

**FOURTH AMENDMENT
TO THE FISCAL YEAR 2019
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2023**

This Fourth Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2023 (“**Fourth Amendment**”) is dated as of July 1, 2022, for reference purposes only, and is entered into by and between the CITY OF SAN DIEGO, a municipal corporation (“**City**”), and the **OCEAN BEACH MERCHANTS ASSOCIATION, INC.**, a California non-profit public benefit corporation (“**Manager**”). City and Manager are sometimes referred to in this Fourth Amendment, each individually, as a “**Party**” or, collectively, as the “**Parties**.” This Fourth Amendment is entered into by City and Manager with reference to the following recited facts (“**Recitals**”):

RECITALS

A. The Parties entered into that certain Business Improvement District Management Agreement Fiscal Year 2019, dated July 1, 2018, that certain First Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2020, dated July 1, 2019, that certain Second Amendment to the Fiscal Year 2019 Business Improvement District Management Agreement for Fiscal Year 2021, dated July 1, 2020 and that certain Third Amendment to the Fiscal Year 2019 Business Management Agreement for Fiscal Year 2022, dated July 1, 2021 (“**Third Amendment**”) (collectively, “**Agreement**”);

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

C. The beginning of each Extended Term is subject to the following conditions: (a) Manager is not in Default on the last day of the Initial Term or the immediately preceding Extended Term, as applicable; (b) the Extended Term has been approved by the City Council; and (c) the Manager Representative has approved the Extended Term;

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

E. For Fiscal Year 2023, with the adoption of R-314121, effective May 23, 2022, City Council approved an extension of the Agreement for six (6) months, from July 1, 2022 through and including December 31, 2022, with an option to extend the Agreement an additional six (6) months at the City’s sole discretion, from January 1, 2023 through and including June 30, 2023;

F. This Fourth Amendment represents the fourth and final option to extend the Agreement;

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

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this Fourth Amendment by this reference, as though fully set forth in this Fourth Amendment.

2. **Amendment to and Extension of Term.** The Extended Term for Fiscal Year 2023 is amended to six (6) months, from July 1, 2022, through and including December 30, 2022, with a six (6) month option to extend from January 1, 2023 through and including June 30, 2023, with such extension at the City's sole discretion by notice to Manager by email or any other method provided in the Agreement.

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

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

5. **Counterparts.** This Fourth Amendment may be signed by the authorized representatives of the Parties in multiple counterpart originals (including facsimile or electronic counterpart originals), each of which shall be deemed an original, and all such counterpart originals, when taken together, shall constitute one agreement.

6. **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Fourth Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this Fourth Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this Fourth Amendment may be used in the singular, plural, past tense or future tense, regardless of how it is defined, all in accordance with ordinary principles of English grammar, which shall govern all language in this Fourth Amendment. The words "include" and "including" in this Fourth Amendment shall be construed to be followed by the words: "without limitation." Each collective noun in this Fourth Amendment shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including the Agreement, refers to such document, as modified from time to time (excepting any modification that violates the Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Fourth Amendment includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form or similar governmental requirement in this Fourth Amendment refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

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

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

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

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

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[Signatures on next page]

**SIGNATURE PAGE
TO
FOURTH AMENDMENT
TO THE FISCAL YEAR 2019
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2023**

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

CITY:


The City of San Diego, a municipal corporation

By: 

Christina Bibler
Economic Development Department
Director

MANAGER:


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

By: 

Barbara Iacometti (Jun 28, 2022 22:25 PDT)
Barbara Iacometti
President

APPROVED AS TO FORM:

MARA W. ELLIOTT
City Attorney

By: 

Marguerite E. Midaugh
Deputy City Attorney