



**SOUTH BAY
COMMUNITY DEVELOPMENT
DISTRICT**

**HILLSBOROUGH COUNTY
REGULAR BOARD MEETING
MARCH 10, 2023
1:00 P.M.**

Special District Services, Inc.
The Oaks Center
2501A Burns Road
Palm Beach Gardens, FL 33410

www.sbaycdd.org
561.630.4922 Telephone
877.SDS.4922 Toll Free
561.630.4923 Facsimile

AGENDA
SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
Sunset Grill & Beach Bar
602 Bahia del Sol Drive
Ruskin, Florida 33570
REGULAR BOARD MEETING
March 10, 2023
1:00 P.M.

- A. Call to Order
- B. Proof of Publication.....Page 1
- C. Establish Quorum
- D. Additions or Deletions to Agenda
- E. Approval of Minutes
 - 1. February 10, 2023 Regular Board Meeting.....Page 2
- F. Old Business
- G. New Business
 - 1. Consider Resolution No. 2023-01 – Appointing and Fixing the Compensation of the District Manager.....Page 6
 - 2. Consider Resolution No. 2023-02 – Designating Officers of the District.....Page 7
 - 3. Consider Resolution No. 2023-03 – Designation Authorization and Actions Relating to the Accounts of the District.....Page 8
 - 4. Consider Approval of Revocable Sidewalk Lease Agreement.....Page 9
 - 5. Consider Ratification of Inframark Management Agreement.....Page 13
- H. Reports
 - 1. Manager’s Report
 - 2. Legal Report
 - a. Update to the Memo to South Bay Board of Directors.....Page 24
 - b. Seawall Assessment Memo.....Page 28
 - 3. Engineer’s Report
 - a. Review and Approval of the Scope of the District Survey
 - 4. Chairman’s Report
 - 5. POA Report
 - a. Discussion Regarding Fence Quotes
- I. Administrative Matters
- J. Comments by the Public for Matters not on the Agenda
- K. Board Members Comments
- L. Adjourn

Tampa Bay Times
Published Daily

STATE OF FLORIDA
COUNTY OF Hillsborough

}SS

Before the undersigned authority personally appeared **Jean Mitotes** who on oath says that he/she is **Legal Advertising Representative** of the **Tampa Bay Times** a daily newspaper printed in St. Petersburg, in Pinellas County, Florida; that the attached copy of advertisement, being a Legal Notice in the matter **RE: South Bay CDD - FY 22/23 Mtg Schedule** was published in said newspaper by print in the issues of: **9/28/22** or by publication on the newspaper's website, if authorized, on

Affiant further says the said **Tampa Bay Times** is a newspaper published in **Hillsborough** County, Florida and that the said newspaper has heretofore been continuously published in said **Hillsborough** County, Florida each day and has been entered as a second class mail matter at the post office in said **Hillsborough** County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement, and affiant further says that he/she neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
FISCAL YEAR 2022/2023 REGULAR MEETING
SCHEDULE

NOTICE IS HEREBY GIVEN that the Board of Supervisors of the South Bay Community Development District (the "District") has revised their Fiscal Year 2022/2023 Regular Meeting Schedule by holding Regular Meetings at the Sunset Grill and Beach Bar located at 602 Bahia del Sol Drive, Ruskin, Florida 33570, at 1:00 p.m. on the following dates:

October 14, 2022
November 11, 2022
December 9, 2022
January 13, 2023
February 10, 2023
March 10, 2023
April 14, 2023
May 12, 2023
June 9, 2023
July 14, 2023
August 11, 2023
September 8, 2023

The purpose of the meetings is to conduct any and all business coming before the Board. Meetings are open to the public and will be conducted in accordance with the provisions of Florida law. Copies of the Agendas for any of the meetings may be obtained from the District's website or by contacting the District Manager at (941) 244-2805 and/or toll free at 1-877-737-4922 prior to the date of the particular meeting.

From time to time one or more Supervisors may participate by telephone; therefore a speaker telephone will be present at the meeting location so that Supervisors may be fully informed of the discussions taking place. Meetings may be continued as found necessary to a time and place specified on the record.

If any person decides to appeal any decision made with respect to any matter considered at these meetings, such person will need a record of the proceedings and such person may need to insure that a verbatim record of the proceedings is made at his or her own expense and which record includes the testimony and evidence on which the appeal is based.

In accordance with the provisions of the Americans with Disabilities Act, any person requiring special accommodations or an interpreter to participate at any of these meetings should contact the District Manager at (941) 244-2805 and/or toll-free at 1-877-737-4922 at least seven (7) days prior to the date of the particular meeting.

Meetings may be cancelled from time to time without advertised notice.

SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
www.southbaycdd.org
PUBLISH: TAMPA BAY TIMES 09/28/22 0000248257

Jean Mitotes

Signature Affiant

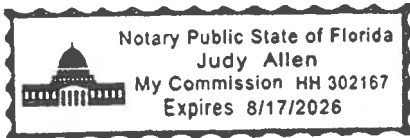
Sworn to and subscribed before me this **09/28/2022**

Judy Allen

Signature of Notary Public

Personally known _____ _____ or produced identification

Type of identification produced _____



**SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
REGULAR BOARD MEETING
FEBRUARY 10, 2023**

A. CALL TO ORDER

The February 10, 2023, Regular Board Meeting of the South Bay Community Development District (the “District”) was called to order at 1:01 p.m. at the Sunset Grill and Beach Bar located at 602 Bahia del Sol Drive, Ruskin, Florida 33570.

