



1 early-June consistent with the program for the coming fiscal year. The Annual Report shall  
2 be prepared in a manner acceptable to the City Manager or his designee, the Business  
3 Improvement District Program Manager ("BID Manager"), and shall meet all minimum State  
4 law requirements for Annual Reporting, which include: (a) any proposed changes to  
5 boundaries of the district or to any benefit zones within the district; (b) improvements,  
6 maintenance, and activities to be provided for that fiscal year; (c) estimate costs of  
7 improvements, maintenance, and activities for that fiscal year; (d) method and basis of  
8 levying the assessment in sufficient detail to allow each member to estimate the amount of  
9 their levy for that fiscal year; (e) estimated amount of any surplus or deficit revenues to be  
10 carried over from a previous fiscal year; and (f) amount of any contributions to be made  
11 from sources other than assessment levies.

12           3. Association will prepare and file with the BID Manager a six-month  
13 Progress Report of the activities described in the Annual Report. The Progress Report shall  
14 be filed annually by mid-April for the period ending March 31st. The Progress Report shall  
15 include: (a) an update on programs, achievements, and activities; (b) a six-month Financial  
16 Report, which shall include a line-item schedule which matches expenditures with specific  
17 amounts and activities designated in the Annual Report; and (c) performance metrics to  
18 help quantify the impact of the Annual District Program. The Progress Report shall be  
19 prepared in a manner and format approved by the BID Manager.

20           4. Association will prepare and file with the BID Manager an end-of-the-  
21 year Financial Report, which shall include a line-item schedule which matches  
22 expenditures with specific amounts and activities designated in the Annual Report to be  
23 reviewed by the BID Manager for consistency with the Annual Report. The end-of-the-year  
24 Financial Report shall be submitted no later than mid-October every year.

25           5. The Association's financial records relating to the performance of this  
26 Agreement shall be kept and maintained in accordance with generally accepted accounting  
27 principles. These records shall be current, complete and available for inspection and as  
28 deemed necessary by the BID Manager. The Association shall provide all reports,

1 documentation or information requested or required by the City within fifteen (15) days of  
2 a written request from the BID Manager to the Executive Director and/or President of the  
3 Board unless a longer period of time is otherwise expressly stated by the BID Manager.

4           6. Association may accrue surplus of funds paid by the City to  
5 Association, but not expended by Association, provided that Association identifies such  
6 surplus in the Annual Report and shows the use of the surplus along with other assessment  
7 funds.

8           7. Assessment money may be used to finance fund-raising activities  
9 intended to generate additional revenue for use by the Association. However, the sum of  
10 all assessment money used for this purpose shall be accounted for and proceeds from the  
11 fund-raiser equal to that sum shall be used for purposes approved by the City Council and  
12 conforming to the purposes of the assessment levy as defined by State law.

13           8. Association is authorized to adjust expenditures in any expenditure  
14 category that carries out actual programs and activities, such a Promotions and Special  
15 Projects, provided that: (a) prior written approval is obtained from the BID Manager, and  
16 (b) the change does not exceed twenty percent (20%) of the category total. Furthermore,  
17 the Association may adjust line items within any category as long as the limits on categories  
18 as described above are maintained, and the total expenditures do not exceed the total  
19 budget or the total assessment revenue available, whichever is less.

20           The amount of assessment revenue expended in categories of  
21 administration and general office can be increased only with the City Council's approval,  
22 but may be decreased or reallocated between line items with the prior written approval of  
23 the BID Manager.

24           Use of contingency funds may be made for purposes defined in the  
25 Annual Report.

26           9. The BID Manager will cause to be reported to the Association the total  
27 assessment revenue collected by the City every two (2)-month period of the fiscal year.

28           10. The City will cause to be paid to the Association the total amount of

1 funds collected during each two (2)-month period of the fiscal year. The payment and  
2 accompanying reporting will be processed and sent to the Association as soon as possible  
3 after the month is closed by the Department of Financial Management. However, the total  
4 amount paid to the Association shall not exceed the total amount of Fourth Street Parking  
5 and Business Improvement Area ("FSPBIA") assessments and charges received by the  
6 City.

7 11. Association will use none of the funds it receives from the Agreement  
8 for any expense, including administration and overhead, in support of any political activity.  
9 These expenses shall also conform to City regulations and policy pertaining to conflict of  
10 interest regulations and non-discrimination in the hiring of vendors.

