

CONTRACT

between

THE CITY OF NEW YORK

DEPARTMENT OF SMALL BUSINESS SERVICES

and

GREATER JFK DISTRICT MANAGEMENT ASSOCIATION, INC.

Dated as of July 1, 2017

Relating to the Greater JFK District Management Association, Inc.'s providing Supplemental Services and Capital Improvements to the Greater JFK Business Improvement District.

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This CONTRACT (the "Contract") dated as of July 1, 2017 between THE CITY OF NEW YORK (the "City"), a municipal corporation of the State of New York, acting by and through the Commissioner of the City's Department of Small Business Services ("SBS"), his or her successor in function, or his or her designee (the "Commissioner of SBS"), having an office at 110 William Street, New York, New York 10038 and the GREATER JFK DISTRICT MANAGEMENT ASSOCIATION, INC. (the "DMA") a not-for-profit corporation, organized under the laws of the State of New York, having an office at \_\_\_\_\_ (each a "Party" and collectively the "Parties").

**BACKGROUND:**

1. Pursuant to Section 25-405 (a) of Chapter 4 of Title 25 of the Administrative Code of the City of New York (the "Law"), a Mayoral authorization dated February 26, 2016, provided for the preparation of a district plan (as may be amended and hereinafter referred to as the "Plan") for the Greater JFK Business Improvement District (the "District") in the Borough of Queens, which includes the area indicated on the map annexed hereto as Exhibit A.

2. The City Council, by Local Law No. 148 of 2016, authorized the establishment of the District in accordance with the Plan.

3. The Law provides that the expenses incurred in the construction or operation of any improvement or in the provision of supplemental services in the District shall be financed in accordance with the Plan upon which the establishment of the District is based and provides that the charges upon benefitted real property located within the District shall be imposed as provided in the Plan and shall be determined, levied and collected in the same manner as general City taxes are levied and collected (the "District Charges").

4. The Law provides that the proceeds of the District Charges shall be held by the City,

shall be separately accounted for in the books and records of the City, and shall be used only for the purposes set forth in the Plan.

5. The City and the DMA hereby desire to enter into this Contract for the DMA to provide the supplemental services and to cause the construction and operation of improvements as set forth in the Plan and this Contract in consideration of the District Charges.

The Parties agree as follows:

## **ARTICLE 1** **GENERAL PROVISIONS**

### **Section 1.01 Program**

The City hereby retains and engages the DMA to perform the supplemental services set forth in Exhibit C annexed hereto (the “Supplemental Services”) and cause the construction and maintenance of the improvements set forth in Appendix A annexed hereto (the “Capital Improvements”), which Supplemental Services and Capital Improvements, collectively, are hereinafter referred to as the “Program”. The Program will be performed in accordance with the annual budget set forth in Exhibit B annexed hereto (the “Annual Budget”). The Annual Budget will be updated every year by the DMA and submitted with the annual report to SBS pursuant to Section 6.04 hereof.

### **Section 1.02 Term**

The DMA shall undertake and perform the Program for, during and within the term (the “Term”) commencing on July 1, 2017 (the “Commencement Date”) and ending, unless earlier terminated pursuant to Article 9 hereof, at 11:59 p.m. on June 30, 2022 (the “Termination Date”); provided, however, that the City, in its sole discretion, shall have the option to renew said Contract, upon the Termination Date, for a further term of five (5) years. Thereafter, the Contract may be

extended for additional periods upon mutual agreement of the Parties.

**Section 1.03 Compensation Generally**

In consideration of the DMA's provision of the Program, the City shall pay to the DMA, subject to and in accordance with the procedures and restrictions contained in Article 3 and other provisions of this Contract, all of the Proceeds (as defined in Section 3.01 of Article 3) actually collected by the City pursuant to the District Charges levied by the City upon real property within the District, subject to adjustment pursuant to Section 2A.03(a) and Section 3.01(b) hereof.

**Section 1.04 Authority of the Commissioner of SBS**

The Program to be provided under this Contract shall at all times be subject to the reasonable review and reasonable direction and control of the Commissioner of SBS. The Commissioner of SBS shall have the right to determine the amount, quality, acceptability and fitness of the Program being performed by the DMA under this Contract, and shall have the right to withhold any Proceeds if he or she determines that the provisions of this Contract have not been materially complied with; provided, however, that the right of the Commissioner of SBS to withhold Proceeds shall be subject to the DMA's obligation to pay Debt Service (as hereinafter defined). The Commissioner of SBS and any other persons or agents duly authorized to act for and on behalf of the City shall not, by virtue of such authority or action, be liable in any manner whatsoever to the DMA.

**ARTICLE 2A**  
**SUPPLEMENTAL SERVICES**

**Section 2A.01 Scope of Supplemental Services**

The Supplemental Services provided in each year of this Contract shall be set forth in Exhibit C annexed hereto and in accordance with the Annual Budget submitted in such year pursuant to and set forth in Exhibit B annexed hereto. The Supplemental Services shall be delivered in the manner set forth in the Plan and if performed proximate to the District, must principally benefit property within the District. The Supplemental Services shall supplement basic services provided by the City.

**Section 2A.02 Insufficient Revenues for the Provision of Supplemental Services**

If, in any year of this Contract, the sum of the Street Use Revenues (as defined in Section 2C.01 herein), Proceeds and other sources of funds identified in the Annual Budget are not, in the aggregate, sufficient to pay for both the provision of the Supplemental Services and any Debt Service (as hereinafter defined) obligation incurred by the DMA in accordance with the Plan and this Contract, then, in that event, the DMA may forego, with the approval of its Board of Directors or an Executive Committee thereof, the provision of one or more of the Supplemental Services in order for the DMA to meet such obligation; provided, however, that the DMA shall give SBS reasonable advance notice of its decision to forego one or more of the Supplemental Services, and shall, in addition, provide SBS with a revised Annual Budget for such Contract year, modified to reflect any change in the use of Proceeds, Street Use Revenues and other revenues identified in the Annual Budget.

**Section 2A.03 Supervision and Remedies**

(a) Pursuant to Section 1.04 herein, SBS shall have the right to inspect the performance of the Supplemental Services and, by written notice to the DMA, order the performance of specific

Supplemental Services set forth in Exhibit C annexed hereto for which the DMA has allocated Proceeds in its Annual Budget which SBS finds, after considering all the facts and circumstances, have not been satisfactorily performed. Where SBS has issued such an order, the DMA shall promptly commence and diligently complete the work specified therein. If, within twenty (20) business days (subject to extension by reason of a Force Majeure Event (as hereinafter defined)) following any such notice from SBS to the DMA to perform specific items of work, such work has not been performed or, if the work is of such a nature as cannot be completed within such period and the DMA has not commenced to perform the work, then the City shall have the right, upon notice to the DMA, to perform such work for the DMA, and to charge the DMA therefor and shall have the right, without limitation as to other remedies, to deduct its costs of doing such work from the next installment or installments of Proceeds to be paid to the DMA; provided, however, that the City's right to deduct its costs of performing work on behalf of the DMA shall be subject to the DMA's obligation to pay Debt Service (as hereinafter defined) incurred in accordance with the Plan and this Contract. SBS shall use best efforts to give the DMA reasonable advance notice of any such deductions.

For purpose of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the DMA; provided the DMA shall have given SBS notice of such event promptly following the DMA having obtained knowledge of the occurrence of same ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot and labor disputes not brought about by any act or omission of the DMA.

Nothing herein contained shall extend the obligation or limit the right of the City at any time to perform work in its ordinary municipal capacity in relation to the District.

(b) SBS may require the DMA to give written notification of any action taken by the DMA that requires a permit or license from any City agency or that would require an expenditure of District funds not set forth in the DMA's Annual Budget. The DMA shall notify its Board of Directors and the Board's Finance Committee of any budget or budget allocation changes of over 10%.

(c) The DMA may incur short term indebtedness for the provision of Supplemental Services in accordance with the Plan and this Contract; provided that the DMA shall have obtained the written approval of SBS and the DMA's Board of Directors prior to incurring such indebtedness. The DMA shall have the right to pay any such indebtedness from the Proceeds received by the DMA pursuant to Section 3.01 of this Contract.

**Section 2A.04 Subcontracts for the Performance of Supplemental Services**

Subject to the applicable provisions of this Contract, the DMA may contract for the performance of the Supplemental Services. No such subcontract shall be awarded unless the DMA has complied with the procurement provisions set forth in Article 4 hereof.

All subcontracts of the DMA shall contain a provision that allows for the assignment of such subcontract to the City or any agency or instrumentality thereof or any corporation governed thereby designated by the City and having authority to accept such assignment, and an option for the City to terminate said subcontract upon the expiration or termination of this Contract between the City and the DMA pursuant to Article 9 of this Contract.

