

**DISBURSEMENT AGREEMENT  
BETWEEN THE CITY OF OAKLAND  
AND  
THE JACK LONDON IMPROVEMENT DISTRICT**

This Disbursement Agreement (“Agreement”) is made and entered into as of April 15, 2014, between the CITY OF OAKLAND, a municipal corporation (“City”), and the JACK LONDON IMPROVEMENT DISTRICT, a California non-profit corporation (“Recipient”) (together, the “Parties”).

**Whereas**, the City Council, by Resolution No. 84534 C.M.S. (July 13, 2013), approved the creation of the Jack London Improvement District (“District”) pursuant to the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999); and

**Whereas**, the District is intended to benefit the assessed parcels in the district area by providing them with improvements of particular benefit as more specifically identified in the District Management Plan for the Jack London Improvement District (“District Plan”), attached hereto as **Exhibit A** and approved annual reports and budgets on file with the City Clerk; and

**Whereas**, the District includes several parcels owned by the City of Oakland, acting by and through its Board of Port Commissioners (“Port”), which properties fall within and are encumbered by the state public trust (“Trust”), which requires that revenues generated from the trust-impressed properties be used for purposes consistent with the Trust and, in ordinary circumstances only on lands subject to the Trust and administered by the Port; and

**Whereas**, the City Administrator finds that this Agreement shall not result in the loss of employment or salary by any person having permanent status in the competitive service of the City; and

**Whereas**, Recipient agrees to use good faith efforts to comply with City’s programs and policies as specified in this Agreement;

**Now Therefore**, the parties to this Agreement agree as follows:

1. **Trust Agreement**. The Parties acknowledge that the District includes several parcels owned by the Port, which properties fall within and are subject to the Trust, which requires that revenues generated from the trust-impressed properties be used for purposes consistent with the Trust and, in ordinary circumstances only on lands subject to the Trust and administered by the Port. Execution of this Agreement is contingent upon simultaneous execution by Recipient of the Jack London Improvement District Public Trust Agreement executed by the Port and the City on July 16, 2013 (“Trust Agreement”) and acknowledged and confirmed by the Jack London Improvement District Steering Committee, attached hereto as **Exhibit E**. Recipient will comply with the terms of the Trust Agreement. Notwithstanding anything to the contrary in this Agreement, to the extent of any conflict between this Agreement and the Trust Agreement, the Trust Agreement shall control.

2. Scope of Disbursement Duties. Recipient agrees to perform the tasks, responsibilities and obligations as specified in this Agreement, in the District Plan (“Disbursement Duties”) attached hereto as **Exhibit A** and on file with the City Clerk, in the Trust Agreement (**Exhibit E**), and in the annual reports and budgets approved by the City. Recipient shall designate an individual who shall be responsible for communications with City for the duration of this Agreement. Nothing in this Agreement shall be construed to require Recipient to perform as specified in the District Plan if funds are not available to perform those duties from the District revenues.
3. Method of Performing Disbursement Duties. Recipient will determine the method, details and means of performing the Disbursement Duties described in **Exhibit A**, provided that said method, details and means are consistent with the Trust Agreement.
4. Time of Performance. Recipient’s Disbursement Duties shall begin on April 15, 2014, and shall be completed by December 31, 2023, contingent upon the review and approval of the annual report submitted to the City pursuant to Section 5.9.1 of this Agreement and the annual collection of revenues generated from the District, or unless this Agreement is otherwise terminated pursuant to Section 13 of this Agreement. Notwithstanding the foregoing, Recipient’s obligation to pay to the Port for Port-Provided Services (as defined in Page 3, Section 3(a) of the Trust Agreement) any unused funds from the Port Share (as defined in Page 3, Section 3 of the Trust Agreement) pursuant to the Trust Agreement (page 4, Section 3(d)) shall survive.
5. Recipient Responsibilities.
  - 5.1. Program Implementation and Operation. Recipient shall be fully responsible for developing, implementing, directing and operating the District Plan. Recipient assumes all responsibility for completing activities as required to implement the District Plan and its programs, and in a manner consistent with the Trust Agreement.
  - 5.2. Competitive Bidding. Recipient shall abide by all competitive bidding policies outlined in the District Plan. If no competitive bidding policy is contained in the District Plan, then Recipient will make a good faith effort to develop and implement a reasonable competitive bidding policy when securing services for the District and will keep and provide copies of all bids submitted for review by any affected property owner or by the City upon request. No service contract may extend beyond the term of this Agreement without the express written consent of the City and is subject to provisions in Section 5.9.3 below.
  - 5.3. Separate Tracking of District Funds. All District funds received by Recipient pursuant to this Agreement shall be tracked separate and apart from any other funds administered by Recipient and shall be reported to the City in the format outlined in Section 5.10 below. To ensure compliance with the Trust, Recipient will maintain, account for and expend all assessments received from the Port in accordance with the requirements of Page 3, Section 3 of the Trust Agreement (**Exhibit E**). Copies of all District bank account statements shall be made available to the City upon request.

