

AGENDA

DGRI BOARD OF ADVISORS



Board Members:

Stephanie Andrews • Monica App • Rick Baker • Shaun Biel • Mayor Rosalynn Bliss • Kayem Dunn • Jorge Gonzalez • Kristian Grant • Brian Harris • Bob Herr • Nikos Monoyios • Doug Small • Eddie Tadlock • Randy Thelen • Al Vanderberg • Mark Washington • Kara Wood • Rick Winn

December 20, 2022 2:00p
29 Pearl Street NW (DGRI Offices)

- | | | |
|--|--------|--------|
| 1. Call to Order (2:00) | | Harris |
| 2. Approve Minutes from September 2022 (2:01)
(enclosed) | Motion | Harris |
| 3. The Week Ahead Newsletter Overview (2:02) | Info | Eledge |
| 4. 2023 Meeting Dates (2:10)
(enclosed) | Info | Kelly |
| 5. DGRI Purchasing and Procurement Policy (2:11)
(enclosed) | Motion | Kelly |
| 6. Art Prize MOU and Agreement (2:20)
(enclosed) | Motion | Kelly |
| 7. World of Winter Overview (2:35) | Info | Kelly |
| 8. Grand River Greenway Update (2:55) | Info | Guy |
| 9. President & CEO Report (3:05) | Info | Kelly |
| 10. Board Member Discussion (3:15) | | |
| 11. Public Comment (3:20) | | |
| 12. Adjournment (3:25) | | |



**Board of Advisors Meeting
September 21, 2022**

1. Call to Order – The meeting was called to order at 2:06 p.m. by Chair Brian Harris.

Attendance:

Members Present: Monica Steimle-App, Rick Baker, Mayor Bliss Rosalynn Bliss, Kayem Dunn, Kristian Grant, Brian Harris, Bob Herr, Nikos Monoyios, Doug Small, Eddie Tadlock, Al Vanderberg, Rick Winn.

Members Absent: Randy Thelen, Stephanie Andrus, Mark Washington, Jorge Gonzalez, Shaun Biel.

Others Present: Tim Kelly (President & CEO), Jessica Wood (Legal Counsel), Marion Bonneaux, Bill Kirk, Kendsie Channing, Megan Catcho, Mark Miller, Nancy Toledo, Katie Moore, Trey Abbott. (DGRI Staff).

2. Approve Minutes from May 17, 2022

Motion: Member Baker, supported by Mayor Bliss, moved to approve May 17, 2022, meeting minutes as presented. Motion carried unanimously.

3. DGRI Board Appointment

Kelly proposed Kara Wood, who served formerly as an alliance member, is familiar with the workings of the organization, to be added to the DGRI Board of Advisors.

Motion: Member Vanderberg, supported by Member Dunn, moved to approved Board Appointment of Kara Wood to the DGRI Board of Advisors. Motion carried unanimously.

4. DGRI Service Agreement

Kelly introduced the service agreement as an administrative action. Term agreement with City of Grand Rapids that expired in June 2022. The City Commission approved this service agreement in June 2022. This will extend the agreement to June 2025.

Motion: Member Herr, supported by Member Steimle-App to accept the service agreement with the City of Grand Rapids to extend until June 2025. Motion carried unanimously.

5. Block by Block Contract Amendment

Kelly received recommendation from DID Board to include a residential assessment addition. Based on residential assessment subcommittee, 2 new Ambassadors are recommended to the Board of Advisors to focus on resident-specific issues.

Funding will come from DID. This contract is for current fiscal year and will be reevaluated for the next fiscal year. Herr mentioned the hope for learning a lot from including residents in the DID assessment. Harris inquired how DGRI/DID will we gather feedback. Kelly indicated that a pre- and post-survey will be administered to residents, and direct feedback from residents will be noted by staff.

Harris asked if this project was this palatable to residents, and if there were any disagreements. Kelly responded that no disagreements were noted from residents. If there were disagreements, they were ameliorated by staff.

Motion: Member Herr, supported by Member Grant to add two Ambassadors specifically to meet the needs of DID residential property rate payers. Motion carried unanimously.

6. FY22 and FY23 Performance Indicators

Kelly shared that KPIs (key performance indicators) can be found in the agenda packet.

- Facilitating Investment – Tax increment value has increased by 48% since 2021.
- Pedestrian Counts – World of Winter saw a 20% increase 2021-2022, ArtPrize saw 37% increase from 2021-222.
- Housing – 4,800 units currently downtown. 1,293 units in pipeline, all market rate. 253 units under construction including 56 income restricted. Lots of activity in housing market and lots of investment. DGRI will continue to push on projects that we have input on. We currently have 31% affordable housing.
 - Harris asked about the estimated completion timeline for Phase 2 of Studio Park.
 - Kelly responded it is estimated to take 2 years.
 - Steimle-App confirmed.
- Communications & Vibrancy: Strong presence on Facebook. DGRI has a TikTok account now. We continue to have a broad audience on social media.
- Safe, clean, beautiful Downtown. The Ambassadors have been a tremendous asset. Measures all going up in terms of the work they are doing.
- Trees & parks: we are continuing to add trees and we are just shy of our 10% tree canopy goal. We are adding more recreational space for people in the district to use in underutilized spaces.
- DID administration: We maintain a 12% overhead cost.
- Public resources leveraged: For every dollar brought in, our Return On Investment is \$2.50.
- Key Projects: standing up Grand River Inc (working title), Equity Framework work, Hill/River Network Planning, VAA, events, and the activation team is crushing it.

- Advocacy: Grand River Greenway \$55M from state. DDA Liquor license process improvement – powerful tool for Downtown that the MLCC’s interpretation needed adjustment. Removed sunset on social districts. Reauthorized the DID to include residentially classified properties and nonprofit class 2 properties.
- FY23 Key Projects: Market Ave., Lyon Square – application is now “administratively complete”, wayfinding, bridge south work.

Mayor Bliss inquired about the approval for Lyon Square and the EGLE permits for the museum and Leonard/Ann. Kelly informed the board we are waiting confirmation of approval for Lyon Square and a bid packet will be put together once approved. Guy let the board know the Museum and Leonard/Ann are in a similar position as Lyon Square.

Monoyios inquired about affordable units in the pipeline numbers. Kelly, planning to dig into these number; however, most unit in pipeline are market rate. Harris requested an addendum be added to minutes to answer this question (see housing numbers above). Discussion ensued regarding the city’s affordability goal. Mayor Bliss discussed the city-wide goal and the need to decentralize affordable housing, so it is not all in one area. The affordable Housing Fund board is working on this, Steimle-App mentioned the board is still completing bylaws and DEI objectives. More robust meetings will start to dig into the role of being fundraising and recommendations. Mayor Bliss mentioned the city received \$9.4M from MEDC – a significant portion of those will go toward affordable housing. There is still an issue is supply chain and availability of contractors to meet the rate at which the money is flowing. Members agree to continue focusing on housing at every price point and looking further into house data for decision making.

Motion: Monoyios, supported by Mayor Bliss, moved to approve FY22 and FY23 Performance Indicators. Motion carried unanimously.

7. DGRI and Grand River Inc. Term Sheet

Guy shared a review of previous conversation about Grand River Inc. (GRI) incubation. This represents a formalization of working relationship between DGRI and GRI. Final draft presented in agenda packet.

Proposed roles for 2 organizations, defining who is doing what.

- GRI will: take role of managing project prioritization, technical advising, understanding eligibility of funds, committee will put forward recommendation to GRI board which will go forward to DGRI. Collaborative dialogue on importance of maintenance.
- DGRI will: be the grant recipient and agent responsible for reporting. We have engaged a consultant to accomplish this. Will continue incubation role.
- Both: fundraising responsibilities on radar, but conversation about who is raising what for what will change overtime with different projects.

This has been approved by GRI Board in August.

Harris invited Dunn and Vanderberg to comment on any additional info and on different between term sheet and MOA. Dunn shared that she is confident that multiple bases have been covered and that it clearly articulates what the agreements are. Believes that an MOA will not be needed unless there is an exchange of money. Vanderberg reiterated that we’re on the front end of

something huge and we are just getting started. This is a great start for us to move forward together and will amend when needed.

Herr inquired about the permitting process timeframe. Guy responded that timeliness is certainly a concern. We're confident that those dollars are helping us ramp up the urgency at the state level. Harris noted that there is an end date to this relationship, which is 2026 and inquired about the timeframe of money being released. Guy mentioned that the necessary negotiation will occur in the next few weeks.

Mayor Bliss then asked when we will be able to have a clear county-wide trail map that we can point to show existing projects, next projects, etc. Guy answered that we are engaging multiple stakeholders and by the first of next year we should have something together to present. Guy included that we are organizing a meeting at the county to generate a map of current trails. Mayor Bliss questioned if any conversations has been had with the railroads. Guy stated that city is finalizing application to rails for Leonard/Ann trails.

Harris questioned the board for comprehension on the visualization of these efforts. We are partnering/collaborating with GRI in order to not duplicate or stand up our own groups. DGRI will then be responsible for getting the work done.

Motion: Vanderberg, supported by Mayor Bliss., moved to formalize the working agreement between DGRI and GRI to oversee projects related to river restoration. Motion carried unanimously.

8. Return to the River Overview

Kelly invited Event Manager Megan Catcho to share recent river activation projects, The first annual Return to the River Festival, which took place on August 27, 2022. Event was successful at engaging new audiences around the Grand River.

9. Alliance 3.0 Update

Kelly shared that the third iteration of the Citizen Alliance will meet again next week to discuss ways in which to engage stakeholders to encourage engagement Downtown.

10. President & CEO Report

Kelly provided updates on the Downtown Vitals Report, staffing, and upcoming events.

11. Board Member Discussion

Dunn received an email from Grand Rapids Whitewater stating that public comment is open for permits. Please visit their website to add your comments to move the project forward. There are talking points available to help you format a response. Mayor Bliss added that they are accepting comments until October 10th.

12. Public Comment

No public comment.

13. Adjournment

The meeting adjourned at 3:13 p.m. by Chair Harris.

Downtown Vitals Report Downtown Development Authority



Produced December 9, 2022
for the month of November, 2022

Summary of Downtown Vital Signs

Most Recently Completed Month: **November 2022**

New Businesses

+4 in October
vs. 3.4 5-yr avg.
+26 year-to-date
p. 3

Storefront Vacancy Rates

+3% vs. October
-8% vs. 2-yr avg.
p. 4

Office Space Vacancy Rates

+4% vs. Q2
+76% vs. 5-yr avg.
+26% vs. 15-yr avg.
p. 5

Office Space Rental Rates

+\$0.39 vs. Q2
+\$2.78 vs. 5-yr avg.
+\$5.31 vs. 15-yr avg.
p. 5

Housing Occupancy

-1% vs. Q2
+3% vs. 5-yr avg.
+2% vs. 15-yr avg.
p. 6

(Oct) Hotel Occupancy

-5% vs. Sep
+23% vs. Oct 2021
+22% vs. 5-yr avg.
p. 7

Visitor Activity Counts

-9% vs. October
5% vs. Nov 2021
p. 8

Employee Activity Counts

-9% vs. October
+19% vs. Nov 2021
p. 8

(Aug) On-Street Parking Instances

+18% vs. July
+20% vs. Aug 2021
p. 11

(Aug) On-Street Parking Revenue

+17% vs. July
+27% vs. Aug 2021
p. 11

(June) DASH Ridership

+7% vs. May
+60% vs. June 2021
p. 12

(Sep) City Employment

+0.1% vs. Aug
+5% vs. Sep 2021
+1% vs. 5-yr avg.
p. 13

Editorial Notes

Downtown Visitor Activity (p. 8)

Regarding the decrease in employee activity counts: although the overall employee counts are lower than the 5-year average, the rate of the decrease between October and November is healthier in 2022 when compared to the 5-year average (9% decrease vs. 11% decrease, respectively).

On-Street Parking (p. 11)

The source for on-street parking is still experiencing a data lag. September, October, and November are not reflected.

Storefront Business Openings in 2022

Retail

Periwinkle Fog
Thrift on Div
Hëmd
Courage & Soar*
Gazelle Sports*
Le Macaron
WIMAGE*
The Arts Marketplace
Zabház
Second Vibess*
Decaydence

Food & Beverage

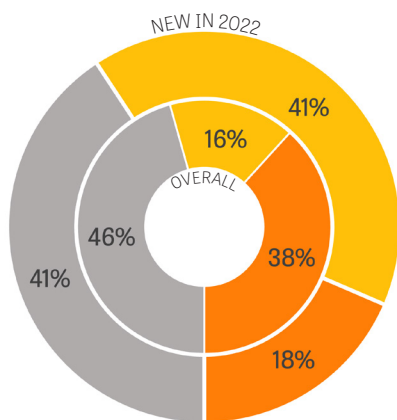
Brooklyn Bodega Bagel & Deli
Real Seafood Co.
Woodrow's
Taste of Cairo†
Monsoon Vietnamese Kitchen
Barrio Tacos
Westside Starbucks
New! Drip Drop Cocktail Room
New! Noodlepig
New! Broadleaf Brewing

Services

Stellar Broadband
GR Voice Collective
Vivid IV Health
AllArtWorks
Angel Face Academy
New! Cocoon Art Space*

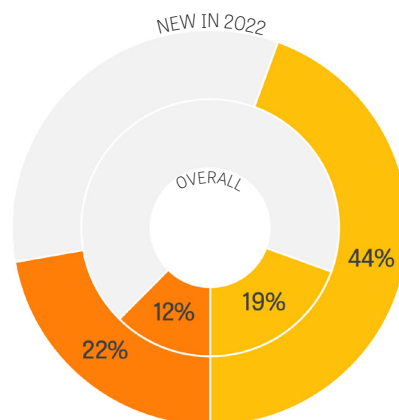
businesses are opening **1.7x** faster than closing in 2022 so far
1.7x in 2021 & 1.6x in 2020