**ARTICLE 2B**  
**CAPITAL IMPROVEMENTS**

**Section 2B.01 Basic Capital Improvements Contract**

For and during the Term of this Contract, the City hereby retains and engages the DMA to



provide the Capital Improvements (as hereinafter defined), if any, within the District, as proposed in the Plan and as set forth in the Annual Budget submitted to the Commissioner of SBS each year pursuant this Contract. If applicable, the DMA has obtained the necessary financing to provide for the construction of the Capital Improvements in accordance with the Plan and with this Contract. In consideration of the provision of the Capital Improvements the City agrees to pay and the DMA agrees to accept the Proceeds specified in Article 3.

**Section 2B.02 Capital Improvements**

(a) The term “Capital Improvements”, as used herein, shall mean an improvement to, or within City-owned property, the public sidewalk, or the public right of way; or an improvement to or within District owned or leased property as set forth in the Plan, which improvements shall be in addition to, and not in substitution for, required and customary municipal improvements provided by the City on a City-wide basis. The Capital Improvements to be provided pursuant to the Plan may include, but are not limited to, those listed in Appendix A annexed hereto. Capital Improvements that require review and approval by an appropriate City agency will be submitted to that City agency and the applicable Community Board(s), where applicable, prior to undertaking any such Capital Improvement.

(b) Additional Capital Improvements

To the extent consistent with the provision of the Capital Improvements enumerated in Appendix A annexed hereto at a high standard of quality, with notice to SBS and subject to the approval of any City agency having jurisdiction thereof, Capital Improvements may include any other improvements provided for under the Law that the DMA determines will enhance the safety, convenience, attractiveness or usefulness of the District so long as such Capital Improvements have been authorized by the Plan. Notwithstanding the foregoing, SBS shall have the right to disapprove

such Capital Improvements within five (5) business days of receipt of said notice. Any additional Capital Improvements must comply with the Plan and any rules or regulations of any appropriate City agency having jurisdiction thereof.

**Section 2B.03 Debt Service Incurred in Connection With Capital Improvements**

The DMA may incur indebtedness for the provision of Capital Improvements in accordance with the Plan and this Contract; provided that the DMA shall have obtained the written approval of SBS and the DMA's Board of Directors prior to incurring any indebtedness for the provision of Capital Improvements hereunder. The DMA shall have the right to pay such indebtedness (the "Debt Service") from the Proceeds received by the DMA pursuant to Article 3 of the Contract.

**Section 2B.04 Design, Plans and Specifications**

The DMA shall prepare or shall cause to be prepared all designs, plans and specifications for the Capital Improvements and shall submit the same to the City agency having jurisdiction thereof for approval, with written notice thereof to SBS, and upon request therefor by SBS, a copy of same. Upon approval of the City agency having jurisdiction thereof, and subject to the availability of funding, the DMA shall undertake to complete the Capital Improvements in accordance with the design, plans and specifications approved.

**Section 2B.05 Permits and Licenses for the Capital Improvements**

The DMA shall obtain any approval, permit, license, grant, right or other authorization required by any law, rule, regulation or order in connection with the Capital Improvements or their use. The DMA shall obtain the same in accordance with the applicable laws, rules, regulations and orders in the same manner as if this Contract did not exist. The DMA shall give SBS prior written notice of any application for such approval, permit, license, grant, right or other authorization, and upon the written request of SBS, shall provide SBS with all supporting documentation.

**Section 2B.06 Schedule for Construction for Capital Improvements**

Prior to the commencement of any construction of the Capital Improvements, the DMA shall prepare or shall cause to be prepared a schedule of construction and shall submit the same to SBS. Capital Improvements shall be constructed on an as needed basis in the District as determined by the DMA.

**Section 2B.07 Subcontracts for Consultant Services and the Construction of Capital Improvements**

Subject to the applicable provisions of this Contract, the DMA may contract for the design and construction of Capital Improvements. No such subcontract shall be awarded unless the DMA has complied with the procurement provisions set forth in Article 4 hereof.

All subcontracts of the DMA shall contain a provision that allows for the assignment of such subcontract to the City or any agency or instrumentality thereof or any corporation governed thereby designated by the City and having authority to accept such assignment, and an option for the City to terminate said subcontract upon the expiration or termination of this Contract between the City and the DMA pursuant to Article 9 of this Contract.

**Section 2B.08 Provisions to be Included in Contracts for the Construction of Capital Improvements**

Contracts for the construction of Capital Improvements (“Construction Subcontracts”) shall provide that:

(a) Payment thereunder shall be made by the DMA only for work performed to the satisfaction of the DMA upon submission to the DMA of a written voucher submitted by the contractor;

(b) If any payments are to be made prior to completion of said contract, the DMA shall

retain five percent (5%) of each payment, or in lieu thereof, require the contractor to obtain a performance bond, in an amount necessary to assure that the contractor complies with all its obligations under said contract;

(c) Payment upon substantial completion of the work shall include the amount of the retainage, minus twice the value of any uncompleted work, and minus the value of any claims or judgments on behalf of the DMA arising out of said contract. Final payment shall be made upon approval of the work in accordance with subparagraph (a) of this Section;

(d) No Construction Subcontract shall be materially modified nor shall any amount in excess of ten percent (10%) above the price approved by the DMA be paid by the DMA without prior written notice to SBS;

(e) The Construction Subcontract shall not be effective unless the contractor shall provide certified copies of payment and performance bonds reasonably deemed by SBS to be necessary under the circumstances;

(f) During the term of the Construction Subcontract, the contractor and any subcontractors thereof shall obtain and maintain commercial general liability insurance and other applicable insurance in the amounts and with the applicable provisions set forth in Article 5 of this Contract;

(g) Neither the contractor nor any of its employees nor any of its subcontractors is or shall be an agent, servant or employee of the City by virtue of the Construction Subcontracts or by virtue of any approval, permit, license, grant, right or other authorization given by the City or any of its officers, officials, agents or employees; and the contractor is solely responsible for the work, direction, compensation and personal conduct of its employees and subcontractors. The contractor shall indemnify and hold harmless the City and the DMA and their agents, officers, directors,

officials and employees from any and all claims, judgments or liabilities to which they might be subject because of any act or omission of the contractor, its agents, officers, directors, employees or subcontractors in connection with the Construction Subcontracts or because of any negligence of the contractor, its agents, employees, officers, directors or subcontractors;

(h) The Construction Subcontract shall state a specified term and provide for completion of the work within such term; and

(i) The Construction Subcontract shall be assignable to the City or any agency or instrumentality thereof or any corporation governed thereby designated by the City and having authority to accept such assignment.

The DMA agrees that no Proceeds, Street Use Revenues or debt secured by the foregoing shall be used to pay any contractor under a Construction Subcontract that does not include the above provisions, and that it shall be a material breach of this Contract if the DMA shall fail to enforce the provisions required hereby to be included in any Construction Subcontract.

**Section 2B.09 Construction Subcontracts, Liquidated Damages Clause**

SBS may require that any contractor under a Construction Subcontract funded by Proceeds , Street Use Revenues or debt secured by the foregoing agree to pay liquidated damages for any delays beyond the completion date set forth in the Construction Subcontract. Such amount shall be determined by the DMA in consultation with SBS and shall be included in the Construction Subcontract.

**Section 2B.10 Tax Exemption**

(a) Pursuant to Section 1115(a) (15) and (16) of the Tax Law, purchases of tangible personal property by the DMA or its contractors arising out of this Contract are exempt from the sales and use taxes imposed by Article 28 of the Tax Law, to the extent that such property is used to

alter, maintain or improve, and becomes an integral component part of, City-owned real property. This exemption does not apply to tools, machinery, equipment or other property leased by the DMA or its contractors or to supplies, materials or other property which are consumed in the course of construction or for any other reason not incorporated into City-owned real property.

(b) The DMA and its contractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract.

## **ARTICLE 2C** **USER RIGHTS**

### **Section 2C.01 User Rights Generally**

The City hereby grants to the DMA, subject to the prior written approval of SBS and the limitations hereinafter set forth, the right for the DMA to undertake, or permit, commercial activities or other private uses of the streets or other parts of the District in which the City has any real property interests ("User Rights"); provided, however, that the activities to be so undertaken or permitted by the DMA pursuant to its User Rights ("Street Uses") shall be in accordance with the Plan, be subject to all applicable laws including, without limitation, Chapter 14 of the City Charter and be authorized by the appropriate City agency having jurisdiction thereof. Upon the written request of SBS, the DMA shall provide SBS with all supporting documentation relating to its Street Uses. The User Rights to be undertaken or permitted by the DMA shall conform to the requirements authorized by the appropriate City agency having jurisdiction thereof. Such requirements may include, but shall not be limited to:

(a) requirements as to what consideration the DMA shall pay the City for the grant and/or license in question;

(b) requirements as to whether and how the DMA may permit other persons to undertake the User Rights in question pursuant to a sub-grant or sub-license (the “Permittees”);

(c) requirements as to what charges the DMA may impose upon Permittees as consideration for such sub-grant or sub-license (“Permit Charges”); and

(d) requirements as to the general regulation of the Street Uses by whomsoever undertaken.

The DMA may derive revenue from the Street Uses and may control their design, appearance and operations; provided, however, that said design, appearance or operation is governed by local laws, rules or regulations relating to said Street Uses. The DMA shall use the revenues from the Street Uses (including Permit Charges, collectively “Street Use Revenues”) for District purposes consistent with the Plan.

