

AGREEMENT BETWEEN CITY OF BEND AND DOWNTOWN BEND BUSINESS ASSOCIATION FOR MANAGEMENT OF THE DOWNTOWN BEND ECONOMIC IMPROVEMENT DISTRICT

This agreement is between the City of Bend, an Oregon municipal corporation ("City"), and the Downtown Bend Business Association, an Oregon nonprofit corporation ("DBBA"). This Agreement supersedes all prior agreements between City and DBBA.

RECITALS

A. The Bend City Council established the Downtown Bend Economic Improvement District ("DBEID") by Ordinance No. xxxx. The City had previously established a Downtown Bend Economic District by Ordinance No. 2181 and 2234.

B. The City and DBBA previously entered into an agreement as authorized by ORS 223.119 for administration of the previous DBEID.

C. The City and DBBA wish to enter into a new agreement for administration of the new DBEID, including the payment of collected funds to DBBA and the expenditure of funds by DBBA on authorized economic development projects and activities.

D. This agreement is authorized by, consistent with, and governed by ORS 223.112 to 223.161 and Ordinance No. xxxx.

AGREEMENT

1. City shall collect an assessment on all commercial, non-residential property within DBEID consistent with Bend Code Chapter 2.30 and Ordinance No. xxxx. Subject to the administration charge authorized in Section 3 and the other provisions of this Agreement, City shall disburse funds collected pursuant to Ordinance No. xxx to DBBA on the 10th of the month following collection.

2. The City may offer its facilities in planning and other non-economic measures to assist DBBA in carrying out Bend Code Chapter 2.30 and Ordinance No. xxxx.

3. The City will retain 5% of the assessments collected to cover its cost of billing, routine collection, disbursement of funds, and staff support of DBBA. This percentage may be reviewed and modified each year with notice from the City, if the City determines that the percentage is not sufficient to cover the City's costs. If the City is required to place liens on properties or engage in or defend litigation, the City may request additional retainage, reimbursement, or advance payment of costs from DBBA.

4. DBBA shall only disburse funds received from the City under this agreement pursuant to a budget adopted following a public process, and only for the following specific purposes:

- Beautification projects including but not limited to: Flower baskets, planters, tree lights, decorations, and banners
- Maintenance services including but not limited to: Sidewalk sweeping/cleaning and debris removal, Graffiti removal on public right of way, and trash receptacles
- Marketing downtown to promote business, draw customers to the DBEID, advertising on various outlets, and management of the Downtown Dollars Program.
- Events drawing customers to the District including but not limited to: Art Walk, Art Hop, Sidewalk Sale, Christmas Tree Lighting and Oktoberfest, as well as helping organize and oversee other events and parades.
- Other projects to improve the appearance, safety, and attractiveness of downtown

Beautification projects and other services will be provided equally throughout the District. Maintenance will be performed throughout the entire District area.

Marketing efforts including events and advertising will be executed to obtain the maximum exposure and benefit for all downtown businesses. These efforts will keep downtown a central gathering place for the community, keep it vibrant and stimulate economic improvement.

5. DBBA shall adopt an annual budget which shall align with the fiscal year of the City, and present budget and previous year's accomplishments to Council as requested.

6. The Board of Directors of DBBA shall approve all disbursements of funds received pursuant to the DBEID. All disbursements shall be according to the approved budget and for the purposes stated in Paragraph 4 above. Not less than thirty-five percent of the voting members of the Board shall own property within the District. City shall be permitted to participate in Board discussions through one ex-officio staff appointment. DBBA board meetings shall be held consistently with the Oregon non-profit laws, and all records relating to funds received from the DBEID shall be considered public records under Oregon Public Records Law.

7. Insurance. DBBA shall purchase and maintain at their own expense the insurance noted below subject to review and acceptance by the City of Bend. All insurance shall apply on a primary, non-contributory basis and remain in effect for the duration of the contract terms. Any policy written on a 'claims made' basis may only be done so with the written approval and authorization of the City of Bend and coverage written in this manner shall extend for two years past the termination of this Agreement.

7.1 Commercial General Liability Insurance with minimum coverage in effect of \$2,000,000 per incident, claim or occurrence and \$2,000,000 in aggregate. The policy shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability and contractual damages. DBBA shall remain fully responsible and liable for any claims

resulting from the negligence or intentional misconduct of DBBA, its subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits.

- 7.2 Commercial Automobile (Fleet) Liability Insurance with minimum combined single limit of \$2,000,000 covering all owned, non-owned, and hired vehicles. This coverage shall be written in combination with the Commercial General Liability Insurance with separate limits for Commercial Automobile Liability and Commercial General Liability.
- 7.3 Commercial General Liability coverage shall name, by certificate and endorsement the City, its officers, agents, employees and volunteers as additional insureds with respect to DBBA's work or services provided under this contract.
- 7.4 Workers' Compensation Insurance as required by ORS chapter 656 and meeting the minimum requirements therein. DBBA shall ensure that each subcontractor obtains and maintains workers' compensation insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the state of Oregon Workers' Compensation Division before performing work.
- 7.5 DBBA shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

8. DBBA will provide City with an updated accurate property owner name, mailing address, email and phone number for each of property in the DBEID each year by January 31 to ensure that assessment invoices can be mailed by early May. In fulfilling this obligation, DBBA will review County tax assessor records, building permit information and other reliable sources of information regarding commercial growth within the district.

