

**Agreement for  
Lloyd Business District  
Management Services**

This Agreement for Lloyd Business District Management Services (Agreement) is between the City of Portland, Oregon (City), and Lloyd B.I.D., Inc. (Lloyd BID), an Oregon non-profit corporation.

RECITALS:

a. Under Chapter 6.06 of the City Code, the City established a business property management license fee (License Fee) within the Lloyd Business District, referred to herein as the District. The purpose of the License Fee is to provide revenues to fund supplemental transportation management, District Attorney prosecution, Fareless Square transit, and job development, marketing, and economic development services within the District. On August 30, 2000, pursuant to amendments to Chapter 6.06 adopted under Ordinance No. 174840, the City deferred the starting date for the Lloyd Business District to February 1, 2001.

b. Lloyd BID represents the owners and managers of a large portion of property within the District. Lloyd BID initiated the establishment of the License Fee and has identified the services recommended to be funded by the License fee. Lloyd BID also represents the business property managers who will be responsible for paying most of the License Fee revenues.

c. Given Lloyd BID's position in relation to the District and the License Fee revenues, Lloyd BID is uniquely qualified to manage the provision of the District's services, and there is no other potential provider that is so qualified. It therefore is appropriate for the City to contract with Lloyd BID for the provision of the services; and Lloyd BID is willing to contract to provide the services.

AGREEMENT:

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

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

i. Providing District prosecutor services, through an agreement with the Multnomah County District Attorney.

- ii. Providing transportation management services, through an agreement with the Lloyd District Transportation Management Association.
- iii. Participating in providing transit services, either through an agreement with Tri-Met for a Fareless Square extension to the District or through an agreement with the Lloyd District Transportation Management Association under which the Association will enter into such an agreement with Tri-Met.
- iv. Providing District job development, marketing, and economic development services.
- v. Administering District services, including letting and administering subcontracts for District services, preparing budgets for services, and undertaking any other tasks that are necessary to carry out the District services.

Notwithstanding any other provisions of this Agreement, “services” and “District Services” shall include only services for which public funds may be used under Oregon law.

B. Task Force. As used herein, “Task Force” means a committee whose membership consists of representatives of those City offices, bureaus, and commissions that have a significant interest in the Lloyd Business District, as determined and appointed by the Mayor of the City, and a representative appointed by Lloyd BID.

2. **Lloyd BID Obligations**. Lloyd BID’s obligations hereunder shall be as follows:

A. Provide Services. Manage and provide all District services during annual periods, from February 1 through the succeeding January 31.

B. Budget. Provide to the City for review, comment, and approval a proposed summary of District services and budget (Work Scope and Budget) for the next annual period’s services, to be provided on or before the January 1 proceeding each annual period. In any annual period, Lloyd BID may transfer amounts among budget categories within the overall City-approved budget in order to perform the approved Work Scope, but Lloyd BID shall not increase the amount budgeted within the overall City-approved budget for Lloyd BID’s administration of District services by more than \$1,000 during any annual period without the prior written approval of the Task Force. Lloyd BID shall be responsible for providing District services under this Agreement only to the extent that

the City provides funding to Lloyd that covers the cost to Lloyd BID of the services.

C. Verification of Expenditures. On or before the April 1 following the end of each annual period, obtain and provide to the City a written certification from each of Lloyd BID's subcontractors performing District services paid for by Lloyd BID with funds it receives from the City under this Agreement, identifying the nature of the work performed by the subcontractor and the amount paid by Lloyd BID to the subcontractor for the work during the applicable annual period; and provide to the City copies of all checks issued by Lloyd BID representing payments made from funds it received from the City under this Agreement during the applicable annual period.

D. Subcontracts. Let and administer subcontracts for District services. In all subcontracting, Lloyd BID shall follow competitive bidding procedures unless Lloyd BID has documented that it is necessary or desirable to award a subcontract on a negotiated basis in order to assure the provision of adequate services at the most advantageous cost. Lloyd BID shall provide a copy of all subcontracts for District services to the City Attorney for review and approval for compliance with section 2(J) of this Agreement.

E. Indemnification. Hold harmless, defend, and indemnify the City and the City's officers, agents, and employees against all claims, demands, actions, and suits (including all attorney fees and costs) brought against any of them arising from Lloyd BID's work or the work of any subcontractors under this Agreement and against any improper use of District funds by employees or agents of Lloyd BID with the responsibility for handling the funds.