#### **Section 2C.02 Specific User Rights**

Subject to the provisions of Section 2C.01 above and subject to the approval and control by the appropriate City agency having jurisdiction thereof, the DMA may undertake or permit commercial activities or other private uses in the District, provided, however, that all such rights are subject to local laws, rules or regulations (including City franchising authority and granted City franchises). The DMA may undertake or permit the Specific User Rights set forth in Appendix B, “Specific User Rights”.

**ARTICLE 3**  
**COMPENSATION**

**Section 3.01 Compensation to the DMA**

(a) In consideration of the performance of the Program, the City shall pay to the DMA in two (2) installments annually during the Term, and the DMA shall accept as full payment therefor, all sums assessed by the City pursuant to the levy of the District Charges upon the benefitted real property within the District pursuant to the Law (the “Proceeds”), including any such sums collected prior to, or with respect to a period prior to, the Commencement Date of this Contract. Payment shall be made in accordance with the City’s existing payment procedures.

(b) Such payments shall be subject to the deductions provided in Section 2A.03(a) herein; provided, however, that the City shall not impair the ability of the DMA to pay Debt Service incurred in accordance with the Plan and this Contract. In addition, if pursuant to a final judicial determination or other legally binding determination of an agency having jurisdiction, the size and/or assessed value of a property within the District, as determined from the City Department of Finance’s real property assessment data, is reduced with respect to a period following the establishment thereof, then any refund of Proceeds owing with respect to such property shall be effected by deduction from the next payment or, if such is insufficient, next payments to the DMA.

**Section 3.02 Monies of the DMA**

The DMA hereby agrees that all monies of the DMA derived from (a) the payments to the DMA of Proceeds by the City, (b) Street Use Revenues, and (c) debt secured by the foregoing shall be used only for the provision of the Program or the payment of Debt Service in accordance with the Plan and in accordance with the DMA’s Annual Budget; provided, however, that, this section shall not limit the DMA’s lawful activities with respect to monies other than those referred to in this Section.



**ARTICLE 4**  
**CONTRACTS BY THE DMA**

**Section 4.01 Procurement by the DMA**

Subject to the applicable provisions of law relating to the letting of contracts by the City, the DMA may contract for the performance of the Supplemental Services and/or for the design and construction of the Capital Improvements. In procuring goods and services pursuant to this Contract, the DMA shall comply with or exceed the procedures set forth below.

**Section 4.02 Selection Process for Contracts for Goods and Services**

(a) Goods and Services Costing Less Than \$20,000

For procurements of goods and services the value of which is \$20,000 or less in any single fiscal year, no competition is required except that in making purchases below this limit, the DMA shall ensure that the price is reasonable. Documentation of such purchases shall identify the contractor the item was purchased from, the item purchased, and the amount paid.

(b) All Other Goods and Services

(1) Contracts for goods and services the value of which is more than \$20,000 in any single fiscal year are to be awarded on a competitive basis to the maximum extent practical, in accordance with the general procedures set forth below; provided, however, that, upon approval of the Board of Directors, payroll, employee benefits, insurance, legal services and banking services may be procured without competition from any party satisfactorily providing related services to the City, a local development corporation or similar not-for-profit entity.

(2) For procurements of goods and services the value of which is more than \$20,000 but equal to or less than \$100,000 in any fiscal year, proposals may be solicited from vendors in writing or solicited via telephone where the DMA's President or Executive Director

determines that the issuance of a written request for proposals (“RFP”) is impracticable. Where practicable, proposals should be solicited from at least three (3) responsive and responsible vendors.

(3) For procurements of goods and services the value of which is greater than \$100,000, proposals or bids shall be solicited by written RFPs or competitive sealed bid. RFPs shall set forth the nature of the goods or services the DMA is seeking to procure, including specifications where applicable or available, and shall solicit proposed prices, fees, charges or billing rates, where appropriate. RFPs shall contain such other information and shall request from proposers such other information as the DMA may deem necessary or desirable. RFPs shall either: (i) be sent to a sufficient number of qualified proposers or (ii) be advertised in at least one appropriate periodical at least five (5) business days before proposals are due and posted on the DMA’s website.

(4) In procuring contracts, the DMA will endeavor to include procedures to afford maximum opportunity for and encourage participation from minority and women owned business enterprises (“M/WBEs”) to compete for DMA contracts and shall report data on M/WBEs contracting to the DMA’s Board of Directors on an annual basis.

(5) For contracts greater than \$100,000, the DMA shall require vendors to submit VENDEX (as defined in Section 7.07 hereof) questionnaires in order to make a determination that the proposed vendor is a responsible entity. The DMA agrees that no payments shall be made under any such contract unless and until VENDEX has been completed and the DMA has been notified by SBS that no derogatory information has been uncovered or that SBS has determined that the derogatory information uncovered shall not preclude the continuation of such contract. Any such contracts shall provide that (a) upon the determination

of SBS that derogatory information uncovered is of such a nature that the contract shall be terminated, the contract shall be terminated and no payments shall be due thereunder, and (b) the DMA and the City shall not be liable to the contractor for such termination.

**Section 4.03 Exceptions to Selection Procedures**

(a) Notwithstanding the requirements of Section 4.02 above, contracts may be awarded to persons or firms on a non-competitive basis, without regard to the procedures set forth above, when the DMA's President or Executive Director determines that one of the following circumstances exists and determines that it is in the best interest of the DMA to award a contract on a non-competitive basis:

(1) In the event an emergency or other extraordinary circumstances exist which make competition impracticable or inappropriate;

(2) Only one source for the goods or services is reasonably available;

(3) Legal services or other specialized services are required for which a certain person or firm's expertise is unique;

(4) Information is obtained from a prior solicitation or appropriate market research which indicates that all persons or firms that previously submitted proposals or are anticipated to submit proposals are not qualified, responsive or responsible based upon the appropriate criteria for the project;

(5) In the event that the City or another governmental unit, a local development corporation or similar not-for-profit entity can provide or cause to be provided needed services directly or pursuant to contracts entered into by any such entity, or a present provider of services to such an entity agrees to extend its rates or rate formulas on such services to the DMA;

(6) There is a time-sensitive situation where a vendor must be retained quickly because of, for example, a need to respond to a court order, funds available from a source outside the City will be lost, an existing vendor has been terminated, has defaulted, has withdrawn from, or has repudiated a contract, or has become otherwise unavailable, or there is some other compelling need for goods or services that cannot be met in a timely manner through a competitive process;

(7) There is a limited number of vendors available and able to perform the work; or

(8) There is a need to maintain open orders for certain routine goods (e.g., office supplies, uniforms, cleaning equipment) or services (e.g., bulk mailing, printing, landscaping, promotional banners and design) for purposes of continuity or compatibility or to avoid shortages of commodities or similar purchases for which a competitive process would be impractical. Open orders which the DMA uses on an annual or a seasonal basis shall be re-bid at least every three years to ensure that the DMA continues to receive the highest quality goods and services at the best possible price.

(b) If a contract is awarded pursuant to an exception in accordance with subsection (a) above, the Board of Directors of the DMA and SBS shall be notified prior to such award.

## **ARTICLE 5** **INSURANCE**

### **Section 5.01 Commercial Liability Insurance**

Throughout the Term, the DMA shall maintain in full force and effect and at its sole expense, or cause to be maintained, insurance policies protecting the DMA and the City against claims for injuries to persons or damages to property arising from or in connection with the

performance of the Program by the DMA and the DMA's contractors, subcontractors and Permittees. The DMA shall deliver annual certificates of insurance to SBS and make available upon request a copy of each such policy, proof of payment and confirmation of renewal of such policy.

The substance of all insurance policies, including amounts and scope of coverage, shall comply with or exceed the following specifications for insurance coverage relative to the DMA's direct operations and relative to the operations of any of the DMA's contractors, subcontractors or Permittees:

(a) Commercial General Liability Insurance covering all premises, operations, products and completed operations of the DMA or undertaken for the DMA written on an occurrence basis. Liability limits of \$1,000,000 combined single limit for personal injury, bodily injury and property damage with an aggregate limit of \$2,000,000. Such insurance shall be as broad as the latest edition of Insurance Services Office ("ISO") Form CG 00 01.

(b) If vehicles are used in the performance of the Program pursuant to this Contract, Commercial Automobile Liability Insurance covering all owned, non-owned and hired vehicles operated by the DMA and by its relevant contractors, subcontractors and Permittees with liability limits of \$1,000,000 combined single limit for bodily injury and property damage.

(c) The "City of New York, together with its officials and employees" shall be added as additional insured on all applicable Commercial Liability policies required by this Article 5 with coverage at least as broad as the latest edition of ISO Form CG 20 26. The DMA and the City shall also be added as additional insured on such policies obtained by its contractors, subcontractors and Permittees for all actions arising under or in connection with this Contract.

