

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

This Agreement for Downtown Clean & Safe District Management Services (Agreement) is between the City of Portland, Oregon (City) and Clean & Safe, Inc. (Clean & Safe). This Agreement is effective from October 1, 2016, to September 30, 2021.

**RECITALS:**

1. Pursuant to Chapter 6.06 of the City Code, the City has established a property management license fee (License Fee) within the Downtown Business District, commonly known as the Downtown Clean & Safe District (District). The purpose of the License Fee is to provide revenues to fund supplemental cleaning, security, business development, public policy, housing, and marketing and communications services within the District.
2. Clean & Safe is a Oregon non-profit 501(c)(3) corporation formed by the District license fee payers who are representative of a large number of business property owners and managers in the District. Clean & Safe representatives make up the non-public membership of a City-formed public-private partnership that recommended to the City the continuation of the License Fee. The City Council implemented this recommendation when it extended the District and the License fee for 10 years in Ordinance No. 175729, and again by Resolution No.36857 on April 20, 2011. Clean & Safe representatives have also recommended to the City the nature and level of services to be funded by the License Fee.
3. Clean & Safe has provided District management services to the District since 1994. The services are part of a unique and coordinated personal services program that Clean & Safe has developed and provided, and there is no other potential provider of the services with the experience, expertise, and capability of Clean & Safe and with Clean & Safe's status as representative of license fee payers. It therefore is appropriate for the City to contract with Clean & Safe for the provision of the services; and Clean & Safe is willing to contract to provide the services.

**AGREEMENT:**

**A. Definition of "Services".**

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

1. Cleaning services, such as cleaning of sidewalks; graffiti removal; weed control; pressure washing of sidewalks and restrooms; responding to citizen requests for emergency or needed clean-ups; trash and leaf removal; and clean-up of drug and sexual activity paraphernalia.
2. Security services, such as:
  - a. Providing both armed and unarmed patrol officers in distinctive uniforms who will report observed and reported criminal, disruptive, or offensive conduct to the

- appropriate public agencies or personnel, and, as a last resort, respond to dangerous or life-threatening emergencies. If armed, the officers will be licensed under Oregon Department of Public Safety Standards and Training (DPSST) requirements or their equivalents as both armed and unarmed security. Unarmed security will be licensed under DPSST as unarmed.
- b. Providing funding for the City for a mutually agreed upon number of sworn Portland Police Officers to focus on specific problems that are more serious than simple disorderly conduct; and to support patrol officers, in particular when events exceed their capabilities.
  - c. Providing funding and personnel assistance to the Westside Neighborhood District Attorney office and the Westside Community Court to assist in ensuring that crimes committed in the Downtown area can be prosecuted and deterred.
3. Marketing and communication services, such as promotion of the Clean & Safe identity of the area within the District, promotion of activities within the District, and communication with District businesses and residents regarding the activities of the District.
  4. Marketing services, such as:
    - a. Business development services, such as efforts to recruit and retain quality office and retail business downtown; working with local government to ensure that public projects and programs are coordinated with the needs and activities of downtown businesses and residents; coordination of cooperative retail promotions; and marketing research.
    - b. Providing sidewalk ambassadors (also known as guides) within the District dressed in distinctive clothing who will function as walking information kiosks for citizens and visitors regarding civic and public events; work to maintain a pleasant atmosphere on Downtown streets; report disruptive or criminal activity to appropriate public personnel or agencies; distribute brochures and promotional materials about Downtown attractions and offerings; and, as a last resort, respond to life-threatening emergencies.
  5. Public policy services, such as analysis and representation regarding matters of general concern to the overall health of downtown businesses and the downtown residential community.
  6. Housing services, such as promoting development of downtown housing to create a downtown residential community; assisting the downtown residential community to work with the downtown business community on issues of mutual interest; and assisting the downtown residential community in resolving public policy issues that affect the quality and enjoyment of downtown living.
  7. District administration services, such as letting and administering subcontracts for District services, preparing budgets for services, undertaking any other tasks that are necessary to carry out the District services.

