

AGREEMENT REGARDING PROVISION OF DOWNTOWN BUSINESS DISTRICT MANAGEMENT SERVICES

This Agreement Regarding Provision of Downtown Business District Management Services ("Agreement") is between Clean & Safe, Inc. ("Clean & Safe") and the Portland Business Alliance ("the Alliance").

RECITALS:

- A. Clean & Safe is an Oregon non-profit 501 (c)(3) corporation that was formed in 1981 and is formally known as Portland Downtown Service, Inc. (PDSI). For a number of years, the Association for Portland Progress and PDSI worked together to provide services to the Downtown Business District (the "District") under Agreements for Downtown Business District Management Services between PDSI, the Association for Portland Progress and the City of Portland (City). The District was created by the City of Portland Code Chapter 6.06. The Association of Portland Progress and the Portland Metropolitan Chamber of Commerce merged in July 2002 and became the Portland Business Alliance. The Alliance is an Oregon non-profit 501 (c)(6) corporation. Clean & Safe desires to contract with the Alliance for the services previously provided by the Association for Portland Progress.
- B. The City established and maintains the license fee/downtown services program at the request of the representatives of property owners, property managers and business in the District.
- C. Clean & Safe and the Alliance wish to clarify their relationship regarding the provision of District management services. Clean & Safe's focus is strictly on the oversight of the provision of services funded through the District's Property Management License Fee. Clean & Safe and the Alliance therefore have agreed that Clean & Safe should have overall responsibility for the services to be provided under District Management Services Agreements with the City. The Alliance has the staff and capacity to provide some or all of the services to be provided under the District Management Services Agreements, but also has other programs that it provides using separate funds of the Alliance. Clean & Safe and the Alliance have agreed that Clean & Safe should subcontract with the Alliance for the provision of some of or all of the services to be provided by Clean & Safe in the District.
- D. Clean & Safe and the Alliance have maintained a healthy private-public partnership with the City in the implementation and management of the District property management license fee and the provision of the services funded by license fee revenues. Clean & Safe and the Alliance therefore also agree that their contractual relationship as provided for in this Agreement should be fully coordinated with the structure of future District Management Services Agreements with the City.

Clean & Safe has overall responsibility for the district services.

Public-Private partnership with the City of Portland

AGREEMENT:

A. General Responsibilities of Clean & Safe and the Alliance.

1. **Clean & Safe.** Subject to the agreement of the City, Clean & Safe shall be responsible for contracting with the City for the provision of services to the District to be funded by revenues from the District Property Management License Fee. In addition, Clean & Safe shall be responsible for the development of an Annual Scope of Services and Budget, and assuring the proper provision of the services called for in the Scope of Services. Subject to any limitations in the contract with the City, Clean & Safe may subcontract with the Alliance for the provision of some or all of the services by the Alliance or may subcontract with others for the provision of the services.
2. **The Alliance.** The Alliance shall provide the services outlined and described in the "Work Scope". A copy of the 2018-19 Work Scope is attached hereto as Exhibit A. The cost to provide the services in Exhibit A will be in accordance with the Budgeted costs for each item, as approved by the Clean & Safe Board in the annual Clean & Safe Budget (attached hereto as Exhibit B is the 2018-19 Budget).

B. Specific Alliance Obligations Related to Subcontracted Services. In its provision of subcontracted services funded with District business property management license fee revenues under this Agreement, the Alliance in all cases shall provide the services in a manner consistent with the Clean & Safe City Management services Agreement under which the services are subcontracted. This shall include, but is not limited to, the following:

1. **Subcontracts.** The Alliance will administer subcontracts for services. In all subcontracting, the Alliance will follow competitive bidding procedures unless the Alliance 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.
2. **Indemnification.** The alliance will hold harmless, defend, and indemnify Clean & Safe, the City, and their officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and cost) brought against any of them arising from the Alliance's work or the work of any the Alliance subcontractors under this Agreement.

3. Liability Insurance.

- i. The Alliance will maintain public liability and property damage insurance that protects the Alliance, Clean & Safe, 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 Alliance's work under this Agreement. The insurance shall provide coverage of not less than \$2,000,000 for personal injury to each person; \$1,000,000 for property damage to each person; and \$2,000,000 for each occurrence; or a single limit policy of not less than \$2,000,000 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 Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds Clean & Safe, the City, and their 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, the Alliance and Clean & Safe should maintain continuous uninterrupted coverage for the duration of the Agreement. If the insurance is canceled or terminated prior to completion of the Agreement, the Alliance 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 the Alliance.