- 5.4 District Name on All Activities Funded by the District. The name of the District or an appropriate abbreviation shall appear on all special activities, marketing and promotional materials funded in whole or in part by District moneys. Prior to using the City's name on promotional materials related to any special event, Recipient shall first consult with City for use of City of Oakland name.
- 5.5 Reporting to Affected Property Owners. A statement of activities funded by District moneys and the cost of each shall be distributed to every affected property owner either by e-mail or by U.S. mail once a year within 60 days of each fiscal year end. A copy of this statement may also be made available at a local public library and shall be posted on Recipient's website within 60 days of each fiscal year end and a list of property owner names, addresses and/or e-mail addresses to which the notice was sent shall be made available to the City or the public upon request.
- 5.6 Ratepayer Survey. City may request that Recipient administer a ratepayer survey to all affected property owners in format acceptable to the City that will be substantially the same format attached as **Exhibit B**. Such survey shall be performed at a time specified by the City at its sole discretion but in no event shall such survey be required more than once every twelve (12) calendar months. Results of the survey shall be compiled by Recipient and a summary submitted to the City. The City may request that copies of each separate property owner response also be submitted to the City by Recipient as an attachment to the summary report.
- 5.7 Open Meetings. Recipient shall comply with the open meeting requirements of the Ralph M. Brown Act (California Government Code Section 54950 *et. seq.*) with regard to its performance of this Agreement.
- 5.8 Creation and Maintenance of Central Files and Records. Recipient shall create and maintain central files and records for the District that shall contain documents designated by the City. Such files and records shall be made available for inspection as specified in Section 17 below and shall at a minimum include current copies of this Agreement, the District Plan, the assessment database described in Sections 5.10.7 and 5.11 below, the latest annual report submitted by the District Advisory board and approved by the City, a list of Recipient board members, proof of insurance coverage required pursuant to this Agreement, and all other financial and operational records related to this Agreement, including, but not limited to, those required by the Ralph M. Brown Act pursuant to Section 5.7 above.
- 5.9. Program and Budget Reports.
- 5.9.1. Annual Report and Budget. Recipient shall submit to the City an annual report and budget for each fiscal year for which assessments are to be levied and collected, in a format to be designated by the City. The report shall be prepared in accordance with the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999) as amended. Annual reports shall be submitted on or before September 1 of each year and shall describe improvements and activities provided in the prior fiscal year in addition to other information required by the above-

referenced legislation. The District's next annual report and budget shall be submitted on or before September, 2014. Any proposed changes to the assessments, including allowable percentage increases, if any, shall not be implemented until the following fiscal year. If there are changes requested that would require a public hearing and/or a public meeting pursuant to state law as amended, then the report shall be submitted at a time to be determined by the City and in sufficient time prior to September 1 of each year to comply with public notice requirements and the City agenda processing timelines then in effect. The budget for any year shall not be effective until approved by the City as being in compliance with the District Plan as incorporated in Resolution No. 84534 C.M.S.

