

AGREEMENT FOR THE ADMINISTRATION OF THE “DOGPATCH AND NW POTRERO HILL GREEN BENEFIT DISTRICT”

This Agreement (“Agreement”) is entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation (“City”), through San Francisco Public Works (“Public Works”), and the **DOGPATCH AND NW POTRERO HILL GREEN BENEFIT DISTRICT**, a California nonprofit corporation (“Corporation”), with respect to the special assessment district known as the **DOGPATCH AND NW POTRERO HILL GREEN BENEFIT DISTRICT** (“District”).

RECITALS

WHEREAS, pursuant to Article XIID of the California Constitution (“Article XIID”), California Government Code Section 53753 (“Section 53753”), and California Streets and Highways Code section 36600 et seq. (“the 1994 Act”) as augmented by Article 15A of the San Francisco Business and Tax Regulations Code (“Article 15A”), the City may levy assessments on real property for the purpose of funding services, improvements, and activities that confer special benefits on the assessed parcels.

WHEREAS, On July 22, 2025, the Board of Supervisors established the District, and levied multi-year special assessments (“Assessments”) on specified parcels in the District to fund certain services, improvements and activities in the District (“District Programs”), as set forth in the Management Plan for the District (Board Resolution No. 343-25). The District is not a governmental, corporate or separate legal entity, but is a geographic area containing all of the parcels subject to the Assessments.

WHEREAS, Public Works, which oversees the District on behalf of the City, desires to retain Corporation to help provide the District Programs, under Section 36612 of the 1994 Act, it being understood that Corporation shall hold all Assessment Revenues in trust and use them only to administer, manage and provide the District Programs, by its own personnel or by third party providers contracting with the Association, as set forth in the Management Plan (as it may be amended from time to time), the annual budgets for the District, and further subject to the terms, conditions, and restrictions in this Agreement.

WHEREAS, the District Programs are supplemental to the services the City currently provides within the District. Without the City’s formation of the District, the District Programs could not or would not be performed by the City or by City employees. The City intends that the its formation of the District and its expenditure of the Assessment Revenues for the District Programs will not affect the level of services it has been providing within the District as of the date the Board approved the Resolution of Formation. City will notify Corporation if City reduces the level of, or discontinues, such services.

WHEREAS, On 12/18/2025 10:21:50 AM PST, the Purchaser granted sole-source approval for this Agreement.

WHEREAS, On 12/2/25, the Board of Supervisors approved this Agreement (Res. No. 568-25).

NOW, THEREFORE, the parties agree as follows:

- j. **"Indemnified Parties"** means: (1) the City, including the Board of Supervisors, Public Works, Controller, City Attorney and all other commissions, departments, agencies and other subdivisions of the City; (2) elected officials, directors, officers, employees, agents, successors and assigns of the City; and (3) all persons or entities acting on behalf of any of the foregoing.
- k. **"Identified Parcel"** shall, consistent with Government Code Section 53750(g), mean a parcel of real property included within the District, identified in the Management Plan as having a special benefit conferred upon it, upon which the Board of Supervisors has levied Assessments.
- l. **"Losses"** means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.
- m. **"Management Plan"** and **"Plan"** mean the proposal (including any attachments and exhibits) known as the "Dogpatch and Northwest Potrero Hill Green Benefit District Management Plan," which was approved by the Board of Supervisors by resolution pursuant to Section 36622 of the Streets and Highways Code, as it may be amended, modified, corrected, supplemented or superseded by the City from time to time.
- n. **"Owners' Association"** shall mean a private nonprofit entity under contract with the City to administer or implement Activities and Improvements as specified in the Management Plan, consistent with Section 36612 of the 1994 Act, as it may be amended from time to time.
- o. **"Publication"** shall mean any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, web page, audio or visual material or other communication for public dissemination, which relates to the District, all or any portion of the Management Plan or is paid for in whole or in part using Assessment Revenues.