B. PROOF OF PUBLICATION

Proof of publication was presented that indicated Notice of the Regular Board Meeting had been published in the *Tampa Bay Times* on September 28, 2022, as part of the District’s Fiscal Year 2022/2023 Meeting Schedule, as legally required.

C. ESTABLISH A QUORUM

It was determined that the following Supervisors constituted a quorum and was in order for the meeting to commence:

| | | |
|---------------|-----------------|---------|
| Chairman | Leah Popelka | Present |
| Vice Chairman | Kelly Evans | Present |
| Supervisor | Ian Brown | Present |
| Supervisor | W. Thomas Grimm | Absent |
| Supervisor | Mary Madden | Present |

The following staff were in attendance:

| | | |
|-------------------|-----------------|---------------------------------|
| District Manager | Michelle Krizen | Special District Services, Inc. |
| General Counsel | David Smith | GrayRobinson, P.A. |
| District Engineer | Rick Brylanski | Hole Montes, Inc. |

Also present were the following:

| | |
|---------------------------|---------------------------|
| Hudson Richard | Peter Schwarz |
| Deb Florio | Antonio Garcia |
| Stella and Dan Beauchemin | Mark Nelson |
| Hecter Bertrond | Kent and Bettie Wanninger |
| John Neregney | Tom Gurry |
| Jerhardt | Kevin Morris |

D. ADDITIONS OR DELETIONS TO THE AGENDA

There were no additions or deletions to the agenda.

E. APPROVAL OF MINUTES

1. January 13, 2023, Regular Board Meeting

The January 13, 2023, Regular Board Meeting minutes were presented for consideration.

A **motion** was made by Ms. Popelka, seconded by Ms. Madden and passed unanimously approving the minutes of the January 13, 2023, Regular Board Meeting, as presented.

F. OLD BUSINESS

1. Discussion Regarding TECO Lights

The POA is still waiting for POA Board approval due to concerns and liability.

2. Discussion Regarding Unapproved Signs

The formal applications will be submitted to the POA and they will be approve based on the parameters sent by the CDD Board. The HOA will bring the sign form from years ago back to the CDD Board for revision/approval. Ms. Madden will be the point of contact for any signs.

G. NEW BUSINESS

1. Review & Discussion of RFQ Proposals

The Board previously requested proposals for management companies. Inframark was the only company to submit a proposal. The Board had a chance to review the proposal before today's meeting. In addition, present at today's meeting was Andrew Mendenhall and Mark Vega, both managers from Inframark. The representatives from Inframark presented some background of the company and themselves individually.

After the presentation, the Inframark representatives left the meeting room and the Board discussed the presentation and proposal. Ms. Evans shared that she has been on other Boards with Inframark and has had positive professional experiences. The Board commented on the technology, websites and communications. The HOA reported that the landscape company had worked with Inframark in other communities and praised their work.

A **motion** was made by Ms. Evans, seconded by Mr. Brown and passed unanimously selecting Inframark as the District's management company and authorizing the Chair to negotiate a contract and work with District Counsel on same.

2. Consider Revocable Sidewalk Lease Agreement

This item was reviewed with the Board, but not considered for approval. Some changes were recommended by District Counsel. There would need to be an inspection before the District takes possession. There were indemnification issues as a governmental agency. We would be able to add them as an additional insured, but the indemnification would be an issue. A resident mentioned that there were some ongoing lawsuits in that area. The District would need a statement that the District was not part of any lawsuits that are currently in the process. Mr. Smith will get in touch with owners to determine if they are willing to negotiate on these terms and bring it back to the Board at their next meeting.

H. REPORTS

1. Manager's Report

The next meeting is scheduled for March 10, 2023, at 1:00 p.m.

2. Legal Report

a. Update to Memo to South Bay Board of Directors and Seawall Assessment Memo

Mr. Smith went over the memos with the Board, which will need to be addressed in the coming months.

3. Engineer's Report

Mr. Brylanski has been working with Florida Structural Group to prioritize the seawall in greatest need of repair in order to get the most work done for \$200,000 or less. There is a proposal to repair approximately 125 feet of seawall for \$178,700 and includes a 2-year warranty for workmanship and a 50-year warranty for vinyl.

A discussion occurred regarding the Antigua Cove seawall. This is an item that needs repair by the District will need to be addressed, but there is not enough money in the current budget. This is an item that needs to be addressed within the budget process with a special assessment.

A **motion** was made by Ms. Evans, seconded by Ms. Madden and passed unanimously allowing the Chair to execute the contract after legal review.

4. Chairperson's Report

There was no Chairperson's Report at this time.

5. POA Report

a. Discussion Regarding Fence Quotes

Since we are still waiting on the sidewalk lease, these quotes will be addressed at a later date.

b. Discussion Regarding Parking Signage

Target towing is in place. Pave Mobility paid parking is going to be in effect soon. There will need to be additional "No Parking" signs placed on Bahia Beach and Bahia Del Sol Boulevards.

A **motion** was made by Ms. Popelka, seconded by Ms. Evans and passed unanimously directing Mr. Wanninger to coordinate with Mr. Brown in order to determine the number and placement of "No Parking" signs for installation by the POA.

A frequent visitor of the beach asked for an exemption for parking on Sunday mornings from 8 am until 9 am. Mr. Smith advised the HOA that there needed to be an exemption process.

I. ADMINISTRATIVE MATTERS

There were no Administrative Matters to come before the Board.