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

**B. Clean & Safe Obligations.**

Clean & Safe’s obligations hereunder are as follows:

1. Provide Services. Manage and provide all District services for each District license year.
2. Budget. Clean & Safe will provide to the City for review, comment, and approval a proposed summary of District services and line item budget by service type (Work Scope and Budget) for each District license year, to be provided on or before the September 1 preceding the beginning of each District license year, for services provided under section A of this Agreement. The Work Scope and Budget attached hereto as Exhibit A is deemed the approved Work Scope and Budget for the District license year commencing October 1, 2016, for services provided under section A of this Agreement. In any license year, Clean & Safe may transfer amounts among budget categories in order to perform the approved Work Scope, except that Clean & Safe cannot transfer amounts so as to increase the budgeted amount for District administration services by more than \$15,000 during any license year without the prior written approval of the Office of Management & Finance's Business Operations Manager. Clean & Safe is responsible for providing District services under this Agreement only to the extent that the City provides funding to Clean & Safe that covers the cost to Clean & Safe of the services.
3. Audit. Obtain and provide to the City an independent financial audit of Clean & Safe's use of the District funds during the preceding license year on or before the January 10 following the completion of the license year.
4. Subcontracts. Let and administer subcontracts for the provisions of District services. Clean & Safe will follow written competitive bidding procedures adopted by Clean & Safe unless Clean & Safe has documented that it is necessary or desirable to award a subcontract on a negotiated basis in order to assure the provisions of adequate services at the most advantageous cost. Clean & Safe will provide a copy of all subcontracts for District services to the City Attorney for review and approval for compliance with section B(10) of this Agreement. In the copies provided by Clean & Safe, Clean & Safe may redact trade secrets information as defined by ORS 192.501(2) that is not relevant to the City Attorney's review of the subcontract as to form. This does not prevent the City or its authorized representatives, when conducting an audit under section C(1)(b) of this Agreement, from examining the original subcontracts at the Clean & Safe office.
5. Bond. Provide and maintain a fidelity bond in a form approved by the City Attorney in the amount of \$100,000 guaranteeing the full and faithful performance of all employees or agents of Clean & Safe with the responsibility for handling District funds.
6. 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 Clean & Safe's work or the work of any Clean & Safe subcontractor under this Agreement.
7. Liability Insurance.
  - a. Maintain public liability and property damage insurance that protects Clean & Safe, and the City and its officers, agents, and employees from any and all claims, demand, actions, and suits for damage to property or personal injury, including death, arising from Clean & Safe's work under this Agreement. The insurance must provide coverage of not less than \$500,000 for personal injury to each person; \$500,000 for

property damage to each person; and \$2,000,000 for each occurrence; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The limits of the insurance are subject to statutory changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Agreement. The insurance are without prejudice to coverage otherwise existing and must name as additional insureds the City and its officers, agents, and employees. Notwithstanding the additional insureds the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance must provide that it cannot terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor. Clean & Safe must maintain continuous uninterrupted coverage for the duration of the Agreement. If the insurance is cancelled or terminated prior to completion of the Agreement, Clean & Safe agrees to provide a new policy with the same terms. The insurance must include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by Clean & Safe.

