

**CITY OF OCEANSIDE**

**PROFESSIONAL SERVICES AGREEMENT**

**PROJECT: Implementation of the Management District Plan for the Oceanside Tourism Marketing District**

THIS AGREEMENT, dated \_\_\_\_\_, 2025 for identification purposes, is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as “CITY”, and VISIT OCEANSIDE, hereinafter designated as “DESTINATION ORGANIZATION”

**BACKGROUND.** On February 28, 2024, the Oceanside City Council renewed the Oceanside Tourism Marketing District (OTMD) in accordance with the Property and Business Improvement District Law of 1994 (Streets and Highways Code section 36624). The OTMD’s purpose is to levy a special assessment that will fund the activities and improvements described in the OTMD’s Management District Plan, hereinafter referred to as “Management District Plan” or “Plan.” A copy of the Plan is attached to, and made part of, this Agreement.

Pursuant to Streets and Highways Code section 33612, the CITY may by ordinance and adoption of the Plan identify the body that shall implement the activities and improvements funded by the special assessment. Oceanside City Code section 24A.9 and the Plan identify DESTINATION ORGANIZATION, a private nonprofit corporation, as the body that will implement the activities and improvements described in the Plan and shall be charged with managing the OTMD’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.**

**DESTINATION ORGANIZATION agrees to do the following:**

**Management District Plan.** Provide the programs and activities that benefit businesses within the OTMD in accordance with the Management District Plan attached hereto and any subsequent amendments thereto.

**Annual Reports.** By March 31 of each year submit to the City a written report in accordance with Government Code Section 36650.

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**Contracts.** Award and administer all contracts necessary for providing the activities and improvements. Provide the CITY with a copy of any contract upon request.

**Compliance with Laws.** Comply with all federal, state and local laws.

**Brown Act and Public Records Compliance.** The Destination Organization is a private entity and may not be considered a public entity for any purpose, nor may members of the Destination Organization Board of Directors or staff be considered to be public officials for any purpose. The Destination Organization is, however, subject to government regulations relating to transparency, namely the Ralph M. Brown Act and the California Public Records Act. These regulations are designed to promote public accountability. The Destination Organization Board of Directors must act as a legislative body under the Ralph M. Brown Act (Government Code §54950 et seq.). Thus, meetings of the Destination Organization Board of Directors at which actions related to the OTMD are heard, discussed, or deliberated and meetings of certain other committees must be held in compliance with the public notice and other requirements of the Brown Act. The Owners' Association is also subject to the record keeping and disclosure requirements of the California Public Records Act.

### **The CITY agrees to do the following:**

**OTMD Administration.** Administer annual OTMD proceedings. This includes preparation of the annual City Council reports and notices to business owners.

**Billing and Collecting.** The CITY shall collect the OTMD assessment on a quarterly basis (including any delinquencies, interest, and overdue charges) from each assessed lodging business and vacation rental business located in the boundaries of the OTMD, in accordance with the Management District Plan.

**Payments to DESTINATION ORGANIZATION.** CITY shall forward to DESTINATION ORGANIZATION all OTMD assessment funds collected, less the City's authorized administrative expenses, within thirty (30) days of collection, less any CITY administrative fees as authorized in the OTMD Management District Plan.

2. **TERM.** The term of this Agreement shall begin on April 1, 2025, and shall end on June 30, 2034. If the OTMD is renewed beyond June 30, 2034, the Parties may extend the term of this Agreement by mutual written amendment to a term consistent with the renewal period, or for such other term as the Parties mutually agree. Nothing herein shall create any binding obligation to extend the term of this Agreement on either Party at the time of any renewal of the OTMD.

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3. **INDEPENDENT CONTRACTOR.** DESTINATION ORGANIZATION'S relationship to the CITY shall be that of an independent contractor. DESTINATION ORGANIZATION 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 Engineer. DESTINATION ORGANIZATION. DESTINATION ORGANIZATION shall be solely responsible for the performance of its employees, agents, and subcontractors under this Agreement, including the training of each employee regarding the rights and responsibilities of an employer and employee for any potential discrimination or harassment claim under state or federal law.
4. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the DESTINATION ORGANIZATION hereby certifies that the DESTINATION ORGANIZATION 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 DESTINATION ORGANIZATION will comply with such provisions, and provide certification of such compliance as a part of this Agreement.
5. **LIABILITY INSURANCE.**
- 5.1. DESTINATION ORGANIZATION shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of DESTINATION ORGANIZATION, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.
- 5.2. DESTINATION ORGANIZATION shall maintain liability insurance in the following minimum limits:

**Comprehensive General Liability Insurance**  
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$2,000,000*

**Commercial General Liability Insurance**  
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<b><u>Automobile Liability Insurance</u></b>	\$ 1,000,000
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<u>Umbrella Coverage</u> (Above covered CGL and Auto claims)	\$2,000,000
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\*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of DESTINATION ORGANIZATION under this Agreement.

