AGREEMENT FOR THE ADMINISTRATION OF THE OCEAN AVENUE COMMUNITY BENEFIT DISTRICT

This Agreement ("Agreement") is entered into by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("City"), through its Office of Economic and Workforce Development ("OEWD"), and the **Ocean Avenue Association**, a California nonprofit corporation ("Corporation"), with respect to the special assessment district known as the **Ocean Avenue Community Benefit District** ("District").

RECITALS

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

WHEREAS, In 2010, the Board of Supervisors established the District, which is not a governmental or corporate or separate legal entity but a geographic area within the City, and levied multi-year special assessments ("Assessments") on specified parcels in the District, to fund certain services, improvements and activities in the District ("District Programs") for a 15-year term expiring on December 31, 2025 (Board Resolution No. 587-10), and subsequently approved an agreement to retain Corporation to administer the Assessments to provide the District Programs on the City's behalf (Board Resolution No. 221-11).

WHEREAS, In July 2025, the Board of Supervisors renewed and expanded the District, and levied Assessments on specified parcels in the District to fund certain District Programs, as set forth in the Management Plan for the District for a further 15-year term expiring on December 31, 2040 (Board Resolution No. 314-25).

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

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

WHEREAS, On July 11, 2025, the Purchaser granted sole-source approval for this Agreement.

WHEREAS, On _____, the Board of Supervisors approved this Agreement (Res. No. _____).

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.1 Specific Terms.

a. "**Activities**" means services provided for the purpose of conferring special benefit upon assessed real property or specific benefits upon assessed businesses located in the District, as defined in the 1994 Act and as specified in the Management Plan.

b. "**Annual Report**" means the annual report required under the 1994 Act.

c. "**Assessments**" mean the special assessments levied by the City on Identified Parcels included within the District pursuant to the Resolution of Establishment.

d. "**Assessment Revenues**" means 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 by or on behalf of the City or Corporation.

e. "**Disbursement & Depository Certification**" means a writing bearing the original signatures of authorized officers of the Corporation requesting that the City Controller deposit Assessment Revenues to Corporation into an account or accounts held in the name of the Corporation at a bank. Said writing shall contain: (1) the name, address and telephone number of the San Francisco branch of such bank, savings and loan, credit union or other financial institution or firm; (2) the specific account or accounts to which such funds are to be deposited; (3) the name and contact information of the branch manager or other senior management employee at the branch to whom the City should direct communications regarding the Assessment Revenues; and (4) such other information as may be required by the Controller or by the bank, savings and loan, credit union or other financial institution. The Disbursement & Depository Certification shall not be valid unless a certified copy of the resolution of Corporation's board of directors authorizing execution and delivery of such certification to the Controller, and containing all of the same information as must be specified in the certification, is affixed thereto and received by the Controller. Corporation shall also follow the procedures of the Controller's Office such as obtaining a Supplier ID to facilitate the disbursements. The Controller may supplement, modify or waive any or all of the requirements for the Disbursement & Depository Certification set forth in this subsection (h) and Section 4.1 of this Agreement, in writing delivered to Corporation and the branch manager or other senior management employee specified in the certification.

f. "**Eligible Expenditures**" means expenditures of Assessment Revenues for District Programs that are set forth in the Management Plan and have been approved as part of the Annual Budget for the Fiscal Year in which the expenditures are proposed.

g. "**Fiscal Quarter**" means each period of three (3) calendar months commencing on July 1, October 1, January 1 and April 1, respectively.

h. "**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.

i. "**Improvement**" means the acquisition, construction, installation, or maintenance of any tangible property with an estimated useful life of five years or more, as defined in the 1994 Act and as specified in the Management Plan.

j. "**Indemnified Parties**" means: (1) the City, including the Board of Supervisors, OEWD, Controller, City Attorney and all other commissions, departments, agencies and other subdivisions of the City; (2) elected officials, directors, officers, employees, agents, successors and assigns of the City; and (3) all persons or entities acting on behalf of any of the foregoing.

k. "**Identified Parcel**" shall, consistent with Government Code Section 53750(g), mean a parcel of real property included within the District, identified in the Management Plan as having a special benefit conferred upon it, upon which the Board of Supervisors has levied Assessments.

l. "**Losses**" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

m. "**Management Plan**" and "**Plan**" mean the proposal (including any attachments and exhibits) known as the "Ocean Avenue Community Benefit District Management Plan," which was approved by the Board of Supervisors by resolution pursuant to Section 36622 of the Streets and Highways Code, as it may be amended, modified, corrected, supplemented or superseded by the City from time to time.

n. "**Owners' Association**" shall mean a private nonprofit entity under contract with the City to administer or implement Activities and Improvements as specified in the Management Plan, consistent with Section 36612 of the 1994 Act, as it may be amended from time to time.

