Order 245-18/19
Passage: 9-0 on 6/18/2018

Effective 6/28/2018

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
BRIAN E. BATSON (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

KIMBERLY COOK (5)
JILL C. DUSON (A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

ORDER APPROVING AND AUTHORIZING THE FISCAL YEAR 2019 MASTER AGREEMENT AND SUPPLEMENTAL SERVICES AGREEMENT WITH PORTLAND DOWNTOWN

ORDERED, that the Downtown Improvement District, Inc. doing business as Portland Downtown Master Agreement is hereby approved, and the City Manager is hereby authorized to enter into said Agreement, with the Baseline Services provided in Exhibit B, to carry out the Development Plan for the Downtown Improvement District, Inc. for the period from and after July 1, 2018 and ending June 30, 2019, in substantially in the form attached; and

BE IT FURTHER ORDERED, that Downtown Improvement District, Inc. doing business as Portland Downtown Supplemental Services Agreement is hereby approved, and the City Manager is authorized to enter into said Agreement, substantially in the form attached, to implement Supplemental Public Works Services as approved in the Fiscal Year 2019 Appropriation Resolve.

MASTER AGREEMENT

BETWEEN THE CITY OF

PORTLAND AND

DOWNTOWN IMPROVEMENT DISTRICT, INC.
D/b/a PORTLAND DOWNTOWN

AGREEMENT made by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Maine, hereinafter referred to as the **"CITY"** and **DOWNTOWN IMPROVEMENT DISTRICT, INC., d/b/a PORTLAND DOWNTOWN**, a Maine non-profit corporation, having its office and place of business at Portland, Maine, hereinafter referred to as the ‘‘**CORPORATION**".

WHEREAS, the **CITY** has established a Downtown Improvement District; and

WHEREAS, the **CITY** desires to have certain services performed by the **CORPORATION**, as described in this Agreement, within the **CITY's** Downtown Improvement District (hereinafter referred to as the ‘‘District’’; and

WHEREAS, the **CITY** desires to contract with the **CORPORATION** for the provision of certain services to be provided in the District;

NOW, THEREFORE, in consideration of the covenants herein contained, the parties hereto mutually agree as follows:

ARTICLE I. FINANCIAL CONSIDERATIONS

1. The **CITY** will levy development district assessments on property in the District, as authorized by the City Council and permitted by law.**CITY**-owned property, as well as property which is tax exempt under Maine law, shall not be assessed by the **CITY**.

2. For the period commencing July 1, 2018 and ending June 30, 2019 the City will pay the **CORPORATION** in monthly installments, to reflect the assessments collected by the City, less the **CITY**'s direct and indirect costs, such as, but not limited to, postage, publication, lien costs and costs of delinquent collection. Installment payments will be made on the 1st of each month beginning July 2018 through and including June 1, 2019.

3. The **CITY** may adjust such payments, after an advisory consultation with representatives of the **CORPORATION** either: (i) in order to equal the net assessments collected; or (ii) in the event of any challenge to the assessments which includes a request for a refund, to withhold such amounts as the Director of Finance may deem necessary to protect the City from any order or judgment requiring it to make a refund.

   In addition to the foregoing, the **CITY** will pay in a lump sum, within thirty (30) days from the close of the fiscal year, any amount assessed in a prior year, but collected in a subsequent year. Said payment by **CITY** shall be in the amount of the net assessment collected as provided herein, less any amounts remaining to be reimbursed under a prior year Master Agreement or Supplemental Services Agreement with the **CITY**.**CITY** will provide the **CORPORATION** with written detail as to any deductions taken from payments under this paragraph.

4. Advancements made hereunder shall be reimbursed to the **CITY** from receipts from development district assessments, net of any of the costs referred to in Paragraph 2.

5. Notwithstanding the foregoing, **CORPORATION** agrees that it will neither encumber funds which it anticipates receiving from development district assessments nor incur

expenditures in anticipation of receipt of such funds except in accord with the line items in the budget attached hereto as Exhibit A, or any subsequent amendments thereto approved by the **CITY**.

6. The **CITY** and the **CORPORATION** have accepted the **CORPORATION's** budget and Development Program in Exhibit A, covering the period beginning on July 1, 2018, and ending on June 30, 2019. City Council approval of the assessment mil rate provides funding to support the **CORPORATION'S** budget and Development Program.

7. The parties agree that the acceptance of the budget by the **CITY** is for planning purposes only and does not obligate the **CITY** to pay the **CORPORATION** said amounts. **CORPORATION** specifically acknowledges the **CITY's** right to either terminate or reduce its payments as provided in Paragraph 2.

8. The **CORPORATION** will provide the Director of Finance with an annual certified financial statement in a form acceptable to him, including, but not limited to, a statement of its cash position. At a minimum, the statement shall list all income and expenses, and shall be provided to the Finance Director within six (6) months after the fiscal year ends.