Section 1.2 Additional Terms. The terms "as directed," "as required," "as permitted," and similar terms shall refer to the direction, requirement, or permission of the City, including the official, director, officer, employee or agent of the City responsible for such direction, requirement, or permission, as the case may be. The terms "sufficient," "necessary" or "proper" and similar terms refer to the reasonable judgment of the City as described in the preceding sentence. The terms "approval," "acceptable" or "satisfactory" or similar terms similarly mean approved by, or acceptable to, or satisfactory to the City. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation". The use of the term "subcontractor," "successor" or "assign" herein refers only to a subcontractor, successor or assign expressly permitted by the City in writing.

Section 1.3 References to this Agreement. References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with this Agreement and applicable law. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," herein or "hereto" refer to this Agreement as a whole.

Section 1.4 Other References. References in this Agreement to the Management Plan, Annual Reports, budgets, resolutions, statutes, ordinances, regulations, agreements and other documents or materials include: (a) any and all appendices, exhibits, schedules, attachments thereto; (b) any and all statutes, ordinances, regulations, resolutions or other documents expressly incorporated by reference therein; and (c) any and all amendments, modifications or supplements thereto.

Board of Supervisors for approval. Corporation shall prepare the Annual Reports in accordance with Section 36650 of the Streets and Highways Code, and must include all information and/or supporting documentation as City may reasonably require, including at minimum the following items:

- a. Any proposed changes in the boundaries of the District or in any benefit zones or classification of property or businesses within the district.
- b. The Eligible Expenditures for that fiscal year.
- c. An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.
- d. The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.
- e. The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year, and the breakdown of how those funds will be spent in the following fiscal year.
- f. The amount of non-Assessment sources to be used for District Programs. If non-Assessment sources will fund less than 2% of that year's budget, provide an explanation why non-assessment collections fell short of requirement and how Corporation will correct the funding going forward.
- g. The proposed budget for the following fiscal year (in a manner consistent with Section 3.9).
- h. Summary of year-to-date performance metrics, including but not limited to (1) total amount of trash collected in pounds (lbs.), (2) total number of instances of graffiti removed or addressed, (3) total number of landscape, parks, and open space maintenance requests addressed, (4) total number of volunteers and cumulative volunteer hours, and (5) total number of commercial and industrial vacancies (if known) including the address, APN, square footage, last known use, and property owner contact information.

Section 3.5 Mid-Year Reports. In addition to the Annual Reports, Corporation shall submit mid-year reports to Public Works on Corporation's operations for the first and second Fiscal Quarters of the then-current Fiscal Year. Corporation shall submit the first mid-year report by January 31, 2026, and subsequent mid-year reports by January 31 of each year thereafter (unless Public Works grants an extension in writing). The mid-year reports shall be written in narrative summary form, and shall include all information and/or supporting documentation as Public Works may reasonably require, including the following:

- a. A status update regarding the Eligible Expenditures for that fiscal year, with (1) an estimate of the cost of providing the District Programs to date for that fiscal year, (2) a comparison of actual versus budgeted expenditures for each line item in the budget; and (3) a description of any deviations from the annual budget or additional proposed expenditures that would require approval by the Board of Supervisors and/or amendment of the Management Plan.
- b. A description of the status of each subcontract to provide or perform any of the District Programs

owners, Corporation may organize and conduct a series of informational meetings, each of which will be noticed to only some of the owners so long as all owners are invited to at least one meeting each year.) For purposes of providing notice of an annual information meeting to individuals and entities with a timeshare ownership interest in an Identified Parcel, written notice provided to the homeowner's association for such individuals and entities shall meet the requirements of this section as applicable. Corporation shall conduct such meetings at a location within the District that allows the owners of the Identified Parcels to familiarize themselves with the Corporation, its functions and its officers and directors, and to express their views relating to the District. Such meetings may, but are not required to be, consolidated with a regular meeting of the Corporation's board of directors for the transaction of Corporation's business.