(d) Unless otherwise waived by the DMA in consultation with SBS, the DMA shall

cause all contractors providing professional or standard services in connection with the Supplemental Services and contractors providing construction or construction-related services in connection with Capital Improvements to obtain insurance in the types and amounts that are at least as broad as the types and amounts set forth in Section 5.01(a) and (b) above. Commercial general liability policies and all other liability policies contractors may be required to obtain (including, but not limited to, contractors pollution legal liability, excess and umbrella policies) shall name the DMA and the City, together with their respective officers, officials and employees, as additional insureds. The City's coverage shall be at least as broad as the latest edition of ISO Form CG 20 26.

#### **Section 5.02 Workers' Compensation**

The DMA shall obtain, and shall cause each of its contractors, subcontractors and Permittees to obtain, Worker's Compensation Insurance, disability benefits and employer's liability in the statutorily required amounts in accordance with New York State law.

#### **Section 5.03 Director's and Officer's Liability Insurance**

The DMA may obtain director's and officer's liability insurance coverage on terms consistent with Section 726 of the New York Not-for-Profit Corporation Law to indemnify and save harmless each director and officer of the DMA from all liability, claims, or damages by reason of his or her acts or omissions in connection with the performance of his or her duties as a director or officer of the DMA.

#### **Section 5.04 Notice of Claim**

The DMA shall comply with the provisions of all insurance policies required pursuant to this Article, and shall give the insurer and the City notice of any claim, accident, and loss promptly upon its acquiring knowledge of the same.

**Section 5.05 Insurance Company Rating**

All insurance policies required by this Contract shall be in form and substance satisfactory to SBS and shall be obtained from responsible companies authorized to do business in the State of New York with a minimum “Best’s” rating of no less than A-/“VII”.

**Section 5.06 Policy Provisions**

Each such policy of insurance obtained by the DMA or its contactors, subcontractors and Permittees pursuant to Section 5.01 hereof shall contain the following provisions, if available:

- (a) Notices from the insurer to the City or SBS in connection with this policy shall be addressed to the Assistant Commissioner for Neighborhood Development, Department of Small Business Services, 110 William Street, 8<sup>th</sup> Floor, New York, New York 10038;
- (b) this policy shall not be canceled, terminated or modified by the insurer unless thirty (30) days prior written notice is sent by mail to the DMA, SBS and the City; and
- (c) the insurer shall waive any rights of subrogation it may have against the DMA, SBS or the City.

**Section 5.07 Alternate Insurance**

Notwithstanding any other provisions of this Article 5, SBS may promulgate alternate schedules which vary the types and amounts of insurance to be maintained by the DMA due to the nature of the activities undertaken. If SBS reasonably determines that additional insurance is properly required, SBS may direct that additional insurance coverage be provided.

**ARTICLE 6**  
**BOOKS AND RECORDS; AUDIT; ANNUAL REPORT; LOCATION**

**Section 6.01 Books and Records**

The DMA shall keep and retain up-to-date books and records in accordance with generally accepted accounting principles and showing all its receipts and assets, including without limitation the Proceeds from the City pursuant to this Contract and those derived from the User Rights, and all disbursements and liabilities, including contingent liabilities.

**Section 6.02 Maintenance of Records**

The DMA shall maintain complete and accurate records in readily accessible files on all its activities in connection with this Contract in accordance with Section 621 of the New York State Not for Profit Corporation Law and any other laws, rules or regulations applicable to the DMA. Such records shall include but shall not be limited to the following:

- (a) by-laws, appropriate corporate governance documents and minutes of all meetings of the DMA and its committees;
- (b) copies of all relevant correspondence, both incoming and outgoing, but not including routine transmittals or other non-material correspondence;
- (c) copies of all press releases or other publicity generated by the DMA;
- (d) financial and other business documentation such as contracts, personnel records, tax returns, insurance policies, bank statements, canceled checks, bills and receipts, requests for payment, and deposit slips relating to all financial accounts, transactions and activity under this Contract;
- (e) cash disbursement ledger, cash receipts ledger and general ledger of the DMA;
- (f) a log of all complaints received by the DMA (written or oral);
- (g) a log of all lawsuits filed against the DMA; and



(h) such other records and papers as SBS or the Comptroller of the City of New York (“Comptroller”) in writing may require to be maintained.

The DMA shall maintain all records relating to this Contract for a period of at least six (6) years. This requirement shall survive the termination of this Contract.

### **Section 6.03 Audit**

(a) SBS, the New York City Department of Investigation and the Comptroller shall have the right, at all times, to audit, inspect, and copy any of the books, records, accounts and other documents of the DMA in connection with this Contract upon reasonable notice to the DMA or in accordance with such entities’ applicable authority. Upon request of the City, the DMA agrees to appear before the Audit Committee of the City of New York. Notwithstanding anything to the contrary in this provision, nothing herein shall be construed to limit the rights of the Comptroller or the Department of Investigation set forth in the City Charter or other applicable law.

(b) Not later than December 31 of each year during the Contract Term, the DMA shall submit to SBS an audited financial statements for the DMA’s preceding fiscal year, certified by an independent Certified Public Accountant.

### **Section 6.04 Annual Reports**

(a) Prior to the Commencement Date of this Contract, the DMA has submitted to SBS all relevant Contract exhibits, projecting Supplemental Services and expenditures required therefor, Capital Improvements and expenditures required therefor, Debt Service, the required total District Charges levied upon real property within the District and projected sources of funding for the above.

(b) On a date prescribed by SBS, with a minimum of forty-five (45) days advance written notice, the DMA shall each year, during the terms of the Contract, submit to SBS an annual

report. The annual report shall be in a format prescribed by SBS and include at a minimum the following: (i) the annual updated submission of Exhibit B detailing the Annual Budget, (ii) the annual updated submission of Exhibit C detailing the Supplemental Services, and (iii) any other information as may be requested by SBS including but not limited to a survey collecting program and service impact data.

(c) Upon submission to SBS, the DMA must make available to its “Members” (all property owners and commercial and residential tenants within the District and any other persons who are “members” pursuant to the certificate of incorporation, by-laws or the Plan, hereinafter, collectively the “Members”) the annual report.

#### **Section 6.05 Additional Reports**

The DMA shall promptly furnish to SBS copies of any audit conducted by or on behalf of the DMA during the Term of this Contract, as SBS shall request. In addition, the DMA shall promptly prepare and furnish to SBS the following information, as SBS may reasonably request, including, but not limited to: information relating to the basis for the allocation of expenses by the DMA between it and any other district management association or related entity; salaries reported on the DMA’s 990 Form; program guidelines that may be useful to other DMAs; and all contracts of the DMA, listing their amounts, terms, expiration dates and scope of services.

#### **Section 6.06 Performance Survey**

At the request of SBS, the DMA shall conduct a survey of its Members to determine the current level of support for the Plan, current level of satisfaction with the performance of the DMA and recommendations for possible changes to the Program. Notwithstanding the above, the DMA is encouraged to conduct regular surveys of its Members.

#### **Section 6.07 Finance and Audit Committees**

The DMA shall establish and maintain, as committees of its Board of Directors, separate finance and audit committees to oversee the DMA's activities. Said committee members shall not have been employed by the DMA in an executive capacity within the last two (2) years. Unless otherwise prohibited by law, Board members serving in an ex officio capacity may serve on the committees.

**Section 6.08 Location**

Unless otherwise permitted by SBS, the DMA shall maintain a physical location at premises within the District, for the following purposes:

- (a) to maintain secure files of books and records required to be kept pursuant to this Article 6 in a manner reasonably accessible to the public and entities with jurisdiction to inspect or audit such books and records; and
- (b) to provide reasonable and appropriate access by the public to the DMA.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

**Section 7.01 Status and Authority of the DMA**

The DMA represents and warrants that:

- (a) The DMA is and shall continue to be a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York, and has all requisite power and authority to execute, deliver and perform this Contract.
- (b) This Contract has been duly authorized by all necessary corporate action on the part of the DMA and has been duly executed and delivered by the DMA and, assuming due execution and delivery by the City, constitutes a legal valid, binding and enforceable obligation of the DMA.
- (c) The execution and delivery of this Contract, and compliance with the provisions

hereof, do not and will not conflict with or constitute a violation of or default under the DMA's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, contract or other agreement or instrument to which the DMA is bound, or to the knowledge of the DMA, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the DMA or any of its activities or properties.

**Section 7.02 Procurement of this Contract**

The DMA warrants and represents that:

(a) The DMA has not been asked to pay, nor offered to pay, nor has paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

(b) The DMA has not employed any person to solicit or procure this Contract, and has not made and shall not make any payment or any agreement for the payment of any commission, percentage, brokerage or contingent fee, or any other compensation in connection with the procurement of this Contract.

**Section 7.03 Conflict of Interest**

The DMA warrants and represents that:

(a) No elected official or other officer or employee of the City, or any person whose salary is payable in whole or in part from the City Treasury, shall participate in any decision relating to this Contract that affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this Contract or the Proceeds thereof. This provision shall not prohibit an official, officer or employee of the City who, pursuant to the Law or designation pursuant thereto, sits as a member of the Board of Directors of the DMA, from exercising his or her official duties as such official, officer or employee with regard to the District.

