fMAINTENANCE ASSESSMENT DISTRICT MANAGEMENT AGREEMENT

FISCAL YEAR 2027

This Maintenance Assessment District Management Agreement ("**Agreement**") is effective as of July 1, 2026 ("**Effective Date**"), and is entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("**City**"), and OCEAN BEACH MERCHANT'S ASSOCIATION, INC., a California nonprofit public benefit corporation ("**Manager**"). Manager and City are sometimes referred to in this Agreement, individually, as a "**Party**" and, collectively, as the "**Parties**."

RECITALS

A. The Newport Avenue Maintenance Assessment District ("**District"**) is governed by Article XIIID 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 (SDMC) sections 65.0201 – 65.0234), and San Diego City Council Policy 100-21 (collectively, "**District Laws**").

B. City authorized the levy of Assessments on properties located within the District to be collected by the County of San Diego ("**County**") in the same time and manner as the ad valorem property tax and to be used for Activities (defined in Section 2) that will provide certain benefits to each Property (defined in Section 2).

C. City must comply with the District Laws for all expenditures of District Funds (defined in Section 2).

D. Under SDMC section 65.0218, City may enter an agreement with an Owners' Association (defined in Section 2) for administration of a maintenance assessment district. Manager, as the Owners Association, seeks to administer all contracts necessary to provide for the Activities within the District as well as providing and managing the day-to-day operations of the District. City believes that Manager has the experience necessary to perform all obligations as the Owners' Association under the District Laws and provide or provide for the Activities as Manager under this Agreement.

E. 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 covenants, conditions and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

1. SCOPE OF SERVICES. Manager shall provide the administrative services described in Exhibit B, which is incorporated herein by reference.

2. DEFINITIONS. For the purposes of this Agreement, the terms listed below are defined as follows:

2.1. Activities. The activities, services, and improvements that meet the definitions of either *Activities* or *Improvements* in SDMC section 65.0202 and that are identified in the District Engineer's Report and current Fiscal Year Annual Report.

2.2. Affiliate. Any other Person, directly or indirectly, Controlling or Controlled by or under common Control with the specified Person.

2.3. Annual Report. The prospective annual report, including proposed District expenditures, prepared by Manager each Fiscal Year in accordance with SDMC section 65.0220 and approved by the City Council.

2.4. Assessment. A levy for the purpose of acquiring, constructing, installing, or maintaining Improvements and providing Activities that will provide certain benefits to Properties located within the District.

2.5. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.6. City Parties. Collectively, City, the City Council, and all City elected or appointed officials, employees, agents and attorneys.

2.7. City Representative. Defined in Section 12.1.

2.8. Contract Administrator. City's Economic Development Department.

2.9. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity or otherwise), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if a Party improperly fails to provide a defense for another Person entitled to indemnity under this Agreement or provides such defense under a reservation of rights, then Legal Costs of the Person) and any judgment.

2.10. Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests in any entity, at any tier of ownership, by contract or otherwise. "Controlling" and "controlled" shall have correlating meanings.

2.11. Default. A Monetary Default or a Non-Monetary Default.

2.12. Deficient Work. Activities conducted by Manager, its agents, or Subcontractors in a manner that fails to meet industry best practice standards or fails to meet the quality or acceptability required under this Agreement or is otherwise found to be deficient or incomplete.

2.13. District. Defined in Section 1.

2.14. District Funds. All funds resulting from the Assessment on Property in the District or otherwise allocated or received by the City for the benefit of the District and deposited to the City's District account.

2.15. District Laws. Defined in Section 1.

2.16. Equity Interest. All or any part of any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity nature) in any entity, at any tier of ownership, that owns or holds any ownership or equity interest in a Person.

2.17. Engineer's Report. The District Management Plan and Assessment Engineer's Report approved by the City Council in connection with the formation of the District.

2.18. Event of Default. The occurrence of any one or more of the following:

2.18.1. *Monetary Default*. A Monetary Default that continues for seven (7) calendar days after Notice to the Party in Default specifying in reasonable detail the amount of money not paid and the nature and calculation of each such amount, or the bond, surety or insurance not provided;

2.18.2. *Bankruptcy or Insolvency*. A Party admits in writing that the Party is unable to pay its debts as they become due or a Party becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Party's assets or the Party's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary, and is contested with diligence and continuity and vacated and discharged within ninety (90) days after commencement). Bankruptcy Proceeding for purposes of this section is any proceeding, whether voluntary or involuntary, under Title 11 of the United States Code or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters;

2.18.3. *Transfer*. The occurrence of Transfer of any or all of Manager's rights or obligations under this Agreement, whether voluntarily, involuntarily or by operation of Law, in violation of the terms and conditions of this Agreement;

2.18.4. *Violation of Section 4.9*. Any violation of the provisions of Section 4.9; or

2.18.5. *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 2.18.2, Section 2.18.3, or Section 2.18.4, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of such a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the effective date of a Notice of Default, the Party asserted to be in Default shall only be in Default if such Party does not do all of the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default;

(b) duly commence such cure within such thirty (30) day period; and (c) diligently prosecute such cure to completion within a reasonable time under the circumstances.

2.19. Federal. Relating to the authority of the federal government of the United States of America.

2.20. Fiscal Year. Each twelve-month period starting on July 1 and ending on the immediately following June 30.

2.21. Government. Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever of any governmental unit (Federal, State, County, City, district, or otherwise) whether now or later in existence.

2.22. Indemnify. Where this Agreement states that any Party shall "Indemnify" any Person from, against, or for a particular Claim, that the Party shall indemnify the Person and defend and hold the Person harmless from and against such Claim (alleged or otherwise). "Indemnified" shall have the correlative meaning.

2.23. Initial Term. Defined in Section 3.

2.24. Intellectual Property. All materials and deliverables subject to copyright protection that arise, or are developed in performance of this Agreement, including editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, Photostats, drawings, and other production materials, and for information technology procurements, executable code, source code, fixes, patches, updates, upgrades, documentation embedded or otherwise, original copy, and other production materials.

2.25. Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to this Agreement or otherwise relating to any Party's rights, obligations or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, including any retroactively-applicable law, subject in all cases, however, to any applicable waiver, variance or exemption.

2.26. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

2.27. Manager Parties. Collectively, Manager and its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners and Affiliates.

2.28. Manager Party. Individually, Manager or its directors, officers, employees, agents, guests, invitees, shareholders, members, managers, partners or Affiliates.

2.29. Manager Representative. Defined in Section 12.2.

2.30. Monetary Default. Any failure by a Party to pay, deposit or deliver, when and as this Agreement requires, any amount of money, any bond or surety or evidence of any insurance coverage required to be provided under this Agreement, whether to or with a Party or a Third Person.

2.31. Non-Monetary Default. The occurrence of any of the following, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of such Party's obligations under this Agreement; (b) any failure of a Party to comply with any material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement by a Party.

2.32. Notice. Any consent, demand, designation, election, notice or request relating to this Agreement. All Notices must be in writing. "Notify" shall have the correlated meaning, to give Notice.

2.33. Owners' Association. A private non-profit entity which represents, and whose membership includes, the assessed Property Owners or Property Owners' representatives in the District. For purposes of this Agreement, the Manager.

2.34. Operating Manual. City's "Operating Manual" maintained by the Economic Development Department, as may be amended from time to time, containing procedures for fiscal management and accountability.

2.35. Other Revenue. Defined in Section 7.

2.36. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

2.37. Property. Real property situated within the District.

2.38. Property Owner. Any person or entity shown as the owner of property on the last equalized secured property tax assessment roll or otherwise known by the City to be the current owner of property.

2.39. Reimbursement Request. Defined in Section 5.1.

2.40. Records. All administrative or financial records relating to the District, District Funds, Activities, or this Agreement that are prepared or gathered by Manager, including books, papers, invoices, receipts, accounting records, reports, financial disclosures, audits, other disclosures, certifications, work product, and any other documents, data or records.

2.41. SDMC. San Diego Municipal Code.

2.42. State. The State of California.

2.43. Subcontract. A contract between Manager and a Subcontractor.

2.44. Subcontractor. Any Person with which Manager contracts for the performance of services or the supplying of materials that will be paid for in whole or in part with Assessments received by Manager under this Agreement.

2.45. Subcontractor List. A list of the names of and contact information for all Subcontractors Manager has hired or intends to hire in connection with performing Activities under this Agreement.

2.46. Term. Defined in Section 3.2.

2.47. Third Person. Any Person that is not a Party, an Affiliate of a Party, or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.48. Transfer. Regarding any property, right or obligation, any of the following, whether by operation of Law or otherwise, whether voluntary or involuntary and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale or other transfer, whether direct or indirect, of all or any part of such property, right or obligation or of any legal, beneficial or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale or other transfer of any Equity Interest(s) in the owner of such property, right or obligation by the holder(s) of such Equity Interest(s); or (c) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "(b)" or "(c)" of this Section 2.50, shall be deemed a Transfer by the Person issuing such Equity Interests, even though such Person is not technically the transferor.

3. TERM.

3.1. Initial Term. Upon the execution of this Agreement by the Parties, subject to approval by the City Attorney in accordance with San Diego Charter section 40, this Agreement shall be effective as of July 1, 2026 and shall continue for a two-year period until June 30, 2028, subject to potential extension as provided in this Section 3 and the other rights of the Parties under this Agreement ("**Initial Term**"), unless terminated earlier in accordance with the terms of this Agreement.

3.2. Term Extension. The Initial Term may be extended in individual Fiscal Year durations up to a maximum of three (3) separate times, with written approval of each extension by the Mayor or designee (each, an "**Extended Term**"). Only one Extended Term may be approved and entered into by the Parties during the Initial Term and each Extended Term (if any). Under no circumstance shall the Term (defined below in this Section 3) exceed five (5) years. The beginning of each Extended Term is subject to all of 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; and (b) the Manager Representative has approved the Extended Term. The Initial Term and each Extended Term entered into under this Section 3 are sometimes, collectively, referred to in this Agreement as the "**Term**."

3.3. Expiration. On expiration of the Term, this Agreement and the rights and obligations of the Parties under this Agreement shall terminate, except those rights and obligations expressly surviving expiration or termination of this Agreement.

4. SPECIFIC MANAGER OBLIGATIONS.

4.1. District Management. District Manager shall provide the administration of, or perform all Activities necessary for, the management of the District in a professional and prudent manner and in accordance with all Laws, including District Laws, the Engineer's Report, and the Annual Report, generally described as follows:

4.1.1. *Activities.* For all Activities administered or provided under **EXHIBIT B Scope of Services** attached to this Agreement ("**EXHIBIT B**"), District Manager shall meet the maintenance standards described in **EXHIBIT B**, as authorized by the Engineer's Report, and consistent with the Annual Report approved by City Council in the current fiscal year; and

4.1.2. *Site Inspection and Report*. Upon City's request and as specified, Manager shall conduct on-site inspections of any work done under this Agreement. Upon completion of the requested inspection, Manager shall promptly submit a report to the City indicating the results of the inspection.

