

**SUPPLEMENTAL SERVICES AGREEMENT BETWEEN
DOWNTOWN IMPROVEMENT DISTRICT, INC. d/b/a
PORTLAND DOWNTOWN**

AND

CITY OF PORTLAND

AGREEMENT made this ____ day of June, 2018, by and between the City of Portland, a municipal corporation duly organized under the laws of the State of Maine, with an address of 389 Congress Street, Portland, Maine 04101 (hereinafter the "**City**") and Downtown Improvement District, Inc., d/b/a Portland Downtown, a Maine non-profit corporation, having its office and place of business at 549 Congress Street, Portland, Maine 04101 (hereinafter the "**PD**").

W.I.T.N.E.S.S.E.T.H.

WHEREAS, the **City** and **PD** entered into a Master Agreement of even date establishing mutual rights and responsibilities for the provision of services in the Downtown Improvement District (hereinafter the "**District**"); and

WHEREAS, said Master Agreement established the Baseline Services to be provided by **City** in the District; and

WHEREAS, **PD** wishes to contract with the **City** to have the **City** provide, on a flexible basis depending upon funds available, Supplemental Maintenance Services in addition to those in the Master Agreement;

NOW THEREFORE, the parties do hereby agree as follows:

1. Supplemental Services: The **City** shall provide the following Personnel and Services (hereinafter the "Supplemental Services") in the District in addition to the Baseline Services provided in the Master Agreement:

1.1. Personnel:

One PD Steward		
One Public Services Supervisor	Days	52 Weeks
Three Maintenance Worker	Days	52 Weeks
Two Laborers	Days	Seasonal

- 1.2. Persons providing Supplemental Services hereunder shall be assigned by the **City** after providing reasonable opportunity to **PD** for requests for service. Such persons are not required to be employees of the **City**. Such persons shall not, however, be considered to be employees of **PD** and **PD** is not intended, nor shall it be deemed to be, a joint employer with **City**. As between the **City** and **PD**, **City** shall be responsible for all aspects of employment for all persons supplied by **City** pursuant to this Agreement, including compensation, liability and workers compensation coverage, employment taxes and any applicable fees.

1.3 Services to be provided are:

- *Transportation and set-up of materials and equipment for planned special events activities of **PD** (as outlined in Exhibit A to the SSA; Section 2).
- *Litter patrol, collection and disposal on streets, sidewalks, tree wells and public areas within the District.
- *Graffiti removal from City property within 5 days of notification.
- *Removal of posters from PD posterboards (at a minimum of monthly).
- *Check Condition, catalogue, and if necessary,

paint or clean all public furniture and fixtures twice a year, at minimum. Furniture and fixtures shall include (but not be limited to) the following items: benches, trash/recycling receptacles, light pole bases, planters.

- *Sidewalks will be swept on a daily basis, weather and season permitting.
- *Cleaning, weeding, and maintenance of tree wells at a minimum of once per month.
- *Weed control in support of other City departments performing 'basic services'
- *Snow clearance at crosswalks and from sidewalks during curb to curb snow removal
- *Installation of Holiday decoration in the District as agreed with PD, in addition to those described in the Baseline Services provided in the Master Agreement, including electrical energy costs
- *Maintenance and cleaning of Visitor's Booth in Tommy's Park at least once per month during season (May-October)
- *Clean and maintain the bathrooms, located in the Fore Street Garage and Spring Street Garage buildings, when the bathrooms are open to the public, cleaning to occur no later than 10am on days the bathrooms are open to the public.

1.3.1. PD Sidewalk Snow Plowing Program. All property owners in the District assessment area are responsible for maintaining their sidewalks in the winter pursuant to Portland City Code §§25-173(C) and 25-174(C), including snow removal from their property line to the street gutter and ice control.

1.3.2. Following a snow storm, the **City** will provide a clear walkway no less than the width of a Holder's capability. To the extent reasonable, the **City** will clear the sidewalk area but it is not the intent of the parties that the **City** will clear the snow from the full width of the sidewalk area. The City will provide ice control to the extent possible. If weather conditions are so severe that the area cannot be plowed

due to equipment capability, the **City**, in its discretion, may choose to delay, clearing of the sidewalks, but must complete the work within 24 hours of the storm being complete.

1.3.3. Management of Supplemental Services. The City's Public Works Director and/or Designee and PD's Executive Director and/or Designee (Downtown Experience Liaison) agree to meet and communicate on a monthly basis with meeting agendas to ensure quality control in service delivery is meeting expectations; providing updated information on service activities, programs and projects. The Public Works Department will provide a staff contact to PD for direct communications, which is identified as the Districting Supervisor and PD Supervisor. A point of contact for PD officials is the PD Supervisor and District Coordinator. Conversely, Department of Public Works looks to the PD Executive Director or designee as the City's point of contact on all issues involving PD matters. A complete work plan and list of Services provided under this FY2019 agreement is provided in Exhibit A hereto.

