

**FIRST AMENDMENT
TO THE FISCAL YEAR 2024
BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2025**

This First Amendment to the Fiscal Year 2024 Business Improvement District Management Agreement for Fiscal Year 2025 (“**First Amendment**”) 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 First Amendment, each individually, as a “**Party**” or, collectively, as the “**Parties**.” This First 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 2024, dated July 1, 2023 (“**Agreement**”);

B. Under Section 3 of the Agreement, the “**Term**” consists of the “**Initial Term**,” beginning July 1, 2023 and ending June 30, 2024, and the option to extend in individual fiscal year durations up to four times, with approval of each 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. The City Council approved an Extended Term of the Agreement for fiscal year 2025 in Resolution R-315512, effective May 24, 2024;

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

2. **Extension of Term.** The Extended Term for Fiscal Year 2025 is six (6) months, from July 1, 2024, through and including December 30, 2024, with a six (6) month option to extend from January 1, 2025 through and including June 30, 2025, 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 First Amendment, is in all respects confirmed and all of the terms, provisions and conditions of the Agreement, as amended by this First Amendment, shall be and remain in full force and effect.

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

5. **Counterparts.** This First 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 First Amendment. The Parties participated substantially in the negotiation, drafting, and revision of this First Amendment, with advice from legal and other counsel and advisers of their own selection. A word, term or phrase defined in this First 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 First Amendment. The words “include” and “including” in this First Amendment shall be construed to be followed by the words: “without limitation.” Each collective noun in this First 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 First 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 First 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 First Amendment, without application of conflicts of laws principles or statutes.

8. **Binding on Successors and Assigns.** This First 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 First Amendment, no Party makes any representation or warranty material to this First 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 First Amendment that are not specifically defined in this

First 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
FIRST AMENDMENT
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BUSINESS IMPROVEMENT DISTRICT MANAGEMENT AGREEMENT
FOR FISCAL YEAR 2025**

IN WITNESS WHEREOF, City and Manager sign and enter into this First 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 (Jul 11, 2024 17:03 PDT)
Christina Bibler
Economic Development Department
Director

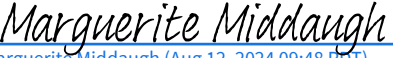
MANAGER:

Ocean Beach Merchants Association,
Inc.

By: 
Barbara Iacometti (Jul 11, 2024 16:53 PDT)
Barbara Iacometti
Board President

APPROVED AS TO FORM:

MARA W. ELLIOTT
City Attorney

By: 
Marguerite Middaugh (Aug 12, 2024 09:48 PDT)
Marguerite E. Middaugh
Deputy City Attorney