- 5.3** DESTINATION ORGANIZATION shall also notify the CITY promptly any loss or claim against DESTINATION ORGANIZATION resulting from any of DESTINATION ORGANIZATION'S work under this Agreement.
- 5.4** All insurance companies affording coverage to the DESTINATION ORGANIZATION 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.
- 5.5** All insurance companies affording coverage to the DESTINATION ORGANIZATION 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.
- 5.6** DESTINATION ORGANIZATION 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.
- 5.7** DESTINATION ORGANIZATION 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.
- 5.8** DESTINATION ORGANIZATION shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the DESTINATION ORGANIZATION to provide such a substitution and extend the policy expiration date shall be considered a default by DESTINATION ORGANIZATION and may subject the DESTINATION ORGANIZATION to a suspension or termination of work under the Agreement.
- 5.9** Maintenance of insurance by the DESTINATION ORGANIZATION as specified in this Agreement shall in no way be interpreted as relieving the DESTINATION

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ORGANIZATION of any responsibility whatsoever and the DESTINATION ORGANIZATION may carry, at its own expense, such additional insurance as it deems necessary.

6. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Throughout the duration of this Agreement and four (4) years thereafter, the DESTINATION ORGANIZATION 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).

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

7. **MUTUAL INDEMNIFICATION.** To the greatest extent allowed by law (including, without limitation, California Civil Code section 2782.8), each Party shall indemnify and hold harmless the other Party and its officers, agents and employees against all claims for damages to persons or property arising out of that Party's identified scope work under the Agreement, including the negligent acts, errors or omissions or wrongful acts or conduct of that Party, 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 that Party, its officers, agents, or employees. Each Party's indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the other Party, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, each Party at its own expense shall, upon written request by the other Party, defend any such suit or action brought against the other Party, its officers, agents, or employees founded upon, resulting or arising from the conduct, tortious acts or omissions of that Party's scope of work under the Agreement.

8. **OWNERSHIP OF DOCUMENTS.** All copyright and other use rights in any and all proposals, plans specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies), hereinafter referred to as "Documents and Materials," respecting in any way the subject matter of this Agreement, shall remain the property of the DESTINATION ORGANIZATION as instruments of service. However, DESTINATION ORGANIZATION understands and agrees CITY shall have free access to all such copyright and other use rights materials with the right to make and retain copies of all proposals, plans, specifications, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies).

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DESTINATION ORGANIZATION shall be permitted to retain copies, including reproducible copies and computerized copies, of Documents and Materials.

DESTINATION ORGANIZATION agrees to take such further steps as may be reasonably requested by CITY to implement the aforesaid assignment. If for any reason said assignment is not effective, DESTINATION ORGANIZATION hereby grants the CITY and any assignee of the CITY an express royalty – free license to retain and use said Documents and Materials. The CITY’s rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not DESTINATION ORGANIZATION’s services set forth in the Management District Plan have been fully performed or paid for.

The CITY’s rights under this Section shall not extend to any computer software used to create such Documents and Materials.

DESTINATION ORGANIZATION shall maintain all documents and records in accordance with the California Public Records Act, Government Code section 7920.000 et seq.

9. **TIMING REQUIREMENTS.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
10. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and DESTINATION ORGANIZATION concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
11. **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.

DESTINATION ORGANIZATION 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.

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12. **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; however, this Agreement shall be subject to any amendments to the OTMD Management District Plan adopted by the City Council pursuant to the Property and Business Improvement District Law of 1994. No supplement, amendment or modification of this Agreement, except for a duly adopted amendment to the OTMD Management District Plan, shall be binding unless it is in writing and signed by authorized representatives of both parties.
13. **TERMINATION OF AGREEMENT.** Either party may terminate this Agreement by providing ninety (90) 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 DESTINATION ORGANIZATION for any work completed up to and including the date of termination or abandonment of this Agreement. The CITY shall be required to compensate DESTINATION ORGANIZATION only for work performed in accordance with the Agreement up to and including the date of termination. OTMD funds held by DESTINATION ORGANIZATION for the purpose of OTMD Management Plan required activities at the time of termination but not previously committed will be returned to the CITY for OTMD purposes.
14. **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 DESTINATION ORGANIZATION 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 by setting hereunto their signatures on the dates set forth below.

**DESTINATION ORGANIZATION**

By: \_\_\_\_\_  
Name/Title

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name/Title

Date: \_\_\_\_\_

\_\_\_\_\_

**CITY OF OCEANSIDE**

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

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Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF DESTINATION ORGANIZATION MUST  
BE ATTACHED.**