- b. Maintain on file with the City Auditor a certificate of insurance certifying the coverage required under subsection 7(a) above. The adequacy of the insurance is subject to the approval of the City Attorney. Failure to maintain liability insurance is cause for the immediate termination of this Agreement by the City.
8. Workers' Compensation. Provide and maintain continuous workers' compensation insurance coverage throughout the term of this Agreement for all of its employees either as a carrier-insured employer or as a self-insured employer, if legally required by ORS Chapter 656. Clean & Safe must complete the Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made a part hereof. If legally required to have workers' compensation insurance, Clean & Safe must provide a certificate of insurance, or a copy thereof, to the City Auditor prior to this Agreement becoming effective. The adequacy of the insurance is subject to the approval of the City Attorney.
  9. 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 Clean & Safe. Clean & Safe employees and its subcontractors and their employees are not City employees and are not be eligible for any benefits provided through the City including without limitation social security, health, workers' compensation, unemployment compensation, and retirement benefits.
  10. Subcontract requirements.
    - a. All subcontracts must require that the subcontractors maintain public health liability and property damage insurance that protects the subcontractor, Clean & Safe, and the City and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from the subcontractor's work under the subcontract. The insurance must provide coverage of not less than \$500,000 for personal injury to each person; \$500,000 for

property damage to each person; and \$2,000,000 for each occurrence; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence. The limits of the insurance are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the contract. The insurance are without prejudice to coverage otherwise existing and must name as additional insureds the City and its officers, agents, and employees. Notwithstanding the name of additional insureds, the insurance must protect each insured in the same manner as though a separate policy has been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance must provide that the insurance cannot terminate or be cancelled without thirty (30) days written notice first being given to the City Auditor.

- b. Each subcontract must require the subcontractor to maintain continuous uninterrupted coverage for the duration of the subcontract. The subcontract must require the subcontractor to provide a new policy with the same terms, if the insurance is cancelled or terminated prior to the completion of the subcontract.
  - c. The subcontractor insurance required hereunder must include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the subcontractor.
  - d. All subcontracts must require the subcontractors to provide and maintain workers' compensation insurance, if legally required. Subcontractors must complete the Independent Contractor/Workers' Compensation Insurance Questionnaire, which is attached hereto and by this reference made part hereof. If a subcontractor is legally required to have workers' compensation insurance, the subcontractor must provide to Clean & Safe and the City Auditor certificates of insurance, or copies thereof, as provided in subsection 8 of this section.
  - e. All subcontracts must require subcontractors to maintain compliance with Chapter 3.100 of the City Code.
  - f. All subcontracts entered into by Clean & Safe must require the subcontractors to comply with the City's Fair Wage Policy established by City Ordinance No. 174839 as amended and renewed from time to time, to the extent that policy is applicable to work performed under the subcontract. For purposes of this subsection, the approval given under that policy in the January 14, 1997 memorandum from the Commissioner of Public Utilities to the City Auditor, entitled "Clean and Safe District Cleaning Crew Compensation" is deemed applicable to any work covered by the memorandum and performed under this Agreement unless and until such time as the commissioner in charge has revoked the approval.
11. EEO Certification. Maintain compliance with Chapter 3.100 of the City Code pertaining to equal employment opportunity.
  12. Records. Maintain records on a current basis to document the expenditure of funds and the performance of services in accordance with this Agreement. Clean & Safe must retain these records for three (3) years from the date of completion or termination of this

Agreement. The City or its authorized representative has the authority, during normal business hours and on reasonable notice, from time to time to inspect, audit, and copy any records of Clean & Safe regarding the expenditures of funds and performance of services under this Agreement.

13. Fair Wage Policy. Maintain compliance with the City's Fair Wage Policy established by City Ordinance No. 174839 as amended and renewed from time to time, to the extent that policy is applicable to work performed under this Agreement.
14. Public Contracts. Clean & Safe must observe all applicable state laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS Chapter 279, the provisions set out in Exhibit C hereto are part of this Agreement.

