

Order 271-14/15

Passage as amended: 9-0 on 6/25/2015

Effective 7/5/2015

MICHAEL F. BRENNAN. (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER APPROVING AND AUTHORIZING
THE ACTING CITY MANAGER TO ENTER INTO
MASTER AGREEMENT AND SUPPLEMENTAL
SERVICES AGREEMENT WITH PORTLAND'S DOWNTOWN DISTRICT**

ORDERED, that the City Manager or Acting City Manager is hereby authorized to enter into a Master Agreement, with the Baseline Services provided in Exhibit B, with the Downtown Improvement District Corporation, d/b/a Portland's Downtown District, to carry out the Development Plan for the Portland's Downtown Improvement District for the period from and after July 1, 2015 and ending June 30, 2016, said agreement to be substantially in the form attached;

BE IT FURTHER ORDERED, that the City Manager or Acting City Manager is authorized to enter into a Supplemental Services Agreement, substantially in the form attached, with the Downtown Improvement District Corporation d/b/a Portland's Downtown District to implement Supplemental Public Works Services as approved in the Fiscal Year 2016 Appropriation Resolve.

MASTER AGREEMENT BETWEEN

THE CITY OF PORTLAND

AND

**DOWNTOWN IMPROVEMENT DISTRICT, INC.
D/b/a PORTLAND'S DOWNTOWN DISTRICT**

AGREEMENT made by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Maine, hereinafter referred to as the "**CITY**" and the **DOWNTOWN IMPROVEMENT DISTRICT, INC., d/b/a PORTLAND'S DOWNTOWN DISTRICT**, a Maine non-profit corporation, having its office and place of business at Portland, Maine, and doing business as "Portland's Downtown District", 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, 2015 and ending June 30, 2016 the City will pay the **CORPORATION** in four (4) 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 August 10, 2015; October 12, 2015; February 1, 2016; and May 2, 2016.
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.

The **CORPORATION** shall provide a fiduciary bond, payable to the **CITY**, in the minimum amount of Ten Thousand Dollars (\$10,000.00).

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 in Exhibit A, covering the period beginning on July 1, 2015, and ending on June 30, 2016, with estimated District revenues from the assessments in the amount of \$746,307.
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 a monthly 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. The statement shall be due on or before the fifteenth (15th) day of the month following the month to which it relates. In addition, the books and records of the **CORPORATION** shall be audited annually as of the close of business on the thirtieth (30th) day of June by an independent certified public accountant and his report will be delivered to the Director of Finance.
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 the kind 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 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, 2015, and continue through, June 30, 2016.

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) 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, 2015 to December 31, 2015, and January 1, 2016 to June 30, 2016; (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.

ARTICLE VIII. MANAGEMENT OF PERFORMANCE

The **CITY's** Director of Public Services 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.

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 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**.

(a) Workers' Compensation Insurance. The **CORPORATION** and its subcontractors shall procure and maintain, at their own expense, and show evidence to the **CITY** of Workers' Compensation Coverage, as well as Employer's Liability Coverage, for their employees. All such policies which are in any way related to the services to be provided hereunder and which are secured and maintained by the **CORPORATION** or any subcontractors shall include clauses requiring that each underwriter shall waive all of its rights of recovery under subrogation or otherwise against the **CITY**. The City shall be named as an additional insured in all such policies.

(b) Prior to the execution of this Agreement, **CORPORATION** will procure and maintain Public Liability Insurance coverage and Automobile Insurance coverage in amounts of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit for bodily

injury, death, and property damage, and also Worker's Compensation Insurance coverage, naming the **CITY** as an additional insured thereon. an additional insured on the certificate, in this way: certificate must say either: A) "the policy actually been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Expansion Endorsement, by which the City of Portland is, in fact, automatically made an additional insured." A Certificate which merely has a box checked under "Addl Insr", or the like, or which merely states The City of Portland is named as an Additional Insured, will not be acceptable.

(d) Deductible Amount. The **CORPORATION** and its subcontractors will reimburse the **CITY** for any amounts it may be required to pay and hold it harmless from the cost of any losses for which they are responsible and to which a deductible amount may apply. The deductible amount in any such policy may not exceed Two Thousand Five Hundred Dollars (\$2,500.00) without the written consent of the **CITY**.

(e) Certificate of Insurance. The **CORPORATION** and its subcontractors will provide the **CITY** with either certificates of insurance or certified copies of the applicable policies, showing that they have complied with these provisions, and such certificates shall provide that thirty (30) days' written notice of non-renewal, material modification, or cancellation must be given to the **CITY**, prior to the effective date of such non-renewal, material modification, or cancellation.