- c. **Designated Meetings.** If Corporation receives a cumulative total per year of at least \$250,000 in City funds (including Assessment revenue), Corporation shall also comply with and be bound by all the applicable provisions of Chapter 12L of the Administrative Code. Consistent with Chapter 12L, Corporation shall hold at least two designated public meetings per year at which it shall address issues of approximately the same general nature and significance as those it typically addresses at its other regular or special meetings. At least one of these designated public meetings shall provide the public an opportunity to address the Board of Directors on membership on the Board of Directors and to propose candidates for membership on the Board of Directors. Corporation agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Corporation further acknowledges that its failure to comply with any material provisions of this paragraph shall constitute a material breach of this Agreement, and shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety. Corporation shall provide notice of these designated meetings at least 30 days in advance, by submitting a written notice to the Clerk of the Board of Supervisors for posting where notices of meetings of the Board of Supervisors are posted, to the San Francisco Main Library Government Information Center which shall post the written notice where notices of meetings of City boards and commissions are posted, and by publishing a copy of the notice on its own website.
- d. **Public Access to District Related Records; Compliance with the California Public Records Act.** Consistent with Section 36612 of the 1994 Act, Corporation shall comply with the California Public Records Act (Government Code Section 7928.500 *et seq.*), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement. If Corporation receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Corporation shall also comply with the provisions of Section 12L.5 of that Chapter. In the event of a conflict between the Public Records Act and Chapter 12L, the provision that results in greater public access shall apply.
- e. **Newsletters.** If Corporation prepares a District newsletter for the owners of Identified Parcels and businesses and community-based organizations operating in the District, Corporation shall also distribute copies to Public Works.
- f. **Other Events.** Corporation may organize at its discretion other events and programs that involve the owners of Identified Parcels, businesses and community-based organizations operating in the District and the public that further the goals and objectives described in the Management Plan; provided, that Assessment Revenues may only be used for such events and programs if included in the annual budget set forth in the Management Plan or Annual Report.

ARTICLE IV CITY RESPONSIBILITIES

Section 4.1 Collection and Disbursement of Assessments. City shall include the Assessments on the property tax bills mailed to the owners of Identified Parcels on the secured property tax roll that year, based upon the annual Assessments as listed in the Management Plan and, after the first Fiscal Year, the Annual Reports, also taking into account any recoverable City costs for supplemental City service fees, loans, or advances. Public Works, or at Public Works's direction, Corporation, shall directly bill annual Assessments on Identified Parcels owned by entities exempt from property taxation. The City shall disburse to Corporation the actual revenues received from the Assessments, subject to the terms and conditions of this Agreement. The City shall be under no obligation to disburse any Assessment Revenues without a Disbursement & Depository Certification executed by Corporation containing the information described in Section 1.1(j) of this Agreement. The City shall disburse Assessment Revenues during each Fiscal Year for the duration of this Agreement according to the following schedule:

- a. **Disbursement of First Installment.** For Assessments the City receives with the first installment of secured property taxes which, if not paid on or before December 10, are delinquent, the City shall disburse all Assessment Revenues available for immediate disbursement on or before January 10 of the following calendar year.
- b. **Disbursement of Second Installment.** For Assessments the City receives with the second installment of secured property taxes which, if not paid on or before April 10, are delinquent, the City shall disburse all Assessment Revenues available for immediate disbursement on or before May 10 of the same calendar year.
- c. **Reconciliation; Delinquent Assessments and Other Special Disbursements.** In addition to the disbursements for the first and second installments described above, and subject to the terms and conditions of this Agreement, the City may disburse Assessment Revenues during the last Fiscal Quarter of each Fiscal Year, or from time to time as deemed appropriate by the Controller (for example and without limitation, where the assessments were paid, processed, and/or posted to the special assessment account within the City's Treasury for the District after disbursement of the second installment; based on the need to reconcile books and records related to the Assessments, resolve disputes and/or cure an Event of Default that resulted in a withholding or suspension of disbursements; and/or in situations of delinquent Assessments).
- d. Disbursements made under subsection (c) shall be made at such intervals and under such conditions or assurances of Corporation's future compliance with this Agreement as the Controller deems appropriate. Assessments not disbursed during the Fiscal Year in which received shall carry over to the next Fiscal Year and be disbursed with the first installment disbursement, unless disbursement would violate this Agreement or applicable law.
- e. City shall not be responsible for delays in disbursements to Corporation due to delays in transmittals of funds or payment delays by property owners, including other public entities, organizations or agencies, or delays caused by the resolution of disputes which, in the discretion of the Controller, warrant suspension of disbursements as set forth in this Article.
- f. The City shall provide reports to the Corporation electronically four times a year, coinciding with the assessment distribution. The first report will be distributed on or about January 10 with the disbursement of the first installment and shall include a detailed assessment payment report by parcel for the current fiscal year. The second report will be distributed on or about May 10 with the disbursement of the second installment and shall include a detailed assessment payment report by parcel for the current fiscal year. If there are remaining Assessment Revenues to be distributed the third report will be distributed in June and will include the assessment payment redemption report by parcel for the current and previous