J. COMMENTS FROM THE PUBLIC FOR ITEMS NOT ON THE AGENDA

On Seagrape and Christopher's Watch, the cars are driving fast. Would the CDD allow the HOA to have a speed awareness sign or some speed bumps. The engineer will get a cost estimate for 4-6 speed bumps and present the proposal to the Board. The HOA could possibly pay for this.

K. BOARD MEMBER COMMENTS

There were no further Board Member comments.

L. ADJOURNMENT

There being no further business to come before the Board, a **motion** was made by Ms. Popelka, seconded by Ms. Evans adjourning the Regular Board Meeting at 2:56 p.m. That **motion** passed unanimously.

Secretary/Assistant Secretary

Chair/Vice-Chair

RESOLUTION 2023-01

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT APPOINTING AND FIXING THE COMPENSATION OF THE DISTRICT MANAGER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the South Bay Community Development District (“**District**”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within Hillsborough County, Florida; and

WHEREAS, the Board of Supervisors of the District (“**Board**”) must employ and fix compensation of a “**District Manager**;” and

WHEREAS, the Board has determined that the appointment of a District Manager is necessary, appropriate and in the District’s best interests; and

WHEREAS, the Board desires to appoint a District Manager and to provide compensation for their services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT:

- 1. Approval of District Management Agreement.** Inframark, LLC is appointed as District Manager and shall be compensated for their services effective March 11, 2023 in such capacity in the manner prescribed in the agreement incorporated herein by reference as **Exhibit A**.
- 2. Conflicts.** Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.
- 3. Effective Date.** This Resolution shall become effective immediately upon its adoption.

Adopted this _____ day of _____, 2023

Attest:

**South Bay Community Development
District**

Secretary/Assistant Secretary

Chair of the Board of Supervisors

RESOLUTION 2023-02

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT DESIGNATING OFFICERS OF THE DISTRICT AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the South Bay Community Development District (“**District**”) is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*, being situated entirely within Hillsborough County, Florida; and

WHEREAS, the Board of Supervisors (“**Board**”), desires to appoint a Mark Vega as Secretary and Stephen Bloom as Treasurer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT:

- 1. District Officers.** Mark Vega is appointed as Secretary and Stephen Bloom is appointed as Treasurer effective March 11, 2023.
- 2. Conflicts.** All Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.
- 3. Effective Date.** This Resolution shall become effective March 11, 2023.

Adopted this ___ day of _____, 2023.

Attest:

**South Bay Community Development
District**

Secretary/Assistant Secretary

Chair of the Board of Supervisors

RESOLUTION 2023-03

**A RESOLUTION OF THE SOUTH BAY
COMMUNITY DEVELOPMENT DISTRICT
DESIGNATING AUTHORIZATION AND ACTIONS
RELATING TO THE ACCOUNTS OF THE DISTRICT**

WHEREAS, the Board of Supervisors (“**Board**”) of the South Bay Community Development District (“**District**”) desires to designate authorization and authorize certain actions relating to its accounts;

WHEREAS, the Board has engaged the services of Inframark, LLC as the District’s management company pursuant to a District Management Agreement;

WHEREAS, the Board by Resolution 2023-02, has appointed Mark Vega as Secretary and Stephen Bloom as Treasurer for the District.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS
OF THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT:**

1. The above recitals are true and correct and by this reference are incorporated into and form a material part of this resolution.
2. As District officers, Mark Vega and Stephen Bloom are authorized to administer the District’s accounts, as soon as practical and effective immediately.
3. All previous signers on the District’s accounts will be removed effective immediately. Resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.
4. This resolution shall become effective March 11, 2023.

Adopted this ____ day of _____, 2023.

Attest:

**South Bay Community Development
District**

Assistant Secretary

Chair of the Board of Supervisors

REVOCABLE SIDEWALK LEASE AGREEMENT

This Lease Agreement is made effective on the ____ day of _____, 2023 between the Harborside Suites LLC., a _____ limited liability corporation whose address is _____ ("Lessor") and South Bay Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, being situated in Hillsborough County, Florida, whose mailing address is c/o Thomas A. Cloud, GrayRobinson, P.A., 301 E. Pine Street, Suite 1400, Orlando, Florida 32801 ("Lessee").

WITNESSETH:

1. Lessor hereby leases to Lessee a portion of the Lessor's real property, more particularly described and designated in Exhibit A attached hereto and incorporated herein ("Premises"), constituting a sidewalk area and contiguous property for use by Lessee and its residents, guests and invitees.

2. The term of this Lease Agreement shall be for a period of three (3) months from the above date, and extended monthly thereafter unless otherwise terminated by either party upon thirty (30) days' prior written notice ("Termination Notice").

3. Lessee shall pay Lessor \$1.00 and other good and valuable consideration as provided herein as consideration for this Lease Agreement and use of the Premises through the date of termination.

4. The Lessee shall be responsible for all maintenance, repairs and required improvements for the use of the Premises as provided herein and will indemnify and hold harmless Lessor from any and all claims, actions and damages brought in conjunction with the use of the Premises by the Lessee and its residents, guests and invitees to the extent and subject to limitations and conditions provided in Paragraph 30 below or elsewhere herein.

5. The Lessee agrees to name Lessor as an additional insured under Lessee's existing liability insurance policy pertaining to any covered claim regarding the Premises.

