

AGREEMENT FOR ADMINISTRATION OF THE SAN FRANCISCO MOSCONE EXPANSION DISTRICT

This Agreement ("Agreement") is entered into as of December 1, 2013 (with an effective date as set forth in Section 2.1 below) by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City"), by and through the Office of Economic and Workforce Development ("OEWD"), and subject to approval of the Board of Supervisors for the City and County of San Francisco (the "Board of Supervisors" or "Board") by resolution, and the **SAN FRANCISCO TOURISM IMPROVEMENT DISTRICT MANAGEMENT CORPORATION**, a California nonprofit corporation ("Corporation"), acting as the "Owners' Association" pursuant to Sections 36614.5 and 36651 of the California Streets and Highways Code.

RECITALS

WHEREAS, pursuant to the Property and Business Improvement Law of 1994 (California Streets and Highways Code Sections 36600 *et seq.*, the "Act"), as augmented and modified by Article 15 of the San Francisco Business and Tax Regulations Code ("Article 15") and other legal authorities (collectively, the "Business Assessment District Law"), revenues from assessments on businesses may only be used for the services, improvements and activities that confer special benefits upon the assessed businesses.

WHEREAS, on November 20, 2012, acting pursuant to the Business Assessment District Law, the Board of Supervisors adopted Resolution No. 416-12 ("Resolution of Intention"), signed by the Mayor of San Francisco on November 26, 2012, declaring the Board's intention to form a business-based business improvement district and to levy assessments on businesses to be included within the district, setting the public hearing, initiating mail ballot proceedings, approving the Moscone Expansion District Management District Plan (the "Management District Plan" or "Management Plan" or "Plan"), making various findings and taking other legislative actions required to form the proposed district and levy the proposed assessments (Board File No. 120989).

WHEREAS, on February 5, 2013, the Board of Supervisors, acting pursuant to the Business Assessment District Law, adopted Resolution No. 26-13 ("Resolution of Formation"), signed by the Mayor of San Francisco on February 11, 2013, establishing the business-based business improvement district designated as the "Moscone Expansion District" ("District") and levying multi-year special assessments on Identified Businesses (as defined herein) included within the District ("Assessments") (Board File No. 130043).

WHEREAS, pursuant to the Business Assessment District Law and the Resolution of Formation, the Assessments may only be used to fund business-related services, "Improvements" (as defined in Section 36610 of the Streets and Highways Code) and "Activities" (as defined in Section 36613 of the Streets and Highways Code) within the District in accordance with the Management District Plan (collectively, "District Programs").

WHEREAS, Corporation shall hold in trust for the City all funds it receives from the City that are derived from the City's levy and collection of the Assessments exclusively for the purposes of

implementing the Management District Plan, and administering, managing and providing District Programs, directly by Corporation's personnel or by third party providers contracting with Corporation.

WHEREAS, the City and the Corporation are parties to an Agreement for Administration of the San Francisco Tourism Improvement District, dated August 7, 2009 (the "City-TID Agreement"), which remains in effect. For clarity, the parties intend that the Corporation shall continue to serve as the "Owners' Association" of the San Francisco Tourism Improvement District as set forth in the City-TID Agreement, and simultaneously serve as "Owners' Association" of the District, as set forth herein.

WHEREAS, it is in the interests of the City and the owners of Identified Businesses to enter into an agreement between the City and an Owners' Association to implement the Management District Plan and administer, manage and provide the District Programs. In addition:

A. The Board of Supervisors, by adopting a resolution approving this Agreement, (i) authorizes OEWD, as the City agency responsible under the Resolution of Formation for coordination between the City and the Owners' Association of the District, to execute and administer this Agreement with Corporation, (ii) authorizes the San Francisco Department of Public Works ("DPW") to provide fiscal oversight over the expenditure of public funds on the Moscone Center expansion project, including the primary responsibility for overseeing the expenditure of funds related to construction and support services with respect to that project, and (iii) authorizes DPW to provide oversight of District funds spent on development and renovation activities within the District budget.

B. The Board of Supervisors, by adopting a resolution approving this Agreement, also hereby authorizes the Office of the Treasurer/Tax Collector, consistent with its authority under Section 6.06 of the Charter and Section 6.3-1 of the Business and Tax Regulations Code and pursuant to the provisions of the Resolution of Formation and the District Management Plan, to enter into an agreement with the District to collect the Assessment, including the collection and enforcement of any delinquent assessments and imposition of interest and penalties under Article 6 of the City's Business and Tax Regulations Code, as amended from time to time ("Article 6").

C. Prior to the execution of this Agreement, Corporation has accomplished the following tasks associated with this Agreement, including but not limited to: (i) obtained approval of the officers and board of directors for the Corporation to enter into this Agreement and authorizing the execution hereof by the individual or individuals executing this Agreement on behalf of the Corporation, (ii) appointed an agent for service of process upon the Corporation, whose business address is in San Francisco and who shall accept service of process in San Francisco on behalf of the Corporation, (iii) established an account or accounts at a federally insured bank, a savings and loan, a credit union or other financial corporation acceptable to the City for the safekeeping of Assessments Funds the City disburses to or on behalf of the Corporation under this Agreement, (iv) obtained a business registration certificate from the Tax Collector pursuant to Article 12 of the San Francisco Business and Tax Regulations Code, and (v) submitted to City a certificate of good standing from the California Secretary of State.

D. As set forth in the Management District Plan, and as approved by the Board of Supervisors, the City will execute and deliver bonds, financing lease (including certificates of participation), or other similar obligations of the City (collectively "City Indebtedness"), the proceeds of which will be used to pay for development costs associated with the expansion of the Moscone Convention Center project, including planning, design, engineering, entitlement, project management and related development services, as well as a portion of hard construction costs and the cost of capital

improvements to the Moscone Convention Center that will not be funded by District Assessment funds. The handling and disbursement of the above-described funds, including the flow of funds generated by the District Assessment, are set forth with greater particularity in the Management Plan. Subject to the Management Plan, nothing in this Agreement shall be construed so as to prevent the use of funds from City Indebtedness for the above purposes.