5.9.2. Budget. Each program specified in the Plan and succeeding budgets shall be implemented within the budget amount specified and in accordance with the District Plan in Exhibit A, with the Trust Agreement, and with subsequent annual reports and budgets approved by the City. Any obligations or expenditures for items not budgeted, or in excess of the line item amount budgeted shall not be paid from the assessments collected for the District without prior written agreement from the City. Recipient and City agree that amounts shown in the District Plan or subsequent annual reports reviewed and approved by the City were (or will be) the best estimates of the cost of those District related services, improvements and activities at the time the estimates were (or will be) made. The parties anticipate that deviations from those estimates may occur and that some District related services, improvements and activities may not be completed within the particular year budgeted, given normal delays that can be expected with these types of programs and changing circumstances. Recipient will use its best efforts to implement and complete all District programs specified in the District Plan and annual reports; however, it is possible that Recipient may not expend the precise amount budgeted for any particular line item in the approved annual budget. A ten percent (10%) deviation in a budget line item set forth in the approved annual report for any respective year will not be considered significant so as to constitute a material breach of this agreement. If deviation in a budget line item exceeds 10%, or if Recipient desires to make budget allocation changes that exceed 10% of the total budget for all District programs for a given fiscal year, and such changes would, in the opinion of the City, adversely impact the special benefits conferred on the affected District properties, Recipient will request that the City modify the District Plan or annual budget pursuant to Section 36450 *et al.* of California Streets and Highways Code.

5.9.3. General Fund Not Liable. Neither the General Fund of the City, nor any other fund, revenue source or monies whatsoever of the City, except the actual collected District assessment net revenue shall be liable for payment of any obligations arising from this Agreement. Any obligations incurred by Recipient are not a debt of the City, nor a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon its income, receipts or revenues.

5.10. Financial Statements.

Within 60 days of each fiscal year end, Recipient shall submit a full disclosure financial statement in a form to be designated by the City and shall at a minimum include an Actual versus Total Annual Budgeted Expenditures statement indicating each line item expenditure versus the corresponding line item amount set forth in the annual report submitted to and approved by the City pursuant to Section 5.9.1 above. The financial statement shall also clearly indicate by line item any deviations between actual and budgeted expenditures. For even numbered years in addition to the above financial statement, at no expense to the City, Recipient shall secure and submit to the City a Certified Public Accountant's (CPA) Review Report within 60 days of fiscal year end, commencing with fiscal year 2014.

The Review Report must be prepared by a qualified, independent, licensed CPA acceptable to the City. Upon the City's review of the CPA Review Report or financial statement, if the City is not satisfied with the statement or report or with regard to the propriety of Recipient's commitment or expenditure of funds during the corresponding reporting period, then the City may request, at no expense to the City, that the Recipient provide either an Expanded Review of the District or require that the Recipient prepare full audited financial statements. For purposes of preparing the above financial statements and reports, Budgeted Expenditures shall mean expenditures approved by the City and on file with the Office of the City Clerk for the corresponding fiscal year, as amended by the City pursuant to applicable legislation.

- 5.10.1. Where applicable, the statement or audits must be conducted in accordance with Government Auditing Standards (2003 and subsequent revisions) prescribed by the Comptroller General of the United States. All other reports and audits shall be prepared in accordance with Generally Accepted Accounting Principles in the United States of America.
- 5.10.2. If an audit is required, it must be conducted by a qualified, independent, licensed Certified Public Accounting (CPA) firm acceptable to the City. Recipient will make good faith efforts, to procure its reports and audits from qualified small, local and minority and women-owned Oakland firms.
- 5.10.3. The financial statement, CPA Review Report and/or audit may be funded from assessment proceeds as part of the general administration of the District. At all times the City shall reserve full rights of accounting of these funds.
- 5.10.4. If a full audited financial statement is required, a Management Letter shall be requested from the Certified Public Accounting firm and be presented to the City.
- 5.10.5. The statement, report or audited financial statement and the Management Letter shall be delivered to the City at the address provided in Section 26 of this Agreement.