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

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

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

ARTICLE II
TERM OF AGREEMENT

Section 2.1 **Period of Performance**. The period of performance under this Agreement shall be from the effective date of the Board of Supervisors resolution approving this Agreement, until through and including December 31, 2040. If the District is disestablished or expires or if this Agreement is terminated early for any reason, then 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 Revenues 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. Corporation's obligations as to the preservation of records, providing 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 Plan and receipt of Assessment Revenues, shall survive the period of performance set forth in this section.

ARTICLE III
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 District Programs as described in the Management Plan, attached hereto as Appendix A and incorporated herein by reference.

Section 3.2 **Corporation's Personnel; Administration of Contracts with Third Parties; Accountability**. The Management Plan shall be implemented only by competent personnel under the direction and supervision of Corporation. Corporation is responsible for the oversight, administration, and enforcement of any and all contracts with third parties to provide any District Programs paid or to be paid with Assessment Revenues. The use of Assessment Revenues 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 to seek reimbursement, terminate this Agreement, and/or enter into a contract with a different nonprofit entity to act as the Owners' Association.

Section 3.3 **Corporation's Board of Directors**. Corporation shall at all times be governed by a legally constituted and fiscally responsible board of directors, which shall meet regularly and maintain appropriate membership, as established in Corporation's bylaws and other governing documents and shall adhere to applicable provisions of federal, state and local laws governing nonprofit corporations. Consistent with the Management Plan, the Corporation's board of directors will create and manage programs that best respond to the needs of the Identified Parcels, find and manage programs that will augment existing City services, purchase services cost-effectively, provide accountability to the City and to the Identified Parcels, and exercise such oversight as is necessary to ensure full and prompt performance by Corporation of its obligations under this Agreement and compliance with federal, state and local laws.

Section 3.4 **Annual Reports**. Starting on October 31, 2026 and annually thereafter (unless OEWD grants an extension in writing), Corporation shall submit an Annual Report to OEWD for review. Following OEWD's review and comment, the parties will submit the Annual Report to the Board of Supervisors for approval. Corporation shall prepare the Annual Reports in accordance with Section

36650 of the Streets and Highways Code, and must include all information and/or supporting documentation as City may reasonably require, including at minimum the following items:

a. Any proposed changes in the boundaries of the District or in any benefit zones or classification of property or businesses within the district.

b. The method and basis of levying the assessment in sufficient detail to allow each real property or business owner, as appropriate, to estimate the amount of the assessment to be levied against his or her property or business for that fiscal year.

c. The Eligible Expenditures for that fiscal year.

d. An estimate of the cost of providing the improvements, maintenance, and activities for that fiscal year.

e. Comparison of actual versus budgeted expenditures for each line item in the budget; and a description of any deviations from the annual budget or additional proposed expenditures outside the budget, consistent with the limitations and approval requirements set forth in Section 3.9.

f. The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year, and the breakdown of how those funds will be spent in the following fiscal year.

g. The amount of non-Assessment sources to be used for District Programs. If non-Assessment sources will fund less than 5.47% of that year's budget, provide an explanation why non-assessment collections fell short of requirement and how the Corporation will correct the funding going forward.

h. The proposed budget for the following fiscal year (in a manner consistent with Section 3.9).

i. Summary of year-to-date performance metrics, as requested by OEWD. Corporation shall follow OEWD's year-to-year guidance for reporting performance metrics. Standard metrics shall include, but are not limited to, the following: total trash collected (lbs), graffiti, stickers, and flyers removed (#), cleaning and safety requests addressed (#), hazardous waste removed (#), new beautification projects installed (#), public spaces maintained (#), qualitative corridor update and key activities, total number of commercial vacancies including the address and APN for each vacant commercial property and its last known use. The vacancy report shall be completed no earlier than 30 days prior to, and no later than 30 days following, the end of the fiscal year.

