

## **DISTRICT MANAGEMENT AGREEMENT**

### **First Amendment to the Agreement between the City of San Diego and Ocean Beach Merchants Association, Inc. for the Management and Administration of the Newport Avenue Maintenance Assessment District Commencing Fiscal Year 2022**

This FIRST AMENDMENT TO THE MANAGEMENT AGREEMENT (First Amendment) is made and entered into by and between the City of San Diego, a municipal corporation (City), and Ocean Beach Merchants Association, Inc. (Contractor) (collectively, the “Parties”).

#### **RECITALS**

WHEREAS, the Newport Avenue Maintenance Assessment District (District) is governed by Article XIID of the California Constitution, the Proposition 218 Omnibus Implementation Act (California Government Code sections 53750 – 53758), the San Diego Maintenance Assessment Districts Ordinance (San Diego Municipal Code sections 65.0201 – 65.0234), and San Diego City Council Policy 100-21 (collectively, “District Laws”); and

WHEREAS, Contractor is an “Owners’ Association” as defined in the District Laws; and

WHEREAS, Contractor currently provides management and administrative services within the boundaries of the District under the current Management Agreement and in accordance with San Diego Municipal Code section 65.0217; and

WHEREAS, the maintenance standards are described in the Scope of Work (Exhibit B) to the Management Agreement; and

WHEREAS, the Parties wish to revise the Scope of Work in connection with sidewalk conditions, sidewalk maintenance, repair, replacement and liability, clarify responsibilities, and provide a process by which the Parties will communicate and cooperate in the event of a claim or suit against the City for damage or injury arising from certain categories of dangerous conditions; and

WHEREAS, all capitalized terms not otherwise defined in this Agreement shall have the same meaning as identified in the District Laws;

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants and conditions set forth herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Contractor hereby agree as follows:


1. Exhibit B to the Management Agreement is deleted in its entirety and replaced with the Exhibit B dated July 2023 attached to this First Amendment.

2. The Management Agreement shall remain in full force and effect, with changes only as expressly identified in this First Amendment.
3. This Amendment may be executed in counterparts and when so executed, each such counterpart will constitute an original document and such counterparts will constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement executed by City of San Diego acting by and through the Mayor or designee.

THE CITY OF SAN DIEGO

NAME OF CONTRACTOR

By:   
Name: Christina Bibler  
Title: Economic Development Director

By:   
Name: Barbara Iacometti  
Title: Board of Directors President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 15 day of  
November, 2023.

MARA W. ELLIOTT, City Attorney

By: *Daphne Skogen*  
Name: Daphne Z. Skogen  
Title: Deputy City Attorney

**EXHIBIT B  
TO DISTRICT MANAGEMENT AGREEMENT**

**Newport Avenue Maintenance Assessment District Enhanced Services  
Scope of Work**

The Newport Avenue Maintenance Assessment District (District) is governed by the District Management Plan and Assessment Engineer's Report approved by the City Council in connection with the formation of the District (collectively, the "Engineer's Report").

Pursuant to the Management and Maintenance Agreement for the Newport Avenue Maintenance Assessment District (Agreement) to which this document is attached as Exhibit B, Ocean Beach Merchants Association, Inc. (Contractor, also referred to as "District Manager" in this Exhibit B) agrees to undertake this Scope of Work, which consists of activities, improvements, and services described in the District's Engineer's Report (Services). Exhibit A of the Agreement sets forth the baseline services provided by the City within the District (Baseline Services). Exhibit A may change from time to time throughout the Term of the Agreement. In the event that Exhibit A is amended to include Services described in the Engineer's Report and listed on this Exhibit B, Contractor shall not provide such Services identified in Exhibit A.

