

**AGREEMENT FOR
DOWNTOWN CLEAN AND SAFE DISTRICT
MANAGEMENT SERVICES**

This Agreement for Downtown Clean and Safe District Management Services (Agreement) is between the City of Portland, Oregon (City) and Portland Downtown Services, Inc. (PDSI).

RECITALS:

a. Pursuant to Chapter 6.06 of the City Code, the City has established a property management license fee (License Fee) within the Downtown Business District, commonly known as the Downtown Clean and Safe District (District). The purpose of the License Fee is to provide revenues to fund supplemental cleaning, security, business development, public policy, housing, and marketing and communications services within the District.

b. PDSI is an Oregon non-profit 501(c)(3) corporation formed by District license fee payers who are representative of a large number of business property owners and managers in the District. PDSI representatives make up the non-public membership of a City-formed public-private Clean & Safe Advisory Committee (Advisory Committee) that recommended to the City the continuation of the License Fee. The City Council implemented this recommendation when it extended the District and the License fee for 10 additional years in Ordinance No. 175729. The Advisory Committee also has recommended to the City the nature and level of services to be funded by the License Fee.

c. PDSI, together with the Association for Portland Progress, has provided District management services to the District over the 7 years from 1994 through 2001, pursuant to prior management services agreements with the City. The services are part of a unique and coordinated personal services program that PDSI has developed and provided, and there is no other potential provider of the services with the experience, expertise, and capability of PDSI and with PDSI's status as representative of license fee payers. It therefore is appropriate for the City to contract with PDSI for the provision of the services; and PDSI is willing to contract to provide the services.

AGREEMENT:

1. Definition of "Services" and "Task Force".

A. Services. As used herein, unless the context requires otherwise, "services" or "District services" means:

- i. Cleaning services, such as cleaning of sidewalks; graffiti removal; weed control; pressure washing of sidewalks and restrooms; responding to citizen requests for emergency or needed clean-ups; trash and leaf removal; and clean-up of drug and sexual activity paraphernalia.
- ii. Security services, such as:
 - a. Providing patrol officers, qualified under Oregon Bureau of Police Standards and Training requirements or their equivalent, or qualified at the time of retirement from a police agency, in a distinctive uniform and carrying loaded sidearms, who will report to

the appropriate public agencies or personnel observed and reported criminal, disruptive, or offensive conduct; and, as a last resort, respond to dangerous or life-threatening emergencies.

- b. Providing funding to the City for a mutually agreed upon number of sworn Portland Police Officers to focus on specific problems that are more serious than simple disorderly conduct; and to support patrol officers, in particular when events exceed their capabilities.
 - c. Providing funding and personnel assistance to the Westside Neighborhood District Attorney office and the Westside Community Court to assist in ensuring that crimes committed in the Downtown area can be prosecuted or deterred.
 - d. Providing funding assistance to Project Respond, (with the financial assistance of Multnomah County), to assist in its response to Downtown calls for problems involving individuals who appear to suffer from mental illness.
- iii. Marketing and communication services, such as promotion of the Clean & Safe identity of the area within the District, promotion of activities within the District, and communication with District businesses and residents regarding the activities of the District.
- iv. Marketing services, such as:
 - a. Business development services, such as efforts to recruit and retain quality office and retail businesses downtown; working with local government to ensure that public projects and programs are coordinated with the needs and activities of downtown businesses and residents; coordination of cooperative retail promotions; and market research.
 - b. Providing sidewalk ambassadors (also know as guides) within the District dressed in distinctive clothing who will function as walking information kiosks for citizens and visitors regarding civic and public events; work to maintain a pleasant atmosphere on Downtown streets; report disruptive or criminal activity to appropriate public personnel or agencies; distribute brochures and promotional materials about Downtown attractions and offerings; provide impromptu street entertainment; and, as a last resort, respond to life-threatening emergencies.
- v. Public policy services, such as analysis and representation regarding matters of general concern to the overall health of downtown businesses and the downtown residential community.
- vi. Housing services, such as promoting development of downtown housing to create a downtown residential community; assisting the downtown residential community to work with the downtown business community on issues of mutual interest; and assisting the downtown residential community in resolving public policy issues that affect the quality and enjoyment of downtown living.
- vii. District administration services, such as letting and administering subcontracts for District services, preparing budgets for services, undertaking any other tasks that are necessary to carry out the District services and, during the October 1, 2001 to September 30, 2002 license year, paying to licensees from license fee funds received from the City any excess in the amount of the first license fee installment payments paid by the licensees over what the payments would have

been if determined based on clarifying amendments to the license fee formula adopted by the City prior to February 15, 2002. PDSI shall provide to the City Bureau of Licenses a written detailed plan outlining how the payment to licensees of any excess fee payments will be administered. In addition, PDSI shall provide to the Bureau, at the conclusion of the October 1, 2001 to September 30, 2002 license year, a detailed report on the reconciliation of the excess fee payments and the clarified license fee formula.

Notwithstanding any other provision of this Agreement, "services" and "District services" shall include only services for which public funds may be spent under Oregon law.

B. Task Force. As used herein, "Task Force" means a committee whose membership consists of representatives of those City offices, bureaus, and commissions that have a significant interest in the Clean and Safe District, as determined and appointed by the Mayor of the City, and a representative appointed by PDSI.