6. The Lessee shall at its sole cost, fee and expense add fencing to Lessor's existing fence to fence off the Premises to be used as a sidewalk. Such fencing shall be located at the northerly line of the 20-foot Pedestrian Easement and shall be extended from Bahia Beach Road to the South Parking lot located on other property owned by the Lessee, all as shown on Exhibit B attached hereto and incorporated herein by reference. Such installation shall constitute the "Required Improvements" under this Lease Agreement. Lessee shall be responsible for the maintenance, repair and other costs of such Required Improvements. The Required Improvements shall be constructed to prevent access from the Premises to the private road lying northerly thereof. The existing fence adjacent to the seawall at the down ramp westerly and just outside of the Premises shall remain and the repair and maintenance thereof shall be the responsibility of Lessor.

7. The Lessee agrees that it will abandon or terminate of record the 20-foot Pedestrian Easement around the Hammer Head portion of Lessor's property to the extent shown on Exhibit C attached hereto and incorporated herein by reference. The Lessor and Lessee agree that the fact that the Lessor has not requested abandonment of the remainder of the 20-foot Pedestrian Easement around the marina or on the seawall itself and the adjacent Riparian property owned by Lessor, shall not be considered an acknowledgment that the Lessee or any third party has any leasehold interest in such unabandoned portion of this Pedestrian Easement or the underlying property.

8. The Lessee further agrees as follows:

a. To maintain and keep the Premises in good repair and in a clean state at the Lessee's expense. Maintenance also includes the trash pick-up along the Premises.

b. To leave the Premises, on termination of this Lease Agreement, in the same condition and state of repair as it was at the commencement of this Lease Agreement.

9. Upon termination of this Lease Agreement, or upon failure by Lessee to perform any and all maintenance provided herein, the Lessor shall have the absolute right to enter onto the Premises in order to perform any such maintenance required by Lessee hereunder, but not performed by Lessee at the sole cost, fee and expense of the Lessee. Lessor shall provide an itemized statement of any such work to Lessee in conjunction with written notice thereof as provided under this Lease Agreement. Lessee shall have sixty (60) days from receipt of such invoice to pay same.

10. If any non-monetary default by Lessee occurs, Lessor may terminate Lessee's right of possession under this Lease Agreement following written notice hereunder and Lessee's failure to cure the default within twenty (20) days after receipt of the notice specifying the default.

11. The Lessee shall not be entitled to make any improvements to the Premises, other than the Required Improvements as described in paragraph 6 above, or to add furnishings, tables, seats or other accessories to the Premises without the written consent of the Lessor.

12. In the event that any dispute arises concerning the terms of this Lease Agreement, this Lease Agreement shall be interpreted and governed by the laws of the State of Florida. In the event that any litigation is initiated relating to this Lease Agreement, venue for any such litigation shall be in Hillsborough County, Florida.

13. Lessor shall not be liable for any loss, damage or injury of any kind or character to any person or property arising from any use of the Premises caused by or arising from any act or omission of Lessee, or any of its agents or employees, licensees or invitees.

14. For the purposes of any interpretation of this Lease Agreement, this Lease Agreement shall be considered as having been authored, drawn and written by both Lessor and Lessee and, in the interpretation of this Lease Agreement, there shall be no presumption of vagueness, ambiguity or unfairness against the Lessor.

15. Lessor and Lessee hereby agree and understand that time is of the essence as to the performance of all terms and conditions of this Lease Agreement.

16. All notices, pursuant to this Lease Agreement, shall be sent to Lessor or Lessee respectively at the address first above written by certified or registered mail.

17. Both Lessor and Lessee shall properly comply with all laws, ordinances, orders, rules, regulations and requirements of Federal, State and Local Governments in the use of the premises. No signs shall be permitted on the Premises except in compliance with applicable County Code provisions.

18. Lessee shall not create, permit, suffer any mechanics liens, other liens or any encumbrances to be imposed on the Premises that would affect the Lessor's title thereto.

19. This Lease Agreement is not assignable without the express prior written consent of Lessor.

20. This written agreement shall constitute a sole agreement between Lessor and Lessee with regard to the issues described herein and no previous discussions, negotiations or oral commitments shall remain binding on either party hereto.

21. No waiver shall be deemed to have occurred unless in writing and signed by the party against whom such waiver is sought to be enforced.

22. This agreement may be signed in multiple counterparts, all of which collectively constitute one binding agreement between and upon Lessor and Lessee.

23. Pursuant to the calculation of any time period applicable under this Lease Agreement, any holiday recognized by Hillsborough County shall be excluded therefrom.

24. Each party shall execute and deliver to another party upon request, any documents, evidence of good standing, certificates, agreements, resolutions, acknowledgements and consents as may be reasonably necessary in order to accomplish the purposes and intent of this Lease Agreement.

25. Amendments to and waivers of the provisions contained in this Lease Agreement may be made only by instrument in writing which is executed by the Lessor and Lessee.

26. None of the terms or provisions of this Lease Agreement shall be deemed to have been abrogated or waived by any reason of any failure or failures to enforce same. Nothing herein or in any other agreement, written or oral, entered into by or binding upon the Lessor or Lessee shall be deemed a limitation on the ability of the Lessor or Lessee to enter into this agreement and be valid in accordance with its terms.

27. The execution of this Lease Agreement has been duly authorized by the appropriate body or official of each of the Lessor and Lessee and Lessor and Lessee has complied with all of the requirements of law and has the full power and authority to comply with the terms and provisions of this Lease Agreement.

28. The Lessor and Lessee agree that this Lease Agreement is solely for the benefit of the Lessor and Lessee and Lessee's residents, guests and invitees and no right or cause of action shall accrue upon or by reason of, to or for the benefit of any third person not a signatory of this Lease Agreement. Nothing in this Lease Agreement express or implied is intended or shall be construed to confer upon any person or corporation other than Lessor and Lessee any right, remedy or claim under or by reason of this Lease Agreement or any of the provisions or conditions of this Lease Agreement and all of the provisions, representations, covenants and conditions contained in this Lease Agreement shall inure solely to the benefit and shall be binding upon Lessor and Lessee and their respective representatives, successors and permitted assigns.