**C. City Obligations.**

The City's obligations hereunder are as follows:

1. Budget and Audit.
  - a. Review, comment on, and approve as appropriate, on or before the beginning of each District license year, the proposed Work Scope and Budget provided by Clean & Safe under section B(2) for services provided under section A of this Agreement. Monitor the use by Clean & Safe of District funds through review of the audit provided by Clean & Safe under section B(3) for each license year and through such other reviews as the City deems appropriate.
  - b. If it chooses, whether directly or through a designated representative, conduct financial and performance audits of the uses of funds and services specified in this Agreement, at any time during the term of the Agreement. This audit right expires at the conclusion of the three (3) year period described in section B(12). Audits will 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 any audit determines that payments to Clean & Safe were in excess of the costs of District services being provided under this Agreement, then Clean & Safe must repay the amount of the excess to the City, with the amount of any repayment to be used to provide District services.
2. Maintenance of Services. Except as otherwise provided in this subsection, and within the limitation imposed by the City Charter and Oregon Law, during each District license year, the City will strive to maintain public services within the District at activity levels such that the activity levels are within 10 percent of the following levels and at funding levels such that the funding levels are within 10 percent of the funding levels for City fiscal year 2010-2011, adjusted in proportion to changes in the CPI-W for Portland-Salem since January 2011. In the event of a conflict or inconsistency between activity levels and funding levels, activity levels will receive primary consideration.

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

Bureau of Maintenance: Provide street cleaning services in the district at least four (4) nights per week including sweeping and flushing. Hose flushing on the transit mall and light rail sidewalks for 130 days per year. Scrubbing services on the transit mall and light rail sidewalks for 130 days per year. Empty trash receptacles along the transit mall 6 days per week and empty other trash receptacles in the district an average of 4 days per week.

Bureau of Transportation: Provide at least existing staffing levels as of FY 2010-2011 for construction mitigation, contingent on continued funding source levels.

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

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

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

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

Central Precinct will inform Clean & Safe in a timely manner of any changes to the current staffing model for the District.

- c. Crime Prevention. One full-time equivalent crime prevention staff assigned to the Portland central business district.
- d. Parks. The level of park maintenance and security services and parks grass cutting provided by the City as of October 1, 2011 to all City parks property within the District; the City fiscal year 2010-2011 level of funding for Pioneer Courthouse Square; and the level of transit mall flower pot maintenance provided by the City as of October 1, 2011.



- e. Public Garage Facilities. The level of public garage facilities maintenance and security provided by the City as of October 1, 2011 to all public buildings and facilities, except for sidewalk cleaning.
- f. Drinking and Decorative Fountains. The level of operation and maintenance of drinking and decorative fountains provided by the City as of October 1, 2011.
- g. Business Development. One full-time equivalent position dedicated to Central City business development and assistance, working in close coordination with Clean & Safe or its subcontractor.

The City may change the levels of services required by this section more than 10 percent in the event of unusual fiscal or other emergency conditions. The City Council 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 Agreement as appropriate to respond to the City changes, so that a coherent and rational set of services is provided within the District. The adjustments will be accomplished through an amended Work Scope and Budget, to be submitted to the City for review, comment and approval.

- 3. Compensation to Clean & Safe. Pay to Clean & Safe all net License Fee revenues, provided that the City first has approved the Work Scope and Budget for services provided under C(1) of this Agreement. The City will make payment to Clean & Safe of such net License Fee revenues as soon following the close of each City accounting period (of which there are 12 during the City fiscal year) as the amount thereof received during the accounting period has been determined, and the City may make advance payments during any accounting period if the City's Manager of the Revenue Bureau determines that sufficient funds have been received to make advance payments.

Notwithstanding the aforementioned, 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 to Clean & Safe during the last license year covered by this Agreement. Amounts needed to replenish the \$10,000 balance following payments of refunds to District License Fee payers following appeals will be retained from "seasonal lighting" revenues as defined in City Code Section 6.06.216(A) and from those 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 Agreement, "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 F(7) of this Agreement, and less the continuing balance retained for payments or refunds due to District License Fee

payers as provided in this section. However, for the 2016-2017 license year, only the Division's costs of administrations will be deducted to arrive at net License Fee revenues.