2. PDSI Obligations. PDSI's obligations hereunder shall be as follows:

A. Provide Services. Manage and provide all District services for each District license year.

B. Budget. Provide to the City for review, comment, and approval a proposed summary of District services and line item budget by service type (Work Scope and Budget) for each District license year, to be provided on or before the September 1 preceding the beginning of each District license year. The Work Scope and Budget attached hereto as Exhibit 1 shall be deemed the approved Work Scope and Budget for the District license year commencing October 1, 2001. In any license year, PDSI may transfer amounts among budget categories in order to perform the approved Work Scope, except that PDSI shall not transfer amounts so as to increase the budgeted amount for District administration services by more than \$15,000 during any license year without the prior written approval of the Task Force. PDSI shall be responsible for providing District services under this Agreement only to the extent that the City provides funding to PDSI that covers the cost to PDSI of the services.

C. Audit. Obtain and provide to the City an independent financial audit of PDSI's use of District funds during the preceding license year on or before the January 10 following the completion of the license year.

D. Subcontracts. Let and administer subcontracts for the provision of District services. PDSI shall follow written competitive bidding procedures adopted by PDSI unless PDSI has documented that it is necessary or desirable to award a subcontract on a negotiated basis in order to assure the provision of adequate services at the most advantageous cost. PDSI shall provide a copy of all subcontracts for District services to the City Attorney for review and approval for compliance with section 2(J) of this Agreement. In the copies provided by PDSI, PDSI may redact trade secret information as defined by ORS 192.501(2) that is not relevant to the City Attorney's review of the subcontract as to form. This shall not prevent the City or its authorized representatives, when conducting an audit under section 3(A)(ii) of this Agreement, from examining the original subcontracts at the PDSI office.

E. Bond. Provide and maintain a fidelity bond in a form approved by the City Attorney in the amount of \$100,000 guaranteeing the full and faithful performance of all employees or agents of PDSI with the responsibility for handling District funds.

F. 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 PDSI's work or the work of any PDSI subcontractor under this Agreement.

G. Liability Insurance.

- i. Maintain public liability and property damage insurance that protects PDSI, 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 PDSI's work under this Agreement. The insurance shall provide coverage of not less than \$200,000 for personal injury to each person; \$50,000 for property damage to each person; and \$500,000 for each occurrence; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall 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 shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. PDSI shall maintain continuous uninterrupted coverage for the duration of the Agreement. If the insurance is canceled or terminated prior to completion of the Agreement, PDSI agrees to provide a new policy with the same terms. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by PDSI.
- ii. Maintain on file with the City Auditor a certificate of insurance certifying the coverage required under this subsection (G). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Agreement by the City.

H. Workers' Compensation. Provide and maintain continuous workers' compensation insurance coverage throughout the term of this Agreement for all of its employees either as a carrier-insured employer or as a self-insured employer, if legally required by ORS Chapter 656. PDSI shall complete Exhibit 2, the Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made a part hereof. If legally required to have workers' compensation insurance, PDSI shall provide a certificate of insurance, or a copy thereof, to the City Auditor prior to this Agreement becoming effective. The adequacy of the insurance shall be subject to the approval of the City Attorney.

I. 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 PDSI. PDSI employees and its subcontractors and their employees are not City employees and shall not be eligible for any benefits provided through the City including without limitation social security, health, workers' compensation, unemployment compensation, and retirement benefits.

J. Subcontract Requirements.

- i. All subcontracts shall require that the subcontractors maintain public liability and property damage insurance that protects the subcontractor, PDSI, and the City and their 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 shall provide coverage of not less than \$200,000 for personal injury to each

person; \$50,000 for property damage to each person; and \$500,000 for each occurrence; or a single limit policy of not less than \$500,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the subcontract. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall 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 shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor.

- ii. Each subcontract shall require the subcontractor to maintain continuous uninterrupted coverage for the duration of the subcontract. The subcontract shall require the subcontractor to provide a new policy with the same terms, if the insurance is canceled or terminated prior to the completion of the subcontract.
- iii. The subcontractor insurance required hereunder shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the subcontractor.
- iv. All subcontracts shall require the subcontractors to provide and maintain workers' compensation insurance, if legally required. Subcontractors shall complete Exhibit 2, the Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made a part hereof. If a subcontractor is legally required to have workers' compensation insurance, the subcontractor shall provide to PDSI and the City Auditor certificates of insurance, or copies thereof, as provided in subsection (H) of this section.
- v. All subcontracts shall require subcontractors to maintain compliance with Chapter 3.100 of the City Code.
- vi. All subcontracts entered into by PDSI shall require the subcontractors to comply with the City's Fair Wage Policy established by City Ordinance No. 174839 as amended and renewed from time to time, to the extent that policy is applicable to work performed under the subcontract. For purposes of this subsection, the approval given under that policy in the January 14, 1997 memorandum from the Commissioner of Public Utilities to the City Auditor, entitled "Clean and Safe District Cleaning Crew Compensation" shall be deemed applicable to any work covered by the memorandum and performed under this Agreement unless and until such time as the commissioner in charge has revoked the approval.

K. EEO Certification. Maintain compliance with Chapter 3.100 of the City Code pertaining to equal employment opportunity.