- 1) The Contractor shall maintain all areas consistent with requirements set forth in the Engineer's Report. A map showing general areas of maintenance is provided in the Engineer's Report as "Exhibit A - District Boundary Map."
- 2) The Contractor and its Subcontractors must perform all work within this Scope of Work to meet or exceed industry best practice standards. If the City determines that the District Manager or its Subcontractors have failed to perform the work to industry best practice standards, or has failed to perform the work at all, payment for such work may be withheld until the work is completed to the City's satisfaction, subject to the terms of the Agreement including Article VI. Ongoing or repeated instances regarding Contractor's or Subcontractor's failure to provide quality or acceptable services as required may be considered cumulatively as a Default under this Agreement.
- 3) The Contractor, at a minimum, shall provide the Services (as described below) within the boundaries of the District. Contractor may provide additional Improvements and Activities described in the Engineer's Report, contingent on written approval by the City, and subject to requirements under state and local laws.

**A. NEWPORT AVENUE MAINTENANCE ASSESSMENT DISTRICT CONTRACT  
SITE LOCATIONS**

The District generally includes the parcels that front Newport Avenue between Abbott Avenue to the northwest and Sunset Cliffs Boulevard to the southeast.

## **B. CONTRACT ADMINISTRATION**

The District Manager for the administration of this Contract is District's designee specified on Notice to Proceed letter issued under a contract with the City of San Diego's designee.

The District Manager will provide regular oversight of all work to ensure compliance to the scope of work and/or performance to Contract Specifications. The District Manager, or designee, is also responsible for oversight of all invoice payments and billing questions for Purchase Orders issued for the work described in the Scope of Work.

The City shall be responsible for all contractual matters and is the only individual authorized to make changes of any kind to the Contract. The Contractor shall not rely upon any oral change from anyone, or a written request for change from someone other than the City. All changes must be in writing, signed by the City.

The District Manager, authorized to discuss matters related to this Scope of Work, must be available during normal working hours, Monday through Friday between 9:00a.m. and 5:00 p.m. The Contractor shall have the capability to receive and to respond immediately to calls of an emergency nature during normal working hours and outside of normal working hours. Calls of an emergency nature received by the District Manager may be referred to a Subcontractor for immediate disposition.

## **C. USE OF SUBCONTRACTORS**

The District Manager may employ the use of Subcontractors in the implementation of any work specified in this Scope of Work. All Subcontractors must hold the appropriate qualifications, registrations, certifications, licenses and/ or other required documentation of their ability to perform the work subcontracted for by the District Manager. The District Manager is responsible to verify qualifications. Additionally, the District Manager will approve, supervise, and accept all completed work by Subcontractor and invoice for all Subcontractor work in a timely fashion.

## **D. DESCRIPTION OF IMPROVEMENTS, MAINTAINANCE AND SERVICES**

The District, through the levy of special assessments, provides funding for ongoing maintenance, operation and servicing of landscaping, lighting, and other improvements or appurtenant facilities located within the public rights-of-ways and dedicated easements located within the District. This includes approximately 60,509 square feet of landscaped right-of-way, 57,888 square feet of sidewalk, 2,621 square feet of landscaping, 4,588 linear feet of gutters, and various street right-of-ways. These improvements may include, but are not limited to, all materials, equipment, utilities, labor, and appurtenant facilities related to the ongoing maintenance of the improvements.

All District Manager and Subcontractor services shall be limited to maintenance, improvements, and activities authorized under the Assessment Engineer's Report (Annual

Report) for the District. The improvements maintained and services provided by the District are generally described as follows:

Maintenance and servicing of improvements, include but are not limited to landscaping, sprinkler systems, shrubbery, trees, irrigation and drainage systems, street lighting, and other appurtenant items located in right of ways and any incidental costs thereto, and located within the boundaries the District or adjacent to the District.