F. Liability Insurance.

- i. Maintain public liability and property damage insurance that protects Lloyd BID, and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from Lloyd BID's work under this Agreement. The insurance shall provide coverage of not less than \$200,000 for personal injury to each person; \$50,000 for property damage to each person; and \$1,000,000 for each occurrence; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to the maximum limits of liability

imposed on municipalities of the State of Oregon during the term of this Agreement. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees.

Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. Lloyd BID shall maintain continuous uninterrupted coverage for the duration of the Agreement. If the insurance is canceled or terminated prior to completion of this Agreement, Lloyd BID agrees to provide a new policy with the same terms. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Lloyd BID.

- ii. Maintain on file with the City Auditor a certificate of insurance certifying the coverage required under this subsection (F). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause of the immediate termination of this Agreement by the City.

G. Workers' Compensation. If Lloyd BID employs personnel, provide and maintain continuous workers' compensation insurance coverage throughout the term of this Agreement for all of its employees either as a carrier-insured employer or as a self-insured employer, as provided by ORS Chapter 656. In that event, Lloyd BID shall provide a certificate of insurance, of a copy thereof, to the City Auditor prior to this Agreement becoming effective. The adequacy of the insurance shall be subject to the approval of the City attorney.

H. Independent Contractor Status. Provide services under this Agreement as an independent contractor and be responsible for any federal, state, and local taxes and fees applicable to Lloyd BID. Lloyd BID employees and subcontractors are not City employees and shall not be eligible for any benefits provided through the City including without limitation social security, health, workers' compensation, unemployment compensation, and retirement benefits.

I. Subcontract Requirements.

- i. All subcontracts shall require that the subcontractors maintain public liability and property damage insurance that protects the subcontractor and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the subcontractor's work under the subcontract. The insurance shall provide coverage of not less than \$200,000 for personal injury to each person; \$50,000 for property damage to each person; and \$1,000,000 for each occurrence; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the subcontract. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable of only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor.

- ii. Each subcontract shall require the subcontractor to maintain continuous uninterrupted coverage for the duration of the subcontract. The subcontract shall require the subcontractor to provide a new policy with the same terms, if the insurance is canceled or terminated prior to the completion of the subcontract.
- iii. The subcontractor insurance required hereunder shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the subcontractor.
- iv. All subcontracts shall require subcontractors to provide and maintain workers' compensation insurance and to provide to Lloyd BID and the City Auditor certificates of insurance, or copies thereof, as provided in subsection (G) of this section.
- v. In lieu of the insurance described herein, subcontractors may provide equivalent insurance, if approved by the City Attorney.
- vi. All subcontracts shall require subcontractors to maintain compliance with Chapter 3.100 of the City Code.
- vii. All subcontracts shall require subcontractors to comply with the City's Fair Wage Policy established by City Ordinance No. 170222 as amended and renewed from time to time, to the extent that policy is applicable to work performed under the subcontract.

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

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

L. Fair Wage Policy. Maintain compliance with the City's Fair Wage Policy established by City Ordinance No. 170222 as amended and renewed from time to time, to the extent that policy is applicable to work performed under this Agreement.

M. Compliance with Laws. In connection with its activities under this Agreement, Lloyd BID shall comply with all applicable federal, state, and local laws and regulations.

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

A. Budget and Audit.

- i. Review, comment on, and approve as appropriate, on or before February 1 of each annual period, the proposed Work Scope and Budget provided by Lloyd BID under section 2(B) for that annual period. Monitor the use by Lloyd BID of District funds through the review of the verification of expenditures provided by Lloyd BID under section 2(C) for each annual period and through such other reviews as the City deems appropriate.
- ii. If it so chooses, either directly or through a designated representative, conduct financial, and performance audits of the uses of funds and services specified in this Agreement, at any time during the term of the Agreement and during the three (3) year period described in section 2(K). Audits shall be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office. If an audit determines that payments to Lloyd BID were in excess of the costs of District services, the Lloyd BID shall repay the amount of the excess to the City, with the amount of any repayment to be used to provide District services.