4.1.3. *Dissemination of Information*. Manager will be expected to disseminate information that is accurate and consistent with applicable Laws. Manager shall disseminate information to Property Owners regarding relevant District information, such as the following as applicable: District highlights, City affiliated programs, District events, activities, services and budget, and Manager's current Board of Directors.

4.2. Procurement of Goods and Services. Because all procurement of goods and services under this Agreement will result in the expenditure of public funds, Manager shall comply with Divisions 30-36 of Article 2, Chapter 2, of the San Diego Municipal Code, and all other laws and policies applicable to City's procurement of such goods and services, except that the threshold amounts shall be as listed below, and all quotes or pricing must be obtained in writing.

4.2.1. *Agreement Duration*. Agreements for procured goods or services shall not exceed five (5) years, and no renewal or extension of an agreement may result in a term exceeding five (5) years or the Term of this Agreement.

4.2.2. *Bid Requirements*. Manager shall solicit and obtain the following price quotations before awarding a contract that will be funded in whole or in part from Assessments: (a) when a contract provides for an expenditure greater than $10,000 but equal to or less than $25,000 in total, Manager may award the contract but shall solicit, in writing, a written price quotation from at least three (3) potential sources; (b) when a contract provides for an expenditure greater than $25,000, but equal to or less than $100,000 in total, Manager may award the contract but shall solicit, in writing, a written price quotation from at least five (5) potential sources; or (c) when a contract provides for an expenditure greater than $100,000, Manager may award the contract only after advertising it for a minimum of one (1) day in the City Official Newspaper at least ten (10) days before bids or proposals are due.

4.2.3. *No Conflict.* Neither Manager nor any of its board members shall have a financial interest in any contract awarded for the District.

4.3. Manager as Owners' Association.

4.3.1. *Nonprofit Status*. Manager, as the Owners' Association, shall at all times during the Term be a Federal and State nonprofit corporation in good standing.

4.3.2. *Board Membership.* Manager acknowledges and agrees that, as the Owners' Association, Manager represents, and must include in its board membership, the assessed Property Owners or Property Owners' representatives in the District. Board members, officers, and members of the Owners' Association are intended and understood to represent and further the interest of the property owners located within the District. Each Property Owner or Property Owner's representative paying the assessment shall have the right to vote in, and seek nomination in, annual elections to the board of directors of the Owners' Association. If a mailed ballot election is used for the Board of Directors election, the results of the mailed ballot election shall be announced at the annual membership meeting. Manager shall provide its Board of Directors roster (names and business affiliations) to the City Representative in accordance with **EXHIBIT C,** Section 10.5.

4.3.3. *Delegation of Administrative Obligations.* Manager is permitted to engage one or more subcontractors to provide Activities and services in accordance with Section 4.5. Manager shall not delegate its administrative obligations without the prior written consent of the City.

4.4. Annual Report. Manager shall submit to the City a prospective annual report pursuant to section 65.0220 for the Activities for the District, including a line item budget for the upcoming fiscal year, no later than March 15 of each year. The prospective annual report shall be consistent with the Engineer's Report and shall contain all information and meet all requirements described in Municipal Code section 65.0220 (a) and (b). Manager shall budget and maintain reserves in accordance with Section V of the Maintenance Assessment District Council Policy 100-21 and the Engineer's Report. The proposed District budget for Activities will be brought forward to City Council for consideration as part of the annual plan for the upcoming fiscal year.

4.5. Open and Public Meetings. Manager acknowledges and agrees that because Manager will be expending public funds under this Agreement, all portions of meetings of Manager's Board of Directors at which any matter within the scope of this Agreement, including the Annual Report and all Activities, are heard, discussed, or deliberated shall be conducted in accordance with the Ralph M. Brown Act, California Government Code sections 54950-54963.

4.5.1. *Annual Budget Meeting.* Manager shall conduct at least one noticed meeting per year which shall include the Property Owners, any applicable Property Owners' designated representatives pursuant to Municipal Code section 65.0212, and City staff, to discuss the budget and Activities for the upcoming fiscal year.

4.5.2. *Noticed Meetings.* In addition to the annual noticed meeting required in Municipal Code section 65.0218(f) and described in Section 4.5.1, Manager shall hold at least three other noticed meetings per year, which must be open to the public and Property Owners within the District, to receive comments on all matters related to the District, including input on bids or proposals received by the Manager for any contracts for Activities of the District, evaluation of the performance of any contractor for the District, and advice to the Manager regarding the Activities for the District. With respect to any such meeting, The Contract Administrator may modify the annual budget prior to submitting it to the City Council for consideration. Manager shall use its best efforts to contact in writing the City, the relevant community planning group, and designated Property Owners' representatives of the District, and provide notice in community newspapers, or if unavailable, other local resources customarily used to distribute information within the District.

4.6. Public Records. Manager acknowledges and agrees that because Manager will be expending public funds under this Agreement, all records produced by or on behalf of Manager relating to this Agreement and Activities are subject to the California Public Records Act, California Government Code sections 6250-6276.48.

4.7. District Website. Manager shall maintain an official District website and shall post on such official District website all of the following: (a) Manager's Board of Directors roster (names and business affiliations); (b) all regular Board of Directors and committee meeting agendas; (c) all approved Board of Directors and committee meeting minutes; (d) Manager's articles of incorporation or formation and amendments; (e) Manager's bylaws; (f) all audits, Annual Reports and financial statements or disclosures prepared by Manager or provided by Manager to City under Section 9; (g) Internal Revenue Service and California Franchise Tax Board determinations of nonprofit and tax-exempt status; (h) all contracts for which Manager will expend $10,000 or more of Assessments; and (i) this Agreement, including exhibits and amendments. All items required to be posted on the official District website under this Section 4.7 shall be maintained on the website for a minimum of five (5) years.

4.8. Compliance with Law. Manager shall comply with all Laws in performing this Agreement. Also, Manager shall immediately comply with all directives issued by City, or City's duly authorized representatives, under authority of any Law.

4.9. Prevailing Wage Law Compliance. Pursuant to SDMC section 22.3019, construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair or maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000 is subject to California Labor Code sections 1720 through 1861 and in performing or funding any and all such work, Manager and its Subcontractors shall comply with California Labor Code sections 1720 through 1861 and the requirements of **EXHIBIT D** attached to this Agreement.

4.10. City Municipal Code, Regulation, and Policy Compliance. Manager shall comply with City's contract provisions set forth in **EXHIBIT C** attached to this Agreement.

4.11. Independent Contractor. Manager acknowledges and agrees that Manager is an independent contractor and not an agent or employee of City. Any provision of this Agreement

that may appear to give City a right to direct Manager concerning the details of performing its obligations under this Agreement, or to exercise any control over such performance, shall mean only that Manager shall follow the direction of City concerning the end results of the performance. Manager shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind, on behalf of or against City, whether by contract or otherwise.

4.12. Operating Manual. Manager acknowledges receipt of and agrees to comply with the Operating Manual, which may be updated from time to time, including those provisions related to fiscal accountability, eligible and ineligible expenditures, and procedures for financial management, accounting, budgeting, record keeping, reporting, and other administrative functions.

4.13. Annual Review of Bylaws. Manager shall conduct an annual review of its bylaws, and update bylaws as necessary, 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.

4.14. 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.

4.15. 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.

4.16. 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.

5. REIMBURSEMENT AND COMPENSATION

5.1. Reimbursement Requests

5.1.1. Invoice Detail and Procedure. Manager shall submit monthly reimbursement requests to the City along with all supporting receipts, invoices, checks, payroll statements, bank statements, and all other records of services performed up to the total amount authorized for each Fiscal Year during the Term under the procedures described in **EXHIBIT E** attached to this Agreement.

5.1.2. Payment. City will reimburse Manager from District Funds within thirty days of receiving a reimbursement request that is complete, accurate, and meets all requirements described in **EXHIBIT E.** Reimbursement may be made by payment or by reduction to funds advanced under Section 5.4.

5.1.3. Deficient Work. If City receives an invoice for Deficient work, City shall have the right to withhold all, or a portion of the requested reimbursement amounts related to the Deficient Work until Manager has demonstrated that the Deficient Work has been satisfactorily completed or otherwise addressed as described in Section 6.

5.1.4. Ineligible Expenses. Manager shall not request, nor shall it be entitled to, reimbursement under this Agreement for any expenditures that do not constitute Activities or has been or will be properly charged to a funding source other than District Funds.

5.1.5. Submittals. If Manager fails to timely submit to City any report, financial statement, audit or other matter required to be submitted by Manager to City under Section 9, City may stop future Assessment disbursements until such time as the overdue item is received and determined by City to comply with the requirements of this Agreement. Failure to timely submit to City any report, financial statement, audit or other matter required to be submitted by Manager to City may also result in termination by the City. Nothing in this Section 5.1.5 shall waive or prevent City from exercising any or all other rights or remedies that may be available to City under this Agreement, at law or in equity for an Event of Default resulting from Manager failing to timely submit to City any item required to be submitted by Manager to City under Section 9.

5.2. Compensation

5.2.1. Manager shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 5.2 and District Laws. In any given fiscal year, Manager may request an amount of up to 15 percent of budgeted annual expenditures, as reflected in the District's Engineer's Report, Management Plan, and Annual Report for the applicable fiscal year, in order to pay for Administrative expenses as defined by Municipal Code section 65.0202. Manager shall not be authorized to include charges for Administration on any amounts paid by Manager that contain any administrative expense charges by the billing entity. If Manager enters into any contracts with third parties for the performance of any of Manager's duties under this Agreement and any such contract includes an administrative expenses charge, Manager shall not be entitled to receive Administration reimbursements for its own administrative expense activities related to the work performed by third party contractors.

5.2.2. City shall be compensated a flat rate of $3,500 associated with the annual budget processing, property tax enrollment and collections, and professional engineering services from District Funds. Under District Laws, City is entitled to reimbursement for all expenses incurred in connection with the District, subject to the Engineer's Report. City reserves the right to amend this section to seek reimbursement for lawful expenditures in excess of $3,500; however, City agrees it will primarily exert this right in the event that District Fund shortfalls or City's continued contribution of General Funds negatively impacts the City's ability to provide City services.

5.2.3. City will not reimburse Manager for any expenditure that has been or may be properly charged to or reimbursed by (1) a City funding source other than District Funds; or (2) a public agency other than the City.

5.2.4. City's monetary responsibility is limited to the amount provided for in this Agreement, subject to the Engineer's Report and Annual Report in the applicable Fiscal Year.

5.3. Improper Expenditure. District Funds may only be expended on Activities and in amounts authorized in the Annual Report for the applicable Fiscal Year. Any expenditure inconsistent with the Engineer's Report and Annual Report, or not supported with proper documentation, as described in **EXHIBIT E** attached to this Agreement, shall be considered an ineligible expenditure. Upon determining that Manager has made an ineligible expenditure, City shall provide written notice to Manager and shall not provide reimbursement in connection with the ineligible expenditure. Nothing in this Section 5.3 shall waive or prevent City from exercising any or all other rights or remedies that may be available to City under this Agreement, at law or in equity for an Event of Default resulting from Manager making an ineligible expenditure of Assessments.