E. As further set forth in the Management District Plan, in addition to partially funding the repayment of City Indebtedness, District Assessment funds will also provide funding for efforts to attract convention business, including (i) a Convention Incentive Fund, to be used to help attract important meetings to San Francisco by offsetting convention center rental, a practice used by many other cities that compete with San Francisco for major convention business, (ii) increased, targeted sales and marketing of convention business, (iii) a capital reserve fund for future improvements and upgrades to Moscone Center, and (iv) funds for costs incurred in the formation and for the administration of the District.

NOW, THEREFORE, City and Corporation, in consideration of the recitals, mutual promises, covenants, agreements, representations set forth below, and other valuable consideration the receipt of which is hereby acknowledged, hereby promise, covenant, agree and represent as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Specific Terms. Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

- (a) "**Activities**" mean as that term is defined in Section 36613 of the Streets and Highways Code.
- (b) "**ADA**" means the Americans with Disabilities Act (including all rules and regulations thereunder) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.
- (c) "**Annual Report**" means as that term is defined in Section 36650 of the Streets and Highways Code.
- (d) "**Assessments**" mean the special assessments levied by the Board of Supervisors on Identified Businesses included within the District pursuant to the Resolution of Formation.
- (e) "**Assessment Funds**" and "**Assessment Revenues**" mean any and all money collected by the City from the levy of the Assessments, including all amounts collected as penalties and interest for delinquent payment of Assessments, and including all interest, dividends, income and other increases or accumulations from the deposit or investment thereof.
- (f) "**Charter**" means the Charter of the City and County of San Francisco.

- (g) "**City Attorney**" means the City Attorney of the City and County of San Francisco.
- (h) "**Controller**" means the Controller of City and County of San Francisco.
- (i) "**Eligible Expenditures**" means expenditures of Assessments Funds for business-related services, Improvements and Activities, as authorized by the Business Assessment District Law, Management District Plan, Resolution of Formation and Annual Reports for the relevant Fiscal Year.
- (j) "**Event of Default**" shall have the meaning set forth in Section 11.1 of this Agreement.
- (k) "**Fiscal Quarter**" means each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.
- (l) "**Fiscal Year**" means each period of twelve (12) calendar months commencing on July 1 and ending on June 30 during all or any portion of which this Agreement is in effect.
- (m) "**Improvements**" means as that term is defined in Section 36610 of the Streets and Highways Code.
- (n) "**Indemnified Parties**" means: (1) the City, including the Board of Supervisors, OEWD, Controller, Treasurer and Tax Collector, 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.
- (o) "**Identified Business**" means a business included within the District, identified in the Management District Plan as having a special benefit or benefits conferred upon it, and upon which the Board of Supervisors has levied multi-year special assessments pursuant to Streets and Highways Code Sections 36625 and 36628.5, Article 15 and the Resolution of Formation.
- (p) "**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.
- (q) "**Management District Plan**" and "**Management Plan**" and "**Plan**" mean the proposal submitted to the Board of Supervisors pursuant to Section 36622 of the Streets and Highways Code, designated as the "Moscone Expansion District Management District Plan" and approved by the Board of Supervisors by adoption on February 11, 2013, of the Resolution of Formation, as the Plan may be amended, modified, corrected, supplemented or superseded by the Board of Supervisors from time to time pursuant to the Business Assessment District Law, and including any attachments and exhibits thereto. The Management District Plan, as amended, and the Resolution of Formation are attached hereto as Appendices A and B, respectively.

(r) "**Owners' Association**" means as that term is defined in Section 36614.5 of the Streets and Highways Code.

(s) "**Special Assessment Monthly Payment**" means the payment sent by the owner of each Identified Business to the City's Treasurer and Tax Collector each month of each year of this Agreement, based on the gross revenue collected for tourist guest rooms each month during the calendar year.

(t) "**Treasurer and Tax Collector**" means the Treasurer and Tax Collector of the City and County of San Francisco.

Section 1.2 Additional Terms. The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of the OEWD, Board of Supervisors, Mayor, Controller, Treasurer and Tax Collector, City Attorney, Risk Manager or other commission, department, agency, subdivision, elected 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 shall mean sufficient, necessary or proper in the reasonable judgment of the department, person or body described in the preceding sentence authorized to exercise such judgment on behalf of the City. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to such department, person or body authorized to grant such approval, acceptance or determination of satisfaction on behalf of the City, as the case may be. 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 "successor" or "assign" herein refers only to a 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.

ARTICLE 2

TERM OF AGREEMENT

Section 2.1 Period of Performance. Subject to adoption by the Board of Supervisors of a resolution approving this Agreement, this Agreement shall be effective as of July 1, 2013. Unless modified by mutual agreement of the parties through a written amendment to this Agreement, the period of performance under this Agreement shall be from its effective date and continuing for a period of thirty-two (32) years, *i.e.*, to and including June 30, 2045; provided, that if the District is disestablished pursuant to the Business Assessment District Law, expires prior to June 30, 2045 for any reason, the City exercises its right to terminate this Agreement as provided herein, or this Agreement is terminated for any other reason, the period of performance shall end on the date the last of the following events occurs: (i) the Controller accepts in writing the Corporation's final accounting of all Assessment Funds disbursed by the City, (ii) the Corporation submits written confirmation acceptable to the Controller that

there is no outstanding and unpaid indebtedness incurred to accomplish any of the purposes of the District, and (iii) any and all claims against the Corporation and the City arising out of this Agreement or the Corporation's administration, management and provision of the District Programs have been settled or finally adjudicated and all obligations relating thereto have been fully satisfied; provided, further, that certain obligations of Corporation with respect to the preservation of records, City's access to books and records, audits, insurance and indemnification of City and Indemnified Parties arising from Corporation's performance of this Agreement, implementation of the Management District Plan and receipt of Assessment Funds, shall, as specified in this Agreement and applicable law, survive the period of performance set forth in this section. In the event that this Agreement is not renewed or extended beyond the end of its term, the Assessment for the quarter ending June 30, 2045, shall be collected and disbursed to pay existing debt, with any remainder used as set forth in the Management District Plan, and then to be distributed to the businesses that paid the assessment in accordance with the requirements of the Business Assessment District Law.