**D. 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:

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.
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 their conduct of the defense. Notwithstanding any other provision of this Agreement, Clean & Safe may use any net License Fee revenues Clean & Safe receives under section C(3) of this Agreement to satisfy the hold harmless, defense, and indemnification obligations established by this section or by section B(6) before using the funds to provide other services under this Agreement.
3. As an alternative to City suspension of payments under subsection D (1) above, Clean & Safe may propose and the City in its discretion may approve Clean & Safe providing a letter of credit, guaranty or other comparable instrument serving to protect the City against any risk of financial exposure due to the invalidity of, unenforceability of, or limitations on the License Fee.

**E. License Fee Revenues from License Years prior to 2016-17.**

1. It is the intention of Clean & Safe and the City that there is continuity of services in the transition from the services provided in license years prior to 2016-17 to the services to be provided in license year 2016-17 and thereafter. It also is their intention that any funds presently held by the City arising out of District revenues from license years prior to 2016-17, to the extent they are not otherwise provided for in prior management services agreements, be used for services within the District under this Agreement, and that District revenues received in the future by the City attributable to license years preceding the 2016-17 license fee year also be used for services within the District under this Agreement. To accomplish this intention, the City will pay any such revenues to Clean & Safe in accordance with the provisions of section C (3) of this Agreement. In addition, it also is the intention of Clean & Safe and the City that any funds presently held by Clean & Safe arising out of District revenues from license years prior to 2016-17,

to the extent they have not been spent to provide services under prior management services agreements, also be used for services with the District under this Agreement.

2. All funds received or presently held by Clean & Safe pursuant to subsection E (1) of this section will be used to provide services within or for the District. To the extent that Clean & Safe receives such funds, Clean & Safe must account for the use of those funds in the audits provided for in section B (3) of this Agreement.

**F. Administration of License Fee.**

The City Revenue Division (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 in these administrative functions as follows:

1. Overall Program Management. The Division will administer the license fee program in accordance with City Code 6.06 and with a view toward the continued goodwill of Downtown property managers towards the Downtown Clean & Safe District and the City.

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.

2. Materials Development. The Division, working with Clean & Safe, will develop, maintain, and, if requested by Clean & Safe, have printed a handbook for the Property Management License Fee program and an information sheet for those wishing to appeal fee calculations or installment assessments. If Clean & Safe does not request that the Division have printed the handbook and information sheet, then Clean & Safe is responsible for printing the handbook and information sheet.
3. Receiving Payments. The Division will receive all License Fee payments and enter them to Fund 204 maintained by the City.
4. Appeals. The Division has sole authority to decide appeals, consistent with the provisions of City Code Chapter 6.06, but it may 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.
  - a. Collections. Clean & Safe will monitor payments and encourage Downtown business property managers to make license fee payments in a timely manner. However, the Division is responsible for actual collections and has sole authority to waive penalties and/or other finance charges.

- b. Collection Litigation Costs. City costs related to District License Fee collection litigation will be billed separately to 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; 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 based on actual hourly costs of Office staff, and the cost of Revenue Division staff time based on actual hourly costs of Division staff, all without the addition of an overhead charge; and further provided that the City, at the written request of Clean & Safe, will provide written documentation of any amount so billed, payable, and deducted.
6. Service Problems. The Division will notify Clean & Safe, as soon as is reasonably possible by telephone, fax, electronic mail, or otherwise, whenever the Division receives comments that are about Clean & Safe District Services. Clean & Safe must attempt to resolve all service-related problems.
7. Division’s Administration Costs.
- a. The City will provide collection services to Clean & Safe for a fee of 1.25% of the total District License Fee billings, including 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, 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.
- b. Both Clean & Safe and the City acknowledge that setting the collection services as 1.25% is at a level below the Revenue Division actual cost of providing collection services to Clean & Safe. The difference between the Division’s actual costs of providing collection services and the recovery of such costs under the 1.25% mechanism as provided under subsection 7(a) above will be addressed through a technical adjustment in the budget for the Division.
- c. The 1.25% collection services fee under subsection 7(a) will be charged against “seasonal lighting” revenues as defined in City Code Section 6.06.216(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.)
- d. In addition to the 1.25% fee in subsection a. above, direct charges to Fund 204 will be deducted to arrive at the net License Fee revenues payable to Clean & Safe. Direct fund charges include, but are not limited to, General Fund Overhead (GFOH) charge (currently capped at \$25,000 annually) and EBS charges. However, for License Year 2016-2017 only, Fund 204 direct charges will not be deducted to arrive at net License Fee revenues.