Business Mix of Storefronts



■ Food & Bev ■ Retail ■ Services

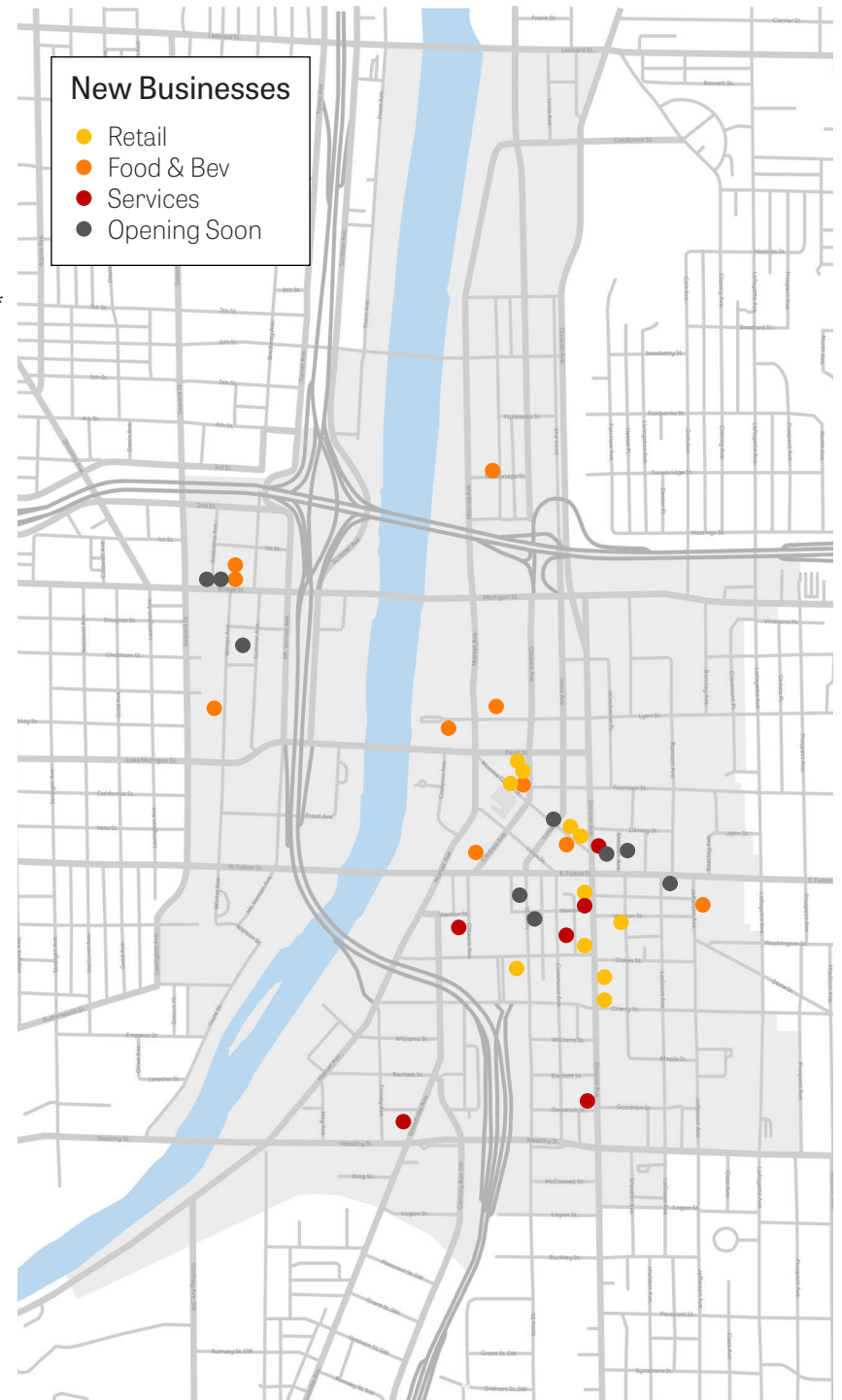
Business Ownership of Storefronts



■ BIPOC-Owned ■ Women-Owned



* received DDA Retail Innovation Grant
† since closed



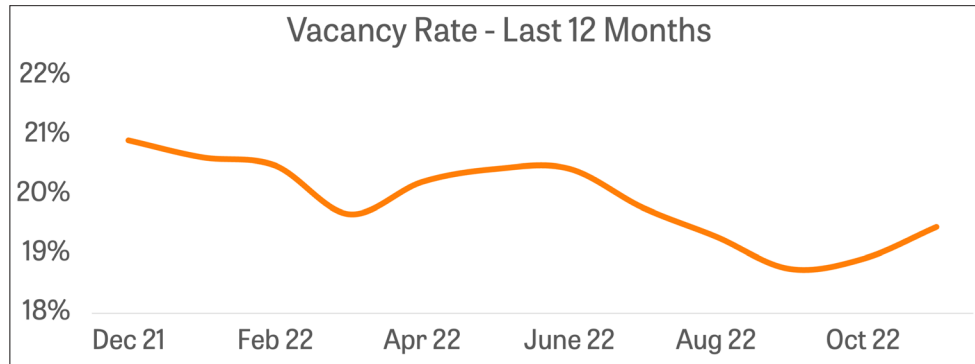
Source: Downtown Grand Rapids Inc.

Storefront Vacancies & Recent Closures

17
storefront
businesses have
closed in 2022
(**3** in November)

2022 Closures:
35% Food & Bev
35% Retail
30% Services

3%
increase in
vacancy rate in
November

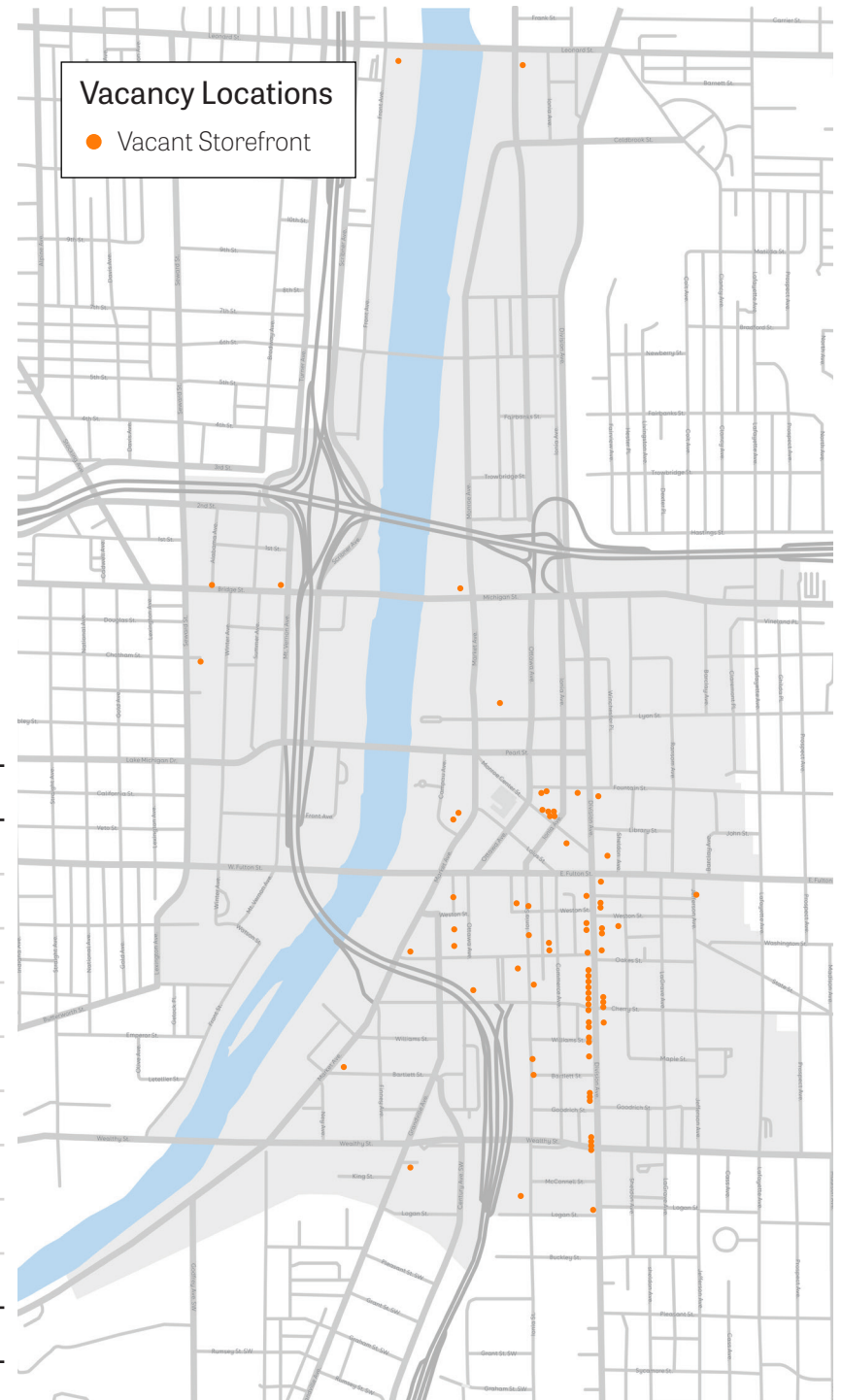


	Storefronts	Vacancies	Vacancy %	Sq Ft Available
Bridge Street	22	2	9%	3,835 sq ft
Center City	115	19	17%	~34,492 sq ft
<i>Monroe Center*</i>	51*	8*	15%*	~50,750 sq ft*
Fulton & Jefferson	21	1	5%	~4,000 sq ft
Heartside: Division	99	33	33%	~89,096 sq ft
Heartside: Ionia	69	11	16%	27,104 sq ft
Heartside: Grandville	14	4	29%	16,463 sq ft
Monroe North	26	1	4%	3,895 sq ft
Other	4	1	25%	500 sq ft
DISTRICT TOTALS:	370	72	19%	~230,135 sq ft



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*Monroe Center is a subset of Center City and is not included in District Totals



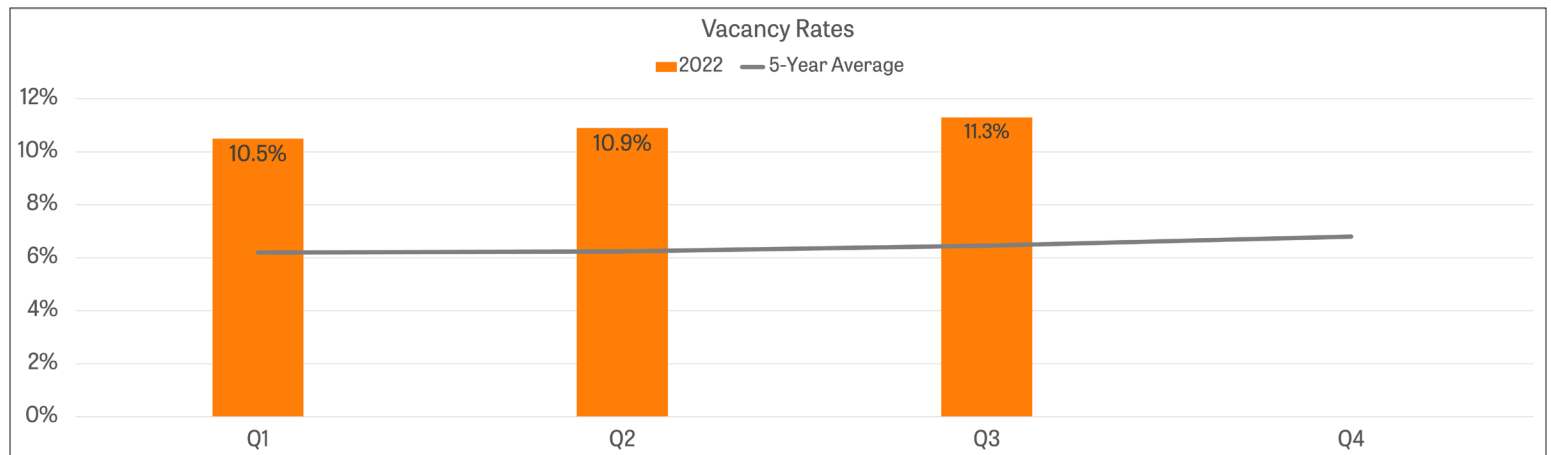
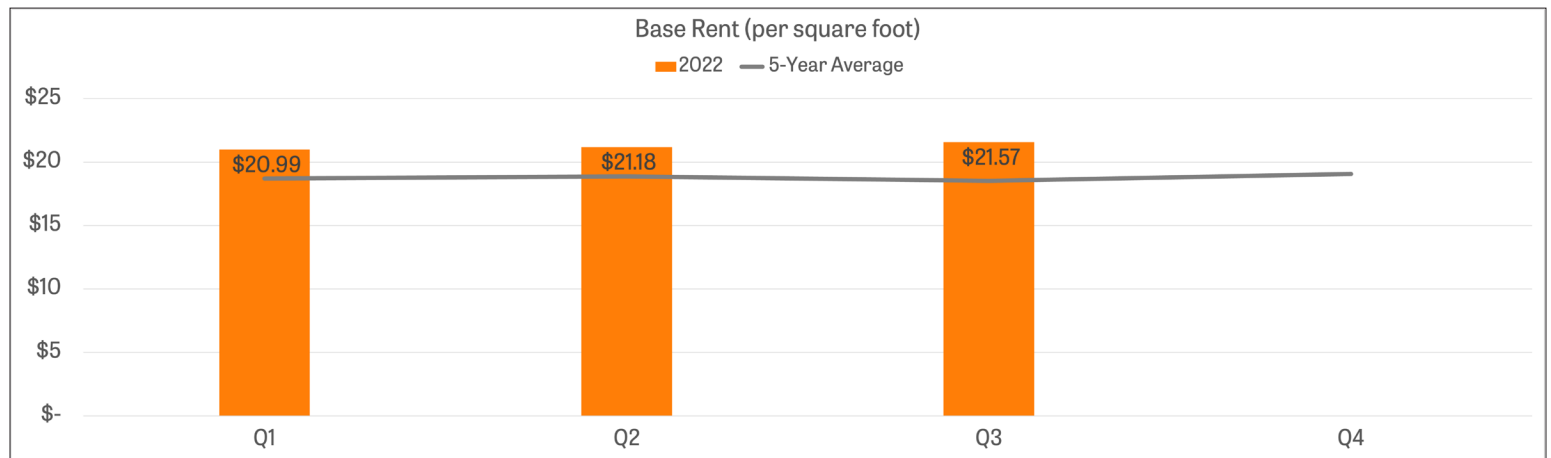
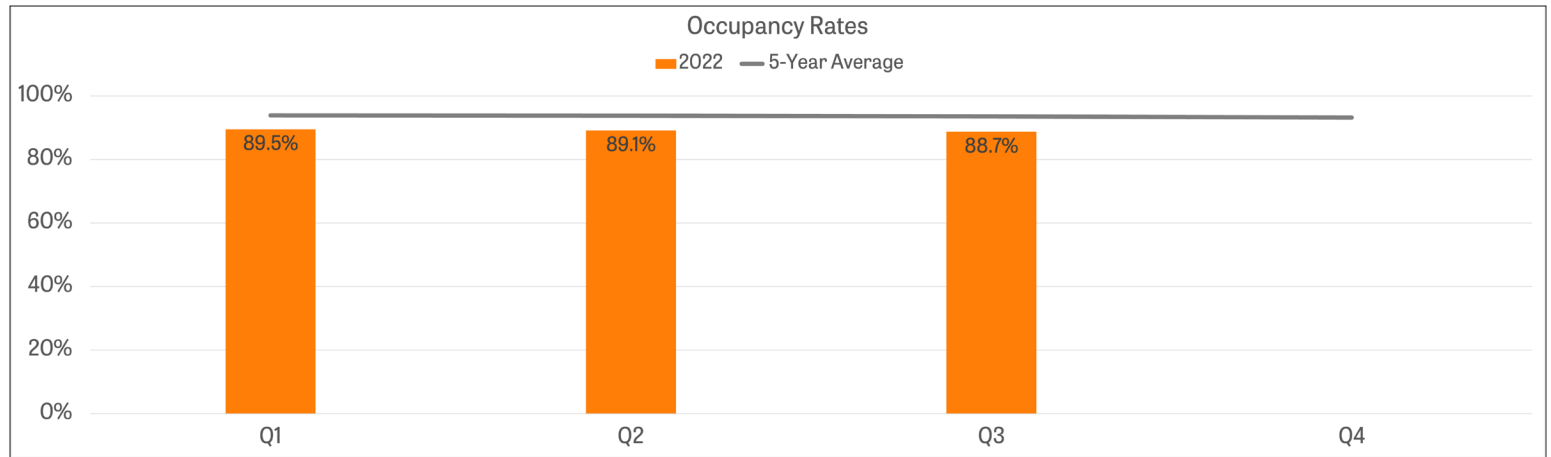
Source: Downtown Grand Rapids Inc.