5.10.6. Recipient shall make available on-line current copies of District's quarterly financial statements and an annual statement of activities funded by District moneys and the cost of each for access by all interested parties.

5.10.7. Assessment Records. Recipient shall maintain, including in the Central Files described in Section 5.8 above, complete records for each property assessed within the District. Said records will contain the following information:

- (i) Assessor's parcel number
- (ii) Street address
- (iii) Name and address of owner of record
- (iv) Amount of assessment levied
- (v) Proportionate financial obligation imposed, compared to District
- (vi) Assessment Calculation, including all variables used
- (vii) Such other information as the City or City's Treasury Division may require.
- (viii) Recipient agrees to maintain such information and make it available to property owners within the District during regular business hours.

5.11. Annual Assessment Preparation. In June of each operating year, Recipient shall supply the City with updated assessment data for the subsequent tax year (July 1 – June 30), in a format to be prescribed by the Treasury Division of the City's Financial Management Agency. The assessment data shall include any of the information required in "Assessment Records," paragraph 5.10.7, above, that is requested by the Treasury Divisions. Maintenance of the database for assessment billing and collection purposes shall be the responsibility of the Recipient. At least once each year Recipient shall update the assessment database for purposes of billing and collections to reflect changes that may have occurred in the assessment roll since the prior fiscal year. The City's Treasury Division may, at its discretion, provide assistance in compiling or correcting data or information relative to the assessments; however, the City shall not be obligated to prepare, produce or correct such data or information.

Any corrections or adjustments to the assessment database, as well as the accuracy of any such corrections or adjustments, shall be the responsibility of Recipient.

Upon request of the City, Recipient shall promptly complete requests for an investigation of discrepancies and make all reasonable efforts to obtain additional documentation related to

the assessments upon any or all of the affected properties for which a correction or adjustment is requested.

5.12. Liaison with Community. Recipient shall maintain an ongoing relationship with the assessed District property owners and any affected residents and business owners, which shall include:

5.12.1. Annual Public Meeting. Recipient shall organize and conduct, at a minimum, one annual public meeting to be noticed in writing to all property owners of record in the District. Notice may be provided by U.S. mail, e-mail, or by posting of the notice on District's website. Such notice shall be in addition to the requirements of the Ralph M. Brown Act referenced in Section 5.7 above. The annual meeting shall be conducted at a location convenient to the District. A representative of the City Administrator or his/her designee may attend as a member of the panel to provide information and assistance.

5.12.2. Meetings with the District's Advisory Board as required and outlined in the District Plan and the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999). For purposes of this section Advisory Board shall mean the advisory board appointed by the City pursuant to Section 4.48.190 of the above City of Oakland Business Improvement Management District Ordinance.

5.12.3. Other Events and activities that involve the members of the District and that encourage attainment of the goals and objectives of the District Plan.

5.12.4. Recipient shall notify all assessees in writing when an increase in assessments is proposed prior to any increase of assessments being recommended to the City.

5.12.5. Cost and Expense Records. In accordance with generally accepted accounting principles, Recipient shall maintain full and complete records of activities performed under this Agreement. Such records shall be open to inspection by the City. Recipient agrees to maintain all such records a minimum of four years after the termination of this Agreement.

5.12.7 Program Coordination. Recipient shall complete Disbursement Duties and shall cooperate with the City Administrator or his/her designee and shall utilize and cooperate with such personnel as the City Administrator or his/her designee shall designate in the implementation of the District Plan and approved annual reports, including program development and coordination of District activities with City functions.