4. **Worker's Compensation.** The Alliance will provide and maintain continuous worker's compensation insurance coverage throughout the term of this Agreement for all of the employees either as a carrier-insured employer or as a self-insured employer, as provided by ORS Chapter 656. The Alliance 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.

5. **Independent Contractor Status.** Both parties to this Contract attest to the fact that CCC is an independent contractor and PPI employees are not employees of the Alliance. All employees of Contractor shall be subject exclusively to the supervision and control of Contractor, including, but not limited to, the rights to hire, train, assign work, discipline, and fire its employees. Contractor and its subcontractors and employees are not employees of the Alliance and are not eligible for any benefits through the Alliance including, but without limitation to, social security, health, workers compensation, unemployment compensation, sick leave, and/or retirement benefits. The Contractor shall maintain its own supplies, equipment, and materials to perform this Contract. The Contractor shall also maintain its own business facility as well as maintain all licenses, certificates and/or specialized training required to provide the services. The Contractor shall be responsible for the payment of the wages or salary of any of its workers with whom it may contract and who are involved in the providing of the services, including insurance premiums, and taxes and fees of every kind as required by any governmental body.

6. **Subcontract Requirements.**

- i. All subcontracts shall require that the subcontractors maintain public liability and property damage insurance that protects the subcontractor, the Alliance, Clean & Safe, 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 \$5,000,000 for personal injury to each person; \$1,000,000 for property damage to each person; and \$2,000,000 for each occurrence; or a single limit policy of less than \$2,000,000 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 Alliance, Clean & Safe, the City and their 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. The subcontractor insurance requirements set out in subsections (i), (ii), and (iii) of this section shall not apply to subcontractors as to which there is an insignificant risk of the types of the claims to be covered by the insurance.
 - v. All subcontracts shall require subcontractors to provide and maintain worker's compensation insurance and to provide to the Alliance and the City Auditor certificates of insurance, or copies thereof, as provided in subsection (E) of this section.
 - vi. All subcontracts shall require subcontractors to maintain compliance with Chapter 3.100 of the City Code.
7. Executive Director's Employment. In fulfillment of the contract between the Alliance and Clean & Safe, the Alliance agrees to employ an individual who will serve as the Clean & Safe Executive Director, as well as perform other Alliance duties. The division of that individual's duties between Clean & Safe and the Alliance will be mutually agreed to annually as part of the Clean & Safe budget development. As the employer of the Clean & Safe Executive Director, the Alliance controls the employment relationship between the Alliance and the Clean & Safe Executive Director including, but not limited to, the right to control the performance of his/her duties as well as the right to hire and/or fire the Executive Director. The Alliance agrees to consult in advance with the Clean & Safe Board of Directors regarding the hiring and/or firing of the Executive Director as well as compensation practices and performance assessments. If, at any time, the Clean & Safe Board of Directors has a concern regarding the performance of the Clean & Safe Executive Director, or any Alliance employee employed in fulfillment of the contract between the Alliance and Clean &

Safe, Clean & Safe shall notify the Alliance of its concerns and provide sufficient information. Except that in a case of criminal activity, malfeasance, or conflict of interest, as defined by the conflict of interest policy, the Alliance shall provide the Clean & Safe Board of Directors its findings as well as its corrective actions, if any, within thirty days of Alliance notification. In a case of criminal activity, malfeasance, or conflict of interest on the part of the Executive Director, the termination process should be initiated immediately but no later than five (5) days after the issue is brought to the attention of the Alliance.

8. Executive Director's Duties. The Executive Director will perform services for Clean & Safe, as directed by the Board of Directors of Clean & Safe. The Executive Director may also perform services for the Alliance, as directed by the Board of Directors of the Alliance. As of the date of this Amendment, the Executive Director allocates approximately 80% of her time to performing duties for Clean & Safe, and approximately 20% of her time to performing duties for the Alliance. The Alliance and Clean & Safe agree to consider adjusting the allocation of the Executive Director's time (between performance of Clean & Safe's duties and the Alliance's duties) on an annual basis, in connection with the budgeting process.
9. EEO Certification. The Alliance will remain compliance with Chapter 3.100 of the City Code pertaining to equal employment opportunity.
10. Records. The Alliance will maintain records on a current basis to document the expenditure of funds and the performance of services in accordance with this Agreement. The Alliance shall retain these records for three (3) years from the date of completion or termination of this Agreement. Clean & Safe or its authorized representatives shall have the reasonable authority, during normal business hours and on reasonable notice and from time to time, to inspect, audit, and copy any records of the Alliance regarding the expenditure of funds and performance of services under this Agreement.
11. Fair Wage Policy. The Alliance will maintain compliance with City's Fair Wage Policy as outlined in Portland City Code 3.99, 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 the Public Utilities to the City Auditor, entitled "Clean & 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.

