



CITY OF PORTLAND

**CONTRACT FOR
ENHANCED SERVICE DISTRICT MANAGEMENT SERVICES
FOR
DOWNTOWN PORTLAND ENHANCED SERVICE DISTRICT**

Contract Number: 30007911

As authorized by City Code Chapter 6.06, this Contract is made effective on October 1, 2021 ("Effective Date") by and between the City of Portland ("City"), a municipal corporation of the State of Oregon, and Clean & Safe, Inc ("Contractor"), a(n) non-profit 501(c)(3) corporation, by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties."

The initial Term of this Contract shall be from October 1, 2021 through September 30, 2026, with an option to renew for an additional five (5) year term, commencing on the expiration of the original term. The total not-to-exceed amount under this Contract for the initial Term shall be \$33 million, subject to annual review of the scope of work and budget.

Party contacts and Contractor's and City's Project Manager for this Contract are:

For City of Portland:	For Contractor:
Name: Shawn Campbell	Name: Mark Wells
Title: ESD Coordinator	Title: DC&S interim Director
Address: 1120 SW Fifth Avenue	Address: 121 S.W. Salmon St., Suite 1440
City, State: Portland, Oregon 97204	City, State: Portland, OR 97204
e-mail: shawn.campbell@portlandoregon.gov	e-mail: mwells@portlandalliance.com
Copy to:	Copy to:
Procurement Services	
1120 SW 5 th Ave.	
Portland OR 97204	

Scope and Consideration

- (a) Contractor shall perform the Services and provide the Goods and Deliverables set forth in the Statement of Work by the due dates specified in the Contract.
- (b) City agrees to pay Contractor a sum not to exceed \$33 million for accomplishment of the Project.

- (c) Payments shall be made to Contractor according to the terms of this Contract and pursuant to an annual budget. A draft annual budget for the initial fiscal year (October 1, 2021 to September 30, 2022) is attached and incorporated hereto as Exhibit A. Once Clean & Safe adopts a final budget for the initial fiscal year, the final budget will replace Exhibit A. The Parties will amend the annual budget for subsequent fiscal years in accordance with this Contract, and the amended annual budget will be administratively adopted by the Parties and will be incorporated as supplement to Exhibit A.

Recitals:

Pursuant to City Resolution No. 37554, the Downtown Business District was reauthorized on September 29, 2021.

This Contract is authorized by City Ordinance No. 190566, effective on September 29, 2021.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1 DEFINITIONS

General Definitions. These definitions apply to the entire Contract, subsequent Amendments, and any Change Orders or Task Orders, unless modified in an Amendment. If any definition contains a substantive provision conferring rights and/or obligations upon a Party, then effect shall be given to the substantive provision.

“Acceptance” means the Deliverable demonstrates to the City’s satisfaction that the Deliverable conforms to and operates according to the Acceptance Criteria, and if required, has successfully completed Acceptance Testing, and for Deliverables not requiring Acceptance Testing that the Deliverable conforms to the Acceptance Criteria or the City’s Specifications.

“Affiliates” means, for Contractor, any individual, association, partnership, corporation or other entity controlling, controlled by, or under common control. The term “control” means the power to direct or cause the direction of the management and policies of an individual or entity, whether through the ownership of voting securities, by contract, agreement or otherwise.

“Amendment” means a written document required to be signed by both Parties when in any way altering the Master Terms and Conditions of the Contract, Contract amount, or substantially altering a Statement of Work.

“Business Day” means a twenty-four hour day, excluding weekends and City holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” means a twenty-four hour day, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Change Order” means a document, agreed and signed by both Parties, that changes an existing Statement of Work. Change Orders cannot change Contract amount or Master Terms and Conditions. Change Orders may be referenced as “Amended Statement of Work”.

“City Services” means those municipal public services provided within the District by the City and specifically described in Exhibit C.

“Confidential Information” means any information that is disclosed in written, graphic or machine-recognizable form and is marked or labeled at the time of disclosure as being Confidential or its equivalent, or, if the information is in verbal or visual form, it is identified as Confidential or proprietary at the time of disclosure, or a reasonable time thereafter. Information shall always be considered Confidential Information, whether or not it is marked or identified as such, if it is described by one or more of the following categories: (1) non-public financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Information Protection Act; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by Oregon Public Records Laws and the Uniform Trade Secrets Act; (5) information which is exempt from disclosure per Oregon Public Records Law; (6) attorney/client privileged communications; (7) information which is exempt per federal laws (including but not limited to copyright, HIPPA); and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems including without limitation, data and information systems, any software code and related materials and processes, Customizations, Configurations, Updates, Upgrades; and any Documentation. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving Party; is already lawfully known to the receiving Party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving Party’s possession without any obligation restricting disclosure; is independently developed by the receiving Party, as shown by reasonable written documentation, without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing Party.

“Contract” means the Master Terms and Conditions including all exhibits, attachments and schedules and their constituent parts listed in the Order of Precedence or incorporated by reference.

“Contract Price” means the not-to-exceed price agreed upon by the Parties for all Goods and Services.

“Deliverable(s)” means the Goods, Services, Documentation or documents or tangible work products described in the Statement of Work to be provided to the City by Contractor under this Contract.

“Division” means the Revenue Division of the Bureau of Revenue and Financial Services, of the Office of Management and Finance, of the City of Portland, which has responsibility over Portland City Code Chapter 6.06.

“Documentation” means user manuals and other written materials in any form that describe the features or functions of the Goods and Services, including but not limited to published specifications, online instructions and help, marketing materials, technical manuals, and operating instructions provided by Contractor to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Equipment” means any hardware, machinery, device, tool, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper implementation and operation of the Goods or Services to be provided to the City by Contractor under this Contract.

“Defect” means any error, problem, condition, bug, or other partial or complete inability of a Service, Good or component thereof, to operate in accordance with the applicable Specifications.

“Force Majeure Event” means an exceptional, unforeseeable and unavoidable occurrence beyond the reasonable control of the affected Party, such as, riots, epidemics, war, government regulations, labor disputes, fire, natural phenomena, or other causes beyond such Party’s reasonable control.

“Good(s)” means the items provided by Contractor to the City under this Contract, as outlined in the Statement of Work.

“Intellectual Property Rights (IPR)” means any patent rights, copyrights, trade secrets, trade names, service marks, trademarks, trade dress, moral rights, know-how and any other similar rights or intangible assets to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the foregoing now or hereafter in force.

“Key Personnel” means the individuals identified in Section 3.9.1 of this Contract with leadership, supervisory or managerial responsibility to perform services on behalf of Contractor.

“Key Position” (11/18) means a job position critical to the success of the Project as identified in Section 3.9.1 of this Contract.

“License Fee” means the fee assessed under Portland City Code Chapter 6.06 for the Downtown Business District.

“Master Terms and Conditions” means the body of text from the preamble through the signature page of this Contract.

“Material Breach” means any breach of this Contract that causes, caused, or may cause substantial harm to the non-breaching Party or substantially deprives the non-breaching Party of the benefit it reasonably expected under this Contract.

“Personally Identifiable Information (PII)” means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context, as described in the Oregon Consumer Information Protection Act.

“Project” means the overall delivery of the Goods all related Services including, without limitation, design, development, integration, implementation, testing, support and Maintenance, and any Deliverables any of which Contractor may be providing in whole or in part.

“Services” or “District Services” means both ordinary and professional services performed by Contractor under this Contract.

“Specifications” means the most current cumulative statement of capabilities, functionality, and performance requirements for the System and its components as set out in the Change Orders, the Statement of Work, or this Contract.

“Statement of Work” (SOW) means the written detailed specifications of the Product(s) and Services(s) to be delivered to the City by Contractor subject to the terms and conditions of this Contract as provided in Exhibit B and the services(s) to be delivered by the City as provided in Exhibit C.

“Subcontractor” means any person or entity under the control of Contractor, other than an employee of Contractor, utilized by Contractor to perform all or part of this Contract.

“System” means the operational combination of all Goods and Services to be provided by Contractor to City under this Contract.

“Task Order” means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under this Contract. Task Orders

shall document the description of Goods and/or Services, price, payment schedule, Project and performance schedule, due dates, milestones and Deliverables.

“Term” means the period of time that this Contract is in effect as stated on page one or as subsequently amended.

SECTION 2 ORDER OF PRECEDENCE

2.1 Order of Precedence. (09/17) In the event there is a conflict or ambiguity between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict or ambiguity will be resolved in accordance with the order of precedence below. This order of precedence designates which portion of the Contract takes precedence over the other for purposes of interpretation. Contractor's hyperlinks contained herein will not supersede or alter the Master Terms and Conditions. For the avoidance of doubt, no other terms and conditions will override the Parties' obligations in the Confidentiality, Indemnification, or Choice of Law provisions in these Master Terms and Conditions. In this Contract the order of precedence shall be:

1. Amendments
2. Master Terms and Conditions
3. Exhibit A – Five Year Contract Budget and Annual Budget
4. Exhibit B – Statement of Work
5. Exhibit C – City Scope of Work
6. Exhibit D – License Fee

SECTION 3 GENERAL AND ADMINISTRATIVE PROVISIONS

3.1 Term. This Contract shall begin on the Effective Date and end upon the expiration date set forth on page one of this Contract unless terminated or extended under the applicable Contract provisions.

Contractor shall timely and professionally perform the services identified in Exhibit B – Statement of Work. The City shall provide support to Contractor's services through the City Services described in Exhibit C and subject to the limitation provided therein. Exhibit B and Exhibit C to the Contract shall pertain to fiscal year commencing October 2021-September 2022. The Parties will amend the Exhibits B and C for subsequent fiscal years in accordance with this Contract, and the amended Exhibit B and C will be administratively adopted by the Parties as supplement to the Contract. Contractor shall manage and utilize License Fee in accordance with this Contract, and subject to Exhibit A Annual Budget and the clarifications on administration and assessment of License Fee as provided in Exhibit D.

3.2 Point of Contact. Contractor shall be the sole point of contact for the City with regard to this Contract and the System.

3.2.1 Written Notifications. All notices to, and other written communication between the Parties shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services, or by e-mail. All notices and written communications shall be sent to the Parties set forth on page 1 of the Contract, or to such other places as they may designate by like notice from time to time. Each Party shall provide written notice of any changes to the Party's contacts within thirty (30) Calendar Days.