(b) Neither it nor any of its directors, officers, members or employees has any interest, nor shall it acquire or permit any of its directors, officers, members or employees to acquire or retain any interest, directly or indirectly, which would conflict in any manner or degree with the proper performance of Supplemental Services or the provision of Capital Improvements. The DMA further covenants that in the performance of Supplemental Services or the provision of Capital Improvements no person having such interest shall be employed by it. Nothing in this section shall be deemed to prohibit the retention of a member of the DMA as subcontractor of the DMA for the performance of Supplemental Services or a supplier of materials, or the provision of Capital Improvements, provided that the DMA follows the procedures of Article 4 herein, as applicable, prior to awarding any contract. In addition, nothing in this section shall be deemed to prohibit the granting to a member of the DMA of a permit for the conduct of commercial activities or other private uses in the District, provided that the DMA shall grant such permits to members on terms no more favorable than those for non-members.

The DMA shall comply with its Conflict of Interest Policy, as required by the New York State Not for Profit Corporation Law, with respect to awarding any contract or granting any permit or license to any individual or entity covered thereunder, and the DMA shall give notice to SBS of the proposed award or grant, setting out the procedures followed in selecting the contractor or Permittee.

#### **Section 7.04 Pending Litigation**

The DMA warrants and represents that there are no proceedings pending, except as disclosed to SBS, or to the knowledge of the DMA threatened, against or affecting the DMA in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the operation or condition (financial or otherwise)

of the DMA or the ability of the DMA to perform this Contract. The DMA is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal.

In addition, the DMA shall notify SBS, within ten (10) business days, of any and all litigation initiated against the DMA in any court or before any governmental authority or arbitration board or tribunal that involves the possibility of materially and adversely affecting the operation or condition (financial or otherwise) of the DMA or the ability of the DMA to perform this Contract.

#### **Section 7.05 International Boycott**

(a) The DMA represents and warrants that neither the DMA nor any affiliated company substantially owned by the DMA is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

(b) Upon the final determination by the Commerce Department or any other agency of the United States as to the conviction of the DMA or an affiliated company substantially owned by the DMA for participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Contract.

(c) The DMA shall comply in all respects with the provisions of Section 6-114 of the New York City Administrative Code and the rules and regulations issued by the Comptroller thereunder.

#### **Section 7.06 Publicity**

The DMA shall make best efforts to give SBS reasonable advance notice of any press or public event (collectively, "Publicity"), which the DMA plans to undertake in order to publicize the Program, and will afford representatives of the City the opportunity to participate in any Publicity

event.

**Section 7.07 VENDEX**

(a) In connection with the performance of a background investigation by the City pursuant to the City's Vendor Information Exchange System ("VENDEX"), the DMA agrees that it shall provide to the City a Vendor Questionnaire on behalf of the DMA and Principal Questionnaires for the three (3) officers who exercise the most substantial degree of control over the DMA. Such Vendor and Principal Questionnaires shall be required prior to the Commencement Date and upon each renewal of this Contract in accordance with the applicable provisions of Section 6-116.2 of the New York City Administrative Code.

(b) The DMA represents and warrants that neither the DMA nor any principal officer thereof who is required to submit a Principal Questionnaire hereunder is an Unqualified Person. For purposes of this Contract, an "Unqualified Person" shall mean any person or entity or any person or entity that directly or indirectly controls, is controlled by, or is under common control with a person or entity who:

(1) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing or settled by the City; or

(2) has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years; or

(3) has been convicted of a felony in the past ten (10) years; or

(4) has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(5) has received formal written notice of default in the payment to the City of any real estate taxes, sewer rents or water charges, which have not been paid, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.

Failure to comply with the foregoing shall be deemed a breach or violation of a material provision of this Contract under Article 9 herein.

**ARTICLE 8**  
**APPLICABLE LAWS, RULES AND REGULATIONS**

**Section 8.01 Governing Law; Venue**

(a) This Contract shall be governed by and construed in accordance with the laws of the State of New York.

(b) The Parties agree that any and all claims asserted by or against the City arising under this Contract or related hereto shall be heard and determined either in the courts of the United States (“Federal Court(s)”) or in the courts of the State of New York (“New York State Court(s)”) located in the City and County of New York. To effect this agreement and intent, the DMA agrees, and shall require each subcontractor, contractor or Permittee of the DMA to agree as follows:

(1) If the City initiates any action against the DMA and/or any subcontractor, contractor or Permittee of the DMA in Federal Court or in New York State Court, service of process may be made on such party either in person, wherever such party may be found, or by registered mail addressed to the party at its address as set forth in this Contract, or to such other address as the party may have provided in writing to the City or the DMA, as the case may be.

(2) With respect to any action between the City and the DMA and/or any subcontractor, contractor or Permittee of the DMA in New York State Court, the DMA hereby expressly waives and relinquishes and shall cause each subcontractor, contractor or Permittee of the



DMA to waive and relinquish any rights it might otherwise have (A) to move to dismiss on grounds of *forum non conveniens*, (B) to remove to Federal Court, and (C) to move for a change of venue to a New York State Court outside New York County.

(3) With respect to any action between the City and the DMA and/or any subcontractor, contractor or Permittee of the DMA in Federal Court located in New York City, the DMA expressly waives and relinquishes and shall cause each subcontractor, contractor or Permittee of the DMA to expressly waive and relinquish any right it might otherwise have to move to transfer the action to a Federal Court outside the City of New York.

(4) If the DMA and/or any subcontractor, contractor or Permittee of the DMA commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the DMA shall and shall cause each subcontractor, contractor or Permittee of the DMA to either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the DMA shall and shall cause each subcontractor, contractor or Permittee of the DMA to consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City.

(c) If any provision(s) of this section is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### **Section 8.02 Modification Required by Law**

(a) The Parties agree that each and every provision of federal, state and local law, rule, regulation and order, required to be inserted in this Contract shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted or is not inserted in correct

form, then this Contract shall forthwith, upon the application of either Party, be amended so as to comply strictly with such law, rule, regulation or order and without prejudice to the rights of either Party.

(b) If any provision of this Contract or its application shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of all other provisions and applications hereof and thereof shall not in any way be affected or impaired.

### **Section 8.03 Compliance with Law**

The DMA agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all applicable federal, state, and local laws, rules, regulations and orders, including the New York State Not-For-Profit Corporation Law.

Failure to comply with these requirements may be determined by SBS to constitute a breach of the material terms of the Contract under Article 9 herein.

### **Section 8.04 Equal Opportunity**

The DMA agrees that it will comply with Executive Order No. 50, annexed hereto as Exhibit D.

### **Section 8.05 Minimum Wages**

Except for any employees whose minimum wage is required to be fixed pursuant to Sections 220 or 231 of the New York Labor Law or by Section 6-109 of the New York City Administrative Code, all persons employed by the DMA or any subcontractor of the DMA in the performance of the Program under this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the minimum wage required by law.

### **Section 8.06 Noise Control**

In accordance with Section 24-216 of the New York City Administrative Code:

(a) Devices and activities that will be operated, conducted, constructed or manufactured pursuant to this Contract and that are subject to the provisions of the City Noise Control Code shall be operated, conducted, constructed or manufactured without causing a violation of the City Noise Control Code.

(b) Such devices and activities shall incorporate advances in the art of noise control developed for the kind or level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of Environmental Protection of the City. Regulations promulgated pursuant to Section 24-216 of the New York City Administrative Code after the execution of this Contract shall not alter its terms, conditions and specifications.

**ARTICLE 9**  
**DEFAULT, SUSPENSION OR TERMINATION**

**Section 9.01 Suspension Due to Acts of the DMA**

If the DMA, through any cause, fails to progress with the Program in accordance with this Contract, in the reasonable judgment of the Commissioner of SBS, or if the DMA violates any of the material terms, covenants or provisions of this Contract, or if any representation or warranty made by the DMA in Article 7 shall prove untrue, or if, in the reasonable judgment of the Commissioner of SBS, the conduct of the DMA is such that the interests of the City have been or are likely to be impaired or prejudiced, the City shall give written notice to the DMA of any such failure, violation, breach of warranty or conduct and the DMA shall have twenty (20) days in which to cure; provided, however, that if such failure, violation, breach of warranty or conduct is of such a nature that it cannot be cured within twenty (20) days, the DMA shall commence to cure within the twenty (20) day period and shall cure within a reasonable period of time thereafter. If the DMA does not cure, or commence to cure, within this twenty (20) day period, the City shall have the right

to postpone, delay or suspend this Contract. Any such postponement, delay or suspension shall not give rise to any cause of action for damages against the City. The twenty (20) day cure period shall be tolled for each day of delay in effecting a cure due to a Force Majeure Event.

