Portland, Maine   Yes. Life's good here.

ECONOMIC DEVELOPMENT COMMITTEE

DATE: **February 23, 2016 (Tuesday)**
TIME: **5:00 – 6:30 p.m.**
LOCATION: **Room 209, Second Floor**
Portland City Hall

<u>A G E N D A</u>

1. **Review and accept Minutes of previous meeting held on February 11, 2016.**

2. **Brief Overview of Portland's Downtown, partner in the Portland Economic Development Plan (5:00 pm).**
   a) Casey Gilbert, Executive Director of Portland's Downtown, will provide an overview of the Portland's Downtown services (see enclosed presentation).

3. **Review and vote to recommend to City Council – Amendment to Portland City Code Chapter 15 Licensing and Permits and Chapter 30 Vehicles for Hire Re: Tour Operator Licensing (5:20 pm)**.
   a) Adam Lee will provide a briefing at the meeting regarding the enclosed materials.

4. **Review of Updated Economic Development Committee Work Plan for discussion (5:50 pm).**
   a) See enclosed updated Work Plan.

5. **Executive Session (6:00 pm):** Pursuant to 1 M.R.S.A. 405(6)(C), the Committee will go into executive session to provide City staff general policy guidance regarding possible sale or lease of City-owned Thames Street property.

Public Comment will be accepted on action items.

Next Meeting: March 22, 2016

Councilor David Brenerman, Chair

Minutes

Economic Development Committee

February 11, 2016

A meeting of the Economic Development Committee of the Portland City Council was held Thursday, February 11, 2016 at 5:00 p.m. in Room 209 of Portland City Hall. Present from the Committee was its Chair Councilor David Brenerman and members Councilors Justin Costa and Spencer Thibodeau. Mayor Ethan Strimling also joined the meeting. Present from the City staff were Associate Corporation Counsel Michael Goldman, City Manager Jon Jennings (arriving as noted herein), Deputy Finance Director Suzanne Knight, Economic Development Director Greg Mitchell, Senior Executive Assistant Lori Paulette, and Chief of Staff Julie Sullivan.

Item #1: Review and accept Minutes of previous meeting held on January 26, 2016.

On motion made and seconded, the Committee voted unanimously to accept the Minutes as presented.

Item #2: Brief Overview of Creative Portland, partner in the Portland Economic Development Plan

Jennifer Hutchins, Executive Director of Creative Portland (CP), thanked the Committee for the opportunity to highlight the programs of CP, which was created in 2008 by the City Council – its Corporator – as a 501(C)(3) to enhance Portland's creative economy. Ms. Hutchins then described CP's LiveWorkPortland website as contemporary with emphasis on talent and people and why they live and work here. The site has been very successful with world-wide contacts/hits. Ms. Hutchins then described CP's 2 Degree Program, which connects people who are thinking of living/working here with like people who are already here. This program has 250 volunteers who help make connections, noting that the program has made 1,300 connections in five years.

Ms. Hutchins then described the First Friday Art Walk (FFAW) which is in its 15th year and at times can have over 8,000 people on a Friday participating and the resultant economic impacts on area businesses.

Ms. Hutchins closed by saying that CP is the City's Local Arts Agency and, therefore, can apply for various Federal and State grant programs. Ms. Hutchins also said she works with the Economic Development Department and the associated Economic Development Plan, which includes a section to "enrich the creative economy". She sees CP as a bridge between the City and non-profit businesses.

Councilor Thibodeau congratulated CP on its programs, particularly the 2 Degrees Program.

Councilor Costa asked about its Board of Directors, and Ms. Hutchins said that the Council recently appointed Chair Brenerman as an ex officio member. She is always looking for potential Directors to leverage private resources, and who have knowledge of the creative economy and the desire to actively participate in various programs/projects.

Chair Brenerman asked about its budget and where it is located. Ms. Hutchins said that CP receives up to $100,000 yearly from what was formerly the City's Arts TIF District and now the Downtown TOD TIF, as well as always seeking other sources of funding. Its annual budget has ranged anywhere from $225,000 to $165,000. CP leases space in the State Theatre building and is fine with that space.

Noting no further discussion, Chair Brenerman thanked Ms. Hutchins for the overview and congratulated her on the work of CP.

Item #4: Review and vote to recommend to City Council proposed amendments to City property disposition related to tax-acquired properties and City-owned properties.

Chair Brenerman asked this be taken out of order as City Manager Jennings wanted to be presented for Item #3.

Mr. Mitchell said that the Committee has the same material that was reviewed in City Council Workshop on Feb. 8th. He then handed out a one-page memo (copy attached) that highlighted consensus and discussion points.

Councilor Costa noted Consensus Item #2 "Annual tracking and reporting to City Council", and asked about regular updates, as well as communicating to the District Councilor when the City is about to sell a tax-acquired property. Mr. Mitchell said that the City forecloses each December, at which time it can provide a list annually to the Council at the end of December/first of January. Mr. Mitchell also agreed that staff would communicate with the District Councilor about tax-acquired going up for sale prior to that happening.

Chair Brenerman asked about this past December foreclosures, and Mr. Mitchell said that the list is available to send to the Committee and will do so after the meeting.

Councilor Thibodeau asked about noticing occupants of a tax-acquired property about to be sold and what the sale would mean to them, and Mr. Mitchell said that the proposed amendments do provide for notice to the occupants that the City is intending to sell the property.

Chair Brenerman opened the meeting for public comment. There being none, the public comment session was closed.

(City Manager Jennings joined the meeting at this time.)

Councilor Costa stated that he would like the District Councilor to be noticed when staff is moving on a sale of a tax-acquired property prior to it be placed on the market, and Mr. Jennings said that this would be done.

Councilor Costa said that he was fine with delegating authority to the City Manager to sell tax-acquired property under the recommended parameters. Regarding selling City-owned property, he would recommend after City Council approval to move forward with the disposition process, that the appropriate Council Committee then review and recommend to the City Council a Purchase and Sale Agreement.

Mayor Strimling asked about discussion point #2, net sale proceeds from the sale of a tax-acquired property being restricted for, for example, housing development. Mr. Mitchell said that this was touched upon at the Workshop, where it was noted that sale proceeds would first be credited to the City for back taxes, interest, costs, attorney's fees, etc., and then any sale revenue above this to be targeted for housing.

Mr. Jennings questioned where to apply those funds and for how long, and Mayor Strimling suggested that they go into the Housing Trust Funds for one full fiscal year and then into the General Fund after if not utilized.

Chair Brenerman asked about the percentage of residential properties foreclosed on, and Mr. Mitchell said that about 50% of the properties are residential vacant land, and about 50% percent are single family residences.

Chair Brenerman said that he favors the proposed amendments, and, particularly the City Council being first approached for approving the disposition of other City-owned properties and then the appropriate City Council Committee reviewing bids/proposals for its recommendation to the City Council for a purchase and sale agreement.

Mr. Jennings said that the proposed amendments are an effort to streamline processes.

On motion made and seconded, the Committee voted unanimously to recommend to the City Council that net sale proceeds from the sale of tax-acquired properties go to the Housing Trust Fund for one full fiscal year, and then revisited at the end of FY2017 by this Committee.

On motion made and seconded, the Committee voted unanimously to recommend to the City Council that it approve amending City Ordinance 2-313 as recommended – noting that the City Council would annually receive a list of the foreclosures at the end of December or first of January and the District Councilor would be notified prior to moving ahead to sell a tax-acquired property, and approving the amendments to the Rules for disposition of City-owned and tax-acquired property – noting that the City Council will first approve of the disposition for City-owned properties and then having the appropriate Council Committee then review bids/proposals for its recommendation to the City Council for sale.

Item #3: Review and vote to recommend to City Council proposed changes to City permitting and inspections functions: reorganization for customer efficiencies.

In follow-up to the City Council Workshop on Feb. 8, Ms. Sullivan handed out (copy attached) answers to two main areas of question – how to measure the effectiveness of the reorganization and how to ensure quality reviews to maintain or exceed the current level of public safety provided by the building permit review process.

Mr. Jennings said that for the City to know whether or not the changes implemented through the new proposed department are impactful, he noted that the last two pages of the handout show the type of permit and the average number of days now to issue the permit. These days include waiting for additional information from the applicant. South Portland issues a third of the permits Portland does and does so in less than ten days, but there are large differences in ordinances and review standards from Portland.

Ms. Sullivan added that the proposed front end triage will assist in decreasing the amount of time to issue a permit. This front end triage will have 3 Permit Techs who will act as case managers for the permit applicant, letting the applicant know whether the City needs more information immediately. The waits should decline and some will not require zoning review. Regarding concerns for safety – training will be significantly expanded including CEO's trained on NFPA .

Councilor Thibodeau asked about inspections improving, and Ms. Sullivan said that Code Enforcement Officers (CEOs) now have to come back to the office for data entry; this will be done in the field. CEOs work from 1100 items in the building code. The new system in the IT upgrade will allow for an easier check off of these items in the field.

Councilor Thibodeau asked if there would be additional CEOs hired, and Mr. Jennings said the recently established Housing Safety Office will eventually be blended into this new department with its 3 CEOs. There will be cross training for CEOs that will allow them to do plan review. Training funds for the department will be instituted, and employees have indicated that they do want that training. Once the new Director is in place, he or she will further administer training and creating metrics to measure results.

Mayor Strimling asked about residential permits in South Portland, and Ms. Sullivan said that residential renovations and small additions permits are issued in 3 to 5 days. Mr. Jennings also noted that South Portland does just over 500 annually, and Portland does over 1,500.

Mayor Strimling said that seeing the current list in the handout being updated in a year's time would be a metric to watch. Mr. Jennings said that also separating out large and small projects will help in measuring success.

Ms. Sullivan noted that the IT upgrade will not be in place right away to obtain reports, and Mr. Jennings added that the new Director will have to measure success up until it is automated through the upgrade.

Chair Brenerman asked about timing for the new Department to be up and running, and Mr. Jennings said that once the Council approves of this, staff is ready the next day to start the hiring process – job descriptions have already been written. The process really needs to be streamlined, particularly for the residential permits.

Councilor Thibodeau asked for an estimate when the IT upgrade would be done, and Ms. Sullivan estimated two years.

Chair Brenerman opened the meeting for public comment.

Carol McCracken asked the City Manager what he meant by a cultural shift across the City.

Jim Brady, of CPB2, congratulated the City Manager to tackle this issue. Creating more efficiencies is important to grow the tax base. His only concern is the cost structure proposed for fees, noting that Portland would be the highest in Maine, and twice as much as Burlington, VT. The IT upgrades and improved customer services are great to reduce the time it takes for permits issued. The financial burden of a 45% increase to building permit fees may hinder large scale development, suggesting to keep the fees more in line with other benchmark cities. In closing, he said that the Press Hotel had to hire a third party inspector at $20,000 that it thought the building permit included.

Jack Lufkin, representing the Portland Chamber, also expressed his appreciation to the City Manager, as this has been issue for at least nine years for the City when he was the Economic Development Director, and is also consistent with the Economic Development Plan issued in 2011. It is about customer service and will benefit small projects, as well as large. He agreed, however, that the 45% fee increase is a burden. The Chamber can work with the City on that if needed.

Chair Brenerman, noting no further public comment, closed the public comment session.

Mr. Jennings said that the cultural shift is that the City has been over promising and under delivering, which has created anxiety and mistrust. The City's customer comes first. People are now losing money because of delays. The proposed fee increases is similar to what So. Portland is charging. In recent years, Building Inspections staff has been cut and more responsibility added to the employees remaining. The fee increases are necessary to create a one-stop shop and predictability. Additional staff training is also needed, as well as the IT upgrade to be efficient and effective. This fee increase is to invest in this new Department..

A motion was then made and seconded to recommend to the City Council approval of the proposed reorganization.

Councilor Thibodeau asked if the new department would be self-funding, and Mr. Jennings said that the recommendation is not to lock box revenue received from fees to this Department. That being said, the plan is to balance the new Department's needs to always invest in it.

Councilor Thibodeau said that he supports the investment.

Councilor Costa also supported the investment, and fees can be re-evaluated next year for further investments or based on other City needs. He also supported the cross training with the Housing Safety Office CEOs. Regarding raising fees, the onus is on the City for tangible results.

Chair Brenerman said that most residents have little contact with City Hall, but when they do contact City Hall apply for a permit to put, for example, a deck on their residence, they run into delays This is intended to fix that problem, as well as for larger projects. Regarding fee increases, it is important to get this reorganization underway and invest now.

The Chair then asked for a vote on the motion and it passed unanimously.

Item #5: Review of Draft Economic Development Committee Work Plan for discussion and direction.

Mr. Mitchell said that the first four items in the draft work plan are taken from the 2016 Mayor and City Council Goals; the remaining items are staff recommended. He asked if the Committee had additional items, noting real estate items are more demand driven and will be brought to the Committee as they come up. At the Feb. 23 EDC meeting, he anticipates having the Tour Bus Operator ordinance on the Agenda, as well as a proposed lease for City owned commercial space at 84 Spring Street, and the next draft of this work plan.

Councilor Thibodeau said that he would like to have the Committee discuss outdoor seating for food service establishments. He would like an overview of the permitting process and ordinance, particularly any barriers for older buildings.

Mayor Strimling suggested also adding other items from the Council goal setting process.

Chair Brenerman asked about getting the word out to the public on various issues the Committee will be taking up, and Mayor Strimling suggested press releases when the Committee was having a public hearing on, for example, Office for New Americans, Portland Ocean Terminal, to name a couple.

Councilor Costa asked about the Maine State Pier and the visioning that was done in the past, and Mr. Mitchell said that the Waterfront Coordinator Bill Needelman could make a presentation on this.

Mayor Strimling said that he looked forward to this, and for the City to be proactive for this and its other valuable waterfront parcels.

Chair Brenerman asked if there was any public comment.

Ms. McCracken said that she looked forward to further discussion on the various City waterfront parcels.

Chair Brenerman, noting no further public comment, closed the public comment session.

On motion made and seconded, the Committee voted to accept the work plan with the additions as noted herein.

There being no further business, the meeting adjourned at 7:15 p.m.

Respectfully,

Lori Paulette

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: February 11, 2016

SUBJECT: **Proposed Amendments to Rules for the Disposition of Tax-Acquired and Other City-owned Property**

The following is my summary of both high level "consensus" and "discussion point" items related to the outcome of Monday night's City Council Workshop on the above matter.

Consensus

1. To delegate authority to City Manager to sell tax-acquired properties under defined parameters (see discussion point about parameters).
2. Annual tracking and reporting to City Council.

Discussion Points

1. *City staff recommended parameters* to support City Manager delegated authority to sell tax-acquired properties as presented at the City Council Workshop include (Ordinance Amendment required):

   a) Tax-acquired properties with a total municipal assessed value of $400,000 and under;
   b) Residential properties only (up to three units), including residential vacant land; and,
   c) Minimum sale price may be no less than the sum of back taxes, interest, marketing costs, attorney fees, and other expenses due to the City (i.e., net sale proceeds).