5.4. Advances.

5.4.1. Upon a written request from Manager no later than March 15 of each year, the City, in its sole and absolute discretion, may make a cash advance to Manager from the District's own reserves in an amount of up to three months of working capital. The amount advanced will be based on the District's Annual Report for the current fiscal year and may also include additional budget considerations and immediate expenses necessary to meet the District's needs, provided that all expenses are allowed under the Engineer's Report and current Annual Report. If the District reserves are not adequate to cover the working capital advance request, City shall base any advanced amount on available cash at the time of the request. City shall issue no more than four advances in any fiscal year. The total amount advanced to Manager under this Section 5.4.1, as adjusted for all funds returned or reduced under Sections 5.4.2 or 5.4.3, shall not exceed 40% of the current year's annual budget for the District.

5.4.2. Manager must return all advanced funds on or before the expiration of the Initial Term, or earlier termination under the provisions of this Agreement. City, at its sole and absolute discretion, may allow Manager to return advanced funds as either a reduction to one or more reimbursement requests throughout the Initial Term, or a transfer of funds from Manager to City at the expiration of the Initial Term. City reserves the right to require Manager to return any outstanding advanced funds at the end of each fiscal year following the City's annual account reconciliation process and adjustments from estimated costs to actual costs.

5.4.3. If the Initial Term is extended under Section 3.2 of this Agreement, City may allow Manager to return advanced funds as a reduction to one or more reimbursement requests throughout the Term. City reserves the right to require Manager to return any outstanding advanced funds at the end of each fiscal year following the City's annual account reconciliation process and adjustments from estimated costs to actual costs. Manager must return all advanced funds on or before the expiration of the Term, or earlier termination under the provisions of this Agreement.

5.5. Other Revenue/ Non-Public Funds.

5.5.1. If the Manager receives revenue directly generated by activities carried out with any District Funds, then a portion of that revenue must be returned to the District account

based on the District's proportional monetary contribution toward the activity generating the revenue. All revenue owed to the District under this section must be returned in accordance with Section 5.1.1 prior to the end of the fiscal year in which the revenue was generated.

5.5.2. In the event Manager collects any funds other than District assessment funds ("Non-Public Funds"), such Non-Public Funds may be utilized or obligated by Manager for activities and/or improvements and shall not be subject to the provisions in this Agreement, with the exception of Sections 11.3 and 4.8, so long as Manager does not utilize or obligate any District assessment funds towards the following:

1) any portion of the proposed activity or improvement to which Manager proposes the use of Non-Public Funds; and

2) any staff time or resources associated with the proposed activity or improvement to which Manager proposes the use of Non-Public Funds, including but not limited to facilitating committee or board discussions, implementing the proposed activity or improvement, soliciting for goods or services necessary for implementation, and accounting or reporting on the proposed activity or improvement. Notwithstanding the foregoing sentence, Manager's use of District assessment funds for purposes of generating reports pertaining to Non-Public Funds in accordance with the requirements set forth in **Exhibit B** of this Agreement shall not, by itself, subject such Non-Public Funds to the provisions in this Agreement.

6. ACCEPTABILITY OF WORK

6.1. Quality of Work. Manager shall perform all work as reasonable and necessary to accomplish the intent of this Agreement and in a manner consistent with the standards outlined in this Agreement and the Engineer's Report. If Manager's work fails to meet industry best practice standards or fails to meet the quality or acceptability required under this Agreement, or Manager's or its Subcontractors' work is otherwise found to be deficient or incomplete (Deficient Work), Manager shall perform all reasonable and necessary corrective action that adequately addresses the Deficient Work.

6.2. Notice of Deficient Work. Upon discovery of Deficient Work, City agrees it will provide written communication to Manager with a description of the Deficient Work and any corrective action that Manager must provide or facilitate in order to receive reimbursement for the Activity.

6.3. Corrective Action for Deficient Work.

6.3.1. Manager shall correct, or facilitate correction of, all Deficient Work and all other deficiencies reported by City to Manager within seven (7) calendar days of Manager's receipt of Notice. City, it its sole and absolution discretion, may authorize additional time for corrective action.

6.3.2. If City receives complaints in connection with work subject to this Agreement, City may forward the communication to Manager. Within seven (7) calendar days of

receipt of Notice, and Manager must deliver written response to the City that includes a proposed corrective action that adequately addresses the identified issue(s) in the Notice. Manager is subject to withholding, reduction, and suspension under **Section 5 Reimbursement and Compensation** and **Section 6 Acceptability of Work** for failure to provide timely written response or failure to perform corrective action in accordance with this Section 6.3.2.

6.3.3. If the Deficient Work is not corrected or otherwise addressed to the satisfaction of the City within the allotted time, the Mayor or designee may use such findings as the basis for termination of this Agreement for cause under Municipal Code section 65.0218(n) and Section 14 of this Agreement.

7. OTHER REVENUE. If Manager collects any funds other than District Funds ("**Other Revenue**"), such Other Revenue shall not be subject to the provisions in this Agreement, unless Manager uses or obligates District Funds towards: (a) any portion of the proposed activity or improvement to which Manager proposes the expenditure of Other Revenue; or (b) any Manager staff time or resources paid for with District Funds (in whole or in part) are used for the proposed activity or improvement to which Manager proposes the expenditure of Other Revenue, including facilitating committee or Board of Directors discussions, providing administration for or implementing the proposed activity or improvement, soliciting goods or services necessary for implementation of the proposed activity or improvement, or accounting or reporting on the proposed activity or improvement.

8. INSURANCE. Prior to the Effective Date, Manager shall obtain all insurance coverage required in **EXHIBIT F** attached to this Agreement and deliver to City written certificates or policies of insurance evidencing such insurance coverage. Manager shall not perform any Activities, unless and until evidence of all insurance coverage required to be carried by Manager under this Section 8 has been submitted to and approved by the City Representative. Manager shall maintain all of the insurance coverage required to be obtained under this Section 8 throughout the Term.

9. REPORTS AND AUDITS.

9.1. Annual Audited Financial Statement. Manager shall provide an audited financial statement of all reimbursements and working capital advances paid to Manager with District Funds within ninety (90) days after the end of Manager's fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) as selected or approved by the City in accordance with Generally Accepted Auditing Standards (GAAS). The statements must include a Statement of Expenditures of the District Funds identified in the same expenditure classifications as contained in the City Council-approved District budget and show a comparison to the budgeted amounts, and a Statement of Compliance with the terms of this Agreement signed by Manager. Failure to comply with these requirements could result in suspension of any current payments or possible future funding. Each Annual Audited Financial Statement shall be posted to the District Website within 180 days after the end of Manager's Fiscal Year.

9.2. Audit. The City, at its sole discretion, reserves the right to require an audit. If Manager is subject to an audit from a source other than City, Manager shall provide a copy of the

audit to City within thirty (30) calendar days after receipt. Manager shall provide in any agreement it enters into with an audit firm for performance of any and all audits referenced in this Agreement that the audit firm shall provide City access to the working papers of the auditor(s) who prepare(s) the audit(s), that Manager waives any claim of privilege or confidentiality regarding, and consents to and authorizes the audit firm to release to City, any and all information obtained or utilized by such audit firm as the basis of any audit report issued by the audit firm.

9.3. Adverse Audit Findings. If any type of audit or monitoring review reveals any pattern of suspicious or questionable financial activity by Manager, City, in its sole and absolute discretion, shall have the right to immediately suspend this Agreement, in whole or in part, to further investigate such matter or pursue any other rights or remedies for such Default available to City under this Agreement, at law or in equity.

9.4. Cooperation. The City Auditor may, in their sole discretion, at no cost to the City, and for purposes of performing their responsibilities under San Diego Charter section 39.2, review Manager's records to confirm contract compliance. Manager shall make reasonable efforts to cooperate with Auditor's requests. Additionally, manager shall fully cooperate with City and any other auditors in any review or investigation of Manager's conduct or action(s) relating to this Agreement or money received under this Agreement. Manager's failure to provide required financial statements, audits or other information, notwithstanding expiration of the Term or other termination of this Agreement, shall be an Event of Default by Manager.

10. RECORDS.

10.1. Ownership of Records. Manager shall own and retain all Records. Manager shall require that each Subcontractor retain all Records. No Records shall be shown to any other public or private Person, except as authorized by City in writing, or where such Records are subject to disclosure under the California Public Records Act or other Law, as determined by the City Attorney.

10.2. Maintenance, Inspection and Photocopying. Manager and Subcontractors shall maintain all Records during the Term and the Retention Period (defined in Section 10.3). Manager shall maintain separate books and records of costs associated with Manager and Subcontractor's responsibilities under this Agreement. All Records shall be kept at Manager's regular place of business in the City of San Diego. At any time during normal business hours and as often as requested, Manager and all Subcontractors shall make available to the City or any of City's authorized representatives, at a reasonable location within the City of San Diego, all Records for the purposes of review, auditing and copying. If Manager is unable to make any Records available for inspection within the City, then Manager shall pay all of City's travel-related costs to inspect and photocopy the Records at the location where the Records are maintained. Assessments shall be used to pay for the costs of any audit performed by or at the direction of the City.

10.3. Records Retention Period. Manager and Subcontractors shall maintain Records for three (3) years after expiration or termination of this Agreement and Manager performing all of its obligations under Section 15 ("**Retention Period**"). At all times during the Retention Period, Manager shall permit City or any of City's authorized representatives to inspect and photocopy any and all Records. After expiration of the Retention Period, Manager shall provide City with

thirty (30) days' Notice of its intent to dispose of any Records. Manager shall provide any and all Records to City upon Notice from City requesting the Records during this thirty (30) day time period.

11. SUBCONTRACTOR LIST AND SUBCONTRACTS.

11.1. Initial Subcontractors. Within seven (7) days after the Effective Date, Manager shall provide City with each of the following: (a) a Subcontractors List (**EXHIBIT I**) including a statement of each Subcontractor's general area of responsibility; (b) a copy of all Subcontracts entered into; (c) a written statement describing the justification for each Subcontract; and (d) an itemization of all costs for each Subcontract. Manager shall procure all Subcontracts in compliance with the procedures in Section 4.2.2. Manager shall maintain documentation of the process used to procure each Subcontract showing compliance with Section 4.2.2 and shall provide a copy of all such documentation to City within ten (10) days after Notice from City requesting such documentation. Manager shall not employ, award any contract to, engage the services of, or pay any Subcontractor during any period of Federal, State, or City debarment, suspension, or ineligibility of the Subcontractor, when Manager has notice of such debarment, suspension, or ineligibility.

11.2. Adding Subcontractors. If Manager identifies a need for additional or substitute Subcontractor services, Manager shall provide City with each of the following within ten (10) days after the date of any Subcontract for such services: (a) a copy of the Subcontract; (b) a written statement of the justification for the additional or substitute Subcontractor services; (c) an itemization of all costs for the additional or substitute Subcontractor services; and (d) an updated Subcontractors List that includes the name and contact information of any new or substitute Subcontractor hired to provide the additional or substitute Subcontractor services.