Section 3.5 Mid-Year Reports. In addition to the Annual Reports, Corporation shall submit mid-year reports to OEWD on Corporation's operations for the first and second Fiscal Quarters of the then-current Fiscal Year. Corporation shall submit the first mid-year report by January 31, 2027 and subsequent mid-year reports by January 31 of each year thereafter (unless OEWD grants an extension in writing). The mid-year reports shall be written in narrative summary form, and shall include all information and/or supporting documentation as City may reasonably require, including the following:

a. any proposed changes in the boundaries of the District or in any benefit zones or classification of property or businesses within the district

b. A status update regarding the Eligible Expenditures for that fiscal year, with (1) an estimate of the cost of providing the District Programs to date for that fiscal year, and (2) a comparison of actual versus budgeted expenditures for each line item in the budget

c. Summary of year-to-date performance metrics, as requested by OEWD. Corporation shall follow OEWD's year-to-year guidance for reporting performance metrics. Standard metrics shall include, but are not limited to, the following: total trash collected (lbs), graffiti, stickers, and flyers removed (#), cleaning and safety requests addressed (#), hazardous waste removed

(#), new beautification projects installed (#), public spaces maintained (#), qualitative corridor update and key activities, total number of commercial vacancies including the address and APN for each vacant commercial property and its last known use. The vacancy report shall be completed no earlier than 30 days prior to, and no later than 30 days following, the end of the fiscal year.

Section 3.6 Coordination. Corporation shall render all services and perform all work in accordance with the Management Plan and this Agreement, in cooperation with the City. OEWD shall be the lead City agency responsible for administering this Agreement and for any acceptance, approval, permission or determination of the City required or permitted under this Agreement, all of which shall be in writing and delivered to Corporation by email, mail or personal delivery.

Section 3.7 Eligible Expenditures; Support Services. Corporation shall use Assessment Revenue on Eligible Expenditures only. Items not budgeted in the Annual Report are not Eligible Expenditures. In addition, Corporation shall ensure that at least 5.47% of the funding for District Programs derives from sources other than Assessments, consistent with the Management Plan, to cover the proportional share of the costs of general benefits conferred by the District Programs. Corporation assumes responsibility for contracting for support services as required, and for paying all direct and indirect expenses as may be necessary or convenient to provide the District Programs. In administering contracts with third party providers for District Programs, Corporation shall comply with all applicable federal, state and City laws and regulations.

Section 3.8 Community/Public Access. To foster effective working relationships and effectuate the goals of the District as set forth in the Management Plan, Corporation's responsibilities under this Agreement shall include the following:

a. **Open Meetings Generally; Compliance with Ralph M. Brown Act**. Consistent with Section 36612 of the 1994 Act, all meetings of the Corporation shall occur 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). At minimum, Corporation shall post meeting notices and agendas by sending them for posting to the Government Information Center at the main branch of the San Francisco Public Library, and by posting such notices and agendas on Corporation's own website. In the event of a conflict between the notice provisions of the Ralph M. Brown Act and subsections (b) and (c), the provision that results in greater public access shall apply.

b. **Annual Outreach/Informational Meeting**. Corporation shall organize and conduct at least one annual informational meeting, with at least 30 days' notice by mail to the owners of Identified Parcels located in the District. (In lieu of one informational meeting noticed to all owners, Corporation may organize and conduct a series of informational meetings, each of which will be noticed to only some of the owners so long as all owners are invited to at least one meeting each year.) Corporation shall conduct such meetings at a location within the District that allows the owners of the Identified Parcels to familiarize themselves with the Corporation, its functions and its officers and directors, and to express their views relating to the District. Such meetings may, but are not required to be, consolidated with a regular meeting of the Corporation's board of directors for the transaction of Corporation's business.

c. **Designated Meetings.** If Corporation receives a cumulative total per year of at least $250,000 in City funds (including Assessment revenue), Corporation shall also comply with and be bound by all the applicable provisions of Chapter 12L of the Administrative Code. Consistent with Chapter 12L, Corporation shall hold at least two designated public meetings per year at which it shall address issues of approximately the same general nature and significance as those it typically addresses at its other regular or special meetings. At least one of these designated public meetings shall provide the public an opportunity to address the