2. *Possible restrictions on tax-acquired net sale proceeds.* Net sale proceeds would always be first applied towards taxes, penalties, closing costs etc.

3. *Sale of other City-owned property*: Current proposed amendments to require City Council direct property disposition process.

Proposed Permitting and Inspections Department

Responses to Questions from 2/8/16 Council Workshop
Economic Development Committee, 2/11/16

Council questions from Monday's workshop focused on two main areas:

(1) How can we know whether or not the changes implemented through the proposed new department are impactful, and

(2) How can we ensure quality reviews to maintain or exceed the current level of public safety provided by the building permit review process.

Question One

Benchmarks from comparable cities in New England and in Maine were provided as part of USM's 2013 study of the City's permitting and inspections functions. It is not as straightforward as one might think to infer benchmark numbers regarding permit issuance. Some average times are far longer than ours, and some are far shorter. There are many factors that contribute to review time, and without more robust ways to quantify these differences, conclusions can be misleading.

However, even a quick review of Portland's numbers of permits and the number of days to issue each type of permit shows significant room for improvement. Looking next door to Portland, South Portland issues about a third of the number of permits that we do, and takes less than 10 days to issue nearly all permit types. But, to set 10 days as a target for Portland does not take into account the vast difference in ordinances and review standards between the two communities.

That being said, I would suggest **percentage reductions in time to issue the most frequent permit types is a wise place to set initial benchmarks, and would survey a range of applicants at the 3, 6, and 12-month marks to gauge improvements in customer service and perceived efficiency.** I also suggest that the incoming department head set the detailed evaluative measures for all changes implemented to follow a classic plan-do-check-act cycle.

While the City works through the process of selecting a new information systems vendor, the magnitude of improvement will be limited. There should be significant improvement in time to issue permits as well as the process flow once the new Permit Techs are hired and trained, but the full potential cannot be realized without major technological improvements.

Question Two

The initial triage and customer relations functions to be provided by the new Permit Tech positions should speed up the process by ensuring completion and accuracy of applications up front, sorting and managing applications by complexity, and conducting review of simple permits. The Permit Techs will be provided with extensive training to allow them to conduct these simple reviews and issue such permits quickly.

It is the staff's assumption that by making the building permit application process easier, faster and more pleasant will mean that more people will pull permits for their projects. This is clearly an assumption that should be measured by **evaluating whether there are increased numbers by type of application and by applicant survey**, as mentioned in the response to Question One.

Types and Numbers of Permits and Days to Issue
2/9/15 - 2/9/16

PLEASE NOTE:
Only limited conclusions can be drawn from this data. Our current systems do not allow for easily extractable data; the upcoming citywide information technology RFP will yield a system with far more robust capabilities. In addition, Days to Issue includes time spent waiting for applicants to respond with required information.

Permit Type	Number of Permits	Days to Issue
Additions - Commercial	12	71.6
Additions - Multi Family	11	61.0
Additions - Single Family	103	40.3
Additions - Townhouses	2	26.5
Additions - Two Family	10	38.8
Alterations - Commercial	173	34.9
Alterations - Multi Family	53	43.0
Alterations - Restaurant	4	76.0
Alterations - Single Family	143	18.6
Alterations - Townhouses	4	31.0
Alterations - Two Family	31	27.4
Amendment to Commercial	16	25.3
Amendment to Multi Family	6	20.2
Amendment to Single Family	19	23.2
Amendment to Two Family	2	12.5
Awning, no signage	1	
Awning, with signage	1	22.0
Change of Ownership - Condo Conve	9	58.0
Change of Use - Commercial	94	46.2
Change of Use Home Occupation	7	83.7
Change of Use - Multi Family	13	86.4
Change of Use - One and Two Family	17	47.3
Change of Use - Restaurant	7	50.0
Demolitions - Building	31	53.4
Demolitions - Interior	13	20.4
Fence Permit	3	18.0
Fire Alarm System	61	24.0
Fire Sprinkler Systems One & Two Fan	27	23.1
Fire Suppression Non-Water Based	20	17.2

Permit Type	Number of Permits	Days to Issue
Fire Suppression Water Based	59	21.6
Foundation Only/Commercial	5	54.8
Garages - Attached	2	64.0
Garages - Detached	5	34.0
Generator - Commercial	1	35.0
Hood Systems, Commerical	14	44.1
HVAC	199	17.3
Legalization of Non-Conforming Units	16	74.3
New Commercial Structure	10	94.1
New Multi Family 3+	5	87.8
New Single Family	17	52.8
New Two Family	3	
Outdoor Seating	62	61.4
Pool - Above Ground	3	15.7
Pool - In Ground	6	4.7
Radio/Telecommunications Equipmen	18	37.5
Radio/Telecommunications Tower	1	
Replacement windows	4	34.3
Retaining Wall	1	51.0
Sheds	45	25.8
Signs - Permanent	112	43.1
Signs - Side Walk	8	27.6
Signs, Banners and Awnings	11	28.8
Site Alteration	12	33.5
Special Events	30	16.5
Tanks - Commercial	4	6.5
Tents	36	12.4
	1,582	**37.8** **Avg**

EST. 1633

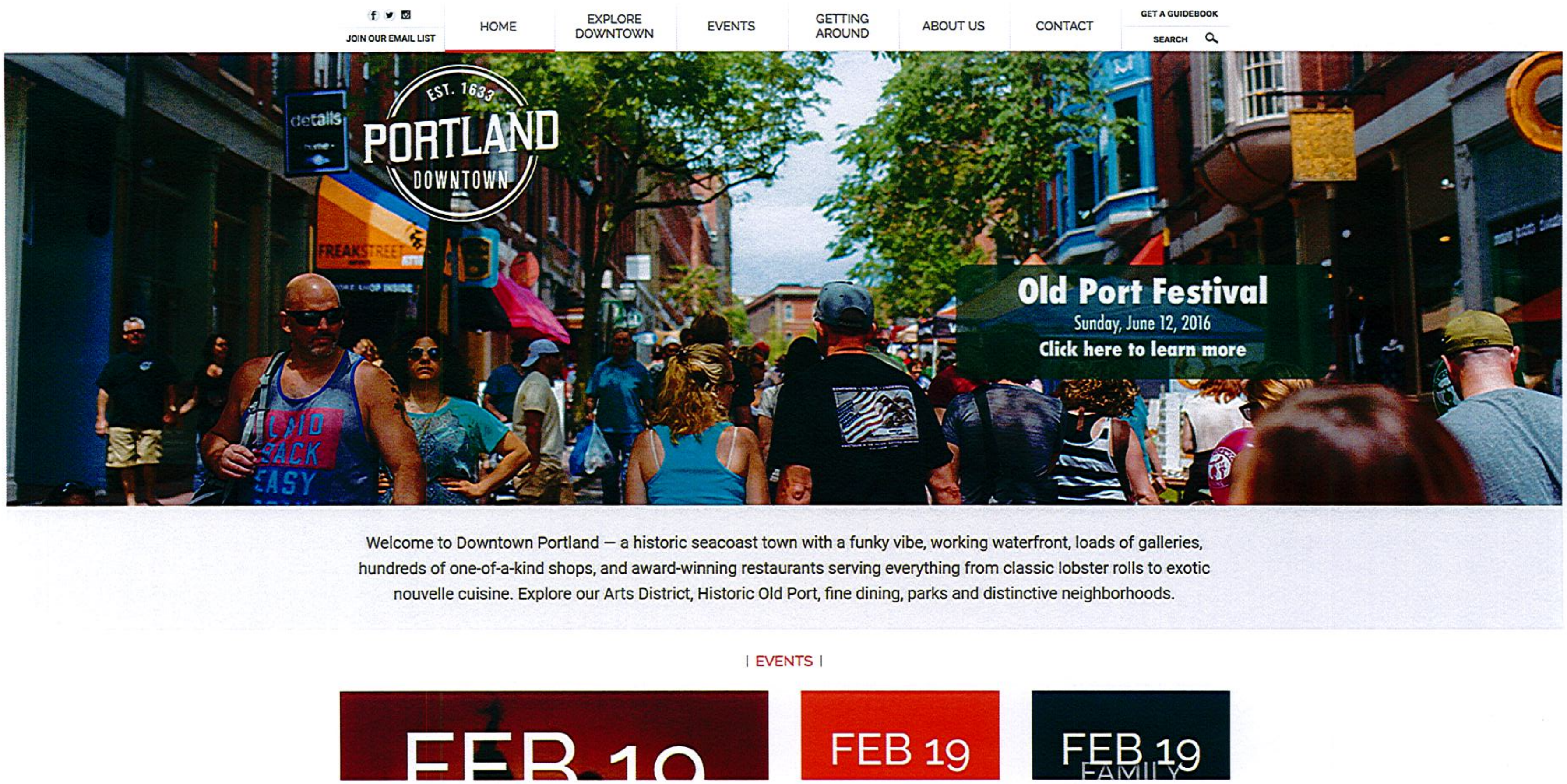
PORTLAND

DOWNTOWN

Portland Downtown

Formerly "Portland's Downtown District"

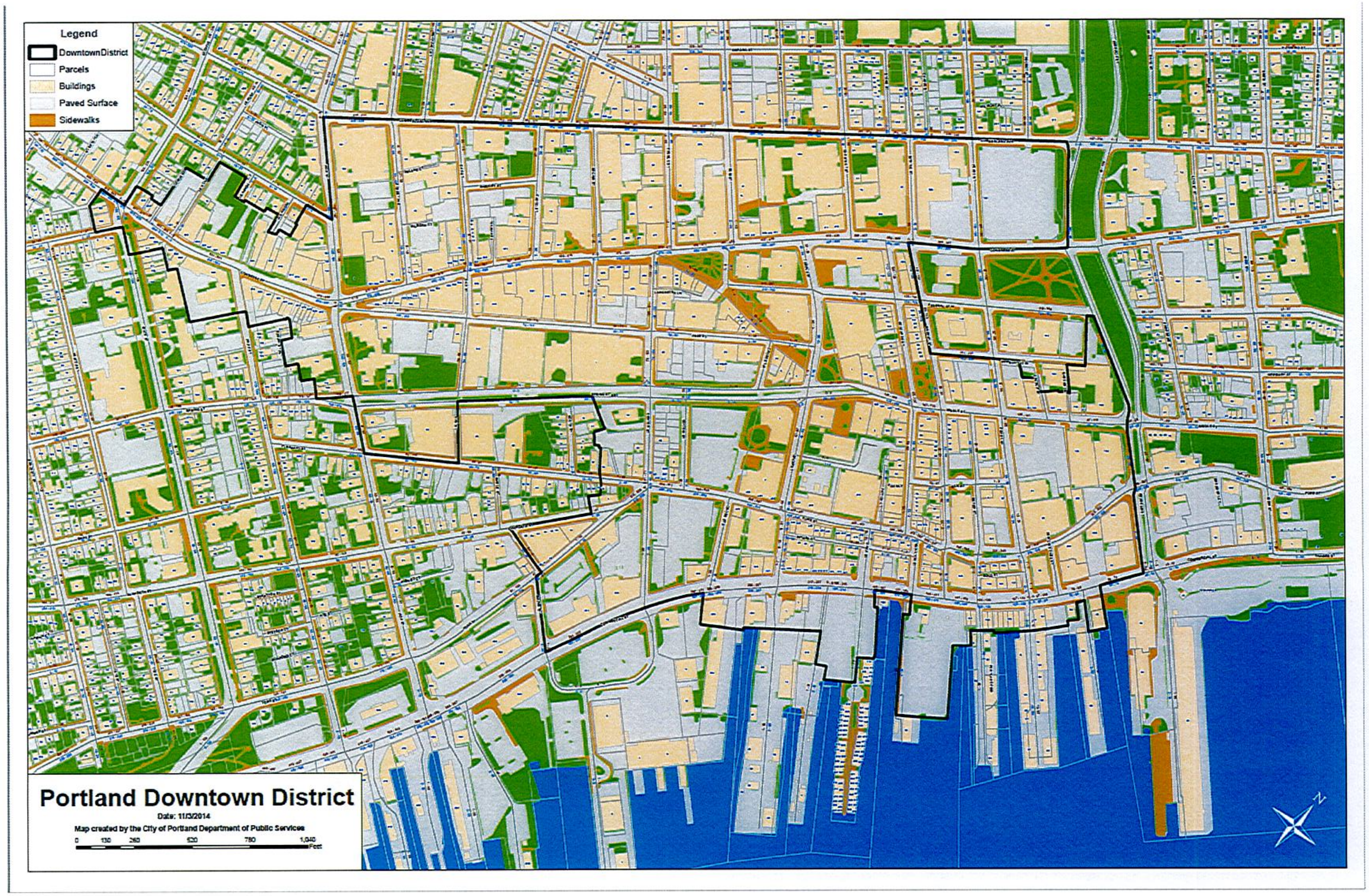
Fall 2015 : rebranding, new logo & new website



About / History

- Formed in 1992
- Property owners within the footprint are assessed a tax
- The City of Portland collects the tax on behalf of Portland Downtown
- Portland Downtown has a **Master Agreement** with the City that outlines responsibilities/obligations
- Portland Downtown has a **Supplemental Services Agreement** with the City that allows for an increased level of services to the property owners, including: snow removal, street cleaning, maintenance of benches and trash cans, holiday decorations, etc
- Portland Downtown has a **Board of Directors** and several active **committees** that work on projects, programs, events and initiatives that strengthen Downtown
- Annual budget $850,000

Our Footprint



5-Year Strategic Plan

- Approved by Board of Directors in 2015
- Four Key Initiatives: Vitality, Experience, Growth & Advocacy

- **Vitality:** Promote and market Downtown businesses and events through website/social media/email marketing; hire new FT marketing coordinator; plan and execute amazing community events; develop long-term marketing plan; improve parking & transportation landscape; maintain business database; grow partnerships & sponsorships.
- **Experience:** grow cadet program; hire new FT Experience Liaison; new banners; improved sidewalks/lighting/streetscape; public restrooms; snow removal; maximize management of supplemental services agreement.
- **Growth:** Consider expansion of district to other areas on the peninsula; possible acquisition of other 'like purpose' organizations.
- **Advocacy:** establish a formal advocacy policy; gather community input; greater involvement at City Hall and with other community organizations (Chamber/CVB/Creative Portland); communication to constituents; board and committee recruitment.