B. Compensation to Lloyd BID. Pay to Lloyd BID all net License Fee revenues, provided that the City first has approved the Work Scope and Budget for the applicable annual period pursuant to section 3(A) of this Agreement. The City shall make payment to Lloyd BID of such net License Fee revenues as soon following the close of each City accounting period as the amount thereof

received during the accounting period has been determined, and the City may make advance payments during any accounting period if the City's Director of the Revenue Bureau determines that sufficient funds have been received to make advance payments. Notwithstanding the aforementioned, the City shall retain a continuing balance of \$5,000 for payments or refunds due to District License Fee payers, to be paid to Lloyd BID for the provision of District services, at such time that the City determines that the retainage no longer is needed. As used in this Agreement, "net License Fee revenues" means all License Fees, penalties, and interest, and any interest earned thereon, less amounts otherwise retained by the City under a separate agreement between Lloyd BID and the City as the City's fee to cover its costs of collecting the License Fee, and less the \$5,000 continuing balance retained for payments or refunds to District License Fee payers as provided on this section.

4. **Challenges to District Business Property Management License Fee.**

The parties acknowledge that there may be uncertainties regarding the District License Fee due to potential challenges to it under Article XI, sections 11 and 11b of the Oregon Constitution and other provisions of law, and that it is necessary to minimize any financial risk to the City from such challenges. To minimize this risk, in the event of a challenge asserting that the License Fee is invalid or otherwise unenforceable or subject to limitation, then the following provisions shall apply:

A. The City may suspend its payments to Lloyd BID hereunder pending negotiation of amendments hereto that will assure the City's financial risk is minimized and, if the outcome of the challenge is unfavorable, the City may apply any net License Fee revenues held by the City to such repayments to License Fee payers as are appropriate.

B. Lloyd BID shall defend the City and the City's officers, agents, and employees against any challenge alleging that the License Fee is invalid or otherwise unenforceable or subject to limitation (including the payment of all attorney fees and costs), and shall hold harmless and indemnify the City and the City's officers, agents, and employees from any monetary claims, damages, refund obligations, or other payments they must make arising out of such a challenge. Lloyd BID shall consult and cooperate with the City in conducting a defense of the License Fee, and the City shall cooperate in their conduct of the defense.



Notwithstanding any other provision of this Agreement, Lloyd BID may use any net License Fee revenues Lloyd BID receives under section 3(C) of this Agreement to satisfy the hold harmless, defense, and indemnification obligations established by this section or by section 2(E) before using the funds to provide other services under this Agreement; and

C. The City may require that Lloyd BID 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.

#### **5. Term and Termination.**

A. Term. The term of this Agreement shall be from February 1, 2011 through January 31, 2016. Lloyd BID and the Task Force may recommend to the City Council extension of the termination date in order to allow Lloyd BID expenditure of remaining District funds for District services in the event all District funds are not received and spent by January 31, 2016.

B. Termination by Mutual Agreement. The City and Lloyd BID, by mutual agreement, may terminate this Agreement at any time.

C. Unilateral Termination. The City or Lloyd BID may terminate this Agreement, for any reason deemed appropriate in its sole discretion, effective on delivery to the other party of 30 days prior written notice of termination. Following the termination, Lloyd BID as expeditiously as is reasonably possible shall terminate its services hereunder, pay all obligations and costs of administration incurred hereunder, and return all remaining License Fee funds to the City.

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

administration incurred hereunder, and return all remaining License Fee funds to the City.

6. **Remedies.** The remedy of termination under section 5(D) shall be the only remedy for breach of this Agreement by either party.

7. **Oregon Laws and Forum.** This Agreement shall be construed in accord with the laws of the State of Oregon. Any litigation between the Bureau and Lloyd BID arising under this Agreement or out of work performed under this Agreement 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.

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

9. **Amendments.** The parties may amend this Agreement, including Exhibit 1 (district Map) and Exhibit 2 (Work Scope and Budget), at any time only by written amendment executed by duly authorized representatives of the City and Lloyd BID. Any amendment to this Agreement that increases the compensation payable to Lloyd BID must be approved by ordinance adopted by the City Council to be valid.

10. **Representatives of Parties.** The City Project Manager shall be the Chief Administrative Officer of the Office of Management and Finance or such other person as shall be designated by the Chief Administrative Officer. The Lloyd BID Project Manager shall be the Chairperson of Lloyd BID or such person as shall be designated by the President. The Project Managers are authorized to give notice, terminate this Agreement, and take any other actions referred to herein on behalf of their respective parties, except as otherwise specifically provided herein.