L. Records. Maintain records on a current basis to document the expenditure of funds and the performance of services in accordance with this Agreement. PDSI shall retain these records for three (3) years from the date of completion or termination of this Agreement. The City or its authorized representative shall have the authority, during normal business hours and on reasonable notice, from time to time to inspect, audit, and copy any records of PDSI regarding the expenditure of funds and performance of services under this

Agreement.

M. Fair Wage Policy. Maintain compliance with the City's Fair Wage Policy established by City Ordinance No. 174839 as amended and renewed from time to time, to the extent that policy is applicable to work performed under this Agreement. For purposes of this subsection, the approval given under that policy in the January 14, 1997 memorandum from the Commissioner of Public Utilities to the City Auditor, entitled "Clean and Safe District Cleaning Crew Compensation" shall be deemed applicable to any work covered by the memorandum and performed under this Agreement unless and until such time as the commissioner in charge has revoked the approval.

N. PDSI shall 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 C hereto shall be a part of this Agreement.

3. **City Obligations.** The City's obligations hereunder shall be as follows:

A. Budget and Audit.

- i. Review, comment on, and approve as appropriate, on or before the beginning of each District license year, the proposed Work Scope and Budget provided by PDSI under section 2(B) for the license year. Monitor the use by PDSI of District funds through review of the audit provided by PDSI under section 2(C) for each license year and through such other reviews as the City deems appropriate.
- ii. If it so chooses, either directly or through a designated representative, 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 shall expire at the conclusion of the three (3) year period described in section 2(L). Audits shall be conducted 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 an audit determines that payments to PDSI were in excess of the costs of District services being provided under this Agreement, then PDSI shall repay the amount of the excess to the City, with the amount of any repayment to be used to provide District services.

B. Maintenance of Services. Except as otherwise provided in this subsection, and within the limitations imposed by the City Charter and Oregon law, during each District license year, the City shall strive to maintain public services within the District at activity levels such that the activity levels shall be within 10 percent of the following levels and at funding levels such that the funding levels shall be within 10 percent of the funding levels for City fiscal year 2001-2002, adjusted in proportion to changes in the CPI-W for Portland-Salem since January 2001. In the event of a conflict or inconsistency between activity levels and funding levels, activity levels shall receive primary consideration.

- i. Street Maintenance. The following services are provided by the Bureau/Organization as listed below either via contract or in house personnel:

Bureau of Maintenance: Provide street cleaning services in the district 6 nights per week including sweeping and flushing. Hose flushing on the transit mall and light rail sidewalks for 260 days per year. Scrubbing services on the transit mall and light rail sidewalks for 260 days per year.

Office of Sustainable Development: Empty trash receptacles along the transit mall 6 days per week and empty other trash receptacles in the district an average of 4 days per week.

Office of Transportation: Provide at least existing staffing for construction mitigation, contingent on continued funding source levels.

- ii. Police. The number of District Patrol Officers in the Police Bureau and the percentage of officers available to Central Precinct based on percentage of priority 1 and 2 calls for service dispatched from the Bureau of Emergency Communications (“BOEC”). The classification of calls, whether as priority 1, 2, 3 or 4, is determined by policies and procedure manuals at BOEC. The command staff for Central Precinct assigns and adjusts staffing levels for each shift and patrol district based on such factors as the number of calls for service within each police patrol district, the priority of calls for service, time of day, day of week, geographical factors, and other factors.

All officers respond first to priority 1 and 2 calls within the District and City-wide. In addition, the Bureau of Police will strive to respond to requests for assistance from any PDSI or PDSI subcontractor employees providing security services pursuant to this Agreement.

Currently, there are four patrol districts totally or partially within the District that are covered 7 days a week. Under certain operational conditions, these four districts may be split into smaller units. These officers will be deployed in standard marked patrol vehicles, on bicycles, on horse, or on foot.

The Tri-Met Transit Division will provide additional bike and foot patrols on the transit malls and routes in the District. The Mounted Patrol Unit will provide additional horse mounted officers in the District.

Central Precinct shall inform PDSI in a timely manner of any changes to the current staffing model for the District.

- iii. Crime Prevention. One full-time equivalent crime prevention staff assigned to the Portland central business district.
- iv. Parks. The level of park maintenance and security services and parks grass cutting provided by the City as of October 1, 2001 to all City parks property within the District; the City fiscal year 2001-2002 level of funding for Pioneer Square; and the level of transit mall flower pot maintenance provided by the City as of October 1, 2001.
- v. Public Garage Facilities. The level of public garage facilities maintenance and security provided by the City as of October 1, 2001 to all public buildings and facilities, except for sidewalk cleaning.
- vi. Drinking and Decorative Fountains. The level of operation and maintenance of drinking and decorative fountains provided by the City as of October 1, 2001.
- vii. Business Development. One full-time equivalent position dedicated to Central City business development and assistance working in close coordination with PDSI or its subcontractor.

The City may change the levels of services required by this section more than 10 percent in the event of unusual fiscal or other emergency conditions. The City Council shall have the sole discretion to make the determination whether such conditions exist. In the event the City wishes or intends to make such a change,

then the City shall refer the proposed changes as expeditiously as is reasonable to PDSI for its review and comment. If the City makes such a change, PDSI shall have the right to change or adjust services it provides under this Agreement as appropriate to respond to the City change, so that a coherent and rational set of services is provided within the District. The adjustments shall be accomplished through an amended Work Scope and Budget, to be submitted to the City for review, comment, and approval.