Portland Downtown Events

- Police Awards Breakfast (January)

- Worker Appreciation Day (May)

- Old port Festival (June)

- Light Up Your Holidays (December)

• Tree Lighting at Monument square
• Shop For A Cause Day
• Merry Madness

Current Projects

- Student projects with USM
  - Undergraduate/Hospitality: designing walking tours for our summer guide program
  - Graduate/Planning & Policy: cost-benefit analysis of expansion

- Parking & Transportation Advocacy
Letter/Recommendations to City

- Noise/Sound in Downtown Advocacy
Letter/Recommendations to City

- Monthly e-newsletter and weekly e-campaign
"What's Up Downtown"

Thank You

PORTLAND
DOWNTOWN
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Board Roster 2015-2016

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Portland Downtown

5-Year Strategic Plan

June, 2015

Introduction

Portland Downtown was established in 1992 through an act of the Maine State Legislature under the "Maine Municipal Development Districts" statute. It was incorporated as a 501C(4) non-profit called the Downtown Improvement District, Inc. The initial overriding goal, as taken directly from the enabling legislation, was to "promote and enhance the image of downtown Portland, Maine, as a safe, clean, well-managed area in which to live, visit, shop and conduct business."

The legislation document goes on to describe many of the goal elements that Portland Downtown still performs today. More recently, these were incorporated into the mission statement established during the organization's previous strategic planning process:

Portland Downtown is in the business of maintaining a clean and safe downtown while building and promoting a vibrant business, residential and tourism destination.

While Portland Downtown's original goals have remained relatively constant over the preceding 23 years, Portland has evolved to become one of the leading cities in New England, and, arguably, the economic engine for Maine. The downtown in particular has built its reputation as an important visitor destination, and a popular place to live, play and work. Portland now receives national accolades for its successes, and regularly makes top ten lists for its scenic beauty, restaurants, active arts culture and quality of life.

Portland Downtown deserves at least some of the credit for the city's resurgence. Working mostly behind the scenes, Portland Downtown has been committed to maintaining a clean and safe environment for visitors, workers and residents. It has consistently produced popular city events, developed a successful website, distributed printed visitor brochures and maps, and worked hard with other partners to create value for its property owner constituents.

Current State – Spring 2015

Today, Portland is a city in major transition. Older infrastructure is requiring upgrades along with major capital projects that need prioritizing and funding. Transportation and parking pressures must be addressed so that the city maintains its walkability, while vehicular access to, and through, the downtown is not adversely constricted. New housing is needed to satisfy demand in all economic groups from affordable to workforce to retirement. While development projects should be carefully considered and encouraged, zoning schemes must also be scrutinized so as not to limit appropriate private investments. Open space and historical complexities must be balanced against the city's growing economic needs. Social service capabilities require a new collaboration of all downtown organizations, along with funding to mitigate acute problems like homelessness and panhandling.

This is a long list of transitional growth issues! Yet, Portland Downtown's mission and original goals still remain relevant today. Our role in Portland's future success will require establishing priorities in the areas of Downtown Vitality and the Downtown Experience. And, the organization must fill a leadership void and become a stronger voice for the city.

In the fall of 2014, the Chamber of Commerce cast light on the current economic realities of Portland in its annual benchmark report. On the surface the city appears thriving, but as the Chamber has pointed out underneath the foundation is hardly solid. Income, housing costs, tax burden and other key metrics are underperforming when compared to similar sized peer cities in New England and across the country. These issues are of similar concern and importance to Portland Downtown.

Looking Forward

Portland's downtown has physically grown beyond the Portland Downtown borders which were established over two decades ago. Today it reaches into the surrounding downtown areas and pockets of real estate that were not included within the original footprint. An expansion of Portland Downtown is needed to allow the organization to provide more resources to these newer regions, incorporate the businesses into our marketing strategies, and more importantly to bring additional voices in support of the organization's goals.

The next 5 years will present significant challenges as well as opportunities, and is a crucial period for Portland's long term social and economic future. Clearly, there are conflicting views on where that future should take the city, and there is no overriding leadership coming from the public or private sectors. Often voices representing narrow interests are able to have a significant influence over local decisions, with more traditional organizations or business interests left out of the discussions. Even the normal process of government is impacted with the 'legislation by referendum' phenomenon Portland is currently experiencing.

Though unintended, this lack of broad thoughtful leadership and consensus building has the potential for harming the positive economic advances and reverting Portland back to the difficult times that spawned the organization in the first place!

Portland Downtown has always supported a healthy mix of economic development, business and income growth, combined with maintaining the city's superior quality of life. Portland Downtown is in the unique position of speaking for the downtown's largest cross section of constituents - property owners, businesses, residents and employees. In the end the current situation and potential for the next five years, presents a clear opportunity, and responsibility, for Portland Downtown to help shape the dialog and influence the future of Portland.

Strategic Planning Process

Many paths can be taken to achieve a strategic plan. Ultimately, its purpose is to set goals and initiatives that are expected to be achieved over a reasonable timeline. It is not a business or operational plan, as these are more granular and short term, and generally adopted in support of the strategic plan. Clearly, a good strategic plan will not simply be an exercise conducted according to bylaw requirements, but a document that guides the organization forward.

The process was conducted over six months in expectation of adoption by June FY15, the end of the current year. Below is the timeline to achieve the final document:

1. 1st Draft was reviewed by all board members prior to the January 15th board meeting/morning retreat.
2. An electronic survey was sent to Portland Downtown constituent groups for strategic planning input.
3. The same survey mailed to Portland Downtown property owners.
4. Survey results were closed and tabulated by January 31st.
5. Board members offered additional input, changes and prioritization of items.

6. A 2nd draft was completed in March and reviewed by the board electronically.
7. Changes and refinements were made in April and May.
8. The final document will be approved at the June board meeting.

The Strategic Plan is organized into Four Key Initiatives. These are the broad, core categories that will define the focus of the organization through 2020. Incorporated into the Key Initiatives are the specific goals to be achieved during this 5 year cycle.

Strategic Plan Key Initiatives

A. The Downtown Experience Initiatives

Portland is an old city with narrow streets, crooked sidewalks, historic buildings, public parks, a working waterfront, 4 seasons of weather, and a resulting charm that is not seen in a city of its size anywhere in America. Our core responsibility is to be the leaders for maintaining the downtown, and these Downtown Experience priorities incorporate our traditional "clean and safe" goals.

Property owners rightfully expect a certain level of baseline public services from the city of Portland paid for by property taxes. Our investment in a supplemental level of services is where Portland Downtown is able to make a major difference. To provide this, we contract with the city of Portland annually on a Supplemental Services Agreement.

Portland is generally a safe city but Portland Downtown must remain vigilant as perception for many is reality. This requires continuous work to create a comfortable experience for visitors, employees and residents. We manage safety concerns through a close working relationship with the police and fire departments, hired cadet patrols, human service agencies and city staff.

Top strategic priorities are:

1. Expanded police and cadet presence – to add more foot patrols and expand the hours and coverage in the downtown.

2. Create and hire a new position called Community Services Coordinator – with property management skills to monitor 'the streets' and work closely with city staff and property owners.

3. Improved street lighting – by addressing poor lighting in darker downtown zones. Consider ways to fund city lighting upgrades.

4. New signage and banners – to improve wayfinding and replace aging banners

5. Focused effort on homelessness and panhandling – Work with city staff and shelter agencies to find common ground in solving these problems. Research legislation to reduce panhandling

6. Increased landscaping and plantings – Consider ways to beautify the downtown such as an "adopt a planter" program and volunteer landscapers. Work closely with "Friends" groups to support park maintenance.

7. More resources for graffiti removal and education – Closely monitor Learning Works and consider additional removal vendors. Provide frequent information to property owners on latest removal techniques.

8. Additional public restrooms – identify sites for new public restroom facilities, or other alternative concepts. Seek funding sources.

9. Sidewalk brick and tree well repair – Inspect and log all sidewalk issues and create priorities for use of CIP funds. Replace trees and reconstruct tree wells, or brick in unused wells and remove old asphalt repairs.

10. Improved snow removal procedures – Refine rules for parking bans in the downtown and closely monitor removal following storms

11. Recycling and waste removal – In conjunction with the city, implement a recycling and food waste removal plan.

12. Management of supplemental services agreement – create a new working model for oversight. Monitor and track See, Click and Fix performance.

B. The Downtown Vitality Initiatives

Our 'Downtown Vitality' strategy will be contemporized through a stronger focus on marketing and online communications. Major downtown events like the Old Port Festival, Winterfest and Light Up Your Holidays present an opportunity for partnerships to achieve even greater success, and to share some of the operational burdens.

Much of our vitality efforts will be directed toward the support of downtown businesses, especially those on the street level that struggle to compete with online companies and national competitors located in South Portland, Freeport and the other surrounding communities. Our new website will feature a comprehensive calendar of events and provide help to visitors with parking, transportation and other needs.

1. Develop and execute a long-term consumer marketing and communications plan – focus will be in support of downtown businesses, mainly retail, and expanding local and long-distance visitations on a year-round basis

2. Hire a Marketing and Communications Coordinator – to focus on executing a marketing plan, and managing the website, database, and internal and external communications.

3. Establish www.portlandmaine.com as the online hub for Portland – feature local events, business information and how to travel to downtown Portland. Create a plan to monetize elements of the site.

4. Maintain Portland Downtown events – Retain 'ownership' of the Old Port Festival, Winterfest, Light Up Your Holidays and seek partners and outside event management for support.

5. Event partnerships – provide our city knowledge and marketing capabilities to support other downtown events

6. Improve the Park and Shop Program – update this program to better serve the public, merchants and parking lot owners.

7. Complete a parking and transportation study – to inform city leaders and provide solutions

8. Research and monitor the health of downtown businesses – acquire information about retail sales and track performance

9. Maintain business database – continually update business information and communicate effectively to individual sector groups.

10. Seek sponsorships and grants – to provide funding for events and other marketing or maintenance initiatives

11. Support acquisition and recruitment of new businesses and residents – by participating with other organizations, and remaining engaged on all housing and zoning issues

C. The Advocacy Initiatives

Portland Downtown should take carefully considered positions on major issues that affect our constituents. Moreover, Portland Downtown is positioned to be in a leadership role with regard to all issues than impact the future of Portland. This responsibility requires an advocacy process that seeks input from the community, vetted through a committee of the board of directors.

1. Establish a formal advocacy policy – a committee should be formed to create the procedures for adopting positions. The executive director should speak publicly for the organization.

2. Create a process to solicit community input – utilize surveys and meetings to elicit feedback and support.

3. Portland Downtown Representation – to remain informed in all city decision-making, Portland Downtown should provide a member(s) to all city committees, task forces, and study groups. The executive director should be a member of other organization boards, such as the Chamber and CVB.

4. Consistent communication to constituents – Portland Downtown should frequently communicate its position to

all constituent groups. It should seek supporters to attend council and committee meetings

5. Continuous board and committee recruitment – to maintain fresh perspectives and keep a 'pipeline' in place

D. The Growth Initiatives

Portland's downtown has grown significantly since Portland Downtown was established in 1992. However, the organization's footprint has not grown beyond its initial boundaries. A specific plan is needed to expand.

1. Add properties within the current footprint but not presently included in the assessment – for a variety of reasons a significant amount of property was excluded or has been redeveloped since the district was established.

2. Expand east of Franklin Street - to include the India Street Neighborhood and the waterfront area down to the current Portland Company property

3. Consider expansion to the Bayside Neighborhoods – to include some of downtown Portland's fasted growing areas

4. Consider expansion to include the total Downtown TIF – The newly enacted 'downtown TIF' includes nearly all of the commercial area in the central peninsula of Portland.

5. Consider acquisition of other 'like purpose' downtown organizations – there are a number of non-profits that have similar roles and are often inadequately funded and staffed. Portland Downtown could incorporate them under our umbrella.

6. Evaluate a two-tier assessment program – analyze the financial and operational issues with offering a different rate for residential and commercial properties

Summary

Portland Downtown is completing an organizational transition much like the city itself. By the end of June it will be launching a new website to better represent its high profile URL, portlandmaine.com. At the same time it will be changing its name to simply Portland Downtown, removing the 'district' label and broadening its focus to be more inclusive of all constituent sectors in the city.

This five year plan lays out an ambitious strategy for the 23 year old organization. While the plan does not establish many of the specific details or timelines to complete each goal or initiative, it identifies the path toward positioning Portland Downtown as a leader in the future evolution of the city.

Some strategic goals are likely to be completed more quickly than others. And, while certain goals may be dropped, others will likely be added by future boards. This is a normal process in a dynamic organization. In fact, the strategic plan should be reviewed annually and a business plan created for each fiscal year cycle.

Finally, Portland Downtown will only be as strong as its volunteer board of directors and committees, supported by talented staff members. A continuous effort should be made to recruit and retain a team of influential people with a passion for Portland and a positive outlook for the future.

MASTER AGREEMENT BETWEEN

THE CITY OF PORTLAND

AND

DOWNTOWN IMPROVEMENT DISTRICT, INC.
D/b/a PORTLAND'S DOWNTOWN DISTRICT

AGREEMENT made by and between the **CITY OF PORTLAND**, a municipal corporation of the State of Maine, hereinafter referred to as the "**CITY**" and the **DOWNTOWN IMPROVEMENT DISTRICT, INC., d/b/a PORTLAND'S DOWNTOWN DISTRICT**, a Maine non-profit corporation, having its office and place of business at Portland, Maine, and doing business as "Portland's Downtown District", hereinafter referred to as the ``**CORPORATION**"

WHEREAS, the **CITY** has established a Downtown Improvement District; and

WHEREAS, the **CITY** desires to have certain services performed by the **CORPORATION**, as described in this Agreement, within the **CITY's** Downtown Improvement District (hereinafter referred to as the ``District''; and

WHEREAS, the **CITY** desires to contract with the **CORPORATION** for the provision of certain services to be provided in the District;

NOW, THEREFORE, in consideration of the covenants herein contained, the parties hereto mutually agree as follows:

ARTICLE I. FINANCIAL CONSIDERATIONS

1. The **CITY** will levy development district assessments on property in the District, as authorized by the City Council and permitted by law. **CITY**-owned property, as well as property which is tax exempt under Maine law, shall not be assessed by the **CITY**.

2. For the period commencing July 1, 2015 and ending June 30, 2016 the City will pay the **CORPORATION** in four (4) installments, to reflect the assessments collected by the City, less the **CITY**'s direct and indirect costs, such as, but not limited to, postage, publication, lien costs and costs of delinquent collection. Installment payments will be made on August 10, 2015; October 12, 2015; February 1, 2016; and May 2, 2016.

3. The **CITY** may adjust such payments, after an advisory consultation with representatives of the **CORPORATION**: either (i) in order to equal the net assessments collected; or (ii) in the event of any challenge to the assessments which includes a request for a refund, to withhold such amounts as the Director of Finance may deem necessary to protect the City from any order or judgment requiring it to make a refund.