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

If to the City: Revenue Bureau  
111 SW Columbia St, #600  
Portland, OR 97201

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

12. **Integration.** This Agreement replaces in their entirety the previous Agreement for Services between Lloyd BID and the City of Portland.

Dated: \_\_\_\_\_, 2011.

City of Portland

By: \_\_\_\_\_  
Chief Administrative Officer

APPROVED AS TO FORM

APPROVED AS TO FORM

*Sandra Menzies*  
\_\_\_\_\_  
CITY ATTORNEY

SUBJECT TO INSURANCE APPROVAL

LLOYD B.I.D., INC.

By: \_\_\_\_\_

\_\_\_\_\_  
President

AGREEMENT FOR COLLECTION SERVICES

This Agreement regarding License Fee administration services (Agreement) is between the City of Portland, Oregon, ("City") and LLOYD B.I.D., Inc. ("LLOYD BID").

**RECITALS:**

1. Business property owners and managers in the Lloyd district area have formed the LLOYD BID. Portland City Code (PCC) Chapter 6.06 was amended to establish a business property management license fee for the Lloyd Business District similar to the Downtown Business District. The Lloyd Business District is that area within the boundaries formed by the Willamette River, from the Broadway Bridge to the point just south of the Oregon Convention Center at which NE Lloyd Boulevard reaches the River; NE Lloyd Boulevard, from the Willamette River to NE 16<sup>th</sup> Avenue; NE 16<sup>th</sup> Avenue curving into NE 15<sup>th</sup> Avenue, from NE Lloyd Boulevard to NE Halsey Street; NE Halsey Street, from NE 15<sup>th</sup> Avenue to NE Grand Avenue; NE Grand Avenue, from NE Halsey Street to NE Broadway; and NE Broadway, from NE Grand Avenue to the Willamette River.

2. LLOYD BID has provided the Bureau with district license fee administrative services since the formation of the Lloyd Business District. The services provided by LLOYD BID are part of a unique program that LLOYD BID has developed and provided, and there is no other potential provider of the services with the experience, expertise, and capability of LLOYD BID and with LLOYD BID's status as representative of license fee payers within the Lloyd Business District. It therefore is appropriate for the City to contract with LLOYD BID for the provision of these services; and LLOYD BID is willing to contract to provide the services.

3. Under the Bureau's authority in PCC Chapter 6.06 to collect Property Management License Fees, the City enters into this Agreement with LLOYD BID regarding fee administration services, including fee calculations, collections, enforcement and appeals.

**AGREEMENT:**

1. DEFINITIONS

(a) 'OMF' means the Office of Management and Finance of the City of Portland, along with its officers, employees, and agents.

(b) 'Bureau' means the Revenue Bureau of the City of Portland, along with its officers, employees and agents.

(c) 'LLOYD BID' means LLOYD B.I.D., Inc. established by PCC Chapter 6.06.

(d) 'TMA' means the Lloyd District Transportation Management Association.

(e) 'License Fee' means the property management license fee for the Lloyd Business District as established by Chapter 6.06.

2. SCOPE OF CITY SERVICES

(a) The Revenue Bureau shall provide collection services specifically as set out below:

(1) **Overall Program Management.** The Bureau shall administer the Business Property Management License Fee program in accordance with PCC Chapter 6.06 and with a view toward continued goodwill of property managers within the Lloyd District toward the City.

(2) **License Fee Administration.** The Bureau shall administer the License Fee program penalty and interest calculations, billing, collections, code enforcement, and appeals.

- (a) OMF or the Bureau may, at any time during the term of this Agreement, determine that any or all aspects of License Fee program administration should be performed by the Bureau. Upon written notice from the Bureau Director or OMF, LLOYD BID shall, within 60 days, deliver to the Bureau all records, software, and databases in its possession regarding License Fee program administration.
- (b) The Bureau shall utilize and maintain the financial revenue system database to track the payment of invoices for each invoice cycle beginning February 1, 2011.
- (3) **Receiving Payments.** The Bureau shall receive all License Fee payments, excluding voluntary payments made directly to TMA, and shall enter them into the financial revenue system database.
- (4) **Appeals.** The Bureau shall have sole authority to decide appeals, consistent with the provisions of PCC Chapter 6.06, but may consult with LLOYD BID regarding appeals. LLOYD BID shall provide timely response to the Bureau's requests for information needed to decide appeals.
- (5) **Collections.** The Bureau shall perform routine collection duties to ensure proper payment by LLOYD BID payers. The Bureau shall be responsible for actual collections and shall have sole authority to waive penalties included in any outstanding balances.
- (6) **Service Problems.** The Bureau shall inform LLOYD BID whenever the Bureau receives critical comments about LLOYD BID's services.