11.3. Required Language for Subcontracts. Manager shall ensure that all Subcontracts entered into in connection with this Agreement contain language requiring Subcontractors to comply with all applicable Laws and all notices issued by City under the authority of all current or future Laws.

11.4. Subcontractor Insurance. Each Subcontractor shall obtain all insurance coverage required of Manager under this Agreement. Each Subcontractor shall maintain, in full force and effect all such insurance coverage while any and all work is performed by the Subcontractor in connection with this Agreement. No Subcontractor shall begin work on a Subcontract until all insurance required of the Subcontractor under this Section 11.4 has been obtained and evidence of such insurance coverage is approved by City.

11.5. Indemnity of City. If City is made a party to any judicial or administrative proceeding to resolve a dispute between Manager and a Subcontractor, Manager shall Indemnify City under Section 18 relating to such proceeding.

11.6. Subcontract Activity Report. Within ten (10) days after Notice from City requesting such a report, Manager shall provide to City: (a) statistical information (as described in the City's "**Subcontract Activity Report**" form), including the amount of subcontracting provided by firms

during the time period covered by the Subcontract Activity Report; and (b) an invoice from each Subcontractor listed in the Subcontract Activity Report.

12. CITY AND MANAGER REPRESENTATIVES.

12.1. City Representative. The Person identified as "City Representative" in **EXHIBIT G** is City's representative for all purposes of this Agreement, including receipt of Notice ("**City Representative**"). The City Representative shall communicate with Manager on all matters related to this Agreement. When this Agreement refers to communications to or with City, those communications shall be with the City Representative, unless this Agreement or the City Representative specifies otherwise. When this Agreement refers to an act or approval to be performed by City, that act or approval shall be performed by the City Representative, except where City Council approval is expressly required or required by Law or City Council policy. City, in its sole and absolute discretion, may change the identity of the City Representative at any time by Notice to Manager.

12.2. Manager Representative. The Person identified as "Manager Representative" in **EXHIBIT G** is Manager's representative for all purposes of this Agreement, including receipt of Notice ("**Manager Representative**"). The Manager Representative shall be a Person holding an executive position with Manager. The Manager Representative shall communicate with City on all matters related to this Agreement, coordinate Manager's activities, participate in all phases of the Agreement, and act as billing agent or primary point of contact to facilitate the reimbursement process. When this Agreement refers to any act or approval to be performed by Manager, that act or approval shall be performed by the Manager Representative.

12.3. Manager Representative: Changes**.** Given the City's continued services within the boundaries of the District, and the City's continuing oversight and fiscal and obligations under District Laws, the quality of Manger's performance of this Agreement is of substantial concern and importance to the City. Manager may change the identity of the Manager Representative by Notice to City at least ten (10) days in advance of the effective date of such change; however, timing and personnel changes shall not impede City's ability to meet its obligations under District Laws and all other applicable Laws.

13. EVENT OF DEFAULT REMEDIES. Notwithstanding any provision of this Agreement to the contrary, if an Event of Default by Manager occurs, City may exercise any or all of the following remedies: (a) immediately terminating this Agreement; (b) deeming Manager ineligible from consideration for any future funding from City; (c) any other remedy specified in this Agreement; or (d) any remedy available at law or in equity. The rights and remedies of City under this Agreement are cumulative and exercise of any one or more of such rights or remedies shall not limit, waive, or prevent City's exercise of any other rights or remedies under this Agreement, at law or in equity, existing as of the Effective Date or later enacted or established, that may be available to City against Manager. In addition to any and all other rights or remedies under this Agreement, at law, or in equity that may be available to City on the occurrence of a Default or an Event of Default by Manager, if Manager is in Default of this Agreement, City may take one or more of the following actions by Notice to Manager: (i) suspending one or more Assessment distributions to Manager, pending correction of the Default; or (ii) disallowing expenditure of Assessments for all or part of the Activities.

14. TERMINATION.

14.1. City's Right to Terminate for Convenience. Notwithstanding any other provision of this Agreement, the City Council may terminate this Agreement for any reason and at any time, provided the termination is carried out in accordance with Municipal Code section 65.0218(n).

14.2. Event of Default. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Manager, following the occurrence of an Event of Default by Manager. Unless otherwise stated in this Agreement, an Event of Default occurs no less than thirty (30) days after the effective date of a Notice of Default.

14.3. Other Termination Events. Notwithstanding any provision of this Agreement to the contrary, City, in its sole and absolute discretion, may immediately terminate this Agreement by Notice to Manager if:

14.3.1. *Misrepresentation*. Manager made or makes a material misrepresentation to City relating to this Agreement or any money received under this Agreement, regardless of whether Manager had knowledge or intent with respect to the misrepresentation;

14.3.2. *Termination Authorized*. Manager violates any term or condition of this Agreement for which immediate termination is authorized;

14.3.3. *Performance Impairment*. Any of the Manager Parties becomes subject to any court action or proceeding that may materially and adversely affects Manager's performance of, or ability to perform, its obligations under this Agreement;

14.3.4. *Misappropriation of Funds*. Manager misappropriates any funds provided by City to Manager under this Agreement (or any other agreement with City);

14.3.5. *District Disestablishment*. City elects, in City's sole and absolute discretion, to disestablish the District; or

14.3.6. *Change in Law*. Manager is unable or unwilling to comply with any additional term or condition governing this Agreement, Activities, Assessments, District Funds, or funds from any other public agency that may be required by newly enacted (or amended) Law.

14.4. Effect of Termination. Termination of this Agreement shall terminate the rights and obligations of the Parties under this Agreement, and any Person claiming any rights by or through a Party, except the Parties' rights or obligations expressly surviving termination of this Agreement; provided, however, any termination of this Agreement under either Section 14.2 or Section 14.3 shall not terminate City's rights under this Agreement to pursue any right or remedy relating to Manager's Event(s) of Default existing at the time of termination of this Agreement upon or as a result of such termination.

15. MANAGER RESPONSIBILITIES ON EXPIRATION OR TERMINATION OF THIS AGREEMENT. If this Agreement expires or is terminated, Manager shall complete any and all additional work necessary for the orderly filing of documents and closing of Manager's performance of its obligations under this Agreement, including delivering to City on or before the expiration or termination date of this Agreement: (a) Records, work product, leases, and agreements prepared or completed in connection with, or related to, Manager's performance under this Agreement; (b) all Assessments, accounts receivable attributable to the use of Assessments, vehicles, equipment, grant funds, and any other assets of the District; and (c) the final audited financial statement covering the last Fiscal Year during the Term or applicable portion of such Fiscal Year.

16. INFORMAL DISPUTE RESOLUTION. If the Parties have any dispute about their respective rights, obligations, or duties under this Agreement, or the meaning or interpretation of any provision of this Agreement, they shall first attempt to resolve such dispute by informal discussion among their respective representatives. Within five (5) calendar days after determining the existence of any such dispute, the Party determining there is such a dispute shall give Notice to the other Party of the existence of the dispute and the need to meet informally to resolve such dispute. The Parties shall endeavor, thereafter, to meet within five (5) calendar days after the delivery of such Notice, or at such other time as is reasonable under the circumstances.

17. MANDATORY ASSISTANCE. If a Third Person dispute or litigation, or both, to which City is or becomes a party, arises out of, or relates in any way to, this Agreement and Manager is not required to Indemnify City under Section 18 for all aspects of such dispute or litigation, upon City's Notice to Manager requesting such assistance, Manager Parties shall fully assist City in resolving the dispute or litigation. Manager Parties' assistance to City, referred to in this Agreement as "**Mandatory Assistance**," includes providing professional consultations, attending mediations, arbitrations, depositions, trials, or any event related to the dispute or litigation. In providing City with Mandatory Assistance, if the Manager Parties incur reasonable costs, City will reimburse Manager for such costs. However, if it is determined through resolution of the Third Person dispute or litigation, or both, that such Third Person dispute or litigation was attributable, in whole or in part, to one or more acts or omissions of one or more of the Manager Parties, Manager shall fully reimburse City for all amounts paid to Manager or any Manager Parties in reimbursement of costs incurred in providing Mandatory Assistance and shall Indemnify City under Section 18 for the Third Person dispute or litigation. Any Legal Costs the Manager Parties may incur as a result of providing Mandatory Assistance are not reimbursable by City under this Agreement.

18. INDEMNITY AGREEMENT. Manager shall Indemnify the City Parties against any and all Claims arising from, connected with, caused, or claimed to be caused, by this Agreement, City disbursement of District Funds to Manager under this Agreement, Manager expenditure of such funds, Manager accounting for receipt or expenditure of such funds, or by one or more acts or omissions of the Manager Parties in performing this Agreement, and all expenses of investigating and defending against any and all such Claims, including Legal Costs. Manager agrees to indemnify, defend, and hold the City free and harmless from and against all other actions, suits, proceedings, liability, claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the Manger or any officer, contractor, agent, or employee of the Manager and all expenses of

investigating and defending against same. However, Manager's duty to Indemnify the City Parties shall not include any Claim arising from the established sole negligence or willful misconduct of the City Parties. City may, in its sole and absolute discretion, conduct its own defense, or participate in its own defense, of any Claim subject to this Section 18. If City elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any Claim subject to this Section 18, Manager shall pay City for all Legal Costs related to such defense. Manager shall pay City any and all costs, including Legal Costs, City incurs enforcing the provisions of this Section 18. The provisions of this Section 18 are not limited by the insurance requirements of Section 8.

19. NOTICE. In all cases where Notice is required under this Agreement, service of such Notice shall be effective on the date transmitted by e-mail, on the third Business Day after the Notice is deposited with the United States Postal Service for first-class mail delivery, or on the first Business Day after deposit with a nationally recognized overnight delivery service for next Business Day delivery, in each of the latter two cases, with postage or delivery costs paid and addressed to City or Manager as specified in **EXHIBIT G** attached to this Agreement. City or Manager may change its Notice address by Notice delivered in accordance with this Section 19. Notice delivered by personal service shall be effective on delivery. Any attorney representing a Party may give Notice on behalf of that Party.

20. NO TRANSFER. Because this Agreement is entered into by City in reliance upon Manager's qualifications, experience, and personnel, Manager shall not Transfer or subcontract any of its rights, obligations, or duties under this Agreement, without the prior written consent of City, which may be given, withheld or conditioned in City's sole and absolute discretion. Any asserted Transfer or subcontract of Manager's rights, obligations, or duties under this Agreement without City's prior written consent shall not create a contractual relationship between City and any asserted transferee or Subcontractor, and any such Transfer or subcontract shall be ineffective, null and void.

21. CONFIDENTIALITY OF INFORMATION. All information provided by City to Manager in connection with this Agreement, the District, Assessments, Activities, or SBEP grants is for the sole use of Manager in performing Manager' obligations under this Agreement. Manager shall not release any of this information to any Third Person, without the prior written consent of City, except information that: (a) was publicly known, or otherwise known to Manager, at the time the information was provided to Manager by City; (b) subsequently becomes publicly known, through no act or omission of Manager; (c) becomes known to Manager from a source or means other than City; or (d) is considered a "public record," under the California Public Records Act (California Government Code sections 6250 – 6276.48), and not exempt from disclosure, as determined by the City Attorney.