   In addition to the foregoing, the **CITY** will pay in a lump sum, within thirty (30) days from the close of the fiscal year, any amount assessed in a prior year, but collected in a subsequent year. Said payment by **CITY** shall be in the amount of the net assessment collected as provided herein, less any amounts remaining to be reimbursed under a prior year Master Agreement or Supplemental Services Agreement with the **CITY**. **CITY** will provide the **CORPORATION** with written detail as to any deductions taken from payments under this paragraph.

   The **CORPORATION** shall provide a fiduciary bond, payable to the **CITY**, in the minimum amount of Ten Thousand Dollars ($10,000.00).

4. Advancements made hereunder shall be reimbursed to the **CITY** from receipts from development district assessments, net of any of the costs referred to in Paragraph 2.

5. Notwithstanding the foregoing, **CORPORATION** agrees that it will neither encumber funds which it anticipates receiving from development district assessments nor incur expenditures in anticipation of receipt of such funds except in accord with the line items in the budget attached hereto as Exhibit A, or any subsequent amendments thereto approved by the **CITY**.

6. The **CITY** and the **CORPORATION** have accepted the **CORPORATION's** budget in Exhibit A, covering the period beginning on July 1, 2015, and ending on June 30, 2016, with estimated District revenues from the assessments in the amount of $746,307.

7. The parties agree that the acceptance of the budget by the **CITY** is for planning purposes only and does not obligate the **CITY** to pay the **CORPORATION** said amounts. **CORPORATION** specifically acknowledges the **CITY's** right to either terminate or reduce its payments as provided in Paragraph 2.

8. The **CORPORATION** will provide the Director of Finance with a monthly financial statement in a form acceptable to him, including, but not limited to, a statement of its cash position. At a minimum, the statement shall list all income and expenses. The statement shall be due on or before the fifteenth (15th) day of the month following the month to which it relates. In addition, the books and records of the **CORPORATION** shall be audited annually as of the close of business on the thirtieth (30th) day of June by an independent certified public accountant and his report will be delivered to the Director of Finance.

9. The Director of Finance of the City of Portland will advise the **CORPORATION**, from month to month, of the amounts the **CITY** has collected from the assessments referred to herein, so that the **CORPORATION** can amend its budget to conform with the amount of money which may be available to it from the net proceeds of the development district assessments.

10. The **CITY** will maintain the level of "Basic Services" described in the memorandum which is attached hereto as Exhibit B.

11. The **CORPORATION** shall have reasonable access to the **CITY's** assessment collection records, and the **CITY** shall have reasonable access to the **CORPORATION's** books and records.

12. The Director of Finance shall determine the net amount collected by the City from development district assessments. In determining such amount, he shall deduct from the amounts so collected all costs (whether direct or indirect) incurred by the **CITY** both in establishing and also in administering the development district; all costs of assessments and collections; and, if the **CITY** should collect interest on delinquent assessments, such interest shall not be included in the "net amount collected".

13. The Director of Finance shall determine the "net amount collected from development district assessments" as well as the amount to be withheld by the **CITY** in the event of a challenge which includes a request for a refund. The **CORPORATION** may appeal his determination within fourteen (14) days to the **CITY** Manager whose decision will be final.

ARTICLE II. SERVICES

A. ORGANIZATION OF CORPORATION.

The **CORPORATION** will:

1. Provide staff and administrative services for supervision of the daily activities and public space management of the District.

2. Establish positions for administration and management of the program; recruit, hire, and pay and otherwise supervise the work force necessary to implement this charge.

3. Establish a corporate Board of Directors whose members fairly represent a cross section of taxpayers in the District.

4. Establish a mechanism for resolving any dispute to the kind and level of services which may arise between the **CORPORATION** and persons subject to development district assessments regarding the kind and level of services provided by the **CORPORATION**.

5. Provide liaison between the **CITY**, the District, property owners, civic groups, interested persons, and other groups and individuals, as directed by the **CITY** Manager and necessary to insure the successful implementation of District services.

6. Maintain all minutes and records of proceedings as may be required.

B. SERVICES AUTHORIZED TO BE PROVIDED BY CORPORATION.

The **CORPORATION** is authorized to provide the following services to supplement the **CITY's** "Basic Services" as described in Exhibit B.

1. Decorate and beautify public places in the District.

2. Sponsor and promote public events to take place on or in public places in the District.

3. Advertise and promote non-profit, cultural, educational and commercial business activities in the District.

4. Maintain information and directional signing for the District in accordance with applicable City codes and ordinances.

5. Improve public relations, generating favorable publicity for the District.

6. Manage vending activities, kiosks and information booths.

7. Sweep and clean sidewalks in the District.

8. Clean and erase graffiti.

9. Maintain vegetation and greenery in the public areas.

10. Remove trash and litter.

11. Wash, maintain and relocate street furniture, trash cans, drinking fountains, street lanterns, telephones and undertake minor repairs to street furniture.

12. Remove snow.

13. Provide for security of public areas.

14. Carry out the downtown improvement program authorized and approved by the **CITY** Council as set forth in this Agreement.

C. AUTHORITY OF CORPORATION.

Nothing in this Agreement shall be construed to limit the **CORPORATION**'s general powers, as set forth in the Maine Nonprofit Corporation Act, Title 13-B of the Maine Revised Statutes Annotated.

ARTICLE III. TERM OF AGREEMENT

This Agreement shall commence on July 1, 2015, and continue through, June 30, 2016.

ARTICLE IV. TERMINATION

This Agreement may be terminated by either party for good cause. Good cause shall be deemed to be found by the **CITY** at such time as the **CORPORATION's** performance under this Agreement has been determined in the exclusive judgment of the **CITY** Manager to be unsatisfactory which determination shall not be unreasonable.

If the **CORPORATION** should fail to perform any material covenant, obligation or agreement hereunder for a period of thirty (30) days after written notice from the **CITY** Manager specifying such failure, then, upon expiration of the thirty (30) day period, the **CITY** Manager may provide the **CORPORATION** with notice of his intention to terminate the Agreement as provided herein.

The **CORPORATION** shall have a ninety (90) day period, computed from the date of receipt of the notice of intent to terminate, within which to provide satisfactory service. In the event the **CITY** Manager should determine, at the expiration of the ninety (90) day period, that the **CORPORATION's** performance is still unsatisfactory and declare that the Agreement is terminated, the **CORPORATION** shall have the right to appeal his decision to the City Council.

The appeal to the **CITY** Council shall be filed with the **CITY** Manager within seven (7) days from the date the **CORPORATION** receives the notice of termination.

The terms and conditions of this Agreement shall remain in full force and effect and binding on both parties until the **CITY** Council has acted on the appeal.

The **CORPORATION** shall be deemed to have good cause to terminate this Agreement if (i) the **CITY**, pursuant to the provisions of Article I, should reduce its anticipated payments by more than 20% of the amount it would otherwise have paid during the periods from July 1, 2015 to December 31, 2015, and January 1, 2016 to June 30, 2016; (ii) if the **CITY** should be more than 30 days in arrears in any payment due hereunder; or (iii) the **CITY** should fail to maintain "Basic Services", as that phrase is defined herein, in a material and substantial way.

In the event the **CORPORATION** should have "good cause" to terminate this Agreement, its relief shall be limited solely to termination of this Agreement, and it shall not be entitled to damages of any kind nor to equitable relief.

Nothing herein shall be construed as giving the **CORPORATION** the right to perform the work contemplated under this Agreement beyond the time when the **CORPORATION's** services become unsatisfactory as determined by the **CITY** Manager, following the ninety (90) day notice period, or, in the event of an appeal, beyond the time the **CITY** Council has affirmed the **CITY** Manager's decision. In case the **CORPORATION** should be discharged before all the services contemplated hereunder have been completed, or the services for any reason should be stopped, either because of the expiration of the term hereof or because of the inability of the **CORPORATION** to fulfill its obligations under this Agreement, the **CORPORATION** shall be reimbursed for all services satisfactorily performed to the date of termination in accordance with Article II hereof. After notice of termination and completion of the appeal process, the **CORPORATION** shall:

A. With respect to existing activities, take only such actions as the **CITY** Manager shall direct;

B. Assign to the **CITY** in the manner, at the times and only to the extent the **CITY**, acting by and through its **CITY** Manager, may direct it to do so, all the rights, title and interest of the **CORPORATION** in and to all existing orders and agreements.

C. To the extent rights, title and interests of the **CORPORATION** in and to existing orders and agreements may be assigned to the **CITY** and accepted by it; obligations incurred on or after such assignment will be assumed by the **CITY**. Otherwise, the **CORPORATION** shall settle all outstanding liabilities and all claims arising out of any terminated orders or agreements.

D. Deliver to the **CITY**, in the manner, at the times and to the extent directed by the **CITY** Manager, all documents and data produced by the **CORPORATION** as part of or in connection with the work.

ARTICLE V. ASSIGNMENT

The **CORPORATION** covenants and agrees that it will neither assign nor transfer any rights hereunder, either in whole or in part, without first obtaining the prior written consent of the **CITY**.

ARTICLE VI. AREA COVERED

The services will be provided by the **CORPORATION** in the area designated by the **CITY** Council as the Downtown Improvement District of the **CITY** (hereinafter the "District"). A description and map thereof are attached as Exhibits C and D respectively and incorporated herein.

ARTICLE VII. STANDARD OF PERFORMANCE

All services performed under this Agreement either by or on behalf of the **CORPORATION** shall be performed in a good, workmanlike fashion to the reasonable satisfaction of the **CITY** Manager.

ARTICLE VIII. MANAGEMENT OF PERFORMANCE

The **CITY'**s Director of Public Services and/or designee and the **CORPORATION'S** Executive Director and/or designee agree to meet and communicate on a monthly basis using a standard meeting agenda format to address regular topic reviews, including but not limited to quality control in service delivery, updated information on service activities, programs and projects. These services are detailed in this Agreement, its Exhibits, and also in the Supplemental Services Agreement - executed contemporaneously with this Master Agreement - and its Exhibit.

ARTICLE IX. COMPLIANCE WITH LAW

The **CORPORATION** will comply with all applicable provisions of Federal, State, and local law, including, but not limited to, the Civil Rights Act of 1964, in its performance under this Agreement. The **CORPORATION** shall include a similar provision in each of its subcontracts.

ARTICLE X. INDEMNIFICATION

The **CORPORATION** shall, at its own cost and expense, defend, indemnify, and hold harmless the **CITY**, its officers, agents, and employees, from and against the following:

(a) to the fullest extent permitted by law, the **CORPORATION** shall indemnify and hold harmless the **CITY**, its officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including but not limited to costs of defense, including attorney's fees, arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense is: (1) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss or use thereof; and (2) is caused in whole or in part by any negligent act or omission of the **CORPORATION**, anyone directly or indirectly employed by it, or anyone for whose act it may be liable;

(b) all claims and liens of the **CORPORATION's** consultants, subcontractors, and their laborers, mechanics, materialmen, and/or suppliers.

Such obligation shall not be construed either to negate or abridge any other obligation of indemnification, and shall not be limited by any provision for insurance contained in this Agreement.

ARTICLE XI. INSURANCE

Neither the **CORPORATION** nor any of its subcontractors shall commence work under this Agreement until they have provided the insurance coverage required by this Agreement and such coverage has been approved by the **CITY**.

(a) Workers' Compensation Insurance. The **CORPORATION** and its subcontractors shall procure and maintain, at their own expense, and show evidence to the **CITY** of Workers' Compensation Coverage, as well as Employer's Liability Coverage, for their employees. All such policies which are in any way related to the services to be provided hereunder and which are secured and maintained by the **CORPORATION** or any subcontractors shall include clauses requiring that each underwriter shall waive all of its rights of recovery under subrogation or otherwise against the **CITY**. The City shall be named as an additional insured in all such policies.

(b) Prior to the execution of this Agreement, **CORPORATION** will procure and maintain Public Liability Insurance coverage and Automobile Insurance coverage in amounts of not less than Four Hundred Thousand Dollars ($400,000) combined single limit for bodily injury, death, and property damage, and also Worker's Compensation Insurance coverage, naming the **CITY** as an additional insured thereon. an additional insured on the certificate, in this way: certificate must say either: A) "the policy actually been endorsed to name the City of Portland as an Additional Insured" and a copy of the endorsement must come to the City of Portland with the certificate, or B) "the policy already includes an endorsement, such as the General Liability Expansion Endorsement, by which the City of Portland is, in fact, automatically made an additional insured." A Certificate which merely has a box checked under ''Addl Insr'', or the like, or which merely states The City of Portland is named as an Additional Insured, will not be acceptable.

(d) Deductible Amount. The **CORPORATION** and its subcontractors will reimburse the **CITY** for any amounts it may be required to pay and hold it harmless from the cost of any losses for which they are responsible and to which a deductible amount may apply. The deductible amount in any such policy may not exceed Two Thousand Five Hundred Dollars ($2,500.00) without the written consent of the **CITY**.

(e) Certificate of Insurance. The **CORPORATION** and its subcontractors will provide the **CITY** with either certificates of insurance or certified copies of the applicable policies, showing that they have complied with these provisions, and such certificates shall provide that thirty (30) days' written notice of non-renewal, material modification, or cancellation must be given to the **CITY**, prior to the effective date of such non-renewal, material modification, or cancellation.

(f) Claims-made Policies. Claims-made policies will not be accepted.

ARTICLE XII. INDEPENDENT CONTRACTOR

The **CORPORATION** either has or will secure, at its own expense, all personnel, materials, and equipment required to perform its obligations under this Agreement. Its personnel shall neither include any employee of the **CITY** nor shall such personnel be deemed to have any contractual relationship with the **CITY** by virtue of this Agreement. This Agreement does not prohibit either the **CORPORATION** or the **CITY** from entering into any contractual relationship. The **CORPORATION**, agreeing expressly that its status is that of an independent contractor, further, agrees that no such personnel shall represent or hold himself or herself out to be an officer or employee of the **CITY** either by reason of this Agreement or by reason of his/her employment by the **CORPORATION** or its subcontractors.

ARTICLE XIII. SUBCONTRACTS

The **CORPORATION** may, after thirty (30) days' notice in advance to the **CITY** Manager of its intention to do so, and with his approval, which shall not be unreasonably withheld, subcontract with third parties for the provision of part or all of the public services, including, but not limited to, security services, trash and litter removal, and snow removal, under this Agreement. The **CORPORATION** shall provide the **CITY** with copies of any third party contracts and with any insurance certificates required under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 30Th day of June, 2015.