9. Records and Accounting. DBBA shall maintain records and accounts that will allow the City to assure a proper accounting for all funds paid for the performance of this Agreement. Within 72 hours of a written request by the City, DBBA shall make records relating to income and expenditures available for review and/or audit by the City. City shall have the right during the term of this Agreement or within 180 days after expiration or termination of this Agreement to audit DBBA's records for the period of three years prior to the audit. The audits may be undertaken by a qualified person or entity selected by the City. The "Financial Records" shall include, but not be limited to, a balance sheet and income and expense reports. Contractor shall maintain Financial Records for at least six years after the expiration of this Agreement.

10. Term. This Agreement shall be effective when signed and shall remain in effect through June 30, 2021. This Agreement may be extended by written amendment signed by both Parties.

Either party may terminate this Agreement in the event of a default or material breach by providing written notice to the other party setting forth the items in which the other party is in non-compliance with this Agreement. The non-complying party shall have 30 days after receipt of a notice of non-compliance to cure the non-compliance. If the non-compliance cannot be corrected within 30 days, corrective action must commence within 30 days and proceed with due diligence until completed. This Agreement may be terminated if the non-complying party does not initiate compliance within 30 days of the notice or at any time stops diligent efforts to cure the non-compliance.

11. Equal Opportunity. DBBA agrees that it will not discriminate against any employee or applicant for employment on the basis of race, color, sex, religion, ancestry or national origin sexual orientation or gender identity and shall take such affirmative action including but not limited to hiring, promotion or demotion, recruitment, layoff or Termination, salary and selection for training as is necessary to ensure that all employees and applicants are treated equally as to the aforementioned bases. DBBA and its employees shall not, in the performance of this Agreement, discriminate against any customer, potential customer, Visitor Center patron or other person on the basis of race, color, sex, religion, ancestry, or national origin, sexual orientation or gender identity and shall provide services, facilities and other privilege to all such persons equally.

12. DBBA Indemnification. DBBA shall defend, protect, indemnify and hold harmless the City, its officers, agents and employees from and against any and all claims, loss, damages, injury or liability including claims for misapplication of contributions or other funds, state or federal anti-trust violations, personal injury or death, damages to property, liability arising out of the use of materials, concepts or processes protected by intellectual property rights and liens, however caused, resulting directly or indirectly from the performance of this Agreement by DBBA, unless caused by the gross negligence or willful misconduct of the City. DBBA is not an officer, employee or agent of the City under ORS 30.285 or ORS 30.287.

13. Licensing and Taxes. DBBA shall be responsible for the acquisition and maintenance of all licenses and permits to carry on DBBA's business.

14. Independent Contractor. DBBA is an independent contractor, holding itself out to the general public as an independent contractor. The parties intend that an independent contractor relationship will be created by this Agreement. The City is interested only in the results to be achieved; all conduct and control of the work will lie with DBBA. DBBA is not to be considered an agent or employee of the City for any purpose, and the employees of DBBA are neither employees of the City nor entitled to any of the benefits that the City provides for its employees.

15. No Third Party Beneficiaries. The City and DBBA are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

16. Limitations. As provided in Section 14, DBBA is an independent contractor in the performance of this Agreement, and shall comply with all laws regarding unemployment insurance, disability insurance and worker's compensation. As such, DBBA shall have no authorization, express or implied, to bind the City to any agreement, settlement, liability or understanding, whatsoever, and agrees not to perform any acts as agent for the City.

17. Notice. Any notice or notices provided for this Agreement or by law to be given or served upon either party shall be given or served by (1) personal service, (2) certified mail, return receipt requested, postage prepaid or (3) by email or facsimile followed by certified mailing of the original and addressed to:

City of Bend
City Manager
P. O Box 431
Bend, Oregon 97709

Downtown Bend Business Association
Executive Director
916 SW Wall Street
Bend, Oregon 97701

18. Assignment. Neither party may assign, subcontract, or otherwise transfer any rights and responsibilities under this Agreement except upon the written consent of the other party. If any assignment is made both the assigning party and assignee shall be bound by the terms of this Agreement. The City may terminate the Agreement if transferred or assigned without the prior written consent of the City.

19. Amendments. This Agreement may be amended by written agreement of both parties.

20. Laws of Oregon. This Agreement shall be governed by the laws of the State of Oregon both as to the interpretation and performance, and the venue shall be in Deschutes County.

21. Waiver. The City's failure to enforce a provision of this Agreement shall not constitute a continuing waiver, shall not constitute a relinquishment of the City's right to performance in the future and shall not operate as a waiver of the City's right to enforce any other provision of this Agreement.

Signature page follows

The persons signing below represent and warrant that they have the authority to sign this Agreement on behalf of the entity they are signing for:

Eric King, City Manager
City of Bend

Date: _____

Approved as to Form:

By: _____
City Attorney's Office

Date: _____

Executive Director
Downtown Bend Business Association

Date: _____