(f) Claims-made Policies. Claims-made policies will not be accepted.

ARTICLE XII. INDEPENDENT CONTRACTOR

The **CORPORATION** either has or will secure, at its own expense, all personnel, materials, and equipment required to perform its obligations 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this _____ day of June, 2015.

WITNESS

CITY OF PORTLAND

_____ By: _____
Michael Sauschuck
Its Acting City Manager

WITNESS

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

_____ By: _____
Michael Mastronardi
Its Board Chairman

PORTLAND'S DOWNTOWN DISTRICT FY2016 BUDGET

July 1, 2015 to June 30, 2016

ORDINARY INCOME/EXPENSE

Income

ADMIN FEE INCOME-P&S	12,000	
ASSESSMENT INCOME		
CITY ASSESSMENT PROCESSING COST	0	
ASSESSMENT REVENUE	746,307	
NONPROFIT CONTRIBUTIONS	0	
TOTAL ASSESSMENT INCOME		746,307
EVENT INCOME		
MERRY MADNESS INCOME	12,000	
LIGHT UP YOUR HOLIDAYS INCOME	10,000	
ALIVE AT FIVE INCOME	0	
OLD PORT FESTIVAL INCOME	70,000	
SHOP FOR A CAUSE INCOME	0	
PORTLAND WINTERFEST INCOME	5,000	
TOTAL EVENT INCOME		97,000
INTEREST INCOME	0	
ONLINE REVENUES	5,000	
MARKETING INCOME	5,000	
P&S INCOME	12,000	
P&W INCOME	1,000	
TOTAL ORDINARY INCOME	878,307	

Expense

BANK SERVICE CHARGES	0	
CLEANING	2,995	
CONFERENCES/PROF DEV	1,200	
CONTRACT LABOR	9,000	
COPIER MAINTENANCE	250	
DEPRECIATION EXPENSE	0	
DUES AND SUBS	3,000	
EMPLOYEE COSTS		
HEALTH/DENTAL INSURANCE	42,000	
LIFE & DISABILITY INSURANCE	4,400	
PAYROLL PROCESSING FEE	1,000	
PAYROLL TAX EXPENSE	17,000	
SIMPLE EXPENSE	4,000	
TOTAL EMPLOYEE COSTS		68,400
EMPLOYEE PARKING & BUS	4,800	
EQUIPMENT EXPENSE	1,000	
INSURANCE		
DIRECTORS & OFFICERS	600	
GENERAL LIABILITY INCLUDING EVENTS	10,000	
LIQUOR LIABILITY	1,000	

WORKERS COMPENSATION	1,300	
TOTAL INSURANCE COSTS		12,900
MEETING EXPENSES	1,500	
POSTAGE	3,500	
PROFESSIONAL FEES		
ACCOUNTING	6,500	
COMPUTERS	750	
LEGAL	1,000	
TOTAL PROFESSIONAL FEES		8,250
RENT		
CAM CHARGES	7,880	
RENT - Other	17,128	
SALARIES AND WAGES	185,000	
BONUS AND INCENTIVES	10,000	
TOTAL COMPENSATION		200,000
SUPPLIES	4,000	
TAXES-PROPERTY	400	
TELEPHONE & INTERNET	3,000	
UTILITIES		
ELECTRIC	1,600	
GAS	1,200	
TOTAL ORDINARY EXPENSE	347,003	
NET ORDINARY INCOME	531,304	

OTHER INCOME/EXPENSE

Expense

ADOPT A FLAG EXPENSE	0	
ALIVE AT FIVE	0	
BANNERS EXPENSE	2,000	
CRUISE CONSORTIUM EXP	0	
DOWNTOWN WORKER DAY	475	
TARGETED MARKETING	20,000	
GRAFFITI REMOVAL	12,000	
GUIDES EXPENSES		
GUIDE PROGRAM EXPENSES	500	
PAYROLL TAX EXPENSES	1,200	
TELEPHONE STIPEND	200	
WAGES	12,000	
TOTAL GUIDE EXPENSES		13,900
HOLIDAY LIGHTS	41,500	
HOMETEAM EXPENSES	5,000	
LIGHT UP YOUR HOLIDAYS		
MARKETING	5,500	
PERFORMERS	3,000	
SECURITY	1,500	