29. LESSOR UNDERSTANDS AND AGREES THAT ALL DOCUMENTS OF ANY KIND PROVIDED TO THE LESSEE IN CONNECTION WITH THIS LEASE AGREEMENT MAY BE PUBLIC RECORDS AND TREATED AS SUCH IN ACCORDANCE WITH FLORIDA LAW.

30. Nothing in this Lease Agreement shall be deemed as a waiver of immunity or limits of liability of the Lessee beyond any statutory limited waiver or immunity or limits of liability which have been adopted by the Florida Legislature and Section 768.28, *Florida Statutes*.

31. WAIVER OF JURY TRIAL. LESSOR AND LESSEE AGREE AS FOLLOWS: (A) EACH OF THEM KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION (AN "ACTION") BASED UPON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS LEASE AGREEMENT, SEEKING TO ENFORCE THE COLLECTION OF THE DELINQUENT ASSESSMENTS, OR ENFORCEMENT OF ANY RELATED DOCUMENTS, INSTRUMENTS OR AGREEMENTS (WHETHER ORAL OR WRITTEN) WHETHER EXPRESS OR IMPLIED AS A RESULT OF A COURSE OF DEALING, A COURSE OF CONDUCT, A STATEMENT, OR OTHER ACTION OF ANOTHER PARTY; (B) NEITHER LESSOR NOR LESSEE MAY SEEK A TRIAL BY JURY IN ANY SUCH ACTION; (C) NEITHER LESSOR NOR LESSEE WILL SEEK TO CONSOLIDATE ANY SUCH ACTION (IN WHICH A JURY TRIAL HAS BEEN WAIVED) WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED; AND (D) NO PARTY HAS IN ANY WAY AGREED WITH OR REPRESENTED TO THE OTHER OF THEM THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

Dated this _____ day of _____, 2023.

_____,
on behalf of Harborside Suites, LLC, Lessor

Witness on behalf of Harborside Suites, LLC

on behalf of South Bay Community Development District, Lessee

Witness on behalf of South Bay Community Development District

State of Florida
County of _____

Signed and sworn before me on this _____ day of _____ 20____.

By _____

Identification verified: _____ Oath sworn: ___ Yes ___ No

Notary Signature

My Commission expires: _____

MANAGEMENT SERVICES MASTER AGREEMENT

This **Management Services Master Agreement** (the “Agreement”) is made this 28th day of February 2023, between:

- 1) **SOUTH BAY CDD**, a Community Development District with its principal place of business in Hillsborough County, Florida (hereinafter the “District”); and
- 2) **INFRAMARK, LLC**, a Texas limited liability company registered in Florida, with its principal place of business at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449 (hereinafter the “Service Company”)

BACKGROUND

The District desires to procure management services required for the District as set forth in Schedule A attached to this Agreement (“Services”) and the Service Company desires to provide said operations and maintenance services to the District.

In consideration of the mutual promises in this Agreement, the parties agree as follows:

1) TERM AND TERMINATION

1.1 The term of this Agreement shall be for an initial period of one (1) year effective March 1, 2023 and shall automatically renew for additional one (1) year terms unless either party terminates for any reason, in writing by certified mail return receipt requested, thirty (30) days prior to the renewal date.

1.2 The failure of either party to comply with the terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party forty-five (45) days to cure the default. If the default is capable of being cured within forty-five (45) days, but is not cured, the Agreement shall terminate at midnight of the forty-fifth (45th) day following receipt of the Notice. In the case of default that cannot be cured within forty-five (45) days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure.

1.3 This Agreement may be terminated upon the dissolution or court-declared invalidity of the District.

1.4 Upon termination, the Service Company shall be paid in full for all services rendered and reimbursed for all reasonable costs and/or expenses incurred on behalf of the District through the date of termination.

1.5 If District incurs costs for damages due to a default of the Service Company that results in termination of this Agreement, District may deduct such costs or damages from the final payment due to Service Company. Such deduction will not exceed the final payment owed to Service Company and

will constitute full and final settlement between District and Service Company for all claims against Service Company by District and a release by District of any and all further claims against Service Company.

1.6 The Service Company may, at its discretion, suspend service immediately should the District fail to make payments in a timely manner, until such time as the account is made current.

2) SERVICE COMPANY’S SERVICES

2.1. Service Company shall provide the services as set forth in Schedule A attached to this Agreement (the “Services”).

2.2. In the event the District is an established and previously operating entity on the date of this Agreement, the District shall provide or make available to the Service Company the following records as soon as reasonably practical but not later than three (3) weeks after the execution of this Agreement:

- 2.2.1. All financial books and records in possession of the District;
- 2.2.2. All bank statements of all accounts of the District;
- 2.2.3. Copies of all contracts and agreements to which District is a party;
- 2.2.4. Copies of all minutes, resolutions and other official actions of the District; and
- 2.2.5. Copies of recorded Covenants and Restrictions, Articles of Incorporation, by-laws, any amendments thereto, and plats (to include addresses).

It is agreed between the District and the Service Company that the Service Company shall have no liability for any errors contained in the above-referenced documents, and shall have no liability for errors which may result from the use of the above-referenced documents should errors be contained therein.