During May and October of each District license year, the Task Force shall meet to discuss the levels of services the City is providing under this subsection and any changes in the levels of services under consideration by the City at the time of the meeting. On or before May 30 of each license year, the City shall inform PDSI of any proposed changes in the levels of services the City intends to provide during the next City fiscal year, for PDSI's review and comment.

C. Compensation to PDSI. Pay to PDSI all net License Fee revenues, provided that the City first has approved the Work Scope and Budget for the applicable District license year pursuant to section 3(A) of this Agreement. The City shall make payment to PDSI of such net License Fee revenues as soon following the close of each City accounting period (of which there are 13 during the City fiscal year) 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 Manager of the Bureau of Licenses determines that sufficient funds have been received to make advance payments. Notwithstanding the aforementioned, the City shall retain a continuing balance of \$10,000 for payments or refunds due to District License Fee payers, to be paid to PDSI during the last license fee year covered by this Agreement. As used in this Agreement, "net License Fee revenues" means all License Fees, penalties, and interest, and any interest earned thereon, less the Bureau's costs of administration under section 6(I) of this Agreement, and less the \$10,000 continuing balance retained for payments or refunds due to District License Fee payers as provided in this section.

4. **Challenges to Downtown Business Property 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 shall apply:

A. The City may suspend its payments to PDSI 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.

B. PDSI shall 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 shall 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. PDSI shall consult and cooperate with the City in conducting a defense of the License Fee, and the City shall cooperate in their conduct of the defense. Notwithstanding any other provision of this Agreement, PDSI may use any net License Fee revenues PDSI receives under section 3(C) of this Agreement to satisfy the hold harmless, defense, and indemnification obligations established by this section or by section 2(F) before using the funds to provide other services under this Agreement.

C. As an alternative to City suspension of payments under subsection 4(A) above, PDSI may propose and the City in its discretion may approve PDSI providing a letter of credit, guaranty or other comparable instrument serving to protect the City against any risk of financial exposure due to the invalidity of, unenforceability of, or limitations on the License Fee.

5. License Fee Revenues from License Years prior to 2001-02.

A. It is the intention of PDSI and the City that there be a continuity of services in the transition from the services provided in license years prior to 2001-02 to the services to be provided in license year 2001-02 and thereafter. It also is their intention that any funds presently held by the City arising out of District revenues from license years prior to 2001-02, to the extent they are not otherwise provided for in prior management services agreements, be used for services within the District under this Agreement, and that District revenues received in the future by the City attributable to license years preceding the 2001-02 license fee year also be used for services within the District under this Agreement. To accomplish this intention, the City shall pay any such revenues to PDSI in accordance with the provisions of section 3(C) of this Agreement. In addition, it also is the intention of PDSI and the City that any funds presently held by PDSI arising out of District revenues from license years prior to 2001-02, to the extent they have not been spent to provide services under prior management services agreements, also be used for services within the District under this Agreement.

B. All funds received or presently held by PDSI pursuant to subsection A of this section shall be used to provide services within or for the District. To the extent that PDSI receives such funds, PDSI shall account for the use of those funds in the audits provided for in section 2(C) of this Agreement.

6. **Administration of License Fee.** The City Bureau of Licenses (Bureau) shall administer the license fee calculations, billing, collections, and appeals. The City reserves the right, at its option, to subcontract out for any or all of these administrative functions. PDSI shall provide assistance in these administrative functions, as follows:

A. **Overall Program Management.** The Bureau shall administer the license fee program in accordance with City Code Chapter 6.06 and with a view toward the continued goodwill of Downtown property managers towards the Downtown Clean and Safe District and the City.

PDSI, in providing assistance to the Bureau, shall practice good customer service in relation to license fee payers. PDSI also shall respect and protect the Bureau's authority to make final determinations in regard to collections, appeals, and questions of compliance with City Code Chapter 6.06.

The Manager of the Bureau of Licenses may, at any time during the term of this Agreement, determine that any or all aspects of license fee administration, such as calculations, billings, collection, and enforcement should be performed by the City's Bureau of Licenses. Upon written notice from the Manager, PDSI shall turn over to the Bureau of Licenses all records, software, and databases in its possession regarding license fee administration.

B. **Materials Development.** The Bureau, working with PDSI, shall develop, maintain, and, if requested by PDSI, have printed a handbook for the Property Management License Fee program and an information sheet for those wishing to appeal fee amounts. If PDSI does not request that the Bureau have printed the handbook and information sheet, then PDSI shall be responsible for printing the handbook and information sheet.

In addition, PDSI, working with the Bureau, shall develop, maintain, and have printed billing statements and related information sheets showing how billed fees were calculated and how the calculations are traceable to independent source documents.

C. **Data Preparation.** PDSI shall prepare and maintain an accurate underlying database of those property and elevator statistics needed in order to calculate license fees. Once the first bills for a District license year have been sent out, PDSI shall make no changes to the database for that license year without the

prior written approval of the Bureau.