9. The Director of Finance of the City of Portland will advise the **CORPORATION**, from month to month, of the amounts the **CITY** has collected from the assessments referred to herein, so that the **CORPORATION** can amend its budget to conform with the amount of money which may be available to it from the net proceeds of the development district assessments.

10. The **CITY** will maintain the level of "Basic Services" described in the memorandum which is attached hereto as Exhibit B.

11. The **CORPORATION** shall have reasonable access to the **CITY's** assessment collection records, and the **CITY** shall have reasonable access to the **CORPORATION's** books and records.

12. The Director of Finance shall determine the net amount collected by the City from development district assessments. In determining such amount, he shall deduct from the amounts so collected all costs (whether direct or indirect) incurred by the **CITY** both in establishing and also in administering the development district; all costs of assessments and collections; and, if the **CITY** should collect interest on delinquent assessments, such interest shall not be included in the "net amount collected".

13. The Director of Finance shall determine the "net amount collected from development district assessments" as well as the amount to be withheld by the **CITY** in the event of a challenge which includes a request for a refund. The **CORPORATION** may appeal his determination within fourteen (14) days to the **CITY** Manager whose decision will be final.

ARTICLE II. SERVICES

A. ORGANIZATION OF CORPORATION.

The **CORPORATION** will:

1. Provide staff and administrative services for supervision of the daily activities and public space management of the District.

2. Establish positions for administration and management of the program; recruit, hire, and pay and otherwise supervise the work force necessary to implement this charge.

3. Establish a corporate Board of Directors whose members fairly represent a cross section of taxpayers in the District.

4. Establish a mechanism for resolving any dispute to the kind and level of services which may arise between the **CORPORATION** and persons subject to development district assessments regarding thekind and level of services provided by the

CORPORATION.

5. Provide liaison between the **CITY**, the District, property owners, civic groups, interested persons, and other groups and individuals, as directed by the **CITY** Manager and necessary to insure the successful implementation of District services.

6. Maintain all minutes and records of proceedings as may be required.

B. SERVICES AUTHORIZED TO BE PROVIDED BY CORPORATION.

The **CORPORATION** is authorized to provide the following services to supplement the **CITY's** "Basic Services" as described in Exhibit B.

1. Decorate and beautify public places in the District.

2. Sponsor and promote public events to take place on or in public places in the District.

3. Advertise and promote non-profit, cultural, educational and commercial business activities in the District.

4. Maintain information and directional signing for the District in accordance with applicable City codes and ordinances.

5. Improve public relations, generating favorable publicity for, and enhancing economic growth in, the District.

6. Manage vending activities, kiosks and information booths.

7. Sweep and clean sidewalks in the District.

8. Clean and erase graffiti.

9. Maintain vegetation and greenery in the public areas.

10. Remove trash and litter.

11. Wash, maintain and relocate street furniture, trash cans, drinking fountains, street lanterns, telephones and undertake minor repairs to street furniture.

12. Remove snow.

13. Provide for security of public areas.

14. Carry out the downtown improvement program authorized and approved by the **CITY** Council as set forth in this Agreement.

C. AUTHORITY OF CORPORATION.

Nothing in this Agreement shall be construed to limit the **CORPORATION**'s general powers, as set forth in the Maine Nonprofit Corporation Act, Title 13-B of the Maine Revised Statutes Annotated.

ARTICLE III. TERM OF AGREEMENT

This Agreement shall commence on July 1, 2018, and continue through, June 30, 2019.

ARTICLE IV. TERMINATION

This Agreement may be terminated by either party for good cause. Good cause shall be deemed to be found by the **CITY** at such time as the **CORPORATION's** performance under this Agreement has been determined in the exclusive judgment of the **CITY** Manager to be unsatisfactory which determination shall not be unreasonable.

If the **CORPORATION** should fail to perform any material covenant, obligation or agreement hereunder for a period of thirty (30) days after written notice from the **CITY** Manager specifying such failure, then, upon expiration of the thirty (30) day period, the **CITY** Manager may provide the **CORPORATION** with notice of his intention to terminate the Agreement as provided herein.

The **CORPORATION** shall have a ninety (90) day period, computed from the date of receipt of the notice of intent to terminate, within which to provide satisfactory service. In the event the **CITY** Manager should determine, at the expiration of the ninety (90) day period, that the **CORPORATION's** performance is still unsatisfactory and declare that the Agreement is terminated, the **CORPORATION** shall have the right to appeal his decision to the City Council.

The appeal to the **CITY** Council shall be filed with the **CITY** Manager within seven (7) business days from the date the **CORPORATION** receives the notice of termination.