WITNESS		CITY OF PORTLAND
Sonia Bean	By:	Jon P. Jennings Its City Manager
WITNESS		DOWNTOWN IMPROVEMENT DISTRICT, INC. d/b/a PORTLAND'S DOWNTOWN DISTRICT
Elizabeth Elton	By:	Michael Mastronardi Its Board Chairman

Approved as to Form: MG (Corporation Counsel)
Approved as to Funds: B Tower (Finance Department)

PORTLAND'S DOWNTOWN DISTRICT FY2016 BUDGET **July 1, 2015 to June 30, 2016**

ORDINARY INCOME/EXPENSE				
Income				
	ADMIN FEE INCOME-P&S		12,000	
	ASSESSMENT INCOME			
		CITY ASSESSMENT PROCESSING COST	0	
		ASSESSMENT REVENUE	746,307	
		NONPROFIT CONTRIBUTIONS	0	
		TOTAL ASSESSMENT INCOME		746,307
	EVENT INCOME			
		MERRY MADNESS INCOME	12,000	
		LIGHT UP YOUR HOLIDAYS INCOME	10,000	
		ALIVE AT FIVE INCOME	0	
		OLD PORT FESTIVAL INCOME	70,000	
		SHOP FOR A CAUSE INCOME	0	
		PORTLAND WINTERFEST INCOME	5,000	
		TOTAL EVENT INCOME		97,000
	INTEREST INCOME		0	
	ONLINE REVENUES		5,000	
	MARKETING INCOME		5,000	
	P&S INCOME		12,000	
	P&W INCOME		1,000	
	TOTAL ORDINARY INCOME		**878,307**	
Expense				
	BANK SERVICE CHARGES		0	
	CLEANING		2,995	
	CONFERENCES/PROF DEV		1,200	
	CONTRACT LABOR		9,000	
	COPIER MAINTENANCE		250	
	DEPRECIATION EXPENSE		0	
	DUES AND SUBS		3,000	
	EMPLOYEE COSTS			
		HEALTH/DENTAL INSURANCE	42,000	
		LIFE & DISABILITY INSURANCE	4,400	
		PAYROLL PROCESSING FEE	1,000	
		PAYROLL TAX EXPENSE	17,000	
		SIMPLE EXPENSE	4,000	
		TOTAL EMPLOYEE COSTS		68,400
	EMPLOYEE PARKING & BUS		4,800	
	EQUIPMENT EXPENSE		1,000	
	INSURANCE			
		DIRECTORS & OFFICERS	600	
		GENERAL LIABILITY INCLUDING EVENTS	10,000	
		LIQUOR LIABILITY	1,000	

WORKERS COMPENSATION	1,300	
TOTAL INSURANCE COSTS		12,900
MEETING EXPENSES	1,500	
POSTAGE	3,500	
PROFESSIONAL FEES		
ACCOUNTING	6,500	
COMPUTERS	750	
LEGAL	1,000	
TOTAL PROFESSIONAL FEES		8,250
RENT		
CAM CHARGES	7,880	
RENT - Other	17,128	
SALARIES AND WAGES	185,000	
BONUS AND INCENTIVES	10,000	
TOTAL COMPENSATION		200,000
SUPPLIES	4,000	
TAXES-PROPERTY	400	
TELEPHONE & INTERNET	3,000	
UTILITIES		
ELECTRIC	1,600	
GAS	1,200	
TOTAL ORDINARY EXPENSE	**347,003**	
NET ORDINARY INCOME	**531,304**	
OTHER INCOME/EXPENSE		
Expense		
ADOPT A FLAG EXPENSE	0	
ALIVE AT FIVE	0	
BANNERS EXPENSE	2,000	
CRUISE CONSORTIUM EXP	0	
DOWNTOWN WORKER DAY	475	
TARGETED MARKETING	20,000	
GRAFFITI REMOVAL	12,000	
GUIDES EXPENSES		
GUIDE PROGRAM EXPENSES	500	
PAYROLL TAX EXPENSES	1,200	
TELEPHONE STIPEND	200	
WAGES	12,000	
TOTAL GUIDE EXPENSES		13,900
HOLIDAY LIGHTS	41,500	
HOMETEAM EXPENSES	5,000	
LIGHT UP YOUR HOLIDAYS		
MARKETING	5,500	
PERFORMERS	3,000	
SECURITY	1,500	

TREE LIGHTING	3,000	
WINDOW WALK	0	
MERRY MADNESS EXPENSES	6,500	
WAGON RIDES	6,000	
TOTAL LUYH EXPENSES		24,400
PORTLAND WINTERFEST EXPENSES	5,000	
OLD PORT FESTIVAL		
MARKETING	5,000	
MISCELLANEOUS	5,000	
PERFORMERS	1,000	
PERMITS	5,800	
SECURITY	1,800	
TOTAL OLD PORT FESTIVAL EXPENSE		20,100
PARK & SHOP		
P&S MISCELLANOUS EXP	3,000	
PARK & SHOP ADMIN EXPENSE	7,000	
TOTAL PARK AND SHOP EXPENSE		10,000
PARK AND WORK EXPENSE	0	
POLICE CADET PROGRAM	24,000	
PRIOR YEAR ADJUSTMENTS	0	
SUPPLEMENTAL SERVICES CONTRACT EXPENSE	335,329	
WEBSITE DEVELOPMENT	18,000	
TOTAL OTHER EXPENSE	**531,304**	
NET INCOME	**0**	

<u>EXHIBIT B TO MASTER AGREEMENT</u>
(BASELINE SERVICES)

MEMORANDUM RELATED TO THE PROVISION OF CERTAIN SERVICES BY THE CITY OF PORTLAND

(July 1, 2015 - June 30, 2016)

This Memorandum relating to the provision of certain services attempts to define the baseline of City services agreed to be provided by the City to the area defined and designated as the Downtown Improvement District as passed by the City Council on March 16, 1992 (Council Order #306, as amended on February 22, 1995, by Council Order #185). This Memorandum is not binding upon the current City Council or any future City Council, but rather is a definition of the City's intent and good faith to provide services to the Downtown Improvement District zone.

It is generally understood that the City shall not reduce any of these usual and normal baseline services, thus requiring the same services to be provided by the Downtown Improvement District, Inc. (d/b/a Portland's Downtown District or its successors, unless these reductions are part of an overall reduction of City services provided by various departments to the City as a whole.

<u>MAINTENANCE SERVICES</u>.

Whereas it is the intention of any downtown improvement district maintenance program to complement existing City services currently provided with a supplementary program of cleaning and/or maintenance, the following information shall comprise the baseline of City services to be provided at City expense. Unless otherwise noted, services to be provided by the City shall apply only to the area(s) considered part of the public way.

1) <u>Horticultural Program</u>.

In all public areas within the downtown improvement district zone, the City will maintain and improve the condition of all flower urns and other flowerbeds, trees, tree wells, bushes, plantings and other like horticultural amenities. Such activity shall include the initial planting, timely and appropriate maintenance, preventative and otherwise, and expeditious replacement of any damaged, destroyed or diseased horticultural products, including grass, flowers, and trees. Specific areas of attention will include Longfellow Square, Congress Square, Monument Square, Tommy's Park, Post Office Park, Boothby Square, and any other public park, square or space which may be developed in the future.

2) Green Space Maintenance.

The City shall execute a green space maintenance program including mowing of all public grassed areas within the District. .

3) Downtown Blitz.

Each year the City shall undertake a dedicated effort to repair, repaint, replace and correct any defects, deficiencies or problems in the district. Items of focus shall include light and utility poles, sidewalks, curbstones, trashcans, benches, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that is now or at some point in the future may be installed. This program will be undertaken as early as possible each spring and conclude as rapidly as possible. Performance of some activities, i.e. painting, will take place annually as conditions permit. Major capital activity or the reconstruction and/or repair of significant infrastructure (street paving, sewer work, etc.) would not be considered part of this blitz program.

4) Sidewalk Repair.

To the extent it is funded, the City will undertake an on-going sidewalk repair program to re-grout existing sidewalks and replace bituminous sidewalk repairs with permanent repairs.

5) <u>Street Sweeping</u>.

All streets or parts thereof included in the downtown improvement district zone will be swept from curb line to curb line once per week.

6) <u>Trash Removal</u>.

Daily and when necessary emptying of all public trash receptacles in the downtown improvement district zone and disposal of resulting waste.

7) <u>Holiday Decorations</u>.

Installation and removal of downtown Holiday decorations throughout the District to include Christmas trees at Monument Square and City Hall Plaza, string lights on light poles and common area trees such as Tommy's Park, and banners as agreed by the City and PDD, and provide for electrical energy related costs.

8) <u>Snow Plowing</u>.

The City will plow and remove snow as necessary from all streets and parts thereof in the downtown improvement district zone.

9) <u>Streetscape Amenity Maintenance</u>.

The City will repair and correct any defects, deficiencies or problems in the district as necessary. Items of focus include light and utility poles, sidewalks, curbstones, trashcans, signs, crosswalk markings, traffic signals, tree wells, planters, benches, trees, kiosks, shelters, bollards, and any other amenity that are now or at some point in the future may be installed. All repairs, etc. will take place within a reasonable time after notice of need.

10) Lighting.

Maintenance and replacement of all street lights and traffic signals and payment for necessary electrical energy.

11) Graffiti removal on public property.

12) Prioritization

PDD shall have the opportunity to participate with City staff from the Department of Public Services in the prioritization of all proposed capital improvement projects within the District including, but not limited to, tree well reconstruction and sidewalk repairs. PDD officials recognize that City staff also work closely with the City Manager's office and the City Council for project priorities.

POLICE SERVICES.

1) A minimum of four uniformed patrol officers will intersect all or part of the downtown improvement district area. The actual number of officers will vary depending upon time of day and day of week. During periods when calls for service are typically at their peak, the number of officers assigned will increase significantly, for example during weekend evenings and the summer months. This increase will include foot and bicycle patrols. Officers will be supported with additional personnel (supervisors, detectives, evidence technicians) as necessary.

2) As long as the Senior Lead Officer Program is in effect, at least one Senior Lead Officer will be assigned to the Downtown Improvement District area.

3) From the Friday following Thanksgiving to New Year's Day, patrol efforts will be supplemented by use of a foot patrol. The number of officers and hours of the assignment is dependent upon staffing levels. Every effort will be made to assign two officers during those hours that retail shops are open.

OTHER MUNICIPAL SERVICES.

Whereas it is the intention of any downtown improvement district program to complement existing City services currently provided by departments or divisions, other than those described above, with supplemental services, the following information shall comprise the baseline of other City services to be provided at City expense.

1) Coordination of the use of downtown's public spaces within the District.

2) Coordination and staffing City services required for events occurring in downtown Portland.

3) As previously existing events, the City will provide necessary services to support the annual Tree Lighting Ceremony and the annual one-day Old Port Festival within the boundaries established by City Council order #168-21/13; to wit: the area bordered by Congress, Pearl, Commercial, Center, Union and Temple Streets and including both sidewalks of Commercial Street with no costs charged to the PDD for these events.

Exhibit C

Description of Portland's Downtown District

Beginning at Longfellow Square, at the southwesterly corner of Congress Street and State Street, easterly along Congress Street to High Street;

Thence northwesterly along High Street to Deering Street;

Thence along the easterly side of High Street to Cumberland Avenue;

Thence along the southerly side of Cumberland Avenue, beginning at High Street, to the Franklin Street Arterial:

Thence along the westerly side of the Franklin Street Arterial to Congress Street; and

Thence along the westerly side of Congress Street to Myrtle Street;

Thence along the westerly side of Market Street to the southerly side of Newbury Street;

Thence easterly along Newbury Street to the westerly side of the Franklin Street Arterial;

Thence along the westerly side of the Franklin Street Arterial to the southerly side of Commercial Street; thence along Commercial Street to the easterly side of Cross Street;

Thence along the northerly side of Commercial Street to Maple Street;

Thence along the easterly side of Maple Street from Commercial Street to the southerly side of Danforth Street;

Thence along the southerly side of Danforth Street in an easterly direction to York Street;

Thence northeasterly to the intersection of Center Street, York Street, and Pleasant Street;

Thence westerly along Pleasant Street from its intersection with Center Street to a passage way, situated at number 15 Pleasant Street according to the street numbering plan as shown on Chart 38, Block E, Lot 23 of the Assessor's Maps on file at Portland City Hall; and

Thence along the easterly side of South Street from number 13 South Street according to the street numbering plan as shown on Chart 38, Block E, Lot 10 of the Assessor's Maps on file at Portland City Hall, to the northerly side of Spring Street;

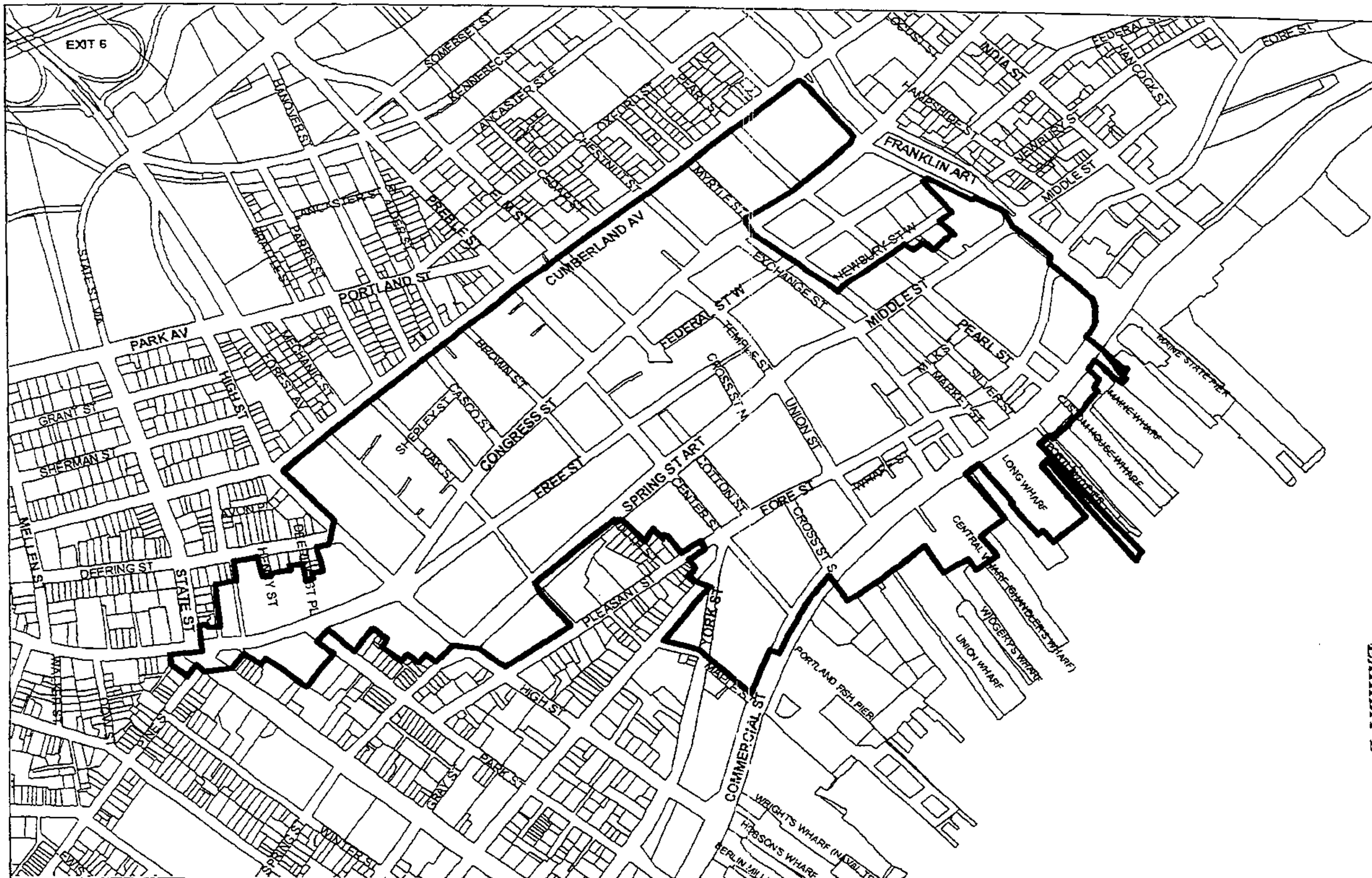
Thence along the northerly side of Spring Street in a westerly direction to Oak Street;

Thence along the westerly side of Oak Street to its intersection with Pleasant Street;

Thence along Pleasant Street in a westerly direction to the easterly side of High Street; and

Thence along the northerly side of High Street to its intersection with Congress Street.