22. INTELLECTUAL PROPERTY.

22.1. Rights in Data. If, in connection with the services performed under this Agreement, Manager or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials),

all rights of Manager or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Manager, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Manager's work on behalf of the City without prior written consent of City. Manager may not publish or reproduce any Deliverable Materials, for purposes unrelated to Manager's work on behalf of the City, without the prior written consent of the City.

22.2. Intellectual Property Rights Assignment. For no additional compensation, Manager assigns to City all of Manager's rights, title, and interest in and to the content of the Deliverable Materials created by Manager or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Agreement. Manager shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Manager also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

22.3. Manager Works. Manager Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Manager prior to the effective date of this Agreement; or (b) were conceived, invented, created, or developed by Manager after the effective date of this Agreement, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Agreement. All Manager Works, and all modifications or derivatives of such Manager Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Manager.

22.4. Subcontracting. In the event that Manager utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Manager and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Manager and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

22.5. Intellectual Property Warranty and Indemnification. Manager represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Agreement are either original, or not encumbered, and do not infringe upon the

copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Manager to produce, at Manager's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Manager further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third-Party Claim of Infringement is threatened or made before Manager receives payment under this Agreement, City shall be entitled, upon written notice to Manager, to withhold some or all of such payment.

22.6. Software Licensing. Manager represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Manager further represents and warrants that all third-party software, delivered to City or used by Manager in the performance of the Agreement, is fully licensed by the appropriate licensor.

22.7. Publication. Manager may not publish or reproduce any Deliverable Materials, for purposes unrelated to Manager's work on behalf of the City without prior written consent from the City.

22.8. Royalties, Licenses, and Patents. Unless otherwise specified, Manager shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Manager warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Manager, or those furnishing goods, materials, supplies, or equipment to Manager under the Agreement.

23. GENERAL PROVISIONS.

23.1. Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State.

23.2. Governing Law. The terms and conditions of this Agreement shall be construed and interpreted in accordance with the Laws of the State.

23.3. Jurisdiction and Venue. The Parties agree to submit to the personal jurisdiction of, and that venue shall be in, any State court within the County, for any dispute, Claim, or matter arising out of, or related to, this Agreement, subject to the requirements of Section 16.

23.4. Integration and Amendment. This Agreement and the exhibits attached to this Agreement fully express all understandings of the Parties concerning the subject matter of this Agreement. All prior negotiations and agreements between the Parties regarding the subject matter of this Agreement are merged into this Agreement. No change, alteration, amendment, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be enforceable, unless made in the form of a written amendment to this Agreement signed by the authorized representative(s) of each Party, respectively. The Parties agree to enter into any and all amendments to this Agreement that are necessary to comply with any and all new or modified Federal, State, and local laws affecting this Agreement.

23.5. No Waiver. No failure of any Party to insist upon the strict performance by another Party of any term, covenant, or condition of this Agreement, nor any failure to exercise any right or remedy upon a Default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or the requirement to comply with such term, covenant, or condition. No waiver of any Default or Event of Default shall affect or alter this Agreement, and each and every term, covenant, and condition, in this Agreement shall continue in full force and effect regarding any existing or subsequent breach.

23.6. Successors in Interest. Subject to Section 20, this Agreement, and all rights, obligations, or duties under this Agreement, shall be in full force and effect, whether or not any Party to this Agreement has been succeeded by another entity, and all rights, obligations, or duties under this Agreement shall be binding on any Party's successor in interest.

23.7. Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity or unenforceability. All remaining terms and provisions of this Agreement shall be valid and enforced to the fullest extent Law allows.

23.8. Conflicts between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and any exhibit attached to this Agreement, the main body of this Agreement shall control. If a conflict exists between an applicable Federal, State, City, or other Law and this Agreement, then the Law shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, or Laws are not considered conflicts, and the most stringent requirement shall control. Each Party shall Notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

23.9. Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this

Agreement 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 Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement 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 this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement 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 Agreement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

23.10. Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

23.11. Counterparts. This Agreement may be signed in multiple counterparts, which, when taken together, shall constitute a single signed original, as though all Parties had signed the same document.

23.12. Headings. All headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

23.13. Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Agreement, and all continuing obligations set forth in this Agreement, shall survive expiration or termination or completion of this Agreement.

23.14. Time of Essence. Time is of the essence of each provision of this Agreement.

23.15. Exhibits. All exhibits referenced in this Agreement are incorporated into this Agreement and are attached to this Agreement as follows:

EXHIBIT A	City Baseline Services
EXHIBIT B	Scope of Services
EXHIBIT C	City Contract Provisions
EXHIBIT D	Prevailing Wage Requirements
EXHIBIT E	Reimbursement Procedures
EXHIBIT F	Insurance Requirements
EXHIBIT G	Notice Address; Party Representatives
EXHIBIT H	Sample Budget Worksheet
EXHIBIT I	Subcontractor List

[**Signatures on following page.**]

SIGNATURE PAGE
TO
CITY OF SAN DIEGO
NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

IN WITNESS WHEREOF, this Agreement is entered into by City, acting by and through the Mayor or designee and Manager, by and through the signature(s) of Manager's authorized representative(s), all as set forth below.

CITY OF SAN DIEGO,
a California municipal corporation

By: Christie A. Marcella (Aug 20, 2026 17:14:12 PDT)
Christie Marcella
Deputy Director
Economic Development Department

OCEAN BEACH MERCHANT'S ASSOCIATION, INC.,
a California nonprofit corporation

By: Carter D. Moss (Aug 20, 2026 09:21:23 PDT)
Carter Moss
Board President
Ocean Beach Merchant's Association, Inc.

Approved as to form this 21 day of August, 2026

HEATHER FERBERT
City Attorney

By: Daphne Skogen
Daphne Z. Skogen
Deputy City Attorney

EXHIBIT A
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

City of San Diego Baseline Services

Pursuant to the Management and Maintenance Agreement for the North Park Special Enhancement District (Agreement) between the City and Ocean Beach Merchant's Association, Inc. (District Manager) to which this document is attached as Exhibit A, the proposed Baseline Services each year would be subject to confirmation by the City Council through the City's annual budget process. The Parties to the Agreement understand that the City baseline services, including but not limited to the level and frequency of the services, may change, at the sole discretion of the City Council and as allowed by law. As of **July 1, 2026**, the City provides, the following citywide Baseline Services within the North Park Special Enhancement District (District):

1. Maintenance of Street Safety Lights, Signals and Signal Lights: Maintain and repair street safety lights, signals and signal lights. In addition to responding to lights and traffic signal repair needs reported to the City by the District Manager, the City repairs lights, signals and signal lights as needed via reports to the Get It Done application. [Transportation Department: Street Division]

2. Maintenance of Streets, Signs, Curbs, and Traffic Legends: Maintain, repair and replace all street signs; paint curbs and traffic legends; and pavement striping consistent with the then current citywide baseline service level. In addition, the City maintains, repairs and replaces street signs, curbs, pavement striping traffic legends as needed via reports to the Get It Done application. [Transportation Department: Street Division]

3. Street Sweeping: Regularly sweep the streets, pursuant to a schedule provided to the District Manager but not less frequently than six times per year in each of the benefit zones within the District boundaries. Street sweeping operates two shifts, day and night, and schedules vary. Scheduled maintenance occurs Monday through Friday 2:00 am to 2:30 pm. Stormwater will respond 24 hours per day, 7 days per week to Get it Done request in case of any emergencies. Street sweeping services do not occur on City-observed holidays or during rain events.
Please refer to the Street Sweeping Map and Schedule Route for the most updated frequency: https://sandiego.maps.arcgis.com/apps/webappviewer/index.html?id=ee3b1f22fc6246bbbc9349a0c866132c. District Manager shall post the street sweeping schedule on its website. [Stormwater Department]

4. Storm Drains: All storm drain inlets are scheduled for inspection and/or cleaning once a year per the Jurisdictional Urban Runoff Management plan and on an as-needed basis via reports to the Get It Done application. All repairs to storm drains are also performed on an as needed basis. Scheduled maintenance occurs Monday through Friday 6:00 am to 2:30 pm. Stormwater will respond 24 hours per day, 7 days per week to Get it Done request in case of any emergencies. [Stormwater Department]

5. Tree Maintenance: Maintain all palm trees in the public right-of-way in each of the benefit zones within the District as funding permits for trimming every two years. Removals of palm trees as needed to prevent or minimize dead trees and removal of fronds in the street to prevent the blocking of storm drains. Trimming of shade trees as needed to prevent or minimize blocking of traffic signs and signals and fallen or hanging limbs in the right-of-way. In such cases, the City may leave the stump if tree grate is in place.

In accordance with City Council Policy 200-05, remove damaged, dead or dying trees of any kind in the public right-of-way and repair the tree area in each of the benefit zones within the District boundaries when reported via the Get It Done application. At the City's discretion, and if funding is available, the City may replace the tree. If an unsafe condition related to a damaged tree grate exists and is reported via the Get it Done application, the City will issue a Notice of Liability (NOL) to the adjacent property owner instructing them to remedy the problem. If the adjacent property owner fails to respond to the NOL, the City will take action to mitigate the potential hazard. [Transportation Department]

6. Graffiti Control: When graffiti is reported or observed in public places not related to City streets and traffic control, the City's Graffiti Abatement Program staff and its private contractor, will work with District Manager staff to remove graffiti located on privately owned residential property of four units or less in the area which is visible from the street using the administrative abatement procedures found in Municipal Code section 54.0405 and established practices. Private residential property of five units or more and commercial property will be referred to Code Enforcement to facilitate compliance from the private property owner.