The terms and conditions of this Agreement shall remain in full force and effect and binding on both parties until the **CITY** Council has acted on the appeal.

The **CORPORATION** shall be deemed to have good cause to terminate this Agreement if (i) the **CITY**, pursuant to the provisions of Article I, should reduce its anticipated payments by more than 20% of the amount it would otherwise have paid during the periods from July 1, 2018 to December 31, 2018, and January 1, 2019 to June 30, 2019; (ii) if the **CITY** should be more than 30 days in arrears in any payment due hereunder; or(iii) the **CITY** should fail to maintain "Basic Services", as that phrase is defined herein, in a material and substantial way.

In the event the **CORPORATION** should have "good cause" to terminate this Agreement, its relief shall be limited solely to termination of this Agreement, and it shall not be entitled to damages of any kind nor to equitable relief.

Nothing herein shall be construed as giving the **CORPORATION** the right to perform the work contemplated under this Agreement beyond the time when the **CORPORATION's** services become unsatisfactory as determined by the **CITY** Manager, following the ninety (90) day notice period, or, in the event of an appeal, beyond the time the **CITY** Council has affirmed the **CITY** Manager's decision. In case the **CORPORATION** should be discharged before all the services contemplated hereunder have been completed, or the services for any reason should be stopped, either because of the expiration of the term hereof or because of the inability of the **CORPORATION** to fulfill its obligations under this Agreement, the **CORPORATION** shall be reimbursed for all services

satisfactorily performed to the date of termination in accordance with Article II hereof. After notice of termination and completion of the appeal process, the **CORPORATION** shall:

A. With respect to existing activities, take only such actions as the **CITY** Manager shall direct;

B. Assign to the **CITY** in the manner, at the times and only to the extent the **CITY**, acting by and through its **CITY** Manager, may direct it to do so, all the rights, title and interest of the **CORPORATION** in and to all existing orders and agreements.

C. To the extent rights, title and interests of the **CORPORATION** in and to existing orders and agreements may be assigned to the **CITY** and accepted by it; obligations incurred on or after such assignment will be assumed by the **CITY**.Otherwise, the **CORPORATION** shall settle all outstanding liabilities and all claims arising out of any terminated orders or agreements.

D. Deliver to the **CITY**, in the manner, at the times and to the extent directed by the **CITY** Manager, all documents and data produced by the **CORPORATION** as part of or in connection with the work.

ARTICLE V. ASSIGNMENT

The **CORPORATION** covenants and agrees that it will neither assign nor transfer any rights hereunder, either in whole or in part, without first obtaining the prior written consent of the **CITY**.

ARTICLE VI. AREA COVERED

The services will be provided by the **CORPORATION** in the area designated by the **CITY** Council as the Downtown Improvement District of the **CITY** (hereinafter the "District"). A description and map thereof are attached as Exhibits C and D respectively and incorporated herein.

ARTICLE VII. STANDARD OF PERFORMANCE

All services performed under this Agreement either by or on behalf of the **CORPORATION** shall be performed in a good, workmanlike fashion to the reasonable satisfaction of the **CITY** Manager. All Basic Services performed by or on behalf of the City pursuant to Exhibit B shall be performed in a good, workmanlike fashion to the reasonable satisfaction of the Portland Downtown Board of Directors.

ARTICLE VIII. MANAGEMENT OF PERFORMANCE

The **CITY**'s Director of Public Works and/or designee and the **CORPORATION'S** Executive Director and/or designee agree to meet and communicate on a monthly basis using a standard meeting agenda format to address regular topic reviews, including but not limited to quality control in service delivery, updated information on service activities, programs and projects. These services are detailed in this Agreement, its Exhibits, and also in the Supplemental Services Agreement executed contemporaneously with this Master Agreement - and its Exhibit(s).

ARTICLE IX. COMPLIANCE WITH LAW

The **CORPORATION** will comply with all applicable provisions of Federal, State, and local law, including, but not limited to, the Civil Rights Act of 1964, in its performance under this Agreement. The **CORPORATION** shall include a similar provision in each of its subcontracts.

ARTICLE X. INDEMNIFICATION

The **CORPORATION** shall, at its own cost and expense, defend, indemnify, and hold harmless the **CITY**, its officers, agents, and employees, from and against the following:

(a) to the fullest extent permitted by law, the **CORPORATION** shall defend, indemnify and hold harmless the **CITY**, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including but not limited to costs of defense, including attorney's fees, arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense is: (1)

attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss or use thereof; and (2)is caused in whole or in part by any negligent act or omission of the **CORPORATION**, anyone directly or indirectly employed by it, or anyone for whose act it may be liable;

(b) all claims and liens of the **CORPORATION's** consultants, subcontractors, and their laborers, mechanics, materialmen, and/or suppliers.