EXHIBIT D



PORTLAND DOWNTOWN DISTRICT

Effective July 1, 2004

Map produced by the City of Portland's GIS Workgroup March 5, 2004

DOWNIMP-01 MGARDNER

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/18/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Norton Insurance Agency 275 US Route 1 Cumberland Foreside, ME 04110	CONTACT NAME: PHONE (A/C, No, Ext): (207) 829-3450 — FAX (A/C, No): (207) 829-6350 E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Philadelphia Insurance Companies	
INSURER B : Maine Employers Mutual Ins.	11149
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Downtown Improvement District, Inc
Portland Downtown District
549 Congress Street
Portland, ME 04101

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR	X		PHPK1338489	05/15/2015	05/15/2016	DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 3,000,000
	POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 3,000,000
	OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
A	ANY AUTO			PHPK1338489	05/15/2015	05/15/2016	BODILY INJURY (Per person)	$
	ALL OWNED AUTOS SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB CLAIMS-MADE						AGGREGATE	$
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE X OTH-ER	
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N	N/A		1810089274	08/04/2014	08/04/2015	E.L. EACH ACCIDENT	$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$ 500,000
							E.L. DISEASE - POLICY LIMIT	$ 500,000
A	Liquor Liability			PHPK1338489	05/15/2015	05/15/2016	Liquor occ/aggregate	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
City of Portland is included as an additional insured with respects to the insureds activities
General Liability includes liability for specifically scheduled events.

for the following events: The Olde Port Festival, Winter Fest, First Friday Art Walk June 2015, Light Up Holidays including the annual Christmas Tree Lightning and Shop for a Cause Day, Merry Madness, and Horse & Wagon Rides. The additonal insured status is provided by an endorsement made part of the insured's policy.

CERTIFICATE HOLDER	CANCELLATION
City of Portland Parks & Recreation Attn: Ted Musgrave 17 Arbor Street Portland, ME 04101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE Michelle Gardner

Philadelphia Indemnity Insurance Company

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Policy Number: PHPK1338489

Agent # 5486

☒ See Supplemental Schedule

LIMITS OF INSURANCE

$	3,000,000	General Aggregate Limit (Other Than Products – Completed Operations)
$	3,000,000	Products/Completed Operations Aggregate Limit (Any One Person Or Organization)
$	1,000,000	Personal and Advertising Injury Limit
$	1,000,000	Each Occurrence Limit
$	100,000	Rented To You Limit
$	5,000	Medical Expense Limit (Any One Person)

FORM OF BUSINESS: CORPORATION

Business Description: Non Profit Organization

Location of All Premises You Own, Rent or Occupy: **SEE SCHEDULE ATTACHED**

AUDIT PERIOD, ANNUAL, UNLESS OTHERWISE STATED: This policy is not subject to premium audit.

Classifications	Code No.	Premium Basis	Rates Prem./Ops.	Rates Prod./Comp. Ops	Advance Premiums Prem./Ops.	Advance Premiums Prod./Comp. Ops.
SEE SCHEDULE ATTACHED						
TOTAL PREMIUM FOR THIS COVERAGE PART:					$ 4,487.00	$

RETROACTIVE DATE (CG 00 02 ONLY)

This insurance does not apply to "Bodily Injury", "Property Damage", or "Personal and Advertising Injury" which occurs before the retroactive date, if any, shown below.

Retroactive Date: ______________________________

FORM (S) AND ENDORSEMENT (S) APPLICABLE TO THIS COVERAGE PART: **Refer To Forms Schedule**

______________________ Countersignature Date

______________________ Authorized Representative

Philadelphia Indemnity Insurance Company

Form Schedule – General Liability

Policy Number: PHPK1338489

Forms and Endorsements applying to this Coverage Part and made a part of this policy at time of issue:

Form	Edition	Description
CGP011	0509	Recording and Distribution of Material or Information
CGP016	0514	General Liability Advisory Notice To Policyholders
Gen Liab Dec	1004	Commercial General Liability Coverage Part Declaration
Gen Liab Schedule	0100	General Liability Schedule
CG0001	0413	Commercial General Liability Coverage Form
CG2106	0514	Excl-Access/Disclosure-With Ltd Bodily Injury Except
CG2146	0798	Abuse Or Molestation Exclusion
CG2147	1207	Employment-Related Practices Exclusion
CG2167	1204	Fungi or Bacteria Exclusion
CG2170	0108	Cap on Losses From Certified Acts of Terrorism
CG2402	1204	Binding Arbitration
PI-GL-002	0894	Exclusion - Asbestos Liability
PI-GL-ME-1	0197	Exclusion - Lead Liability - Maine
PI-GLD-HS	1011	General Liability Deluxe Endorsement: Human Services
PI-HS-005	0704	Exclusion - Professional Liability Coverage
PI-SE-001	1205	Fund Raising Events Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY DELUXE ENDORSEMENT: HUMAN SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

Coverage Applicable	Limit of Insurance	Page #
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	$30,000 limit	2
Damage to Premises Rented to You	$1,000,000	3
HIPAA	Clarification	4
Medical Payments	$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	$5,000	5
Supplementary Payment – Loss of Earnings	$1,000 per day	5
Employee Indemnification Defense Coverage	$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – Includes Mental Anguish	Included	11
Personal and Advertising Injury – Includes Abuse of Process, Discrimination	Included	11

A. Extended Property Damage

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection **2. Exclusions**, Paragraph **a.** is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

"Bodily injury" or property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

B. Limited Rental Lease Agreement Contractual Liability

SECTION I – COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection **2. Exclusions**, Paragraph **b. Contractual Liability** is amended to include the following:

(3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to $50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

C. Non-Owned Watercraft

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Subsection **2. Exclusions**, Paragraph **g. (2)** is deleted in its entirety and replaced by the following:

(2) A watercraft you do not own that is:

(a) Less than 58 feet long; and

(b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

D. Damage to Property You Own, Rent or Occupy

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE

LIABILITY, Subsection **2. Exclusions**, Paragraph **j. Damage to Property**, Item **(1)** is deleted in its entirety and replaced with the following:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a $30,000 limit. A client is defined as a person under your direct care and supervision.

E. **Damage to Premises Rented to You**

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

   a. The last paragraph of **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**; is deleted in its entirety and replaced by the following:

      Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE.**

   b. **SECTION III – LIMITS OF INSURANCE**, Paragraph 6. is deleted in its entirety and replaced by the following:

      Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

   c. **SECTION V – DEFINITIONS**, Paragraph 9.a., is deleted in its entirety and replaced by the following:

      A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, Subsection **4. Other Insurance**, Paragraph **b. Excess Insurance, (1) (a) (ii)** is deleted in its entirety and replaced by the following:

   That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

a. $1,000,000; or

b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

F. **HIPAA**

SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, is amended as follows:

1. Paragraph **1. Insuring Agreement** is amended to include the following:

   We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph **2. Exclusions** is amended to include the following additional exclusions:

   This insurance does not apply to:

   a. **Intentional, Willful, or Deliberate Violations**

      Any willful, intentional, or deliberate "violation(s)" by any insured.

   b. **Criminal Acts**

      Any "violation" which results in any criminal penalties under the HIPAA.

   c. **Other Remedies**

      Any remedy other than monetary damages for penalties assessed.

   d. **Compliance Reviews or Audits**

      Any compliance reviews by the Department of Health and Human Services.

3. **SECTION V – DEFINITIONS** is amended to include the following additional definitions:

   a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."

   b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.

   c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

G. Medical Payments – Limit Increased to $20,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

   a. $20,000; or
   b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. **SECTION I – COVERAGE, COVERAGE C MEDICAL PAYMENTS,** Subsection **1. Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:

   (b) The expenses are incurred and reported to us within three years of the date of the accident.

H. Athletic Activities

SECTION I – COVERAGES, COVERAGE C MEDICAL PAYMENTS, Subsection **2. Exclusions,** Paragraph **e. Athletic Activities** is deleted in its entirety and replaced with the following:

e. Athletic Activities

To a person injured while taking part in athletics.

I. Supplementary Payments

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B are amended as follows:

1. b. is deleted in its entirety and replaced by the following:

1. b. Up to $5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.

1.d. is deleted in its entirety and replaced by the following:

1. d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $1,000 a day because of time off from work.

J. Employee Indemnification Defense Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B the following is added:

We will pay, on your behalf, defense costs incurred by an "employee" in a criminal proceeding occurring in the course of employment.

The most we will pay for any "employee" who is alleged to be directly involved in a criminal proceeding is $25,000 regardless of the numbers of "employees," claims or "suits" brought or persons or organizations making claims or bringing "suits.

K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the "clients" premises due to theft or other loss to keys entrusted to you by your "client," up to a $10,000 limit per occurrence and $10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, "employees", "managers", directors, trustees, authorized representatives or any one to whom you entrust the keys of a "client" for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. "Employee" means:

(1) Any natural person:

(a) While in your service or for 30 days after termination of service;

(b) Who you compensate directly by salary, wages or commissions; and

(c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" as defined in Paragraph **(1)** above, who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) "Employee" does not mean:

(a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."

c. "Manager" means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph **3.a.** is deleted in its entirely and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

a. **Medical Directors and Administrators** – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. **Managers and Supervisors** – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your "employees" are also insureds for "bodily injury" to a co-"employee" while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. **Broadened Named Insured** – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. **Funding Source** – Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

e. **Home Care Providers** – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.

f. **Managers, Landlords, or Lessors of Premises** – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

g. **Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You** – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

h. **Grantors of Permits** – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

i. **Vendors** – Only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(1) The insurance afforded the vendor does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs **(d)** or **(f)**; or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.

j. Franchisor – Any person or organization with respect to their liability as the grantor of a franchise to you.

k. As Required by Contract – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations

l. Owners, Lessees or Contractors – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

m. State or Political Subdivisions – Any state or political subdivision as required, subject to the following provisions:

(1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.

(2) This insurance does not apply to:

(a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

M. Duties in the Event of Occurrence, Claim or Suit

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph **2.** is amended as follows:

a. is amended to include:

This condition applies only when the "occurrence" or offense is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or "suit" is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

N. Unintentional Failure To Disclose Hazards

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. Transfer of Rights of Recovery Against Others To Us

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of

Recovery Against Others To Us is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

P. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

Q. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph 3. is deleted in its entirety and replaced by the following:

"Bodily injury" means:

a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and

b. Except for mental anguish, includes death resulting from the foregoing (Item **a.** above) at any time.

R. Personal and Advertising Injury – Abuse of Process, Discrimination

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

1. **SECTION V – DEFINITIONS,** Paragraph 14.b. is deleted in its entirety and replaced by the following:

   b. Malicious prosecution or abuse of process;

2. **SECTION V – DEFINITIONS,** Paragraph 14. is amended by adding the following:

   Discrimination based on race, color, religion, sex, age or national origin, except when:

   a. Done intentionally by or at the direction of, or with the knowledge or consent of:

      (1) Any insured; or

      (2) Any executive officer, director, stockholder, partner or member of the insured;

   b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or

d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

SUPPLEMENTAL SERVICES AGREEMENT BETWEEN

DOWNTOWN IMPROVEMENT DISTRICT d/b/a
PORTLAND'S DOWNTOWN DISTRICT CORPORATION

AND

CITY OF PORTLAND

AGREEMENT made this 30th day of June, 2015, by and between the City of Portland, a municipal corporation duly organized under the laws of the State of Maine, Cumberland County (hereinafter the "**City**") and the Downtown Improvement District Corporation, d/b/a Portland's Downtown District, a Maine non-profit corporation, having its office and place of business at 549 Congress Street, Portland, Maine (hereinafter the "**PDD**").

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

WHEREAS, the **City** and **PDD** 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, **PDD** 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 PDD Steward		
One Public Services Supervisor	Days	52 Weeks
Three Maintenance Worker III	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 **PDD** 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 **PDD** and **PDD** is not intended, nor shall it be deemed to be, a joint employer with **City**. As between the **City** and **PDD**, **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 **PDD** (with proper notification to coordinator)
*Litter patrol, collection and disposal on streets, sidewalks, and public areas within the District.
*Graffiti removal from City property
*Removal of posters
*Cleaning and painting of all furniture and fixtures
*Sidewalk sweeping
*Cleaning of tree wells
*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 PDD, 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 and Tommy's Park.
*Clean and maintain the bathrooms, located in the Fore Street Garage and Spring Street Garage buildings, when the bathrooms are open to the public

1.3.1. **PDD** 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 not to provide sidewalk snow plowing without penalty.

1.3.3. Management of Supplemental Services. The City's Public Services Director and/or Designee and PDD's Executive Director and/or Designee 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 Services Department will provide a staff contact to PDD for direct communications, which is identified as the Districting Supervisor and

PDD Supervisor. A point of contact for PDD officials is the PDD Supervisor and District Coordinator. Conversely, the City of Portland Department of Public Services looks to the PDD Executive Director or designee as the City's point of contact on all issues involving PDD matters. A complete work plan and list of Services provided under this FY2016 agreement is provided in Exhibit A hereto.

2. Term: The term of this Agreement is from July 1, 2015 through June 30, 2016.

3. Budget and Payment: In consideration for these Supplemental Services, **PDD** agrees to pay the **City,** in equal quarterly installments, for all Supplemental Services provided hereunder the total sum of $335,329 for FY2016. The **City** shall bill and **PDD** shall pay the **City** beginning July 1, 2015, a quarterly payment of $83,832.