3.3 Changes to Contract.

3.3.1 Amendment of the Contract. Any changes to the provisions of this Contract shall be in the form of an Amendment. No provision of this Contract may be amended unless such Amendment is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. If the requirements for Amendment of this Contract as described in this section are not satisfied in full, then such Amendments automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect. The City reserves the right to make administrative changes to the Contract unilaterally, such as extending option years and increasing compensation. An administrative change means a written Contract change that does not affect the substantive rights of the Parties.

3.3.2 Change Orders to a Statement of Work. The City and Contractor can agree to make changes, at any time to a Statement of Work in the form of a Change Order or "Amended Statement of Work". Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor's obligations, the Parties shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified amount.

3.3.3 Delivery Schedule. Contractor shall use best efforts to deliver Product(s) and/or Services(s) on time, in accordance with the scheduled delivery date as set forth in this Contract, Statement of Work or Change Order.

3.3.4 Time is of the Essence. The Parties agree that time is of the essence as to the delivery of Deliverables and performance of Services under this Contract. By executing this Contract and accepting the Statement of Work, Contractor agrees that the time limits specified in the Statement of Work are reasonable. By accepting late

or otherwise inadequate performance of Contractor's obligations, the City will not waive its rights to require timely performance of Contractor's obligations thereafter.

3.3.5 Late Delivery. In the event that any specified delivery date is not met, Contractor shall be liable for any loss, expense, or damage resulting from delay in delivery or failure to deliver Goods or provide Services which is due to any cause except as set forth in Force Majeure. In the event of delay due to any such cause, the City may obtain substitute Goods or Services from another source and bill all additional costs directly to Contractor who shall remain financially liable for all additional acquisition costs.

3.3.6 Best Efforts. Contractor shall use best efforts to minimize any delay in the provision of Goods, Deliverables or performance of Services. If Contractor anticipates any delay that may prevent timely performance of Contractor's obligations under this Contract, Contractor shall promptly notify the City, including the anticipated length of the delay, the cause of the delay, measures proposed or taken to prevent or minimize the delay, and the timetable for implementation of such measures.

3.4 City Reporting Requirements. The City is required to track certain types of contract data for reporting purposes. Items which the City must report on may include, but are not limited to, Subcontractor utilization, Minority, Women, Emerging Small Business, Service-Disabled Veteran Business Enterprise (D/M/W/ESB/SDVBE) participation and Subcontractor/Supplier Payment. The City will enforce all diversity in workforce and D/M/W/ESB/SDVBE subcontracting commitments made by Contractor.

3.5 Payment. Payment(s) shall be in accordance with the payment schedule set forth in in this Contract.

3.5.1 The City will pay to Clean & Safe all net License Fee revenues, provided that the City first has approved the annual Scope of Work and Budget for services under Exhibits A and B of this Contract. The City will make payment to Clean & Safe of such net License Fee revenues following the close of each City accounting period (of which there are 12 during the City fiscal year) as soon as the amount thereof received during the accounting period has been determined. The City may make advance payments during any accounting period if the City's Manager of the Revenue Bureau determines that sufficient funds have been received to make advance payments.

3.5.2 Notwithstanding 3.5.1, the City may retain a continuing balance of \$ 10,000 for payments or refunds due to District License Fee payers following appeals under Portland City Code section 6.06.100, to be paid Clean & Safe during the last license year covered by this Contract. Amounts needed to replenish the \$10,000 balance

following payments of refunds to District License Fee payers following appeals will be retained from the "seasonal lighting" revenues as defined in City Code Section 6.06.216(4) and from those net License Fee revenues that are not "seasonal lighting" revenues in proportion to the relative amounts of those revenues. (For example, if the "seasonal lighting" revenues are \$500,000 and the revenues that are not "seasonal lighting" revenues are \$3,000,000 in a license year, and if there is a need for a \$3,500 replenishment, \$500 will be retained from the "seasonal lighting" revenues and \$3,000 will be retained from revenues that are not "seasonal lighting" revenues.) As used in this Contract, "net License Fee revenues" means all License Fees, penalties (excludes civil penalties), and interest, and any interest earned thereon, less the Division's costs of administration and other Fund 204 charges under section Exhibit D of this Contract and less the continuing balance retained for payments or refunds due to District License Fee payers as provided in this section.

3.5.3 Challenges to Downtown Business 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

3.5.3.1 The City may suspend its payments to Clean & Safe 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.

3.5.3.2 Clean & Safe 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. Clean & Safe 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, Clean & Safe may use any net License Fee revenues Clean & Safe receives in this Agreement to satisfy the hold harmless, defense, and indemnification obligations established by this section or by section 6.1 (indemnification) before using the Funds to provide Services.

3.5.3.3 The City may require that Clean & Safe 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.

3.5.4 The City makes payments via electronic fund transfers through the Automated Clearing House (ACH) network. To initiate payment of invoices, Contractor shall execute the City's standard ACH Vendor Payment Authorization Agreement. Upon verification of the data provided, the ACH Vendor Payment Authorization Agreement will authorize the City to deposit payment directly into specified Contractor accounts with specified financial institutions. All payments shall be made in United States currency.

3.6 Payment of Taxes/Contractor Shall Withhold. (09/17) Contractor shall, at its own expense, timely (a) pay all salaries, wages, and other compensation to its employees; (b) withhold, collect, and pay all applicable federal, state, and local income taxes (domestic or foreign), FICA, Medicare, unemployment insurance and any other taxes or charges in connection with its employees; and (c) provide and pay for workers compensation insurance and any statutory or fringe benefits to employees. Contractor shall be solely responsible for all such obligations for its employees. Contractor shall also ensure that any Subcontractor shall comply with the foregoing obligations for its employees. The City shall have no duty to pay or withhold such obligations.

3.7 Records and Audits

3.7.1 Records Retention. Contractor shall maintain current financial records in accordance with Generally Accepted Accounting Principles (GAAP). Contractor agrees to maintain and retain and retain all financial records, supporting documents, statistical records and all other records pertinent to this Contract during the term of this Contract and for a minimum of six (6) years after the expiration or termination date of this Contract or until the resolution of all audit questions or claims, whichever is longer.

3.7.2 City Audits. The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and Products or Services at any time in the course of the Contract and during the records retention period listed above. 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 Government Accountability Office.

3.7.3 Access to Records. The City may examine, audit and copy Contractor's books, documents, papers, and records relating to this Contract at any time during the records retention period listed above upon reasonable notice. Copies of applicable records shall be made available upon request.

3.8 Overpayment. If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices.

3.9 Independent Contractor. Contractor is independent of the City and, accordingly, this Contract is not entered into as a joint venture, partnership, or agency between the Parties. No employment or agency relationship is or is intended to be created between the City and any individual representing Contractor. Employees of Contractor and any authorized Subcontractors shall perform their work under this Contract under Contractor's sole control.

3.9.1 The Parties have identified Key Positions and Key Personnel as set forth in the table below, along with the percentage of their time to be allocated to the City's Project:

Name	Title/Role	% of Time	Company
Andrew Hoan	President & CEO	45	Portland Business Alliance
Vacant	Executive Director	100	Portland Business Alliance
Mark Wells	Director, Operations	100	Portland Business Alliance
Sydney Mead	Director, Downtown Programs	100	Portland Business Alliance
Jon Isaacs	VP, Government Affairs	50	Portland Business Alliance
Vanessa Briseño	Senior Director, Strategic Communications	30	Portland Business Alliance
Ariana Alejandres	Senior Director, Finance & Operations	45	Portland Business Alliance

3.9.2 Substitution of Key Personnel. Any substitutions or replacements of Key Personnel require the written approval of the City, which will not be unreasonably withheld provided that Contractor provides sufficient information as required in the paragraph

directly below. Contractor shall provide the City with the maximum possible period of notice of substitution or replacement of Key Personnel in order to allow for background screening, fingerprint checks, and other investigation as may be required.

3.9.2.1 For any proposed substitute or replacement Key Personnel, Contractor shall provide the following information to the City: a detailed explanation of the circumstances necessitating the proposed substitution or replacement, a complete resume for the proposed substitute(s), and any additional information requested by the City. Proposed substitutes or replacements should have qualifications comparable to or better than those of the persons being replaced. No change in Contract prices may occur as a result of substitution or replacement of Key Personnel.

3.10 Termination. The following conditions apply to termination of this Contract. The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason in the City's sole discretion. In the event of such termination, the City shall pay to Contractor the portion of the not-to-exceed price attributable to all Deliverables Accepted or Services performed and Accepted through the effective date of the termination. In the event of termination, all of Contractor's Work Product to date shall be delivered to the City, and it will become and remain property of the City.

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

3.11 Mutual Agreement. The City and Contractor, by mutual written agreement, may terminate this Contract at any time.

- 3.12 Material Breach. Either Party may terminate this Contract in the event of a Material Breach of this Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice to cure the Material Breach and of the Party's intent to terminate. If the Party has not entirely cured the Material Breach within thirty (30) Calendar Days of the notice, then the Party giving the notice shall have the option to: (a) terminate this Contract by giving a written notice of termination, (b) seek any remedies in this Contract, in law, or at equity, to the extent not otherwise limited by the terms of this Contract, or (c) any combination thereof.
- 3.13 Force Majeure. Either Party may terminate this Contract due to a Force Majeure event as set forth in Section 5.12, Force Majeure.
- 3.14 Bankruptcy. The City may terminate this Contract if Contractor: (a) becomes insolvent, makes a general assignment for the benefit of creditors; (b) suffers or permits the appointment of a receiver for its business or assets; (c) becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, and such proceeding has not been dismissed within a sixty (60) Calendar Day period; or (d) has wound up or liquidated, voluntarily or otherwise.
- 3.15 Void Assignment. In the event that Contractor assigns its obligations under this Contract to a third party in a manner other than as set forth in Section 5.7, Assignment, the City shall have the option to terminate this Contract without any notice or cure period or further obligation to Contractor or the assignee, and promptly receive a refund for fees paid for Products delivered and/or Services performed by the third party.
- 3.16 Waiver. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach of this Contract. The failure of either Party to insist upon any of its rights under this Contract upon one or more occasions, or to exercise any of its rights, shall not be deemed a waiver of such rights on any subsequent occasions.
- 3.17 Severability. Any section of this Contract which is held or declared void, invalid, illegal or otherwise not fully enforceable shall not affect any other provision of this Contract and the remainder of this Contract shall continue to be binding and of full force and effect. This Contract shall be binding upon and inure to the benefit of the City and its successors and assigns.
- 3.18 Business Tax Registration. Contractor shall register for a City of Portland business license as required by Chapter 7.02 of the Code of the City of Portland prior to execution of this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this Contract. Failure to be in compliance may result in

payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

- 3.19 EEO Certification. Contractor shall be certified as an Equal Employment Opportunity Affirmative Action Employer as prescribed by Chapter 5.33.076 of the Code of the City of Portland and maintain its certification throughout the term of this Contract.
- 3.20 Non-Discrimination in Benefits. Throughout the term of this Contract, Contractor shall provide and maintain benefits to its employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 5.33.077 of the Code of the City of Portland.
- 3.21 Sustainability. Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, Contractor is encouraged to incorporate these Principles into its scope of work with the City wherever possible. Therefore, in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of Products or Services that help to minimize the human health and environmental impacts of City operations. Contractor is encouraged to incorporate environmentally preferable Products or Services into its work performance wherever possible. "Environmentally preferable" means Products or Services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the Product or Service.
- 3.22 Packaging. All packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, readily recyclable in local recycling programs, is made from recycled materials, and/or is collected by Contractor for reuse/recycling.
- 3.23 News Releases and Public Announcements. Contractor shall not use the City seal or other representations of the City in its external advertising, marketing, website, or other promotional efforts, nor shall Contractor issue any news release or public announcements pertaining to this Contract or the Project without the express written approval of the City. Such approval may be withheld in the City's sole discretion. Contractor shall not use the City seal without specific written permission from the City Auditor.
- 3.24 Rule of Construction/Contract Elements/Headings. This Contract has been drafted by the City in the general format by the City as a convenience to the Parties only and shall not,

by reason of such action, be construed against the City. Section headings are for ease of reference and convenience only and shall not affect or enter into the interpretation of any portion of this Contract.

- 3.25 Survival. All obligations relating to Confidential Information; indemnification; publicity; representations and warranties; remedies; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination or expiration shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City.
- 3.26 Changes in City Code. Both the City and Clean & Safe recognize that this Contract is conditional upon Chapter 6.06 of the City Code, which may be subject to change prior to the end date of the term of this Contract. Both parties agree that if City Code change occurs, then any sections of this agreement affected by the code change will be renegotiated prior to the end of the term. Both parties agree that renegotiation will include a reasonable timeline for transition to an amended agreement that is fully in compliance with any changes in City Code.

SECTION 4 STATUTORY REQUIREMENTS, PUBLIC RECORDS AND CONFIDENTIALITY

- 4.1 Governing Law and Jurisdiction. This Contract shall be construed according to the laws of the State of Oregon without reference to the conflict of laws' provisions. Any litigation between the City and Contractor arising under this Contract or out of work performed under this Contract shall 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.
- 4.2 Public Records Request. Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. All information submitted by Contractor is public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Contractor requests and meets an exemption from disclosure consistent with federal or Oregon law. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

4.3 Public Records. The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon and Portland City Code public records and archiving laws.

4.4 Confidentiality.

4.4.1 Contractor's Confidential Information. During the term of this Contract, Contractor may disclose to the City, certain Contractor Confidential Information pertaining to Contractor's business. Contractor shall be required to mark Confidential Information CONFIDENTIAL with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked, or the Contractor's Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Contract itself shall not be considered Confidential Information. Subject to Section 4.2, the City shall: (1) limit disclosure of Contractor Confidential Information to those directors, employees, contractors and agents of the City who need to know the Contractor Confidential Information in connection with the City Project and who have been informed of confidentiality obligations at least as strict as those contained in this Contract, and (2) exercise reasonable care to protect the confidentiality of the Contractor Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

4.4.2 City's Confidential Information. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use City Confidential Information exclusively for the City's benefit in the performance of this Contract. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Contractor shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors and agents of Contractor who need to know the City Confidential Information in connection with the City Project and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Contract, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the Intellectual Property Rights of the City without the City's prior written consent.

- 4.4.3 Scope. This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. Contractor's confidentiality obligations under this Contract shall survive termination or expiration of this Contract.
- 4.4.4 Equitable Relief. Contractor acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Contract, in the event of a breach or a threatened breach of Contract terms related to Confidential Information or Intellectual Property Rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.
- 4.4.5 Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

SECTION 5 CONTRACTOR PERFORMANCE AND WARRANTIES

5.1 General Warranties. Contractor makes the following warranties:

- 5.1.1 Capacity. Contractor warrants it has the legal authority and capacity to enter into and perform this Contract.
- 5.1.2 Authority to Conduct Business. Contractor warrants it is lawfully organized and constituted and duly authorized to operate and do business in all places where it shall be required to do business under this Contract, and that it has obtained or will obtain all necessary licenses and permits required in connection with this Contract.
- 5.1.3 Disclosure of Litigation. Contractor warrants that as of the Effective Date there are no suits, actions, other proceedings, or reasonable anticipation thereof, in any judicial or quasi-judicial forum that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will immediately notify the City in writing if, during the Term of this Contract, Contractor becomes aware of, or has reasonable anticipation of, any lawsuits, actions, or

proceedings in any judicial or quasi-judicial forum that involves Contractor or any Subcontractor and that will or may adversely affect Contractor's ability to fulfill its obligations under this Contract.

5.1.4 Conflict of Interest. Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under this Contract.

5.1.5 Compliance with Applicable Law. Contractor warrants it has complied and shall comply with all applicable federal, state, and local laws and regulations of its domicile and wherever performance occurs during the term of this Contract. Contractor warrants it is currently in compliance with all tax laws.

5.1.6 Public Contracts. Contractor shall observe all applicable state and local laws pertaining to public contracts. ORS Chapters 279A and 279B require every public contract to contain certain provisions. To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Contract by reference.

5.1.7 Compliance with Civil Rights Act. Contractor warrants it is in compliance with Title VI of the Civil Rights Act of 1964 and its corresponding regulations as further described at: <http://www.portlandoregon.gov/bibs/article/446806>

5.1.8 Respectful Workplace Behavior. The City is committed to a respectful work environment, free of harassment, discrimination and retaliation and other inappropriate conduct. Every individual has a right to work in a professional atmosphere where all individuals are treated with respect and dignity. The City's HR Rule 2.02 covers all employees of the City as well as contractors, vendors or consultants who provide services to the City of Portland. Contractor warrants its compliance with terms and conditions HR 2.02 as further described at: <https://www.portlandoregon.gov/citycode/27929>

5.2 Grant Funding. This Contract is currently not using grant funding. However, in the event that City acquires or uses grant funding to pay for any portion of this Contract, the City and Contractor agree to Amend the Contract to include the federally required terms and conditions. General grant terms may be found at <http://www.portlandoregon.gov/bibs/article/455735>

5.3 Compliance with Non-Discrimination Laws and Regulations.

5.3.1 Nondiscrimination. Pursuant to all City, State, and federal non-discrimination and civil rights laws, Contractor, with regard to the work performed by it during this Contract, shall not discriminate on the grounds of race, color, national origin,

including limited English proficiency, sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income, including in employment practices, the selection and retention of subcontractors, including procurements of materials and leases of equipment.

- 5.3.2 Solicitations for Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract relative to nondiscrimination on the grounds of race, color, national origin, sex, sexual orientation, age, religion, disability, marital status, or family relationships.
- 5.3.3 Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such contract sanctions as it or any state or federal agency may determine to be appropriate, including, but not limited to withholding of payments to Contractor under this Contract until Contractor complies, and/or cancellation, termination, or suspension of this Contract, in whole or in part.
- 5.3.4 ADA Compliance. Contractor shall comply with the Americans With Disabilities Act (ADA), including any duty the ADA may impose on City or Contractor as a result of the Products, Services or activities requested to be provided for City under this Contract.

At minimum, Contractor shall do the following:

Contractor shall work with the ESD Coordinator to ensure all reports and information provided to the public are accessible to all persons; that all persons are able to participate in public processes and decision making, including persons with limited English proficiency; and that negative impacts do not disproportionately fall on persons of color or low income communities.

Contractor shall document each ADA request for modification to the Products or Services and Contractor's fulfillment of the request. If Contractor determines that it is unable to promptly fulfill the request for modification under the ADA, Contractor will contact the City contract manager within the same business day, proving reasons why Contractor is unable to fulfill the request for modification and to identify alternate accessibility options that Contractor can perform.

Within fifteen (15) Business Days after receipt, City and Contractor shall advise the other Party in writing, and provide the other Party with copies (as applicable) of any notices alleging violation of or noncompliance with the ADA relating to the Contract,

or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to the Contract or the programs, Products, Services or activities that Contractor is undertaking for City under this Contract.

5.3.5 Required Reporting. If any person or class of persons files a complaint with Contractor alleging discrimination under Title VI of the Civil Rights Act of 1964 (race, color, or national origin, including limited English proficiency), Contractor will notify the City of Portland of the complaint and cooperate with any investigation related to the complaint. Notifications shall be sent to Title VI Program Manager, 421 SW 6th Ave, Suite 500, Portland, Oregon 97204, or title6complaints@portlandoregon.gov.

5.4 Goods and Service(s) Warranties. Contractor makes the following warranties:

5.4.1 No Third-Party Conflict or Infringement. As of the Effective Date, Contractor warrants the execution and performance of this Contract, shall not contravene the terms of any contracts with third parties or any third-party Intellectual Property Right; and, as of the Effective Date of this Contract, there are no actual or threatened legal actions with respect to the matters in this provision. Contractor agrees to promptly notify the City, in writing, if during the Term of the Contract, a potential third-party conflict or infringement of third-party Intellectual Property Rights arises.

5.4.2 No Encumbrances. All Deliverables provided by Contractor under this Contract shall be transferred to the City free and clear of any and all restrictions of transfer or distribution and free and clear of any and all liens, claims, security interests, liabilities and encumbrances of any kind.

5.4.3 Conformance with Specifications. Contractor warrants that the Goods and Services shall operate in conformance with the Specifications.

5.5 No Waiver of Warranties or Representation. Delivery of Goods or performance of Services shall not be construed to represent Acceptance nor relieve Contractor from its responsibility under any representation or warranty. If the City makes a payment prior to full performance, the payment does not grant a waiver of any representation or warranty by Contractor.