**E. SERVICE FREQUENCY**

The frequency of basic services as generally described in the Annual Report for the District are as follows:

<b>Service</b>	<b>Frequency</b>
Sidewalk pressure washing	Monthly
Sidewalk sweeping	As Needed
Litter abatement	As Needed
Weed abatement	As Needed
Plant and shrub maintenance	Weekly
Graffiti abatement	As Needed
Trashcan maintenance and emptying	Daily
Security services	As Needed
Reporting hazards to City	As Needed
Special projects	As Needed

**F. SPECIFICATIONS FOR WORK**

**1. Landscape Plant and Shrub Maintenance (Sidewalks):** District Manager or its Subcontractors shall perform complete landscape maintenance of all contract areas identified in Section A of these Specifications (Contract Sites) including the following: irrigation, tree pruning, shaping and training of trees, shrubs, and groundcover plants; fertilization; litter control; weed control; control of all plant diseases and pests; edging; and renovation. District Manager shall not conduct any tree pruning but may provide all other maintenance required to maintain the Contract Sites included in the Annual Report in a safe, attractive and useable condition and to maintain the plant material in good condition with horticulturally acceptable growth and color.

**2. Sidewalk Services**

1) **Sidewalk Sweeping:** District Manager or its Subcontractors will sweep all sidewalks and street gutters within the area described in Section A of this Scope of Work to remove all litter debris and other refuse from the area. All debris collected will be immediately hauled to and placed in the on-site dumpsters provided by the District Manager. This work will be completed, at

minimum per the schedule shown in Section E of this Scope of Work.

- 2) **Sidewalk Steam Cleaning:** District Manager or its Subcontractors will steam clean (including power washing and gum removal) all sidewalks within the area described in Section A of this Scope of Work. This will be completed in compliance with all applicable state laws and city ordinances especially in terms of wastewater management and water conservation. This work will be completed per the schedule shown in Section E of this Scope of Work.

Sidewalk sweeping and steam cleaning are services provided for District beautification and are over the baseline services provided by the City. Contractor is not responsible for sidewalk uplifting caused by tree roots, or for the general maintenance, repair, or replacement of any sidewalks. Contractor is not responsible for the cleaning, maintaining, repairing or replacing of tree planters located throughout the district area unless Contractor planted the tree or Contractor accepted responsibility in writing the activity is compliance with the provisions of the District Management Plan and Engineer's Report.

3. **Trashcan Emptying:** District Manager or its Subcontractors shall empty all sidewalk trashcans within the area described in Section A of this Scope of Work by removing the plastic liner bag and replacing it with a new liner bag. The trash bags will be hauled to and placed in the on-site dumpsters provided by the District Manager. The area around the on-site dumpster will also be maintained, free from any loose debris or trash on the ground near the dumpster.

#### 4. Street Trees

**Watering and Maintenance:** District Manager or its Subcontractors shall regularly and adequately water all trees that are not watered by an irrigation system within the area described in Section A of this Scope of Work. Any newly planted trees may need to be watered more frequently. This work will be completed, at minimum per the schedule shown in Section E of this Scope of Work.

**Tree Wells and Planting Strips:** With the exception of mulch and/or a gator bag, Contractor shall not add material, including flexible porous pavement, to tree wells or planting strips without written approval from the City. The City may require Contractor to remove all material Contractor installs in tree wells or planting strips without approval of the City. Expenses associated with unauthorized installations or incurred in connection with removal of unauthorized installations will not be eligible for reimbursement. City may charge Contractor for all costs incurred for corrective action not resolved by Contractor under this provision.

5. **Removal of Bulky Items:** District Manager or its Subcontractors will remove all bulk items from the streets, medians or sidewalks within the area described in Section A of this Scope of Work and haul to an appropriate, legal dumpsite or landfill. District Manager may have dumpsters available for small bulk items and larger bulk items be

immediately hauled to landfill. This work will be completed per the schedule shown in Section E of this Scope of Work.

6. **Graffiti Removal:** District Manager or its Subcontractors will remove any graffiti visible from the street within the area within Section A of this Scope of Work. This includes but is not limited to sidewalks, street light poles, public or private owned buildings, public or private owned street furniture, trashcans, utility boxes, bike racks, etc. This work will be completed per the schedule shown in Section E of this Scope of Work. All graffiti observed on private property shall be reported for repair within twenty-four (24) hours to the Contractor, the City, Graffiti Hotline (619) 527-7500 or Get It Done App: <https://www.sandiego.gov/get-it-done>
7. **Reporting Safety Hazards to City:** District Manager or its Subcontractors are to immediately report any and all actual, perceived or potential safety hazards, as described further in Section G(5) of this Scope of Work, to the appropriate City Department. This is especially appropriate for any responsibilities that fall within the purview of the City. This will be done per the schedule shown in Section E of this Scope of Work.