6. City Responsibilities.

6.1. Administration. This Agreement shall be administered by the City Administrator or his/her designee on behalf of the City. The City Administrator or his/her designee shall:

6.1.1. Coordinate the regular collection of the annual assessment through an Interagency Agreement with the County of Alameda. Manually bill tax-exempt entities that are not billed through the County of Alameda property tax billing procedures.

6.1.2. Provide general assistance, clarification, or information to Recipient, the assessed parties and the public.

6.1.3. Direct the disbursement of funds to Recipient in accordance with this Agreement and subsequent approved budgets. City shall promptly forward funds to Recipient in accordance with the terms of this Agreement.

6.1.4. Maintain a liaison with Recipient, including coordination of services with and from various City agencies, departments or divisions, as mutually agreed to by the City Administrator or his/her designee and Recipient.

6.2. Discrepancies and Assessment Disputes. The City Administrator or his/her designee may assist with the resolution of any discrepancies in individual assessment amounts or calculations. The City Administrator or his/her designee reserves the right to:

6.2.1. Conduct reviews of existing primary data; verify assessment data as compiled by any consultant, subcontractor or other party hired by Recipient; and perform field or on-site inspections to verify the accuracy of existing or secondary data, or to investigate the claim of any property owner in the District.

6.2.2. Recalculate the assessment amount due and direct the City Treasury Division to respond appropriately.

6.3. Disbursements. The annual District assessments will be collected through the City Treasury Division collection procedures and will be transmitted to Recipient less the City's cost of billing and collection, described in Paragraph 6.3.4, below. The City shall not be obligated to disburse amounts of the assessments not collected at the time called for pursuant to the schedule for disbursements. Upon request by Recipient and with approval of the City Administrator (or his or her designee), funds may be disbursed at an earlier time than provided for herein.

6.3.1. Schedule of Funds Disbursement. Of the annual appropriation, disbursements shall be in the following approximate percentages on or around the following dates, contingent upon receipt of funds from assesseees:

For fiscal year 2013-2014 funds:



April 15	Fifty percent (50%) of annual appropriation
April 30	Forty percent (40%) of annual appropriation
August 15	Ten percent (10%) of annual appropriation

For funds pertaining to all subsequent fiscal years:

December 31	Fifty percent (50%) of annual appropriation
April 30	Forty percent (40%) of annual appropriation
August 15	Ten percent (10%) of annual appropriation

- 6.3.2. Funds shall be disbursed automatically by the City to Recipient at the time and in the amounts designated in Section 6.3.1 above. Disbursements shall be contingent upon Recipient being in compliance with all provisions set forth in this Agreement and in the Trust Agreement. Disbursements shall include funds collected from the delinquent payment of assessments by any property owner in the District, less the applicable City costs and fees outlined in Section 6.3.4 below. The City reserves the right to request at any time a current financial summary of all District funds committed and/or spent during the previous quarter(s) from Recipient. Such financial summary shall be submitted by Recipient to the City within ten (10) business days of the City's request. The City reserves the right to review the summary and to refuse to disburse any further installments if it is not satisfied with the statement or with regard to the propriety of Recipient's commitment or expenditure during the previous quarter(s). This provision is solely for the benefit of the City and does not confer any rights or cause of action on behalf of any third parties including the Advisory Board or assesses of the district.
- 6.3.3. If there is an adjustment due to changes in the receipts of the District, it may be adjusted in the following year. The City shall not be responsible for delays in payment by affected assesses.
- 6.3.4. Costs and Expenses. The City of Oakland and the County of Alameda will deduct from the funds collected on behalf of the district the respective costs and fees of the City and County collection, including the City's costs of administering the District, except as provided herein. Such costs and fees shall include amounts charged by the County in addition to a 1% (one percent) fee charged by the City. The City's 1% fee shall be calculated on the basis of total funds received from the County on behalf of the District plus 1% of all amounts received from tax-exempt property owners billed directly by the City, excluding Port funds. Pursuant to the Trust Agreement, funds collected from the Port shall not be used to pay for Recipient or City administrative costs. Deduction for this 1% of the collected funds shall be made from the second payment as described in the schedule in Section 6.3.1 above. Such costs and fees will be withheld prior to making any distribution to Recipient. At the request of Recipient,

City shall provide Recipient with a detailed statement of any costs and fees incurred and deducted by City.