Such obligation shall not be construed either to negate or abridge any other obligation of indemnification, and shall not be limited by any provision for insurance contained in this Agreement.

ARTICLE XI. INSURANCE

Neither the **CORPORATION** nor any of its subcontractors shall commence work under this Agreement until they have provided the insurance coverage required by this Agreement and such coverage has been approved by the **CITY**.

Prior to the execution of this Agreement, the CORPORATION will procure and maintain occurrence-based Automobile Liability Insurance and Commercial General Liability Insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000.00) per occurrence for bodily injury, death and property damage, naming the CITY as an additional insured thereon, and also Workers' Compensation Insurance coverage to the extent required by law. With respect to the Automobile and Commercial General Liability Insurance, the CORPORATION shall name the CITY as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. A. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the CITY under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the CITY. Prior to execution of this Agreement, the CORPORATION shall furnish the CITY and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the CITY of termination of insurance from the insurance provider or agent. CORPORATION

shall also provide a copy of any endorsement naming the CITY as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of Portland, its officers or employees. Upon CITY'S request, CONTRACTOR shall provide CITY with a complete copy of any of the above-referenced policies. CONTRACTOR shall be responsible for any and all deductibles and/or self-insured retentions.

ARTICLE XII. INDEPENDENT CONTRACTOR

The **CORPORATION** either has or will secure, at its own expense, all personnel, materials, and equipment required to perform its obligation under this Agreement. Its personnel shall neither include any employee of the **CITY** nor shall such personnel be deemed to have any contractual relationship with the **CITY** by virtue of this Agreement. This Agreement does not prohibit either the **CORPORATION** or the **CITY** from entering into any contractual relationship. The **CORPORATION**, agreeing expressly that its status is that of an independent contractor, further, agrees that no such personnel shall represent or hold himself or herself out to be an officer or employee of the **CITY** either by reason of this Agreement or by reason of his/her employment by the **CORPORATION** or its subcontractors.

ARTICLE XIII. SUBCONTRACTS

The **CORPORATION** may, after thirty (30) days' notice in advance to the **CITY** Manager of its intention to do so, and with his approval, which shall not be unreasonably withheld, subcontract with third parties for the provision of part or all of the public services, including, but not limited to, security services, trash and litter removal, and snow removal, under this Agreement. The **CORPORATION** shall provide the **CITY** with copies of any third party contracts and with any insurance certificates required under this Agreement.

(Signature page follows.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of June, 2017.

WITNESS **CITY OF PORTLAND**

_____ By:_____
Jon P. Jennings
Its City Manager

WITNESS **DOWNTOWN IMPROVEMENT DISTRICT, INC. d/b/a PORTLAND DOWNTOWN**

_____ By:_____
Kim Volk
Its Board Chairman

Approved as to Form:_____ (Corporation Counsel)

Approved as to Funds:_____ (Finance Department)

EXHIBIT A

TO BE INSERTED FOLLOWING
CITY COUNCIL APPROVAL OF BUDGET ON 6/18/2018

EXHIBIT B TO MASTER AGREEMENT
(BASELINE SERVICES)

MEMORANDUM RELATED TO THE PROVISION OF CERTAIN SERVICES BY THE CITY OF PORTLAND

(July 1, 2018 - June 30, 2019)

This Memorandum relating to the provision of certain services attempts to define the baseline of City services agreed to be provided by the City to the area defined and designated as the Downtown Improvement District as passed by the City Council on March 16, 1992 (Council Order #306, as amended on February 22, 1995, by Council Order #185; and again amended on March 1, 2004 by Council order #158). This Memorandum is not binding upon the current City Council or any future City Council, but rather is a definition of the City's intent and good faith to provide services to the Downtown Improvement District zone.

It is generally understood that the City shall not reduce any of these usual and normal baseline services, thus requiring the same services to be provided by the Downtown Improvement District, Inc. (d/b/a Portland Downtown (PD) or its successors, unless these reductions are part of an overall reduction of City services provided by various departments to the City as a whole.

MAINTENANCE SERVICES.

Whereas it is the intention of any downtown improvement district maintenance program to complement existing City services currently provided with a supplementary program of cleaning and/or maintenance, the following information shall comprise the baseline of City services to be provided at City expense. Unless otherwise noted, services to be provided by the City shall apply only to the area(s) considered part of the public way.

1) Horticultural Program.

In all public areas within the downtown improvement district zone, the City’s Parks and Recreation Department will maintain and improve the condition of all flower urns and other flowerbeds, trees, tree wells, bushes, plantings and other like horticultural amenities. Such activity shall include the initial

planting, timely and appropriate maintenance, preventative and otherwise, and expeditious replacement of any damaged, destroyed or diseased horticultural products, including grass, flowers, and trees. Specific areas of attention will include Longfellow Square, Congress Square, Monument Square, Tommy's Park, Post Office Park, Boothby Square, and any other public park, square or space which may be developed in the future.