3.1. In the event **PDD** 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 **PDD** 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 **PDD** as provided hereunder. In the event that either **PDD** 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 **PDD** 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 **PDD** 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. **PDD** 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 **PDD** agree to provide copies of draft budgets for the upcoming fiscal year reasonably in advance of any final decision by **PDD** 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.

(Rest of page left intentionally blank.)

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

Witness: **City of Portland**

Sonia Bean

By: Jon P. Jennings
Jon P. Jennings
Its City Manager

Witness: **Downtown Improvement District d/b/a Portland's Downtown District**

Elizabeth Eaton

By:
Michael Mastronardi
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 FY2016)

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

(July 1, 2015 - June 30, 2016)

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 **PDD**. 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 **PDD** for the benefit of the **City** and its property owners, residents, businesses and visitors, during the contract period.

The ongoing relationship between **PDD** 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 2016 City Personnel Work Plan

The City personnel assigned to perform services under the Supplemental Services Agreement are expressed in the FY2016 Portland Public Services Budget detail. For the current period of July 1, 2015 through June 30 2016 these personnel are:

1. (1) Public Services Supervisor
2. (1) PDD Steward
3. (3) Maintenance Worker III
4. (2) Seasonal Part-Time Maintenance Worker

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 Services 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 Services Supervisor shall inspect the entirety of **PDD 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 every month.

1.3 The Public Services 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. PDD dedicated personnel should assist (for instance with weed control and seeding) on an as needed basis, as time and normally assigned duties allow.

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 Services will organize an annual winter briefing with 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.

1.6 "Quick response" repairs, such as missing bricks, landscaping damage or graffiti removal shall be performed by **PDD** personnel, as soon as possible. **PDD** and **City** will jointly approve each quick response, as needed.

1.7 **PDD** and **City** will prioritize 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 **PDD**, and may include **PDD** personnel in their execution. Progress and status shall be monitored by the **PDD** supervisor, and updated as part of the monthly reporting.

1.8 **PDD** will monitor performance of City teams through specific PDD access to "See, Click and Fix" software.

1.9 **PDD** dedicated personnel will wear approved uniforms and work clothes at all times when on duty. **City** and **PDD** agree to work jointly on uniform decisions, including recommendations on an alternative uniform for PDD personnel.

2. FY2016 PDD Event Support Plan

PDD and the **City** recognize the value that well executed events bring to the vitality and economic development of the downtown. To that end, **PDD** 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 FY2016, **PDD** is planning major events that require a level of support by **City** personnel.

PDD plans to incorporate recycling at all produced events, with support of the **City** staff, volunteers and supplied receptacles.

2.1 The Old Port Festival (OPF) - The OPF will operate from June 11-14, 2015. Sunday, June 14, events will require closure of streets generally in the Old Port area.

2.2 Light Up Your Holiday Celebration (LUYH) - This annual roster of events around the Christmas holidays include a LUYH First Friday Artwalk with Congress Street closure from approximately 6-8pm. The Christmas tree lighting ceremony on the Friday after Thanksgiving, which requires set up and some street closures, along with minor transit re-routing around Monument Square. Horse-drawn carriage rides in the downtown and the merchant event called Merry Madness generally requires no specific city personnel support.

2.3 Portland Winterfest - This event will be held in January or February 2016, with a date to be confirmed.

2.4 Downtown Workers Appreciation Days - Generally held twice a year in early May and mid-October to recognize the employees of businesses and government offices located within the downtown. **City** and **PDD** provide set up and management of 3 stations located at the Portland Museum of Art, Monument Square and Tommy's Park.

2.5 Seasonal lights by Pandora - Lights are installed around the time that Day Light Savings Time ends in the late fall, and de-installed around the time that Day Light Savings Time begins again in the early spring. **PDD** personnel provide some installation support.

From Adam Lee, Associate Corporation Counsel; 2/18/2016

Following the previous Economic Development meeting, and input received there, the following are potential amendments for the Committee to consider adopting.

Changing date for acquiring license from March 31 to April 30

Ch. 30, Art. V	Tour companies	300.00, plus 30.00 per vehicle/ operator	April 30

Providing exception for those companies that do not individually solicit for tours and exclusively provide pre-arranged pre-paid tours to groups.

Tour company means any individual, group, or entity that solicits, provides or offers tours to individuals or groups for profit of any portion of the City of Portland. For purposes of this Article, an individual, group, or entity that exclusively provides tours that are pre-paid and pre-arranged with a charter group or cruise line is not *a tour company* for purposes of this Article and is not required to be licensed as a *tour company* by the City.

Order 137-15/16
~~Tab 9 1-4-16~~
Tab 17 1-20-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE CHAPTER 15 LICENSING AND PERMITS AND CHAPTER 30 (VEHICLES FOR HIRE) Re: Tour Operator Licensing

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That Section 15-12 of the Portland City Code is hereby amended to read as follows:

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for licenses issued pursuant to this Code and the expiration date of each license shall be as follows:

...

Ch. 30, Art. III	Horse-drawn cabs	200.00, plus 20.00 per driver	April 30
Ch. 30, Art. ~~III~~IV	Bicycle cabs	100.00, plus 20.00 per driver	
Ch. 30, Art. V	Tour companies	300.00, plus 30.00 per vehicle/operator	March 31

...

2. That Chapter 30 of the Portland City Code is hereby amended by adding Sections 30-93 to 30-109, which said sections read as follows:

ARTICLE V. TOUR COMPANIES

DIVISION 1. GENERAL PROVISIONS

Sec. 30-93. Definitions.

As used in this article, unless the context otherwise indicates, the following words shall have the following meanings:

Tour company means any individual, group, or entity that provides tours for profit to the public of and in any portion of the City of Portland.

Tour vehicle means any motorized vehicle or apparatus that is used to transport individuals or passengers during a tour of and in any portion of the City. Tour vehicles shall include, but shall not be limited to, cars, trucks, vans, buses, motorcycles, mopeds, and segways.

Forma

Street, way, or public place means any street, way, trail, path, promenade, park, plaza, square, or other public property, or portion thereof.

To operate means to drive, pedal, pull, push or otherwise cause the tour vehicle to move.

Sec. 30-94. General licensing provisions to apply.

Except to the extent that this article contains a contrary provision, all general licensing provisions of chapter 15 shall apply to this article.

DIVISION 2. LICENSES

Sec. 30-95. License Required.

No tour company shall operate a tour vehicle on any street or way or in any public place without a tour company license. In obtaining or renewing a tour company license, accurate information for each operator and vehicle shall be provided pursuant to Section 30-96. An operator for whom such information has not been provided to the Licensing Authority is not licensed to operate. A vehicle for which such information has not been provided to the Licensing Authority is not licensed to be operated. Any operator who is less than eighteen (18) years old shall be restricted to operation between the hours of 8 a.m. to 6 p.m.

Sec. 30-96. Applications.

In addition to the general provisions of chapter 15 relating to the contents of applications, applications for tour company licenses shall contain the following:

(a) A complete listing of all operators to be employed by or associated with the applicant, giving each person's full name, age and present address.

(b) A complete record (Maine Criminal History Record search) of disqualifying criminal convictions or civil offenses as defined in Section 30-33(b)(3-6), if any, for all operators to be employed by or associated with the applicant, and for the applicant, or if the applicant is other than an individual, for each principal officer of the applicant.

(c) A detailed description of each tour vehicle and any other equipment to be used by the applicant, including a photograph of each tour vehicle and the make, model, color, year, power, and seating capacity specifications of each such vehicle.

Sec. 30-97. Licensing authority and regulations.

Notwithstanding any provision of chapter 15 to the contrary, the City Manager or his or her designee shall be the licensing authority for the owner/operator, vehicle, and operator licenses. The City Manager or his or her designee shall also have the authority to promulgate rules and regulations for tour licenses as he or she may deem necessary.

Sec. 30-98. Conditions precedent to issuance.

Prior to the issuance of any tour company license, and in addition to any other requirements of this article or chapter 15, the applicant shall file with the City Manager or his or her designee the following:

(a) A certificate issued by the applicant that the tour company to be licensed and all operators operating thereunder shall comply with the rules made under authority of this article by the licensing authority; and

(b) An insurance policy covering the term of the license and executed by an insurance company authorized to issue such policies in this state in the usual form of vehicle or other liability insurance policies in this state for injuries to persons and property resulting from the use and operation of the tour company to be licensed. Such policy of insurance shall be issued for a principal sum sufficient to provide indemnity in the amount of not less than four hundred thousand dollars ($400,000.00) per occurrence, for bodily injury, death and property damage. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be deposited with the licensing authority. Such certificate shall state that the issuing agent shall notify the licensing authority in writing no less than thirty (30) days prior to the cancellation thereof. The City of Portland shall be included in the policy as an additional named insured.

Sec. 30-99. Denial, suspension, or revocation.

In addition to the general provisions of chapter 15 relating to the grounds for denial, suspension or revocation of license, a tour company, tour operator, or tour vehicle license may be denied, suspended or revoked on any of the following grounds:

(a) The applicant or licensee or any operator is less than seventeen (17) years of age or has had a disqualifying criminal conviction or civil offense as provided in Section 30-33(b)(3-6);

(b) Disobeying any order or direction of the City Manager or his or her designee, including, but not limited to, the city traffic engineer, license inspector, or any police officer; or

(c) Causing or permitting any violation of this article or chapter 25.

DIVISION 3. OPERATING REQUIREMENTS

Sec. 30-100. Operation limited to roadways; carrying of passengers; prohibited locations.

Licensed tour vehicles shall be operated within roadways only. Tour vehicles shall not be operated upon sidewalks or bicycle paths, except those paths specifically designated for that purpose by the Director of Parks and Recreation. Tour vehicles may carry passengers to locations chosen by the passengers or may follow an agreed-upon route for sightseeing purposes. The City Manager or his or her designee shall have the right to prohibit tour vehicles from streets or roadways where the operation of such vehicles will present a threat to the safety of the tour vehicle operator and passengers or to other users of the street or roadway. The City Manager or his or her designee also shall have the authority to erect appropriate signs or markers, and to impose such conditions on the use of routes and locations as he or she deems proper, including limiting the number of such tour vehicles in operation on the same route or at the same location at any one (1) time, and restricting the days, times, or other circumstances of operation on any such route or at any such location. No such vehicle shall stop, stand, or park in any place while on route, to load or unload passengers or otherwise, except in accordance with traffic regulations, traffic-control devices, or the directions of a police officer or other authorized person. In no event shall a tour vehicle utilize a designated taxicab stand for any purpose whatsoever, unless required for an immediate response to an emergency situation. Tour vehicles shall not be permitted at the Jetport.

Sec. 30-101. Not to obstruct traffic; police orders.

No tour company or tour vehicle shall be operated in any manner which unreasonably or unnecessarily obstructs or impedes the free flow of vehicular or pedestrian traffic or otherwise endangers public safety. Any designee of the City Manager, including, but not limited to, police officers and the city traffic engineer, may at any time order the operator of any such company or vehicle to move along, pull over, make way, or temporarily discontinue the use of any such route or location, or any portion thereof, for the public safety or reduction of high-traffic areas.

Sec. 30-102. Traffic regulations to apply.

Except to the extent that this article contains a contrary provision, all traffic regulations of chapter 28, article III, shall apply to the operation of licensed tour companies and tour vehicles.

Sec. 30-103. Display of plate and badge.

A plate, to be issued by the licensing authority and bearing an identification number shall be displayed in a conspicuous place on each licensed tour vehicle at all times while in service. A badge, to be issued by the licensing authority and identifying the wearer by number as a licensed operator of such tour company or tour vehicle, shall be worn prominently on his or her person by each such operator at all times while on duty.

Sec. 30-104. Solicitation of business.

No person shall solicit business in any manner for any licensed tour company or tour vehicle while on route. Prohibited solicitation while standing shall include shouting, hollering, whistling, clapping, or making other loud noises, grabbing or otherwise annoying or harassing passersby, or any other conduct detrimental to the image or reputation of the trade or the public safety or convenience.

The City Manager or his or her designee may restrict the solicitation of business to certain designated areas within a specified zone in certain high-traffic areas.

Sec. 30-105. Passengers to be seated and well-behaved.

No operator of any tour company or tour vehicle shall load or admit more passengers at any one (1) time than may be fully seated in such tour vehicle. Every passenger in any such tour vehicle shall be and remain fully seated at all times while on route and shall refrain from any other conduct or behavior detrimental to the safety or comfort of passengers or others.

Sec. 30-106. Care and maintenance of tour vehicle.

Each licensed tour vehicle shall be at all times clean and in good repair.

Sec. 30-107. Conduct and appearance of operators; rule-making authority.

Every operator of a licensed tour company or tour vehicle shall be courteous at all times when on duty and shall refrain from any loud argument, fight or disturbance, or any other conduct or behavior detrimental to the image or reputation of the trade or the safety or comfort of passengers or others. The City Manager or his or her designee shall have authority to make reasonable rules and regulations, consistent with the public safety and the image and reputation of the trade, governing the training and qualifications of such operators.

Sec. 30-108. Unsafe vehicles; inspections; order from service.

No licensed tour vehicle shall be operated at any time while unsafe, defective or in disrepair. The City Manager or his or her designee, including, but not limited to, any police officer or the license inspector may inspect a tour vehicle at any and all reasonable times, prior to being placed into service, while in service, or otherwise, and may at any time order such vehicle to be removed from service for any defect, unsafe condition, or want of repair. No such vehicle shall be returned to service except upon re-inspection by such officer, the license inspector or the licensing authority, and upon a finding that such repair has been made or that such defect or unsafe condition has been corrected.

Sec. 30-109. Storage of vehicles and equipment.

No tour vehicle or related equipment shall be kept or stored on any street or way or in any public place while not in service.

<u>**MEMORANDUM**</u>
<u>**City Council Agenda Item**</u>

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: **Adam R. Lee, Associate Corporation Counsel**

DATE: **12/9/15**

SUBJECT: **Tour Company Licensing Ordinance**

SPONSOR: Public Safety Health and Human Services Committee, Ordinance Amendments approved by Committee 4-0 on November 10, 2015

(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading__December 21, 2015 Final Action ____January 4, 2016

Can action be taken at a later date: ____ Yes __X__ No (If no why not?)

Passage is recommended now so that Staff can make preparation for implementation of the licensing proccss and advise Tour Companies of the process in advance of "tour season" in the spring.

PRESENTATION: (List the presenter(s), type and length of presentation)

I. ONE SENTENCE SUMMARY

This Ordinance Amendment would require that those providing guided tours with vehicles within the City of Portland acquire a license to do so.

II. <u>AGENDA DESCRIPTION</u>

<u>**See Attached Memo**</u>

III. BACKGROUND

<u>**See Attached Memo**</u>

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

The licensing fees will be utilized primarily for administration of the lieensing process.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

See Attached Memo

VII. RECOMMENDATION

The unanimous PSHHS Committee recommended passage.