5.6 No Third Party to Benefit. This Contract is entered into for the benefit of the City and Contractor. Except as set forth herein, nothing in this Contract shall be construed as giving any benefits, rights, remedies or claims to any other person, firm, corporation or other entity, including, without limitation, the general public or any member thereof, or to authorize anyone not a Party to this Contract to maintain a suit for breach of contract,

personal injuries, property damage, or any other relief in law or equity in connection with this Contract.

- 5.7 Assignment. Neither Party shall assign, transfer, or delegate all or any part of this Contract, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld. For purposes of this Section, the acquisition, merger, consolidation or change in control of Contractor or any assignment by operation of law shall be considered an assignment of this Contract that requires the City's prior written consent. Notwithstanding the foregoing: (a) in the event that the City's business needs change or the City enters into an agreement with a provider for outsourcing services, Contractor agrees that the City shall have the right to assign this Contract to a successor of all, substantially all, or specified area(s) of the City's business, including an outsourcing provider, upon written notice to the other Party, and (b) Contractor may, without the City's consent, but upon prior written notice to the City, assign its right to payment under this Contract or grant a security interest in such payment to any third party without requiring that the third party be liable for the obligations of Contractor under this Contract. Any attempted assignment or delegation in violation of this Section shall be void.
- 5.8 Notice of Change in Financial Condition. Contractor must maintain a financial condition commensurate with the requirements of this Contract. If, during the term of this Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform the obligations of this Contract, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in financial condition is sufficient grounds for terminating this Contract.
- 5.9 Notice of Change in Ownership. If, during the term of this Contract, Contractor experiences a change in ownership or control, Contractor shall immediately notify the City in writing. Failure to notify the City of such a change in ownership or control is sufficient grounds for terminating this Contract.
- 5.10 Subcontractors. Contractor shall not subcontract any work under this Contract without the City's prior written consent. Contractor shall be fully responsible for the acts and omissions of its Subcontractors, including any Affiliates, at all levels, and of their agents and employees. Contractor shall ensure that all applicable provisions of this Contract (including those relating to Insurance, Indemnification, and Confidentiality) are included in all of its subcontracts. The City reserves the right to review any agreements between Contractor and its Subcontractors for Goods and Services authorized under this Contract.

Contractor will follow the City of Portland's Sustainable Contracting Policy and Fair Wage Policy for all subcontract work.

All D/M/W/ESB/SDVBE (COBID Certified) subcontractors/suppliers identified in Contractor's proposals shall be used in their proposed capacity during Contract performance. If Contractor desires to replace any D/M/W/ESB/SDVBE subcontractors/suppliers under this Contract all substitution requests must have approval from the City's Chief Procurement Officer before such substitutions can be made. In no event shall Contractor subcontract any work, assign any rights, or delegate any obligations under this Contract without the City's prior written consent.

5.11 Flow-down Clauses. Contractor shall include the following clauses, or substantially similar language, in its subcontracts under this Contract:

Section 4.4, Confidentiality

Section 5.3, Compliance with Non-Discrimination Laws and Regulations

Section 6.1, Hold Harmless and Indemnification

Section 6.2, Insurance

5.12 Force Majeure.

5.12.1 In the event that either Party is unable to perform any of its obligations under this Contract due to a Force Majeure Event not the fault of the affected Party, the Party who has been so affected immediately shall give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, the performance obligations affected by the Force Majeure event shall immediately be suspended.

5.12.2 If the period of nonperformance exceeds fifteen (15) Calendar Days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract or any Statement of Work.

5.12.3 If the period of nonperformance due to a Force Majeure Event does not exceed fifteen (15) Calendar Days, such nonperformance shall automatically extend the Project schedule for a period equal to the duration of such events. Any Warranty Period affected by a Force Majeure Event shall likewise be extended for a period equal to the duration of such event.

5.12.4 If the period of nonperformance due to Force Majeure Event is longer than fifteen (15) Calendar Days, the Parties shall negotiate options for mitigation of the Force Majeure Event.

SECTION 6 INDEMNIFICATION, INSURANCE, BONDING, LIQUIDATED DAMAGES

6.1 Hold Harmless and Indemnification.

- 6.1.1 Contractor shall indemnify, defend and hold harmless the City of Portland, its officers, agents, and employees, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys' fees and costs), resulting from or arising out of the actions, errors, or omissions of Contractor or its officers, employees, Subcontractors, or agents under this Contract.
- 6.1.2 Infringement Indemnity. Contractor shall indemnify, defend, and hold harmless the City, its directors, officers, employees, and agents from and against any and all claims, demands, suits, and actions for any damages, liabilities, losses, costs, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged misappropriation, violation, or infringement of any proprietary right or Intellectual Property Right of any person whosoever. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise.
- 6.1.3 Contractor shall indemnify, defend, and hold harmless the City against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that the City may be required to pay arising from Goods and Services provided by Contractor under this Contract. The City of Portland, as a municipal corporation of the State of Oregon, is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

6.2 Insurance. Contractor shall not commence work until Contractor has met the insurance requirements in this section and Contractor has provided insurance certificates approved by the City Attorney. Contractor shall acquire insurance issued by insurance companies or financial institutions with an AM Best rating of A- or better and duly licensed, admitted and authorized to do business in the State of Oregon.

- 6.2.1 Insurance Certificate. As evidence of the required insurance coverage, Contractor shall provide compliant insurance certificates, including required endorsements, to the City prior to execution of the Contract. The certificates shall list the City as certificate holder. Contractor shall maintain continuous, uninterrupted coverage for the Term of this Contract and to provide insurance certificates demonstrating the required coverage for the Term of this Contract. Contractor's failure to maintain insurance as required by this Contract constitutes a Material Breach of this Contract. Contractor must notify the City in writing thirty (30) Calendar Days prior to a cancellation, non-renewal, or changes to the insurance policy.

- 6.2.2 Additional Insureds. For commercial general liability coverage, Contractor shall provide City with a blanket additional insured endorsement form that names the City of Portland, Oregon, and its officers, agents and employees, as an additional insured. The additional insured endorsement must be attached to the general liability certificate of insurance.
- 6.2.3 Insurance Costs. Contractor shall be financially responsible for all premiums, deductibles, self-insured retentions, and self-insurance.
- 6.2.4 Coverage Requirements. Contractor shall comply with the following insurance requirements:
- 6.2.4.1 Commercial General Liability. Contractor shall acquire commercial general liability ("CGL") and property damage insurance coverage in an amount not less than \$2 million per occurrence for damage to property or personal injury arising from Contractor's work under this Contract.
☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director
- 6.2.4.2 Automobile Liability. Contractor shall acquire automobile liability insurance to cover bodily injury and property damage in an amount not less than \$2 million for each accident. Contractor's insurance must cover damages or injuries arising out Contractor's use of any vehicle.
☒ Required and attached ☐ Reduced by Authorized Bureau Director ☐ Waived by Authorized Bureau Director
- 6.2.4.3 Workers' Compensation. Contractor shall comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. If Contractor is required by ORS Chapter 656 to carry workers' compensation insurance, Contractor shall acquire workers' compensation coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City for the entire period during which work is performed under this Contract. Contractor shall acquire workers compensation coverage in an amount not less than \$1 million each accident, \$1 million disease each employee, and \$1 million disease policy limit.
☒ Required and attached ☐ Proof of exemption (Complete Independent Contractor Certification Statement)

- 6.2.5 Insurance Requirements for Subcontractors. Contractor shall contractually require its Subcontractors to acquire and maintain for the duration of this Contract insurance equal to the minimum coverage limits required above.
- 6.3 Rolling Estoppel. Unless otherwise notified by Contractor, it shall be understood that the City shall have met all its obligations under this Contract. The City will be conclusively deemed to have fulfilled its obligations, unless it receives written notification described in the process outlined in Exhibits B and C.
- 6.3.1 Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in Project timetable, the standards of performance under this Contract, or the Contract price, if Contractor knew of that problem and failed to provide notification to the City as set forth above or to include it in the applicable status report to the City's project manager.
- 6.3.2 In the event Contractor identifies a situation that is impairing Contractor's ability to perform for any reason, Contractor's notification should contain Contractor's suggested solutions to the situation. These suggestions should be in sufficient detail so that the City's Project Manager can make a prompt decision as to the best method of dealing with the problem and continuing the Project in an unimpeded fashion.
- 6.4 Dispute Resolution. Contractor shall cooperate with the City to ensure that all claims and controversies which arise during this Contract will be resolved as expeditiously as possible in accordance with the following resolution procedure:
- 6.4.1 Any dispute between the City and Contractor, including any dispute related to a party's scope of work that is not resolved after following the complaint procedure set forth in Exhibit B and Exhibit C, shall be resolved, if possible by the Project Manager or their designee on behalf of the City and the Executive Director on behalf of Contractor.
- 6.4.2 If the Project Manager or the Project Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to the Chief Administrative Officer on behalf of the City and the President & CEO on behalf of Contractor for resolution, if possible.
- 6.4.3 Should any dispute arise between the Parties concerning this Contract that is not resolved by mutual agreement above, it is agreed that such dispute will be submitted to mandatory mediated negotiation prior to any Party's commencing arbitration or litigation. In such an event, the Parties to this Contract agree to participate in good

faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by the Parties.

6.4.4 Should an equitable solution not result from the foregoing, the City and Contractor shall be free to pursue other remedies allowed under this Contract.

6.4.5 Unless ordered by the City to suspend performance of all or any portion of Contractor's Services or delivery of Goods, Contractor shall proceed with the performance of such Services or delivery of Goods without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute while having the right to withhold payments that are in dispute.

6.5 Remedies. The remedies provided in this Contract are cumulative, and may be exercised concurrently or separately. In the event of any Material Breach by Contractor, which Material Breach shall not have been cured as agreed to between the Parties, the City shall have the ability to pursue the City's rights at law or equity. The exercise of any one remedy shall not constitute an election of one remedy to the exclusion of any other.

6.6 Cost of Cover. In the event of termination of this Contract by the City due to a Material Breach by Contractor, then the City may complete the Project itself, by agreement with another contractor, or by a combination thereof. After termination, in the event the cost of completing the Project exceeds the amount the City would have paid Contractor to complete the Project under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.