2.3. Service Company may offer and/or District may request, that additional services be provided under this Agreement. In the event that the Service Company and the District agree upon a change in the scope of services to be provided under this Agreement, such agreement as well as the change in compensation, if any, shall be agreed to in writing by both Parties and will be invoiced in accordance with this Agreement.

2.4. In performing the services, Service Company may rely on information supplied by the District and Service Company shall not be required to independently verify the accuracy and completeness of such information unless required for future financings of the District. In addition, although the Service Company may participate in the accumulation of information developed by others necessary for use in documents required by the District, Service Company is not responsible for verifying the accuracy of such information.

2.5. Nothing in this Agreement shall prohibit the Service Company from (a) performing water and wastewater utility management, customer services, utility billing, and operation and maintenance services for the District under a separate agreement; and (b) providing for the benefit of any other district services similar to the services provided to District. District hereby waives any and all conflicts of interest or potential conflicts of interest, it being specifically agreed to and understood that Service Company’s provision of such services to the District or to any other district shall not constitute a conflict of interest under this Agreement.

2.6. Even though Service Company’s employees may include licensed attorneys and engineers, the District acknowledges that Service Company is not performing in the capacity of a law firm or an engineering firm when providing services under this Agreement. Service Company may offer general interpretation of documents, but legal opinions are obtainable only from the District’s legal counsel.

2.7. Service Company shall provide the Services in a professional and workmanlike manner, and in accordance with generally accepted industry practices. THE SERVICE COMPANY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES UNDER LAW.

2.8. If the scope of services requires the Service Company to administer or supervise the District’s personnel, the Service Company shall not be responsible for any damages, losses, settlement payments deficiencies, liabilities, costs and expenses resulting from the failure of the District’s employees to follow the instructions of the Service Company.

3) DISTRICT OBLIGATIONS

3.1. District shall:

3.1.1. Perform all duties and discharge all responsibilities and obligations not expressly assumed by the Service Company pursuant to the terms of this Agreement;

3.1.2. Comply with applicable law relating to the management of the District to the extent that the responsibility of complying with those laws is not specifically assumed by the Service Company under this Agreement (the Service Company shall not be responsible for the District’s failure to comply with any provision of applicable law that is not otherwise specifically assumed by the Service Company hereunder); and

3.2 The Service Company shall have no liability for vendor late charges if the late charges are not the result of the

Service Company’s fault or negligence.

3.3 The District represents and warrants that:

3.3.1. It is duly incorporated, validly existing, and in good standing under the laws of its state;

3.3.2. It has all requisite power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;

3.3.3. The execution, delivery, and performance of this Agreement has been duly and validly authorized by it by all necessary action, and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms;

3.3.4. It shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and

3.4 The District shall operate as a body, dictated by the District legal documents and applicable laws. Authority lies in a majority vote of the Directors, and no Director shall act independently unless authorized by a Board Resolution that empowers him to make specific decisions independently or spend funds within a specified dollar range. District shall also appoint a liaison to communicate Board decisions to Service Company. If no liaison is named, it shall be the Chairman. The District acknowledges and agrees that in the course of providing the Services, it may be necessary for Service Company to use District computer systems, data systems, or networks, or to come into contact with District residents’ personal information. District shall notify Service Company of any protocols for said systems and information, and Service Company shall follow all such protocols as provided, and shall not be liable for the loss or compromise of District systems or information. If no protocols are provided, then Service Company shall treat such systems and information with the same degree of care and confidentiality as it treats its own systems and information, but no less than a reasonable degree of care. Notwithstanding anything in this Agreement to the contrary, Service Company is not liable for any liabilities, losses, damages, expenses, fines, or penalties incurred by the District or any third party as a result of a data security breach or other cyber security breach to the District’s computer systems, operating systems, and all other technological or information systems related to the Services provided hereunder, except to the extent such liability, loss, damage, expense, fine, or penalty is the direct result Service Company’s negligence or willful misconduct.

4) FEES AND PAYMENT

4.1. The District shall pay to the Service Company a one-time organizational fee of N/A within thirty (30) days of the Effective Date, to provide for the data input, review, and organization of the District’s documents, allowing approximately thirty (30) days for a transition period.

4.2. Thereafter, the District shall pay the Service Company a fee of \$44,996.00 ("Annual Base Fee") plus applicable sales tax, if any, and related expenses shall be paid to the Service Company monthly as compensation for the services set forth herein, per schedule(s) defined in Section 1 and attached hereto as part of this Agreement, and/or as may be described on the Miscellaneous Schedule of Charges. The Base Fee shall be due on the first of the month during which the Services will be rendered. All other payments shall be due within thirty (30) days of the date of invoice. Disputes with invoices are waived if not raised within ten (10) days of invoice date.

4.3. Attendance of meetings is based on an allocation of up to thirteen (13) meetings per year, including of the Annual meeting of Members and a Budget meeting, with an allocation of up to three (3) hours per meeting scheduled. The Service Company will bill the District \$250.00 for each additional hour spent attending meetings. Further, meetings which extend past 9:00 p.m. may be charged time and one-half (1.5 x hourly) the hourly rate for meetings. In addition, the Service Company shall bill the District double the prescribed hourly rate of \$125 for each hour spent attending meetings which are scheduled and conducted between the hours of 5:00 P.M. Friday and 9:00 AM. Monday. The Service Company shall not charge for travel time to and from meetings.