(b) The Bureau shall provide the services set out in subsection (a) above in accordance with the schedule set out below:

- (1) Calculate and record penalty and interest fees on past due accounts by the 10<sup>th</sup> business day of each month and provide TMA with a penalty and interest report upon completion;
- (2) Record invoice payments and credits memos as they are received;
- (3) Provide TMA with a monthly report listing past due accounts;
- (4) Investigate and prepare any billing change orders on LLOYD BID accounts. Forward billing change orders to LLOYD BID by the end of each accounting period; and,
- (5) Investigate and render decisions on appeals.

3. SCOPE OF LLOYD BID SERVICES

(a) To assist the Bureau in carrying out its obligations, LLOYD BID shall perform the services set out below:

- (1) LLOYD BID, contracting with the TMA, shall prepare invoices for the License Fee program;
- (2) **Billing.** LLOYD BID shall prepare and mail all monthly invoices to License Fee payers on behalf of the Bureau. The invoice statements shall be on Bureau letterhead with the Bureau's address as the return address, including the term 'LLOYD BID' on all correspondence. LLOYD BID shall pay postage and printing costs on any documentation needed to administer the program. LLOYD BID shall provide copies of all billings to the Bureau;

- (3) **Payment Encouragement.** LLOYD BID shall encourage District property managers to make License Fee payments in a timely manner;
- (4) **Materials development.** LLOYD BID shall develop, maintain, and have printed invoice statements and related information sheets showing how billed fees were calculated and how calculations are traceable to independent source documents;
- (5) **Data Preparation.** LLOYD BID shall provide the Bureau with updated database property statistics needed in order to calculate License Fees. LLOYD BID shall make no changes to the database without the prior written approval of the Bureau. LLOYD BID database shall be accessible to the Bureau by modem or other mutually agreed upon method. The application provided shall be compatible with Bureau information technology systems. The application used shall allow the export and import of data from Bureau information technology systems. If the Bureau determines that access in this manner is inadequate for any reason, the Bureau and LLOYD BID, by mutual agreement, shall arrange for moving the existing or comparable software to the Bureau's server;
- (6) **Customer Service.** LLOYD BID, in providing assistance to the Bureau, shall practice good customer service in relation to License Fee payers. LLOYD BID shall respect and protect the Bureau's authority to make final determinations in regards to collections, enforcement, appeals, and questions of compliance with PCC Chapter 6.06. All appeals and any supporting documentation shall be forwarded to the Bureau on appropriate appeal forms filled out by the appellant immediately upon receipt; and,



- (7) **Service Related Problems.** LLOYD BID shall attempt to resolve all service-related problems and inform the Bureau of efforts at resolution of problems presented by the Bureau.
- (8) LLOYD BID shall perform the services set out in subsection (a)(1), (3), and (7) above in a timely manner, in order to be able to prepare and mail invoice statements to License Fee payers on the 1<sup>st</sup> of January and the 1<sup>st</sup> of August annually.
- (9) LLOYD BID shall observe all applicable state laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the provisions set out in Exhibit A hereto shall be a part of this Agreement.

4. COMPENSATION

(a) The City will provide collection services to LLOYD BID for a fee of 1.25% of the total billed License Fees, including voluntary payments, plus any civil penalties collected. The City will deduct its fees from the collected License Fees. The fee deduction will coincide with each installment billing to match the disbursement of funds by the City to LLOYD BID. In addition, City costs related to District License Fee collection litigation will be billed separately to LLOYD BID and will be payable and deducted from the next disbursement of funds to LLOYD BID, provided that the amount so billed, payable, and deducted in relation to any particular collection case shall not exceed the amount collected as a result of that case; further provided that "City costs" as used in this sentence means City costs and disbursements as defined in ORCP 68(A)(2), City attorney fees as defined in ORCP 68(A)(1) with the cost of City Attorney's Office staff time based on actual hourly costs of Office staff, and the cost of Revenue Bureau

staff time based on actual hourly costs of Bureau staff, all without the addition of an overhead charge; and further provided that the City, at the written request of LLOYD BID, shall provide written documentation of any amount so billed, payable, and deducted. In addition, other costs for work provided by the Revenue Bureau to LLOYD BID not directly related to collection services, such as printing of a LLOYD BID booklet and information sheet for those wishing to appeal fee amounts, will be agreed upon in advance by the Bureau and LLOYD BID and billed to LLOYD BID separately and will be payable and deducted from the next Bureau disbursement of funds to LLOYD BID.