2) Green Space Maintenance.

The City shall execute a green space maintenance program including mowing of all public grassed areas within the District.

3) Downtown Blitz.

Each year the City shall undertake a dedicated effort to repair, repaint, replace and correct any defects, deficiencies or problems in the district. Items of focus shall include light and utility poles, sidewalks, curbstones, trashcans, benches, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that is now or at some point in the future may be installed. This program will be undertaken as early as possible each spring and conclude as rapidly as possible. Performance of some activities, i.e. painting, will take place annually as conditions permit. Major capital activity or the reconstruction and/or repair of significant infrastructure (street paving, sewer work, etc.) would not be considered part of this blitz program.

4) Sidewalk Repair.

To the extent it is funded, the City will undertake an on-going sidewalk repair program to re-grout existing sidewalks and replace bituminous sidewalk repairs with permanent repairs.

5) Street Sweeping.

All streets or parts thereof included in the downtown improvement district zone will be swept from curb line to curb line once per week.

6) Trash Removal.

Daily and when necessary emptying of all public trash receptacles in the downtown improvement district zone and disposal of resulting waste.

7) Holiday Decorations.

Installation and removal of downtown Holiday decorations throughout the District to include Christmas trees at Monument Square and City Hall Plaza, string lights on light poles and common area trees such as Tommy's Park, and banners as agreed by the City and PDD, and provide for electrical energy related costs.

8) Snow Plowing.

The City will plow and remove snow as necessary from all streets and parts thereof in the downtown improvement district zone.

9) Streetscape Amenity Maintenance.

The City will repair and correct any defects, deficiencies or problems in the district as necessary. Items of focus include light and utility poles, sidewalks, curbstones, trashcans, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that are now or at some point in the future may be installed. All repairs, etc. will take place within a reasonable time after notice of need.

10) Lighting.

Maintenance and replacement of all street lights and traffic signals and payment for necessary electrical energy.

11) Graffiti removal on public property.

12) Prioritization

PD shall have the opportunity to participate with City staff from the Department of Public Works in the prioritization of all proposed capital improvement projects within the District including, but not limited to, tree well reconstruction and sidewalk repairs. PD officials recognize that City staff also work closely with the City Manager's office and the City Council for project priorities.

POLICE SERVICES.

1) A minimum of four uniformed patrol officers will intersect all or part of the downtown improvement district area. The actual number of officers will vary depending upon time of day and day of week. During periods when calls for service are typically at their peak, the number of officers assigned will increase significantly, for example during weekend evenings and the summer months. This increase will include foot and bicycle patrols. Officers will be supported with additional personnel (supervisors, detectives, evidence technicians) as necessary.

2) As long as the Senior Lead Officer Program is in effect, at least one Senior Lead Officer will be assigned to the Downtown Improvement District area.

3) From the Friday following Thanksgiving to New Year's Day, patrol efforts will be supplemented by use of a foot patrol. The number of officers and hours of the assignment is dependent upon staffing levels. Every effort will be made to assign two officers during those hours that retail shops are open.

OTHER MUNICIPAL SERVICES.

Whereas it is the intention of any downtown improvement district program to complement existing City services currently provided by departments or divisions, other than those described above, with supplemental services, the following information shall comprise the baseline of other City services to be provided at City expense.

1) Coordination of the use of downtown's public spaces within the District.

2) Coordination and staffing City services required for events occurring in downtown Portland.

3) As previously existing events, the City will provide necessary services to support the annual Tree Lighting Ceremony and the annual one-day Old Port Festival within the boundaries established by City Council order #168-21/13; to wit: the area bordered by Congress, Pearl, Commercial, Center, Union and Temple Streets and including both sidewalks of Commercial Street with no costs charged to the PDD for these events.

SUPPLEMENTAL SERVICES AGREEMENT BETWEEN

DOWNTOWN IMPROVEMENT DISTRICT, INC. d/b/a PORTLAND DOWNTOWN

AND

CITY OF PORTLAND

AGREEMENT made this ____ day of June, 2018, by and between the City of Portland, a municipal corporation duly organized under the laws of the State of Maine, with an address of 389 Congress Street, Portland, Maine 04101 (hereinafter the "**City**") and Downtown Improvement District, Inc., d/b/a Portland Downtown, a Maine non-profit corporation, having its office and place of business at 549 Congress Street, Portland, Maine 04101 (hereinafter the "**PD**").

W.I.T.N.E.S.S.E.T.H.