ARTICLE 3

CORPORATION RESPONSIBILITIES

Section 3.1 District Programs; Implementation of Plan; Nonprofit Status of Corporation. Corporation shall, in good faith and with diligence, develop, implement, direct, manage, administer, operate and ensure the timely provision of all business-related services, Improvements and Activities as described in the Management District Plan. Corporation acknowledges and expressly agrees that, for the duration of this Agreement, it will: (a) comply with all applicable federal, state and local laws and regulations, (b) continuously maintain its corporate status active and in good standing, and (c) continuously maintain non-profit status under Section 501(c)(6) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended.

Section 3.2 Corporation's Administration of Contracts with Third Parties; Accountability. The Management District Plan shall be implemented under the direction and supervision of Corporation. Corporation shall be responsible for the oversight, administration and enforcement of any and all contracts with third parties to provide any business-related service, improvement or activity paid or to be paid with Assessment Funds. The use of Assessment Funds for purposes other than Eligible Expenditures by any third party under contract with Corporation shall be attributable to Corporation and shall be deemed a material breach of this Agreement for which the City may exercise any of its remedies under this Agreement or applicable law, including terminating this Agreement and entering into a contract with a different nonprofit entity to act as the Owners' Association for the District; provided, however, the City may not exercise such remedies if the Corporation, upon learning that such third party has used Assessment Funds for purposes other than Eligible Expenditures, takes prompt and appropriate remedial action and recovers the Assessment Funds that were used for purposes other than Eligible Expenditures.

Section 3.3 Corporation's Board of Directors. Corporation shall at all times be governed by a legally constituted board of directors as set forth in the Management District Plan.

Section 3.4 Annual Reports. Corporation shall prepare and submit an Annual Report to the Clerk of the Board of Supervisors and the OEWD for each Fiscal Year for which the City collects and

disburses the Assessments. Corporation also shall prepare an Annual Report for any Fiscal Year in which it expends Assessment Funds carried over from the prior Fiscal Year even if no additional Assessment Funds are to be collected and disbursed to Corporation during the Fiscal Year covered by the report. The first Annual Report shall be submitted by October 31, 2014 and subsequent Annual Reports shall be submitted by October 31st of each subsequent Fiscal Year for the duration of this Agreement. The Corporation's Annual Report may be consolidated with its Annual Report filed with respect to the San Francisco Tourism Improvement District, provided, however, that such report must comply with the requirements of section 36650 of the California Streets and Highways Code with respect to the District.

Section 3.5 Coordination. Corporation shall coordinate with the OEWD for the implementation of the Plan. Unless otherwise stated in the Agreement or required by the Charter, ordinance or other applicable law, OEWD shall be the agency of the City responsible for administration of this Agreement and OEWD will coordinate with the Treasurer and Tax Collector for any acceptance, approval, permission or determination of the City required or permitted under this Agreement.

Section 3.6 Eligible Expenditures.

(a) Any obligations or expenditures for items not constituting Eligible Expenditures may not be paid through Assessments collected by the City for the District programs. In administering contracts with third party providers as necessary for providing the business-related services, Improvements and Activities within the District, Corporation shall comply with all applicable federal, state and City laws and regulations.

(b) The Corporation may reallocate the surplus of any funds disbursed to it by the City within the categories of expenditures consistent with the Management District Plan. If the Corporation wishes to reallocate funding in a manner not provided for under the Management District Plan, it may do so by seeking to modify this Management Plan and by obtaining such approvals as may be required by law pursuant to section 36636 of the Streets and Highways Code. In no event may the Assessments exceed the total amount set forth in the Management District Plan for any applicable fiscal year.

Section 3.7 Community/Public Access. To foster effective working relationships and effectuate the goals of the District as set forth in the Management District Plan, Corporation's responsibilities under this Agreement shall include the following:

(a) **Annual Outreach.** Corporation shall provide copies of its Annual Report and board meeting schedule in writing to the owners of Identified Businesses assessed within the District boundaries. Such notice shall be in addition to the requirements of the Ralph M. Brown Act and additional open meeting requirements of this Section.

(b) **Open Meetings; Compliance with Ralph M. Brown Act.** Actions of the Corporation shall be taken openly and deliberations shall be conducted openly in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), as made applicable to Corporation pursuant to Section 36614.5 of the Streets and Highways Code and this Agreement. In addition to Corporation's obligation to comply with the Ralph M. Brown Act, all notices and agendas for regular and special meetings of Corporation's board of directors and its committees shall be sent to the Government Information Center at the main branch of the San Francisco Public Library for posting. If Corporation establishes an internet website for the

District, meeting notices and agendas shall be posted on Corporation's website no later than the time such notices and agendas must be posted under the Ralph M. Brown Act.

(c) **Public Access to District Related Records; Compliance with the California Public Records Act.** Corporation shall comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management District Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement. Confidential data and records in possession of the Treasurer and Tax Collector shall remain confidential as provided by law, including but not limited to San Francisco Business and Tax Regulations Code §6.22-1.

Section 3.9 Prohibited Contracts with City Officers and Employees. Corporation may not employ or subcontract with any person where such employment or subcontract would constitute a violation of California Government Code Sections 1090 *et seq.*

Section 3.10 City Access to Records; Copies. All designs, plans, reports, files, invoices, investigations, materials, documents and other records that are prepared, acquired, owned, maintained or under the control or possession by Corporation, its agents or representatives, or other person under contract with Corporation, pursuant to this Agreement (including any duplicate copies), shall be made fully available to City by Corporation. Corporation agrees to exercise reasonable and due diligence in providing for the secure storage of all such materials and, upon request, to provide copies for City's use for any purpose related to this assessment district. Nothing herein shall be construed to give the City access to documents protected by evidentiary privileges or a right to privacy, such as attorney-client communications, attorney work product, and confidential medical records.

