

AGREEMENT FOR LLOYD DISTRICT MANAGEMENT SERVICES

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This Agreement for Lloyd District Management Services (Agreement) is between the City of Portland, Oregon (City) and Lloyd B.I.D., Inc. (Lloyd), an Oregon non-profit corporation. This Agreement is effective from February 1, 2019 through January 31, 2024

RECITALS:

1. Under Chapter 6.06 of the City Code, the City established a business property management license fee (License Fee) within the Lloyd District, referred to herein as "the District". The purpose of the License Fee is to provide revenues to fund supplemental transportation management, District Attorney prosecution, neighborhood sustainability, and job development, marketing, and economic development services within the District. The District's boundaries are those as set forth in City Code Chapter 6.06.
2. Lloyd B.I.D. Inc, referred to herein as "Lloyd" represents the property managers of a large portion of property within the District. Lloyd initiated the establishment of the License Fee, and it has identified the services it recommends be funded by the License fee. Lloyd also represents the business property managers who will be responsible for paying the majority of the License Fee revenues.
3. Given Lloyd's position in relation to the District and the License Fee revenues, Lloyd is uniquely qualified to manage the provision of the District's services, and there is no other potential provider that is so qualified. It is therefore appropriate for the City to contract with Lloyd for the provision of the services; and Lloyd is willing to contract to provide the services.

AGREEMENT:

A. DEFINITIONS.

As used herein, unless the context requires otherwise, the following definitions apply to this Agreement:

1. 'Division' means Revenue Division of the City of Portland, Bureau of Revenue and Financial Services along with its officers, employees and agents.
2. 'License Fee' means the property management license fee for the Lloyd District as established by Chapter 6.06.
3. 'Lloyd BID' or 'Lloyd' means Lloyd B.I.D., Inc. established by PCC Chapter 6.06.
4. 'OMF' means the Office of Management and Finance of the City of Portland, along with its officers, employees, and agents.
5. 'TMA' means Go Lloyd.
6. 'Services' means only services for which public funds may be spent under Oregon

law and includes the following:

- a. Providing District Attorney services, through an agreement with the Multnomah County District Attorney.
- b. Providing transportation management services.
- c. Participating in providing transit services.
- d. Providing District job development, marketing, and economic development services.
- e. Providing District administration services, such as letting and administering subcontracts for District services, preparing budgets for services, and undertaking any other tasks that are necessary to carry out the District services.

B. LLOYD BID OBLIGATIONS.

Lloyd obligations are as follows:

1. Provide Services. Manage and provide all District services for each District license year.
2. Budget. Provide to the City a proposed summary of District services and budget (Work Scope and Budget) for the next annual period's services, to be provided on or before the January 1 proceeding each annual period. In any annual period, Lloyd may transfer amounts among budget categories within the overall budget in order to perform the Work Scope, but Lloyd may not increase the amount budgeted within the overall budget for Lloyd administration of District services by more than \$10,000 during any annual period without the prior written approval of the City. Lloyd is responsible for providing District services under this Agreement only to the extent that the City provides funding to Lloyd that covers the cost to Lloyd of the services.
3. Subcontracts. Let and administer subcontracts for the provisions of District services. Lloyd will follow written competitive bidding procedures unless Lloyd has documented that it is necessary or desirable to award a subcontract on a negotiated basis in order to assure the provisions of adequate services at the most advantageous cost. Upon request by the City, Lloyd will provide a copy of all subcontracts for District services to the City Attorney for review and approval for compliance with section B.10 (EEO Certification) of this Agreement. In the copies provided by Lloyd, Lloyd may redact trade secrets information as defined by ORS 192.501(2) that is not relevant to the City Attorney's review of the subcontract as to form.
4. Indemnification. Hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from Lloyd's work or the work of any Lloyd subcontractor under this Agreement and against any improper use of District funds by employees or agents of Lloyd with the responsibility for handling the funds.
5. Liability Insurance.
 - a. Maintain public liability and property damage insurance that protects Lloyd, and the City and its officers, agents, and employees from any and all claims, demand, actions, and suits for damage to property or personal injury, including death,

Upon request by the City, Lloyd will provide subcontracts for review

arising from Lloyd's work under this Agreement. The insurance must provide coverage of not less than \$1,000,000 for personal injury to each person; \$100,000 for property damage to each person; and \$1,000,000 for each occurrence; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance are subject to statutory changes as to the maximum limits or liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance must be without prejudice to coverage otherwise existing and must name as additional insureds the City and its officers, agents, and employees.