Board of Directors on membership on the Board of Directors and to propose candidates for membership on the Board of Directors. Corporation agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. Corporation further acknowledges that its failure to comply with any material provisions of this paragraph shall constitute a material breach of this Agreement, and shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety. Corporation shall provide notice of these designated meetings at least 30 days in advance, by submitting a written notice to the Clerk of the Board of Supervisors for posting where notices of meetings of the Board of Supervisors are posted, to the San Francisco Main Library Government Information Center which shall post the written notice where notices of meetings of City boards and commissions are posted, and by publishing a copy of the notice on its own website.

d. **Public Access to District Related Records; Compliance with the California Public Records Act**. Consistent with Section 36612 of the 1994 Act, Corporation shall comply with the California Public Records Act (Government Code Section 7928.500 *et seq.*), for all records relating to the District, this Agreement, the Assessments, Annual Reports, District Programs, Management Plan, contracts with third party providers and any other matter related to the District or the subject matter of this Agreement. If Corporation receives a cumulative total per year of at least $250,000 in City funds or City-administered funds, Corporation shall also comply with the provisions of Section 12L.5 of that Chapter. In the event of a conflict between the Public Records Act and Chapter 12L, the provision that results in greater public access shall apply.

e. **Newsletters**. If Corporation prepares a District newsletter for the owners of Identified Parcels and businesses and community-based organizations operating in the District, Corporation shall also distribute copies to OEWD.

f. **Other Events**. Corporation may organize at its discretion other events and programs that involve the owners of Identified Parcels, businesses and community-based organizations operating in the District and the public that further the goals and objectives described in the Management Plan; provided, that Assessment Revenues may only be used for such events and programs if included in the annual budget set forth in the Management Plan or Annual Report.

Section 3.9 Budget. Corporation shall provide District Programs consistent with each year's budget. The budget for the First Fiscal Year is set forth in the Management Plan. Corporation shall provide the Budgets for subsequent Fiscal Years in the Annual Reports, and to ensure consistency in reporting shall conform these budgets to the budget categories and line items in the Management Plan. The parties acknowledge and agree that the budgeted amounts are estimates of the costs anticipated for the District Programs, and that some deviations from those estimates may occur. Corporation will use its best efforts to expend Assessment Revenues consistent with the approved budget. Deviations up to ten percent (10%) from the budget for a particular line item will not constitute a material breach of this Agreement. But if the deviation for a budget line item exceeds 10%, or if Corporation desires to make budget allocation changes that exceed 10% of the total budget for all District Programs in a given Fiscal Year, and such changes would, in the opinion of OEWD, constitute a material change to the District Programs, then Corporation will first secure the approval of the Board of Supervisors to modify the Management Plan pursuant to Section 36636 of the Streets and Highways Code. In no event may Corporation expend more than the budgeted amount of Assessment Revenues.

Section 3.10 Assessment Records. Corporation shall maintain an Assessment Database, in a format requested by the Controller and current to the most recent property tax year available, containing the following information: the Assessor Parcel Number and site address of all Identified Parcels; the name and address of the legal owner of each Identified Parcel; the amount of Assessments levied upon each Identified Parcel, including all variables used to calculate the Assessments; for exempt Parcels,

documentation acceptable to the City; the proportionate financial obligation of each Identified Parcels to pay Assessments relative to the entire amount of the Assessments levied in the District; and such other information as City may reasonably require. Corporation shall update the database at least once each year to reflect changed conditions such as merger of parcels, subdivision of parcels (including condominium conversions), lot line adjustments, changed property usage, new construction, and to accurately reflect the status of the Identified Parcels and correct errors, if any. Corporation shall be responsible for maintaining the accuracy of the Assessment Database and may seek assistance from OEWD, which may be provided in OEWD's sole discretion.

Section 3.11 Preparation Annual Assessment Database. Upon request of the City, Corporation shall provide a copy of the Assessment Database to the Controller and OEWD. Upon request of the City, Corporation shall promptly investigate any errors or discrepancies and shall take all reasonable efforts to obtain additional documentation related to any matter for which a correction or adjustment is requested. Corporation shall provide the Annual Assessment Database to OEWD and the Controller by email or through such other electronic medium as requested.