Section 5.2 Certification of Controller; Guaranteed Maximum Costs. No Assessment Revenues shall be available under this Agreement without prior written authorization certified by the City Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code, and as required by other applicable law:

- a. City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by City ordinances governing emergency conditions, City and its employees, officers agents and representatives may not request Corporation to perform services or to provide materials, equipment and supplies that would result in Corporation performing services or providing materials, equipment and supplies that are beyond the scope of this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City may not disburse Assessment Revenues to Corporation for purposes beyond the scope of the Management Plan, Annual Report for the relevant Fiscal Year, or this Agreement, unless an amendment to the Plan, such Annual Report and/or this Agreement, as appropriate, has been made in accordance with applicable law, or that is beyond the scope of Activities and Improvements authorized by the Property and Business Improvement District Law of 1994, as augmented by Article 15A.
- c. City and its employees and officers are not authorized to offer or promise to Corporation additional funding for this Agreement which would exceed the maximum amount of Assessment Revenues provided for herein. Additional funding from any City funds for District Programs in excess of Assessment Revenues actually collected under this Agreement shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum amount of Assessment Revenues provided in this when the lawful approval and certification by the Controller has not been obtained.
- d. The Controller is not authorized to make disbursements on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

Section 5.3 Automatic Termination for Nonappropriation of Funds. This Agreement shall automatically terminate, without penalty, liability or expense of any kind to City, at the end of any Fiscal Year if Assessment Revenues are not appropriated for the next succeeding Fiscal Year. If Assessment Revenues are appropriated for a portion of any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to City, at the end of such portion of the Fiscal Year. All undisbursed Assessment Revenues in the possession of the City or its agents upon termination of this agreement shall be refunded to the owners of Identified Parcels, in proportion to the amounts paid, as set forth in Section 11.4.

Section 5.4 SUPERSEDURE OF CONFLICTING PROVISIONS. IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 5 AND ANY OTHER PROVISION OF THIS AGREEMENT, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 5 SHALL GOVERN.

Section 6.6 Inspection and Audit. Corporation shall make available to City, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls, tax returns and statements and other data required to be established and maintained by Corporation under this Agreement and applicable law. Corporation shall permit City, its employees and authorized representatives to inspect, audit, examine, make and retain duplicate copies, and make excerpts and transcripts from any of the foregoing. The rights of City pursuant to this Section shall remain in effect so long as Corporation has the obligation to maintain such files, records, books, invoices, documents, payrolls, tax returns and statements and other data under this Article 6.

Section 6.7 Submitting False Claims; Monetary Penalties. The full text of Section 21.35 of the Administrative Code, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to Section 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

ARTICLE 7

TAXES

Section 7.1 Corporation to Pay All Taxes. Corporation shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Management Plan, the Assessment Revenues or any of the activities contemplated by this Agreement.

Section 7.2 Use of City Real Property. If at any time this Agreement entitles Corporation to the possession, occupancy or use of City real property for private gain, the following provisions shall apply:

- a. Corporation, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Corporation, and any subcontractor, successor or assign, may be subject to the payment of such taxes.
- b. Corporation, on behalf of itself and any subcontractors, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Corporation shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the Assessor within sixty (60) days after such assignment, transfer, renewal or extension.
- c. Corporation shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

Section 7.3 [Left blank by agreement of the parties]

excluded from being awarded contracts from the State of California or the City, or from participation in assistance programs funded by the State of California. Corporation acknowledges that this certification of eligibility to receive federal, state and local funds is a material term of the Agreement.