4.9M sq ft of occupied space in Q3 2022 771k sq ft of vacant space in Q3 2022

5%
decrease in average
occupancy in
2022 compared to
5-year average

13%
increase in average
rental rates in
2022 compared to
5-year average
(\$2.45/sq ft)

70%
increase in average
vacancy in 2022
compared to
5-year average



Housing Overview

Updated Quarterly

3%

increase in
occupancy rate
vs. 5-year average
(97% vs. 93%)

1%

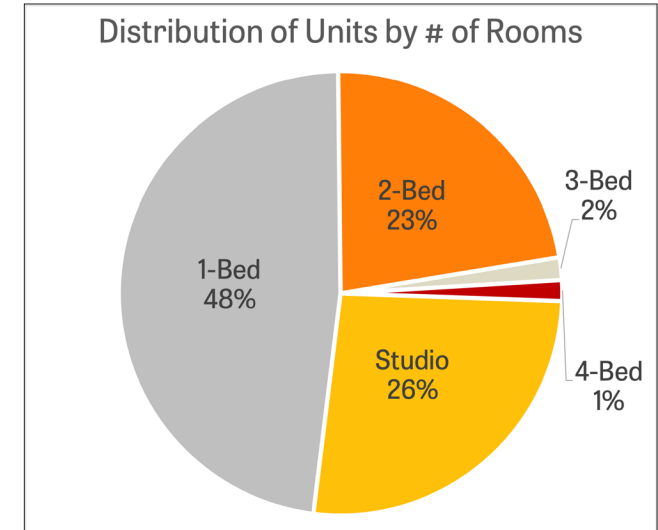
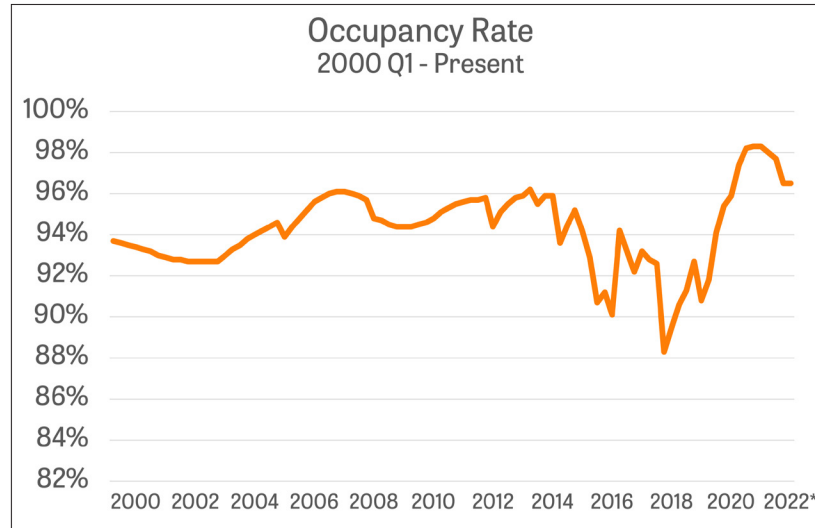
decrease in
occupancy rate
vs. Q2 2022

249

units under construction

1,430

units in planning

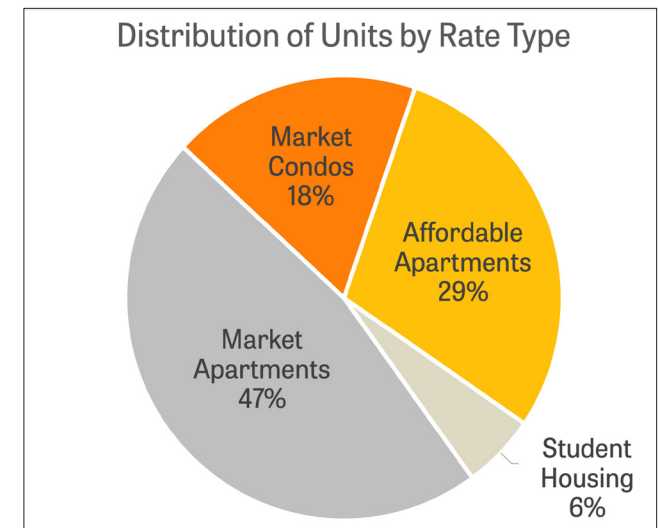
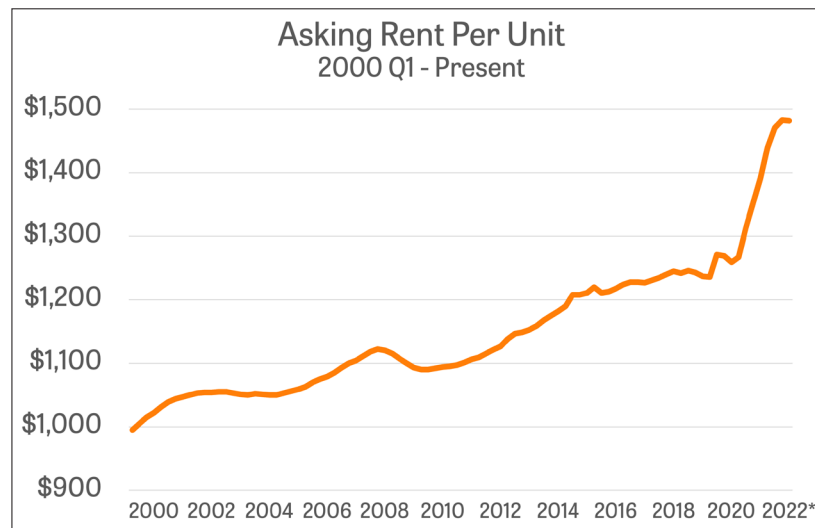


18%

increase in
asking rent rate
vs. 5-year average

1%

increase in
asking rent rate
vs. Q2 2022



Source: CoStar &
Downtown Grand Rapids Inc.

*2022 incomplete

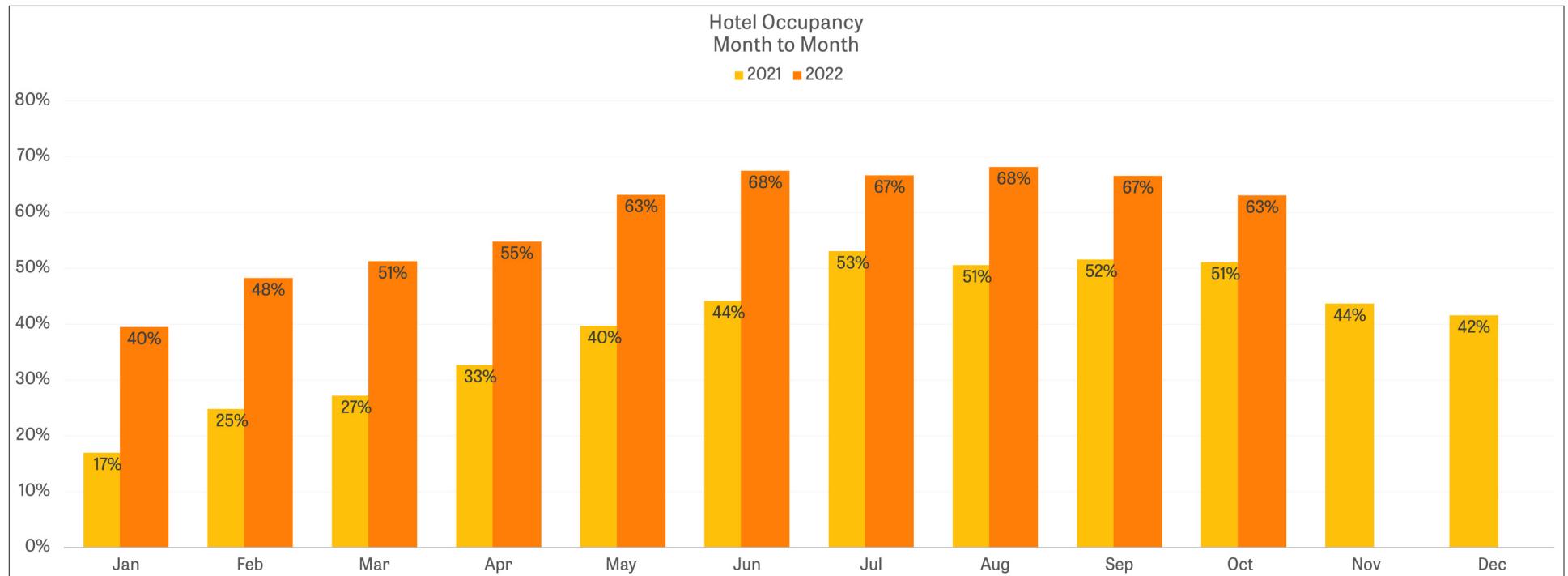
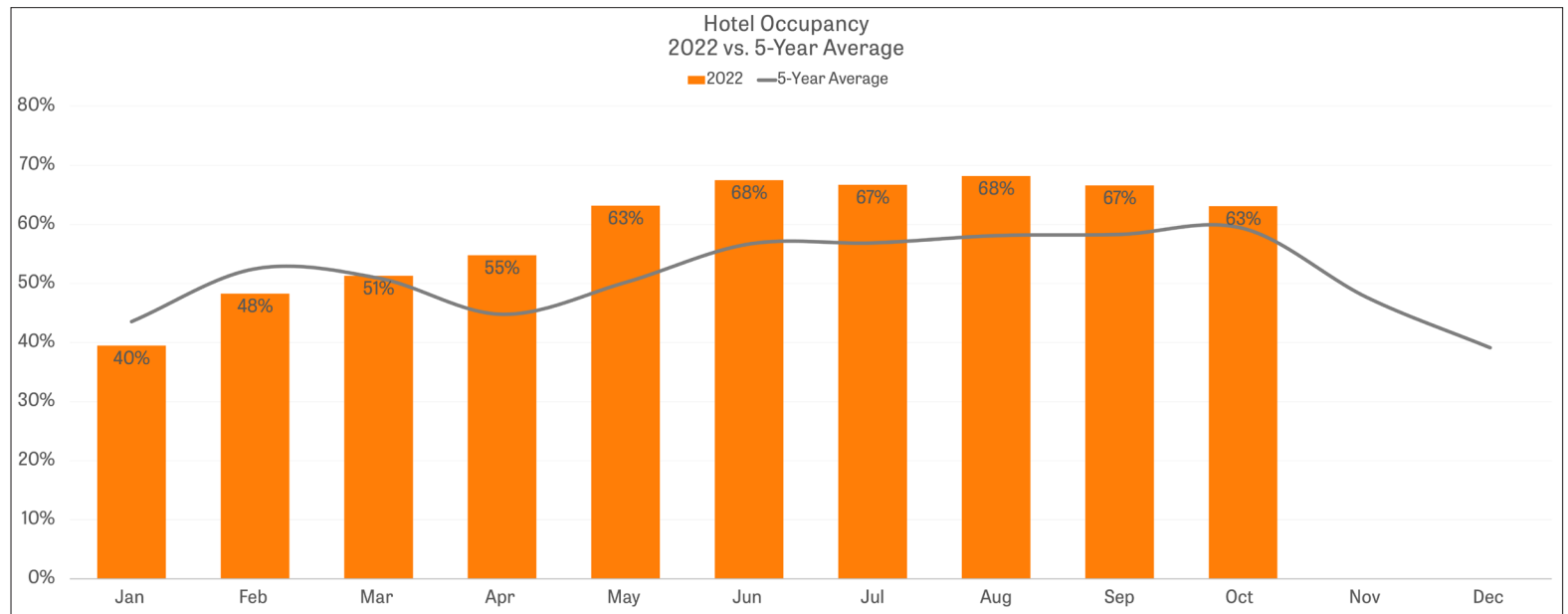
Hotel Occupancy

14%

increase in average
hotel occupancy in
2022 compared to
5-year average

48%

increase in average
hotel occupancy in
2022 vs. 2021



Source: Smith Travel Research via CoStar

Downtown Activity Tracking

0.1%

decrease in average
visitor activity
compared to 5-year
November average

12%

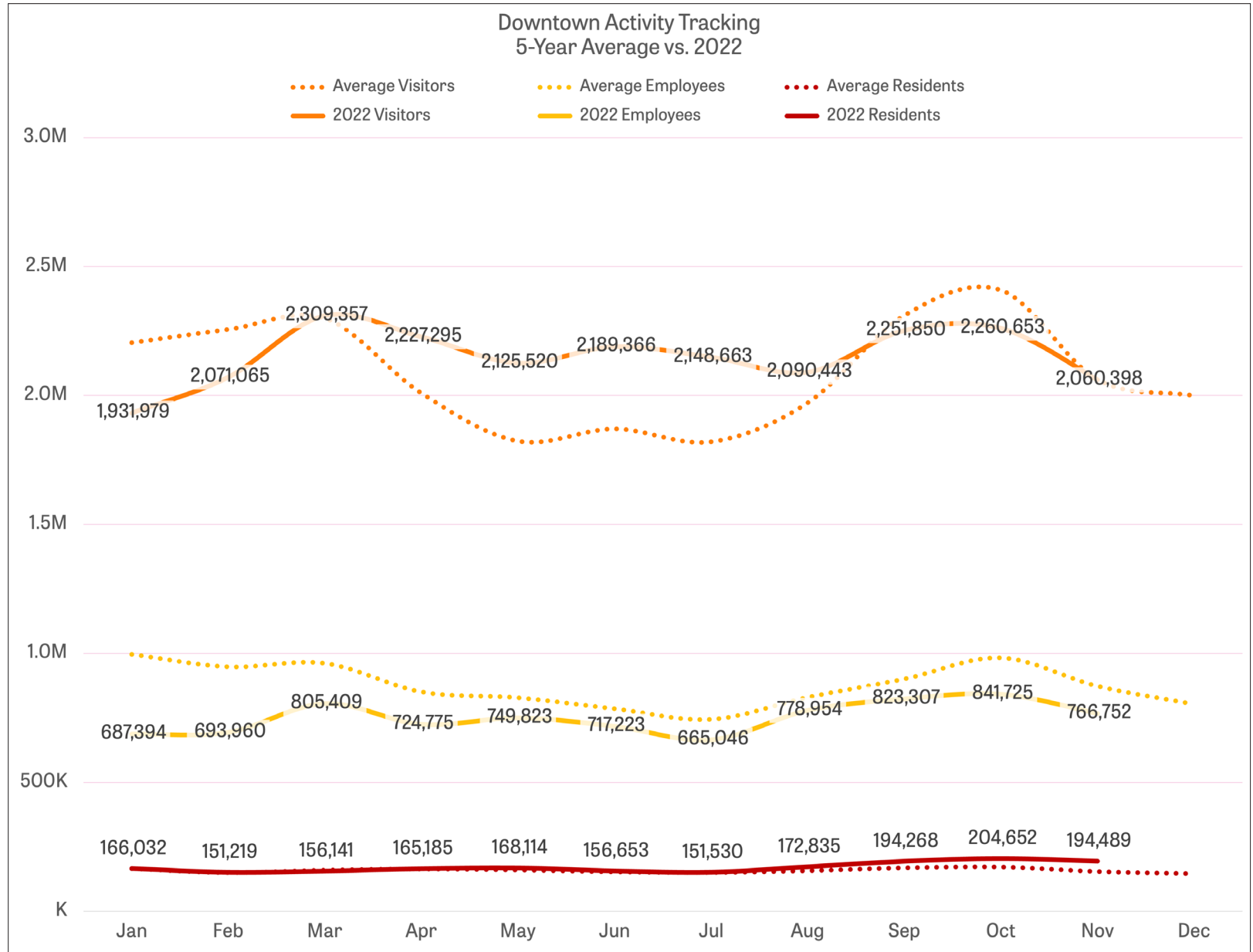
average **decrease** in
employee activity
compared to 5-year
November average