#### **G. REQUIREMENTS OF DISTRICT MANAGER & SUBCONTRACTORS**

1. **Quality of Work:** All work performed within this Scope of Work shall be done with the expectation doing the highest quality of work and doing so in an efficient manner. All work performed within this Scope of Work will be completed in accordance with industry best practices and in keeping with the high aesthetic level of the Contract Sites being maintained.
2. **Schedule of Work:** All work performed within this Scope of Work will be completed per the schedule shown in Section E of this Scope of Work or, in special circumstances, as requested by the District Manager or the City.
3. **Proper Conduct:** The District Manager, Subcontractors and their employees shall conduct themselves in a proper and efficient manner at all times and shall cause the least possible annoyance to the public.
4. **Safety Requirements:** The District Manager, Subcontractors and their employees will follow all federal, state and local safety laws, regulations and ordinances to ensure a safe and healthy work environment. All work performed within this Scope of work will be completed with the highest standards of safety for the public, the District Manager, Subcontractor and their employees.
5. **Hazardous Conditions:** In providing services pursuant to this Agreement, the Contractor and its employees and agents will have the opportunity to observe conditions in the public right-of-way that may constitute a safety hazard. For purposes of this Agreement, "safety hazard" includes, but is not limited to, the following conditions: fallen or drooping tree branches; cut or protruding tree stumps; conditions on public property affecting or causing damage to private property. The Contractor agrees that its employees and agents will make reasonable efforts to promptly barricade the affected

public property, where reasonable under the circumstances, and make reasonable efforts to provide notice of hazardous conditions to the City-designated liaison. Contractor shall have no obligation to report or repair cracked, raised, or uneven sidewalks. The Contractor shall have no obligation to repair or otherwise protect against safety hazard conditions, and shall have no liability to the City or any third party for claims or loss related to safety hazard conditions, except to the extent that the Contractor, its employees, or agents have i) previously provided work causing such condition to occur; or ii) previously accepted in writing responsibility for the maintenance, repair, or otherwise safety of the particular improvement (e.g. sidewalk, curb, tree, shrub, lighting fixture, or other similar improvement) causing the dangerous condition on public property; or iii) notified the City in writing that it intends to address the safety hazard utilizing material or service in excess of Baseline Service repairs.

The Parties agree they will each (i) direct their respective employees not to suggest to any third party that they file a complaint against the other party, based on any claimed injury or damage suffered in connection with the safety hazards covered by this Section 4, and (ii) not file a complaint or cross-complaint against the other party based upon such claimed injury or damage, without good cause for believing the other party is liable as delimited by this Section, and not before the designated liaison for the party contemplating suit has given the other Party's designated liaison ten (10) business days' written notice of the claim, including all of the facts upon which the complaining Party's complaint or cross-complaint will be based.

6. **Clean Work Area:** The District Manager, Subcontractors and their employees shall ensure that the areas in which any work performed is carried out in a clean work environment and, upon completion of all work, will ensure that the area is left clean and with no debris remaining from their work performed.
7. **Method of Performing Work:** The method of work may be determined by the District Manager or its Subcontractors using the best practices of the industry, all work safety and health precautions for the public and employees and complete all work in compliance with all applicable laws, ordinances or regulations. This assumes that any and all contractors are appropriately licensed, trained and properly permitted to complete the work for which they perform within their specific contract or subcontract.
8. **Inspections:** The City Representative may perform an inspection of any and all work being completed by the District Manager or Subcontractors within this Scope of Work. The District Manager or Subcontractors will accommodate these inspections as requested and offer safe access to any work areas for the purpose of inspecting the work being completed. District Manager may also perform an inspection of any and all work being completed by the Subcontractors within this Scope of Work. The District Manager or Subcontractors will accommodate these inspections as requested and offer safe access to any work areas for the purpose of inspecting the work being completed.