SECTION 7 MISCELLANEOUS

7.1 Social Media. Contractor will manage social media pages in compliance with the City's Social Media Policy, HR 4.08A. <https://www.portlandoregon.gov/citycode/article/372781>

7.2 Video and Audio. Contractor will create video or audio in compliance with the Twenty-First Century Communications and Video Accessibility Act of 2010 and the City's Closed Captioning requirement ARC- BTS 3.04. <https://www.portlandoregon.gov/citycode/article/462666>

7.3 Websites. Any Contractor's Website created for the City must be compliant with ARC-BTS 3.02. <https://www.portlandoregon.gov/citycode/article/114337> Contractor shall ensure that the webpages comply with version 2.1 Level AA of the "Web Content

Accessibility Guidelines” published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C), or any subsequent version(s) that are published during the term of the Contract.

7.4 Transition from Previous Contract.

- 7.4.1 Given it is understood by both Parties that this contract contains significant changes compared to the previous contract between them, it is agreed that the Contractor will have two months from the Effective Date to implement all terms and conditions contained within the main body of the contract, and six months from the Effective Date to implement all terms and conditions contained within Exhibit B: Downtown Portland Enhanced Service District Annual Statement of Work.
- 7.4.2 Notwithstanding Section 7.4.1, the ESD Coordinator will have discretion to allow additional time (in excess of six months from the Effective Date) for Contractor to implement specific provisions of Exhibit B: Downtown Portland Enhanced Service District Annual Statement of Work. Contractor will submit a request for such additional time in writing to the ESD Coordinator. The writing will describe the terms and conditions of Exhibit B for which additional time for implementation is requested, the reason Contractor is requesting additional time, and the new date by which Contractor will comply with applicable terms and conditions of Exhibit B. The ESD Coordinator and Contractor will mutually agree in writing to the terms of any additional time for implementation.

SIGNATURE PAGE

Contractor represents that Contractor has had the opportunity to consult with its own independently selected attorney in the review of this Contract. Neither Party has relied upon any representations or statements made by the other Party that are not specifically set forth in this Contract.

This Contract constitutes the entire agreement between the City and Contractor and supersedes all prior and contemporaneous proposals and oral and written agreements, between the Parties on this subject, and any different or additional terms on a City purchase order or Contractor quotation or invoice.

The Parties agree that they may execute this Contract and any Amendments to this Contract, by electronic means, including the use of electronic signatures.

This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereby cause this Contract to be executed.

CONTRACTOR

 11/08/2021
Authorized Signature Date

MARK WELLS EXECUTIVE DIRECTOR
Printed Name and Title

Address: 121 SW SACMAN ST. STE 1440
PORTLAND, OR 97204

Phone: 503.552.6778

Email: mwells@portlandalliance.com

Contract Number: 30007911

Contract Title: Contract for Enhanced Service District Management Services for Downtown Portland
Enhanced Service District

CITY OF PORTLAND SIGNATURES

By: **Tom Rinehart** Digitally signed by Tom Rinehart
Date: 2021.11.09 09:13:47
-08'00'
Tom Rinehart, Chief Administrative Officer

Date: 11/9/21

By: **Biko Taylor** Digitally signed by Biko Taylor
Date: 2021.11.09 09:38:33
-08'00'
Biko Taylor, Chief Procurement Officer

Date: _____

By: **Ted Wheeler** Digitally signed by Ted Wheeler
Date: 2021.11.18 09:59:32
-08'00'
Mayor Ted Wheeler

Date: 11/18/21

Approved:

By: N/A
Office of City Auditor

Date: _____

Approved as to Form:

By: **Approved as to Form - L Law** Digitally signed by Approved as to
Form - L Law
Date: 2021.11.09 08:40:57 -08'00'
Office of City Attorney

Date: 11/9/21

Exhibit A
Downtown Portland Enhanced Service District

Downtown Services Program
Five Year Contract Budget and Annual Budget
October 1, 2021 – September 30, 2026

for the Contract

for Enhanced Service District Management Services
Between City of Portland and Clean & Safe, Inc.

1. Projected Five Year Contract Budget: \$33 Million

Year 1: October 1, 2021 – June 30, 2022:	\$4.82 Million
Year 2: July 1, 2022 – June 30, 2022:	\$6.36 Million
Year 3: July 1, 2023 – June 30, 2024:	\$6.51 Million
Year 4: July 1, 2024 – June 30, 2025:	\$6.68 Million
Year 5: July 1, 2025 – September 30, 2026:	\$8.37 Million

2. Year 1: October 1, 2021 - June 30, 2022 Annual Budget

To be provided by DC&S upon City Council approval of Exhibit B: Annual Statement of Work

Exhibit B
Statement of Work

DOWNTOWN PORTLAND ENHANCED SERVICE DISTRICT

ANNUAL STATEMENT OF WORK
October 1, 2021 – September 30, 2022

for the Contract

**for Enhanced Service District Management Services
Between City of Portland and Clean & Safe, Inc.**

The Clean & Safe, Inc. (“Clean & Safe”) Board of Directors shall oversee the Downtown Services Program, which performs services requested and funded by property owners and managers within the Downtown Enhanced Service District (“District”), and agreed to with the City of Portland (“City”). The Executive Director of Clean & Safe will supervise the Downtown Services Program. This Annual Statement of Work applies to services during the October 1, 2021 – September 30, 2022, District license year.

As described in further detail below, the Downtown Services Program operations will consist of:

- The Downtown Clean & Safe Program (public safety, janitorial, community health outreach, and Sidewalk Ambassadors);
- The Downtown Retail Development Program (retail retention and recruitment, market research, promotions, communications, and holiday lighting); and
- The Downtown Economic Development Program (business and economic development).

As described in further detail below, the Downtown Services Program will also perform city and community relations, and carry out all administrative duties in overseeing District services.

The Downtown Clean & Safe Program will provide the following services:

I. Enhanced Service Districts Evaluation. The Downtown Services Program will be a participant in the City’s process to evaluate governance and services within the Enhanced Service Districts, as recommended by the August 2020 audit by the City Auditor, through audit completion, and of the ongoing Enhanced Service District citywide program.

II. Public Safety Program

A. Downtown Clean & Safe Safety Coordinators (“DC&S Safety Coordinators”). DC&S Safety Coordinators shall patrol the areas within the District to achieve the following:

1. Provide a presence of public safety on the street and sidewalks within the District by walking foot beats and performing bicycle patrols to observe, report, and mitigate street disorder;
2. At the request of the Portland Police Bureau, engage in problem-solving to reduce the fear of crime and prevent street disorder;
3. Apply community policing and crime prevention strategies to identify stakeholders and focus efforts to help reduce street disorder;
4. Prepare and distribute public safety communications among businesses and organizations in the District; and
5. Provide information and wayfinding services to downtown users.

B. In performance of their duties, DC&S Safety Coordinators shall:

1. Provide a presence of safety in the areas within the District by conducting bicycle patrols and walking beats assigned by the Shift Supervisor based on reported areas of high rates of crimes and calls for service;
2. Attempt to stop criminal conduct and street disorder wherever possible by observing and reporting such conduct and disorder to the Portland Police Bureau;
3. Report criminal activities to the Portland Police Bureau, avoiding participation in arrests or criminal investigations except in an emergency; or when specifically requested or directed by Portland Police Bureau officers to assist.
4. Engage in problem-solving at the request of the Portland Police Bureau and community policing strategies;
5. Maintain a daily log and file incident reports;
6. Be either armed or unarmed Safety Coordinator, uniformed, and radio-equipped to communicate with Shift Supervisors, Portland Police Bureau officers and other public agencies as required;
 - i. At no time will more than 25% of total DC&S Safety Coordinators be armed;
7. Abide by Oregon State law and Department of Public Safety Standards and Training ("DPSST") certification standards applicable to private security; and,
 - i. Clean & Safe commits to working with the City of Portland Enhanced Service District Coordinator to examine the need for further training beyond DPSST certification standards, specifically in de-escalation techniques, mental health

crisis response, trauma informed care interventions, and social service safety net referrals.

8. Maintain communications and rapport with residents, businesses and organizations in the District.

C. The DC&S Safety Coordinators shall be under the direction of the following personnel:

1. Shift Supervisors. The Shift Supervisors shall be:
 - i. Assigned day-to-day responsibilities for the DC&S Safety Coordinators on duty;
 - ii. Responsible for scheduling, performance reports, continuing in-service training, crew and program evaluation, and disciplinary action;
 - iii. Armed or unarmed, uniformed and radio-equipped to communicate and allow contact with the Portland Police Bureau Clean & Safe Officers through the District communications center, as well as having access to a vehicle to facilitate quick response times for calls for service; and
 - iv. Full-time with salary based on a 40-hour work week.
2. Chief Operating Officer (COO). The COO shall:
 - i. Supervise the Shift Supervisors;
 - ii. Provide shift relief to the Shift Supervisors as necessary;
 - iii. Attend planning meetings with District personnel and other downtown stakeholders; and,
 - iv. Oversee the receipt and investigation of citizen complaints regarding DC&S Safety Coordinators in accordance with Section IX.I of this Contract.

D. Portland Police Bureau Clean & Safe Officers. The Portland Police Bureau Clean & Safe Officers shall provide a presence of safety within the District by:

1. Working bicycle patrols focused on areas of high reported calls for service and crime;
2. Working with and assisting DC&S Safety Coordinators and other Portland Police Bureau District Safety Coordinators to address public safety problems; and
3. Engaging in problem solving and community policing activities to enhance District crime and disorder prevention services; and,

4. Be armed, uniformed, and radio-equipped to communicate with Shift Supervisors, DC&S Safety Coordinators and other service agencies and work 40 hours per week.
- E. Supervision of the Portland Police Bureau Clean & Safe Officers will be coordinated between the Shift Supervisors and a Portland Police Bureau Sergeant designated by the Central Precinct Commander. Overall command of the Portland Police Bureau Clean & Safe Officers will always remain with the Portland Police Bureau.
- F. All Shift Supervisors and DC&S Safety Coordinators will wear appropriate uniforms with the Clean & Safe insignia that are clearly distinct from Portland Police Bureau officer uniforms, clearly visible nametags, and maintain a neat and clean appearance.
- G. All Shift Supervisors and DC&S Safety Coordinators will carry and distribute during interactions or upon request, business cards which include their name, their affiliation as a DC&S contracted employee, and directions on how to contact DC&S to request information, or file a complaint or commendation.
- H. Clean & Safe will contract to provide facilities for the Shift Supervisors, DC&S Safety Coordinators, and Portland Police Bureau Clean & Safe Officers, including lockers and dressing space, conference room, storage space, and office space.
- I. A Clean & Safe staff person shall be on duty to monitor the central dispatch, handle filing activities, input incidents and activity data, answer questions and route information to and from the public.
- J. Shift Supervisors shall also maintain direct contact with the District's Janitorial Supervisor to ensure the coordination of security and cleaning efforts.
- K. DC&S Safety Coordinators and Shift Supervisors shall be courteous and professional and conduct their duties in an appropriate manner so as to generate a positive image to the public.
- L. Operations of the Public Safety Program shall generally be carried out as follows:
 1. Day and evening (swing) work shifts will be scheduled Monday through Friday as follows:
 - i. Day shift shall include a Shift Supervisor and approximately seven (7) DC&S Safety Coordinators staggered in six (6) to eight (8) hour shifts; and
 - ii. Swing shift shall include a Shift Supervisor and approximately seven (7) DC&S Safety Coordinators staggered in six (6) to eight (8) hour shifts.