TREE LIGHTING	3,000	
WINDOW WALK	0	
MERRY MADNESS EXPENSES	6,500	
WAGON RIDES	6,000	
TOTAL LUYH EXPENSES		24,400
PORTLAND WINTERFEST EXPENSES	5,000	
OLD PORT FESTIVAL		
MARKETING	5,000	
MISCELLANEOUS	5,000	
PERFORMERS	1,000	
PERMITS	5,800	
SECURITY	1,800	
TOTAL OLD PORT FESTIVAL EXPENSE		20,100
PARK & SHOP		
P&S MISCELLANEOUS EXP	3,000	
PARK & SHOP ADMIN EXPENSE	7,000	
TOTAL PARK AND SHOP EXPENSE		10,000
PARK AND WORK EXPENSE	0	
POLICE CADET PROGRAM	24,000	
PRIOR YEAR ADJUSTMENTS	0	
SUPPLEMENTAL SERVICES CONTRACT EXPENSE	335,329	
WEBSITE DEVELOPMENT	18,000	
TOTAL OTHER EXPENSE	531,304	
NET INCOME	0	

EXHIBIT B TO MASTER AGREEMENT
(BASELINE SERVICES)

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

(July 1, 2015 - June 30, 2016)

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). 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's Downtown District 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 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

PDD shall have the opportunity to participate with City staff from the Department of Public Services in the prioritization of all proposed capital improvement projects within the District including, but not limited to, tree well reconstruction and sidewalk repairs. PDD 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.

Description of Portland's Downtown District

Beginning at Longfellow Square, at the southwesterly corner of Congress Street and State Street, easterly along Congress Street to High Street;

Thence northwesterly along High Street to Deering Street;

Thence along the easterly side of High Street to Cumberland Avenue;

Thence along the southerly side of Cumberland Avenue, beginning at High Street, to the Franklin Street Arterial;

Thence along the westerly side of the Franklin Street Arterial to Congress Street; and

Thence along the westerly side of Congress Street to Myrtle Street;

Thence along the westerly side of Market Street to the southerly side of Newbury Street;

Thence easterly along Newbury Street to the westerly side of the Franklin Street Arterial;

Thence along the westerly side of the Franklin Street Arterial to the southerly side of Commercial Street; thence along Commercial Street to the easterly side of Cross Street;

Thence along the northerly side of Commercial Street to Maple Street;

Thence along the easterly side of Maple Street from Commercial Street to the southerly side of Danforth Street;

Thence along the southerly side of Danforth Street in an easterly direction to York Street;

Thence northeasterly to the intersection of Center Street, York Street, and Pleasant Street;

Thence westerly along Pleasant Street from its intersection with Center Street to a passage way, situated at number 15 Pleasant Street according to the street numbering plan as shown on Chart 38, Block E, Lot 23 of the Assessor's Maps on file at Portland City Hall; and

