

CITY OF OCEANSIDE

Agreement for Implementation of Management District Plan Downtown Oceanside Property and Business Improvement District

THIS AGREEMENT, dated _____, 20__ for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and MAIN STREET OCEANSIDE INC, hereinafter designated as "CONSULTANT".

BACKGROUND. On August 7, 2019, the Oceanside City Council established the Downtown Oceanside Property and Business Improvement District (DTOPBID) in accordance with the Property and Business Improvement District Law of 1994 (Streets and Highway Code Section 36624). The DTOPBID's purpose is to levy a special assessment that will fund the activities and improvements described in the DTOPBID's Management District Plan. A copy of the plan is attached to, and made part of, this agreement.

The Management District Plan indicates that Main Street Oceanside, Inc., a private nonprofit corporation, will provide the activities and improvements described in the plan and otherwise be charged with managing the DTOPBID's day-to-day operations. The Property and Business Improvement District Law of 1994 requires that the City contract with the nonprofit corporation designated in the plan.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF WORK.

Main Street Oceanside agrees to do the following:

- 1) **Management District Plan.** Provide the activities and improvements described in the Management District Plan and otherwise administer and implement the plan.
- 2) **Initial Report.** By March 31 of the first year of operation, submit to the City a written estimate of the DTOPBID's budget for the upcoming year.
- 3) **Annual Reports.** By March 31 of each year of operation after the first, submit to the City a written report in accordance with Government Code Section 36650.
- 4) **Contracts.** Award and administer all contracts necessary for providing the activities and improvements. Provide the City with a copy of any contract

upon request.

- 5) **Compliance with Laws.** Comply with all federal, state and local laws; and secure all necessary permits and authorizations for work on public property or within public right-of-ways such as sidewalks, alleys, streets, pedestrian malls, public easements, public buildings, and public parking areas.
- 6) **Database.** Maintain a complete database of assessed properties within the DTOPBID. Update the database at least once each year to reflect changed conditions and to accurately reflect the status of assessed parcels. Provide a copy of the updated database with the annual reports described in the Management District Plan.

The City of Oceanside agrees to do the following:

- 1) **PBID Administration.** Administer annual PBID proceedings. This includes preparation of the assessment spread, assessment roll, annual City Council reports, notices to property owners, and any changes to the PBID's organization or to the cost-spread formula.
 - 2) **Billing and Collecting.** Coordinate with San Diego County on the annual levy and collection of PBID assessments.
 - 3) **Payments to Consultant.** The annual PBID assessments will be collected with the regular county property taxes. After deducting the City's reasonable and necessary administrative expenses, the City will pay Consultant the balance of revenue actually received from San Diego County. Payment will occur twice each year, with the City becoming obligated to make a payment only when both of the following have occurred:
 - a. The County has disbursed the assessment revenue to the City (typically within 60 to 90 days after December 10 and April 10).
 - b. Consultant has served the City with a written notice requesting payment. A notice will only be valid if served after the City has received the disbursement from the County.
2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in

connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the 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 the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

<u>Comprehensive General Liability Insurance</u> (bodily injury and property damage)	\$2,000,000
Combined Single Limit Per Occurrence General Aggregate	\$4,000,00*
<u>Commercial General Liability Insurance</u> (bodily injury and property damage)	
General limit per occurrence	\$2,000,000
General limit project specific aggregate	\$4,000,000
<u>Automobile Liability Insurance</u>	\$2,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain

available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

- 4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.
- 4.6 CONSULTANT shall provide thirty (30) days written notice to the CITY should any policy required by this Agreement be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing, at minimum, a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving the CONSULTANT of any responsibility whatsoever and the CONSULTANT may carry, at its own expense, such additional insurance as it deems necessary.

5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.**

Throughout the duration of this Agreement and four (4) years thereafter, the CONSULTANT shall maintain professional errors and omissions insurance for work performed in connection with this Agreement in the minimum amount of Two Million Dollars (\$2,000,000.00).

CONSULTANT shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.

6. **CONSULTANT'S INDEMNIFICATION OF CITY.** To the greatest extent allowed by law, CONSULTANT shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

7. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

8. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONSULTANT shall be responsible for complying with all local,

state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

9. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
10. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing thirty (30) days written notice to the other party. If any portion of the work is terminated or abandoned by the CITY, then the CITY shall pay CONSULTANT for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate CONSULTANT only for work performed in accordance with the Agreement up to and including the date of termination.
11. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Professional Services Agreement to be executed on the date set forth below.

“CONSULTANT”

MAINSTREET OCEANSIDE INC.
a California non-profit corporation

By: 
Mary Ann Thiem, Vice Chair

By: 
Chad Marentette, Treasurer

33-0923965
Employer ID No.

Date: _____

“CITY”

CITY OF OCEANSIDE
a municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

City Attorney

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of SAN DIEGO }

On DEC 3, 2019 before me, JOEY LUDWICZAK NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

personally appeared MARY THIEB AND
Name(s) of Signer(s)

CHAD MARENTE

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature _____
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

Corporate Officer – Title(s): _____ Corporate Officer – Title(s): _____

Partner – Limited General Partner – Limited General

Individual Attorney in Fact Individual Attorney in Fact

Trustee Guardian or Conservator Trustee Guardian or Conservator

Other: _____ Other: _____

Signer is Representing: _____ Signer is Representing: _____