With respect to graffiti that is on City streets and traffic control devices (i.e. stickers on street signs, signal boxes and poles), the Street Division will respond to reports to the Get It Done application by taking action to remove the graffiti. In the course of maintaining street and traffic-related infrastructure for which they are responsible, the Street Division will periodically remove graffiti from street infrastructure within the District boundaries. [Transportation Department: Street Division]

7. Refuse Collection: Remove refuse, recycling, and organic waste from eligible residences within the MAD boundaries in compliance with the San Diego Municipal Code and Waste Management Regulations. [Environmental Services Department: Collection Services Division]

8. Street Litter Receptacles: Provide maintenance of City-owned concrete street litter containers at a minimum of once per week or upon request of the District Manager as needed (as resources permit). [Environmental Services Department: Clean SD Division]

9. Special Events: For special events proposed to take place in the District boundaries that are required to obtain a City of San Diego Special Event Permit for the conduct of the event, the City shall:

(A) provide to the District Manager in a timely manner and in conformance with the City's

permit application review process, information submitted to the City by the event organizer (applicant) regarding the event organizer's proposed plans to ensure that clean-up and restoration of the public right-of-way within the venue and surrounding area (200 feet around event perimeter) is completed within the guidelines established by the Special Events Ordinance;

(B) participate (in its discretion) in any pre-event and post-event walk-through inspections of the venue and surrounding area, scheduled by the District Manager; and

(c) upon notification by the District Manager that an event organizer has not restored the venue and surrounding area to the District Manager's satisfaction and a remedy between the two parties cannot be achieved, the City shall take the following steps to follow up on the District Manager's notification: (i) make an independent assessment of the situation using staff with expertise in the specific area noted by the District Manager, (ii) should the City determine that the event organizer has not restored the venue and surrounding area to its pre-event condition and in accordance with the Special Events Ordinance, City shall cause the situation to be remedied in a timely manner and to the mutual satisfaction of the City and the District Manager, in accordance with §22.4022(c) of the San Diego Municipal Code. [Special Events & Filming Department]

10. Sidewalk Maintenance: Regularly maintain in good condition all sidewalks consistent with City Council Policy 200-12. This Policy places the responsibility for replacement of all sidewalks on the abutting property owner unless some act or property of the City has damaged the sidewalk. The City does not maintain decorative pavement or sidewalks above basements. If an unsafe sidewalk condition exists and is reported via the Get It Done application, the City will take action to temporarily mitigate the potential hazard and notify abutting property owners of their responsibility to permanently repair/replace the sidewalk. [Transportation Department: Street Division]

11. Public Parks: The City will regularly clean and maintain or cause to be cleaned and maintained all public parks in the District. [Park & Recreation Department]

12. Public Restrooms: The City will satisfactorily clean and maintain or cause to be cleaned and maintained all public restrooms in the District. [Park & Recreation Department]

13. Illegally Dumped Waste in Public Rights of Way: The City removes large bulky waste such as furniture, appliances, office equipment, and construction materials from the right-of-way within the MAD boundaries in response to Get It Done reports and will proactively remove illegally dumped waste observed in the right-of-way when responding to Get-It-Done complaints. [Environmental Services Department: Clean SD Division]

14. Solid Waste Code Compliance: Environmental Services Department Code Compliance Officers (CCOs) investigate Get-It-Done reports for various solid waste code violations including, but not limited to: Encroachment on right-of-way (including trash containers/dumpsters), overflowing containers, inadequate or no recycling, and waste on private property. CCOs issue Notices of Violation and citations to property owners, business owners, and franchise haulers depending on the violation. [Environmental Services Department: Clean SD and Waste Reduction Divisions]

15. Contact Information: For each of the District Manager obligations set forth in Exhibit B to the Agreement, the City shall identify the person(s) to whom the District Manager's reports of problems, issues, or questions should be directed.

Sean Karafin
Program Manager
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skarafin@sandiego.gov

The Parties agree that if the level or frequency any of the City's services falls below its baseline, the District Manager will not be obligated to correspondingly increase its level of such services hereunder. District Manager may assume provision of services reduced or eliminated by the City in accordance with and subject to the District Management Plan and Engineer's Report, and all applicable laws.

EXHIBIT B
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

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 Merchant's Association, Inc. Manager, 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, District Manager shall not provide such Services identified in Exhibit A.

1) District Manager shall be responsible for administering all contracts necessary to provide the Services set forth in the Engineer's Report. A map showing general areas Services is provided in the Engineer's Report as "Exhibit A - District Boundary Map."

2) All work performed by District Manager and its Subcontractors must meet or exceed industry best practice standards. If the City determines that 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, reimbursement 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 District Manager's or Subcontractor's failure to provide quality or acceptable services as required may be considered cumulatively as a Default under this Agreement.

3) District Manager, at a minimum, shall provide administrative services to facilitate the Services (as further described below) within the boundaries of the District. District Manager 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 MAD CONTRACT SITE LOCATIONS

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

B. CONTRACT ADMINISTRATION

The City Representative and Manager Representative for administration of this Agreement are defined in Sections 12.1 and 12.2, respectively, and are both identified in Exhibit G, which may be amended from time to time by written notice to the Parties.

District Manager will provide regular oversight of all work to ensure compliance to the Agreement in the performance of all Services. 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. District Manager 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.

District Manager, authorized to discuss matters related to this Scope of Work, must be available during normal working hours, Monday through Friday between 9:00 a.m. and 5:00 p.m. District Manager 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

District Manager shall not use Subcontractors for administrative responsibilities under this Agreement unless authorized in writing by the City. District Managers may employ the use of Subcontractors in the implementation of all other 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. District Manager is responsible to verify qualifications. Additionally, 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, MAINTENANCE 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. Maintenance services will be provided by the District Manager or its Subcontractors. District Manager must provide the administrative services necessary to facilitate services in the District, which are generally described in the Annual Report as **Administration, Program Management, and Contingency.** Examples of this category of special benefit services and costs may include the following:

- Staff and administrative costs.
- General liability insurance.
- Office related expenses.
- Rent.
- Financial reporting and accounting.
- Legal costs related to the operation of the district.
- Delinquencies, City/County fees, reserves.

If District Manager provides or facilitates the services identified in this Section D, District Manager must ensure that those services are provided in the manner as described, including measures taken for safety and service standards, and in compliance with all local regulations. The services described in this Section D are eligible for reimbursement only if provided in the manner described below. Additional services may be provided, however, all District Manager and Subcontractor services shall be limited to maintenance, improvements, and activities authorized under the Annual Report for the District.

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. Maintenance services will be provided by the District Manager or its Subcontractors. The improvements maintained and services provided by the District are limited to and generally described in the Annual Report for the District 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. SCHEDULE OF SERVICES

District Manager shall provide a schedule of anticipated services and frequencies (Schedule of Services) for the upcoming fiscal year to City in writing no later than July 15 each year. Funding for the services and frequencies is subject to approval through the

District's Annual Report and the City-approved budgets in each fiscal year. District Manager may use the Schedule of Services below as an example:

Service	Frequency
Trashcan Maintenance and Emptying	Daily
Plant and Shrub Maintenance	Weekly
Sidewalk Pressure Washing	Monthly
Sidewalk Sweeping	As Needed
Litter Abatement	As Needed
Weed Abatement	As Needed
Graffiti Abatement	As Needed
Security Services	As Needed
Reporting Hazards to City	As Needed
Special Projects	As Needed

F. REQUIREMENTS OF DISTRICT MANAGER & SUBCONTRACTORS

1. **Quality of Work:** All work performed within this Scope of Work shall be done with the expectation of 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:** District Manager will ensure that all services are provided according to the schedule shown in Section E of this Scope of Work or, in special circumstances, as otherwise approved by the City.

3. **Proper Conduct:** 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:** 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, District Manager, Subcontractor and their employees.

5. **Hazardous Conditions:** District Manager shall have no obligation to report or repair cracked, raised, or uneven sidewalks. District Manager 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 District Manager, 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:** 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 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. 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. 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

EXHIBIT C
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

CITY CONTRACT PROVISIONS

1. **COMPLIANCE WITH CITY'S EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)**. Manager shall comply with City's EOCP Requirements. Manager shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Manager shall provide equal opportunity in all employment practices. Manager shall ensure that its Subcontractors comply with this program. Nothing in this **EXHIBIT C**, Section 1, shall be interpreted to hold Manager liable for any discriminatory practice of its Subcontractors.

2. **NON-DISCRIMINATION IN CONTRACTING**. Manager shall comply with City's Nondiscrimination in Contracting Ordinance, codified in SDMC sections 22.3501 - 22.3517. Manager shall not discriminate on the basis of race, color, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Manager shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Manager agrees and understands that violation of this **EXHIBIT C**, Section 2, shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment or other sanctions. Within sixty (60) calendar days after Notice from City requesting such information, Manager shall provide City a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Manager has used in the past five years on any of its contracts that were undertaken within the County, including the total dollar amount paid by Manager for each subcontract or supply contract. Manager shall fully cooperate in any investigation conducted by City, under City's Nondiscrimination in Contracting Ordinance, referenced above in this **EXHIBIT C**, Section 2.

3. **LOCAL BUSINESS AND EMPLOYMENT**. Manager acknowledges that City seeks to promote employment and business opportunities for local residents and firms on all City contracts. Manager shall, to the extent reasonably possible and allowed by Law, solicit applications for employment and bids and proposals for Subcontracts for work associated with this Agreement, from local residents and firms, as opportunities occur. Manager shall hire qualified local residents and firms, whenever feasible and allowed by Law.

4. **LIVING WAGES**. This Agreement is subject to City's Living Wage Ordinance ("**LWO**"), codified at SDMC sections 22.4201 through 22.4245, if and to the extent that any of the Activities to be undertaken under this Agreement are services subject to the LWO. The LWO requires payment of minimum hourly wage rates and other benefits to "covered employees" (as defined in the LWO), unless an exemption from the LWO applies. SDMC section 22.4225 requires Manager and its Subcontractors to fill out and file a living wage certification with the City Manager within thirty (30) days after the Effective Date. Subcontractors hired by Manager after the Effective Date must fill out and file a living wage certification with the City Manager within thirty

(30) days after being hired. Manager shall require, by contract, all of its Subcontractors that are performing services subject to the LWO to comply with the LWO.

4.1. Exemption from Living Wage Ordinance. Under SDMC section 22.4215, Manager or any of its Subcontractors may be exempt from the LWO. For an LWO exemption determination, Manager or any of its Subcontractors must complete the Living Wage Ordinance Application for Exemption.

4.2. Proof of Compliance. Manager and all of its Subcontractors shall submit written proof of compliance with or exemption from the LWO on or before the first day of each Fiscal Year during the Term.

5. **AMERICANS WITH DISABILITIES ACT**. Manager shall comply with all accessibility requirements under the Federal Americans with Disabilities Act ("**ADA**") and under Title 24 of the California Code of Regulations ("**Title 24**"). When a conflict exists between the ADA and Title 24, Manger shall comply with the most restrictive requirement (i.e., the requirement that provides the most access). Manager shall also comply with City Council Policy 100-04, adopted by City Council Resolution R-282153, which policy is incorporated into this Agreement by this reference. Manager warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any Subcontract contains the Subcontractor's agreement to abide by the provisions of the ADA, Title 24, City Council Policy 100-04, and any other applicable access laws or regulations.

6. **DRUG – FREE WORKPLACE**. Manager shall comply with City's Drug-Free Workplace requirements, set forth in City Council Policy 100-17, as adopted by City Council Resolution R-277952. Manager shall certify that it will provide a drug-free workplace, by electronically submitting to City a "Certification for a Drug-Free Workplace" form approved by the Manager Representative. Submittal of this certification by Manager shall be a condition precedent to this Agreement. Manager shall post in a prominent place at its offices a statement setting forth its drug-free workplace policy, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying the actions that will be taken against employees for violating the policy. Manager shall establish a drug-free awareness program to inform employees about each of the following: (a) the dangers of drug abuse in the workplace; (b) the policy of maintaining a drug-free workplace; (c) the availability of drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon employees for drug abuse violations.