- b. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance must provide that it cannot terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. Lloyd must maintain continuous uninterrupted coverage for the duration of the Agreement. If the insurance is cancelled or terminated prior to completion of the Agreement, Lloyd agrees to provide a new policy with the same terms. The insurance must include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Lloyd.
 - c. Maintain on file with the City Auditor a certificate of insurance certifying the coverage required under this subsection. The adequacy of the insurance is subject to the approval of the City Attorney. Failure to maintain liability insurance is cause for the immediate termination of this Agreement by the City.
6. Workers' Compensation.
- a. Lloyd, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, must be given to the City Auditor prior to this Agreement's effective date if one is required under this Agreement's terms. Lloyd further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.
 - b. In the event, if applicable, Lloyd's workers' compensation insurance coverage is due to expire during the term of this Agreement, Lloyd agrees to timely renew its insurance, either as a carrier insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and Lloyd agrees to provide the City such further certification of workers' compensation insurance as renewals of said insurance occur.
7. Independent Contractor Status. Provide services under this Agreement as an independent contractor and be responsible for any federal, state, and local taxes and fees applicable to Lloyd. Lloyd employees and its subcontractors and their employees are not City employees and are not be eligible for any benefits provided

through the City, including without limitation, social security, health, workers' compensation, unemployment compensation and retirement benefits.

8. Subcontract requirements.

- a. All subcontracts must require that the subcontractors maintain public liability and property damage insurance that protects the subcontractor, Lloyd, and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the subcontractor's work under the subcontract. The insurance must provide coverage of not less than \$1,000,000 for personal injury to each person; \$100,000 for property damage to each person; and \$1,000,000 for each occurrence; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the contract. The insurance must be without prejudice to coverage otherwise existing and must name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance must provide that the insurance cannot terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor.
- b. Each subcontract must require the subcontractor to maintain continuous uninterrupted coverage for the duration of the subcontract. The subcontract must require the subcontractor to provide a new policy with the same terms if the insurance is cancelled or terminated prior to the completion of the subcontract.
- c. The subcontractor insurance required hereunder must include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the subcontractor.
- d. All subcontracts must require the subcontractors to provide and maintain workers' compensation insurance and to provide to Lloyd and the City Auditor certificates of insurance, or copies thereof, as provided in subsection B.7 (Workers Compensation) of this section.
- e. In lieu of the insurance described herein, subcontractors may provide equivalent insurance if approved by the City Attorney.
- f. All subcontracts must require subcontractors to maintain compliance with Chapter 3.100 of the City Code [Equal Employment Opportunity].
- g. All subcontracts must require subcontractors to comply with the City's Fair Wage Policy established by City Ordinance No. 170222 as amended and renewed from time to time, to the extent that policy is applicable to work performed under the

subcontract.

9. EEO Certification. Maintain compliance with Chapter 3.100 of the City Code pertaining to equal employment opportunity.
10. Records. Maintain records on a current basis to document the expenditure of funds and the performance of services in accordance with this Agreement. Lloyd must retain these records for three (3) years from the date of completion or termination of this Agreement. The City or its authorized representative has the authority, during normal business hours and on reasonable notice, from time to time to inspect, audit, and copy any records of Lloyd regarding the expenditures of funds and performance of services under this Agreement.
11. Fair Wage Policy. Maintain compliance with the City's Fair Wage Policy established by City Ordinance No. 170222 as amended and renewed from time to time, to the extent that policy is applicable to work performed under this Agreement.
12. Compliance with Laws. In connection with its activities under this Agreement, Lloyd BID must comply with all applicable federal, state, and local laws and regulations.
13. Public Contracts. Lloyd must observe all applicable state laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the provisions set out in Exhibit B hereto are part of this Agreement.