Section 3.12 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 3.13 Prohibited Use of Assessment Revenue for Lobbying. Corporation may not use Assessment Revenue to influence legislation, commonly known as lobbying. Legislation includes action by Congress, any state legislature, any local council, any Board of Supervisors, or similar governing body with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by public in referendum, ballot initiative, constitutional amendment, or similar procedure. Corporation will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Section 3.14 City Access to Records; Copies. Corporation shall make 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), fully available to City. 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.

Section 3.15 Digital Photographs of Streetscape Conditions. Within 30 days of execution of this Agreement, Corporation shall provide to City digital photographs of the conditions of streets, sidewalks and other streetscape, acceptable to OEWD, prior to commencing the District Programs.

ARTICLE IV
CITY RESPONSIBILITIES

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

containing the information described in Section 1.1(j) of this Agreement. The City shall disburse Assessment Revenues during each Fiscal Year for the duration of this Agreement according to the following schedule:

a. **Disbursement of First Installment.** For Assessments the City receives with the first installment of secured property taxes which, if not paid on or before December 10, are delinquent, the City shall disburse all Assessment Revenues available for immediate disbursement on or before January 10 of the following calendar year.

b. **Disbursement of Second Installment.** For Assessments the City receives with the second installment of secured property taxes which, if not paid on or before April 10, are delinquent, the City shall disburse all Assessment Revenues available for immediate disbursement on or before May 10 of the same calendar year.

c. **Reconciliation; Delinquent Assessments and Other Special Disbursements.** In addition to the disbursements for the first and second installments described above, and subject to the terms and conditions of this Agreement, the City may disburse Assessment Revenues during the last Fiscal Quarter of each Fiscal Year, or from time to time as deemed appropriate by the Controller (for example and without limitation, where the assessments were paid, processed, and/or posted to the special assessment account within the City's Treasury for the District after disbursement of the second installment; based on the need to reconcile books and records related to the Assessments, resolve disputes between the parties, cure an Event of Default resulting in withholding of Assessment Revenues; and/or in situations of delinquent Assessments).

d. Disbursements made under subsection (c) shall be made at such intervals and under such conditions or assurances of Corporation's future compliance with this Agreement as the Controller deems appropriate. Assessments not disbursed during the Fiscal Year in which received shall carry over to the next Fiscal Year and be disbursed with the first installment disbursement, unless disbursement would violate this Agreement or applicable law.

e. City shall not be responsible for delays in disbursements to Corporation due to delays in transmittals of funds or payment delays by property owners, including other public entities, organizations or agencies, or delays caused by the resolution of disputes which, in the discretion of the Controller, warrant suspension of disbursements as set forth in this Article.

f. The City shall provide reports to the Corporation electronically four times a year, coinciding with the assessment distribution. The first report will be distributed on or about January 10 with the disbursement of the first installment and shall include a detailed assessment payment report by parcel for the current fiscal year. The second report will be distributed on or about May 10 with the disbursement of the second installment and shall include a detailed assessment payment report by parcel for the current fiscal year. If there are remaining Assessment Revenues to be distributed the third report will be distributed in June and will include the assessment payment redemption report by parcel for the current and previous fiscal years and the fourth report will be distributed in August and will include assessment payment redemption report by parcel for previous fiscal years.

Section 4.2 Assistance. As the primary City liaison to Corporation, OEWD may at its discretion provide Corporation reasonable assistance in resolving any discrepancies in individual Assessments amounts, calculations or benefits; ensuring the timely collection of Assessments, including City Assessments and direct-billed Assessments, if any; and pursuing delinquent Assessments including interest and penalties. City may subject to current or future City policies recover its reasonable costs related to the foregoing from Assessment Revenues.

Section 4.3 Delinquent Assessments. If City collects any delinquent Assessments, and interest and penalties thereon, it shall disburse them to Corporation in accordance with the Section 4.1. The City

shall be under no obligation to make a special disbursement of delinquent Assessments except as provided 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 judgment of the Controller: (a) Corporation is not properly administering the budget in accordance with the Management Plan, Annual Report, and this Agreement, (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 Revenues, (d) based on advice from the City Attorney, Corporation is in violation of this Agreement, the 1994 Act, Article 15, or other applicable law. The City will notify Corporation and set forth the specific problems and issues the Controller determines warrant suspension of disbursements. Corporation will immediately attempt to cure the problems if, at the City's discretion, an opportunity for cure is appropriate. City will release Assessment Revenues upon the implementation of an acceptable cure, subject to the approval of the Controller and possible modification of the disbursement schedule. This Section 4.4 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, including termination of this Agreement.