ARTICLE 4

CITY RESPONSIBILITIES

Section 4.1 Collection and Disbursement of Assessments. Prior to January 1, 2014, the Assessments shall be collected and disbursed by City on a quarterly basis, as set forth in the Resolution of Formation and the Management Plan. Beginning January 1, 2014, City shall collect Special Assessment Monthly Payments from owners of Identified Businesses, and shall disburse to Corporation the actual revenues received from the Assessments, subject to the terms and conditions of this Agreement, according to the following schedule:

(a) **Monthly Payments.** The City's Treasurer/Tax Collector shall collect payments of self-reported Special Assessments from the owners of the Identified Businesses on a monthly basis. Monthly payments shall be due and payable on or before the last day of the following month.

(b) **Allocation and Disbursement.** The City shall apply Assessment Funds in accordance with the Plan as follows (i) withhold Assessment Funds allocated to "Development Activities" that are necessary to pay debt service, (ii) allocate and disburse "Surpluses" from excess MED revenue allocated to Development Activities, and (iii) allocate and disburse to the Corporation Assessments Funds for Renovation Activities, Convention Business Attraction Activities, and

Administration of the MED and Operating Contingency Reserve, all as set forth with greater particularity in the Management Plan. All disbursements to the Corporation shall be made no less frequently than on a monthly basis, no later than forty-five (45) days after the funds were due to the City. The City's Board of Supervisors shall have a full right of accounting of funds disbursed to the Corporation. Capitalized terms in this subsection (b) that are not defined in this Agreement shall have the meanings assigned in the Plan.

(c) **Reconciliation; Delinquent Assessments and Other Special Disbursements.**

In addition to the Allocation and Disbursement described above, and subject to the terms and conditions of this Agreement, the City may make additional disbursements from time to time as determined by the Controller. Each disbursement of Assessment Funds shall include:

(1) Assessments paid and/or processed by the Office of the Treasurer and Tax Collector and posted to the special assessment account within the City's Treasury for the District after the Disbursement;

(2) Assessments collected but not previously disbursed pending: (A) reconciliation of the City's books and records; (B) resolution of disputes resulting in withholdings from or suspension of disbursements under Section 4.4; or (C) cure of an Event of Default resulting in withholding of Assessment Funds under Section 11.2; and,

(3) Assessment Funds, including delinquent Assessments from prior Fiscal Years, not previously disbursed for any other reason that are available for disbursement.

(d) Disbursements made pursuant to subsection (c) shall be made as such intervals and under such conditions or assurances of Corporation's future compliance with this Agreement as the Controller deems appropriate. Assessment Funds not disbursed during the Fiscal Year in which received shall be carried over to the next Fiscal Year and disbursed with the first 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 Identified Businesses, 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 collection and disbursement of Assessments shall be in accordance with Article 6.

(g) All interest earned on Assessment Funds shall be for the benefit of the Corporation, and shall be disbursed by the City to the Corporation on a quarterly basis, on the same schedule as set forth in Section 4.1(b).

Section 4.2 Assistance. The City shall resolve any discrepancies in individual Assessments amounts, calculations or benefits, as provided in Article 6.

Section 4.3 Delinquent Assessments. The amount of delinquent Assessments, if any, and interest and penalties thereon, if any, that have been collected by City that are available for disbursement

to Corporation for District Programs shall be disbursed in accordance with the disbursement schedule in Section 4.1.

Section 4.4 Withholding; Suspension of Disbursements. The City may withhold either all or some portion of the actual revenues received from Assessments if, in the reasonable judgment of the Controller: (a) Corporation is not using the Assessment Funds for Eligible Expenditures, (b) Corporation has failed to maintain proper records or follow generally accepted accounting principles, (c) Corporation has failed to diligently implement audit recommendations regarding the safekeeping or use of Assessment Funds, (d) based on advice from the City Attorney, Corporation is in violation of this Agreement or the Business Assessment District Law. Prior to withholding of any revenue, the City will notify Corporation and set forth the specific issues the Controller determines warrant suspension of disbursements, and will provide the Corporation with a reasonable opportunity to cure any such problems and issues. The City may not withhold funds under this paragraph if the Corporation is diligently pursuing such a cure. If any funds are nevertheless withheld under this paragraph, such funds will be released upon the implementation of an acceptable cure, subject to the reasonable approval of the Controller and possible modification of the disbursement schedule. This does not alter or diminish in any way City's right to proceed in a manner consistent with California Streets and Highways Code, Section 36670, Article 15 or other applicable law, or to invoke other appropriate remedies provided for in this Agreement.

Section 4.5 Notification of Changed Status. If the Corporation is dissolved, dissolves itself, no longer has non-profit status, or has its corporate powers suspended by the Secretary of State or otherwise fails to maintain in good standing its authority to conduct business or operate in the City or the State of California (unless promptly brought back into good standing upon learning of any such failure) (separately and collectively "Corporate Dissolution"), prior to or upon the expiration of this Agreement, Corporation shall immediately transmit to City all unexpended Assessment Funds for allocation and disbursement consistent with the terms of the Management District Plan, and potential distribution to the owners of Identified Businesses, less amounts City, in its sole discretion, may pay or agree to pay to Corporation's unpaid creditors for Eligible Expenses, unless Corporation makes arrangements for payment of creditors and return of excess Assessment Funds acceptable to City. Corporation will immediately notify DPW, OEWD and Controller in writing of any such change in the status of the Corporation described in this Section or which constitutes a breach of this Agreement.

ARTICLE 5

APPROPRIATION AND CERTIFICATION OF ASSESSMENTS FUNDS

Section 5.1 Certification of Controller; Guaranteed Maximum Costs. As provided by City and County of San Francisco Charter §3.105, all disbursements of funds in the custody of the Treasurer must be authorized by the Controller. Accordingly, no Assessment Funds shall be available under this Agreement without prior written authorization certified by the Controller under the terms set forth in this Agreement.

(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) City may not disburse Assessment Funds to Corporation for purposes beyond the scope of the Management District Plan.

(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 Funds provided for in the Management District Plan. Additional funding from any City funds for District Programs in excess of Assessment Funds 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 that exceeds the maximum amount of Assessment Funds provided in the Management District Plan when the lawful approval and certification by the Controller has not been obtained.