38,338

estimated **employee**
population in November

6,483

estimated **resident**
population in November



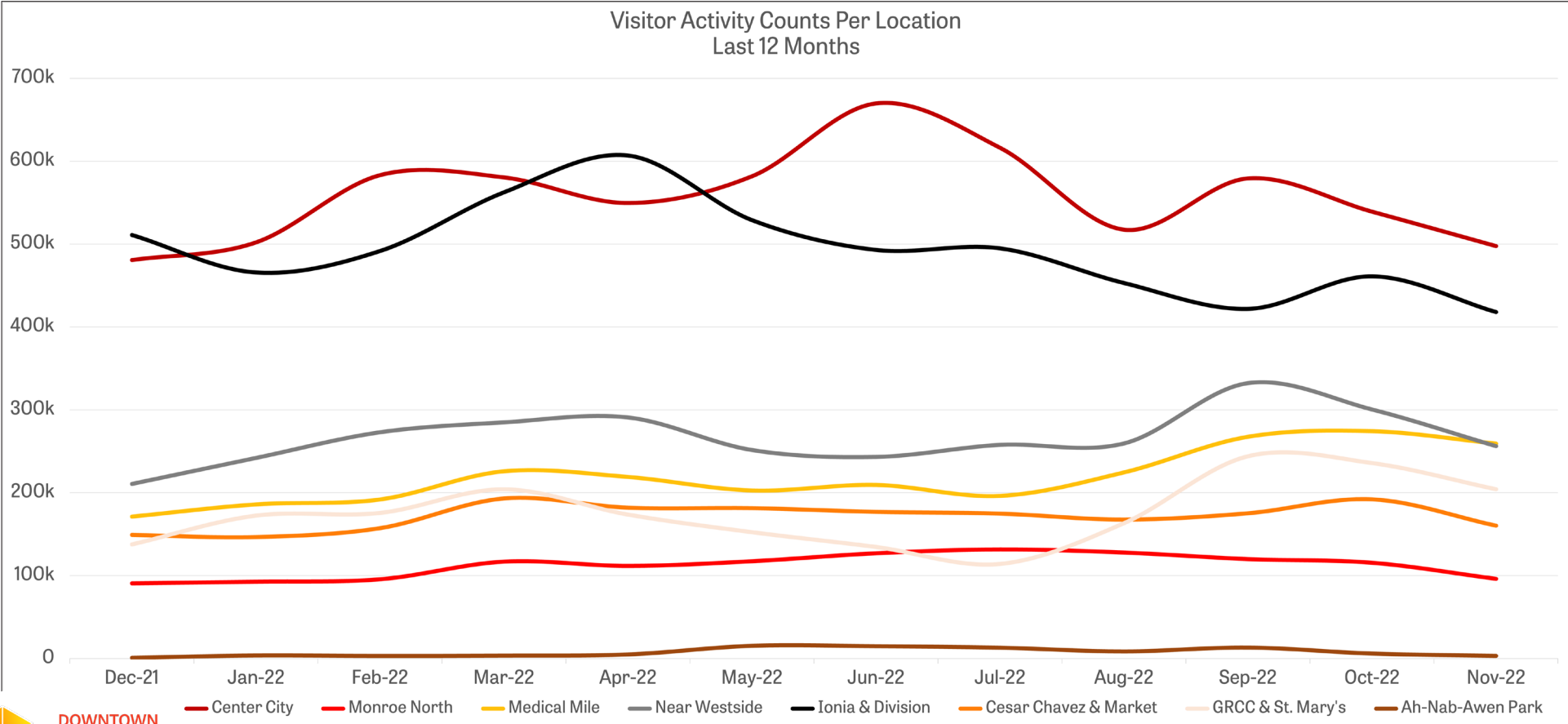
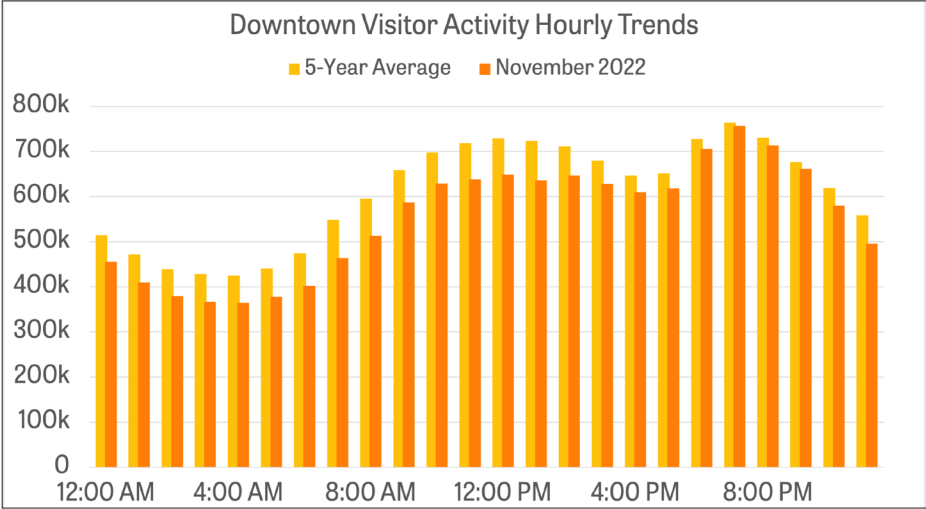
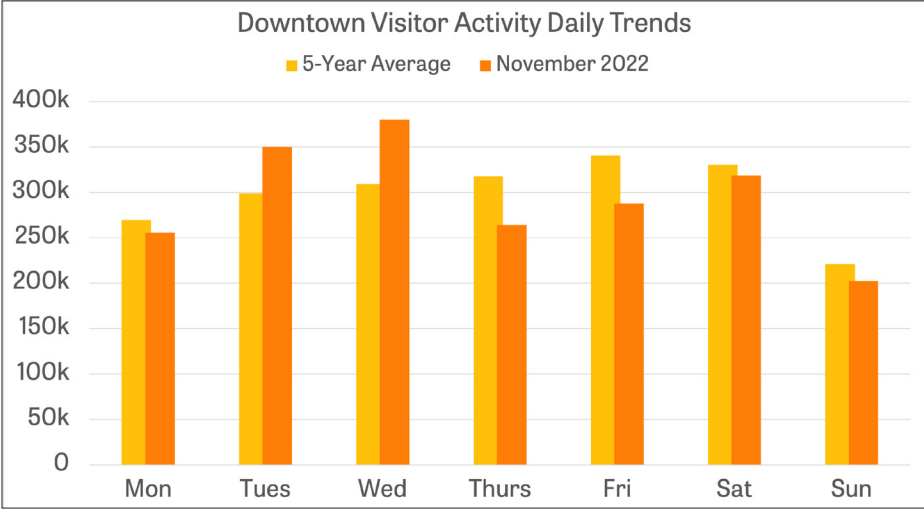
Source: Placer.ai

DGRI uses Placer.ai's location tracking analytics to estimate activity counts. To learn more about the methodology, go to:

<https://downtowngr.org/our-work/reports-studies>



Downtown Activity Tracking, con't



Current Downtown Construction & Development

1 ICCF Tapestry Square - anticipated completion: Q4 2022

+10,000 square feet of commercial space
+56 housing units

2 Center for Transformation & Innovation - anticipated completion: Summer 2023

+303,000 square feet of office space
+1,200 jobs
+1,090 parking spaces

3 Spectrum Health Ambulatory Building - anticipated completion: Spring 2024

+240,000 square feet of office space

4 Studio Park Residential Tower - anticipated completion: End 2024

+193 housing units

Totals:

543k

square feet of
office space

10k

square feet of
commercial

1,200

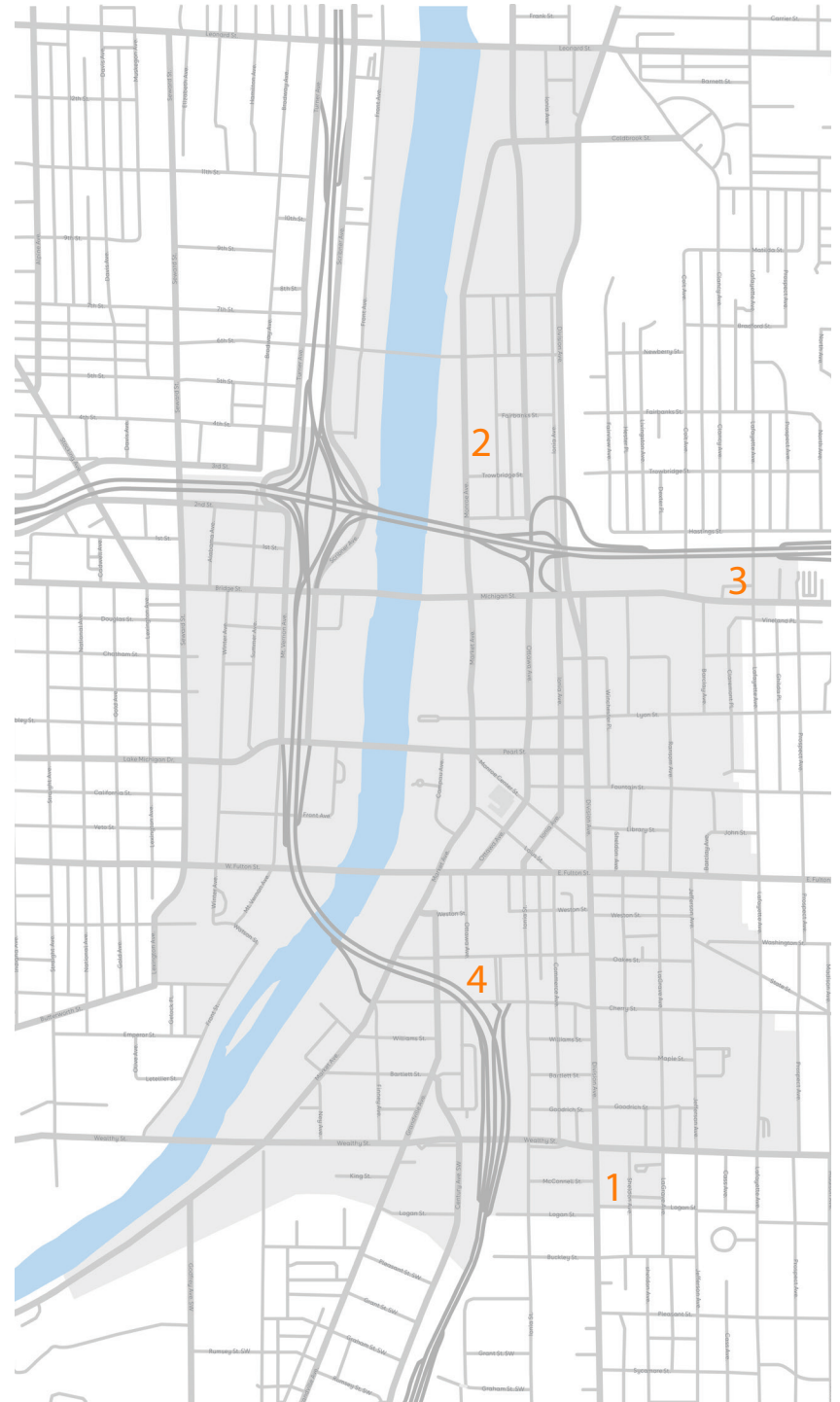
new jobs

1,090

parking spaces

249

housing units



Source: Downtown Grand Rapids Inc.