PDSI shall develop and maintain billing software, including the database, which shall reside on the PDSI computer network and which shall be accessible to and controlled by the Bureau by modem. PDSI shall maintain daily backups of all data. If the Bureau determines that access in this manner is inadequate for any reason, then the Bureau and PDSI mutually shall arrange for moving the software to a Bureau computer.

D. Billing. PDSI shall prepare and send monthly billings to license fee payers on behalf of the Bureau. The billing statements shall be on Bureau letterhead, with the Bureau's address as the return address. PDSI shall provide the Bureau a copy of all billings sent to license fee payers.

E. Receiving Payments. The Bureau shall receive all License Fee payments and shall enter them to the License Fee fund maintained by the City.

F. Appeals. The Bureau shall have sole authority to decide appeals, consistent with the provisions of City Code Chapter 6.06, but shall consult with PDSI regarding appeals. If the Bureau provides PDSI with a copy of an appeal but does not receive comments from PDSI within 7 days of the Bureau's providing the copy, the Bureau will be considered to have fulfilled its consultation responsibilities under this subsection.

PDSI shall provide timely responses to Bureau requests for information needed to decide appeals and for comments on appeals.

G. Collections. PDSI shall monitor payments and encourage Downtown business property managers to make license fee payments in a timely manner.

The Bureau shall be responsible for actual collections and shall have sole authority to waive penalties.

H. Service Problems. The Bureau shall notify PDSI, as soon as is reasonably possible by telephone, fax, electronic mail, or otherwise, whenever the Bureau receives critical comments about Clean and Safe District services.

PDSI shall attempt to resolve all service-related problems.

I. Bureau's Costs of Administration.

- i. The City will provide collection services to PDSI for a fee of 1% of the total District license Fee billings. The City will deduct its fees from the License Fees collected. The first deduction will coincide with the first disbursement of funds by the City to PDSI, and will thereafter occur with each of the two annual disbursement cycles. In addition, City costs related to District License Fee collection litigation will be billed separately to PDSI and will be payable and deducted from the next disbursement of funds to PDSI, provided that the amount so billed, payable, and deducted in relation to any particular collection case shall not exceed the amount collected as a result of that case; further provided that "City costs" as used in this sentence means City costs and disbursements as defined in ORCP 68(A)(2), City attorney fees as defined in ORCP 68(A)(1) with the cost of City Attorney's Office staff time based on actual hourly costs of Office staff, and the cost of Bureau of Licenses staff time based on actual hourly costs of Bureau staff, all without the addition of an overhead charge; and further provided that the City, at the written request of PDSI, shall provide written documentation of any amount so billed, payable, and deducted. In addition, other costs for work provided by the Bureau of Licenses to PDSI not directly related to collection services, such as printing of a Downtown BID booklet and

information sheet for those wishing to appeal fee amounts, will be agreed upon in advance by the Bureau and PDSI and billed to PDSI separately and will be payable and deducted from the next Bureau disbursement of funds to PDSI.

- ii. Both PDSI and the City acknowledge that setting the collection services fee at 1% is at a level below the Bureau of Licenses' actual cost of providing collection services to PDSI. The difference between the Bureau's actual costs of providing collection services and the recovery of such costs under the 1% mechanism as provided under subsection (i) will be addressed through a technical adjustment in the budget for the Bureau.

7. Term and Termination.

A. Term.

- i. The original term of this Agreement shall be from October 1, 2001 through September 30, 2006. PDSI and the Advisory Committee may recommend to the City Council extension of the termination date in order to allow PDSI expenditure of remaining District funds for District services in the event all District funds are not received and spent by September 30, 2006.
- ii. The City and PDSI may renew this Agreement for an additional five (5) year term, commencing on the expiration of the original term. In order to exercise this option, PDSI shall not at any time during the term of this Agreement have been or be in material default of this Agreement. If PDSI at any time during the term of this Agreement materially defaulted in its performance of any of the terms and conditions of this Agreement, then this option is void. Should PDSI elect to renew the term of this Agreement for an additional five (5) year term, it shall 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 of receipt of PDSI's written notice of election to renew, the City shall contact PDSI 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 shall be in writing, and subject to approval by the City Council by ordinance and by the PDSI Board of Directors. If the City and PDSI do not agree on changes to the terms and conditions of the Agreement, it shall be renewed on the same terms and conditions for the additional five (5) year term.

B. Termination. The City or PDSI may terminate this Agreement effective on delivery to the other party of 30 days prior written notice of termination. Following termination, PDSI as expeditiously as is reasonably possible shall terminate its services hereunder, pay all obligations and costs of administration incurred hereunder, and return all remaining license fee funds to the City.

8. **Assignment.** This Agreement may not be assigned without the prior written consent of the other party.

9. **Amendments.** The parties may amend this Agreement, including Exhibit 1 (Work Scope and Budget), any time only by written amendment executed by the City and PDSI.

////

///

//

10. **Representatives of Parties.** The City Project Manager shall be the Director of the Office of Management and Finance or such other person as shall be designated in writing by the Director. The PDSI Project Manager shall be the President of PDSI or such other person as shall be designated in writing by the President. 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.

DATED: _____, 2002.

CITY OF PORTLAND

By: _
Mayor Vera Katz

By:
Gary Blackmer, City Auditor

Approved as to form:

City Attorney

DATED: _____, 2002.