(d) Nothing in this section 5.1 is intended to affect the City's contribution toward the financing of the Moscone Convention Center expansion set forth in page 34 of the Management Plan, as amended as of January 1, 2014 (under the heading "Proposed City Financing of Moscone Convention Center Expansion").

Section 5.2 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.

ARTICLE 6

ADDITIONAL REPORTING AND ORGANIZATIONAL REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

Section 6.1 Additional Reports. In addition to the Annual Reports described in Article 3 of this Agreement, Corporation shall provide, in a prompt and timely manner, unaudited, interim financial statements, as may be requested by the City. All hard-copy reports required under this Agreement, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

Section 6.2 Organizational Documents. On or before the effective date of this Agreement, Corporation shall provide to City the names of its officers and directors, certified copies of its Articles of Incorporation and Bylaws, proof of registration as a non-profit corporation in the State of California, and a copy of the non-profit corporation approval letter upon its issuance by the IRS.

Section 6.3 Notification of Defaults or Changes in Circumstances. Corporation shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 8 to be false or misleading at any time during the term of this Agreement.

Section 6.4 Audited Financial Statements. Within one hundred twenty (120) days following the end of each Fiscal Year, Corporation shall deliver to City audited financial statements with respect to the Corporation, prepared by a Certified Public Accountant (CPA), at no expense to the City. City acknowledges that if Corporation, on its own behalf, is not allowed to audit the books and records of the Treasurer & Tax Collector with respect to its performance of services under this Agreement, which services form the basis of Corporation's revenues, and the Controller has failed to provide the audit report to the Corporation or its auditor as required in Section 6.6 below, Corporation's audited financial statements furnished to City under this section 6.4 may be subject to an exception and/or disclaimer. City expressly acknowledges that any such exception and/or disclaimer in Corporation's audited financial statements shall not constitute a breach of Corporation's obligations under this Agreement or under law.

Section 6.5 Books and Records. Corporation shall establish and maintain accurate files and records of all aspects of the Management District Plan and the matters funded in whole or in part with Assessment Funds during the term of this Agreement, and shall follow generally accepted accounting principles. Without limiting the scope of the foregoing, Corporation shall establish and maintain accurate financial books and accounting records relating to Eligible Expenses incurred and Assessment Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Assessment Funds. Corporation shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final disbursement under this Agreement or until any final audit has been fully completed to the satisfaction of the Controller, whichever is earlier.

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. Corporation shall have the right, at its own expense, to inspect and audit the books and records of the City's Treasurer & Tax Collector with respect to its performance of services under this Agreement. Such right to audit may not be exercised more than one time per year, and must be conducted only by the City Controller's office or by an outside accounting firm otherwise retained or selected by the City. If an audit of the City's Treasurer & Tax Collector is performed under this section 6.6, the Controller shall make a reasonable effort to make the audit report available to the Corporation or the Corporation's auditor no later than ninety (90) days following the end of the Fiscal Year for which the audit is to be performed, provided the Corporation makes a reasonable effort to request the audit no later than fifteen (15) days after the end of such Fiscal Year.

Section 6.7 Submitting False Claims; Monetary Penalties. Corporation acknowledges and agrees that it is a "Contractor" under and is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any Corporation, subcontractor or consultant who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A Corporation, subcontractor or consultant who submits a false claim shall also be liable to City for the

costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A Corporation, subcontractor or consultant will be deemed to have submitted a false claim to City if the Corporation, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to 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 District Plan, the Assessment Funds 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 Omitted by Agreement of the Parties (**Earned Income Credit (EIC) Forms.**)

ARTICLE 8
REPRESENTATIONS AND WARRANTIES

Corporation represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

Section 8.1 Organization; Authorization. Corporation is a nonprofit corporation, duly organized and validly existing and in good standing under the laws of the State of California. Corporation shall maintain valid nonprofit status under Section 501(c)(6) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. Corporation has duly authorized by all necessary action the execution, delivery and performance of this Agreement. Corporation has duly executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation of Corporation, enforceable against Corporation in accordance with the terms hereof.

Section 8.2 Location. Corporation's operations, offices and headquarters are located at the address for notices set forth in Section 15.

Section 8.3 No Misstatements. No document furnished or to be furnished by Corporation to City in connection with the this Agreement, Annual Report, any Disbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

Section 8.4 Conflict of Interest. Through its execution of this Agreement, Corporation acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts that constitute a violation of those provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

Section 8.5 No Other Agreements With City. Except as expressly itemized in Appendix C attached to this Agreement, neither Corporation nor any of Corporation's affiliates, officers, directors or employees has any interest, however remote, in any other agreement with City, including any commission, department or other subdivision thereof. City and Corporation have entered into an Agreement for Administration of the San Francisco Tourism Improvement District, as amended, which need not be itemized on Appendix C.

Section 8.6 Subcontracts. As of January 1, 2014, Corporation shall provide to OEWD a list of any and all agreements with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the Management District Plan required to be performed by Corporation (each a "Management District Plan Subcontract") for which the term has not expired. Corporation shall up-date this list to include each Management District Plan Subcontract entered into on or after January 1, 2014. For each Management District Plan Subcontract, the list shall state: (1) the name of the person or entity with whom or which Corporation has contracted; (2) the amount of the agreement; (3) a general description of the nature of the work to be performed (*e.g.*, construction or marketing); and (4) the expiration of the term of the agreement. Corporation shall

provide OEWD a copy of any Management District Plan Subcontract within 15 days of receipt of a written request by OEWD for the agreement. By executing this Agreement, Corporation certifies that it has not and shall not enter into any subcontract unless the subcontracting party agrees in writing to the terms and conditions set forth in Section 13.3 of this Agreement.

Section 8.7 Eligibility to Receive Government Funds. By executing this Agreement, Corporation certifies that Corporation is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Corporation further certifies that it is not suspended, debarred or otherwise 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 by Corporation. 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; provided, however, that in the event a court of law determines that no such indemnity obligation exists as to the matter at issue, the City shall reimburse the Corporation for the all fees, expenses, costs and liabilities incurred by Corporation in defending the City under this paragraph.