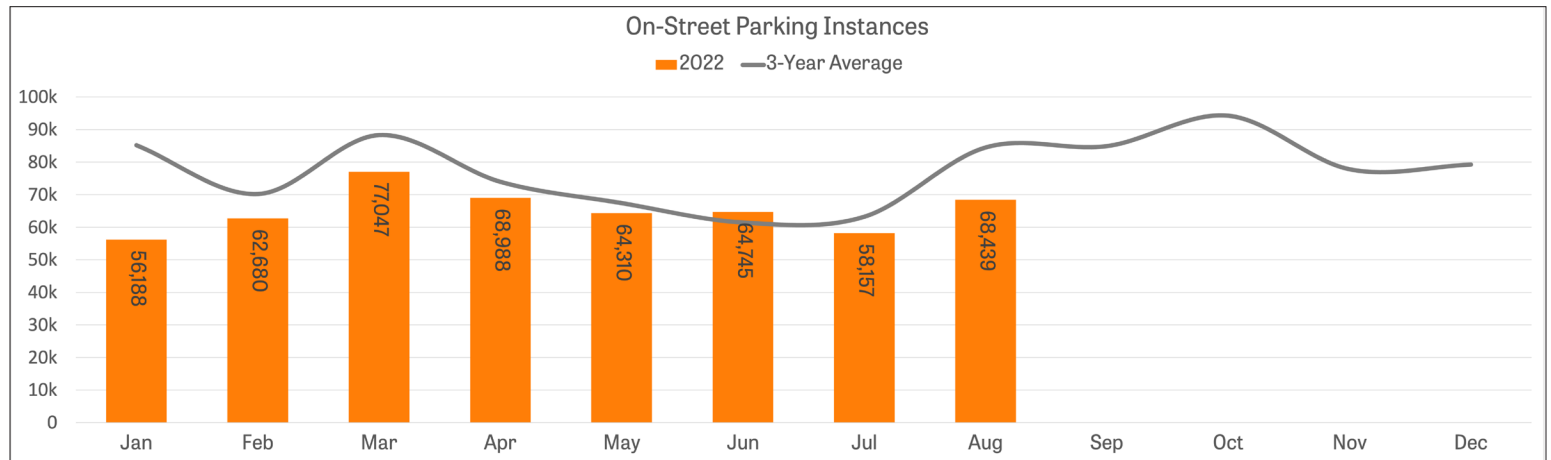


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On-Street Parking

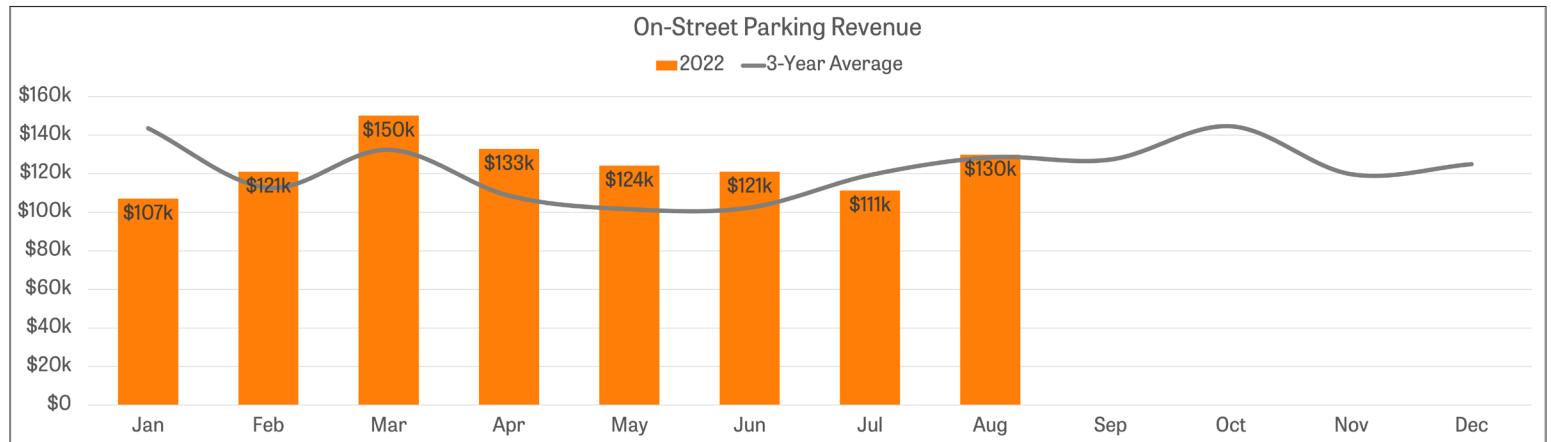
16%

average **decrease** in
of instances in
2022 compared to
3-year average



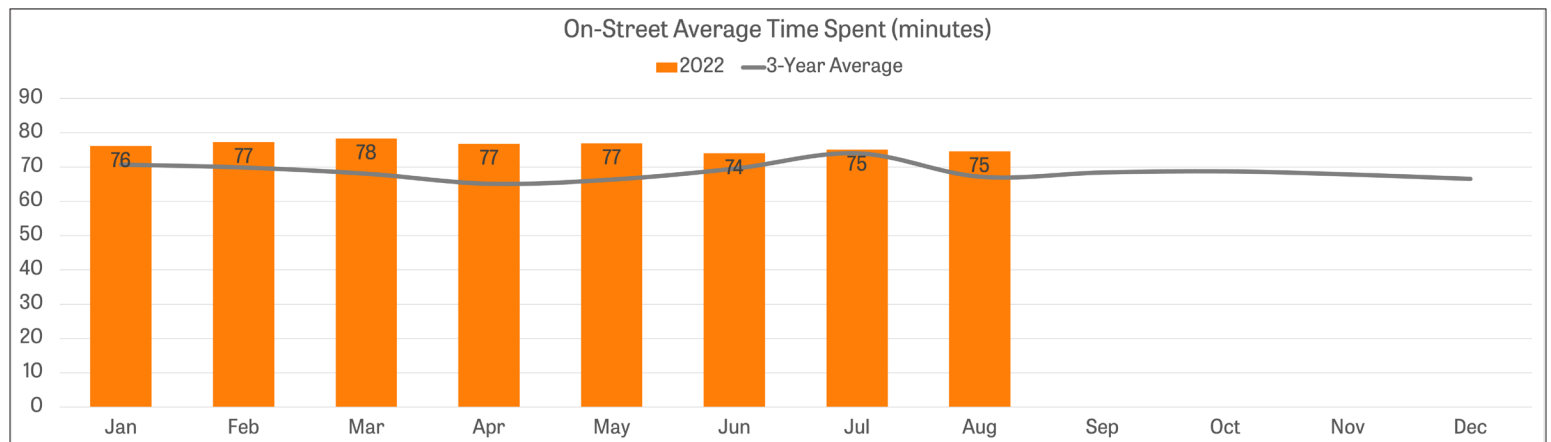
2%

average **decrease** in
revenue in 2022
compared to
3-year average



6-minute

longer sessions in
2022 compared to
3-year average



Source: Mobile GR

DASH Ridership

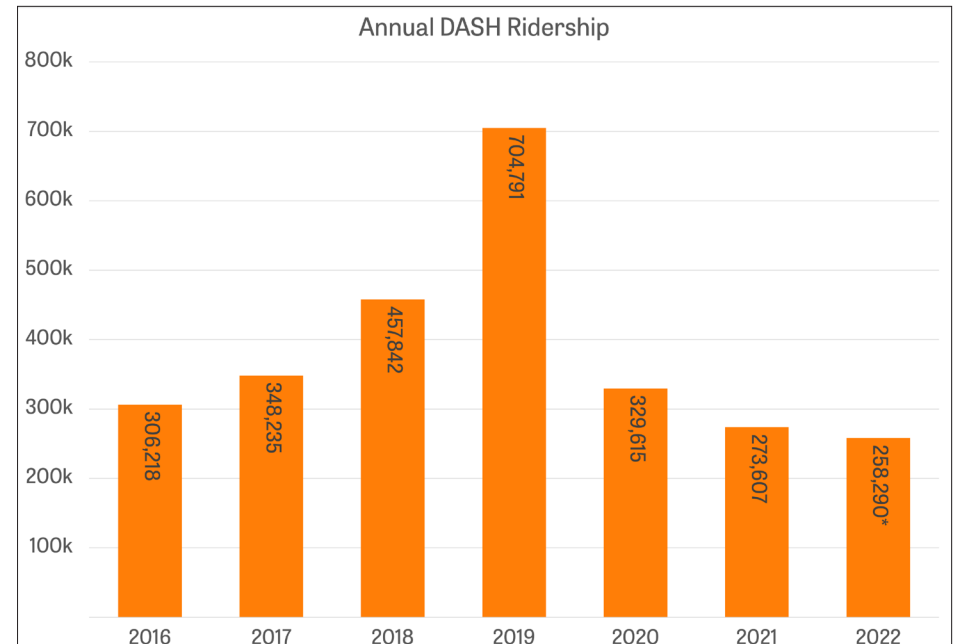
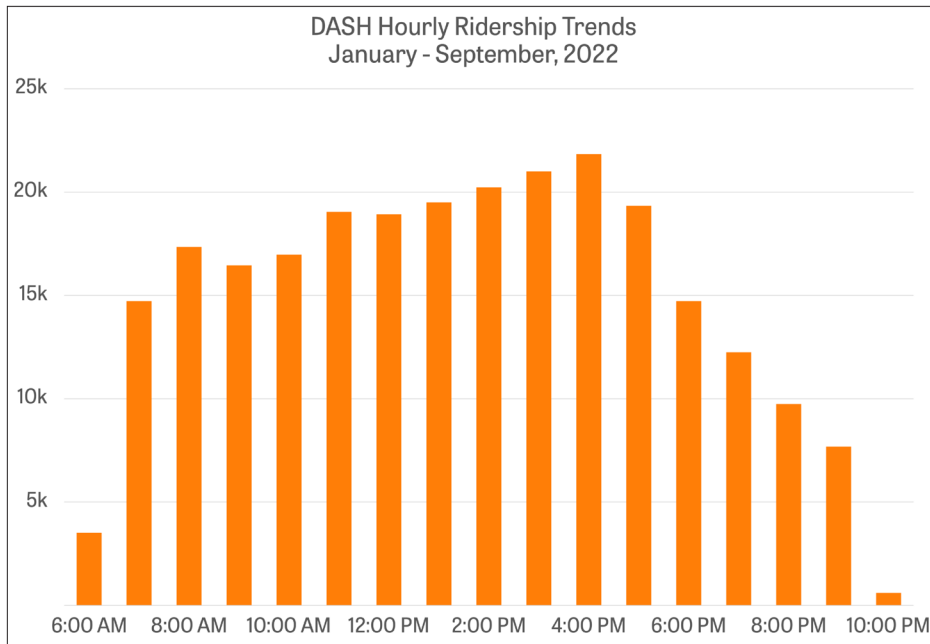
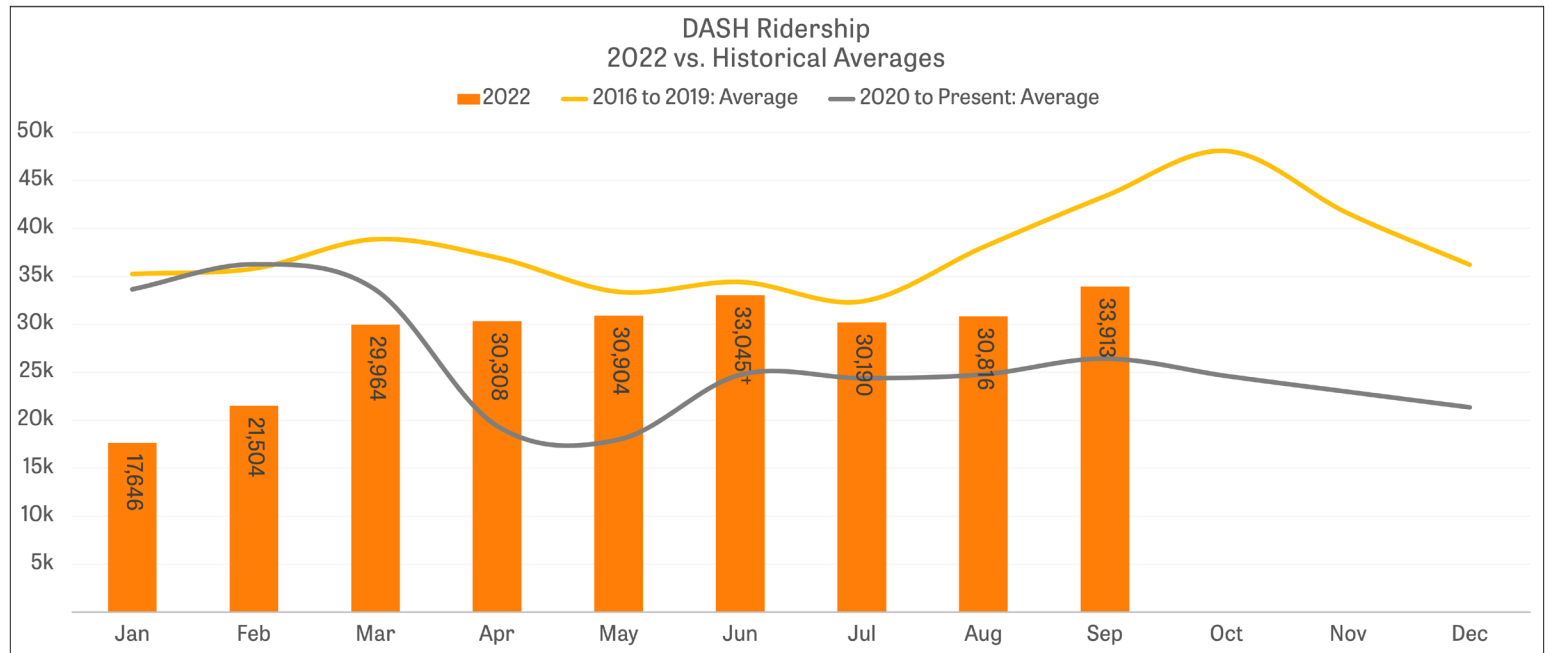
Updated Quarterly

15%

decrease in average
ridership in 2022 vs.
6-year average

28%

increase in ridership
in 2022 so far vs. 2021
(same period)



Source: The Rapid



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*estimate due to technical issue

*2022 total annual ridership count incomplete

City Employment

0.1%

increase in Sep 2022
vs. August 2022

1%

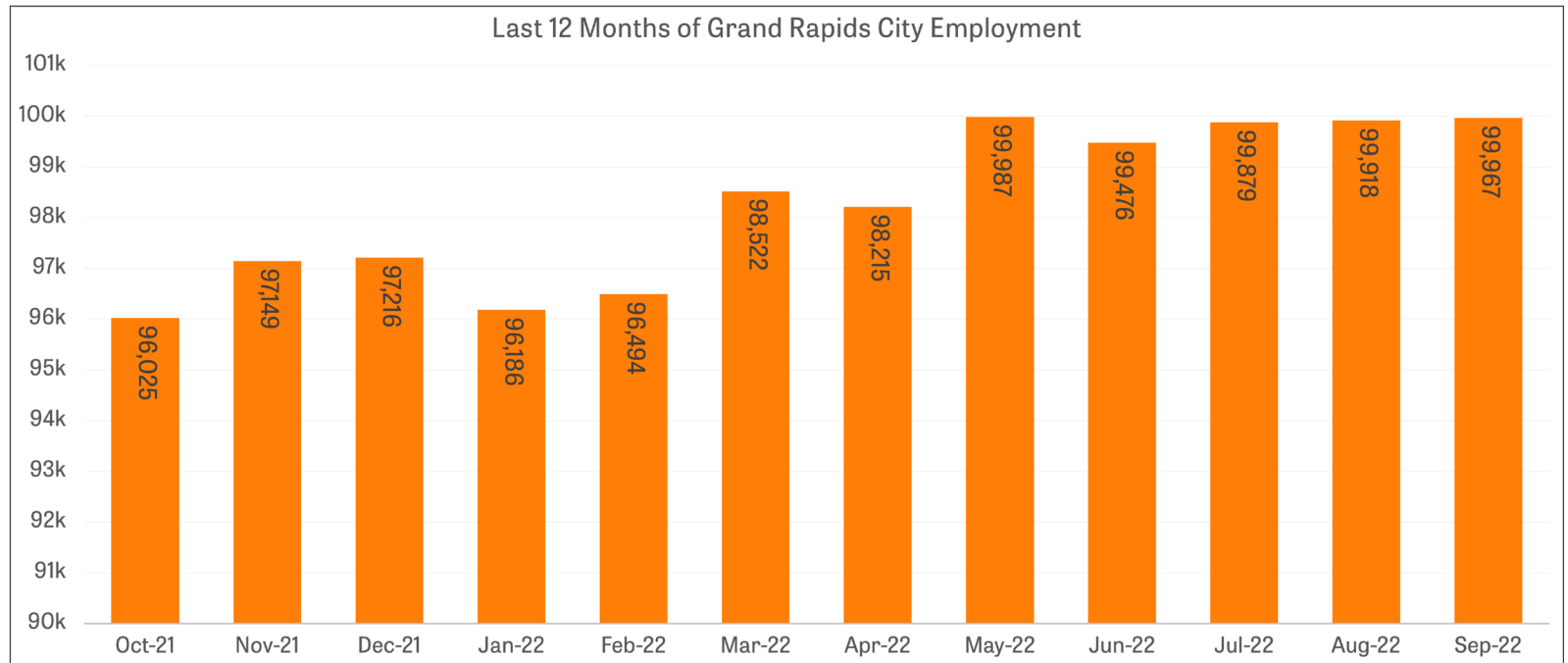
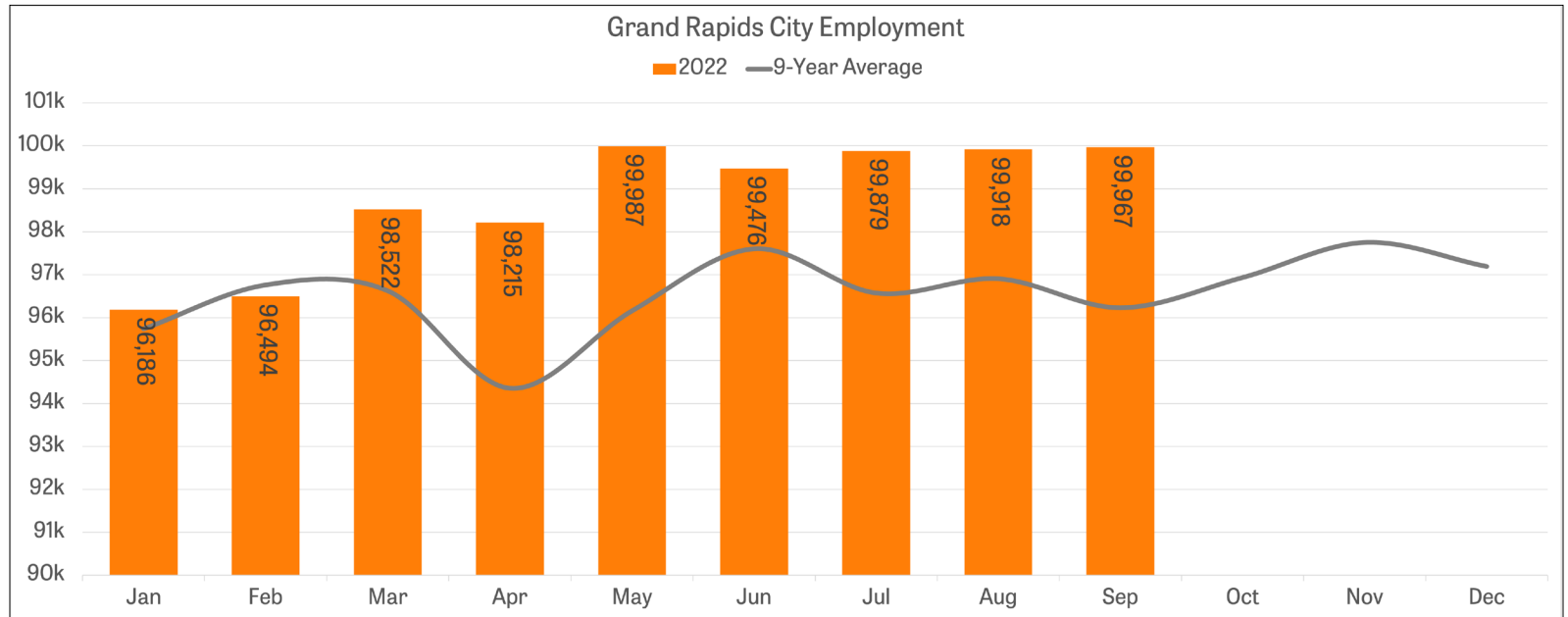
increase compared
to 2022 average