WHEREAS, the **City** and **PD** entered into a Master Agreement of even date establishing mutual rights and responsibilities for the provision of services in the Downtown Improvement District (hereinafter the "District"); and

WHEREAS, said Master Agreement established the Baseline Services to be provided by **City** in the District; and

WHEREAS, **PD** wishes to contract with the **City** to have the **City** provide, on a flexible basis depending upon funds available, Supplemental Maintenance Services in addition to those in the Master Agreement;

NOW THEREFORE, the parties do hereby agree as follows:

1. Supplemental Services: The **City** shall provide the following Personnel and Services (hereinafter the "Supplemental Services") in the District in addition to the Baseline Services provided in the Master Agreement:

1.1. Personnel:

One PD Steward		
One Public Services Supervisor	Days	52 Weeks
Three Maintenance Worker	Days	52 Weeks
Two Laborers	Days	Seasonal

1.2. Persons providing Supplemental Services hereunder shall be assigned by the **City** after providing reasonable opportunity to **PD** for requests for service. Such persons are not required to be employees of the **City.** Such persons shall not, however, be considered to be employees of **PD** and **PD** is not intended, nor shall it be deemed to be, a joint employer with **City.** As between the **City** and **PD**, **City** shall be responsible for all aspects of employment for all persons supplied by **City** pursuant to this Agreement, including compensation, liability and workers compensation coverage, employment taxes and any applicable fees.

1.3 Services to be provided are:

*Transportation and set-up of materials and equipment for planned special events activities of **PD** (as outlined in Exhibit A to the SSA; Section 2).
*Litter patrol, collection and disposal on streets, sidewalks, tree wells and public areas within the District.
*Graffiti removal from City property within 5 days of notification.
*Removal of posters from PD posterboards (at a minimum of monthly).
*Check Condition, catalogue, and if necessary,

paint or clean all public furniture and fixtures twice a year, at minimum. Furniture and fixtures shall include (but not be limited to) the following items: benches, trash/recycling receptacles, light pole bases, planters.

*Sidewalks will be swept on a daily basis, weather and season permitting.

*Cleaning, weeding, and maintenance of tree wells at a minimum of once per month.

*Weed control in support of other City departments performing 'basic services'

*Snow clearance at crosswalks and from sidewalks during curb to curb snow removal

*Installation of Holiday decoration in the District as agreed with PD, in addition to those described in the Baseline Services provided in the Master Agreement, including electrical energy costs

*Maintenance and cleaning of Visitor's Booth in Tommy's Park at least once per month during season (May-October)

*Clean and maintain the bathrooms, located in the Fore Street Garage and Spring Street Garage buildings, when the bathrooms are open to the public, cleaning to occur no later than 10am on days the bathrooms are open to the public.

1.3.1. **PD** Sidewalk Snow Plowing Program. All property owners in the District assessment area are responsible for maintaining their sidewalks in the winter pursuant to Portland City Code §§25-173(C) and 25-174(C), including snow removal from their property line to the street gutter and ice control.

1.3.2. Following a snow storm, the **City** will provide a clear walkway no less than the width of a Holder's capability. To the extent reasonable, the **City** will clear the sidewalk area but it is not the intent of the parties that the **City** will clear the snow from the full width of the sidewalk area. The City will provide ice control to the extent possible. If weather conditions are so severe that the area cannot be plowed

due to equipment capability, the **City**, in its discretion, may choose to delay, clearing of the sidewalks, but must complete the work within 24 hours of the storm being complete.

1.3.3. Management of Supplemental Services. The City's Public Works Director and/or Designee and PD's Executive Director and/or Designee (Downtown Experience Liaison) agree to meet and communicate on a monthly basis with meeting agendas to ensure quality control in service delivery is meeting expectations; providing updated information on service activities, programs and projects. The Public Works Department will provide a staff contact to PD for direct communications, which is identified as the Districting Supervisor and PD Supervisor. A point of contact for PD officials is the PD Supervisor and District Coordinator. Conversely, Department of Public Works looks to the PD Executive Director or designee as the City's point of contact on all issues involving PD matters. A complete work plan and list of Services provided under this FY2019 agreement is provided in Exhibit A hereto.

2. Term: The term of this Agreement is from July 1, 2018 through June 30, 2019.

3. Budget and Payment: In consideration for these Supplemental Services, **PD** agrees to pay the **City**, in equal monthly installments, for all Supplemental Services provided hereunder the total sum of $380,000 for FY2019. The **City** shall bill and **PD** shall pay the **City** beginning July 1, 2018, a monthly payment of $31,666.

3.1. In the event **PD** requests services from **City** in addition to those included herein, **City** shall have the option, in its sole discretion to provide such services, with payment to be made by **PD** for any such services on a Time and Materials basis, or such other basis as the parties may agree in writing. "Time" as used herein shall

mean all of the **City**'s employee costs, i.e. hourly wages or salary. "Materials" as used herein shall mean the actual cost to the **City** of equipment, materials and/or supplies provided or used, with no additional markup.