PORTLAND DOWNTOWN SERVICES, INC.

By:
President

2001 - 2002 BUSINESS DISTRICT
SCOPE OF WORK

Agreement for BID Management Services
Between City of Portland (City) and
Portland Downtown Services, Inc. (PDSI)

PDSI shall provide the following services in carrying out the Downtown Business Improvement District (BID).

I. Security

A. Patrol Officers shall patrol the sidewalks within the BID to achieve the following:

1. Provide a presence of authority on the street, sidewalks and other public areas within the BID by walking foot beats and bicycle patrols observe, report and prevent street disorders.
2. In partnership with the Portland Police Bureau, engage in problem solving to reduce the fear of crime and reduce street disorder.
3. Apply current community policing and crime prevention strategies to identify stakeholders and focus efforts to reduce street disorder.
4. Aid in communications among businesses and organizations in the BID.
5. Provide information and direction to downtown users.

B. The Portland BID Patrol Officers shall include the following personnel:

1. Administrative Supervisors. The Administrative Supervisors shall be:
 - a. Assigned day-to-day responsibilities for the Patrol Officers on both day shift and swing shift.
 - b. Responsible for performance reports, continuing in-service training, crew and program evaluation, and disciplinary action.
 - c. Armed, appropriately uniformed and radio equipped to allow contact with the Portland Police Bureau through the BID communications center, as well as having access to a vehicle to facilitate quick response to calls for service.
 - d. Trained by, and under the Director.
 - e. Full-time with salary based on a 40-hour week.
2. Supervisor. The Supervisor shall have the same duties and responsibilities as the Administrative Supervisors, except that the Supervisor shall be assigned the responsibility to provide shift relief to the Administrative Supervisors.

3. Portland Police Patrol Officers. The Portland Police Patrol Officers shall:

- a. Provide a presence of authority on the streets within the BID by working bicycle patrols based on reported and known trouble spots. (Supervision of the Portland Police Patrol Officers will be shared between the BID security contractor Supervisors and a Portland Police Sergeant designated by the Central Precinct Commander).
- b. Work with and assist BID Patrol Officers to address public safety problems.
- c. Engage in problem-solving and current community policing philosophy to enhance the BID services.
- d. Be armed, uniformed and radio-equipped to communicate with supervisors, Patrol Officers and other service agencies.
- e. Work 40 hours per week.

4. Patrol Officers. Patrol Officers shall:

- a. Provide a presence of authority on the streets within the BID by bicycle patrols and walking beats assigned by the Shift Supervisor based on reported and known trouble spots.
- b. Attempt to stop offensive conduct wherever possible.
- c. Be appropriated (selected Patrol Officers) as Multnomah County Sheriff Office Special Deputies (misdemeanor enforcement authority).
- d. Report criminal activities to the Portland Police Bureau Patrol Officers, *avoiding participation in arrests or criminal investigations*, except in an emergency (except those authorized by the Multnomah County Sheriff limited deputization).
- e. Engage in problem-solving and current community policing strategies.
- f. Maintain a daily log and file incident reports.
- g. Be armed, uniformed and radio-equipped to communicate with Supervisors, Portland Police Officers and other service agencies.
- h. Maintain communications with businesses and organizations in the BID.
- i. Work 6-8 hour days.

C. All Supervisors and Patrol Officers shall wear appropriate uniforms with the BID insignia and maintain a neat and clean appearance.

D. Facilities for the Patrol Officers and Portland Police Officers shall be provided by the security contractor including lockers and dressing space, conference room, storage space, and office space.

E. Supervisors shall be provided access to computer terminals, files, storage space and workspace by the security contractor.

- F. A clerical staff person shall be on duty during the day and evening shift to monitor the central dispatch, handle filing activities, input incidents and activity data, answer questions and route information to and from the public.
- G. Supervisors shall maintain direct contact with the Cleaning Crew Supervisor to ensure the coordination of security and cleaning efforts.
- H. Patrol Officers and Supervisors shall be courteous and professional and conduct their duties in an appropriate manner so as to generate a positive image to the public.
- I. Operations of the program shall generally be carried out as follows:
 - 1. Day and evening (swing) work shifts should be scheduled 7 days a week as follows:
 - a. Day shift shall include an Administrative Supervisor and approximately five (5) Patrol Officers staggered in 8 hour shifts beginning at 7:00 am and ending at 7:00 pm; and
 - b. Swing shift shall include one Administrative Supervisor, five (5) Patrol Officers from 3:00 pm to 11:00 pm. Patrol Officers working 6-8 hour periods.
 - c. Three (3) contracted PPB Officers working ten (10) hour shifts, Mon - Sat, 11:00 am - 9:00 pm.
 - 2. Patrol routes shall be configured for more frequent coverage in areas of high pedestrian activity with varied deployment strategies during the two shifts or on selected days to reflect changes in pedestrian traffic and special events.
- J. Clerical support shall be provided to the Downtown District Attorney to assist in the provisions of community prosecutorial services benefiting citizens and residents within the BID.
- K. Support shall be provided to the Westside Community Court to coordinate the court mandates for community service and social service. This will improve the effectiveness of community court sanctions that are intended to enhance the areas within the boundaries of the BID.