2. Term: The term of this Agreement is from July 1, 2018 through June 30, 2019.

3. Budget and Payment: In consideration for these Supplemental Services, **PD** agrees to pay the **City**, in equal monthly installments, for all Supplemental Services provided hereunder the total sum of \$380,000 for FY2019. The **City** shall bill and **PD** shall pay the **City** beginning July 1, 2018, a monthly payment of \$31,666.

3.1. In the event **PD** requests services from **City** in addition to those included herein, **City** shall have the option, in its sole discretion to provide such services, with payment to be made by **PD** for any such services on a Time and Materials basis, or such other basis as the parties may agree in writing. "Time" as used herein shall

mean all of the **City's** employee costs, i.e. hourly wages or salary. "Materials" as used herein shall mean the actual cost to the **City** of equipment, materials and/or supplies provided or used, with no additional markup.

4. Modifications: It is understood and agreed by the parties that **City** has adopted an expenditure budget which includes the cost of these Supplemental Services and has adopted a revenue budget which provides for the reimbursement of such costs by **PD** as provided hereunder. In the event that either **PD** or the **City** anticipates that there will be insufficient revenues to pay for such Supplemental Services, said party will notify the other party of the anticipated shortfall, and the parties agree to meet promptly and confer to modify the level of Supplemental Services which the **City** is able to provide. It shall be the responsibility of **PD** to notify **City** as soon as reasonably possible if such Supplemental Services need to be modified or adjusted for anticipated revenue shortfalls or modifications. In the event of a revenue shortfall, the **City** will have no obligation to provide Services in excess of **PD** funds available to reimburse **City**; however, **City** will have the right, but not the obligation, to continue to provide Supplemental Services to the extent provided in the **City** budget even in the event of a revenue shortfall. The parties agree to memorialize in writing any changes in the monthly payments due under Section 3 above.

4.1. Either party may terminate or modify this Agreement in the event of a budget shortfall upon no less than Sixty (60) days prior written notice to the other party.

4.2. In the event Supplemental Services are terminated for any reason by either party, it shall be in **City's** discretion as to whether it will continue or resume providing such Supplemental Services.

4.3. **PD** agrees to give the City Manager or the Manager's designee advance written notice of any formal meeting of its Directors or Officers at which modification of the current year Supplemental Services budget is to be discussed

or considered, and to permit the attendance of **City** representative at such meeting. **City** and **PD** agree to provide copies of draft budgets for the upcoming fiscal year reasonably in advance of any final decision by **PD** or the **City** as to said budget, and the parties agree to meet and confer in regard to such budgets.

5. **City's** representative in regard to provision of Supplemental Services hereunder is the City Manager or the Manager's designee.

IN WITNESS WHEREOF, the **City** and **PD** have signed this Agreement through their authorized representatives as of the day and date above written.

Witness:

City of Portland

By: _____
Jon P. Jennings
Its City Manager

Witness:

**Downtown Improvement District
d/b/a Portland Downtown**

By: _____
Kim Volk
Its Board Chair

Approved as to Form: _____
(Corporation Counsel)

Approved as to Funds: _____
(Finance Department)

EXHIBIT A
to Supplemental Services Agreement
**(Supplemental Services Work Plan and Event
Support for FY2019)**

**MEMORANDUM RELATED TO THE
SUPPLEMENTAL SERVICES AGREEMENT (SSA) BETWEEN
THE DOWNTOWN IMPROVEMENT DISTRICT dba PORTLAND
DOWNTOWN (PD)
AND
THE CITY OF PORTLAND (City)**

(July 1, 2018 - June 30, 2019)

This memorandum is a good faith attempt to define certain services, programs and events, and to achieve an improved level of satisfaction for both the **City** and **PD**. It is generally understood that the City's Baseline Services, as articulated in Exhibit B of the Master Agreement, do not overlap or replace the services and programs incorporated in the SSA.

Also, listed are the specific special events produced by **PD** for the benefit of the **City** and its property owners, residents, businesses and visitors, during the contract period.

The ongoing relationship between **PD** and the **City** has evolved, along with the needs and expectations of both parties. The goal of this document is to improve coordination, establish priorities, clarify services and responsibilities, and list events covered under the terms and conditions of the SSA. The result will be to produce a more proactive, performance-based approach to the maintenance, cleanliness and overall attractiveness of downtown Portland.

1. FY 2019 City Personnel Work Plan

The City personnel assigned to perform services under the Supplemental Services Agreement are expressed in the FY2019 Portland Public Works Budget detail. For the current period of July 1, 2018 through June 30, 2019 these personnel are:

1. (1) Public Works Supervisor
2. (1) PD Steward
3. (3) Three Maintenance Workers
4. (2) Seasonal Laborers

Staffing levels may change on an occasion to account for employee leave coverage, emergencies or other unforeseen circumstances. However the City of Portland, Department of Public Works commits to continue to provide the general list of services provided by these personnel under the SSA.