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 Indemnification by City. City shall indemnify and save harmless Corporation and its directors, officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof arising out of or related to (a) the City Indebtedness, and/or (b) the withholding, allocation or handling of Assessment funds not disbursed to Corporation. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Corporation's costs of investigating any claims against Corporation.

Section 9.3 LIMITATION ON LIABILITY OF CORPORATION. CORPORATION'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ASSESSMENT FUNDS ACTUALLY COLLECTED AND DISBURSED OR TO BE DISBURSED TO CORPORATION HEREUNDER, PLUS INTEREST, PENALTIES AND ANY OTHER FEES COLLECTED FROM IDENTIFIED BUSINESSES AND DISBURSED OR TO BE DISBURSED TO CORPORATION. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT, OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CORPORATION 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 FUNDS, THE MANAGEMENT DISTRICT PLAN OR ANY SERVICES, IMPROVEMENTS OR ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

Section 9.4 LIMITATION ON LIABILITY OF CITY. CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ASSESSMENT FUNDS ACTUALLY COLLECTED HEREUNDER, PLUS INTEREST, PENALTIES AND ANY OTHER FEES COLLECTED FROM IDENTIFIED BUSINESSES. 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 FUNDS, THE MANAGEMENT DISTRICT PLAN OR ANY SERVICES, IMPROVEMENTS OR ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 10 INSURANCE

Section 10.1 Types and Amounts of Coverage. Without limiting Corporation's liability pursuant to Article 9, Corporation shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury or illness, at all times during which Corporation employs any individual as an "employee" as defined in California Labor Code Section

3351. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Corporation, its employees, agents and subcontractors.

(b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, if the Corporation employs any individual as an "employee" as defined in California Labor Code Section 3351.

(d) Crime Insurance Requirement: A blanket fidelity bond or crime policy coverage of all officers and employees in an amount not less than one half of the annual District's assessment budget, including the City as additional obligee or loss payee as its interest may appear.

Section 10.2 Omitted by Agreement of the Parties

Section 10.3 Additional Requirements for General and Automobile Coverage.

Commercial General Liability and Commercial Automobile Liability (if applicable under 10.1(c) and 10.2(c), above) insurance policies shall:

(a) Name as additional insured the City and County of San Francisco and its officers, agents and employees.

(b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

(c) Corporation waives subrogation which any insurer of Corporation may acquire from Corporation by virtue of the payment of any loss. Corporation will obtain any endorsement that may be necessary to effect this waiver of subrogation.

Section 10.4 Additional Requirements for All Policies. All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or nonrenewal or reduction in coverage, mailed to City's address for notices pursuant to Article 15.

Section 10.5 Required Post-Expiration Coverage.

(a) Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and the insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

(b) Should any of the insurance required hereunder be provided under a claims-made form, Corporation shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

Section 10.6 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

Section 10.7 Evidence of Insurance. Before commencing any operations under this Agreement, Corporation shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Failure to maintain insurance shall constitute a material breach of this Agreement.

Section 10.8 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of Corporation hereunder.

Section 10.9 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 30 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 discretion may grant.

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, 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 materially breaches any of the terms or provisions of Article 16.

(d) **Failure to Perform Other Covenants.** Corporation fails to perform or breaches any other material 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 thirty (30) days without cure after the date on which City has provided notice to Corporation of such failure or breach.

(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, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Corporation or of any substantial part of Corporation's property or takes action for the purpose of any of the foregoing.

(g) **Involuntary Insolvency.** Without consent by Corporation, a court or government authority enters an order, and such order is not vacated within ten (10) days, (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Corporation or with respect to any substantial part of Corporation's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Corporation.

Section 11.2 Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, subject to the written notice of Event of Default and cure provisions of Section 11.1, above, City may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** City may terminate this Agreement by giving a written termination notice to Corporation and, on the date specified in such notice, this Agreement shall terminate and all rights of Corporation hereunder shall be extinguished. In the event of such termination, Corporation shall not be entitled to receive any further disbursement of Assessment Funds.

(b) **Withholding of Assessment Funds.** City may withhold all or any portion of Assessment Funds not yet disbursed hereunder, regardless of whether the Controller previously approved the disbursement of the Assessment Funds. Any Assessment Funds withheld pursuant to this Section and subsequently disbursed to Corporation after cure of applicable Events of Default may be disbursed without interest.

(c) **Offset.** City may offset against all or any portion of undisbursed Assessment Funds hereunder or against any payments due to Corporation under any other agreement between Corporation and City the amount of any outstanding Loss incurred by any Indemnified Party, including any Loss incurred as a result of the Event of Default.

(d) **Return of Assessment Funds.** City may demand the immediate return of any previously disbursed Assessment Funds that have been claimed or expended by Corporation in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

Section 11.3 Remedies Nonexclusive. Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

Section 11.4 Use of Assessments and Refunds Upon Disestablishment of District or Termination of Agreement.

(a) Upon the disestablishment of the District, any remaining revenues, after all outstanding debts are paid, derived from the levy of the Assessments, or derived from the sale of assets acquired with Assessment Funds, shall be refunded to the owners of the Identified Businesses who paid the Assessment, or on whose behalf the Assessment was paid, applying the same method and basis that was used to calculate the Assessments in the fiscal year in which the District is disestablished. All outstanding Assessment Funds collected after disestablishment shall be spent on Improvements and Activities specified in the Management District Plan in accordance with Section 36671 of the Streets and Highways Code.

(b) If the disestablishment occurs before the monthly Assessment Payments are made by owners of Identified Businesses for the Fiscal Year in which the District is disestablished, the method and basis that was used to calculate the Assessments in the immediate prior Fiscal Year shall be used to calculate the amount of any refund to the owners of the Identified Businesses who paid the Assessment, or on whose behalf the Assessment was paid.