3%

increase compared
to 9-year average

4%

increase in Sep 2022
vs. Sep 2021



Source: BLS



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Downtown Grand Rapids Inc.
Board of Advisors

2023 Meeting Schedule

Thursday February 16th at 2:00pm
Thursday May 18th at 2:00pm
Thursday September 21st at 2:00pm
Thursday November 30th at 2:00pm

DGRI Office
29 Pearl St. NW, Suite 1
Grand Rapids, MI 49503

Please contact Downtown Grand Rapids, Inc. at 616-719-4610 if you have any questions prior to the meeting.



MEMORANDUM

DATE: December 20, 2022

TO: DGRI Board of Advisors

FROM: Tim Kelly, AICP
DGRI President & CEO

SUBJECT: Item #5 - DGRI Purchasing and Procurement Policy

In March 2022 Downtown Grand Rapids Inc. was awarded a \$55,000,000 grant from the State of Michigan for the Grand River Greenway. That grant was funded with federal money via the American Rescue Plan Act (ARPA), and as a result requires specific management and oversight controls when used. This includes following generally accepted accounting principles (GAAP) and various standards set forth in the Code of Federal Regulations (CFR).

The attached Purchasing and Procurement policy is designed to meet those requirements and to ensure proper stewardship of the federal funds being received and deployed. As proposed this policy will only apply to those purchases and projects which receive federal funding. Another policy covering other DGRI operations is in development and will be brought forward for consideration in 2023.

RECOMMENDATION:

Approve the DGRI Purchasing and Procurement Policy covering expenditures utilizing federal funds.

DRAFT DGRI PROCUREMENT POLICY (FOR REVIEW 12-06-2022)

Introduction and Scope

The purpose of this policy is to ensure that Downtown Grand Rapids, Inc. (“DGRI”) achieves the best value for goods and services procured, following a transparent and cost effective process. The policy aims to safeguard an adequate level of competition in order to increase the integrity of the procurement process, ensure good stewardship of funds, and meet requirements of funding agencies.

The following policies and procedures will be followed at all times when DGRI is using federal funds to procure goods and services from an external source.

DGRI will follow accounting policies and procedures that comply with generally accepted accounting principles (GAAP) and avoid purchasing unnecessary items. Any procurement of goods and services shall be made by the procurement officer/authorized agent, in the best interest of the DGRI, upon considering the totality of the circumstances surrounding the procurement, which may include but not limited to price, quality, availability, reputation, and prior dealings.

The Federal regulations pertaining to procurement standards are set forth in 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). The standards included in 2 CFR 200.318 through 200.327 must be complied with when any procurement of supplies and other expendable property, equipment, and services made by DGRI involves the use of Federal funds, including funds directly awarded to DGRI by a government agency or department, as well as pass-through federal funds awarded to DGRI by local or state agencies.

DGRI staff is expected to review and comply with the procurement requirements, if any, under the applicable funding source agreement.

Code of Conduct Requirements and Protocol

2 CFR Section 200.318 requires that DGRI, as a recipient of federal funds, maintain written standards of conduct covering conflict of interests and governing the performance of its employees engaged in the award and administration of contracts.

All DGRI employees who are engaged in the award and administration of government contracts must adhere to a code of professional conduct. All employees, including those employees who purchase goods or services, or otherwise administer contracts, must follow DGRI’s Conflict of Interest Policies.

Conflicts of Interest. No employee, officer, or agent of DGRI shall participate in the selection, award, or administration of a contract supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the

employee, officer, or agent of DGRI, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

Prohibited Conduct. No employee, officer, or agent of DGRI must solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Further, no employee, officer, or agent of DGRI shall accept gratuities, favors, or anything of monetary value (other than an unsolicited gift of a nominal value) from contractors or parties to subcontracts.

Organizational Conflicts of Interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate or subsidiary organization, a person or organization is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization. DGRI employees responsible for the procurement shall identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible and avoid, neutralize, or mitigate significant potential conflicts before contract award. If necessary, DGRI employees are directed to seek counsel from DGRI's legal counsel in the evaluation of potential organizational conflicts of interest and in developing any necessary solicitation provisions and contract clauses. If it is determined that a conflict of interest exists and cannot be avoided or mitigated, before determining to withhold an award based on conflict of interest considerations, the DGRI employee responsible for the engagement shall contact the contractor regarding the existence of a conflict of interest and provide the contractor with an opportunity to respond. If the DGRI employee responsible for the engagement determines that it would be in the best interest of DGRI to award the contract notwithstanding a conflict of interest, the DGRI employee shall request a waiver and authorization to proceed from the DGRI Board of Advisors.

Disciplinary Actions

Any DGRI employee who violates the requirements and protocol above, may be subject to disciplinary action, based on the seriousness of the violation.

Acquisition Planning

Principles of Acquisition Planning

DGRI employees shall make purchase decisions based on necessity and shall avoid purchasing unnecessary or duplicative items with DGRI funds. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services, DGRI may enter into inter-entity agreements where appropriate for procurement or use of common shared goods or services.

Procedures and Documentation Requirements

Prior to purchasing goods or services, DGRI employees shall:

- a) Conduct (where appropriate) an analysis of lease and purchase alternatives to determine the most economical and practical procurement vehicle.
- Documentation may consist of notes made by the DGRI employee(s) making the purchase decision, estimates/cost projections for lease and purchase alternatives (obtained from contractors directly or through reputable Internet resources), quotes from contractors, etc. Such DGRI employee(s) should consider (without limitation) the duration of the need for such item, financing terms, and the requirements of the applicable funding source.
- b) Show a demonstrated need for all items purchased.
- Documentation may consist of notes made by the DGRI employee(s) making the purchase decision, a copy of the applicable work plan or agreement which the purchase/engagement fulfills, etc.
- c) Review current inventories and goods on order to prevent duplicative purchases.
- Documentation may consist of the inventory record dated on or about the date of the purchase decision.
 - DGRI employees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- d) Assess whether the services can be performed more economically by direct employment rather than contracting.
- Documentation may consist of notes made by the DGRI employee(s) making the procurement decision (including cost projections for direct employment and contracting). Such DGRI employee(s) should consider the duration of the need for such services, whether similar services will be required over time, the scope of work, and costs of engagement (as employee and contractor, respectively), among other factors (as the situation might require) in his or her assessment.
- e) When appropriate and applicable, it is recommended that DGRI staff use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

Retention of Documentation

DGRI staff shall maintain documentation in support of his/her observance of the requirements of the section above, for as long as required pursuant to DGRI's record retention

guidelines or as required by the funder pursuant to the applicable funding agreement, whichever is later.

Solicitations for Goods and Services

Objective

All procurement transactions shall be conducted in a manner providing full and open competition. Full and open competition in the contracting process should ensure cost effectiveness and reduce the potential for favoritism and conflicts of interest (including organizational conflicts of interest).

Principles

Basic Principles of Solicitations. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated. Solicitations for goods and services must include the following:

- a) A clear and accurate description of the technical requirements for the material, product or service to be procured. The description should not be worded such that it unduly restricts competition. Detailed product specifications should be avoided if at all possible.
- b) All requirements that the offeror must fulfill and all other factors to be used in evaluating bids or proposals (including any specific criteria related to deliverables, payment of expenses, payment schedules and timeliness, all of which make up the decision criteria; provided, however, that such specific criteria shall not be unduly restrictive of competition).
- c) The submission deadline and the anticipated award date.
- d) A description, whenever practicable, of technical requirements in terms of functions to be performed and services required, including a range of acceptable characteristics or minimum acceptable standards.
- e) When is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement/that bidders are required to meet. The specific features of the named brand which must be met by offers must be clearly stated

Small and Minority Firms, Businesses, Women’s Business Enterprises, and Labor Surplus Area Firms. DGRI employees must take all necessary affirmative steps to assure small and minority firms, women’s business enterprises, and labor surplus area firms are used whenever possible.

Affirmative steps DGRI employees must take, include the following:

- a) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
- b) Assuring that small and minority businesses, and women’s business enterprises

- are solicited whenever they are potential sources;
- c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - e) Using the service and assistance, as appropriate, of such organizations as the Small Business Administration and Minority Business Development Agency of the Department of Commerce; and
 - f) Requiring any prime contractor, if subcontracts are to be let, to take the same affirmative steps.

Unfair Competitive Advantage. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitation for bids and/or, requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to DGRI, price, quality and other factors considered. Some of the situations considered to be restrictive of competition include but are not limited to:

- a) Placing unreasonable requirements on firms in order for them to qualify to do business;
- b) Requiring unnecessary experience and excessive bonding;
- c) Noncompetitive pricing practices between firms or between affiliated companies;
- d) Noncompetitive contracts to contractors that are on retainer contracts;
- e) Organizational conflicts of interest;
- f) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- g) Any arbitrary action in the procurement process.

Monitoring Contractors' Practices. DGRI shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition.

Prohibited Use of Geographical Preferences. DGRI staff shall conduct procurement in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Prequalified Lists of Persons, Firms or Products. DGRI shall ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current

and include enough qualified sources to ensure maximum open and free competition. DGRI shall not preclude potential bidders from qualifying during applicable solicitation periods.

Procurement Methods (Types of Solicitations)

DGRI employees must use ONE of the following methods of procurement, for each instance of procurement:

Procurement by Micro-Purchases. Contracts up to \$10,000

Procurement by Small Purchase Procedures. Contracts from \$10,001 to \$ [REDACTED] [Not to exceed \$250,000 (2 CFR 200.88)].¹

Procurement by Competitive Proposals. Contracts in excess of \$ [REDACTED].

Procurement by Sealed Bids - Construction.

Procurement by Noncompetitive Proposals.

Procurement by Micro-Purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, DGRI shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if DGRI considers the price to be reasonable.

Procurement by Small Purchase Procedures. Contracts from \$10,001 to \$ [REDACTED] [Not to exceed \$250,000 (2 CFR 200.88)].

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property **that do not cost more than the Simplified Acquisition Threshold (\$ [REDACTED])**. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources, not less than three (3).

May be solicited verbally; however price and rate quotes obtained verbally must be confirmed in writing, via email, facsimile, or other acceptable documentation. Moreover, the staff responsible for the engagement and oversight of the contractor shall maintain documentation of its solicitation and engagement process.

- a) Price or rate quotations must be obtained from an adequate number of qualified sources, not less than three (3).
- b) DGRI employee(s) may contact persons and firms included on lists of prequalified contractors.
- c) “Qualified” means the supplier/contractor is able to meet required licensing or certification requirements, is not prohibited from participating in the procurement

¹ [Dickinson Wright Drafting Note: The “Simplified Acquisition Threshold” is 250,000 but DGRI could choose to set a lower number for itself. Under 2 CFR 200.320(a)(2)(ii), DGRI “is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures”]

action, and can fulfill DGRI's requirements.

- d) DGRI employee(s) responsible for the initiation of the solicitation and selection of the contractor shall document its decision rationale in its file. The documentation must include the performance requirements and the organizations/individuals that were contacted. Specifically, the documentation should include, but not be limited to:
- The name of the individual soliciting the information;
 - The names of the companies/individuals solicited and the individuals providing the price or rate quotation;
 - The date the information was provided;
 - The goods or services to be purchased, including the quantities upon which the price or rate quote was provided;
 - All pertinent terms or conditions imposed by either party;
 - The duration of the price or rate quotation. A new solicitation must be conducted for purchases that will be made after the current quotation expires; and
 - Responsiveness of the bid/quotations to the selection criteria contained in the solicitation (including comparative analysis of the bidding individuals/companies).

When a proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the simplified acquisition threshold, the protocol on procurement by competitive proposal shall be followed.