ARTICLE 9

INDEMNIFICATION AND GENERAL LIABILITY

Section 9.1 Indemnification. Corporation shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Corporation or loss of or damage to property, arising directly or indirectly from Corporation's performance of this Agreement, including, but not limited to, Corporation's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Corporation, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Corporation's obligation to indemnify City, Corporation specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Corporation by City and continues at all times thereafter.

Corporation shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

Section 9.2 Incidental and Consequential Damages. Losses covered under this Article 9 shall include any and all incidental and consequential damages resulting in whole or in part from Corporation's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

Section 9.3 LIMITATION ON LIABILITY OF CITY. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ASSESSMENT REVENUES ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE ASSESSMENT REVENUES, THE MANAGEMENT PLAN OR ANY SERVICES, IMPROVEMENTS OR ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

Section 10.7 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of Corporation hereunder.

Section 10.8 Adjustments to Types and Amounts of Coverage. The City may require Corporation to provide types of insurance coverage different than as set forth in this Article 10, and insurance coverage in amounts higher than as set forth in this Article 10, as may be required by the City's Risk Manager. City shall provide written notice of such changes in types and amounts of coverage not less than ninety (90) days before Corporation's obligation to obtain and thereafter maintain such additional type(s) of coverage, or coverage in amounts higher than as set forth herein, becomes effective.

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

Section 11.1 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement. City will provide Corporation with written notice of any such Event of Default and Corporation will have 14 calendar days from the date of the written notice to cure or contest any identified Event of Default, before City may proceed with any Remedies Upon Event of Default as provided in Section 11.2. Corporation may request additional time to cure any identified default, which City in its reasonable discretion may grant. During any initial or additional period to cure or contest, under this Article 11 or any other part of this Agreement, City in its reasonable discretion may require that performance be stopped pending completion of cure. Before issuing any such requirement that performance be stopped, City will consider Corporation's views and circumstances.

- a. **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Disbursement Request or in any other document submitted to City under this Agreement is found by City to be intentionally false or misleading. For purposes of this Article, "intentionally" means that Corporation, with respect to any such statement, representation or warranty, does any of the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. Proof of specific intent is not required, and reliance by the City is not required.
- b. **Failure to Provide Insurance.** Corporation fails to provide or maintain in effect any policy of insurance required in Article 10.
- c. **Failure to Comply with Applicable Laws.** Corporation fails to perform or breaches any of the terms or provisions of Article 16.
- d. **Failure to Perform Other Covenants.** Corporation fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Corporation as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.
- e. **Cross Default.** Corporation defaults under any other agreement between Corporation and City (after expiration of any grace period expressly stated in such agreement).
- f. **Voluntary Insolvency.** Corporation (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or

ARTICLE 12

DISCLOSURE OF INFORMATION AND DOCUMENTS

Section 12.1 Proprietary or Confidential Information of City. Corporation understands and acknowledges that, in the performance of this Agreement or in contemplation thereof, Corporation may have access to private or confidential information that may be owned or controlled by City and that such information may contain proprietary or confidential information, the disclosure of which to third parties may be damaging to City. Corporation agrees that all private or confidential information to which City allows access to Corporation in the performance of this Agreement shall be held in confidence and used only in the performance of this Agreement. Corporation shall exercise the same standard of care to protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

Section 12.2 Sunshine Ordinance. Corporation acknowledges and agrees that this Agreement is subject to Section 67.24(e) of the San Francisco Administrative Code. All information provided by Corporation to City will be subject to inspection and copying unless exemption from disclosure under federal, state, or local law.

ARTICLE 13

ASSIGNMENTS AND SUBCONTRACTING

Section 13.1 No Assignment by Corporation. Corporation shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Corporation hereunder without the prior written consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of Corporation involuntarily or by operation of law without the prior written consent of City. A change of control of Corporation or a sale or transfer of substantially all of the assets of Corporation shall be deemed an assignment for purposes of this Agreement.

Section 13.2 Agreement Made in Violation of this Article. Any agreement made in violation of Section 13.1 shall confer no rights on any person or entity and shall automatically be null and void.

Section 13.3 Subcontracting. Corporation shall have the right to subcontract for the provision of District Programs and administrative, professional and related services necessary or convenient for the implementation of the Management Plan only on the terms set forth in this Section.

