

**SECOND AMENDMENT
TO THE FISCAL YEAR 2019
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2021**

This Second Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2021 (“**Second Amendment**”) is dated as of July 1, 2020, 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, a California non-profit public benefit corporation (“**Manager**”). City and Manager are sometimes referred to in this Second Amendment, each individually, as a “**Party**” or, collectively, as the “**Parties**.” This Second 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 and that certain First Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2020, dated July 1, 2019 (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. The beginning of each Extended Term is subject to the following conditions: (a) Manager is not in Default on the last day of the Initial Term or the immediately preceding Extended Term, as applicable; (b) the Extended Term has been approved by the City Council; and (c) the Manager Representative has approved the Extended Term;

D. City and Manager desire to extend the Term of the Agreement for a second Extended Term for fiscal year 2021, from July 1, 2020 through and including June 30, 2021;

E. The City Council approved an Extended Term of the Agreement for fiscal year 2021 in Resolution R-313041, effective May 21, 2020;

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 Second Amendment by this reference, as though fully set forth in this Second Amendment.

2. **Agreement Term Extension.** The parties extend the Term of the Agreement for a second Extended Term, from July 1, 2020, through and including June 30, 2021.

3. **Confirmation of Agreement.** The Agreement, as amended by this Second Amendment, is in all respects confirmed and all of the terms, provisions and conditions of the Agreement, as amended by this Second Amendment, shall be and remain in full force and effect.

4. **Entire Agreement.** The Agreement, as amended by this Second Amendment, represents the entire understanding between the Parties about the subject matter of the Agreement, as so amended.

5. **Counterparts.** This Second 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.

6. **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 Second Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this Second Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Second 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 Second Amendment. The words “include” and “including” in this Second Amendment shall be construed to be followed by the words: “without limitation.” Each collective noun in this Second 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 Second 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 Second Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

7. **Governing Law.** The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Second Amendment, without application of conflicts of laws principles or statutes.

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

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

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

**SIGNATURE PAGE
TO
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FOR FISCAL YEAR 2021**

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

CITY:

The City of San Diego, a municipal corporation

By: _____
Lydia Moreno
Deputy Director
Economic Development Department

MANAGER:

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

By: _____
Name: Barbara Iacometti
Title: President

APPROVED AS TO FORM:

MARA W. ELLIOTT
City Attorney

By: _____
Marguerite E. Middaugh
Deputy City Attorney