7. Ownership of Documents. The designs, plans, reports, files, invoices, investigation materials documents prepared or acquired by or for Recipient pursuant to this Agreement become the joint property of the City and Recipient. Recipient agrees to exercise diligence in providing for the secure storage of all such materials and to provide copies for official City records on request from City.
8. Independent Contractor. It is expressly agreed that in the performance of the Disbursement Duties necessary to carry out this Agreement, Recipient shall be, and is, an independent contractor, and is not an employee of City. Recipient has and shall retain the right to exercise full control and supervision of the activities, and full control over the employment, direction, compensation and discharge of all persons assisting Recipient in the performance of its Disbursement Duties hereunder. Recipient shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Recipient's own acts and those of Recipient's subordinates and employees.
9. Recipient Not Agent of City. Neither Recipient nor any of its employees, agents, representatives, contractors or subcontractors is or shall be deemed to be an agent of the City for any purpose, including fulfillment of Recipient's obligations pursuant to this Agreement.
10. Recipient's Qualifications. Recipient represents that it has the qualifications and skills necessary to perform the Disbursement Duties under this Agreement in a competent and professional manner without the advice or direction of City. This means Recipient is able to fulfill the requirements of this Agreement. Failure to perform all of the Disbursement Duties required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Recipient has complete and sole discretion for the manner in which the work under this Agreement is performed. Recipient will arrange for any necessary staff and board training regarding Recipient's obligations under this Agreement, as well as the requirements of the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999), as amended, relating to the operation of a Business Improvement Management District.
11. Non-Exclusive Relationship. Recipient may perform services for, and contract with, as many additional clients, persons or companies as Recipient, in its sole discretion, sees fit.
12. Compliance with the City of Oakland Business Improvement Management District Ordinance. Recipient shall comply with all requirements of the City of Oakland Business Improvement Management District Ordinance (Chapter 4.48, Ordinance 12190, 1999); as amended (**Exhibit C**) relating to the operation of a Business Improvement Management District.
13. Termination on Notice. The City may terminate this Agreement for Recipient's breach of any provision of this Agreement. In addition to the foregoing, annually the City Administrator or

his/her designee may review the performance of Recipient under this Agreement and, at the City Administrator's or his/her designee's sole discretion, the City Administrator or his/her designee may terminate this Agreement without cause by giving sixty (60) days' written notice to Recipient. Notwithstanding any other provision of this Agreement City may terminate this Agreement at any time upon request of the City-appointed District Advisory Board by giving thirty (30) days' written notice to Recipient. Such notice shall be made in accordance with the "Notices" section of this Agreement.

14. Agents/Brokers. Recipient warrants that it has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Recipient working solely for it, to solicit or secure this Agreement, and that Recipient has not paid or agreed to pay any contactor, subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.
15. Non-Discrimination/Equal Employment Practices. Recipient shall use good faith efforts to voluntarily comply with the City's Non-Discrimination/Equal Employment programs and policies specified as follows:
  - 15.1. Recipient shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement. Recipient and Recipient's contractors, subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS - Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
16. Living Wage Ordinance. Recipient, at its discretion, will use good faith efforts to comply with payment of wage rates stipulated in the City's Living Wage Ordinance (Ord. 12050 § 1, 1998) on file with the Office of the City Clerk.
17. Inspection of Books and Records.
  - 17.1. During the term of this Agreement, and for a period of four (4) years after the termination of this Agreement, or two (2) years after the closure of any disputed matter, whichever occurs later, (the "Audit Period"), Recipient shall maintain financial and operational records related to this Agreement. Recipient shall make all books and records open to inspection by the governing agency, City Auditor or their individually assigned designee during normal business hours at a location within a twenty-five (25) mile radius of the City of Oakland for the period designated.