4.4. Additional services not described on Schedule A which are rendered by the Service Company for or on behalf of the District, with the District's prior written consent, including, but not limited to, preparation of special schedules in assisting auditors, preparation for lawsuits or court appearances, and/or the coordination of insurance claims, major construction projects, or emergency repairs due to acts of God, when requested by the District, will be billed at the rate of \$125.00 per hour or as otherwise agreed by Service Company, to be paid by the District upon receipt of statement. The billing and/or supervision of construction for restoration due to insurance claims or special construction projects shall be billed as a part of the claim at the rate of fifteen percent (15%) of the actual cost of new construction or reconstruction if so requested and approved by the Board of Directors. Should Service Company not have expertise in an area, an experienced contractor, approved by the Board, will be consulted, and District will be billed at the rate of \$125.00 per hour for any coordination or liaison activities with the contractor.

4.5. In the event of emergency repairs, Service Company is authorized to dispatch the vendor, without liability to the Service Company, to take whatever corrective action is necessary to repair the problem. The District will be notified immediately that such emergency action was taken.

4.6. The District shall reimburse the Service Company for all reasonable costs or expenses incurred by the Service Company as provided for in the "Miscellaneous Schedule of Charges" attached to the Agreement and incorporated herein by reference, or with the written consent of the District, in and directly attributable to its fulfilling its duties under this Agreement, including, but not limited to, postage costs, supplies costs and costs to reproduce documents. Such costs and expenses are payable by the District to the Service

Company. The District shall pay all reasonable legal fees and expenses should it become necessary for the Service Company to seek legal assistance to recover any balance owed by the District under this Agreement.

4.7. The Service Company reserves the right to modify, with thirty (30) days' notice, any of the applicable fees listed in the "Miscellaneous Schedule of Charges", attached to the Agreement, to bring them in line with current business practice. The Board shall approve such increases upon notice and documentation of the reason for the increase. The Board shall not unreasonably delay or withhold approval. Should the Board reject an increase, the Service Company shall have the option to immediately terminate the Agreement.

4.8. For each fiscal year of the District, the compensation payable to the Service Company under the terms and conditions of this Agreement shall be in an amount approved by the District in its final fiscal year budget. Each fiscal year the District will consider price adjustments to compensate for market conditions and the anticipated type and amount of work to be performed by the Service Company during the upcoming fiscal year of the District. In no event shall the compensation payable to the Service Company be reduced, unless agreed to by the District and Service Company, in writing.

4.9. If the fiscal year budget is not approved prior to the first day of the fiscal year, the Service Company's compensation under this Agreement will continue at the rate currently in effect at the time of the renewal. The subsequent approval of the budget will result in a retroactive fee adjustment, which will be invoiced in the first month following approval of the budget.

4.10. Any and all late payments due to either party from the other shall accrue interest at a rate of one and one-half percent (1 ½%) per month from the original due date and until payment is received, unless waived by agreement.

5) INDEMNIFICATION AND LIMITATION

5.1. DURING THE TERM OF THIS AGREEMENT, EACH PARTY (THE "INDEMNIFYING PARTY") SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OTHER PARTY AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (EACH IS REFERRED TO HEREIN AS AN "INDEMNIFIED PARTY") AGAINST ANY AND ALL LIABILITY FOR DAMAGES, COSTS, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, RESULTING FROM ANY CLAIM ASSERTED BY A THIRD PARTY AGAINST THE INDEMNIFIED PARTY FOR WRONGFUL DEATH, BODILY INJURY, AND/OR PROPERTY DAMAGE, BUT ONLY TO THE EXTENT CAUSED BY THE WILLFUL OR NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY.

5.2. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall either party be liable, either directly or indirectly, for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit, even if such party has been advised of the possibility of such

damages.

5.3. In the event that claims(s) raised by the District against the Service Company on account of this Agreement, or on account of the Services performed hereunder is/are covered under the Service Company's insurance policies required of the Service Company hereunder, the Service Company shall not be responsible to the District for any loss, damage or liability beyond the amounts contractually required hereunder and actually paid pursuant to the limits and conditions of such insurance policies. With respect to any causes of action and/or claims raised against the Service Company by the District that are not covered by the insurance policies required hereunder, Service Company's liability to District shall not exceed an aggregate amount equal to twice the compensation paid to the Services Company by the District in the year in which such cause of action and/or claim is raised.

5.4. The Service Company shall not be responsible for any damages, losses, settlement, payment deficiencies, liabilities, costs and expenses arising directly or indirectly because of the execution or implementation of instruction or directions provided by the District or any of its directors, officers, employees, agents, or representatives unless such damages, losses, settlement, payment deficiencies, liabilities, costs and expenses are caused by the Service Company's negligence or willful misconduct.

6) INSURANCE

6.1. The Service Company shall provide and maintain the following levels of insurance coverage:

6.1.1. Commercial Crime/Fidelity Insurance with a per loss limit of one million dollars (\$1,000,000.00);

6.1.2. Professional Liability insurance with an aggregate limit of two million dollars (\$2,000,000);

6.1.3. General Liability insurance with a per occurrence limit of one million dollars (\$1,000,000);

6.1.4. Workers compensation coverage as provided by and in the amounts specified by state law;

6.1.5. Automobile Liability Insurance with a combined single limit of one million dollars (\$1,000,000); and

6.1.6. Excess Liability insurance with a per occurrence limit of two million dollars (\$2,000,000).

6.2. The District shall maintain in force a director's and officer's liability policy in an amount of not less than one million dollars (\$1,000,000) in aggregate coverage and such policy shall name the Service Company as an additional insured. Additionally, the District shall maintain property and general liability insurance with appropriate coverage.