C. Specific Clean & Safe Obligations. Clean & Safe's obligations hereunder shall be as follow:

1. Monitor and Audit.

- i. Monitor the use by the Alliance of compensation paid to it under this Agreement for each year through such reviews, as Clean & Safe deems appropriate.
- ii. If so chooses, either directly or through a designated representative, conduct financial audits of the compensation specified in this Agreement, following the conclusion of any budget year during the term of the Agreement. This audit right shall expire at the conclusion of the three (3) year period described in section B(9). Audits shall be conducted in accordance with generally accepted auditing principles. If the audit determines that payments to the Alliance were in excess of the costs of the services being provided under this Agreement, then the Alliance shall repay the amount of the excess to Clean & Safe.

2. Compensation to the Alliance. Clean & Safe will pay the Alliance \$300,000 on the 1st of every month. At the end of each month, the account will be adjusted for actual expenses, with any excess being paid within ten (10) days so long as the costs are related to the program and approved in the annual budget.

D. Challenges to Downtown Business Property Management License Fee. Clean & Safe and the Alliance acknowledge that there may be uncertainties regarding the District property management 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 Alliance, Clean & Safe and 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 following provisions shall apply:

1. Clean & Safe may suspend its payments to the Alliance and the Alliance and its subcontractors may suspend the provision of services, hereunder pending negotiation of amendments hereto that will assure the Alliance's and Clean & Safe's financial risk is minimized and, if the outcome of the challenge is unfavorable, Clean & Safe may apply any license fee revenues it has received from the City to repay the City, for such repayments to license fee payers as are appropriate; and

2. The Alliance shall join Clean & Safe in defending the City and the City's officers, agents, and employees against any challenges 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 join Clean & Safe in holding harmless and indemnifying 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. The Alliance shall join the consult with the City in conducting a defense of the license fee. Notwithstanding any other provision of this Agreement, the Alliance may use any net license fee revenues it receives under section C(2) of this Agreement to satisfy the hold harmless defense, and indemnification obligations established by this section or by section B(3) before using the funds to provide other services under this Agreement.

E. **Term.** The Initial term of this Agreement shall be from October 1, 2018 through September 30, 2019.

F. **Termination.**

1. Clean & Safe, may terminate this Agreement at any time that the City terminates its management services agreement with Clean & Safe, effective at the same time as the City's termination, in which event Clean & Safe shall give the Alliance written notice of such termination as soon as possible upon receipt of notice of termination from the City. Following termination, the Alliance as expeditiously as is reasonably possible shall terminate its services hereunder, pay all obligations and costs of administration incurred hereunder, and return to Clean & Safe all remaining compensation paid by Clean & Safe to the Alliance hereunder.

2. Either party may terminate this agreement upon 30 days written notice to the other party. Notice is considered completed if hand delivered or if actually received, and, if mailed, it is considered complete (3) days after mailing.

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

H. **Amendments.** The parties may amend this Agreement, including by the inclusion of addenda as referred to in Section A(2), at any time by written amendment executed by Clean & Safe and the Alliance.

I. **Notice.** Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail,

postage prepaid, certified mail, return receipt requested, addressed as follow, or to such other address as the receiving party hereafter shall specify in writing:

If to Clean & Safe: **Board Chair**
c/o Eric Murfitt
Clean & Safe, Inc.
200 SW Market, Suite 150
Portland, OR 97201

If to the Alliance: Andrew Hoan
Portland Business Alliance
200 SW Market, Suite 150
Portland, OR 97201

- J. **Severability**. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be deemed stricken to the extent of the illegality or unenforceability.
- K. **Merger and Integration**. The parties agree that this Agreement and its Addenda represent the entire Agreement between the Alliance and Clean & Safe and no other agreement, written or verbal, are enforceable.
- L. **Non-Waiver**. Neither the Alliance nor Clean & Safe shall be 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 shall not be deemed a waiver or any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- M. **Attorney Fees**. If any suit or action is filed by any party to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution of defense of such suit or action as fixed by the arbitrator, trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court.
- N. **Oregon Law and Forum**. The Agreement shall be construed according to the laws of the State of Oregon. Any litigation between Clean & Safe and the Alliance arising under this Agreement or out of work performed under this Agreement shall occur in the state courts in Multnomah County, and if in the federal courts, in the U.S. District Court for the District of Oregon.

DATED: 9-21-18, 2018.

PORTLAND BUSINESS ALLIANCE

By: 

Andrew Hoan

President and Chief Executive Officer

CLEAN & SAFE, INC.

By: 

Eric Murfitt

Chair of the Board

Not reviewed by City
Attorney's Office