Procurement by Competitive Proposals. Contracts in excess of the Simplified Acquisition Threshold- \$

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- a) Requests for proposals ("RFPs") must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- b) Proposals must be solicited from an adequate number of qualified sources; written responses must be obtained from an adequate number of qualified sources, not less than two for any RFP. It is strongly recommended that at least three (3) price or rate quotations be obtained for each RFP to strengthen the price analysis for the procurement action;
- c) "Qualified" means the supplier is able to meet required licensing or certification requirements, is not prohibited from participating in the procurement action, and can fulfill DGRI's requirements.
- d) DGRI must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

- e) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

If needed/applicable, DGRI may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Contracts in Excess of the Simplified Acquisition Threshold: Must be solicited utilizing written Request for Proposals (RFPs) Minimum Components:

- a) All of the requirements for solicitations under section above.
- b) Any contract requirements mandated by the applicable funder.
- c) Written Requests for Proposals may be posted on or printed in (as applicable):
- d) website
 - Local chamber of commerce
 - Idealist.org
 - Local or national (as feasible or necessary) newspapers
 - Trade or industry newsletters, journals, or periodicals

Responses to the Requests for Proposals must be in writing.

Procurement by Sealed Bids - Construction (Formal Advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all of the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the following conditions apply. In order for sealed bidding to be feasible, the following conditions should be present:

- a) A complete, adequate, and realistic specification or purchase description is available;
- b) Two or more responsible bidders are willing and able to compete effectively for the business; and
- c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- a) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- b) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

- c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- d) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- e) Any or all bids may be rejected if there is a sound documented reason.

Procurement by Noncompetitive Proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- a) The item is available only from a single source;
- b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- c) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- d) After solicitation of a number of sources, competition is determined inadequate.

Procurement Instruments (Type of Contract)

Objective

The type of procuring instruments used shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved.

Procedures

DGRI will determine the type of procuring instruments in order to ensure that goods and services are obtained in the most efficient, cost effective manner, without barriers to full and open competition and free of any potential conflicts of interest.

Government awarding agencies may impose limitations on contractor compensation. DGRI staff procuring contractors with government funds should familiarize themselves with specific contract requirements, including those imposing maximum hourly or daily rates of compensation for contractors. In such cases, DGRI strongly prefers to enter into deliverable-based or fix price contracts.

Procurement Instruments

Deliverables-Based or Fixed Price Contracts:

Contractors will be engaged to perform specific and discrete tasks and/or create specific deliverables and will be paid a flat fee upon completion of each specific/discrete task and/or delivery of each satisfactory final deliverable.

- a) Responsive bids will include flat fee for the applicable task(s) and/or deliverable(s) and projected expenses for which the contractor will seek reimbursement for from (which shall be reimbursed at actual cost).
- b) Fees do not fluctuate based on time spent by the contractor to complete the work.

Time-Based (Hourly/Daily Rate) Contracts: Contractors will be engaged to perform specific tasks and will be paid based on time spent by the contractor to complete the work.

- a) Time-Based Contracts should **only** be used after a determination has been made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk.
- b) Responsive bids should also include projected expenses for which the contractor will seek reimbursement for from DGRI (which shall be reimbursed at actual cost).
- c) The contract shall be subject to a ceiling price that the contractor exceeds at its own risk.
- d) Rates shall not fluctuate once a contract is awarded.
- e) Projected time shall not fluctuate without significant extenuating circumstances. DGRI employees awarding such time-based contracts must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Other Procurement Instruments: If a different procurement instrument is contemplated for use, staff should contact DGRI legal counsel for guidance prior to issuance of solicitations.

- a) Neither “cost-plus-a percentage-of-cost” nor “percentage of construction cost” methods of contracting shall be used.
- b) Time and material type contracts may only be used after a determination has been made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost is the sum of (i) the actual cost of materials; (ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. DGRI employees awarding such time-based contracts must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Additional Considerations for Procurement of Office Supplies and Equipment

Please be aware that federal disposition requirements apply for equipment purchases in excess of \$5,000, with government funds. Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000.

Purchased with Government Funds: Office supplies, software, hardware and general office equipment to be used by DGRI staff for DGRI business purposes and charged to

government funding sources will be subject to the test of allowability, allocability and reasonableness, in accordance with the principles established by 2 CFR Part 200. The following parameters shall be used to make this determination:

- a) Whether the cost is a type generally recognized as ordinary and necessary for the organization or the performance of the award.
- b) Whether the cost is incurred through an “arm’s length transaction,” and do not deviate from established practices of the organization.
- c) Whether the cost does not exceed, in nature or amount that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs.
- d) Whether the cost is consistently charged to both government and non-governmental (private) programs.
- e) The cost is incurred specifically for the award.
- f) The cost benefits both the award and other work and can be distributed in reasonable proportion to the benefits received.
- g) The cost is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
- h) Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.
- i) The cost is allowable according to 2 CFR Part 200 Subpart E.

Contract Cost and Price and Other Selection Criteria Requirement

DGRI shall perform a cost or price analysis (and document such analysis in the procurement files) in connection with every procurement action **in excess of the Simplified Acquisition Threshold**, including contract modifications.

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of Executive Orders 12549 and 12689, “Debarment and Suspension.”

DGRI Procedures

Awards should be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to DGRI, price, quality and other factors considered. DGRI reserves the right to reject any and all bid offers, if deemed to be in DGRI’s best interest. DGRI shall enter into contracts only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; record of past performance; financial and technical resources or accessibility to other necessary resources.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, DGRI **must make independent estimates before receiving bids or proposals.**

Offers and proposals received by DGRI shall be evaluated according to the following parameters:

Contract Cost and Price. The DGRI employee responsible for the procurement action shall perform a cost or price analysis with every procurement made by in excess of the Simplified Acquisition Threshold, including contract modifications. This analysis shall be documented, and supplemented by other supporting documentation maintained by such DGRI employee, for all government funded actions. *Modifications* that change the work beyond the scope of the contract must be justified, and may require additional competitive bidding.

Price Analysis: A comparison of price quotations submitted, market prices and similar indicia, together with discounts. It is the evaluation of the proposed price (i.e. lump sum) without analyzing any of the separate cost elements that comprise the proposed price. DGRI shall compare an offeror's price to others, previous prices paid for similar services, catalogue prices or other similar data.

Cost Analysis: A review and evaluation of each element of cost to determine reasonableness, allocability and allowability. Cost analysis is done when offers are broken into various elements of cost (i.e.: training services broken by fees, travel, materials, etc.). DGRI shall analyze the costs associated with the offer and determine the reasonableness of the amounts (by each component) included in the total cost and the necessity of each element of cost.

Non-Competitive (or Negotiated) Proposal: Acquiring professional, consulting, architect/engineering services, where bidders are required to submit cost proposals that show the elements (labor, materials, overhead, profit, etc.).

Sole Source: Not soliciting competitive bids or offers. Sole source selection must be appropriate and justified. Used when award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following applies: (i) the item/service is available only from a single source; (ii) the exigency/emergency for the requirement will not permit a delay resulting from competitive solicitation; (iii) the awarding agency authorizes noncompetitive proposals; or (iv) after solicitation of a number of sources, competition is determined inadequate.

Only One Bid Received and Bid Differs Substantially from Independent Estimate of the Contract Price: If you determine that the bid is unreasonable and decide to not recomplete (market survey tells you that you will not get competition), then you may formally cancel the solicitation and negotiate a contract price with the single bidder. You must obtain a cost breakdown of the contractor's proposed cost – not a lump sum proposal – before negotiating the change in contract price.

Modifications to a Contract: If modification changes the work authorized under the contract, and changes the price or total estimated cost, either upwards or downwards, you must obtain a detailed breakdown of the contractor's proposed cost – not a lump sum proposal – before negotiating the change in contract price.

Cost Analysis and Fees: The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to:

- a) The complexity of the work to be performed (the more difficult the work, the more profit a contractor may be entitled to);
- b) The risk borne by the contractor (the higher the risk, the higher the profit/fee);
- c) Contractor's investment (labor, oversight, etc.) (the greater the investment of resources, the higher the profit/fee);
- d) Subcontracting (the more complex the contract, the higher the profit/fee);
- e) Quality of the contractor's past performance (profit/fee rewards contractor for proven record of high quality performance); and
- f) Industry profit rates in the surrounding geographical areas for similar work ("going rate") – Be careful to not pay going rates when the work required is not really covered by those rates (you should not pay specialty rates for routine work).
- g) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this Part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal Debarment Standard

When purchasing goods and services using Federal funding, DGRI employees must ensure that the contract awardee is not debarred or suspended from doing business with the federal government nor delinquent in a debt to the United States. Before a contract is awarded, the DGRI employee responsible for such procurement should check the System for Award Management ("SAM") and verify that the contractor is not so debarred or suspended from doing business with the federal government and that the contractor does not have any active exclusions in SAM. A printout or electronic record will be kept as a way to demonstrate compliance with the requirement.

Office of Foreign Assets Control (OFAC)

When purchasing goods and services using government funding, DGRI shall comply with OFAC's regulations against doing business with targeted terrorists and other criminals. Prior to entering into an agreement, DGRI will use a web-based watch list screening tool to ensure

compliance with this requirement.

Contractor Monitoring Monitoring Performance.

Program staff shall regularly monitor and evaluate the contractor's performance against agreed-upon specifications, milestones, or scope of work and promptly address deficiencies. Program staff shall maintain records of its monitoring and evaluation activities with respect to the contractor in accordance with requisite record retention policies.

Procurement Records Requirement

DGRI staff must maintain procurement records sufficient to detail the history of a procurement action. These records shall include the following at a minimum:

- a) Rationale for the method of procurement
- b) Selection of contract type
- c) Contactor selection or rejection; and
- d) Basis for contract price.

Solicitation Documentation

DGRI must maintain procurement records in connection with every procurement action.

Solicitation Documentation: Staff shall maintain information used to solicit and select a contractor, in addition to information documenting the actual purchases made from the successful contractor. This information may include:

- a) Copies of solicitation documents;
- b) Names and dates of contractors contacted by phone;
- c) Copies of letters, e-mails and faxes soliciting price or rate quotations;
- d) Trip reports identifying contractors contacted in person;
- e) Copies of price or rate quotations received, including telephone quote confirmations;
- f) Notification to the successful contractor;
- g) Purchase documents, such as invoices, bills of lading and canceled checks; and
- h) Such other documentation as recommended elsewhere in this document.

Federal Agency Reviews.

On request, DGRI shall provide the Federal awarding agency or pass-through entity with technical specifications on proposed procurements should the awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if DGRI desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-

through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. The Federal awarding agency or pass-through entity may also conduct a review of the technical aspects of the proposed purchase after a solicitation has been developed by DGRI.

On request, DGRI must provide the Federal awarding agency with pre-procurement review and procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

DGRI's procurement procedures or operation fails to comply with the procurement standards set forth in 2 CFR Part 200:

- a) The procurement is expected to exceed the current simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to the solicitation;
- b) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product;
- c) The proposed award over the simplified acquisition threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- d) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the Simplified Acquisition Threshold.

Contract Provisions and Bonding Requirements Award and Administration Requirement

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. DGRI employees responsible for each procurement action shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

Other Award Administration Requirements

Contract Provisions. There are certain procurement provisions contained in 2 CFR Part 200 which must be included in all contracts that involve the use of Federal funds.

Bonding Requirements. For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, minimum requirements set forth 2 C.F.R. Section 200.326 must be applied.

Contract Administration. DGRI must maintain a system for contract administration to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow-up of all purchases. DGRI shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms and conditions of their contracts.



MEMORANDUM

DATE: December 20, 2022

TO: DGRI Board of Advisors

FROM: Tim Kelly, AICP
DGRI President & CEO

SUBJECT: Item #6 – Art Prize Agreement and MOU

Goal 5 of GR Forward established the priority to “Expand arts and cultural events and temporary programming to further activate the public realm year-round” (pg. 268). It goes on to say “Downtown events are essential in creating a great place and level of activity that compel residents to live and visitors to hang out Downtown. They are also a great opportunity to introduce potential residents to the lifestyle, cultural vibrancy and entertainment Downtown Grand Rapids has to offer” (pg. 270).

Given these priorities, when ArtPrize decided to cease operations in October 2022 it was natural for DGRI to be asked to play an integral role in transitioning operations and join a community partnership along with Kendall College of Art and Design of Ferris State University (Ferris) and the City of Grand Rapids (City) (collectively with DGRI the “Partners” or “Partnership”). That transition is underway, and the Partnership will begin operations on January 1, 2023. To support the initial work the City has approved a \$150,000 contribution and the Downtown Development Authority (DDA) has approved their commitment of \$50,000.

To guide the work and define the responsibilities of each organization in the Partnership a Memorandum of Understanding has been drafted. That draft MOU is attached for review and spells out the details for the governance and administration of the Partnership. Highlights include the following:

- Ferris will provide office space for Art Prize 2.0 operations.
- The City will provide in-kind staff resources to support day-to-day operations during the transition.
- DGRI will serve as the employer of record and fiduciary for the Partnership. Funds received will be managed in a separate account and will not be “co-mingled” with those of the DDA,

Monroe North TIFA (MNTIFA) or the Downtown Improvement District (DID). All staff positions will be paid via funds raised specifically for Art Prize and not via the funds of the DDA, MNTIFA or DID.

- A transition leadership “Board” will be formed as a committee by the DGRI Board consistent with the DGRI Bylaws and nonprofit law.
- The Committee –AP 2.0 Committee—will have only those powers as delegated to them by the DGRI Board. Current members of AP 2.0 Committee include: Ryan Anderson (Miller Knoll), Mayor Bliss (City of GR), Dave Leonard (Corewell), Tara McCrackin (Ferris), Natalie Stewart (Switch), Mike Verhulst (Acrisure), Mark Washington (City of GR), Rick Winn (DGRI).
- The AP 2.0 Committee will be a recommending body—not a decision-making body. All decisions related to operations must be approved by DGRI via the President & CEO with advisement from the DGRI Executive Committee.
- At its discretion, the DGRI Board could dissolve the AP 2.0 Committee which could then transition as the founding Board of any new nonprofit entity established by the Partners for the purpose of carrying on Art Prize.

In addition to the MOU among Partners, DGRI is also being asked to enter into a separate Agreement with Art Prize (AP) to assume the rights and responsibilities associated with the use of the trademarks and the intellectual property developed by the organization. This includes the website, social media accounts and all registered trademarks. Per the terms of that Agreement, in exchange for these rights DGRI will:

- Actively use the AP Intellectual Property within 36 months after the Effective Date;
- Use the AP Intellectual Property solely for the production and promotion of AP and as financial resources permit;
- Use the AP Intellectual Property only for charitable purposes as defined by Section 501(c)(3) of the Internal Revenue Code;
- Not harm or impair the brand reputation of the AP Intellectual Property;
- Not sell, license, assign or otherwise transfer any of the AP Intellectual Property except as allowed in the Agreement.
- Maintain all existing pending applications and/or registrations with the relevant government agencies;
- Enforce and defend the AP Intellectual Property against infringers;
- Not make or publish in verbal, written or any other form disparaging remarks or negative comments to any third party relating to the ArtPrize founders or its Board of Directors or ArtPrize events or contests held prior to the Effective Date.

The Agreement with AP also allows for the future transfer of the trademarks and intellectual property to a new non-profit entity to carry out the event. AP would be required to approve that transfer. Until a new nonprofit is formed and the related responsibilities transferred to it, the costs related to IP maintenance and enforcement will be covered via the operating budget.

Both the Agreement and the MOU were reviewed thoroughly with DGRI legal counsel and the Executive Committee and are recommended for approval based on their advice and consent.