- a. **Limitations.** In no event may Corporation subcontract or delegate for the implementation of the whole of the Management Plan. Corporation may subcontract with any person or entity acceptable to the City; provided, however, that Corporation shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Corporation, Corporation shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Corporation. Corporation shall ensure that its subcontractors comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management Plan. All references herein to duties and obligations of Corporation shall be deemed to pertain also to all subcontractors to the extent applicable. A default by any subcontractor shall be deemed to

NOTICES AND OTHER COMMUNICATIONS

Section 15.1 Requirements. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, or (b) hand delivered.

If to the City:

San Francisco Public Works
Operations Yard, Building A
2323 Cesar Chavez Street
San Francisco, CA 94124
Attn: James Cassiol, Program Manager

If to Corporation:

Dogpatch and Northwest Potrero Hill Green Benefit District
1459 18th Street, #369
San Francisco, CA 94107
Attn: Donovan Lacy, Acting Executive Director

Section 15.2 Effective Date. All communications sent in accordance with Section 15.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

Section 15.3 Change of Address. From time to time any party hereto may designate a new address for purposes of this Article by notice to the other party.

ARTICLE 16 COMPLIANCE

Section 16.1 Reserved (LBE)

Section 16.2 Nondiscrimination; Penalties.

- a. **Corporation Shall Not Discriminate.** Corporation shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Corporation shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Corporation is subject to the enforcement and penalty provisions in Articles 131 and 132.
- b. **Non-Discrimination in Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Corporation does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the

twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Corporation's board of directors; Corporation's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Corporation; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Corporation. Corporation certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

Section 16.10 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

Section 16.11 Prohibition on Use of Public Funds for Political Activity. In administering the Assessment Revenues, Corporation shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Corporation is subject to the enforcement and penalty provisions in Chapter 12G.

Section 16.12 Preservative-Treated Wood Containing Arsenic. Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

16.13 Reserved. (Working with Minors.)

Section 16.14. Consideration of Criminal History in Hiring and Employment Decisions. Corporation agrees to comply fully with and be bound by all of the provisions of Article 142, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Labor and Employment Code ("Article 142"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of Article 142 is available on the web at <http://sfgov.org/olse/fco>. Grantee is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142. But the requirements of Article 142 shall apply to Corporation or a Subcontractor's operations only to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

Section 16.15 Protection of Private Information. Corporation has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Corporation agrees that any failure of Corporation to comply with the requirements of Section 12M.2 shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against the Corporation pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Corporation.

Section 16.16 Reserved (HCAO)

requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

Section 17.2 Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

Section 17.3 Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of Public Works who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

Section 17.4 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

Section 17.5 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

Section 17.6 Entire Agreement. This Agreement and the documents set forth as appendices hereto constitute the entire Agreement between the parties, and supersede all other oral or written provisions. If there is any conflict between the terms of this Agreement and other documents, the terms of this Agreement shall govern.

Section 17.7 Certified Resolution of Signatory Authority. Upon request of City, Corporation shall deliver to City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of Corporation.

Section 17.8 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

Section 17.9 Successors; No Third-Party Beneficiaries. Subject to the terms of Article 13, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 9, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 17.10 Survival of Terms. The obligations of Corporation and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 6.4 through 6.8, Articles 7 and 9, Section 10.4, Article 12, Section 13.4, Section 14.3 and this Article 17.

Section 17.11 Further Assurances. From and after the date of this Agreement, Corporation agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

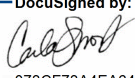
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date below.

CITY

CORPORATION:

SAN FRANCISCO PUBLIC WORKS

**DOGPATCH & NW POTRERO HILL
GREEN BENEFIT DISTRICT**

By:  DocuSigned by:
073CF73A4EA6486...
Carla Short
Director


By:  Signed by:
791641BBF99A466...
Donovan Lacy
Executive Director

Approved as to Form:

Federal Tax ID No.

David Chiu
City Attorney

City Supplier No.

By:  DocuSigned by:
0451C8DD9C264B2...
Manu Pradhan
Deputy City Attorney