- 17.2. During the Audit Period, Recipient hereby grants to City or its designee(s), upon one (1) day prior notice to Recipient, access to and the right to make copies of any of Recipient's books, statements, documents, papers or records ("Financial Information") that arise from or relate to the terms and conditions of this Agreement and the performance of any duties pursuant to this Agreement, or any other agreement between the parties, in order to permit City to conduct audits, examinations, excerpts and transition audits (collectively hereafter referred to as "Audit or Audits"). Recipient authorizes the City Auditor or his designee to obtain such information directly from these sources. City's right to Audit and to make copies shall apply whether such Financial Information is located at Recipient's offices or at Recipient's banks, financial institutions or lenders, or at the offices of Recipient's financial consultants, accountants or bookkeepers. For the purposes of such Audit, Recipient waives its right to the confidentiality of all Financial Information and Recipient authorizes the City or its designee(s) to access, obtain and make copies of Financial Information directly from Recipient's banks, financial institutions or lenders, or from Recipient's financial consultants, accountants or bookkeepers.
- 17.3. Such Audits may be performed by City through its employees or by its designees including, without limitation, a third party auditor retained by City. City's right to Audit under this section is independent, separate and distinct from any right to audit such books and records reserved by law or contract, or as a condition of funding, by the county, state or federal government.
- 17.4. If any Audit reveals any variance from any financial record or report received from Recipient by City in excess of one percent (1%) of the amount shown on such financial record or report, Recipient shall immediately reimburse City for all costs and expenses incurred in conducting such Audit. Such reimbursement shall be paid for by Recipient using Recipient's own funds, separate and apart, from any funds received by Recipient pursuant to this Agreement. Failure to pay such variance and the cost of the Audit as required herein shall constitute a material breach of the Agreement and City may terminate the Agreement in accord with the termination provisions of Section 13 of this Agreement and Recipient shall be subject to a breach of contract claim for damages by City and a claim for return of all funds provided to Recipient by City pursuant to this Agreement.

18. Insurance. Unless a written waiver is obtained from the City's Risk Manager, Recipient must provide the insurance listed in **Schedule Q, as amended from time to time by the City, of Exhibit D** attached hereto and incorporated herein by reference.

19. Indemnification.

- 19.1. Notwithstanding any other provision of this Agreement, Recipient shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees, and Port, and its commissioners, officers, officials, employees, and agents (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments,

obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Recipient's obligations, representations or warranties under this Agreement;
- (ii) Act or failure to act in the course of performance by Recipient under this Agreement;
- (iii) Negligent or willful acts or omissions in the course of performance by Recipient under this Agreement;
- (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Recipient;
- (v) Unauthorized use or disclosure by Recipient of confidential information that the City may provide Recipient; and
- (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.

19.2. For purposes of the preceding Subsections (i) through (vi), the term "Recipient" includes Recipient, its officers, directors, employees, representatives, agents, servants, consultants, contractors and subcontractors.

19.3. City shall give Recipient prompt written notice of any such claim of loss or damage and shall cooperate with Recipient, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

19.4. Notwithstanding the foregoing, if Recipient fails or refuses to defend City with Counsel acceptable to City, City shall have the right to engage its own counsel for the purposes of participating in the defense. In addition, City shall have the right to withhold any payments due Recipient in the amount of anticipated defense costs plus additional reasonable amounts as security for Recipient's obligations under this Section 19. In no event shall Recipient agree to the settlement of any claim described herein without the prior written consent of City.

19.5. Recipient acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim that potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Recipient by City or Port and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Recipient's liability under this Agreement shall not apply to any action or claim arising from the negligence, active negligence or willful misconduct of an Indemnitee.