II. Cleaning

- A. Sidewalks in the BID shall be cleaned to include:
 - 1. Sweeping.
 - 2. Stain removal.
 - 3. Debris removal from sidewalks, tree wells, flowerpots and other areas.
- B. Cleaning shall be carried out at regular intervals based on the requirements of individual areas within the BID in an effort to maintain a consistent cleanliness within the BID.
- C. Cleaning crews shall carry out the cleaning required herein and shall include:
 - 1. Supervisor. The Supervisor shall:

- a. Be responsible for the day-to-day control of the sidewalk cleaning program including overseeing the work and personnel matters of the foremen, crew members, and Special Projects Crew.
 - b. Be equipped for communications with the foremen and Special Projects Crew.
- 2. Special Projects Crew. The Special Projects Crew shall:
 - a. Perform special cleaning jobs such as graffiti removal, pressure washing sidewalks, and other concentrated cleaning assignments.
 - b. Work eight hour shifts, five days a week with staggered starting times.
 - c. Be equipped with for communication with the foremen and Supervisor.
 - d. Be equipped with a truck, pressure washer, detergents, brooms, brushes, ladders, tools, squeegees, buckets and other appropriate tools.
- D. To the greatest extent possible, the program shall be directed towards hiring from the homeless population within the BID District.
- E. Space shall be provided by the cleaning contractor for cleaning crews including a meeting and briefing room, locker room, restroom, and office space for supervisory personnel.
- F. All cleaning crew members shall wear uniforms and insignias to identify them with the BID program, maintain a neat and clean appearance and conduct their duties in an orderly manner with a high degree of courtesy and politeness so as to be pleasing to the public.

III. Business Development

- A. The BID Business Development program will develop and implement strategies to foster the continued vitality of downtown Portland by encouraging the retention and expansion of existing businesses with special emphasis on retail businesses; attracting new businesses to locate within the District to enhance downtown's business mix and economic base; enhancing the market for downtown housing, conducting research to develop an understanding of the center city market, and, by working with governmental entities to overcome identified obstacles to business development.
- B. The Business Development work plan for the BID includes:
 - 1. Maintenance of APP's existing office and retail database.
 - 2. On-going, regular analysis of existing office and retail data to continue program for identifying opportunities for business recruitment, expansion and retention.
 - 3. Continued development of office and retail inventories for use with investors, developers, and prospective downtown tenants.
 - 4. Identification of business climate issues and program advocacy to mitigate these issues necessary for a positive business environment.

5. A direct-mail survey of downtown service and retail businesses to determine their expansion, contraction, or relocation plans and to identify factors considered obstacles or enhancements to conducting business downtown.
6. Regular quarterly contact with major office and retail businesses to identify businesses whose leases are expiring and are indicating a desire to consider space outside the Central City.
7. Problem resolution and technical assistance for office and retail tenants.

C. Business Development Staff shall coordinate office and retail business development services activities. These activities may include:

1. Contract administration and budget monitoring, technical assistance to downtown businesses, outreach and direct contacts with downtown office and retail businesses.
2. Staffing business development and housing program task forces and committees as well as facilitation of the Downtown Retail Council.
3. Preparation of regular and on-going updates regarding office and retail business development activities and their status related to the Work plan for presentation to the Business Development Committee, the Housing sub committee and PDSI Board.
4. Coordination of program for evaluation and measurement of business development activities.
5. Coordination with other BID service areas as necessary and appropriate to support business development needs, particularly in the area of crime prevention and policy/advocacy.

D. Business Development staff shall develop a comprehensive strategy for balanced housing development in the downtown BID.

1. Development of a housing inventory for use with investors, developers, and prospective residents.
 2. Conduct residential marketing campaigns, including downtown open houses, to promote neighborhood development.
 3. Create and implement a developer and investor recruitment program to encourage housing development in downtown.
 4. Work with government agencies to create incentives and to remove barriers to the development of downtown housing.

E. Business development staff shall conduct comprehensive research and analyses of center city data to enhance the development of office, retail, housing and similar complimentary activities within the boundaries of the BID.

1. Conduct annual business census and survey.

2. Conduct semi-annual occupancy survey of all structures in the BID.
3. Conduct quarterly Pedestrian and Traffic counts to assist in the recruitment of business opportunities to Downtown Portland.

IV. Marketing/Communications

The Marketing/Communications program for the BID is designed to generate awareness of Downtown Portland for its stakeholders on a local and regional level.

- A. Planning and implementation of downtown communications activities will be directed and measured through the development of a BID Marketing/Communications Plan.
- B. The Marketing/Communications Plan will outline broad strategies targeted to BID funders and constituents. As appropriate, these strategies will be linked with overall downtown activities.
- C. Marketing/Communications Staff shall coordinate the strategic activities. These activities may include:
 1. Implementation of communications services as outlined in the Communications Plan to assure that the objectives of the Plan are met.
 2. Responsibility for any external, contracted service providers to assure that they perform professionally and within the requirements of their contracts to provide communications services, and that production suppliers complete their responsibilities.
 3. Responsibility for the oversight of budgets for communications activities to assure reasonable use of BID communications dollars.
 4. Coordination of sponsorships, cross-promotions, negotiated media placement, cooperative marketing efforts and other budget leveraging activities to both extend and compliment the expenditure of BID funds.
 5. Preparation of regular and on-going updates regarding communications activities and their status to the PDSI Board.
 6. Conducting and coordinating the evaluation of communications activities and the measurement of their results.
 7. Ensuring that communication materials are necessary and appropriate to support BID services communications needs.
- D. The Marketing/Communications program shall include the development and implementation of an enhanced Portland Guide program.
 1. The Portland Guide program will be an ambassadorial service delivered within the BID boundaries.
 2. The guide program will focus on hospitality and promotion of downtown offerings to enhance the image and utilization of downtown.