Section 4.5 Notification of Changed Status. If the Corporation is dissolved, no longer has nonprofit status, or has its corporate powers suspended by the Secretary of State or otherwise fails to remain in good standing, Corporation shall immediately transmit to City all unexpended Assessment Revenues for distribution to the owners of Identified Parcels, 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 Revenues acceptable to City. Corporation will immediately notify OEWD and the 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 V
APPROPRIATION AND CERTIFICATION OF ASSESSMENT REVENUES; LIMITATIONS ON CITY'S OBLIGATIONS

Section 5.1 Risk of Non-Appropriation of Assessment Revenues. This Agreement is subject to the budget and fiscal provisions of the City's Charter. City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements for administration of the District by Corporation or by a different nonprofit entity acting as the Owners' Association for the District. Corporation assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement. Any Assessment Revenues collected by the City that are not appropriated for implementation of the Management Plan by an Owners' Association shall be refunded, on a proportional basis, to the owners of the Identified Parcels.

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

a. City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by City ordinances governing emergency conditions, City and its employees, officers agents and representatives may not request Corporation to perform services or to provide materials, equipment and supplies that would result in Corporation

performing services or providing materials, equipment and supplies that are beyond the scope of this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City may not disburse Assessment Revenues to Corporation for purposes beyond the scope of the Management Plan, Annual Report for the relevant Fiscal Year, or this Agreement, unless an amendment to the Plan, such Annual Report and/or this Agreement, as appropriate, has been made in accordance with applicable law, or that is beyond the scope of Activities and Improvements authorized by the Property and Business Improvement District Law of 1994, as augmented by Article 15.

c. City and its employees and officers are not authorized to offer or promise to Corporation additional funding for this Agreement which would exceed the maximum amount of Assessment Revenues provided for herein. Additional funding from any City funds for District Programs in excess of Assessment Revenues actually collected under this Agreement shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum amount of Assessment Revenues provided in this when the lawful approval and certification by the Controller has not been obtained.

d. The Controller is not authorized to make disbursements on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

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

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

ARTICLE 6
ADDITIONAL REPORTING AND ORGANIZATIONAL REQUIREMENTS; AUDITS; PENALTIES FOR FALSE CLAIMS

Section 6.1 **Additional Reports**. In addition to the Annual Reports and Mid-Year Reports described in Article 3 of this Agreement, Corporation shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the City, in form and substance satisfactory to the City. All 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 and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of the valid nonprofit status described in Section 8.1. Notwithstanding the previous sentence, Corporation may submit satisfactory evidence that it has applied for and is diligently pursuing nonprofit status in conformity with applicable

laws. Failure to provide proof of such valid nonprofit status satisfactory to City within one year of adoption of a resolution by the Board of Supervisors approving this Agreement shall constitute a material breach of this Agreement.

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 Financial Statements. Within 30 days of City's request, Corporation shall at its own expense provide City an unaudited balance sheet and the related statement of income and cash flows for the requested Fiscal Years, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Corporation as accurately presenting the financial position of Corporation. Corporation shall also deliver to City, no later than one hundred and twenty (120) days following the end of each Fiscal Year and at no expense to the City, a balance sheet and the related statement of income and cash flows for that preceding fiscal year, all in reasonable detail acceptable to City, reviewed by a Certified Public Accountant (CPA); this review shall include a statement of negative assurance from the CPA. Further, the Controller or OEWD may also require Corporation to deliver, at no expense to the City, an annual independent audit report by a CPA of all such funds. The CPA review and/or audit may be funded from assessment proceeds as part of the general administration of the District. At all times the City shall reserve full rights of accounting of these funds. OEWD shall be the City agency responsible for coordination between the City and the District.

Section 6.5 Books and Records. Corporation shall establish and maintain accurate files and records of all aspects of the Management Plan and the matters funded in whole or in part with Assessment Revenues 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 Revenues 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 Revenues. 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 later.

