

**THIRD AMENDMENT
TO THE FISCAL YEAR 2019
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2022**

This Third Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2022 (“**Third Amendment**”) is dated as of July 1, 2021, for reference purposes only, and is entered into by and between the CITY OF SAN DIEGO, a municipal corporation (“**City**”), and the **OCEAN BEACH MERCHANTS ASSOCIATION, INC.**, a California non-profit public benefit corporation (“**Manager**”). City and Manager are sometimes referred to in this Third Amendment, each individually, as a “**Party**” or, collectively, as the “**Parties**.” This Third Amendment is entered into by City and Manager with reference to the following recited facts (“**Recitals**”):

RECITALS

A. The Parties entered into that certain Business Improvement District Management Agreement Fiscal Year 2019, dated July 1, 2018, that certain First Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2020, dated July 1, 2019, and that certain Second Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2021, dated July 1, 2020 (collectively, “**Agreement**”);

B. Pursuant to Section 3 of the Agreement, the “**Term**” consists of the “**Initial Term**”, beginning July 1, 2018 and ending June 30, 2019, and the option to extend in individual fiscal year durations up to four times, with approval of each such extension (each, an “**Extended Term**”) by the City Council;

C. For Fiscal Year 2022, with the adoption of R-313542, effective May 19, 2021, the San Diego City Council (“**City Council**”) approved amendments to the Agreement, which consist of the addition of certain accountability provisions and a six (6) month extension of the Agreement with a six (6) month renewal option, which renewal is at the City’s sole discretion, and subject to the Manager’s compliance with the accountability provisions in this Third Amendment;

D. City and Manager desire to extend the Agreement for Fiscal Year 2022 for six (6) months, from July 1, 2021 through and including December 31, 2021.

E. If City determines that the Manager has demonstrated sufficient compliance with the terms of the Agreement, including the accountability provisions in this Third Amendment, the City may, at its sole discretion, extend the Agreement six (6) additional months, from January 1, 2022 through and including June 30, 2022;

NOW, THEREFORE, CITY AND MANAGER AGREE, AS FOLLOWS:

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this Third Amendment by this reference, as though fully set forth in this Third Amendment.
2. **Amendment to and Extension of Term.** The Extended Term for Fiscal Year 2022 is amended to six (6) months, from July 1, 2021, through and including December 30, 2021, with a six (6) month option to extend from January 1, 2022 through and including June 30, 2022, with such extension at the City's sole discretion by Notice to Manager.
3. **Addition of Exhibit F – Accountability Provisions.** The Agreement is amended to include the accountability provisions detailed in **Exhibit F**, attached to this Third Amendment.
4. **Confirmation of Agreement.** The Agreement, as amended by this Third Amendment, is in all respects confirmed and all of the terms, provisions and conditions of the Agreement, as amended by this Third Amendment, shall be and remain in full force and effect.
5. **Entire Agreement.** The Agreement, as amended by this Third Amendment, represents the entire understanding between the Parties about the subject matter of the Agreement, as so amended.
6. **Counterparts.** This Third Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.
7. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Third Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this Third Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Third Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Third Amendment. The words "include" and "including" in this Third Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this Third Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including the Agreement, refers to such document, as modified from time to time (excepting any modification that violates the Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Third Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Third Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.
8. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Third Amendment, without application of conflicts of laws principles or statutes.

9. **Binding on Successors and Assigns.** This Third Amendment shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

10. **No Other Representations or Warranties.** Except as expressly set forth in this Third Amendment, no Party makes any representation or warranty material to this Third Amendment to any other Party.

11. **Incorporation of Defined Terms.** All terms, phrases and words indicated to be defined terms by initial capitalization in this Third Amendment that are not specifically defined in this Third Amendment (if any) shall have the meaning ascribed to the same term, phrase or word in the Agreement.

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[Signatures on next page]

**SIGNATURE PAGE
TO
THIRD AMENDMENT
TO THE FISCAL YEAR 2019
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2022**

IN WITNESS WHEREOF, City and Manager sign and enter into this Third Amendment, by and through the signatures of their respective authorized representatives, as follows:

CITY:

The City of San Diego, a municipal corporation

By: 

Christina Bibler
Economic Development Department
Director

MANAGER:

OCEAN BEACH MERCHANTS ASSOCIATION, INC., a non-profit public benefit corporation

By: 

Barbara Iacometti
President

APPROVED AS TO FORM:

MARA W. ELLIOTT
City Attorney

By: 

Marguerite E. Middaugh
Deputy City Attorney

**EXHIBIT F
TO
CITY OF SAN DIEGO
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2019**

ACCOUNTABILITY PROVISIONS

- 1. ANNUAL REVIEW OF BYLAWS.** Manager shall conduct an annual review, and update as necessary, of its bylaws to ensure that they do not result in a disparate impact. All updates to the bylaws shall be posted to the official District website in accordance with Section 4.7 of this Agreement.
- 2. ANTI-HARASSMENT, NON-DISCRIMINATION AND INCLUSION POLICY.** Manager shall establish and implement an anti-harassment, non-discrimination and inclusion policy in the workplace consistent with federal, State and local laws and shall conduct an annual review and update of the policy. Manager shall provide the policy to all employees and its Board of Directors and shall certify that each employee and member of its Board of Directors has received and reviewed the policy by requiring each individual's signature.
- 3. ANTI-HARASSMENT, NON-DISCRIMINATION AND INCLUSION TRAINING.** Manager shall conduct annual anti-harassment, non-discrimination and inclusion in the workplace training for all employees and Board of Directors, consistent with federal, State and local laws. Manager shall certify that each employee and member of its Board of Directors has completed the training by requiring each individual's signature.
- 4. PERFORMANCE OF MANAGER AND CHIEF EXECUTIVE.** Manager shall provide an annual opportunity for its Board of Directors, Member Businesses, and the general public to provide input on the performance of the Manager and its Chief Executive relating to this Agreement.
- 5. IDENTIFICATION OF CONFLICTS OF INTEREST.** Manager shall immediately notify the City Representative when a perceived or actual financial or economic interest of any Manager Party relating to this Agreement is identified. City shall have no obligation to pay or reimburse Contractor for services provided under this Agreement if such services relate to any contract awarded or financial obligation entered in violation of any State or local conflict of interest law. If a perceived or actual financial or economic interest of any Manager Party exists and the City Representative has not been notified, or it is later determined that there has been a violation of any federal, State or local conflict of interest law, City shall have the right to stop or reduce Assessment disbursements in connection with the violation, in addition to all other rights and remedies available under this Agreement and federal, State and local conflict of interest laws.