7. **EMPLOYMENT OF CITY STAFF.** Under City Council Policy 300-11, if Manager employs an individual, who, within twelve (12) months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to City Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by Notice to Manager.

8. **ENDORSEMENT**. Manager shall comply with the provisions of City Administrative Regulation 95.65 regarding product endorsements or creating any advertisement or writing that

identifies or refers to City as the user of a product or service, without obtaining the prior written approval of City, which approval may be given or withheld in City's sole and absolute discretion.

9. **EQUAL BENEFITS ORDINANCE**.

9.1. In accordance with City's Equal Benefits Ordinance, codified in SDMC sections 22.4301-22.4308 ("**EBO**"), Manager shall provide and maintain equal benefits, as defined in SDMC section 22.4302 during the Term. Failure of Manager to maintain equal benefits consistent with the EBO is an Event of Default by Manager (SDMC 22.4304(e)). Manager shall notify its employees of the equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by its employees:

> "During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners."

9.2. Manager shall immediately give City access to documents and records sufficient for City to verify that Manager is providing equal benefits and otherwise complying with the EBO requirements. The full text of the EBO and the "Rules Implementing the Equal Benefits Ordinance" are posted on City's website at www.sandiego.gov/purchasing/ or can be requested from City's Equal Benefits Program Office at (619) 533-3948.

10. **CONFLICT OF INTEREST**.

10.1. Compliance with All Laws. Manager shall comply with all Federal, State and City conflict of interest laws, regulations, and policies applicable to City contracts, including each of the following: (a) California Government Code sections 1090-1099; (b) California Government Code sections 81000-91014; and (c) the City's Ethics Ordinance, codified in SDMC sections 27.3501-27.3595.

10.2. Identification of Conflicts of Interest. Manager is unaware of any perceived financial or economic interest of any Manager Party relating to this Agreement. 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 Manager for services provided under this Agreement if such services relate to any contract awarded or financial obligation entered in violation of any State or City 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 City 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 City conflict of interest laws.

10.3. Public Officer or Employee Economic Interests. The Parties are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. If Manager becomes aware during the Term of any financial or economic interest of any public officer or employee of City relating to this Agreement, Manager shall immediately Notify City. If such a financial or economic interest is determined by City to exist, City shall have the right to

immediately terminate this Agreement, without liability to Manager, by giving Notice of termination to Manager.

10.4. City Ethics Code Restrictions. The Manager Parties shall be subject to the provisions of City's Ethics Ordinance, including the prohibition against lobbying City for one (1) year following the expiration or termination of this Agreement. Manager shall establish, and make known to the Manager Parties, appropriate safeguards to prohibit them from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships. The Manager Parties shall not recommend or specify any product, supplier, or contractor with whom they have a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies. If any Manager Party violates any conflict of interest law, or any of the provisions of this **EXHIBIT C**, Section 3, the violation shall be an Event of Default by Manager. Further, any such violation shall subject Manager to liability to City for Legal Costs and all damages sustained by City as a result of the violation.

10.5. Delivery of Board Roster. Within thirty (30) days after the Effective Date and on or before each anniversary of the Effective Date during the Term, Manager shall deliver to the City Representative a list of the names of all of Manager's board members and their business affiliations. If Manager's board membership changes during the Term, Manager shall deliver to City an updated list of the names of all of Manager's board members and their business affiliations within thirty (30) days after each such change occurs.

EXHIBIT D
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Manager and all Subcontractors shall comply with SDMC section 22.3019 requiring compliance with California Labor Code sections 1720 through 1861 (State prevailing wage law) for any and all construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and for any and all alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000. Pursuant to SDMC section 22.3019, construction work performed or funded pursuant to this Agreement cumulatively exceeding $25,000 and alteration, demolition, repair and maintenance work performed or funded pursuant to this Agreement cumulatively exceeding $15,000 is subject to the State of California prevailing wage law set forth in California Labor Code sections 1720 through 1861 ("**Prevailing Wage Law**") and in performing or funding any and all such work, Manager and its Subcontractors shall comply with Prevailing Wage Law, including the requirements set forth in this **EXHIBIT D.** This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" pursuant to SDMC sections 22.4201 through 22.4245 ("**LWO**") or this Agreement. If both Prevailing Wage Law and the LWO are applicable to particular work, Manager and its Subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate, and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1. Notice to City. Manager shall Notify City whenever Manager or a Subcontractor intends to commence any activity that is subject to Prevailing Wage Law under this Agreement.

1.2. Compliance with Prevailing Wage Requirements. Pursuant to Prevailing Wage Law, Manager and its Subcontractors shall ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.2.1. *Wage Rates*. Copies of the prevailing rate of per diem wages are on file at City's Equal Opportunity Contracting Department and are available for inspection to any interested Person on request. Copies of the prevailing rate of per diem wages also may be found at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm. Manager or its Subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to any interested Person upon request. Manager shall deliver evidence of the required job site posting to City, within 5 calendar days after such posting.

1.2.2. *Wage Rate Effectiveness*. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid

after the expiration date, then the published wage rate shall be in effect for the Term of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the Term of this Agreement, such wage rate shall apply to the balance of the Term of this Agreement.

1.3. Penalties for Violations. Manager and its Subcontractors shall comply with California Labor Code section 1775, if a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with California Labor Code section 1775 shall be in addition to any other applicable penalties allowed under California Labor Code sections 1720-1861.

1.4. Payroll Records. Manager and its Subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Manager and its Subcontractors shall comply with California Labor Code section 1776, including having provisions requiring such compliance in all contracts with Subcontractors. Any requirement to submit certified payroll records to DIR shall include, without limitation, submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR, and submitting certified payroll records to City through City's web-based Labor Compliance Program (described in this **EXHIBIT D**, Section 1.9). Further, Manager and its Subcontractors shall furnish the records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required in California Labor Code section 1771.4. Manager is responsible for ensuring that its Subcontractors submit certified payroll records to City, the Labor Commissioner, and DIR.

1.5. Apprentices. Manager and its Subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Manager shall be held responsible for its compliance and the compliance of its Subcontractors with California Labor Code sections 1777.5, 1777.6 and 1777.7.

1.6. Working Hours. Manager and its Subcontractors shall comply with California Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of $25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

1.7. Required Provisions for Subcontracts. Manager and each of its Subcontractors shall include, at a minimum, a copy of the following provisions in any contract it enters into with a

subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

1.8. Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Manager and its Subcontractors are required to secure the payment of compensation of their respective employees and by signing this Agreement or any subcontract, respectively, Manager and each of its Subcontractors certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Manager shall include this certification by each Subcontractor in each contract with a Subcontractor.

1.9. Labor Compliance Program. City has its own Labor Compliance Program authorized in August 2011 by DIR. City will withhold payments to Manager when payroll records are delinquent or deemed inadequate by City or another governmental entity, or it has been established, after an investigation by City or another governmental entity, that underpayment(s) have occurred. For questions or assistance, please contact City's Equal Opportunity Contracting Department at 619-236-6000.

1.10. Contractor Registration Requirements. All work subject to Prevailing Wage Law is subject to compliance monitoring and enforcement by DIR. Manager must be registered with DIR before the Effective Date. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of California Public Contract Code section 4104, or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work pursuant to California Labor Code section 1725.5. In accordance with California Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 2103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

1.10.1. *Inadvertent Error*. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

1.10.2. *Cancellation*. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of California Labor Code section 1725.5.

1.10.3. *Registration Certification*. By entering into this Agreement, Manager certifies that: (a) Manager is registered with DIR in compliance with Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City; and (2) Manager and its Subcontractors have verified or will verify that all Subcontractors used on work subject to Prevailing Wage Law are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and shall provide proof of such Subcontractor registration to City.

1.11. Stop Order. If Manager or its Subcontractor(s) engage in any work without the required registration, in violation of California Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is/are registered. Failure to observe a stop order is a misdemeanor.

1.12. List of all Subcontractors. City may ask Manager for the most current list of Subcontractors (regardless of tier), along with their DIR registration numbers, utilized in performance of any work under this Agreement at any time during performance of this Agreement, and Manager shall provide the list within ten (10) working days of City's request. Additionally, Manager shall provide City with a complete list of all Subcontractors utilized in performance of any work under this Agreement (regardless of tier), within ten (10) working days after the completion of the work, along with their DIR registration numbers. City shall withhold any payments to Manager until 30 days after this information is received by City.

1.13. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of $25,000 or less. Manager shall still comply with California Labor Code sections 1720, et. seq. The only recognized exemptions are listed below:

1.13.1. *Registration*. Manager and its Subcontractors will not be required to register with the DIR for small projects. (California Labor Code section 1771.1).

1.13.2. *Certified Payroll Records*. The records required in California Labor Code section 1776 shall be required to be kept and submitted to City, but will not be required to be submitted online with the DIR directly. Manager will need to keep these records for at least three (3) years following the completion of the subject work. (California Labor Code section 1771.4).

1.13.3. *List of all Subcontractors*. Manager will not be required to hire only registered Subcontractors and is exempt from submitting the list of all Subcontractors that is required in this **EXHIBIT D**, Section 1.12. (California Labor Code section 1773.3).

1.14. Filing of Form PWC-100. Manager shall timely file or update a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed or updated form to City.

1.15. Filing of Notice of Completion. Manager shall record a notice of completion in accordance with California Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

EXHIBIT E
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

REIMBURSEMENT PROCEDURES

Manager shall submit monthly reimbursement requests to the City along with all supporting receipts, invoices, checks, payroll statements, bank statements, and all other records of services performed. Each expenditure submitted for reimbursement must show as cleared on the submitted bank statements. Manager is permitted to submit reimbursement requests for expenses incurred on or after the Fiscal Year beginning July 1 and incurred in connection with providing services, Improvements, and Activities described in this Agreement. Only Activity expenses in the Budget may be submitted with a Reimbursement Report to document use of Assessments.

Packet Submittal Requirements

Manager shall submit a Reimbursement Packet to City for each month during the Term on or before the 15th day of the following month.

The information required to be included as part of each monthly Reimbursement Packet is listed below and should be submitted in the following order. Corresponding details are described below.

DOCUMENT	SOURCE
Checklist of Items Submitted	Template
MAD Cover Sheet	Template
MAD Budget Report	Template
Profit & Loss Summary	QuickBooks
Transaction Detail Report	QuickBooks
Journal Report (Custom)	QuickBooks
Bank Reconciliation(s) Report	District office
Bank Statement(s)	QuickBooks
A copy of back up for each of the expenses in the same order as the Transaction Detail Report	Check/Invoice

Requirements

1. Manager is required to register with City for the ACH payment program. Once the payment request is authorized by City Comptroller's Office, ACH payments are generally deposited into the receiving bank account the next Business Day (in the morning), but City does not guaranty deposits in any particular time period.

2. Accounting System: The District accounting system (QuickBooks or similar accounting system) must be set up into classes or equivalent categories to generate appropriate reports.

   To the extent possible, QuickBooks expense categories should match District Budget Worksheet categories in **Exhibit H** and include the following (as applicable). For year-to-year adjustments, refer to the **Operating Manual**.