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

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

the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

ARTICLE 7
TAXES

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

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

a. Corporation, on behalf of itself and any subcontractors, successors and assigns, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Corporation, and any subcontractor, successor or assign, may be subject to the payment of such taxes.

b. Corporation, on behalf of itself and any subcontractors, successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Corporation shall report any assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the Assessor within sixty (60) days after such assignment, transfer, renewal or extension.

c. Corporation shall provide such other information as may be requested by City to enable City to comply with any reporting requirements under applicable law with respect to possessory interests.

Section 7.3 [Left blank by agreement of the parties]

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, the California Attorney General's Registry of Charitable Trusts, and Section 501(c)(3) 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, which constitutes a legal, valid and binding obligation of Corporation and is enforceable against Corporation in accordance with the terms hereof. At City's request, Corporation shall provide documentation demonstrating its compliance with applicable legal requirements. If Corporation will use any subcontractors/subgrantees/subrecipients to perform the Agreement, Corporation is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable

Trusts at the time of grant execution and for the duration of the agreement. Any failure by Corporation or any subcontractors/subgrantees/subrecipients to remain in good standing with applicable requirements shall be a material breach of this Agreement.

Section 8.2 **Location**. Corporation's operations, offices and headquarters are located at the address for notices set forth in Section 15. All aspects of the Management Plan will be implemented within the geographic boundaries of the District specified in the Management Plan.

Section 8.3 **No Misstatements**. No document furnished or to be furnished by Corporation to City in connection with 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 which constitutes a violation of said 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 an attachment 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.

Section 8.6 **Subcontracts**. Corporation has not entered into any agreement, arrangement or understanding 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 Plan, except as expressly itemized in an attachment to this Agreement, which attachment shall include true and correct copies of all contracts with such person or entity. 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 this Agreement applicable to Corporation. (*See* Section 13 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**. Corporation shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Corporation or loss of or damage to property, arising directly or indirectly from Corporation's performance of this Agreement, including, but not limited to, Corporation's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to

perform some duty imposed by law or agreement on Corporation, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

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

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

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.

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.

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 Community Benefit District's assessment budget, including the City as additional obligee or loss payee as its interest may appear.

Section 10.2 Additional Requirements for General and Automobile Coverage. Commercial General Liability and Commercial Automobile Liability insurance policies shall name as additional insured City and its officers, agents and employees; and 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.

Section 10.3 Additional Requirements for All Policies. All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or reduction in coverage mailed to City's address for notices pursuant to Article 15.

Section 10.4 Required Post-Expiration Coverage. 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 10.5 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 10.6 Evidence of Insurance. Before commencing any operations under this Agreement, Corporation shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

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

ARTICLE 11
EVENTS OF DEFAULT AND REMEDIES

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

a. **False Statement.** Any statement, representation or warranty contained in this Agreement, in the Application Documents, in any Disbursement Request or in any other document submitted to City under this Agreement is found by City to be intentionally false or misleading. For purposes of this Article, "intentionally" means that Corporation, with respect to any such statement, representation or warranty, does any of the following: (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information. Proof of specific intent is not required, and reliance by the City is not required.

b. **Failure to Provide Insurance.** Corporation fails to provide or maintain in effect any policy of insurance required in Article 10.

c. **Failure to Comply with Applicable Laws.** Corporation fails to perform or breaches any of the terms or provisions of Article 16.

d. **Failure to Perform Other Covenants.** Corporation fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by Corporation as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

e. **Cross Default.** Corporation defaults under any other agreement between Corporation and City (after expiration of any grace period expressly stated in such agreement).

f. **Voluntary Insolvency.** Corporation (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or 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 (e) 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 Revenues.

b. **Withholding of Assessment Revenues.** City may withhold all or any portion of Assessment Revenues not yet disbursed hereunder, regardless of whether the Controller previously approved the disbursement of the Assessment Revenues. Any Assessment Revenues 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 Revenues 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 Revenues.** On City's request, Corporation shall immediately return any or all previously disbursed Assessment Revenues to City, as well as any assets acquired with Assessment revenue, 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. In addition to the foregoing, City may disestablish the District under Section 36670 of the Streets and Highways Code, as augmented by Section 1511(e) of the San Francisco Business and Tax Regulations Code. If the District is disestablished, City shall refund and/or disburse any remaining revenues that were derived from Assessments at its sole discretion, consistent with the Management Plan, Section 36671 of the Streets and Highways Code, and any other applicable law.