- iii. Relief shift of two (2) DC&S Safety Coordinators and a Shift Supervisor, Wednesday through Saturday.
- 2. Day and evening (swing) shifts will be scheduled on Saturday and Sunday as follows:
 - i. Day shift shall include a Shift Supervisor and approximately five (5) DC&S Safety Coordinators staggered in six (6) to eight (8) hour shifts;
 - ii. Swing shift shall include a Shift Supervisor and approximately four (4) DC&S Safety Coordinators staggered in six (6) to eight (8) hour shifts.
- 3. No shift will include more than fifteen (15) DC&S Safety Coordinators, including a Shift Supervisor.
 - i. In cases of special events or significant incidents, more than fifteen (15) DC&S Safety Coordinators can work a single shift if approved by the City of Portland Enhanced Service District Coordinator.
- 4. Four (4) contracted Portland Police Bureau Clean & Safe Officers will work four (4) ten- (10)-hour staggered shifts, Monday through Friday. It is understood that specific work assignments, shift schedule and patrol area are determined by Central Precinct command staff for each shift and patrol district based on factors including but not limited to number of calls for service within each police patrol district, the priority calls for service, time of day, day of week, geographic factors, planned or unplanned emergency events and other community public safety situations, and other law enforcement and public safety factors.

M. Patrol routes will be configured for more frequent coverage in areas of high pedestrian activity and high rates of calls for service and crime with varied deployment strategies during the two shifts or on selected days to reflect changes in pedestrian traffic, high rates of calls for service and crime, and special events. Portland Police Bureau & Multnomah County Administrative Support for Public Safety Program:

- 1. Multnomah County District Attorney Administrative Support.
 - i. Clean & Safe employs a Downtown District Attorney Administrative Aid ("DDA Aid"). The DDA Aid provides administrative support to the Multnomah County District Attorney's Office for its community services benefiting citizens and residents within the District.
 - ii. The DDA Aid position has no prosecution authority; it serves solely as an administrative resource for the Portland Police Bureau and a subject matter expert for the Multnomah County District Attorney.

- iii. Clean & Safe will continue to employ a DDA Aid through June 30, 2026. Clean & Safe will collaborate with the Multnomah County District Attorney in creating a plan to adequately fund support for community services and justice within the District by 2026.

2. Portland Police Bureau Positions.

- i. Clean & Safe funds four (4) Portland Police Bureau Clean & Safe Officers via a separate contract with the Portland Police Bureau. Contract No. 30002749 was last amended via Ordinance 188439 and expires June 30, 2022.
- ii. Clean & Safe and the City of Portland commit to collaborating towards the providing of adequately funded public safety personnel, programs, and initiatives in downtown over the next five years.
- iii. Clean & Safe and the City of Portland have the goal of rolling the separate contract between Portland Business Alliance and the Portland Police Bureau into the broader contract between Clean & Safe and the City of Portland when Contract No. 30002749 expires on June 30, 2022.

III. **Community Outreach and Community Health Services**

- A. Sidewalk Ambassadors. Sidewalk Ambassadors will be the first point of contact with members of the community for the Downtown Portland Clean & Safe's Healthy Sidewalk Program. Clean & Safe will make its best efforts to provide at least two (2) full time employee (FTE) Sidewalk Ambassadors, who in addition to providing community members with directions and wayfinding, will serve as the eyes and ears for the District's community safety and mental health services programs. Sidewalk Ambassadors shall:
 1. Be equipped with radio communication equipment and dispatched as an unarmed, first responder team, trained in behavioral health and on-scene medical assistance. Sidewalk Ambassadors shall be unarmed at all times;
 2. Provide quick and compassionate response by trauma-informed members trained in crisis management, emergency medicine, and behavioral health;
 3. Attempt to reduce the number of calls traditionally responded to by police and fire departments where criminal activity is not present;
 4. Facilitate community access to social services and agencies through a range of activities such as outreach, community education, informal counseling, social support, and advocacy;

5. Maintain a positive and trusting relationship with community members on the sidewalks and streets of Portland that is person-centered, strengths-based, and trauma-informed;
 6. Assist community members in need with identifying and engaging various community resources and alternatives to utilizing City of Portland emergency services for non-emergency needs, including using strategies to communicate with persons with limited English proficiency;
 7. Document support services in a program database in a manner that assures compliance with policies, program procedures, and local, state, and federal regulations. Maintain accurate and up-to-date documentation as required by program deliverables;
 8. Wear the uniform and insignias to identify them as Sidewalk Ambassadors with the Downtown Services Program and Clean & Safe distinct from uniforms worn by DC&S Safety Coordinators, maintain a neat and clean appearance, and conduct duties in an orderly manner with a high degree of courtesy and politeness; and,
 9. Report cleaning and safety issues in the District to appropriate personnel.
- B. Community Health Outreach Program. Clean & Safe will fund a Community Health Outreach Team of, and make its best efforts to retain, at least three (3) FTE, made up of at least two (2) Community Health Outreach Workers (CHOWs) and one (1) Program Coordinator. Clean & Safe will make its best efforts to ensure that at least one (1) CHOW will be a licensed mental health clinician. Clean & Safe and the City of Portland Enhanced Service District Program will review data on the community health needs of Downtown Portland annually to assess the need for changes to the size and scope of the Community Health Outreach Program. The team will:
1. Accompany Janitorial Workers in their routine patrols to pick up and dispose of trash at camps throughout the Downtown Portland area that have been identified by the Janitorial Program;
 2. Coordinate, through the Program Coordinator, for service calls to specific camps not part of routine patrols or if additional services are needed in specific camps;
 3. Work to build relationships and trust with individuals experiencing homelessness, and offer connection to medical, behavioral health, and mental health resources, depending on the individual's stated needs and interests;
 4. Conduct brief, informal assessments to determine which culturally-appropriate health services will best meet individual needs and assist individuals in connecting to those services. Connection assistance will include completion of

- intake processes in the field, transportation of individuals, accompanying individuals to initial appointments, and follow up with individuals to ensure that their goals and needs are met;
5. In the event that highly-vulnerable individuals are encountered in the course of outreach, CHOWs will work to connect those individuals with programs meant to address their vulnerability;
 6. While engaging in outreach, if a CHOW is harassed or threatened, the CHOW will immediately leave the area. The CHOW will return to the area once the CHOW feels it is safe or with police presence; and
 7. Clean & Safe commits to working with the City of Portland Enhanced Service District Coordinator to examine the need for specific additional training for CHOW personnel regarding de-escalation techniques, mental health crisis response, trauma informed care interventions, and social service safety net referrals.

IV. Janitorial Program

- A. Janitorial Workers. Clean & Safe shall provide Janitorial Workers. Janitorial Workers shall patrol the areas within the District to perform the following general cleaning services:
 1. Sweeping;
 2. Stain removal and pressure washing of all District blocks unless otherwise covered by alternative contracted cleaning services, (e.g. light rail/bus mall sidewalks);
 3. Debris and weed removal from sidewalks, tree wells, flowerpots, Portland Streetcar Stations, and other areas;
 4. General cleaning services, carried out at regular intervals by the Janitorial Workers based on the requirements of individual areas within the District in an effort to maintain a consistent cleanliness;
 5. Trash removal at Portland Streetcar stops within the District; and
 6. Specifically detailing one FTE Janitorial Worker to the transit mall to provide the in-kind services to Portland Mall Management, Inc. (PMMI) as agreed to between Portland Business Alliance (PBA) and PMMI.

- B. Special Projects Crew. Clean & Safe shall provide a Special Projects Crew. The Special Projects Crew shall:
1. Perform special cleaning jobs such as graffiti removal below eight (8) feet above street level, pressure washing sidewalks, and other concentrated cleaning assignments;
 2. Work ten (10) hour shifts, four (4) days a week with staggered starting times;
 3. Be equipped for communication with the Business Director, Business Manager, and Supervisors; and,
 4. Be equipped with a truck, pressure washer, detergents, brooms, brushes, ladders, tools, squeegees, buckets and other appropriate tools.
- C. Bicycle Janitors. Clean & Safe shall provide Bicycle Janitors. The Bicycle Janitor positions shall:
1. Be equipped for communication with the Business Director, Business Manager, and Supervisor;
 2. Work an eight (8) hour shift, Monday through Sunday;
 3. Ride a specially outfitted bicycle that is equipped with a 5-gallon water tank and cleaning tools; and
 4. Perform duties that include, but are not limited to, biohazard clean-ups such as removal of feces, urine, vomit, and needles;
- D. Clean & Safe will deploy a leased truck with a minimum of one cleaner/driver to pick up bagged garbage throughout the District.
- E. The Janitorial Workers, Bicycle Janitors, and Special Projects Crew shall be under the direction of the following personnel provided by Clean & Safe:
1. Business Director. The Business Director shall:
 - i. Be responsible for the overall performance of the Janitorial Program;
 - ii. Attend meetings with District employees and stakeholders;
 - iii. Be appropriately dressed and communications-equipped to allow contact at all times with the Janitorial Workers, Bicycle Janitors, and Special Projects Crew, as well as having access to a vehicle to facilitate quick response times for calls for service; and

- iv. Be a FTE with a salary based on a 40-hour week.
2. Business Manager. The Business Manager shall:
- i. Assign day-to-day responsibilities for the Janitorial Workers, Bicycle Janitors, and Special Projects Crew on duty;
 - ii. Be responsible for scheduling, performance reports, continuing in-service training, crew and program evaluation, and disciplinary action;
 - iii. Maintain and operate a community-based system for efficient reporting and tracking of janitorial needs in the District;
 - iv. Be appropriately dressed and communications-equipped to allow contact at all times with the Janitorial Workers, Bicycle Janitors, and Special Projects Crew, as well as have access to a vehicle to facilitate quick response times for calls for service; and
 - v. Be a FTE with a salary based on a 40-hour week.
3. Supervisor. The Supervisor shall:
- i. Supervise the Janitorial Workers, Bicycle Janitors, and the Special Projects Crew;
 - ii. Survey and monitor the District for quality control purposes; and
 - iii. Be a FTE with a salary based on a 40-hour week.
4. The Janitorial Program will primarily hire from the formerly homeless population within the District.
5. Clean & Safe will contract to provide facilities for the Janitorial Program staff, including a meeting and briefing room, locker room, restroom, and office space for supervisory personnel.
6. All Janitorial Workers, Bicycle Janitors, and Special Projects Crew members will wear uniforms and insignias to identify them as with Clean & Safe and the Downtown Services 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.
7. General Hours of Cleaning Services.
- i. Janitorial Workers and Bicycle Janitors – cleaning services will be from Monday through Sunday and each shift shall consist of approximately seven

(7) Janitorial Workers, including the Business Manager and Supervisor. Shifts will be eight (8) hours long. All of the management team shall be available either on-site or on-call.