11 12. It is further agreed that Association will reimburse the City for all costs  
12 incurred by City in providing special services specifically requested and approved in writing  
13 by the Association, and related to the Annual Report during the term of this Agreement.  
14 These costs will be determined and certified by the BID Manager and forwarded to the  
15 Association Executive Director and/or President. The City will then invoice the Association  
16 for the cost of the service, which shall be paid within thirty (30) days of receipt. In the event  
17 that payment is not received within ninety (90) days of the date of invoice, City shall transfer  
18 that amount from the FSPBIA monies in the PBIA Fund to the General Purpose Fund to  
19 compensate City for incurred costs.

20 13. Insurance.

21 A. As a condition precedent to the effectiveness of this  
22 Agreement, Association shall procure and maintain at Association's expense for the  
23 duration of this Agreement from an insurance company that is admitted to write  
24 insurance in the State of California or that has a rating of or equivalent to an A:VIII  
25 by A.M. Best and Company the following insurance:

26 i. Commercial general liability insurance or self-insurance  
27 equivalent in coverage scope to ISO CG 00 01 10 93 naming the City of Long  
28 Beach, and their officials, employees, and agents as additional insureds on

1 a form equivalent in coverage scope to ISO CG 20 26 11 85 from and against  
2 claims, demands, causes of action, expenses, costs, or liability for injury to  
3 or death of persons, or damage to or loss of property arising out activities  
4 performed by or on behalf of the Association in an amount not less than One  
5 Million Dollars (US \$1,000,000) per occurrence and Two Million Dollars (US  
6 \$2,000,000) in general aggregate.

7 ii. Workers' compensation coverage as required by the  
8 Labor Code of the State of California and Employer's liability insurance with  
9 minimum limits of One Million Dollars (US \$1,000,000) per accident or  
10 occupational illness. The policy shall be endorsed with a waiver of the  
11 insurer's right of subrogation against the City of Long Beach, and their  
12 officials, employees, and agents.

13 iii. Commercial automobile liability insurance equivalent in  
14 coverage scope to ISO CA 00 01 06 92 in an amount not less than Five  
15 Hundred Thousand Dollars (US \$500,000) combined single limit (CSL)  
16 covering Symbol 1 ("Any Auto").

17 iv. Commercial crime insurance or a surety bond in an  
18 amount at least equal to the maximum amount of funds potentially held at  
19 any one time by Association and that guarantee that such funds will not be  
20 mismanaged or misplaced, providing protection to the City of Long Beach if  
21 it experiences any losses, damages, or penalties resulting from any  
22 malfeasance or misfeasance by the Association, its officers, employees, or  
23 agents. Claim payments under such policy or bond shall name the City of  
24 Long Beach as loss payee.

25 B. Any self-insurance program or self-insurance retention must be  
26 approved separately in writing by City and shall protect the City of Long Beach, and  
27 their officials, employees, and agents in the same manner and to the same extent  
28 as they would have been protected had the policy or policies not contained retention

1 provisions. Each insurance policy shall be endorsed to state that coverage shall not  
2 be suspended, voided, or canceled by either party except after thirty (30) days prior  
3 written notice to City, and shall be primary and not contributing to any other  
4 insurance or self-insurance maintained by City.

5 C. Any subcontractors which Association may use in the  
6 performance of this Agreement or using funds provided by this Agreement shall be  
7 required to indemnify the City to the same extent as the Association and to maintain  
8 insurance in compliance with the provisions of this section with the exception of (d)  
9 as part of their separate contracts with Association.

10 D. Association shall deliver to City certificates of insurance and  
11 original endorsements for approval as to sufficiency and form prior to the start of  
12 performance hereunder. The certificates and endorsements for each insurance  
13 policy shall contain the original signature of a person authorized by that insurer to  
14 bind coverage on its behalf. "Claims-made" policies are not acceptable unless City  
15 Risk Manager determines that "Occurrence" policies are not available in the market  
16 for the risk being insured. In a "Claims-made" policy is accepted, it must provide for  
17 an extended reporting period of not less than one hundred eighty (180) days. Such  
18 insurance as required herein shall not be deemed to limit Association's liability  
19 relating to performance under this Agreement. City reserves the right to require  
20 complete certified copies of all said policies at any time. Any modification or waiver  
21 of the insurance requirements herein shall be made only with the approval of City  
22 Risk Manager. The procuring of insurance shall not be construed as a limitation on  
23 liability or as full performance of the indemnification provisions of this Agreement.

24 14. Indemnification: Association shall defend, indemnify, and hold  
25 harmless the City, its Commissions and Boards, and their officials, employees, and agents  
26 from and against any and all demands, claims, causes of action, liability, loss, liens,  
27 damage, costs, and expenses (including attorney's fees) arising from or in any way  
28 connected or alleged to be connected with Association's performance of the work under

1 this Agreement and from any act or omission, willful misconduct, or negligence (active or  
2 passive) by or alleged to be by Association, its employees, agents, or subcontractors either  
3 as a sole or contributory cause, sustained by any person or entity (including employees or  
4 representatives of City or Association). The foregoing shall not apply to claims or causes  
5 of action caused by the sole negligence or willful misconduct of the City, its Commissions  
6 and Boards, or their officials, employees, or agents.