ARTICLE 12
DISCLOSURE OF INFORMATION AND DOCUMENTS

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

protect such information as a reasonably prudent nonprofit entity would use to protect its own proprietary or confidential data.

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

ARTICLE 13
ASSIGNMENTS AND SUBCONTRACTING

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

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

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

a. **Limitations.** In no event may Corporation subcontract or delegate for the implementation of the whole of the Management Plan. Corporation may subcontract with any person or entity acceptable to the City; provided, however, that Corporation shall not thereby be relieved from any liability or obligation under this Agreement and, as between City and Corporation, Corporation shall be responsible for the acts, defaults and omissions of any subcontractor or its agents or employees as fully as if they were the acts, defaults or omissions of Corporation. Corporation shall ensure that its subcontractors comply with all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management Plan. All references herein to duties and obligations of Corporation shall be deemed to pertain also to all subcontractors to the extent applicable. A default by any subcontractor shall be deemed to 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 be in form and substance acceptable to City and shall expressly provide that it may be assigned to City without the prior consent of the subcontractor. In addition, each subcontract shall incorporate all of the terms of this Agreement, insofar as they apply to the subcontracted portion of the Management 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 Article 6. Upon the request of City, Corporation shall promptly furnish to City true and correct copies of each subcontract permitted hereunder.

Section 13.4 Corporation Retains Responsibility. Corporation shall in all events remain liable for the performance by any assignee or subcontractor of all of the covenants, terms and conditions contained in this Agreement.

ARTICLE 14
INDEPENDENT CONTRACTOR STATUS

Section 14.1 **Nature of Agreement**. Corporation shall be deemed at all times to be an independent contractor and is solely responsible for the manner in which Corporation implements the Management Plan and uses the Assessment Revenues. 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 **Payment of Employment Taxes and Other Expenses.** 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 Corporation (including its subcontractors) is an employee 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 then forward those amounts to the relevant taxing authority. 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). A determination of employment status pursuant to this Section 14.3 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Corporation (including its subcontractors) shall not be considered an employee of City. Notwithstanding the foregoing, Corporation agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

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
1 Dr. Carlton B. Goodlett Place,
San Francisco, CA 94102
Attn: Jackie Hazelwood, Community Benefit District Program Director

If to Corporation:

Attn:

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

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

ARTICLE 16
COMPLIANCE

Section 16.1 Reserved (LBE)

Section 16.2 Nondiscrimination; Penalties.

a. **Corporation Shall Not Discriminate**. Corporation shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Corporation shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Corporation is subject to the enforcement and penalty provisions in Articles 131 and 132.

b. **Non-Discrimination in Benefits**. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Corporation does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

Section 16.3 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 16.4 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 16.5 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 16.6 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 16.7 Compliance with ADA. Corporation acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, 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 Plan and shall comply at all times with the provisions of the ADA.

Section 16.8 Requiring Minimum Compensation for Employees. Labor and Employment Code Article 111 applies to this Agreement. Corporation shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Corporation is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at http://sfgov.org/olse/mco. Corporation is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Corporation certifies that it complies with Article 111.

Section 16.9 Limitations on Contributions. By executing this Agreement, Corporation acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Corporation's board of directors; Corporation's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Corporation; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Corporation. Corporation certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

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

Section 16.12 Preservative-Treated Wood Containing Arsenic. Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor

purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

Section 16.13 Reserved. (Working with Minors.)

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

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

Section 16.16 Reserved (HCAO)

Section 16.17 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; or alternatively, according to the time requirements in any DPW Notice of Violation that is received by Corporation. 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.

Section 16.18 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

Section 16.19 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 question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of the Office of Economic Development who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

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

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

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

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

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

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

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

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

[remainder of this page left blank]

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

CITY

OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT

By: _____
Anne Taupier
Executive Director
Office of Economic and Workforce Development

Approved as to Form:

David Chiu
City Attorney

By: _____
Manu Pradhan
Deputy City Attorney

CORPORATION:

OCEAN AVENUE ASSOCIATION

By: _____
Christian Martin
Executive Director
Ocean Avenue Association

Federal Tax ID No. 45-2283944

City Supplier No. 85162