4. Modifications: It is understood and agreed by the parties that **City** has adopted an expenditure budget which includes the cost of these Supplemental Services and has adopted a revenue budget which provides for the reimbursement of such costs by **PD** as provided hereunder. In the event that either **PD** or the **City** anticipates that there will be insufficient revenues to pay for such Supplemental Services, said party will notify the other party of the anticipated shortfall, and the parties agree to meet promptly and confer to modify the level of Supplemental Services which the **City** is able to provide. It shall be the responsibility of **PD** to notify **City** as soon as reasonably possible if such Supplemental Services need to be modified or adjusted for anticipated revenue shortfalls or modifications. In the event of a revenue shortfall, the **City** will have no obligation to provide Services in excess of **PD** funds available to reimburse **City**; however, **City** will have the right, but not the obligation, to continue to provide Supplemental Services to the extent provided in the **City** budget even in the event of a revenue shortfall. The parties agree to memorialize in writing any changes in the monthly payments due under Section 3 above.

4.1. Either party may terminate or modify this Agreement in the event of a budget shortfall upon no less than Sixty (60) days prior written notice to the other party.

4.2. In the event Supplemental Services are terminated for any reason by either party, it shall be in **City**'s discretion as to whether it will continue or resume providing such Supplemental Services.

4.3. **PD** agrees to give the City Manager or the Manager's designee advance written notice of any formal meeting of its Directors or Officers at which modification of the current year Supplemental Services budget is to be discussed

or considered, and to permit the attendance of **City** representative at such meeting. **City** and **PD** agree to provide copies of draft budgets for the upcoming fiscal year reasonably in advance of any final decision by **PD** or the **City** as to said budget, and the parties agree to meet and confer in regard to such budgets.

5. **City**'s representative in regard to provision of Supplemental Services hereunder is the City Manager or the Manager's designee.

IN WITNESS WHEREOF, the **City** and **PD** have signed this Agreement through their authorized representatives as of the day and date above written.

W**itness:** **City of Portland**

_____ By:_____
Jon P. Jennings
Its City Manager

Witness: **Downtown Improvement District d/b/a Portland Downtown**

_____ By:_____
Kim Volk
Its Board Chair

Approved as to Form:_____
(Corporation Counsel)

Approved as to Funds:_____
(Finance Department)

EXHIBIT A

to Supplemental Services Agreement

(Supplemental Services Work Plan and Event Support for FY2019)

MEMORANDUM RELATED TO THE SUPPLEMENTAL SERVICES AGREEMENT (SSA) BETWEEN THE DOWNTOWN IMPROVEMENT DISTRICT dba PORTLAND DOWNTOWN (PD) AND THE CITY OF PORTLAND (City)

(July 1, 2018 - June 30, 2019)

This memorandum is a good faith attempt to define certain services, programs and events, and to achieve an improved level of satisfaction for both the **City** and **PD**. It is generally understood that the City's Baseline Services, as articulated in Exhibit B of the Master Agreement, do not overlap or replace the services and programs incorporated in the SSA.

Also, listed are the specific special events produced by **PD** for the benefit of the **City** and its property owners, residents, businesses and visitors, during the contract period.

The ongoing relationship between **PD** and the **City** has evolved, along with the needs and expectations of both parties. The goal of this document is to improve coordination, establish priorities, clarify services and responsibilities, and list events covered under the terms and conditions of the SSA. The result will be to produce a more proactive, performance-based approach to the maintenance, cleanliness and overall attractiveness of downtown Portland.

1. FY 2019 City Personnel Work Plan

The City personnel assigned to perform services under the Supplemental Services Agreement are expressed in the FY2019 Portland Public Works Budget detail. For the current period of July 1, 2018 through June 30, 2019 these personnel are:

1. (1) Public Works Supervisor
2. (1) PD Steward
3. (3) Three Maintenance Workers
4. (2) Seasonal Laborers

Staffing levels may change on an occasion to account for employee leave coverage, emergencies or other unforeseen circumstances. However the City of Portland, Department of Public Works commits to continue to provide the general list of services provided by these personnel under the SSA.

1.1 The general list of services provided by these personnel is identified within the SSA under item 1.3. These shall not overlap services provided within Baseline Services (Exhibit B to Master Agreement).

1.2 The Public Works Supervisor shall inspect the entirety of **PD at least once** every two weeks. During this inspection particular attention shall be focused on, but not limited to, the overall cleanliness and maintenance of the sidewalks, streets, trash containers, graffiti removal, open spaces, furniture and fixtures, lights, signage, the visitor kiosk and public restrooms. The status of projects or work orders in process should be continually updated. The results of each inspection shall be logged and documented; a monthly report will be presented to the Executive Director of PD every month.