7           15. Association agrees to notify the BID Manager of the meeting dates of  
8 each meeting of the Board of Directors of Association and the City Manager, BID Manager  
9 or other appointed representative will have the right to attend all meetings of the Board of  
10 Directors.

11           16. Association acknowledges and agrees that because Association will  
12 be expending public funds in the form of assessments under this agreement, Association  
13 shall comply with the Ralph M. Brown Act at its meetings, and with the California Public  
14 Records Act for all documents relating to activities of the PBIA.

15           17. Neither the City nor any of its officer or employees will have any control  
16 over the conduct of Association or any of its employees, except as provided above, and  
17 Association expressly warrants not in any manner or at any time to represent that its  
18 officers, agents, servants or employees are in any manner the officers, agents, servants or  
19 employees of the City, it being distinctly understood that Association is and at all times will  
20 remain as to the City, an independent contractor, and the obligations of Association to the  
21 City are solely as prescribed by this Agreement.

22           18. This Agreement contemplates that Association will render special  
23 promotional services, activities and improvements to the City, as set forth in Exhibit "A",  
24 the Annual Report, and it is recognized by the parties that an inducement to the City for  
25 entering into this Agreement was, and is, the ability of Association to render these special  
26 services. Neither this Agreement nor any interest in this Agreement may be assigned by  
27 Association, except that Association may, with the advance written consent of the BID  
28 Manager assign any monies due, or to become due, to the Association. Association agrees

1 not to subcontract any portion of the performance contemplated and provided for in this  
2 Agreement, except that Association may enter into subcontracts for the sole purpose of  
3 carrying out activities within the Annual Report.

4           19. As part of the consideration thereof , Association, for itself, its heirs,  
5 personal representatives, successors-in-interest, assign, and subcontractors, if any, does  
6 hereby covenant and agree that, subject to the application of relevant laws, rules and  
7 regulations, no person shall be excluded from participation, denied the benefits of, or be  
8 otherwise subjected to discrimination relating to any services or activities furnished  
9 pursuant to this Agreement or any subcontract awarded by Association, on the basis of  
10 race, religion, national origin, color, age, sex, sexual orientation, AIDS, HIV status,  
11 handicap, or disability.

12           20. The term of this Agreement will commence upon its execution and will  
13 be automatically extended on a year-to-year basis upon annual approval of the Annual  
14 Report and related levy assessments of the City Council, and provided that the City and  
15 the Association may terminate this Agreement and any rights, duties and liabilities accruing  
16 in this Agreement at any time by giving written notice of election to terminate to the other  
17 party at least thirty (30) days prior to the end of the fiscal year.

18           21. Any notices to be given under this Agreement, or otherwise, may be  
19 given by enclosing the same in a sealed envelope, addressed to the party intended to  
20 receive the same at its address, and by depositing the same into the U.S. Postal Service  
21 regular mail, postage prepaid. When so given, notice will be effective from the time of  
22 mailing of the notice. For these purposes, unless otherwise provided in writing, the address  
23 of the City and the proper person to receive any notices on its behalf is the BID Manager,  
24 100 W. Broadway, Ste. 550, Long Beach, CA 90802, and the address of the Association  
25 is 2210 E. 4<sup>th</sup> Street, Long Beach, California 90814.

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1 IN WITNESS WHEREOF, the parties have caused this document to be duly  
2 executed with all formalities required by law as of the date first stated above.

3 FOURTH STREET BUSINESS  
4 IMPROVEMENT ASSOCIATION, a  
5 nonprofit corporation organized under the  
6 laws of the State of California

7 March 25, 2019

8 By Jmsm  
9 Name Jennifer Hill  
10 Title President

11 March 26, 2019

12 By [Signature]  
13 Name L. Konsteiner  
14 Title Member

15 Tom Modica  
16 Assistant City Manager, "Association"

17 EXECUTED PURSUANT  
18 TO SECTION 301 OF  
19 THE CITY CHARTER

20 CITY OF LONG BEACH, a municipal  
21 corporation

22 July 12, 2019

23 By [Signature]  
24 City Manager

25 "City"

26 This Agreement is approved as to form on June 20, 2019.

27 CHARLES PARKIN, City Attorney

28 By [Signature]  
Deputy

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Lona Beach, CA 90802-4664