(b) Both Lloyd BID and the City acknowledge that setting the collection services fee at 1.25% is at a level below the Bureau's actual cost of providing collection services to Lloyd BID. The difference between the Bureau's actual costs of providing collection services and the recovery of such costs under the 1.25% mechanism as provided under subsection (A) will be addressed through a technical adjustment in the budget for the Bureau.

5. INVOICE AND PAYMENT PROCEDURE

Within 5 working days of the end of each City Accounting Period, the Bureau shall prepare a letter of disbursement to LLOYD BID for compensation received.

6. EFFECTIVE AND TERMINATION DATES

This Agreement shall be effective as of February 1, 2011 and shall terminate as of January 31, 2016.

7. EARLY TERMINATION OF AGREEMENT

(a) The Bureau and LLOYD BID, by mutual written agreement, may terminate this Agreement at any time.

(b) Either the City or LLOYD BID, on thirty (30) days written notice to the other party, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

(c) Either the Bureau or LLOYD BID may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of the notice, then the party giving the notice may terminate the Agreement ten (10) days after giving a written notice of termination.

8. PAYMENT ON EARLY TERMINATION

(a) In the event of termination under subsection 7, EARLY TERMINATION OF AGREEMENT, hereof, the Bureau may charge for work performed in accordance with the Agreement prior to the termination date.

(b) In the event of early termination all work produced under this Agreement by the Bureau shall become and remains the property of the City of Portland.

(c) In the event of early termination, LLOYD BID shall, upon written request by the Bureau, provide the City with all work previously performed under this Agreement as provided in Section 24, "Ownership of Documents". Such records may be provided in electronic format, so long as the formatting is compatible with that used by the Bureau's computer system.

9. REMEDIES

(a) In the event of termination under subsection 7(c), EARLY TERMINATION OF AGREEMENT, hereof, by the Bureau due to a breach by LLOYD

BID, then the Bureau may complete the work either itself, by agreement with another contractor or by a combination thereof.

(b) The remedies provided to the Bureau under section 7, EARLY TERMINATION OF AGREEMENT and section 9, REMEDIES, hereof, for a breach by LLOYD BID shall not be exclusive. The Bureau also shall be entitled to any other equitable and legal remedies that are available.

(c) In the event of breach of this Agreement by the Bureau, then LLOYD BID's remedy shall be limited to termination of the Agreement.

10. CITY PROJECT MANAGER

(a) The City Project Manager shall be the Chief Administrative Officer of the Office of Management and Finance or such other person as shall be designated by the OMF.

(b) The Project Manager is authorized to approve work and changes hereunder, to give notices referred to herein, to terminate this Agreement as provided herein and to carry out any other City actions referred to herein.

11. COMPLIANCE WITH LAWS

In connection with its activities under this Agreement, LLOYD BID shall comply with all applicable federal, state and local laws and regulations.

12. OREGON LAW AND FORUM

(a) This Agreement shall be governed by and construed according to the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

(b) Any litigation between the Bureau and LLOYD BID arising under this Agreement or out of work performed under this Agreement 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, Portland Division.

13 INDEMNIFICATION

LLOYD BID shall hold harmless, defend and indemnify City, and the City's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from LLOYD BID's work or any subcontractor's work under this Agreement.

14 WORKERS' COMPENSATION INSURANCE

(a) LLOYD BID, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017 which requires them to provide workers' compensation coverage for all their subject workers. A certificate of insurance, or copy thereof, shall be attached to this Agreement as Exhibit B, if applicable, and shall be incorporated herein and made a term and part of this Agreement. LLOYD BID further agrees to maintain workers' compensation insurance coverage for the duration of this Agreement.