C. CITY OBLIGATIONS.

The City's obligations under this Agreement are as follows:

1. Budget and Audit.
 - a. Receive on or before the beginning of each District license year, the proposed Work Scope and Budget provided by Lloyd under section B.2 (Budget) for that annual period. Monitor the use by Lloyd of District funds for each license year through such reviews as the City deems appropriate.
 - b. If the City chooses, whether directly or through a designated representative, it may conduct financial and performance audits of the uses of funds and services specified in this Agreement, at any time during the term of the Agreement. This audit right expires at the conclusion of the three (3) year period described in section B.11 (Records). The City will conduct audits in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office. If any audit determines that payments to Lloyd were in excess of the costs of District services being provided under this Agreement, then Lloyd must repay the amount of the excess to the City, with the amount of any repayment to be used to provide District services.
2. Compensation to Lloyd BID.
 - a. Pay to Lloyd all net License Fee revenues, provided that the City first has received the Work Scope and Budget for services provided under C.1 (Budget &

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Audit) of this Agreement. The City will make payment to Lloyd of such net License Fee revenues as soon following the close of each City accounting period as the amount thereof received during the accounting period has been determined, and the City may make advance payments during any accounting period if the City's Director of the Revenue Division determines that sufficient funds have been received to make advance payments.

- b. Notwithstanding subsection 2(a) above, if the Division determines at any time during any license year that reserves are necessary to fund refunds, contingencies or any other such payment, the Division may retain up to \$5,000.00 until the reserve is no longer reasonably needed. In the event the Division retains such funds, it will give Lloyd at least fourteen (14) days' notice prior to its withholding.

D. CHALLENGES TO LLOYD DISTRICT MANAGEMENT LICENSE FEE.

The parties acknowledge that there may be uncertainties regarding the District License Fee due to potential challenges to it under certain provisions of law, and that it is necessary to minimize any financial risk to the City from such challenges. To minimize this risk, in the event of a challenge asserting that the License Fee is invalid or otherwise unenforceable or subject to limitation, then the following provisions apply:

1. The City may suspend its payments to Lloyd hereunder pending negotiation of amendments hereto that will assure the City's financial risk is minimized and, if the outcome of the challenge is unfavorable, the City may apply any net License Fee revenues held by the City to such repayments to License Fee payers as are appropriate.
2. Lloyd will defend the City and the City's officers, agents, and employees against any challenge alleging that the License Fee is invalid or otherwise unenforceable or subject to limitation (including the payment of all attorney fees and costs), and will hold harmless and indemnify the City and the City's officers, agents, and employees from any monetary claims, damages, refund obligations, or other payments they must make arising out of such a challenge. Lloyd will consult and cooperate with the City in conducting a defense of the License Fee, and the City will cooperate in its conduct of the defense. Notwithstanding any other provision of this Agreement, Lloyd may use any net License Fee revenues Lloyd receives under section C. (Compensation) of this Agreement to satisfy the hold harmless, defense, and indemnification obligations established by this section or by section B.5 (Indemnification) before using the funds to provide other services under this Agreement.
3. The City may require that Lloyd provide a letter of credit or similar instrument, or a guaranty, protecting the City against financial exposure due to the invalidity of, unenforceability of, or limitation on the License Fee, if the City determines that such a letter of credit or similar instrument is necessary or desirable to protect the City from risk of financial exposure.

E. ADMINISTRATION OF LICENSE FEE.

The Division will administer the License Fee calculations, billing, collections, database

and appeals. The City reserves the right, at its option, to subcontract out for any or all of these administrative functions. Lloyd will provide assistance in these administrative functions as follows:

1. Overall Program Management. The Division will administer the License Fee program in accordance with City Code 6.06 and with a view toward the continued goodwill of District property managers towards the Lloyd District and the City.
2. Customer Service. Lloyd, in providing assistance to the Division, will practice good customer service in relation to license fee payers. Lloyd will also respect and protect the Division's authority to make final determinations regarding collections, appeals, and questions of compliance with City Code Chapter 6.06.
3. Receiving Payments. The Division will receive all license payments (excluding voluntary payments made directly to Lloyd) and enter them to the License Fee fund maintained by the City. If Lloyd receives a voluntary payment for license fees, it must notify the Division within fourteen (14) days of receipt for the Division to correctly calculate the license collection fees owed for any given license year. Voluntary payments are included in the Division's calculation for cost of service.
4. Appeals. The Division has sole authority to decide appeals, consistent with the provisions of City Code Chapter 6.06, but it must consult with Lloyd regarding appeals. If the Division provides Lloyd with a copy of an appeal but does not receive comments from Lloyd within 7 days of the Division's providing the copy, the Division is deemed to have fulfilled its consultation responsibilities under this subsection. Lloyd will provide timely responses to Division requests for information needed to decide appeals and for comments on appeals.
5. Collections and Collection Litigation Costs.
 - a. Collections. Lloyd will monitor payments and encourage Lloyd business property managers to make license fee payments in a timely manner. However, the Division is responsible for actual collections and has sole authority to waive penalties and/or other finance charges.
 - b. Collection Litigation Costs. City costs related to District License Fee collection litigation will be billed separately to Lloyd and will be payable and deducted from the next disbursement of funds to Lloyd, provided that the amount so billed, payable, and deducted in relation to any particular collection case may not exceed the amount collected as a result of that case. The City, at the written request of Lloyd, will provide written documentation of any amount so billed, payable, and deducted. The term "City costs" as used in this subsection means:
 - i. City costs and disbursements as defined in ORCP 68(A)(2);
 - ii. City attorney fees as defined in ORCP 68(A)(1) with the cost of City Attorney's Office staff based on actual hourly costs of Office staff; and
 - iii. the cost of Revenue Division staff time based on actual hourly costs of Division staff, all without the addition of an overhead charge.
6. Service Problems. Whenever the Division receives comments that are about Lloyd