(c) The City shall refund and dispose of Assessment Funds as set forth in subsections (a) and (b) of this Section if this Agreement is terminated for any reason and either of the following occurs:

(1) The Board of Supervisors determines, in its sole discretion, not to enter into a different agreement with the Corporation or an agreement with a different nonprofit entity as the Owners' Association for purposes of implementing the Management District Plan, or

(2) The Board of Supervisors disestablishes the District under Section 36670 of the Streets and Highways Code or Section 1511(e) of the San Francisco Business and Tax Regulations Code.

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 allow 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. (*See, e.g.,* San Francisco Business and Tax Regulations Code §6.22-1.) 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 that is covered by such Section 67.24(e) and not exempt from disclosure pursuant to applicable law will be made available to the public upon request. The requirements of this section are in addition to Corporation's obligation to comply with the California Public Records Act.

ARTICLE 13

ASSIGNMENTS AND SUBCONTRACTING

Section 13.1 No Assignment by Corporation.

(a) Neither party may, either directly or indirectly, assign its interest in this Agreement without the prior written consent of the other. Any attempted assignment without such consent shall be void. 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.

(b) The parties agree that (i) the Moscone Convention Center is a City-owned facility in which the Corporation and District have no ownership interest, (ii) the District has a legal existence of limited duration as required by law, and (iii) upon conclusion of the construction phase of the Moscone Convention Center expansion project, or a Corporate Dissolution, the City should have the right to pursue any claims arising from breach of warranties, negligence, latent defects, and the like, with respect to work performed on the expansion project. Based on the above, upon completion of the construction phase of the expansion project or, at the City's request, in connection with any Corporate Dissolution, Corporation shall assign to the City its legal rights and obligations in all contracts to which the Corporation is a party with respect to the design and/or construction of the expansion project, including, for example, contracts with architects and other design professionals, the Construction Manager/General Contractor ("CM/GC"), engineers, trade contractors, and other consultants. In exchange for that assignment, the City shall (a) release the Corporation of liability with respect to the planning, design and/or construction activities for the Moscone Convention Center expansion project, and (b) except for

Corporation's sole negligence, recklessness or willful misconduct, agree to defend and indemnify the Corporation for any claims, losses and liabilities, including reasonable attorney fees, arising out of or related to the assigned contracts or the expansion project. .

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. The parties recognize that the Corporation shall enter into subcontracts for the provision of District Programs and administrative and related services necessary or convenient for the implementation of the Management District Plan and as provided therein, including a contract with San Francisco Travel Association, and contracts with respect to the expansion of, future renovations of and improvements to, and the marketing and promotion of the Moscone Convention Center, as more specifically provided in the Management District Plan.

(a) **Limitations.** A subcontract will not relieve Corporation 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 District 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 that would constitute an Event of Default under this Agreement if committed by Corporation shall be deemed to be an Event of Default hereunder. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and City.

(b) **Terms of Subcontract.** Each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management District Plan. Without limiting the scope of the foregoing, each subcontract shall provide City, with respect to the subcontractor, the audit and inspection rights set forth in Section 6.6. Upon the request of City, Corporation shall promptly furnish to City true and correct copies of each subcontract permitted hereunder. The parties recognize that subcontractors are not subject to the Ralph M Brown Act (Government Code §§54950 *et seq.*). The parties further recognize that subcontractor records of assessment district work performed for Corporation may be subject to the California Public Records Act (Government Code §§6250 *et seq.*).

ARTICLE 14

INDEPENDENT CORPORATION STATUS

Section 14.1 Nature of Agreement. Corporation shall be deemed at all times to be an independent Corporation and is solely responsible for the manner in which Corporation implements the Management District Plan and uses the Assessment Funds. Corporation shall at all times remain solely liable for the acts and omissions of Corporation, its officers and directors, employees and agents. Nothing in this Agreement shall be construed as creating a partnership, joint venture, employment or agency relationship between City and Corporation.

Section 14.2 Direction. Any terms in this Agreement referring to direction or instruction from the City or any Indemnified Party shall be construed as providing for direction as to policy and the result of Corporation's work only, and not as to the means by which such a result is obtained.

Section 14.3 Consequences of Recharacterization.

(a) Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that any officer, employee, agent or representative of Corporation is an employee of City for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Corporation which can be applied against this liability). City shall subsequently forward such amounts to the relevant taxing authority.

(b) Should a relevant taxing authority determine a liability for past services performed by Corporation for City, upon notification of such fact by City, Corporation shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Corporation under this Agreement (again, offsetting any amounts already paid by Corporation which can be applied as a credit against such liability).

(c) A determination of employment status pursuant to either subsection (a) or (b) of this Section 14.3 shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, any officer, employee, agent or representative of Corporation shall not be considered an employee of City. Notwithstanding the foregoing, if any court, arbitrator, or administrative authority determine that any officer, employee, agent or representative of Corporation is an employee for any other purpose, Corporation agrees to a reduction in City's financial obligation hereunder such that the aggregate amount of Assessment Funds under this Agreement does not exceed what would have been the amount of such Assessment Funds had the court, arbitrator, or administrative authority had not determined that any officer, employee, agent or representative of Corporation was an employee of City.

ARTICLE 15

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:

Office of Economic and Workforce Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place,
San Francisco, CA 94102
Attn: Director

Office of Treasurer and Tax Collector
City Hall, Room 140
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Tax Administrator

If to Corporation:

San Francisco Tourism Improvement District Management Corporation
201 Third Street, No. 900
San Francisco, CA 94103-3185
Attn: Chair, Board of Directors
Telephone No. 415-227-2698
Facsimile No. 415-541-0228

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 Nondiscrimination; Penalties.

(a) **Corporation Shall Not Discriminate.** In the performance of this Agreement, Corporation agrees not to discriminate against any employee, City and County employee working with such Corporation or subcontractor, applicant for employment with such Corporation or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune

Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts.** Corporation shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k), of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions, if, depending on the subject matter and terms and conditions of such subcontract, such provisions would be apply to Corporation if the subcontract was a contract to which the City was a party. Corporation's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Non-Discrimination in Benefits.** 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 or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Contract.** As a condition to this Agreement, Corporation shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Corporation shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including the remedies provided in such Chapters. Without limiting the foregoing, Corporation understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of fifty dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Corporation and/or deducted from any payments due Corporation.