- 1.1 The general list of services provided by these personnel is identified within the SSA under item 1.3. These shall not overlap services provided within Baseline Services (Exhibit B to Master Agreement).
- 1.2 The Public Works Supervisor shall inspect the entirety of **PD at least once** every two weeks. During this inspection particular attention shall be focused on, but not limited to, the overall cleanliness and maintenance of the sidewalks, streets, trash containers, graffiti removal, open spaces, furniture and fixtures, lights, signage, the visitor kiosk and public restrooms. The status of projects or work orders in process should be continually updated. The results of each inspection shall be logged and documented; a monthly report will be presented to the Executive Director of PD every month.

- 1.3 The Public Works Supervisor shall direct the maintenance personnel on their daily responsibilities by producing a weekly schedule highlighting project activities and goals. The Supervisor will participate and assist the team in achieving project activities, as needed.
- 1.4 Horticultural and landscaping duties shall be in support of City personnel and departments assigned to these tasks. PD dedicated personnel should assist (for instance with weed control and seeding) on an as needed basis, as time and normally assigned duties allow. Requests for assistance should be communicated via email to the PD Public Works Supervisor.
- 1.5 Sidewalk plowing and snow removal at intersections should be accomplished as soon as is reasonably possible during and following a snow event. If a yellow ban is called, sidewalk snow removal, as indicated in sections 1.3.1 and 1.3.2 of the SSA, should be completed within the same timeframe as city personnel and contracted partners remove snow from the District's streets and parking areas. The Department of Public Works will organize an annual winter briefing with the PD public works team and downtown contract partners that remove snow on sidewalks and plazas to review best practices regarding coordinating work activity. This meeting will typically occur in late fall/early winter. PD's Downtown Experience Liaison (DEL) should be present at this meeting.
- 1.6 "Quick response" repairs, such as missing bricks, landscaping damage or graffiti removal on public property

shall be performed by **PD** personnel, as soon as possible. **PD** and **City** will jointly approve each quick response, as needed.

- 1.7 **PD** and **City** will meet annually to discuss the prioritization of larger projects within the District generally included in baseline services or CIP, and managed by other **City** teams or departments. These include, but are not limited to, major sidewalk repairs, tree well rehabilitation, landscape installations and other reconstruction projects. These District projects will be prioritized with input from **PD**, and may include **PD** personnel in their execution. Progress and status shall be monitored by the **PD** supervisor, and updated as part of the monthly reporting.
- 1.8 **PD** will monitor responsiveness of City teams through specific PD access to "See, Click and Fix" software. PD will also track the activities of downtown PW staff to ensure that daily activities are in-line with section 1.3 of the SSA. Data will be reported to the PW Director by PD's Downtown Experience Liaison (DEL) during the monthly meeting, as outlined in Article VIII of the Master Agreement and article 1.3.3 in the SSA.
- 1.9 **PD** dedicated personnel will wear approved uniforms and work clothes at all times when on duty. **City** and **PD** agree to work jointly on uniform decisions, including recommendations on an alternative uniform for PD personnel.

2. FY2019 PD Event Support Plan

PD and the **City** recognize the value that well executed events bring to the vitality and

economic development of the downtown. To that end, **PD** agrees to follow the **City's** established permitting process and with the exception of the events as outlined in Exhibit B, Baseline Services, agrees to reimburse the City for actual expenses, as agreed to by both parties, required to support these events.

In FY2019, **PD** is planning major events that require a level of support by **City** personnel. Following is a complete list of events, some of which require City permitting, street closures, and the assistance of various City Departments. **PD** will make all efforts to incorporate recycling at all produced events, with support of the **City** staff, volunteers and supplied receptacles.

- 2.1 Summer Kick-Off Weekend (SKW): This event series begins on the second Friday in June with Square Hop from 6pm to 8pm. On Saturday, Shop For A Cause and Walk the Working Waterfront. On Sunday, The Old Port Festival (OPF) which requires closure of streets generally in the Old Port area. The other SKW events do not require street closures. SKW ends following the end of the OPF.
- 2.2 Light Up Your Holiday Celebration (LUYH):
 - This annual roster of events begins with the Annual Tree lighting in Monument Square on the Friday after Thanksgiving. The Tree Lighting requires set up and some street closures, along with minor transit re-routing around Monument Square. PD coordinates with the City Arborist on the selection of and transport of the tree to Monument Square. Other events in the LUYH event series include: Horse-drawn carriage rides, Merry Madness, Shop For A Cause Day, Elfternoon Lunchtime Shopping, and the Holiday Window Display Contest. Merry Madness may require minor street closures and additional City personnel, depending on the selected event location. LUYH events end December 16, 2018.

- 2.3 Downtown Worker Appreciation Day - Generally held in early May to recognize downtown employees. **City** and **PD** provide set up and management of 3 stations located at the Portland Museum of Art, Monument Square and Tommy's Park.
- 2.4 Police Awards Breakfast: Held in early winter at a downtown venue, this day honors both police and civilian heroes going above and beyond the call of duty. No permits or special services are required for this event.
- 2.5 Winter Lights by Pandora - Lights are installed on street poles and in downtown parks around the time that Day Light Savings Time ends in the late fall, and de-installed in February or March. Winter Lights are fully funded through PD's budget, while the City supplies the electricity. Storage for the lights is donated by MECA. Pandora provides labor for the installation and maintenance of the lights.