Revenue has authority over penalties and/or finance charges

District Services, the Division will notify Lloyd of those comments as soon as is reasonably possible. The Division may notify by telephone, electronic mail, or otherwise. Lloyd must reasonably attempt to resolve all service-related problems and inform the Division of its efforts at resolution.

7. **Division's Administration Costs.**

- a. The City will provide collection services to Lloyd for a fee of 1.50% of the total District License Fee billings for License years beginning on or after February 1, 2019. The base for the administration fee shall include any voluntary payments made in lieu of the license fee under Chapter 6.06. Both parties agree that Lloyd is not entitled to any civil penalties collected under Chapter 6.06, that such penalties shall be used to partially offset the Division's costs of administration, and the City will not include them in any disbursements to Lloyd. The City will deduct its fees from the License Fees collected. The deduction will coincide with each of the two annual disbursement cycles.
- b. Both Lloyd and the City acknowledge that setting the collection services as 1.50% is at a level below the Revenue Division's actual cost of providing collection services to Lloyd BID. The difference between the Division's actual costs of providing collection services and the recovery of such costs under the 1.50% mechanism as provided under subsection F.8.a above will be addressed through a technical adjustment in the Division's budget.
- c. In addition to the 1.5% fee in subsection a. above, an allocation of direct overhead charges will be deducted to arrive at the net License Fee revenues payable to Lloyd. Direct overhead charges include, but may not be not limited to, General Fund Overhead (GFOH) a charge and Enterprise Business System (EBS) services.

8. **Division's Other Costs.** Other costs for work provided by the Revenue Division to Lloyd not directly related to collection services outlined in subsections E.5. (Collections) and E.7. (Division's Administration Costs), must be agreed upon in advance by the Division and Lloyd. Those costs will be billed to Lloyd separately, and they will be payable and deducted from the next Division disbursement of funds to Lloyd.

F. TERM AND TERMINATION.

1. **Term.** The original term of this Agreement is from February 1, 2019 through January 31, 2024. Lloyd may recommend to the City Council extension of the termination date in order to allow Lloyd expenditure of remaining District funds for District services in the event all District funds are not received and spent by January 31, 2024.
2. **Termination.**
 - a. **By Mutual Agreement.** The City and Lloyd, by mutual agreement, may terminate this Agreement at any time.
 - b. **Unilateral Termination.** The City or Lloyd may terminate this Agreement, for any reason deemed appropriate in its sole discretion, effective on delivery to the other

party of 30 days prior written notice of termination. Following the termination, Lloyd as expeditiously as is reasonably possible will terminate its services hereunder, pay all obligations and costs of administration incurred hereunder, and return all remaining License Fee funds to the City.

- c. **Termination for Breach.** Either the City or Lloyd may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking termination must give the other party written notice of the breach and of the party's intent to terminate. If the other party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Agreement after giving a further 10 days notice of termination. Following such termination, Lloyd, as expeditiously as is reasonably possible, must terminate its services hereunder, pay all obligations and costs of administration incurred hereunder, and return all remaining License Fee funds to the City.