VIII. LIST ATTACHMENTS

October 5, 2015 Background Memorandum

November 10, 2015 Memorandum regarding solicitation limitation

Approved Ordinance Amendments

Prepared by: Adam R. Lee
Date: 12/9/15

Bean/agendarequestmemo/rev 11/2015

MEMORANDUM

To: Public Safety, Health and Human Services Committee

From: Adam Lee, Esq., Associate Corporation Counsel

Richard M. Bianculli Jr., Esq., Neighborhood Prosecutor

Re Proposed Ordinance Amendment to License Tour Companies

Date: October 5, 2015

The attached ordinance amendment proposes to require a license for tour companies that currently operate in the City of Portland. Adoption of the amendment will allow Portland to ensure public safety by confirming insurance requirements, reviewing background checks for tour company owners and operators, and conducting general safety inspections on tour vehicles. Requiring a license for tour companies is a logical step towards fostering a safe and productive tourist industry.

As an unlicensed business enterprise, mobile tour companies are currently prohibited from actively soliciting customers or selling tours on streets, sidewalks and public areas pursuant to Section 25-17(a) of the Portland City Code. The provision of licenses for tour companies will ensure that tour companies are permitted to conduct their business in a reasonable manner. A majority, if not all, of the current tour operators have indicated their support for a licensing program.

Portland has required licenses for horse-drawn carriages since 1984 and bicycle cabs since 1998. The proposed ordinance amendment will include similar requirements to those found in Chapter 30 for the horse-drawn carriages and bicycle cabs. Operators are required to keep the vehicles clean and presentable. Following the initial inspection required for a license, the license inspector or any police officer is permitted to inspect the tour vehicle at any time in order to ensure compliance with safety measures and the absence of safety hazards. Unsafe vehicles would be removed from service until the compliance issue is attended to.

The Jetport staff has confirmed that they are prepared to process the license applications as they are received. Once the ordinance is adopted, city officials would develop regulations including requirements for application deadlines, inspection checklists, and the like. The inspection of the tour vehicles will be considered a pre-requisite to the application process and inspections will be conducted by the Director of Port Operations, Kathy Alves.

MEMORANDUM

To: Public Safety, Health and Human Services Committee

From: Adam R. Lee, Esq., Associate Corporation Counsel

Re Limitation on Solicitation of Tour Companies Within a Distance of a Fixed-Base Tour Company

Date: November 10, 2015

At the October 13, 2015 meeting, this Committee approved Ordinance amendments creating a process by which Tour Companies are required to obtain licenses. The Committee suggested modifications to the amendments permitting the City Manager or his/her designee to issue and enforce the provisions of the Ordinance. The Committee also suggested an amendment that precludes solicitation by non-fixed-base tour companies within a certain distance of fixed-base tour companies. The Committee suggested that such amendment should be provided to the full Council at the time the Ordinance was placed on the Council's agenda. As a result of scheduling and additional research, Corporation Counsel determined it would be useful to present the issue again for discussion to the Committee before presentation to the full Council.

The amendment requested by the committee to prevent solicitation within a distance of a fixed-base company is a regulation on commercial speech. While the First Amendment affords less protection to commercial speech, it "does not fall outside the purview of the First Amendment." *Lorillard Tobacco v. Reilly*, 533 U.S. 525, 554 (2001). The U.S. Supreme Court established a four-part test in *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 to determine whether regulations of commercial speech violate the First Amendment: 1) Is the commercial speech protected (does it concern lawful activity and is not misleading)?; 2) Is the asserted governmental interest substantial?; If the answer to both of the first two questions is yes, 3) does the regulation directly advance the governmental interest asserted?; and 4) Is the regulation more extensive than necessary to serve the interest?

From Corporation Counsel's perspective, the most likely issue on which this Ordinance would be challenged is what government interest is serves and whether it is narrowly tailored to serve that interest. Those challenging the Ordinance may argue that it was enacted for purposes of protecting certain companies from economic competition. Courts have held that such purposes are not legitimate government interests. *St. Joseph Abbey v. Castille*, 700 F.3d 154, 161 (5th Cir. 2012) ("As we see it, neither precedent nor broader principles suggest that mere economic protection of a pet industry is a legitimate governmental purpose[.]"); *Craigsmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) ("Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.").

Economic protectionism is distinct from another governmental purpose that could be served by the proposed amendment, that of public safety. There is no doubt that protection of public safety – specifically in the context of pedestrian and traffic safety – is a legitimate and significant governmental interest. *See McCullen v. Coakley*, 134 S.Ct. at 2535 and *Cutting v. City of Portland*, 2015 U.S. App. Lexis 16206. If the proposed amendment is enacted, it should be enacted on the basis of protecting public safety. It is Corporation Counsel's advice that prior to enactment of an amendment that would prohibit solicitation within a distance from fixed-base tour companies, the Council hears testimony regarding the congregating of solicitors in front of fixed-base establishments and that any amendment is narrowly-tailored and not more extensive than necessary to serve the public safety interest.

Adam R. Lee

Associate Corporation Counsel

MEMORANDUM	
TO:	Portland City Council
FROM:	Twain Braden
SUBJECT:	Ordinance change (licensing of tour operators)
CASE:	Portland Discovery Land & Sea Tours (800.13925)
DATE:	January 19, 2016

History:

- Loophole as to "street vendors" in existing City Ordinance., making it unclear whether solicitation for tour operators was permitted;
- Above led to two court orders against transient operator, one by City of Portland and one by Portland Discovery for harassment against staff by transient operator;
- Missed last Committee meeting; was under impression it would go to Council.
- Portland Discovery supports licensing: oversight by City; fairness to all; **promotes safety**.

Problems with current Amendment / Tour Operator Licensing:

- Increases congestion on Commercial St., contributing to carnival-like atmosphere;
- Ramps up competition between fixed-base retail and transient vendors (free-for-all);
- Removes "no-solicitation" from streets to allow solicitation on streets;
- Exacerbates involvement by City zoning / parking officers vis-à-vis harassment / 15-minute parking areas.

Solution:

1. "Safety zone" of 65-feet is "content neutral" and can be imposed in interests of **safety**. However, if you accept Corp. Counsel's argument that imposing a 65-foot "safety zone" around fixed-base retail establishments of like kind (tour operators) runs afoul of the Constitution, there are several other options available to you to balance the fairness issue with the safety and tranquility of pedestrians on the streets of Portland. *See* Portland Restaurant / Food Cart Ordinance and Town of Norway Ordinance.

2. No solicitation at all (solicitation limited to private property): Revert to status quo with increased enforcement.

3. Designated solicitation areas: at Ocean Gateway (Juneau, Alaska model) or by Designated Location.

4. Solicitation only at designated pick-up and drop-off locations (designated by City Manager in interests of safety and congestion such as by zone or intersection):

5. Require tour operators to have a store-front to obtain a license that allows solicitation: Analogous to "sandwich board" ordinance

NOTE: Each of the above passes Constitutional muster based upon safety / congestion concerns.

Options:

A. Pass as is: City Manager may / may not resolve through designation of safety areas; fight continues into Spring and Summer; congestion and competition worsens; complaints continue; ***or***

B. Table vote and instruct Corp. Counsel to Amend the Ordinance to include any of the above consistent with your position; ***or***

C. Table vote until Council confers with City Manager as to which entity should handle / decide how it should address problems above.

Portland, Maine — Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

TO: Economic Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: February 17, 2016

SUBJECT: **Updated 2016 Economic Development Committee Work Plan**

Based on additions recommended at your February 11, 2016 EDC meeting, this memorandum serves as the 2016 EDC Work Plan as may be amended in the future.

<u>City Permitting and Inspection System Improvements</u> (2016 Mayor and City Council Goal)
Create a more efficient permitting process with specifics; computer tracking.

Next Steps. The City Council received a presentation a workshop on February 8th, regarding amendments to Rules which govern the city property disposition process for tax acquired and city owned properties. This matter was discussed at the February 11th EDC meeting for Committee discussion and vote to recommend to the City Council. The EDC voted unanimously to recommend the City Council adopt proposed Amendments to the Rules as modified.

<u>Office for New American Mainers</u> (2016 Mayor and City Council Goal)
Create an office for new Americans to assist with job opportunities and business development

Next Steps. The City Manager is working on a proposal to address this goal to present the EDC.

<u>Broadband Access</u> (2016 Mayor and City Council Goal). High speed infrastructure; broad band

Next Steps. Staff is targeting the March 22nd to discuss this provide the EDC a presentation for discussion and direction.

<u>Portland Ocean Terminal</u> (2016 Mayor and City Council Goal)
Establish direction on the future of the Portland Ocean Terminal. With as much as 70,000 square feet of vacant space, the Portland Ocean Terminal on the Maine State Pier needs a plan for investment and optimized utilization. Existing uses, including City cruise ship port of call support, Portland Tugboat, and Ready Seafood, provide a solid basis for growth; however, the building's age, condition, and lack of supporting infrastructure (parking loading, sidewalks …) severely limit the potential reuse of the building as currently configured.

Next Steps. Staff is targeting the March 22nd to discuss this provide the EDC a presentation for discussion and direction. The staff presentation will include a summary of past history and a recommended approach to achieve consensus on policy direction related to the Maine State Pier Portland Ocean Terminal for short-term, interim and long-term uses, including consideration of establishing an innovation center.

Portland Economic Development Plan

It is staff's position that the City Economic Development Plan, adopted by the City Council in the fall of 2011, remains sound. However, the 2016/2017 Work Plan needs to be prepared.

Next Steps include Greg Mitchell convening a meeting of the Plan key stakeholders (Convention and Visitor Bureau; Portland Community Chamber of Commerce; Creative Portland; Portland's Downtown; and, Portland Development Corporation) to prepare a 2016/2017 Draft ED Plan Work Plan for future EDC review and discussion.

It is noted that the EDC directed staff to invite Portland Economic Development Plan stakeholders to provide brief presentations at future EDC meetings.

It is noted that the City of Portland participates in the ***Greater Portland Economic Development Corporation*** (GPEDC) which was established to support regional (Portland, South Portland, Westbrook, Scarborough, Falmouth and Cape Elizabeth) economic prosperity. The GPEDC's current focus is on an international business development program.

City Owned and Tax Acquired Property Disposition

Next Steps. The City Council received a workshop on February 8th to present proposed amendments to receive direction from the City Council. This workshop was followed by the February 11th EDC meeting for Committee discussion and vote to recommend to the City Council. The EDC voted unanimously to recommend the City Council adopt to the proposed amendments to the Rules as modified.

Lease of City Properties

Leasing City owned properties requires City Council approval. Policy discussion regarding the leasing of City owned properties needs to be discussed. Examples of commercial leases requiring EDC (in the form of a recommendation to the City Council) and City Council action include:

> ***Ocean Gateway*** to support a new ferry operator lease.
>
> ***Portland Ocean Terminal tenant leases*** including Ready Seafood Companies. It is noted that the Portland Ocean Terminal is a separate goal in this work plan.
>
> ***Spring Street Parking Garage Commercial tenant leases*** including the Pirates (existing tenant) and 1,110 square feet of vacant commercial space which is being marketed. A commercial lease for a new tenant will be presented to the EDC at one of the two February EDC meetings.

Next Steps include presenting commercial leases to the EDC when ready.

Eastern Waterfront Public Infrastructure Investment

Investing in public infrastructure is an important municipal government responsibility to attract private sector investment. Locations which require public infrastructure planning include both implementation of existing policies and creating new policy direction for investment:

Implementing Existing Policy:

Private Development Integration. The Economic Development Department is leading a Planning, Public Works, and Parks & Recreation Departments discussion to plan road and utility extensions in Portland's Eastern Waterfront planning district facilitating planned and future development consistent with the Eastern Waterfront Master Plan (EWMP.)

Next Steps. Staff will work with consultants to develop sketch level designs for public infrastructure for presentation to the EDC as the basis for planning and negotiations with private development interests.

Amethyst Lot Open Space Development. Implementing recommendations from the EWMP and conditions of approval from Ocean Gateway, define program and design elements for signature waterfront open space promoting recreation and active use of the water in a park-like setting.

Next Steps. Pending approval of funds recommended in the City Manager's budget, present a planning and public process scope to the EDC for advisement moving forward.

Establishing New Policy Direction:

Ocean Gateway to discuss reconfiguration of the "queuing area" located behind the fence to free up property for more diversified marine activity, support for the Portland Ocean Terminal, and expanded access to the water for commercial and public uses.

Possible new Pier development between Ocean Gateway and the Maine State Pier to support increased commercial use of the waterfront and support for the marine passenger industry.

Portland Ocean Terminal. Evaluate supporting infrastructure to attract increased commercial and marine tenant use of available 25,000 +/- square feet of vacant second floor office space and 70,000 square feet of vacant ground floor marine industrial space. It is noted that this is a separate Mayor and City Council Goal and tightly aligned with potential Ocean Gateway queuing area changes contemplated below.

Next Steps. See above

Portland Transportation Center (PTC)

In partnership with the MDOT, NNEPRA, and private sector property owners work to develop an expanded intermodal passenger station in the Thompson Point area.

Next Steps. Staff to work with transportation agency and private partners to establish timeline and work plan for PTC improvements. Present briefing to the EDC when completed.

Tax Increment Financing Districts
Annually the Economic Development Department issues a city Fiscal Year Report related to Portland TIF District activity. This report is available on the City web page at:
http://www.portlandmaine.gov/529/Tax-Increment-Financing

One recommended TIF District to discuss, in 2016, to receive direction for possible geographic expansion is the Waterfront TIF District. The area to consider including in the Waterfront TIF District is East and West Commercial property expansion opportunities due to planned private sector investment projects and supporting public infrastructure needs.

Next Steps presenting any private TIF District request to the EDC for direction along with revisiting the Waterfront TIF District boundaries for possible expansion.

Outdoor Seating for Food Service Establishments
Review current permitting process/ordinance and any barriers, particularly for older buildings.

Other Unanticipated Matters
One recent example includes tour operating licensing referred by the City Council. Other unanticipated matters are expected to be added to the EDC Work Plan.

Other Economic Development Items Discussed in the Mayor and City Council City Goal Setting Session include:

- Research best practices;
- Look in neighborhoods to encourage restaurants in mixed use buildings;
- Rewrite the economic development plan with stakeholders and regional view;
- Stream line process for tax exempt property;
- Set up a city mechanism to attract festivals and events;
- Incentives for business clusters;
- Look at zoning in relationship to business development (example: East Bayside);
- Bring consistency to the approval process (Planning Board and Council);
- What do we need to be prepared for a downturn in the economy;
- Work with community on workforce development; CDBG;
- Extend sidewalk for restaurants;
- Review business and industrial development off peninsula and encourage more; and
- Deal with TIF review policy; how can they result in higher wages.