**Section 9.02 Right To Withhold Payment, Demand Return of Payment and/or Terminate Contract Due to Acts of the DMA**

(a) Notwithstanding any other rights of the City under other Sections of this Contract, if the DMA, through any cause within its reasonable control, is in breach of this Contract because the DMA fails to progress with the Program in accordance with this Contract, in the reasonable judgment of the Commissioner of SBS, or if the DMA violates any of the material terms, covenants or provisions of this Contract, or if any representations or warranty made by the DMA in Article 7 shall prove untrue, and if, in the reasonable judgment of the Commissioner of SBS, the conduct of the DMA is such that a breach of the Contract has occurred and the interests of the City have been or are likely to be impaired or prejudiced, the City shall give written notice to the DMA of such breach and the DMA shall have twenty (20) days in which to cure; provided, however, that if the breach is of such a nature that it cannot be cured within twenty (20) days, the DMA shall commence to cure within the twenty (20) day period and shall cure within a reasonable period of time thereafter. If the DMA does not cure, or commence to cure, within this twenty (20) day period, the City shall have the right to notify the DMA that due to the DMA's breach, the City will withhold payments due under the Contract and/or demand return of payments already made which are equal to the damages the City may have already suffered due to the breach by the DMA. The twenty (20) day cure period shall be tolled for each day of delay in effecting a cure due to a Force Majeure Event.

(b) In addition to the rights of the City described in the prior subparagraph (a), if the

DMA, through any cause within its reasonable control, fails to progress with the Program in accordance with this Contract, in the reasonable judgment of the Commissioner of SBS, or in any other way breaches or violates any of the material terms, covenants or provisions of this Contract, or if any representation or warranty made by the DMA in Article 7 shall prove untrue, or if, in the reasonable judgment of the Commissioner of SBS, the conduct of the DMA is such that the interests of the City have been or are likely to be impaired or prejudiced, the City shall give written notice to the DMA of such failure, violation, breach of warranty or conduct and the DMA shall have twenty (20) days in which to cure; provided, however, that if such failure, violation, breach of warranty or conduct is of such a nature that it cannot be cured within twenty (20) days, the DMA shall commence to cure within the twenty (20) day period and shall cure within a reasonable period of time thereafter. If the DMA does not cure, or commence to cure, within this twenty (20) day period, the City shall have the right to immediately terminate this Contract, whereupon all reports, drawings, plans, studies, tracings, specifications, documents and materials prepared by the DMA in connection with this Contract shall be surrendered and turned over to the City within twenty (20) days after such termination. Any such termination shall not give rise to any cause of action for damages against the City. The twenty (20) day cure period shall be tolled for each day of delay in effecting a cure due to a Force Majeure Event.

The City shall also have the right to engage in any self-help action necessary to complete performance which was uncompleted as of the termination date, and to pursue any remedies available at law or in equity against the DMA.

**Section 9.03 Automatic Termination**

If either of the following events (“Events of Default”) shall happen this Contract shall terminate in accordance with this Section:

(a) the DMA commences proceedings to dissolve the District pursuant to the Law, then this Contract shall expire and terminate upon the commencement of such proceedings and the DMA shall remain liable for all its obligations incurred prior to the date of such termination; or

(b) upon the bankruptcy, liquidation or dissolution of the DMA, then the City upon written notice to the DMA shall have the right to terminate this Contract, in whole or in part.

**Section 9.04 Default, Suspension, Termination and Effect Upon Debt Service**

Notwithstanding any other provision of this Article 9, the City’s right to suspend this Contract, to withhold payments due under this Contract, to demand return of payments already made under this Contract or to terminate this Contract shall be subject to the DMA’s obligation to pay Debt Service incurred in accordance with this Contract.

**Section 9.05 Accounting and Surrender of Proceeds Upon Termination**

Within twenty (20) days after the termination of this Contract, whether by expiration of its term or otherwise, the DMA shall render an accounting to the City of all its assets and liabilities, deliver to the City all books, records, accounts and other documents of the DMA in connection with this Contract, and pay to the City all Proceeds in its possession or under its control. However, if such termination is not by reason of a termination pursuant to Section 9.02 or by reason of an Event of Default set forth in Section 9.03(b), the DMA shall be entitled to retain amounts of Proceeds that it is contractually obligated to pay pursuant to contracts entered into by the DMA pursuant to this Contract and approved by SBS until such funds are disbursed pursuant to such contracts or until the DMA is released of its obligation to disburse such funds. The DMA shall pay to the City any funds

with respect to which it is so released. The City shall expend any funds so received in accordance with the Plan.

**Section 9.06 Assignment of Contracts Upon Termination**

Upon or prior to the termination of this Contract by expiration of its Term or otherwise, the DMA shall submit to SBS adequate information as to each outstanding contract. Within twenty (20) days after the DMA has submitted such information, the City shall elect which, if any, of such contracts the City elects to assume, and thereupon the DMA shall assign any such contracts to the City, and the City shall assume the performance of the DMA's obligations thereunder, and shall indemnify and hold harmless the DMA from any liability under such contracts arising after such assignment. The DMA shall promptly turn over to the City its records with respect to such assigned contracts. The DMA and the City each shall enter into any instruments as may be appropriate to evidence any of the above. This provision shall survive any termination of this Contract.

**Section 9.07 No Release**

The termination of this Contract, whether by expiration of its term or otherwise, shall not release the DMA from any liability to the City arising out of any act or omission of the DMA in connection with this Contract.

**ARTICLE 10**  
**MISCELLANEOUS**

**Section 10.01 Independent Contractor**

Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed that in the performance of the terms, covenants, and conditions of this Contract, neither the DMA nor any of its officers, directors, employees, agents, independent contractors or Permittees shall be deemed to be acting as agents, servants, or employees of the City by virtue of this Contract

or by virtue of any approval, permit, license, grant, right or other authorization given by the City or any of its officers, agents, or employees pursuant to this Contract, but shall be deemed to be independent contractors performing services for the City or the DMA, as the case may be, without power or authority to bind the City, and shall be deemed solely responsible for all acts taken or omitted by them in the performance of or otherwise pursuant to this Contract.

**Section 10.02 Indemnification**

(a) Except as otherwise expressly stated herein, the DMA hereby assumes liability for, and hereby agrees to indemnify, protect, defend, save and keep harmless the City from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (hereinafter called "Liabilities") which may be incurred by or imposed at any time (whether during the Contract Term or thereafter) on the City (whether or not also indemnified against by any other person) and in any way relating to or arising out of, or alleged (by a person other than the City) to in any way relate to or arise out of this Contract, except for the negligent acts or omissions of the City. Such Liabilities shall include, without limitation, the following: claims or penalties arising from any violation of any federal, state or local laws, rules or regulations or the insurance requirements of Article 5 hereof, as well as any claim as the result of latent, patent and other defects, whether or not discoverable by the City, any claim the insurance as to which is inadequate, any claim for patent, trademark or copyright infringement, any tort claim or claim for damages and any claim or liability in respect to any adverse environmental impact or effects. The DMA shall assume full responsibility for the defense against or settlement of any such Liability, and the City shall cooperate with the DMA by providing, at the expense of the DMA, such witnesses, documents and other assistance as the DMA may reasonably request; provided, however,



that: (i) the legal counsel to be employed in respect thereof shall be for, or approved by, the DMA's insurance carrier (if such Liability is covered by insurance), or by such other legal counsel selected by the DMA and reasonably satisfactory to the City; and (ii) if the City shall give to the DMA notice that in its good faith judgment an important general interest of the City is involved in such Liability or potential Liability, the City shall have the right to control, in consultation with the DMA, the defense against or settlement of such Liability. In the event that the City assumes control of the defense or settlement of such Liability, the City shall do so at its own expense and the DMA shall be relieved of any further costs and expenses relating to said defense and/or settlement, unless otherwise agreed by the Parties hereto.

(b) The DMA shall require each of its contractors, subcontractors and Permittees to agree to indemnify the City and assume liability for injuries on the same basis as the DMA under subsection (a) above.

(c) The obligations of the DMA under this Section 10.02 shall survive the expiration or earlier termination of this Contract and are expressly made for the benefit of, and shall be enforceable by, the City without necessity of declaring this Contract in default, and the City may initially proceed directly against the DMA under this Section 10.02 without first resorting to any other rights of indemnification it may have.

### **Section 10.03 Assignment**

The DMA shall not assign, transfer, pledge, grant any lien on, convey or otherwise dispose of this Contract or any part hereof, or of its interest herein or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract, without the consent of the Commissioner of SBS.

**Section 10.04 Claims or Actions**

The DMA shall look solely to the Proceeds collected by the City for this Contract for the satisfaction of any claim or cause of action the DMA may have against the City in connection with this Contract or the failure of the City to perform any of its obligations hereunder. No officer, director, employee, agent or other person authorized to act on behalf of the City or the DMA shall have any personal liability in connection with this Contract or any failure of the City or the DMA to perform its obligations hereunder. The DMA agrees that no action against the City in connection with this Contract shall lie or be maintained unless such action is commenced within six (6) months after (i) the termination of this Contract, or (ii) the accrual of the cause of action, whichever is earliest.

The DMA further agrees that where the Program includes improvements to property requiring entry on to private property, the DMA shall obtain a general release, releasing the City from all claims arising in performance of installing the improvements on the property, from the owner or lessee of such property.