G. RENEWAL. The City and Lloyd may renew this Agreement for up to an additional five (5) year term, commencing on the expiration of the original term. In order to exercise this option, Lloyd may not at any time during the term of this Agreement have been or be in material default of this Agreement. If Lloyd at any time during the term of this Agreement materially defaulted in its performance of any or the terms and conditions of this Agreement, and if Lloyd did not cure the default within 30 days' written notice from the City, then this option is void. Should Lloyd elect to renew the term of this Agreement for an additional five (5) year term, it must give the City written notice of such election at least six (6) months prior to the expiration of the original term. Within thirty (30) days receipt of Lloyd's written notice of election to renew, the City will contact Lloyd and arrange for a suitable time and place to negotiate changes in the terms and conditions of the Agreement for the renewal term. Any negotiated changes in the terms and conditions of the Agreement must be in writing, and subject to approval by the City Council by ordinance and by the Lloyd Board of Directors. If neither party requests any changes in the terms and conditions of the Agreement, and if both otherwise wish to have the Agreement extended, then it will be extended on the same terms and conditions as found in the original Agreement.

H. SUBCONTRACTING. Lloyd may not subcontract its work under this Agreement, in whole or in part, without the written approval of the Division. Lloyd must require any approved subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of Lloyd as specified in this Agreement. Notwithstanding Division approval of a subcontractor, Lloyd remains obligated for full performance hereunder, and the Division incurs no obligation other than its obligations to Lloyd hereunder. Lloyd agrees that if subcontractors are employed in the performance of this Agreement, Lloyd and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

I. REMEDIES. The remedy of termination under section G.2 (Term & Termination) is the only remedy for breach of this Agreement by either party.

J. OREGON LAWS AND FORUM. This Agreement will be construed in accord with the laws of the State of Oregon. Any litigation between the Division and Lloyd arising under

this Agreement or out of work performed under this Agreement must occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

K. ASSIGNMENT. This Agreement may not be assigned without the prior written consent of both parties.

L. AMENDMENTS. The parties may amend this Agreement, including Exhibit A (Work Scope and Budget), at any time only by written amendment executed by duly authorized representatives of the City and Lloyd. Any amendment to this Agreement that increases the compensation payable to Lloyd must be approved by ordinance adopted by the City Council to be valid.

M. REPRESENTATIVES OF PARTIES.

1. **City Project Manager.**

a. The City Project Manager is the Revenue Division Director, or such other person as the Director designates in writing.

2. **Lloyd Project Manager.** The Lloyd Project Manager is the Chairperson of Lloyd BID or such other person as the Chairperson designates in writing.

3. The Project Managers are authorized to give notices, terminate this Agreement, and take any other actions referred to herein on behalf of their respective parties, except as otherwise specifically provided herein.

N. NOTICE. Any notice provided for under this Agreement is sufficient if in writing and delivered personally to the following addresses or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows or to such other address as the receiving party hereafter specifies by notice:

If to the City:

Director
Revenue Division
Bureau of Revenue and Financial Services
111 SW Columbia St., Suite 600
Portland, OR 97201

If to Lloyd BID:

Lloyd BID
700 NE Multnomah St, Suite 340
Portland, OR 97232

O. INTEGRATION. This Agreement replaces in their entireties the previous Agreement for Services between Lloyd and the City of Portland, and the Agreement for Collection Services.

P. SEVERABILITY. If any provision of this Agreement is found to be illegal or otherwise unenforceable, this Agreement nevertheless will remain in full force and effect and the affected provision will be stricken.

Q. NON WAIVER. The Division and Lloyd are not deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach does not waive any other breach not expressly identified, even if the other breach is of the same nature as that waived.

R. PROHIBITED INTEREST

1. No City officer or employee during his or her tenure or for one year thereafter may have any interest, direct or indirect, in this Agreement or the proceeds thereof.
2. No City officer or employee who participated in the award of this Agreement may be employed by Lloyd during the period of the Agreement.

S. BREACH OF AGREEMENT

1. The Division or Lloyd will breach this Agreement if either fails to perform any substantial obligation under the Agreement, except as provided in subsection (2) of this section.
2. Neither the Division nor Lloyd is considered to have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should either the Division or Lloyd fail to perform because of a cause described in this subsection, the Division and Lloyd will make a mutually acceptable revision to any provisions of this Agreement affected thereby.

Dated: 1-21-19

City of Portland

By: [Signature]
Revenue Division Director

Thomas W. Lannom
Revenue Division Director

APPROVED AS TO FORM
APPROVED AS TO FORM

[Signature]
CITY ATTORNEY
City Attorney

LLOYD B.I.D., INC.

By: [Signature]
Chairman

HENRY A. ASHFORTH III