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(b) and 7 above, such as printing of a Downtown District booklet and information sheet for those wishing to appeal fee amounts, will be agreed upon in advance by the Division and Clean & Safe, it will be billed to Clean & Safe separately and will be payable and deducted from the next Division disbursement of funds to Clean & Safe.

#### **G. Term and Termination.**

##### **1. Term.**

- a. The original term of this Agreement is from October 1, 2016 through September 30, 2021. Clean & Safe may recommend to the City Council extension of the termination date in order to allow Clean & Safe expenditure of remaining District funds for District services in the event all District funds are not received and spent by September 30, 2021.
- b. The City and Clean & Safe may renew this Agreement for an additional five (5) year term, commencing on the expiration of the original term. In order to exercise this option, Clean & Safe may not at any time during the term of this Agreement have been or be in material default of this Agreement. If Clean & Safe at any time during the term of this Agreement materially defaulted in its performance of any of the terms and conditions of this Agreement, 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 Agreement for an additional five (5) year term, it must give the City written notice of such election at least six (6) months prior to the expiration of the original term. Within thirty (30) days of 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 Agreement for the renewal term. Any negotiated changes in the terms and conditions of the Agreement must be in writing, and subject to approval by the City Council by ordinance and by the Clean & Safe Board of Directors. If neither party requests any changes in the terms and conditions of the Agreement, and if both otherwise wish to have the Agreement extended, then it will be extended on the same terms and conditions as found in the original Agreement.

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

#### **H. Assignment.**

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

#### **I. Amendments.**

The parties may amend this Agreement, including Exhibit A (Work Scope and Budget), at any time, but only by written amendment executed by the City and Clean & Safe.

**J. Representatives of Parties.**

The City Project Manager is the Director of the Bureau of Revenue and Financial Services or such other person as will be designated in writing by the Director. The Clean & Safe Project Manager is the President of Clean & Safe or such other person as is designated in writing by the President. The Project Managers are authorized to give notices, terminate this Agreement, and take any other actions referred to herein on behalf of their respective parties, except as otherwise specifically provided herein.

**K. Seasonal Decorative Lighting System Services.**

1. Provision of Seasonal Decorative Lighting System Services. In addition to other services Clean & Safe is to provide under this Agreement, Clean & Safe, in cooperation with the City as set out in subsection 7 of this section, will provide seasonal decorative lighting system services for specified areas within the District. The seasonal decorative light system services will consist of the design, acquisition, construction, installation, operation and maintenance of a seasonal decorative lighting system within portions of the District.
2. Lighting Work Scope and Budget. The Lighting Work Scope and Budget attached hereto as Exhibit B is deemed the approved Lighting Work Scope and Budget for the District license year commencing October 1, 2011, for seasonal decorative lighting system services that are provided under this section. Clean & Safe may transfer amounts among budget categories within the Lighting Budget in order to perform the approved Lighting Work Scope. Clean & Safe may not, however, transfer any amount from budget categories in the Exhibit B Lighting Work Scope and Budget to the annual Work Scope and Budget for services provided under section A of this Agreement. In addition, Clean & Safe from time to time may propose other changes to the Exhibit B "Lighting Work Scope and Budget" that it deems appropriate. The City Project Manager will review and approve, as he/she deems appropriate, revisions proposed by Clean & Safe to the Exhibit B "Lighting Work Scope and Budget." Each revised Exhibit B when provided to and approved by the City Project Manager will become the then effective approved Light Work Scope and Budget for the District license year.
3. Payments of Net "Seasonal Lighting" Revenues. The City's payment to Clean & Safe of net "seasonal lighting" revenues as defined in City Code Section 6.06.216(A) will be separately identified when funds are disbursed, but can be included in the same payment with other net License Fee revenues.
4. Clean & Safe Handling of and Accounting for Net "Seasonal Lighting" Revenues.
  - a. Clean & Safe Handling of Funds. Clean & Safe must maintain a separate bank account (Clean & Safe Lighting Account) into which it will deposit net "seasonal lighting" revenues paid to it by the City. Clean & Safe will use the Clean & Safe Lighting Account solely for the receipt of those funds and for the payment of expenses provided for in the Lighting Work Scope and Budget.
  - b. Clean & Safe Accounting for Funds. Clean & Safe must maintain its accounting system in a manner such that it accounts for the receipt of and expenditures from net