- ii. Special Projects Crew – cleaning services will be from Monday through Sunday. Shifts will be ten (10) hours long. The morning shift will consist of four (4) Special Projects Crew members and the Business Manager and Supervisor, each of whom shall be available either on-site or on-call. The evening shift will consist of three (3) Special Projects Crew members, including the in-kind FTE as agreed between PBA and PMMI.

F. Crow Abatement.

- 1. When Clean & Safe deems necessary, Clean & Safe will contract with a falconry-based crow abatement program for a sustainable, natural, and non-lethal method of crow abatement in approximately 72 blocks of the central Downtown Portland core.
- 2. Crow Abatement runs from October through April to drive crows from the Downtown Portland core and to avoid crows congregating overnight in the central core and leaving an unsightly and unhygienic mess on the sidewalks, benches, parking meters, garbage receptacles, lamp posts, and parked vehicles of this area.
- 3. Clean & Safe will evaluate the effectiveness of the Crow Abatement program annually with the City of Portland Enhanced Service District Coordinator.

V. Downtown Retail Development Program: General Business Assistance, Recruitment and Retention

- A. The Downtown Retail Development Program will continue to develop and implement strategies to foster the vitality of downtown Portland by encouraging the retention and expansion of existing businesses with special emphasis on retail and restaurant businesses; attracting new businesses to locate within the District to enhance downtown's business mix and economic base; conducting promotions to drive shopping traffic to downtown; administering the holiday lighting program; and providing financial and tactical support to the Portland Business Alliance's Downtown Marketing Initiative and the Downtown Retail Advocate.
- B. The Downtown Retail Development Program will include:
 - 1. Work with the Downtown Retail Council, the City, Prosper Portland, the Downtown Retail Advocate, the Downtown Marketing Initiative, Travel Portland and other community partners to implement action items encouraging retail

- development, retention and recruitment as outlined in the 2009 Downtown Retail Strategy, as it may be updated;
2. On-going, regular analysis of existing office and retail data to continue programs for identifying opportunities for business recruitment, expansion, and retention;
 3. Regular contact with the brokerage community to identify opportunities to assist in business recruitment and retention efforts; and
 4. Problem resolution and technical assistance for office and retail tenants.
- C. The Downtown Retail Development Program shall coordinate office and retail business development services activities. These activities may include:
1. Promote a healthy downtown retail climate, while promoting a diverse mix of local retailers and high-end profile national chains and department stores;
 2. Downtown Retail Strategy plan implementation;
 3. Preparation of regular and on-going updates regarding office and retail business development activities and their status related to the Downtown Retail Development Program for presentation to the Downtown Retail Council and Clean & Safe Board of Directors;
 4. Broker and property owner/manager roundtables as needed in coordination with Prosper Portland and the Downtown Retail Advocate;
 5. Assisting the Downtown Retail Advocate and the brokerage community in downtown retail recruitment efforts through national programs; and,
 6. Coordination with other District service areas as appropriate to support business development needs, particularly in the area of crime prevention and public policy/advocacy.
- D. The Downtown Retail Development Program shall coordinate sponsorships, cross-promotions, negotiated media placement, cooperative marketing efforts and other budget leveraging activities with the Downtown Marketing Initiative to both extend and compliment the expenditure of District funds for marketing retail and downtown vitality.
- E. The Downtown Retail Development Program shall perform communications functions for the District utilizing electronic and print collateral, as well as social media designed to generate awareness of the Downtown Services Program and increase utilization of those services.

- F. The Downtown Retail Development Program shall administer all phases of the holiday lighting program, which attracts visitors to the District during the holiday season, stimulates downtown business activity, and enhances the overall cleanliness and safety of downtown Portland. The program will be active from approximately November 1 through the end of February and will light approximately 725 trees.
- G. Coordinate additional sidewalk amenities including wayfinding, banners, garbage cans, newsracks, etc. to support clean and organized public spaces.

VI. Downtown Economic Development Program

- A. The Downtown Economic Development Program will continue to develop and implement strategies to foster the vitality of downtown Portland by participating in task forces and committees that advocate for economic development for Portland's Central City retail, office and housing development (such as Stakeholder Advisory Committees of Prosper Portland, neighborhood advocacy committees, and the Old Town/Chinatown Business Committee) as well as staffing of the Portland Business Alliance's Central City Standing Committee and related task forces;
- B. The Downtown Economic Development Program will include:
 - 1. Conducting market research to develop an understanding of the Central City market and drive economic development, marketing, and retail efforts;
 - 2. Working with government entities to overcome identified obstacles to business development; and
 - 3. Identifying business climate issues and performing program advocacy to mitigate these issues and promote a positive business environment.
- C. The Downtown Economic Development Program shall coordinate office and retail business development services activities. These activities may include:
 - 1. Conducting an annual survey of downtown businesses to determine their expansion, contraction, or relocation plans and to identify factors considered obstacles or enhancements to conducting business downtown;
 - 2. Conducting research of the Central City parking inventory, hotel density and property descriptions for use by investors and developers;
 - 3. Using technological and manual methods, tracking over time pedestrians at key downtown locations in the District to determine foot traffic patterns and assist the brokerage community with locating appropriate street-level retail opportunities for their clients; and

4. Preparing the annual Development-Redevelopment Report chronicling construction activities within the I-5/I-405 loop.

VII. City & Community Relations

- A. Clean & Safe will maintain a collaborative working relationship with the City to promote a clean and welcoming environment for all members of the community, along with a healthy and accessible business climate.
- B. Clean & Safe will proactively maintain strong collaborative relationships with diverse downtown stakeholders to promote frequent and consistent input into the Downtown Services Program provided by:
 1. Collaborating with the City of Portland Enhanced Service District Coordinator and other City officials to work with downtown stakeholders, including BIPOC, houseless, and other historically underserved and marginalized communities, through committees, task forces, and other outreach to ensure consistent input from impacted communities;
 2. Analyzing public policy initiatives by the City and other local governments to measure and communicate their impact on downtown;
 3. Coordinating Clean & Safe's ongoing participation in the maintenance and improvement of the City of Portland Downtown Enhanced Service District Program and related policies, such as and including the healthy business toolkit program;
 4. Preparing regular and on-going updates regarding policy initiatives related to downtown Portland and the District for the Clean & Safe Board of Directors;
 5. Assisting the City with maintaining consistent input from downtown Portland stakeholders; and,
 6. Ensuring that Clean & Safe meets all of its periodic disclosure requirements to the City.

VIII. Administration, Transparency, and Accountability

- A. Clean & Safe shall employ personnel or retain contractors to provide all management and carry out all administrative duties necessary in overseeing the Downtown Services Program.
- B. The Clean & Safe Board of Directors shall be responsible for employing or contracting for personnel necessary to carry out the Downtown Services Program and for making determinations regarding qualifications and experience.

- C. The Clean & Safe Board of Directors shall provide funds for adequate operating facilities including telephones, printing, and delivery services necessary to enable required personnel to be efficient and operate in a professional manner.
- D. Clean & Safe shall establish a financial management system that allows the tracking and documentation of all expenses incurred in carrying out the Downtown Services Program including:
 - 1. A chart of accounts to provide for the proper financial statement classification of payments made in the performance of the services related to the Downtown Services Program;
 - 2. A system of authorizing contracts for subcontracted services that will include the maintenance of invoices and other documents to substantiate the nature of, delivery 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 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 that include information about the Downtown Services Program including budget versus actual comparisons; and,
 - 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 Clean & Safe (which includes the reporting for the District) for the year then ended.
- E. Clean & Safe agrees to partially fund the City of Portland Enhanced Service District Coordinator position during City of Portland fiscal years 2021-22 and 2022-23, totaling \$96,188 over the two years.
 - 1. Clean & Safe and the City of Portland agree to work with the other enhanced service districts to develop an ongoing funding model for this position prior to the end of fiscal year 2022-23 on June 30, 2023.
- F. Clean & Safe will provide quarterly financial statements to the City of Portland Enhanced Service District Coordinator.
 - 1. The City of Portland Enhanced Service District Coordinator will be given access to Clean & Safe financial records and contracts upon request.

- G. Clean & Safe will conduct a third party financial and contracting audit each year by an agreed upon third party and provide results of the audit to the City of Portland Enhanced Service District Coordinator.
- H. Clean & Safe will provide a monthly report on the public safety and community health programs to the City of Portland Enhanced Service District Coordinator, which will include;
 - 1. Safety Coordinator, Sidewalk Ambassador, and Community Health Outreach Program calls for service by category, interactions with the public, and number of referrals to Portland Police Bureau, Portland Fire and Rescue, and other relevant public or private organizations;
 - 2. List of complaints and commendations received regarding activities of Safety Coordinators, including summaries of any investigations and findings related to said complaints; and
 - 3. Uses of force by or against Safety Coordinators.
- I. Clean & Safe will put information on how to file a commendation or complaint regarding the activities of DC&S Safety Coordinators in an easily accessible place on the organization's website. This will include:
 - 1. Information on how to file a complaint with Clean & Safe; and
 - 2. Information on how to file a complaint directly with DPSST.
- J. Upon receipt of a citizen complaint regarding DC&S Safety Coordinators, the COO will perform an investigation that will include interviews of complainant, witness(es), and involved personnel of the vendor retained by Clean & Safe to perform the Public Safety Program (including involved DC&S Safety Coordinators). The COO will make a finding upon completion of the investigation and if allegations are sustained, will articulate plans to remediate (such as policy changes, trainings, etc.). If the COO finds that the DC&S Safety Coordinator committed violations of applicable DPSST standards or laws, the COO will recommend that a complaint be filed with DPSST. On a monthly basis, the COO will send a summary report of citizen complaints and results of the corresponding investigations to the Executive Director of Clean & Safe, who will forward a copy to the Commissioner in Charge of the Portland Police Bureau and the City of Portland Enhanced Service District Coordinator.
 - 1. The Commissioner in the Charge of the Portland Police Bureau and the City of Portland Enhanced Service District Coordinator reserve the right to review investigations, file complaints with the DPSST, or recommend the remediation or removal of a DC&S Safety Coordinator.