(b) In the event, if applicable, LLOYD BID's workers' compensation insurance coverage is due to expire during the term of this Agreement, LLOYD BID agrees to timely renew its insurance, either as a carrier-insured employer or a self-insured employer, as provided by Chapter 656 of the Oregon Revised Statutes, before its expiration and LLOYD BID agrees to provide the City such further certification of workers' compensation insurance as renewals of said insurance occur.

(c) LLOYD BID agrees to accurately complete the City's Questionnaire for Workers' Compensation Insurance and for Qualification as an Independent Contractor prior to commencing work under this Agreement. The Questionnaire is attached to this

Agreement as Exhibit C and shall remain attached to this Agreement and become a part thereof as if fully copied herein. Any misrepresentation of information on the Questionnaire by LLOYD BID shall constitute a breach of this Agreement. In the event of breach pursuant to this subsection, the City may terminate the Agreement immediately and the notice requirement contained in subsection 7(c), EARLY TERMINATION OF AGREEMENT, hereof, shall not apply.

15. SUBCONTRACTING

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

16. ASSIGNMENT

LLOYD BID shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the City.

17. INDEPENDENT CONTRACTOR STATUS

(a) LLOYD BID is engaged as an independent contractor and will be responsible for any federal, state and local taxes and fees applicable to payments hereunder.

(b) LLOYD BID, its subcontractors and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

18. NOTICE

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:           Revenue Bureau  
                                  111 SW Columbia St. #600  
                                  Portland, Oregon 97201

If to Lloyd BID:        LLOYD BID  
                                  700 NE Multnomah St, Suite 340  
                                  Portland, OR 97232

19. SEVERABILITY

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

20. INTEGRATION

This Agreement contains the entire agreement between the Bureau and LLOYD BID and supercedes all prior written or oral discussions or agreements.

21. MAINTENANCE OF RECORDS

LLOYD BID shall maintain records according to accepted accounting practices on a current basis to document the performance of services in accordance with this Agreement. The Bureau or its authorized representative shall have the authority to

inspect, audit and copy, on reasonable notice and from time to time, any records of LLOYD BID regarding its invoices and performance of such services. LLOYD BID shall retain these records for inspection, audit and copying for three (3) years from the date of completion or termination of this Agreement.

22. LIABILITY INSURANCE

**THIS SECTION DELETED INTENTIONALLY.**

23. BREACH OF AGREEMENT

(a) The Bureau or LLOYD BID shall breach this Agreement if it fails to perform any substantial obligation under the Agreement, except as provided in subsection (b) of this section.

(b) Neither the Bureau nor LLOYD BID shall have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence. Such causes may include, without limitation, acts of God or the public enemy, acts of the federal, state or local governments, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes and unusually severe weather. Should either the Bureau or LLOYD BID fail to perform because of a cause described in this subsection, the Bureau and LLOYD BID shall make a mutually acceptable revision in section 2, SCOPE OF CITY SERVICES, section 3, SCOPE OF LLOYD BID SERVICES, and section 4, COMPENSATION.

24. OWNERSHIP OF DOCUMENTS

(a) All work performed under this Agreement shall be considered work made for hire and shall be the property of the Bureau. The Bureau shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials



LLOYD BID produces in connection with its work under this Agreement. On completion or termination of the Agreement, LLOYD BID shall deliver these materials to the Project Manager.

(b) LLOYD BID may retain for its own use and at its own cost copies of the materials referred to in subsection (a) of this section subject to the following exceptions:  
None

(c) Any use the Bureau makes of the materials referred to in subsection (a) of this section, except for purposes of the work contemplated by this Agreement, shall be at the Bureau's risk.

25. AMENDMENTS

(a) The Bureau and LLOYD BID may amend this Agreement at any time only by written amendment executed by the Bureau and LLOYD BID. Except as to Section 4 which may only be amended by approval of the City Council by ordinance, the Project Manager may agree to and execute any amendment on behalf of the Bureau.

(b) Any change in the Scope of Bureau or LLOYD BID services shall be deemed an amendment subject to subsection (a).

26. NON-WAIVER

The Bureau and LLOYD BID shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

27. PROHIBITED INTEREST

(a) No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

(b) No City officer or employee who participated in the award of this Agreement shall be employed by LLOYD BID during the period of the Agreement.

LLOYD BID

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF PORTLAND

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

**APPROVED AS TO FORM**

City Attorney

*Paula Neugebauer*

CITY ATTORNEY

**SUBJECT TO INSURANCE APPROVAL**