**Section 10.05 Notices**

Each written notice, demand request or other communication in connection with this Contract shall be either served in person, with delivery or service acknowledged in writing by the party receiving the same, or via email, with receipt thereof acknowledged in a reply email by the party receiving the same or deposited in the United States mail by certified mail, return receipt requested, postpaid, and addressed:

- (a) to the DMA at the address hereinbefore set forth  
Email: [info@jfkibid.org](mailto:info@jfkibid.org)
- (b) to the City or to SBS at:

Deputy Commissioner  
Neighborhood Development Division  
New York City Department of Small Business Services  
110 William Street  
New York, New York 10038  
ndevelop@sbs.nyc.gov

or to such other addresses as may be specified by written notice sent in accordance herewith. Every notice, demand, request, or other communication hereunder shall be deemed to have been given at the time of mailing as aforesaid.

**Section 10.06 Contract Changes**

Changes may be made to this Contract only as duly authorized by SBS.

**Section 10.07 Captions**

(a) The table of contents and captions of this Contract are for convenience of reference only and in no way define, limit or describe the scope or intent of this Contract or in any way affect this Contract.

(b) Exhibits A through E and Appendix A and B attached to this Contract are incorporated into this Contract as if they were fully set forth herein.

**Section 10.08 Completeness**

This Contract contains all the terms and conditions agreed upon by the Parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the Parties hereto.

**Section 10.09 Assistance by the DMA**

If any claim is made or any action brought relating to the services to be performed or improvements constructed under this Contract, whether or not the DMA is a party, the DMA, without compensation, shall diligently render to the City any and all assistance which the City may

require of the DMA.

**Section 10.10 Non-Waiver**

Failure of the City to enforce or otherwise require the performance of any of the terms and conditions of this Contract, at the time or in the manner that said terms and conditions are set forth herein, shall not be deemed a waiver of any such terms or conditions by the City and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of the City.

**Section 10.11 DMA Performance Evaluation**

An annual performance evaluation of the DMA may be made by SBS at the completion of each year of the Contract. SBS may also issue interim evaluations during the Term of this Contract if, in the reasonable judgment of SBS, such an evaluation is necessary.

A DMA with an unsatisfactory or marginal evaluation may be listed in the VENDEX cautionary list. The DMA shall have an opportunity to comment in writing subsequent to the evaluation.

**Section 10.12 Political Activity/Religious Activity**

(a) The DMA's provision of the Program under this Contract shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the Proceeds provided under this Contract be used for such purposes.

(b) There shall be no religious worship, instruction or proselytizing as part of or in connection with the DMA's provision of the Program under this Contract nor shall any of the Proceeds provided under this Contract be used for such purposes.

**Section 10.13 Refusal to Testify**

(a) The DMA agrees to cooperate fully and faithfully with any investigation, audit or

inquiry conducted by a State of New York (the “State”) or City governmental agency or authority that is empowered, directly or by designation, to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry.

(b) (i) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision or public authority thereof, the Port Authority of New York and New Jersey, any local development corporation within the City or any public benefit corporation organized under the laws of the State, or

(ii) if any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State, or any political subdivision thereof, or any local development corporation within the City,

Then the commissioner or agency head whose agency is a party in interest to the transaction,

submitted bid, submitted proposal, lease, permit, contract or license shall convene a hearing, upon not less than five days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

(c) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any lease, permit, contract or license pending the final determination pursuant to subparagraph (e) below without the City incurring any penalty or damages for delay or otherwise.

(d) The penalties that may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, transacting business with, or entering into or obtaining any lease, permit, contract or license with or from the City; and/or

(ii) The cancellation or termination of any and all such existing City leases, permits, contracts or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.

(e) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in subparagraphs

(iii) and (iv) below, in addition to any other information that may be relevant and appropriate.

(i) The entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including, without limitation, the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to an entity that is a party to the hearing, including, without limitation, whether the person whose testimony is sought has an ownership interest in the entity, and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its leases, permits, contracts or licenses with the City.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph (d) above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph (b) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

(f) (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer,

principal or employee.

(iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.

(iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(g) In addition to and notwithstanding any other provision of this Contract, the commissioner or agency head may in his or her sole discretion terminate this Contract upon not less than three (3) days written notice in the event the DMA fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other persons, firm corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the DMA or affecting the performance of this Contract.

#### **Section 10.14 Counterparts**


This Contract may be executed in one or more counterparts, each of which when delivered is an original, but all of which taken together constitute one and the same instrument.

[Signature page to follow]

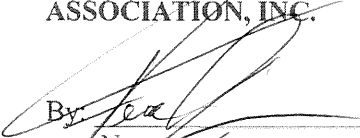


IN WITNESS WHEREOF, the City and the DMA have executed this Contract as of the date first written above.


THE CITY OF NEW YORK

By:   
Name: **Andrew Schwartz**  
Title: **Deputy Commissioner**

GREATER JFK DISTRICT MANAGEMENT ASSOCIATION, INC.

By:   
Name: **Frank Liggio**  
Title: **Chair**

Approved as to Form

  
Acting Corporation Counsel



KEVIN LOUIE  
Notary Public, State of New York  
No. 01LO6121794  
Qualified in Nassau County  
Commission Expires January 31, 2023

IN WITNESS WHEREOF, the City and the DMA have executed this Contract as of the date first written above.

**THE CITY OF NEW YORK**

By: \_\_\_\_\_  
Name:  
Title:

**GREATER JFK DISTRICT MANAGEMENT ASSOCIATION, INC.**

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form

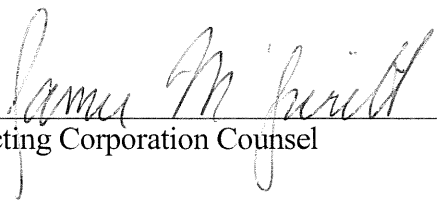
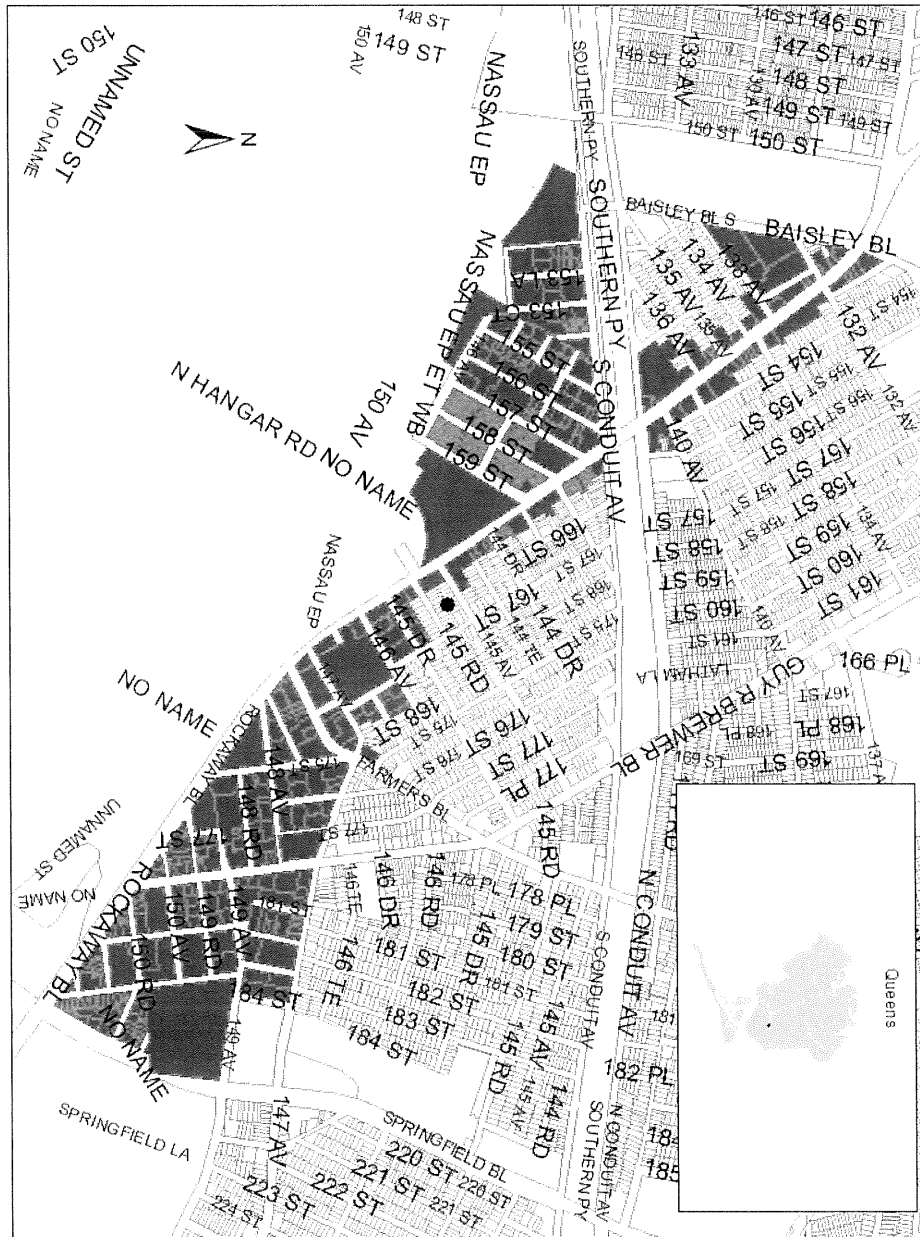
  