- K. Clean & Safe will provide a monthly report on the janitorial program to the City of Portland Enhanced Service District Coordinator.
- L. Clean & Safe will provide an annual report to the City of Portland Enhanced Service District Coordinator, make the report publicly available, and present the report to City Council at least once per fiscal year. This annual report will include:
 - 1. Financial information such as a statement of financial position, statement of activities, statement of functional expenses, and statement of cash flows;
 - 2. Descriptions of programs, including relevant statistics to aid in highlighting each program's scope and effectiveness;
 - 3. Descriptions of activities related to stakeholder outreach and engagement;
 - 4. List of firms and organizations contracted with and for what purpose; and
 - 5. Information as agreed upon by Clean & Safe and the City of Portland Enhanced Service District Coordinator.
- M. Downtown Clean & Safe and the City of Portland may submit a concern or complaint about each party's service commitments detailed in their respective scopes of work. Concerns or complaints must be sent, in writing, to the City of Portland Enhanced Service District Coordinator. Upon receipt, the City of Portland Enhanced Service District Coordinator will have fifteen (15) business days to review and formally respond. In the event of a written complaint, both parties agree to work with the City of Portland Enhanced Service Districts Coordinator to reach a joint resolution based on the scopes of work.
- N. Clean & Safe will follow and comply with the City of Portland Sustainable Procurement Policy.
- O. The City of Portland Enhanced Service District Coordinator will serve as an ex-officio non-voting member of the Clean & Safe Board of Directors.

Exhibit C
City Services

Annual Maintenance Services in Support of Contractor
October 1, 2021 – September 30, 2022

for the Contract

for Enhanced Service District Management Services
Between City of Portland and Clean & Safe, Inc.

Except as otherwise provided in this Contract, and within the limitation imposed by the City Charter and Oregon Law, and subject to annual City fiscal year budget availability, during the October 1, 2021 – September 30, 2022 District license year, the City will strive to maintain public services with the District at the following activity levels:

I. Basic Services

- A. Public Trash Cans. The level of collection and maintenance provided by the Bureau of Planning as of October 1, 2021. This includes:
 - 1. Daily trash can collection 7 days per week.
 - 2. Maintenance and graffiti removal as needed.
- B. Graffiti Abatement. Housed in the Office of Community & Civic Life, can be contacted by property owners and/or Downtown Clean & Safe staff for graffiti removal on the following private property locations:
 - 1. Locations above 8 feet from the street.
 - 2. Murals on private property.
 - 3. Sensitive or porous surfaces requiring pressure washing.
 - 4. The City of Portland's Graffiti Program does not guarantee graffiti removal assistance for all circumstances and locations.
- C. Streets and Right-of-Way. The level of maintenance provided by the Portland Bureau of Transportation (PBOT) as of October 1, 2021. This includes:

1. Maintenance of PBOT assets including street resurfacing, signage, signals/ signal cabinets, striping, paving, crosswalks, bike lanes, light poles, parking meters, and public garages.
 2. Aterial street sweeping three times per week in the summer, five times per week in the fall at a time frame to be agreed upon between the City and Downtown Clean & Safe, and once every other week the remainder of the year.
- D. Parks. The level of maintenance provided by the Portland Parks and Recreation (PPR) as of October 1, 2021. This includes:
1. Regarding City PPR property within the Downtown Clean & Safe District: daily maintenance encompassing ground litter pick up, trash receptacle changed twice per day, irrigation repairs and tune ups as needed, and landscape maintenance.
 2. Maintenance to 302 planters on SW Yamhill Street, SW Morrison Street, SW 5th Avenue and SW 6th Avenue.
 3. Maintenance to 41 planters on SW Ankeny Street.
 4. Maintenance for The Source Fountain, Pettygrove Fountain, Lovejoy Fountain, Ira Keller Fountain, Director Park Fountain, Jamison Square Fountain, Salmon Springs Fountain, Skidmore Fountain, and 4 Ponds in South Waterfront.
- E. Water Bureau. The level of maintenance provided by the Portland Water Bureau as of October 1, 2021. This includes:
1. Cleaning and maintenance to the 125+ Bensn Bubblers on a two-week rotation.
- F. Public Safety. The level of service provided by the Portland Police Bureau as of October 1, 2021 which is assigned and adjusted by the Central Precinct command staff for each shift and patrol district based on such factors as the number of calls for service within each police patrol district, the priority calls for service, time of day, day of week, geographical factors, and other factors. Additionally, the City will provide the services set forth in the Clean & Safe Sceop of Work, Sections II.D – K, for Portland Police Bureau Clean & Safe Officers.
- G. Portland Streetcar. The level of maintenance provided by the Portland Streetcar as of October 1, 2021. This includes:
1. Providing graffiti removal and power-washing of Portland Streetcar stations within the Downtown Clean & Safe District area monthly in exchange for Clean & Safe providing regular trash removal at Portland Streetcar stations within the District.

II. Reporting and Disputes of Service

- A. The City will provide to Clean & Safe periodic reports documenting the services provided under an in accordance with this Exhibit C on a schedule to be agree upon between Clean & Safe and the City.
- B. Downtown Clean & Safe and the City of Portland may submit a concern or complaint about each party's service commitments detailed in their respective scopes of work.
 - 1. Concerns or complaints must be sent, in writing, to the City of Portland Enhanced Service District Coordinator.
 - 2. Upon receipt, the City of Portland Enhanced Service District Coordinator will have fifteen (15) business days to review and formally respond.
 - 3. In the event of a written complaint, both parties agree to work with the City of Portland Enhanced Service District Coordinator to reach a joint resolution based on the scopes of work.
- C. The City may change the levels of services required by this exhibit in in the event of unusual fiscal or other emergency conditions. The City Council has 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 will refer the proposed changes as expeditiously as is reasonable to Clean & Safe for its review and comment. If the City makes such a change, Clean & Safe has the right to change or adjust services it provides under this Contract as appropriate to respond to the City changes, so that a coherent and rational set of services is provided within the District. Such changes will be accomplished through an amended Downtown Clean & Safe Annual Statement of Work (Exhibit B to the Contract), to be submitted to the City for review, comment, and approval.

Exhibit D
City Services

License Fee Administration Services in Support of Contractor
October 1, 2021 – September 30, 2026

for the Contract

for Enhanced Service District Management Services
Between City of Portland and Clean & Safe, Inc.

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. Clean & Safe will provide assistance on 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 Clean & Safe and the City.
2. Customer Service. Clean & Safe, in providing assistance to the Division, will practice good customer service in relation to license fee payers. Clean & Safe 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 Clean & Safe) and enter them to the License Fee fund maintained by the City. If Clean & Safe 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 Clean & Safe regarding appeals. If the Division provides Clean & Safe with a copy of an appeal but does not receive comments from Clean & Safe within 7 days of the Division's providing the copy, the Division is deemed to have fulfilled its consultation responsibilities under this subsection. Clean & Safe will provide timely responses to Division requests for information needed to decide appeals and for comments on appeals.
5. Collections and Collection Litigation Costs
 - 5.1. Collections. Clean & Safe will monitor payments and encourage Clean & Safe 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.

- 5.2. Collection Litigation Costs. City costs related to District License Fee collection litigation will be billed separately to Clean & Safe and will be payable and deducted from the next disbursement of funds to Clean & Safe, 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 Clean & Safe, will provide written documentation of any amount so billed, payable, and deducted. The term "City costs" as used in this subsection means:
- 5.2.1. City costs and disbursements as defined in ORCP 68(A)(2);
 - 5.2.2. 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
 - 5.2.3. 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 Clean & Safe District Services, the Division will notify of those comments as soon as is reasonably possible. The Division may notify by telephone, electronic mail, or otherwise. Clean & Safe must reasonably attempt to resolve all service-related problems and inform the Division of its efforts at resolution.
7. Divisions Administration Costs:
- 7.1. The City will provide collection services to Clean & Safe for a fee of 2% of the total District License Fee billings for License years beginning on or after October 1, 2021. 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 Clean & Safe 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 Clean & Safe. The City will deduct its fees from the License Fees collected. The deduction will coincide with each of the two annual disbursement cycles.
 - 7.2. The 2% collection services fee under subsection 1.1.7.1 will be charged against "seasonal lighting" revenues as defined in City Code Section 6.06.215(A) and against those License Fee revenues that are not "seasonal lighting" revenues in proportion to the relative amounts of those revenues. (For example, if the billings for "seasonal lighting" revenues are \$500,000 and the billings for revenues that are not "seasonal lighting" revenues are \$3,000,000 in a license year, then \$5,000 of the collections services fee will be charged against the "seasonal lighting" revenues and \$30,000 will be charged against revenues that are not "seasonal lighting" revenues).

- 7.3. In addition to the 2% fee in subsection 7.1 above, an allocation of direct overhead charges will be deducted to arrive at the net License Fee revenues payable to Clean & Safe. Direct overhead charges include, but may not be limited to, General Fund Overhead (GFOH) charge and Enterprise Business System (EBS) services.
8. Division's Other Costs. Other costs for work provided by the Revenue Division to Clean & Safe not directly related to collection services outlined in subsections 5 (Collection Litigation Costs) and 7 (Division's Administration Costs), must be agreed upon in advance by the Division and Clean & Safe. Those costs will be billed to Clean & Safe separately, and they will be payable and deducted from the next Division disbursement of funds to Clean & Safe. Division's Administrative Costs are different than Collection Litigation Costs.