Section 16.2 MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Corporation acknowledges and agrees that he or she has read and understood this section

Section 16.3 Tropical Hardwood and Virgin Redwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, City urges all Corporations not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Section 16.4 Drug-Free Workplace Policy. Corporation acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Corporation and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

Section 16.5 Resource Conservation; Liquidated Damages. Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by Corporation to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. If Corporation fails to comply in good faith with any of the provisions of Chapter 5, Corporation shall be liable for liquidated damages in an amount equal to Corporation's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Corporation acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Corporation from any contract with City.

Section 16.6 Compliance with ADA. Corporation acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity (including the City and County of San Francisco, and including its Moscone Center) to the public, whether directly or through a Corporation, must be accessible to the disabled public. Corporation shall not discriminate against any person protected under the ADA in connection with all or any portion of the Management District Plan and shall comply at all times with the provisions of the ADA.

Section 16.7 Requiring Minimum Compensation for Employees.

(a) Corporation agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Corporation's obligations under the MCO is set forth in this Section. Corporation is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Corporation to pay Corporation's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Corporation is obligated to keep informed of the then-current requirements. Any subcontract entered into by Corporation shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Corporation's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Corporation.

(c) Corporation shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Corporation shall maintain employee and payroll records as required by the MCO. If Corporation fails to do so, it shall be presumed that the Corporation paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Corporation's job sites and conduct interviews with employees and conduct audits of Corporation.

(f) Corporation's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Corporation fails to comply with these requirements. Corporation agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Corporation's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Corporation understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Corporation fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Corporation represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Corporation is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Corporation later enters into an agreement or agreements that cause Corporation to exceed that amount in a fiscal year, Corporation shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Corporation and this department to exceed \$25,000 in the fiscal year.

Section 16.8 Limitations on Contributions. Through execution of this Agreement, Corporation acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Corporation acknowledges that the foregoing restriction applies only if the contract or a combination or series of

contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Corporation further acknowledges that 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 20 percent in Corporation; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Corporation. Additionally, Corporation acknowledges that Corporation must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Section 16.9 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Corporation, or any staff member in association with Corporation, engages in any Political Activity, then (i) Corporation shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Corporation shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Corporation agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event Corporation violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (a) terminate this Agreement and any other agreements between Corporation and City, (b) prohibit Corporation from abiding on or receiving any new City contract for a period of two (2) years, and (c) obtain reimbursement of all funds previously disbursed to Corporation under this Agreement.

Section 16.10 Preservative-Treated Wood Containing Arsenic. Corporation may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Corporation may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Corporation from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Section 16.11 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 of this Chapter 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 Corporation pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Corporation.

Section 16.12 Requiring Health Benefits for Covered Employees.

Unless exempt, Corporation agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Corporation shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Corporation chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Corporation is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Corporation's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Corporation if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Corporation fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Corporation fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Corporation shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Corporation shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Corporation shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Corporation based on the Subcontractor's failure to comply, provided that City has first provided Corporation with notice and an opportunity to obtain a cure of the violation.

(e) Corporation shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Corporation's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Corporation represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Corporation shall keep itself informed of the current requirements of the HCAO.

(h) Corporation shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(i) Corporation shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five business days to respond.

(j) City may conduct random audits of Corporation to ascertain its compliance with HCAO. Corporation agrees to cooperate with City when it conducts such audits.

(k) If Corporation is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for non-profits), but Corporation later enters into an agreement or agreements that cause Corporation's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Corporation and the City to be equal to or greater than \$75,000 in the fiscal year.

Section 16.13 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Corporation shall remove all graffiti from any real property owned or leased by Corporation in the City and County of San Francisco within forty eight (48) hours of the earlier of Corporation's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Corporation to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Corporation to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

16.14. Food Service Waste Reduction Requirements.

Corporation agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Corporation agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Corporation agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Corporation's failure to comply with this provision.

Section 16.15 Compliance with Other Laws. Without limiting the scope of any of the preceding sections of this Article 16, Corporation shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations rules and laws.

ARTICLE 17 MISCELLANEOUS

Section 17.1 No Waiver. No waiver by the City of any default or breach of this Agreement shall be implied from any failure by the City to take action on account of such default if such default persists or is repeated. No express waiver by the City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by City of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City of any action 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 issue 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, the Corporation and the Director of the Office of Economic Development, or his or her designee, shall be required to meet and confer in an attempt to arrive at a resolution of the issue.

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. The following appendices are attached to and a part of this Agreement:

Appendix A, Management District Plan;

Appendix B, Resolution of Formation; and

Appendix C, Interests in Other City Contracts/Agreements.

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.

17.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule

that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

17.13 Early Activities of the Corporation The parties acknowledge that the Corporation has engaged in Activities prior to the adoption of a resolution by the Board of Supervisors approving this Agreement which has caused it to incur obligations within the scope of the Management Plan. The Corporation may use Assessments disbursed to it by the City’s Treasurer/Tax Collector to satisfy such obligations.

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

CITY

CORPORATION:

**OFFICE OF ECONOMIC AND
WORKFORCE DEVELOPMENT**

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

By: _____

Director

I have read and understood paragraph 16.3, the City’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

**OFFICE OF THE TREASURER
AND TAX COLLECTOR**

By: _____
JOSÉ CISNEROS
Treasurer and Tax Collector

**SAN FRANCISCO TOURISM
IMPROVEMENT DISTRICT
MANAGEMENT CORPORATION**

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By: _____
_____, **Chair**
Board of Directors

By: _____
ROBERT A. BRYAN
Deputy City Attorney

Federal Tax ID No.: 26-4814856

City Vendor Number: 81801

APPENDIX A

**Management District Plan, As Amended
(section 1.1(q) of Agreement)**

APPENDIX B

**Resolution of Formation
(section 1.1(q) of Agreement)**

APPENDIX C

**Other Agreements with City
(section 8.5 of Agreement)**