3. The guides will function as walking information kiosks for those working, living and visiting downtown.

V. Policy/Advocacy

- A. Planning and implementation of Policy/Advocacy services to advance the policy goals of the BID to assure a clean, safe and active pedestrian environment and healthy business climate.
- B. Policy staff will coordinate BID policy and advocacy activities. This may include:
 1. Analyzing public policy initiatives by the City of Portland, Multnomah County, Metro, the state, and federal governments regarding their impact on the BID and making recommendations on how to address these initiatives.
 2. Developing and coordinating the implementation of organizational positions on significant government initiatives that impact the BID.
 3. Maintaining regular contact with elected officials to discuss issues and concerns related to BID policy issues.
 4. Participation in regular and on-going updates regarding policy initiatives and status related to the BID for presentation to the PDSI Board.

VI. Administration

- A. Personnel shall be employed or contractors retained to provide all management and carry out all administrative duties necessary in overseeing the BID services set forth herein.
- B. PDSI shall be responsible for employing or contracting for personnel necessary to carry out the BID services, for making determinations regarding qualifications and experience, and for training all such personnel.
- C. PDSI shall provide adequate operating facilities including telephones, printing, and delivery services, necessary to enable the personnel required to be efficient and operate in a professional manner.
- D. A financial management system shall be established which allows the tracking and documentation of all expenses incurred in carrying out the BID services including:
 1. A chart of accounts to provide for the proper financial statement classification of payments made in the performance of the above services.
 2. A system of authorizing contracts for subcontracted services which shall include the maintenance of invoices and other documents to substantiate the nature of, delivery date, and date and amount of payments.
 3. An internal control system that provides assurance that all other expenditures are properly authorized and have adequate supporting documentation to substantiate the nature of, receipt date and date and amount of payments.

4. Personnel records, payroll records and time reporting information to the extent required by organizational policy for personnel employed herein.
 5. Monthly financial reports which include information about the BID services including budget versus actual comparisons.
 6. An annual financial report with audit confirming that all the financial statements fairly represent the revenues and expenses incurred for that year and the financial position of PDSI (which includes the reporting for the BID) for the year then ended.
- E. PDSI shall pay to licensees from license fee funds received from the City any excess in the amount of the first license fee installment payments (due October 1, 2001) paid by the licensees over what the payments would have been if determined based on clarifying amendments to the license fee formula adopted by the City prior to January 31, 2001. PDSI shall provide to the City Bureau of Licenses a written detailed plan outlining how the payment to licensees of any excess fee payments will be administered. In addition, PDSI shall provide to the Bureau, at the conclusion of the October 1, 2001 to September 30, 2002 license year, a detailed report on the reconciliation of the excess fee payments and the clarified license fee formula.

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Signature _____ Date _____ Entity _____

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor; standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

Project Manager Signature _____

Date _____

SECTION C

Independent contractor certifies he/she meets the following standards:

1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:

- _____ A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- _____ B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;
- _____ C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;
- _____ D. Labor or services are performed only pursuant to written contracts;
- _____ E. Labor or services are performed for two or more different persons within a period of one year; or
- _____ F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____

Date _____

PDSI shall observe all applicable state and local laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the following provisions shall be a part of this Agreement:

Pursuant to ORS 279.312, PDSI shall make payments promptly, as due, to all persons supplying to PDSI labor or material for the prosecution of the work provided for in the Agreement. PDSI shall pay all contributions or amounts due the Industrial Accident

Fund from PDSI incurred in the performance of the Agreement. PDSI shall not permit any lien or claim to be filed or prosecuted against the City, on account of any labor or material furnished. PDSI shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

Pursuant to ORS 279.314, if PDSI fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to PDSI by any person in connection with the Agreement as such claim becomes due, the proper officer or officers representing the City may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to PDSI by reason of the Agreement. The payment of a claim in the manner authorized by ORS 279.314 shall not relieve PDSI from obligation with respect to any unpaid claims.

Pursuant to ORS 279.316, no person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279.051, the employee shall be paid at least time and a half pay for all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holiday specified in ORS 279.334. PDSI shall give notice to its employees who work on the Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. To the extent that the Agreement is for personal services as defined in ORS 279.051, an employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under the Agreement who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime. To the extent that the Agreement is for services, an employee performing services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279.334(1)(a)(C)(ii) to (vii) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater. PDSI shall give notice to its employees who provide services under the Agreement in writing, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

Pursuant to ORS 279.320(1), PDSI shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of PDSI, of all sums which PDSI agrees to pay for such services and all monies and sums which PDSI collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service. All employers working under the Agreement are subject employers that shall comply with ORS 656.017.