“seasonal lighting” revenues separately from its accounting for receipt of and expenditures from funds that are not net “seasonal lighting” revenues.

5. Nature of City Payment Obligation. The net “seasonal lighting” revenue payments to Clean & Safe by the City will occur on the same accounting period basis as other management fee payments through the license year. No one of the “seasonal lighting” payments will equal the total annual cost of the seasonal decorative lighting system project, and from time to time the portion of the annual cost paid by Clean & Safe will exceed the amount of the “seasonal lighting” revenue payments received to date by Clean & Safe. However, the sum of the “seasonal lighting” revenue payments during the license year is anticipated to be adequate to cover the projected annual cost of the project for that license year. In recognition of the temporary shortfalls that may occur during the course of the license year and Clean & Safe’s being responsible for covering those shortfalls pending receipt of future “seasonal lighting” revenues payments for that license year, the City’s obligation to make payments to Clean & Safe under this section for the District license year survives any termination of this Agreement, to the extent necessary to cover any such shortfalls related to the timing of the lighting revenue payments. In addition Clean & Safe may pledge the net “seasonal lighting” revenues it receives for the District license year to the extent necessary for it to cover any such shortfalls related to the timing of the “seasonal lighting” revenue payments, without further consent of the City. Clean & Safe must, however, give the City written notice of any such pledge.
6. Ownership of Seasonal Decorative Lighting System. The City is the owner of the portion of the seasonal decorative lighting system from the source of electricity to and including any extension cords and the electric plugs into which the light strands will be plugged, and Clean & Safe is the owner of the light strands, any extension cords connecting light strands to each other, and the decorative lights. At all times, Clean & Safe is responsible for applying for and obtaining all permits necessary for placing, maintaining and removing the seasonal decorative street lighting system, together with any extension cords, electric plugs and other related components of the system, in and from any street trees, as such permits are required under Portland City Code Chapter 20.40.
7. Ongoing Maintenance Work and Clean & Safe Operation. Unless otherwise agreed by the City Street Lighting Division and Clean & Safe, the City will maintain the portion of the seasonal decorative street lighting system installed by the City (from the source of the electricity to and including any extension cords and the electric plugs into which the light strands are plugged); and Clean & Safe will maintain the portion of the system installed by Clean & Safe, including but not limited to providing any needed replacements of light strands, extension cords connecting light strands to each other and decorative lights. Clean & Safe will operate the seasonal decorative street lighting system. Clean & Safe’s operating responsibilities include, but are not limited to, paying for the cost of electricity used to operate the seasonal decorative street lighting system, through a direct arrangement made by Clean & Safe for payment of electricity.

CITY OF PORTLAND

DATE:

\_\_\_\_\_  
By: Mayor Charlie Hales

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CLEAN & SAFE, INC.

DATE:

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

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Approved as to form:

\_\_\_\_\_  
City Attorney