1.3 The Public Works Supervisor shall direct the maintenance personnel on their daily responsibilities by producing a weekly schedule highlighting project activities and goals. The Supervisor will participate and assist the team in achieving project activities, as needed.

1.4 Horticultural and landscaping duties shall be in support of City personnel and departments assigned to these tasks. PD dedicated personnel should assist (for instance with weed control and seeding) on an as needed basis, as time and normally assigned duties allow. Requests for assistance should be communicated via email to the PD Public Works Supervisor.

1.5 Sidewalk plowing and snow removal at intersections should be accomplished as soon as is reasonably possible during and following a snow event. If a yellow ban is called, sidewalk snow removal, as indicated in sections 1.3.1 and 1.3.2 of the SSA, should be completed within the same timeframe as city personnel and contracted partners remove snow from the District's streets and parking areas. The Department of Public Works will organize an annual winter briefing with the PD public works team and downtown contract partners that remove snow on sidewalks and plazas to review best practices regarding coordinating work activity. This meeting will typically occur in late fall/early winter. PD's Downtown Experience Liaison (DEL) should be present at this meeting.

1.6 "Quick response" repairs, such as missing bricks, landscaping damage or graffiti removal on public property

shall be performed by **PD** personnel, as soon as possible. **PD** and **City** will jointly approve each quick response, as needed.

1.7 **PD** and **City** will meet annually to discuss the prioritization of larger projects within the District generally included in baseline services or CIP, and managed by other **City** teams or departments. These include, but are not limited to, major sidewalk repairs, tree well rehabilitation, landscape installations and other reconstruction projects. These District projects will be prioritized with input from **PD**, and may include **PD** personnel in their execution. Progress and status shall be monitored by the **PD** supervisor, and updated as part of the monthly reporting.

1.8 **PD** will monitor responsiveness of City teams through specific PD access to "See, Click and Fix" software. PD will also track the activities of downtown PW staff to ensure that daily activities are in-line with section 1.3 of the SSA. Data will be reported to the PW Director by PD's Downtown Experience Liaison (DEL) during the monthly meeting, as outlined in Article VIII of the Master Agreement and article 1.3.3 in the SSA.

1.9 **PD** dedicated personnel will wear approved uniforms and work clothes at all times when on duty. **City** and **PD** agree to work jointly on uniform decisions, including recommendations on an alternative uniform for PD personnel.

2. <u>FY2019 PD Event Support Plan</u>

PD and the **City** recognize the value that well executed events bring to the vitality and

economic development of the downtown. To that end, **PD** agrees to follow the **City's** established permitting process and with the exception of the events as outlined in Exhibit B, Baseline Services, agrees to reimburse the City for actual expenses, as agreed to by both parties, required to support these events.

In FY2019, **PD** is planning major events that require a level of support by **City** personnel. Following is a complete list of events, some of which require City permitting, street closures, and the assistance of various City Departments. **PD** will make all efforts to incorporate recycling at all produced events, with support of the **City** staff, volunteers and supplied receptacles.

2.1 Summer Kick-Off Weekend (SKW): This event series begins on the second Friday in June with Square Hop from 6pm to 8pm. On Saturday, Shop For A Cause and Walk the Working Waterfront. On Sunday, The Old Port Festival (OPF) whichrequires closure of streets generally in the Old Port area. The other SKW events do not require street closures. SKW ends following the end of the OPF.

2.2 Light Up Your Holiday Celebration (LUYH): – This annual roster of events begins with the Annual Tree lighting in Monument Square on the Friday after Thanksgiving. The Tree Lighting requires set up and some street closures, along with minor transit re-routing around Monument Square. PD coordinates with the City Arborist on the selection of and transport of the tree to Monument Square. Other events in the LUYH event series include: Horse-drawn carriage rides, Merry Madness, Shop For A Cause Day, Elfternoon Lunchtime Shopping, and the Holiday Window Display Contest. Merry Madness may require minor street closures and additional City personnel, depending on the selected event location. LUYH events end December 16, 2018.

2.3 Downtown Worker Appreciation Day – Generally held in early May to recognize downtown employees. **City** and **PD** provide set up and management of 3 stations located at the Portland Museum of Art, Monument Square and Tommy's Park.

2.4 Police Awards Breakfast: Held in early winter at a downtown venue, this day honors both police and civilian heroes going above and beyond the call of duty. No permits or special services are required for this event.

2.5 Winter Lights by Pandora – Lights are installed on street poles and in downtown parks around the time that Day Light Savings Time ends in the late fall, and de-installed in February or March. Winter Lights are fully funded through PD's budget, while the City supplies the electricity. Storage for the lights is donated by MECA. Pandora provides labor for the installation and maintenance of the lights.