19.6. All of Recipient's obligations under this Section 19 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

19.7. The indemnity set forth in this Section 19 shall not be limited by the City's insurance requirements contained in **Schedule Q, as amended from time to time by the City, of Exhibit D** hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Recipient in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

20. **Political Prohibition.** Subject to applicable State and Federal laws, moneys paid pursuant to this agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

21. **Religious Prohibition.** There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

## 22. **Conflict of Interest**

### 22.1 Recipient

The following protections against conflict of interest will be upheld:

- (i) Recipient certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- (ii) Recipient certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.
- (iii) Recipient shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Recipient.
- (iv) Recipient warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission that has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to

conflicts of interest in public contracting. Recipient shall exercise due diligence to ensure that no such official will receive such an interest.

- (v) Recipient further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Recipient to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Recipient or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Recipient agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Recipient's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- (vi) Recipient understands that in some cases Recipient or persons associated with Recipient may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Recipient further understands that, as a public officer or official, Recipient or persons associated with Recipient may be disqualified from future City contracts to the extent that Recipient is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- (vii) Recipient shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

## 22.2 No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.

### 22.3 Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Recipient understands and agrees that, if the City reasonably determines that Recipient has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Recipient to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Recipient is responsible for the conflict of interest situation.

23. Assignment. Recipient shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.
24. Business Tax Certificate. Recipient shall obtain and provide proof of a valid City business tax certificate, if applicable. Said certificate must remain valid during the duration of this Agreement.
25. Governing Law. This Agreement shall be governed by the laws of the State of California.
26. Notice. If either party shall desire or be required to give notice to the other, such notice shall be given in writing, by prepaid U.S. certified or registered postage, addressed to recipient as follows:

For the City of Oakland:

City of Oakland  
Department of Economic and Workforce Development  
250 Frank H. Ogawa Plaza, Suite 3315  
Oakland, CA 94612  
ATTN: Maria Rocha, BID/CBD Program

For Recipient:

Jack London Improvement District  
c/o Sara May  
580 Second Street, Suite 260  
Oakland, CA 94607

27. Entire Agreement of the Parties. Other than the Trust Agreement and subject to Section 1 of this Agreement, this Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of Disbursement Duties by Recipient for City with regard to the District and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those duties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any



party, or anyone acting on behalf of any parties, that are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

28. Modification. Any modification of this Agreement will be effective only if it is in a writing signed by both parties.

29. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

30. Approval. If the terms of this Agreement are acceptable to Recipient and City, then sign and date below.

**CITY:**

**RECIPIENT:**

CITY OF OAKLAND,  
a municipal corporation

JACK LONDON IMPROVEMENT DISTRICT  
a California nonprofit corporation

By: [Signature]  
Name:  
Title:

By: [Signature]  
Name: ~~Bill Stotler~~ <sup>WCS</sup> William C. STOTLER  
Title: President

4/11/14  
(Date)

3/31/2014  
(Date)

[Signature]  
(Department Head Signature)

By: [Signature]  
Name: Sara May  
Title: Secretary

By: [Signature]  
Name: Gary Knecht  
Title: Treasurer

75323 C.M.S. and 84534 C.M.S.  
Resolution Number

Approved as to form and legality:  
[Signature]  
Alix A. Rosenthal  
Counsel to the City of Oakland

Approved as to form and legality:  
[Signature]  
Kenneth Katzoff, Katzoff & Riggs LLP

**DISBURSEMENT AGREEMENT  
BETWEEN THE CITY OF OAKLAND  
AND  
JACK LONDON IMPROVEMENT DISTRICT**

**Exhibits:**

**Exhibit A:** [Jack London Improvement District Management Plan](#)

**Exhibit B:** [Rate Payer Survey](#)

**Exhibit C:** [Oakland Business Improvement Management District Ordinance \(Chapter 4.48, Ordinance 12190, 1999\)](#)

**Exhibit D:** [Schedule Q Insurance Requirements](#)

**Exhibit E:** [Jack London Improvement District Public Trust Agreement executed by the City and Port of Oakland on July 16, 2013](#)