\_\_\_\_\_  
Acting Corporation Counsel

EXHIBIT A

MAP OF THE DISTRICT



Greater JFK BID

**EXHIBIT B**

**ANNUAL BUDGET**

Fiscal Year 2018 Business Improvement District Addendum to the Contract between NYC Small Business Services and:

**Greater JFK District Management Association, Inc.**

<b>REVENUE</b>	<b>First Year Budget (as per the District Plan)</b>
Assessment Revenue	\$ 500,000.00
Contracts (ex. plaza maintenance, concessions, etc.)	
Contributions	
Fundraising and Special Events	
Government Grants	
Program Service Revenue (ex. banners, parking lots, trash cans, user rights)	
Interest income	
Miscellaneous	
<b>TOTAL REVENUE</b>	<b>\$ 500,000.00</b>
<b>EXPENSES</b>	<b>First Year Budget (as per the District Plan)</b>
<b>Program Expenses:</b>	
Sanitation	\$ 50,000.00
Public Safety	\$ 100,000.00
Marketing, Special Events, Holiday Lighting	
Beautification and Horticulture	
Streetscape and Repairs	
Other Services (ex. business services, social services, etc.)	
Administration (ex. salaries, rent, supplies, outside contractors, insurance, etc.)	\$ 150,000.00
<i>Please write other expense items in the green spaces below</i>	
District Marketing, Networking & Labor Force Development	\$ 130,000.00
Technical Services & Planning Studies for Project Development	\$ 70,000.00
<b>TOTAL PROGRAM EXPENSES</b>	<b>\$ 500,000.00</b>
<b>Capital Expenses:</b>	
Capital Improvements	\$ -
<b>Other Expenses:</b>	
Debt Service Expense	\$ -
<b>TOTAL EXPENSES</b>	<b>\$ 500,000.00</b>
Net Operating Surplus	\$ -

## EXHIBIT C

### SUPPLEMENTAL SERVICES

The Supplemental Services provided each year of this Contract shall be in accordance with the Annual Budget as developed by the Board of Directors of the DMA. Throughout the Term of this Contract, the Board of Directors shall oversee the general development and implementation of the Supplemental Services provided in the District. Unless modifications are made in accordance with Section 10.06 of the Contract, the following Supplemental Services will be provided during each fiscal year of the Term:

1. Public Safety and Security

Supplemental Public Safety and Security Services shall be permitted in the District. Any public safety and security services shall be administered by the DMA under the direction of the Board of Directors and shall be coordinated with the necessary City agencies and offices having relevant jurisdiction. The DMA may establish a Public Safety Committee to study the current nature of neighborhood crime and stakeholders' perception of safety. The Public Safety Committee shall provide any findings to the DMA for the development of Public Safety and Security Services.

Any security program may include, but not be limited to, a supplemental security presence throughout the District. In the first year a Public Safety Committee is expected to be formed in order to understand the nature of the area's crime incidents, and District members' perceptions of safety, so that appropriate strategies can be identified. Establishing a safe and secure community may involve one or more of the following: a licensed security company, New York City Police Department ("NYPD") Paid Detail program, security camera installation, radio communications network (among property managers, businesses, NYPD, the DMA), and additional area lighting.

2. Sanitation and Maintenance Services

Sanitation and maintenance services are authorized under the Plan. The area maintenance programs may include, but not be limited to, targeted sanitation services, snow and graffiti removal throughout the District in the form of sweeping and cleaning of sidewalks and catch basins, and coordination with NYC Department of Sanitation and the NYPD to address illegal dumping. Snow removal is expected to be performed on an as needed basis by a combination of private snow plows for immediate action and consistent coordination and communication with NYC Department of Sanitation and District area members to effectively clear streets by maneuvering trucks and other vehicles in a systematic manner. Targeted graffiti removal on private property may be performed with alternate, non-assessment funding sources, with the permission and participation of private owners and businesses.

3. District Identity & Marketing

District Identity & Marketing services are authorized and may include, but are not limited to, the creation of a “brand” or image for the area so that property owners can better market their properties, individual businesses can promote their services, and opportunities can be highlighted for all District members. The development of a logo, newsletters, maps, District-wide signage, to-the-trade lists, special events, interactive website, and social media are all tools that go into creating a unified District identity that serves the needs of the entire District and may be employed under this provision.

4. Industry Networking & Labor Force Development

Industry Networking & Labor Force Development services may include, but are not

limited to, establishing close relationships with industry associations, educational institutions and other economic development groups to foster a supportive environment that allows for sharing information, networking, and increased connectivity between companies and workers.

5. Technical Services & Planning Studies for Project Development

Technical Services & Planning Studies for Project Development may include, but are not limited to, engaging the services of a transportation planning firm to evaluate the District's challenges associated with current infrastructure, including transportation, vehicular/pedestrian/truck access, internal circulation and parking. In addition to transportation planning issues, other planning studies and surveys may be necessary to evaluate current conditions and trends to inform decision-making for District programs and seeking support for specific public sector improvements. The District, with an established communications program developed by an information technology professional, could improve responsiveness and fill a gap with additional services where the need is great.

6. Advocacy & Administration

The DMA shall act as an advocate on behalf of the stakeholders of the District to government agencies and elected public officials. The administration of the District shall be by salaried staff which may include, but not be limited to: an Executive Director, Project Managers, and any other special staff and/or consultants that the Board of Directors may deem necessary from time to time, such as communications professionals, and others with specialized technical knowledge and abilities. Administrative costs may also include office-related expenses such as rent, telephone, insurance, supplies, and other ordinary, necessary, and reasonable services and supplies.

7. Additional Services

Subject to any approvals and controls that may be required by any City agency having

jurisdiction thereof and in addition to the approval of the Board of Directors of the DMA and written approval by the Commissioner of the Department of Small Business Services, in subsequent years, the District may provide such additional services as are permitted by law.



EXHIBIT D

EXECUTIVE ORDER NO. 50  
EQUAL EMPLOYMENT OPPORTUNITY

The DMA agrees that:

- (1) it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation;
- (3) it will state in all solicitations or advertisements for employees placed by or on behalf of the DMA that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) it will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50; and

The DMA understands that in the event of its noncompliance with nondiscrimination clauses of this Contract, such noncompliance shall constitute a material breach of the Contract.

The DMA further agrees that it will refrain from entering into any contract or contract modification with a subcontractor who is not in compliance with the equal employment opportunity commitments of E.O. 50.

EXHIBIT E

TAX AFFIRMATION

(SEE SEPARATE ATTACHMENT)

**AFFIRMATION**

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

Full name of proposer or bidder

GREATER JFK DISTRICT MANAGEMENT ASSOCIATION, INC.

Address 157-11 ROCKAWAY BLVD.

City JAMAICA State NEW YORK

Zip 11434

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

( ) A Individual or Sole Proprietorship  
SOCIAL SECURITY NUMBER \_\_\_\_\_

( ) B Partnership, Joint Venture or other unincorporated organization  
Employer Identification Number \_\_\_\_\_

( X ) C Corporation  
Employer Identification Number 822193145


By:  \_\_\_\_\_  
Signature

CHAIR  
Title

*(Must be signed by an officer or duly authorized representative.)*

If a corporation, place seal here:

Under the Federal Privacy Act the furnishing of Social Security Number is by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying businesses which seek City contracts.

  
KEVIN LOUIE  
Notary Public, State of New York  
No. 01LO6121794  
Qualified in Nassau County  
Commission Expires January 31, 2021

## APPENDIX A

### CAPITAL IMPROVEMENTS

The Capital Improvements to be provided pursuant to the Plan may include, but are not limited to the following:

1. Exterior security and pedestrian area lighting to enhance public safety and support marketing efforts; and
2. Streetscape and sidewalk amenities to enhance the pedestrian environment, provide a visual identity to the District and to support business operations, particularly in terms of District-wide and way-finding signage.

## APPENDIX B

### USER RIGHTS

Subject to the approval and control by the appropriate City agency having jurisdiction thereof, the DMA may undertake or permit commercial activities or other private uses in the District; provided, however, that all such rights are subject to local laws, rules or regulations (including City franchising authority and granted City franchises). The DMA may undertake or permit the following Specific User Rights:

1. Any marketing or beautification program that makes use of the NYC Department of Transportation light poles or fixtures.
2. Information Stands
3. News racks
4. Promotion signs or kiosks
5. Such other User Rights as may be appropriate to benefit the District, so long as any additional proposed User Rights not specifically mentioned here are coordinated and approved by the appropriate Agency having jurisdiction thereof and comply with all local laws and regulations, and the Plan.