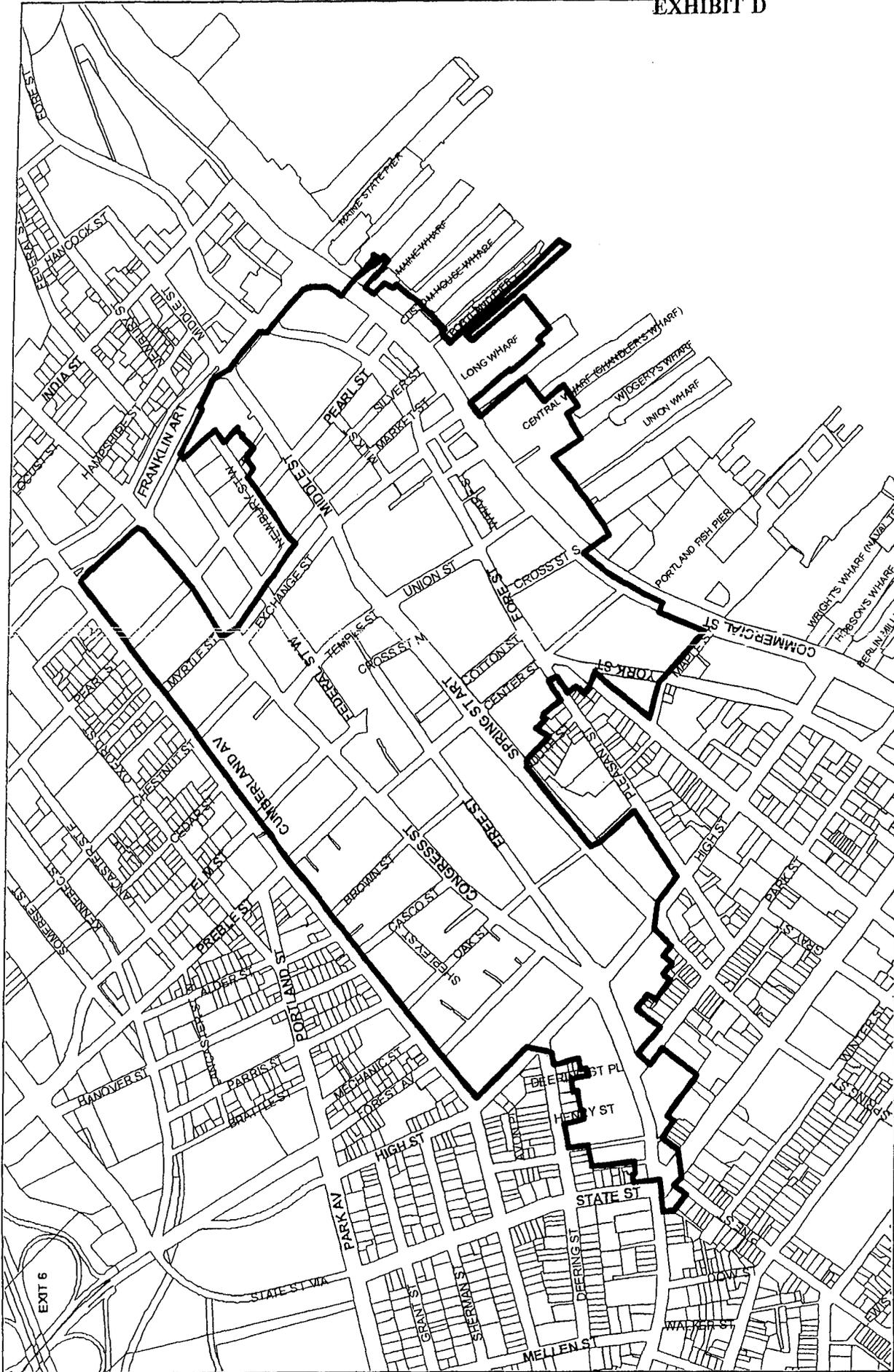
Thence along the easterly side of South Street from number 13 South Street according to the street numbering plan as shown on Chart 38, Block E, Lot 10 of the Assessor's Maps on file at Portland City Hall, to the northerly side of Spring Street;

Thence along the northerly side of Spring Street in a westerly direction to Oak Street;

Thence along the westerly side of Oak Street to its intersection with Pleasant Street;

Thence along Pleasant Street in a westerly direction to the easterly side of High Street; and

Thence along the northerly side of High Street to its intersection with Congress Street.



PORTLAND DOWNTOWN DISTRICT

Effective July 1, 2004

Map produced by the City of Portland's GIS Workgroup March 5, 2004



SUPPLEMENTAL SERVICES AGREEMENT BETWEEN
DOWNTOWN IMPROVEMENT DISTRICT d/b/a
PORTLAND'S DOWNTOWN DISTRICT CORPORATION

AND

CITY OF PORTLAND

AGREEMENT made this ____ day of June, 2015, by and between the City of Portland, a municipal corporation duly organized under the laws of the State of Maine, Cumberland County (hereinafter the "**City**") and the Downtown Improvement District Corporation, d/b/a Portland's Downtown District, a Maine non-profit corporation, having its office and place of business at 549 Congress Street, Portland, Maine (hereinafter the "**PDD**").

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

WHEREAS, the **City** and **PDD** 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, **PDD** 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 PDD Steward		
One Public Services Supervisor	Days	52 Weeks
Three Maintenance Worker III	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 **PDD** 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 **PDD** and **PDD** is not intended, nor shall it be deemed to be, a joint employer with **City**. As between the **City** and **PDD**, **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 **PDD** (with proper notification to coordinator)
- *Litter patrol, collection and disposal on streets, sidewalks, and public areas within the District.
- *Graffiti removal from City property
- *Removal of posters
- *Cleaning and painting of all furniture and fixtures
- *Sidewalk sweeping
- *Cleaning of tree wells
- *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 PDD, 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 and Tommy's Park.
- *Clean and maintain the bathrooms, located in the Fore Street Garage and Spring Street Garage buildings, when the bathrooms are open to the public

1.3.1. PDD 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 not to provide sidewalk snow plowing without penalty.

1.3.3. Management of Supplemental Services. The City's Public Services Director and/or Designee and PDD's Executive Director and/or Designee 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 Services Department will provide a staff contact to PDD for direct communications, which is identified as the Districting Supervisor and

PDD Supervisor. A point of contact for PDD officials is the PDD Supervisor and District Coordinator. Conversely, the City of Portland Department of Public Services looks to the PDD Executive Director or designee as the City's point of contact on all issues involving PDD matters. A complete work plan and list of Services provided under this FY2016 agreement is provided in Exhibit A hereto.