   - Landscape Improvements and Activities
     - Maintenance Personnel
       - Landscaping Services
       - Pressure Washing
       - Steam Cleaning
       - Waste Removal / Dumpster Service
       - Litter Abatement
       - Graffiti Abatement
       - Street Lighting
       - Tree Maintenance / Planting
       - Security Services
       - Water Services
     - Maintenance Goods
       - Trash Containers / Dumpsters
       - Materials / Supplies (i.e. landscaping, tree supplies, nursery, cleaning)
       - Gasoline / Fuel
       - Equipment / Rentals
       - Repairs / Upkeep
   - General Operating
     - Economic Development
       - Banners
       - Communications/Website
       - Events and Mixers
     - Insurance
     - Accounting & Audit
   - Administration
     - Admin Personnel
     - Office Expenses
       - Rent
       - Supplies/Other (Licenses & Fees)
       - Printing
       - Gas & Electric
       - Water
       - Trash
       - Phone/Internet
       - Repair/Janitorial

3. **Financial Reports:**

a. Profit and Loss Summary Reports should include each funding source/class/category for the reporting month.
b. Transaction Detail by Account Report should include each funding source/class/category.
c. Custom Journal Report for all transactions in the month should indicate the split of each expenditure as applicable between the various funding sources/classes/categories.
d. Bank Reconciliation Report is a summary of banking and business activity prepared to reconcile the balance in the organization's records with their bank account balance.
e. Bank Statement(s) should include all pages.

4. Supporting Documentation:

a. A copy of each check, invoice or receipt detailing the services/products for each expense must be submitted. These documents shall be provided in the same order as listed on the Transaction Detail by Account Report. Only those invoices, checks and receipts in connection with services, improvements, and activities described in this Agreement are to be submitted.
b. All checks, invoices, and receipts should include a date, vendor name, and dollar amount.
c. When past due expenses are being submitted, then the prior invoice(s) reflecting the amount owed must also be included, since only fully documented expenses may be accepted. However, payment of expenses from prior Fiscal Year(s) will not be eligible.
d. Include payroll statements that detail all withholdings and taxes if salaries are included in the Budget.
    i. Proof of payments to State and Federal agencies are required if the taxes/fringe benefits are to be considered eligible expenses.
e. For refreshments for <u>public</u> board/committee/taskforce meetings, submit an agenda and the sign-in sheet for each meeting.
f. Ineligible expenses include, but are not limited to: late fees, finance charges (for late payments), citations, other penalties, nonsufficient fund bank fees, gifts, donations, gift cards, and alcohol purchases.

EXHIBIT F
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

INSURANCE REQUIREMENTS

1. **General Requirements**. Manager shall not begin any performance under this Agreement until Manager has: (1) provided City insurance certificates and endorsements evidencing all insurance policies and endorsements described in this **Exhibit F;** (2) obtained City approval of each insurance company or companies issuing such insurance policies or endorsements; and (3) confirmed that all insurance policies contain the special provisions described in this **Exhibit F**. Manager's liabilities, including its indemnity obligations under this Agreement, shall not be limited in any way to the insurance coverage described in this **Exhibit F**. Maintenance of the insurance coverage described in this **Exhibit F** is a material term of this Agreement and Manager's failure to maintain or renew any such insurance coverage or to provide evidence of renewal or replacement of any such insurance coverage during the Term is an Event of Default by Manager.

2. **Specific Insurance**. Manager shall procure and maintain for the duration of the Term insurance against Claims for injuries to Persons or damages to property that may arise from or in connection with Manager's performance under this Agreement and performance by any Manager Parties. Manager shall provide, at a minimum, the following insurance coverage:

2.1. Commercial General Liability. Insurance Services Office Form CG 00 01 covering commercial general liability on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with liability limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Agreement (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the amount of the required occurrence limit.

2.2. Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Manager has no owned autos, Code 8 (hired) and Code 9 (non-owned), with a liability limit no less than $1,000,000 per accident for bodily injury and property damage.

2.3. Workers' Compensation. Manager must maintain Workers' Compensation Insurance for its employees, as required under SDMC and by the State, with statutory liability limits, and Employer's Liability Insurance with a liability limit of no less than $1,000,000 per accident for bodily injury or disease.

2.4. Other Insurance Provisions. The insurance policies required by this Agreement are to contain, or be endorsed to contain, the following provisions:

2.4.1. *Additional Insured Status*. City, its officers, officials, employees, and agents are to be covered as additional insured on the required Commercial General Liability insurance

policy with respect to liability arising out of work or operations performed by or on behalf of Manager, including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Manager's Commercial General Liability insurance policy (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37, if a later edition is used).

2.4.2. *Primary Coverage*. For any Claims related to this Agreement, Manager's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects City, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by City, its officers, officials, employees, or agents shall be excess of Manager's insurance and shall not contribute with it.

2.4.3. *Notice of Cancellation*. Each insurance policy shall provide that coverage shall not be canceled, except after thirty (30) calendar days' Notice of cancellation to City.

2.4.4. *Waiver of Subrogation*. Manager grants to City a waiver of any right to subrogation that any insurer of Manager may acquire against City by virtue of the payment of any loss under any insurance policy. Manager agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this waiver applies regardless of whether or not Manager obtains such a waiver of subrogation endorsement from the insurer.

2.5. Deductibles/Self Insured Retentions. All deductibles under any insurance policy shall be the sole responsibility of Manager and shall be disclosed to City at the time the evidence of the insurance coverage is provided to City. Self-insured retentions under any insurance policy shall be the sole responsibility of Manager and must be declared to and approved by City at the time the evidence of the insurance coverage is provided to City. City may require Manager to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigation, claim administration, and defense expenses within the deductible or retention. Each insurance policy with a self-insured retention shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

2.6. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise approved in writing by City. City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance issued by non-admitted carriers are subject to all of the requirements of this Agreement applicable to insurance policies issued by admitted carriers.

2.7. Verification of Coverage. Manager shall furnish City with original certificates and amendatory endorsements or copies of all applicable insurance policy language effecting insurance coverage described in this **Exhibit F**. All insurance certificates and endorsements are to be received and approved by City before any performance commences under this Agreement. Failure to obtain the required insurance documents prior to the beginning performance shall not waive Manager's obligation to provide the required insurance coverage or evidence of such insurance coverage. City reserves the right to require complete, certified copies of all insurance policies, including endorsements, described in this **Exhibit F**, at any time.

2.8. Special Risks or Circumstances. City reserves the right to modify the insurance requirements of this Agreement, including liability limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

2.9. Additional Insurance. Manager may obtain additional insurance not required by this Agreement, as long as the City, its officers, officials, employees, and agents are named additional insured under such insurance policies.

2.10. Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies, including all endorsements.

2.11. Subcontractors. Manager shall require and verify that all Subcontractors maintain insurance meeting all the insurance requirements of this **Exhibit F**. Manager shall also ensure that City is an additional insured on insurance required from Subcontractors. For commercial general liability insurance coverage, Subcontractors shall provide coverage with a form at least as broad as the CG 20 38 04 13 endorsement.

EXHIBIT G
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

NOTICE ADDRESSES / PARTY REPRESENTATIVES

City Representative:

Christina Bibler, Director
City of San Diego
Economic Development Department
1200 Third Avenue, Suite 1400
San Diego, CA 92101
Contact Phone Number: (619) 236-6700
Contact Email: SDBusiness@sandiego.gov

Manager Representative:

Carter Moss, Board President
Ocean Beach Merchant's Association, Inc.
1868 Bacon Street, #A
San Diego, CA 92107
Contact Phone Number: (619) 224-4906
Contact Email: carter.moss@gmail.com

EXHIBIT H
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

SAMPLE BUDGET WORKSHEET

FY2027 MAD BUDGET WORKSHEET

Fund No. 200XXX / Cost Center No. 131612XXXX

FUND BALANCE & REVENUE

FUND BALANCE	$

REVENUE	AMOUNT
Estimated FY24 Budgeted Assessments (incl. City)	
Proposed Assessment Rate Change (CPI/Other)	
General Benefit Offset	
Gas Tax	
TOTAL FY 24 REVENUE ESTIMATION	**$**

TOTAL FUND BALANCE & REVENUE	

OPERATING EXPENSE

EXPENSE DESCRIPTION	AMOUNT
LANDSCAPING IMPROVEMENTS & ACTITIVIES	**$**
MAINTENANCE PERSONNEL	$
MAINTENANCE SERVICES	$
Landscaping Services	
Pressure Washing	
Steam Cleaning	
Waste Removal / Dumpster Services	
Litter Abatement	
Graffiti Abatement	
Street Lighting	
Tree Maintenance / Planting	
Security Services	
Water Services	
MAINTENANCE GOODS	
Trash Containers / Dumpsters	
Materials / Supplies	
Gasoline	
Equipment / Rentals	
Repairs / Upkeep	
GENERAL OPERATING	**$**
Economic Development (ED)	
Banners	
Communications / Website	
Events / Mixers	
INSURANCE	
ACCOUNTING & AUDIT	
NON-PROFIT ADMIN	**$**
ADMIN PERSONNEL	
OFFICE	
Rent	
Supplies / Other	
Gas & Electric	
Water	
Phone / Internet	
NON-DISCRETIONARY EXPENSES	**$**
City Admin	
Special District Lighting	

Contingency / Fund Balance Contribution	
TOTAL OPERATING EXPENSES	**$**

Key

Beige cells indicate an opportunity to input information.	Grey cells are provided by EDD. No input is needed/appropriate.	Blue cells are totals. No input is needed/appropriate.

EXHIBIT I
TO
CITY OF SAN DIEGO NEWPORT AVENUE MAD
DISTRICT MANAGEMENT AGREEMENT
FISCAL YEAR 2027

SUBCONTRACTORS LIST

INFORMATION REGARDING SUBCONTRACTOR PARTICIPATION:

Contractor shall include name and complete address of all Subcontractors who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of $10,000.

Contractor shall also submit subcontractor commitment letters on subconsultant's letterhead from subcontractor listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

Subcontractors shall be used for scope of work listed. No changes to this Subcontractors List will be allowed without prior written City approval.

SUBCONTRACTOR NAME AND ADDRESS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB ①	CERTIFIED BY ②

① For information only. As appropriate, Contractor shall identify Subcontractors as:

Certified Minority Business Enterprise	MBE	Certified Small Local Business Enterprise	SLBE
Certified Woman Business Enterprise	WBE	Small Disadvantaged Business	SDB
Certified Disadvantaged Business Enterprise	DBE	Woman-Owned Small Business	WoSB
Certified Disabled Veteran Business Enterprise	DVBE	HUBZone Business	HUBZone
Other Business Enterprise	OBE	Service-Disabled Veteran Owned Small Business	DVOSB
Certified Emerging Local Business Enterprise	ELBE		

For information only. As appropriate, Contractor shall indicate if Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC	San Diego Regional Minority Supplier Diversity Council	SRMSDC
State of California	CA	State of California's Department of General Services	CADoGS
U.S. Small Business Administration	SBA	City of Los Angeles	LA