RECOMMENDATION:

Authorize the President and CEO to execute the MOU with the ArtPrize 2.0 Partners covering governance and operations, and the Agreement between DGRI and Art Prize for the acceptance of the ArtPrize intellectual property and trademarks.

ARTPRIZE 2.0
MEMORANDUM OF UNDERSTANDING BETWEEN DOWNTOWN GRAND
RAPIDS, INC., THE CITY OF GRAND RAPIDS, AND FERRIS STATE
UNIVERSITY (KENDALL COLLEGE OF ART AND DESIGN), RELATING TO
THE CONTINUANCE AND SUPPORT OF ARTPRIZE EVENTS AND CONTESTS
AND RELATED RIGHTS AND RESPONSIBILITIES

This ArtPrize 2.0 Partnership Memorandum of Understanding (the “MOU”) is made as of _____, 2022, by and between FERRIS STATE UNIVERSITY (Kendall College of Art and Design) (“FSU”) a public university located at 17 Pearl Street NW, Grand Rapids, Michigan 49503, the CITY OF GRAND RAPIDS, a Michigan municipal corporation (the “City”) located at 300 Monroe Avenue, N.W., Grand Rapids, Michigan 49503, and DOWNTOWN GRAND RAPIDS, INC., a Michigan nonprofit corporation created pursuant to the Nonprofit Corporation Act of Michigan, Act 162 of the Public Acts of Michigan of 1982, as amended (“Act 162”), (“DGRI”), with offices located at 29 Pearl Street, N.W., Grand Rapids, Michigan 49503 (DGRI), collectively the “Partners” or “Partnership”.

RECITALS

1. The founders of ArtPrize have held 13 events since the groundbreaking public art forum was launched in 2009 and have awarded more than \$6,000,000 to artists through a combination of public votes, juried awards, and grants (these activities are collectively described hereafter as “ArtPrize”). Millions of people across the globe have participated in ArtPrize in some fashion.
2. The founding ArtPrize organization (“AP 1.0”) has determined to cease operations and launch a new phase by making a catalytic gift of its creative, technological, and communications platforms to a community partnership for a new experiment that will build upon the legacy of the international art competition, effectively “ArtPrize 2.0.”
3. DGRI and AP 1.0 are negotiating a separate but related agreement in which AP 1.0 will gift and assign the ArtPrize related intellectual property rights and responsibilities to DGRI (the “IP Agreement”);
4. DGRI is also being asked to serve as the overarching nonprofit organization tasked with overseeing and employing certain AP 2.0 staff, managing AP 2.0 contributions, and donations, and upholding the responsibilities related to intellectual property ownership.
5. The Partners have agreed to collectively lead and support this new community partnership and wish to enter into this MOU to sustain, evolve and move this nationally distinctive community event to scale as ArtPrize 2.0

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Partners agree to proceed as follows:

Section 1. Governance. DGRI shall serve as the overarching nonprofit entity for purposes of planning and day-to-day implementation related to AP 2.0. The DGRI Board of Advisors (the “Board”), in accordance with its authorizing statute, Articles of Incorporation, and Bylaws, as may be amended, shall appoint a new specifically designated Committee established solely for the purpose of developing strategic planning, policy, budget, and implementation recommendations to the Board relating to all aspects of AP 2.0 funding and implementation as well as to engage in fundraising (“AP2C”). AP2C shall consist of not more than 11 members, and shall be composed of 2 members representing DGRI, 2 members representing the City, 2 members representing FSU, and other at-large members. The slate of initial AP2C members shall include Rick Winn (DGRI), City Manager Mark Washington (the City), Mayor Rosalynn Bliss (the City), Tara McCrackin (FSU), and Natalie Stewart (at-large). These 5 original members shall operate on behalf of AP2C initially and shall recommend appointments to the Board in order to seat the remaining members of the committee, with such recommendations filling the one vacant seat representing DGRI, and the one vacant seat representing FSU. Terms shall be for a 3-year period for the 5 initial members. One of the remaining members to be appointed shall be appointed for a 2-year term and one of the remaining members shall be appointed for a period of 1-year. AP2C shall continue to make subsequent appointment recommendations to the Board as terms expire, and members subsequently appointed shall serve for 3-year terms. Only as it relates to AP 2.0, AP2C shall make strategic plan recommendations to the Board, shall be responsible for raising funds for the implementation of events and contracts, shall recommend the approval of contracts and agreements, shall recommend the approval of financial policies, shall recommend the adoption of annual budgets, shall review annual event frameworks, and shall make such recommendations required to sustain, expand, and produce ArtPrize 2.0. AP2C shall be a recommending and fundraising committee with no hiring or contracting authority. DGRI may serve as the contracting party in the furtherance of the implementation of AP 2.0 but only in its discretion and only to the extent that AP2C has generated sufficient funds to cover any contractual obligations.

Section 2. AP 2.0 Staff: DGRI shall serve as employer of record for any AP 2.0 staff, at its discretion. AP 2.0 Staff, selected by and at the sole discretion of the DGRI Executive Director, shall be employed as at-will employees of, or as independent contractors with, DGRI, and all salaries and costs associated with AP 2.0 staff positions shall be funded by the Partnership, to accomplish the mission, vision, and values of AP 2.0.

Section 3: Accounting for Funds Received. DGRI agrees to account for funds received from various sources to support AP 2.0 in accounts separate from current DGRI financial accounts and has discretion to manage and hold contributions as is necessary in order to comply with state and federal law.

Section 4. IP Agreement. DGRI and ArtPrize 1.0 are anticipated to enter into an agreement in which AP 1.0 gifts and assigns ArtPrize intellectual property, including the rights and responsibilities relating to ownership, to DGRI. The Partners recognize that ArtPrize intellectual property rights are a crucial aspect of the implementation of AP 2.0. The Partners further recognize that there are costs associated with IP ownership and hereby commit to

proportionately share the costs incurred by DGRI in actively using, registering, and enforcing the IP, including any attorney fees.

Section 5. Annual Audits. DGRI shall cause an annual audit of any AP 2.0 accounts to be conducted.

Section 6. City's Office of Special Events. In planning and executing AP 2.0 events, the Partnership will follow processes and procedures as set forth by the City's Office of Special Events.

Section 7. Cooperation and Collaboration. The Partners share joint interests in the success of AP 2.0 and acknowledge that their mutual cooperation and collaboration are essential to sustain, expand and produce AP 2.0. Each will work with the other to accomplish the mission, vision, and values of ArtPrize 2.0 and in particular, shall commit to funding or fundraising its proportional share of costs related to ownership of ArtPrize intellectual property, to fundraising responsibilities for the AP 2.0 events and implementation, and upon request by DGRI, to attorney fees incurred to date and hereafter in relation to the AP 2.0 transition.

Section 8. Term. This Agreement shall be effective as of December ____, 2022, through December 31, 2025. The Partners may thereafter agree in writing to extend the term of this Agreement in three-year increments.

Section 9. Dispute Resolution. If unanticipated issues arise with respect to this Agreement or their relationship, the Partners agree to promptly in good faith discuss them and seek resolution.

Section 10. Notices. All notices and other communications to be given pursuant to this Agreement shall be given in writing and delivered personally, by first-class mail or by electronic e-mail to the appropriate party at the address or e-mail address set forth below.

If to the City:

City of Grand Rapids
City Hall, 6th Floor
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
Attention: City Manager
Email: manager@grcity.us

If to DGRI:

Downtown Grand Rapids, Inc.
29 Pearl Street, N.W., Suite 1
Grand Rapids, Michigan 49503
Attention: President & CEO
Email: tkelly@downtowngr.org

If to KCAD:

Ferris State University
Kendall College of Art and Design
17 Pearl Street, N.W.,
Grand Rapids, Michigan 49503
Attention: President
Email: TaraMcCrackin@ferris.edu

Each partner may make changes to its designated address/email address by delivery of written notice of the change to the other parties. Notices shall be deemed effective upon actual receipt. Actual receipt of email transmissions shall be presumed based upon the transmitting party's record that it was sent and received.

Section 11. New Entity Formation. DGRI may choose to form a separate nonprofit entity dedicated solely to the purpose of serving AP 2.0 in accordance with the terms of this MOU and accepting an assignment of the IP Agreement. If a new nonprofit entity is formed for these purposes, the Committee described, appointed and operating in accordance with Section 1, entitled Governance herein, shall immediately begin to serve as the Board of Directors for the new entity, shall share in the costs of its formation, and the AP2C Committee serving under DGRI shall be dissolved.

Section 12. General Provisions.

- a. This Agreement constitutes the entire agreement between the Partners and may be modified or amended in whole or in part from time to time only by mutual written agreement of the Partners.
- b. This MOU shall be interpreted under the laws of the State of Michigan.
- c. If any clause or portion of this MOU is rendered void, illegal, unenforceable, or otherwise of no effect, the remaining provisions of this MOU shall remain in full force and effect so that the essence and intent of this MOU is preserved.
- d. A failure by either party to give notice or insist on the immediate performance of any right that it has under this MOU shall not constitute a waiver of that right or any other right under this MOU.
- e. The section headings of this MOU are for convenience only and shall not be considered a part of the substance of this Agreement or affect the interpretation of this MOU.
- f. This MOU shall not be assigned, transferred, or conveyed by any party without the prior written consent of each party.

IN WITNESS WHEREOF, the parties have signed this MOU as of the date shown in the first paragraph hereof.

CITY OF GRAND RAPIDS

By: _____
Rosalynn Bliss, Mayor

Attest: _____
Joel H. Hondorp, City Clerk

DOWNTOWN GRAND RAPIDS, INC.

By: _____
Brian Harris, Chairperson

**FERRIS STATE UNIVERSITY
KENDALL COLLEGE OF ART AND DESIGN**

By: _____
Tara McCrackin, President

**BOARD OF ADVISORS
DOWNTOWN GRAND RAPIDS, INC.**

Resolution No. 2022 - ____

**RESOLUTION AUTHORIZING THE NEGOTIATION AND APPROVAL OF A
MEMORANDUM OF UNDERSTANDING BETWEEN DOWNTOWN GRAND
RAPIDS, INC., THE CITY OF GRAND RAPIDS, AND FERRIS STATE
UNIVERSITY, RELATING TO THE CONTINUANCE AND SUPPORT OF
ARTPRIZE EVENTS AND CONTESTS AND RELATED RIGHTS AND
RESPONSIBILITIES**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS, the founders of ArtPrize Grand Rapids (“AP 1.0”) created and established a successful, and now deeply rooted, public art venue consisting of events and contests (“ArtPrize”) in the City of Grand Rapids (the “City”); and

WHEREAS, Downtown Grand Rapids, Inc. (“DGRI”), the City, and Ferris State University (Kendall College of Art and Design) (“FSU”), (together, “the Partners”), have engaged in discussions relating to the future and legacy of ArtPrize in the City; and

WHEREAS, DGRI and AP 1.0 are negotiating a separate but related agreement in which AP 1.0, will gift and assign the ArtPrize related intellectual property rights and responsibilities to DGRI (the “IP Agreement”); and

WHEREAS, the Partners agree that ArtPrize has been, and will continue to be, invaluable to the vibrancy, economic growth and global recognition of the City; and

WHEREAS, recognizing that ArtPrize is worthy of mutual sustained effort, cooperation, and financial support, the Partners wish to enter into a Memorandum of Understanding pledging their

commitments and setting forth the organizational plan for the continuance of ArtPrize (“AP 2.0”) and all of the rights and responsibilities that AP 2.0 will entail, including the support of DGRI with regard to its obligations under the IP Agreement.

RESOLVED:

1. That the DGRI Board of Advisors authorizes and directs its President & CEO to negotiate a Memorandum of Understanding relating to ArtPrize 2.0, including terms consistent with the Partners’ discussions to date, and this Resolution, in a form substantially similar to the form attached, and as approved by DGRI’s Legal Counsel (the “MOU”).
2. That the DGRI Board of Advisors authorizes and directs DGRI’s President & CEO and/or Chairperson of the Board of Advisors to execute the MOU, if any, for and on behalf of DGRI.
3. That the DGRI Board of Advisors authorizes and directs its President & CEO to take such further action as may be necessary or advisable in carrying out this purpose.
4. That all resolutions or parts of resolutions in conflict herewith shall be, and the same are, hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Recording Secretary

I, the undersigned duly qualified and acting Recording Secretary of Downtown Grand Rapids, Inc. (the “DGRI”), do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Advisors of DGRI, at a meeting held on December 20, 2022, and that public notice of said meeting was given pursuant to, and in compliance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

_____(Print Name)
Recording Secretary

**BOARD OF ADVISORS
DOWNTOWN GRAND RAPIDS, INC.**

Resolution No. 2022 - ____

**RESOLUTION AUTHORIZING THE NEGOTIATION AND APPROVAL OF AN
AGREEMENT BETWEEN DOWNTOWN GRAND RAPIDS, INC. AND
ARTPRIZE GRAND RAPIDS RELATING TO THE ASSIGNMENT OF
INTELLECTUAL PROPERTY RIGHTS**

Boardmember _____, supported by Boardmember _____,
moved the adoption of the following resolution:

WHEREAS, Downtown Grand Rapids, Inc. (“DGRI”) and ArtPrize Grand Rapids (“AP”) (together, “the Parties”), have engaged in discussions relating to the future and legacy of AP related events and contests in the City of Grand Rapids (the “City”), including the rights and responsibilities relating to the intellectual property associated with such events and contests;

WHEREAS, the Parties agree that the AP brand and related events and contests have been, and continue to be, invaluable to the vibrancy, economic growth and global recognition of the City; and

WHEREAS, recognizing DGRI’s reputation as an established leader in the City and the vital role it plays in the City’s placemaking and community building efforts, AP has expressed its intention to gift and assign the AP intellectual property rights to DGRI in order to ensure the continuance of the AP impact, pursuant to an agreement (the “IP Agreement”) which will set forth certain terms and conditions applicable to both parties.

RESOLVED:

1. That the DGRI Board of Advisors authorizes and directs its President & CEO to negotiate an IP Agreement relating to the IP gift and assignment, including terms consistent with the

Parties' discussions to date, and this Resolution, in a form approved by DGRI's Legal Counsel.

2. That the DGRI Board of Advisors authorizes and directs DGRI's President & CEO and/or Chairperson of the Board of Advisors to execute the IP Agreement, if any, for and on behalf of DGRI.
3. That the DGRI Board of Advisors authorizes and directs its President & CEO to take such further action as may be necessary or advisable in carrying out this purpose.
4. That all resolutions or parts of resolutions in conflict herewith shall be, and the same are, hereby rescinded.

YEAS: Boardmembers _____

NAYS: Boardmembers _____

ABSTAIN: Boardmembers _____

ABSENT: Boardmembers _____

RESOLUTION DECLARED ADOPTED.

Dated: December 20, 2022

Recording Secretary (Print Name)

CERTIFICATION

I, the undersigned duly qualified and acting Recording Secretary of Downtown Grand Rapids, Inc. (the "DGRI"), do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the Board of Advisors of DGRI, at a meeting held on December 20, 2022, and that public notice of said meeting was given pursuant to, and in compliance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

Dated: December 20, 2022

(Print Name)
Recording Secretary