2. Term: The term of this Agreement is from July 1, 2015 through June 30, 2016.

3. Budget and Payment: In consideration for these Supplemental Services, **PDD** agrees to pay the **City**, in equal quarterly installments, for all Supplemental Services provided hereunder the total sum of \$335,329 for FY2016. The **City** shall bill and **PDD** shall pay the **City** beginning July 1, 2015, a quarterly payment of \$83,832.
 - 3.1. In the event **PDD** 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 **PDD** 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 **PDD** as provided hereunder. In the event that either **PDD** 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 **PDD** 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 **PDD** 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. **PDD** 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 **PDD** agree to provide copies of draft budgets for the upcoming fiscal year reasonably in advance of any final decision by **PDD** 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.

(Rest of page left intentionally blank.)

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

Witness:

City of Portland

By: _____
Michael Sauschuck
Its Acting City Manager

Witness:

**Downtown Improvement District
d/b/a Portland's Downtown
District**

By: _____
Michael Mastronardi
Its Board Chair

EXHIBIT A
to Supplemental Services Agreement
**(Supplemental Services Work Plan and Event
Support for FY2016)**

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

(July 1, 2015 - June 30, 2016)

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 **PDD**. 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 **PDD** for the benefit of the **City** and its property owners, residents, businesses and visitors, during the contract period.

The ongoing relationship between **PDD** 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 2016 City Personnel Work Plan

The City personnel assigned to perform services under the Supplemental Services Agreement are expressed in the FY2016 Portland Public Services Budget detail. For the current period of July 1, 2015 through June 30 2016 these personnel are:

1. (1) Public Services Supervisor
2. (1) PDD Steward
3. (3) Maintenance Worker III
4. (2) Seasonal Part-Time Maintenance Worker

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 Services 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 Services Supervisor shall inspect the entirety of **PDD 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 every month.

- 1.3 The Public Services 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. PDD dedicated personnel should assist (for instance with weed control and seeding) on an as needed basis, as time and normally assigned duties allow.
- 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 Services will organize an annual winter briefing with 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.
- 1.6 "Quick response" repairs, such as missing bricks, landscaping damage or graffiti removal shall be performed by **PDD** personnel, as soon as possible. **PDD** and **City** will jointly approve each quick response, as needed.
- 1.7 **PDD** and **City** will prioritize 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 **PDD**, and may include **PDD** personnel in their execution. Progress and status shall be monitored by the **PDD** supervisor, and updated as part of the monthly reporting.

- 1.8 **PDD** will monitor performance of City teams through specific PDD access to "See, Click and Fix" software.
- 1.9 **PDD** dedicated personnel will wear approved uniforms and work clothes at all times when on duty. **City** and **PDD** agree to work jointly on uniform decisions, including recommendations on an alternative uniform for PDD personnel.

2. FY2016 PDD Event Support Plan

PDD and the **City** recognize the value that well executed events bring to the vitality and economic development of the downtown. To that end, **PDD** 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 FY2016, **PDD** is planning major events that require a level of support by **City** personnel.

PDD plans to incorporate recycling at all produced events, with support of the **City** staff, volunteers and supplied receptacles.

- 2.1 The Old Port Festival (OPF) - The OPF will operate from June 11-14, 2015. Sunday,

June 14, events will require closure of streets generally in the Old Port area.

- 2.2 Light Up Your Holiday Celebration (LUYH) - This annual roster of events around the Christmas holidays include a LUYH First Friday Artwalk with Congress Street closure from approximately 6-8pm. The Christmas tree lighting ceremony on the Friday after Thanksgiving, which requires set up and some street closures, along with minor transit re-routing around Monument Square. Horse-drawn carriage rides in the downtown and the merchant event called Merry Madness generally requires no specific city personnel support.
- 2.3 Portland Winterfest - This event will be held in January or February 2016, with a date to be confirmed.
- 2.4 Downtown Workers Appreciation Days - Generally held twice a year in early May and mid-October to recognize the employees of businesses and government offices located within the downtown. **City** and **PDD** provide set up and management of 3 stations located at the Portland Museum of Art, Monument Square and Tommy's Park.
- 2.5 Seasonal lights by Pandora - Lights are installed around the time that Day Light Savings Time ends in the late fall, and de-installed around the time that Day Light Savings Time begins again in the early spring. **PDD** personnel provide some installation support.