7) DISPUTES

6.1 In the event of any disputes, the parties shall first attempt to resolve the situation by good faith discussions which shall take place in a timely manner. If the dispute cannot be resolved within sixty (60) days, the parties shall mediate their dispute before a mediator acceptable to both parties, if they cannot agree, they shall ask the Director of the Federal Mediation and Conciliation Service to nominate a mediator. The parties shall bear their own costs of the mediation but the parties shall share equally the costs of the mediator and the mediation Services.

6.2 If the parties are unable to resolve any disputes in accordance with the Section above, either party may request that such dispute be submitted for binding arbitration, which shall be governed by the rules of the American Arbitration District or such other rules as the parties may agree. The parties agree that any judgment issued as a result of arbitration may be entered in the court having jurisdiction thereof. The parties agree that arbitration shall be the exclusive means to settle any dispute, controversy or claim arising out of this Agreement. The parties agree that any judgment issued as a result of arbitration may be entered in the court having jurisdiction thereof. Any mediation or arbitration shall be held in a mutually agreeable location within the County in which the District is located.

6.3 ALL CLAIMS MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE DATE THE CLAIMING PARTY KNEW OR SHOULD HAVE REASONABLY KNOWN OF SAID CLAIM. INVOICES ALREADY PAID CANNOT BE DISPUTED FOR ANY REASON BEYOND THE DATE OF THE NEXT BOARD MEETING.

8) FORCE MAJEURE

A party's performance of any obligation under this Agreement (except for payment obligations) shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. The party unable to perform shall be required to resume performance of its obligations under this Agreement as soon as reasonably practicable following the termination off the event or cause that excused performance hereunder. Force Majeure is defined as any act, event or condition to the extent that it adversely impacts the cost of performance of, or adversely affects the ability of, or either party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the party relying thereon.

9) PUBLIC RECORDS

8.1 The Manager will be the public records custodian for the District. In connection with its services to District, the Manager agrees to fully comply with the provisions of Section 119.0701, Florida Statutes pertaining to Florida's Public Records Law. Said compliance will include the Manager taking appropriate and necessary steps to comply with the provisions

of Section 119.0701(2)(b), Florida Statutes including, without limitation, the following:

8.1.1. The Manager shall keep and maintain public records required by the District to perform the services hereunder.

8.1.2. Upon a request for public records received by the District, the Manager shall provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or otherwise provided by law.

8.1.3 The Manager shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of this Agreement if the Manager does not transfer the records to the District.

8.1.4 Upon completion of this Agreement, the Manager shall transfer, at no cost, to the District all public records in possession of the Manager consistent with Florida law. All records stored electronically by the Manager must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

8.1.5 The District shall make all determinations as to what constitutes confidential or exempt public records.

8.1.6 Service Company shall follow the requirements of the Florida Records Retention Act and destroy all records in accordance with the requirements of the law.

8.1.7 Failure of the Manager to comply with Section 119.0701, Florida Statutes may subject the Manager to penalties under Section 119.10, Florida Statutes. Further, in the event the Manager fails to comply with this Section or Section 119.0701, Florida Statutes, the District shall be entitled to all remedies at law or in equity. The following statement is required to be included in this Agreement pursuant to Section 119.0701(2), Florida Statutes:

IF THE MANAGER HAS QUESTIONS REGARDING THE APPLICATION CHAPTER 119, FLORIDA STATUTES, TO THE MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS TO SANDRA DEMARCO C/O INFRAMARK, LLC, TELEPHONE: (954) 603-0033, EMAIL: Recordsrequest@inframark.com AND MAILING ADDRESS: 210 N. UNIVERSITY DRIVE, SUITE 702, CORAL SPRINGS, FL 33071.

10) MISCELLANEOUS

10.1. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management or board decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Should a party withhold such cooperation as detailed in this Section, the other party shall not be liable for late fees, fines, or other damages or delay as a result.

10.2. The headings and titles to the sections of this Agreement are inserted for convenience only and shall not be deemed a part hereof or affect the construction or interpretation of any provision.

10.3. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise, including injunctive relief.

10.4. If any provision of this Agreement or application thereof to anyone or under any circumstances is adjudicated to be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect any other provision or application of this Agreement which can be given effect without the invalid or unenforceable provision or application and shall not invalidate or render unenforceable such provision or application in any other jurisdiction.

10.5. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

10.6. This Agreement contains the entire agreement between District and Service Company and supersedes all prior or contemporaneous communications, representations, understandings or agreements that are not consistent with any material provision of this Agreement.

10.7. The parties may only modify this Agreement by a written amendment signed by both parties.

10.8. The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

10.9. In the event of termination, cancellation or failure to renew, District agrees, for a period of twelve (12) months from the date of termination, not to engage or attempt to engage the services of anyone who is employed by Service Company (or was employed by Service Company at any time within one (1) year prior to the date of termination) for the performance of identical or similar services. Both parties agree that damages as a result of actions in violation of this Section would be impossible to prove, and therefore, in the event of a breach of

the foregoing covenant, both parties agree that District shall pay to Service Company, as liquidated damages and not as a penalty, an amount equal to twelve (12) times the monthly compensation agreed to herein.

2002 West Grand Parkway North, Suite 100
Katy, Texas 77449
ATTN: Chris Tarase, Vice President

10.10. This Agreement shall be binding upon the successors and assigns of each of the parties. This Agreement shall not be assigned by either party without the prior written consent of the other party unless such assignment shall be to a parent, subsidiary, affiliate, or successor of either Party. When written consent of a party is required, such consent shall not be unreasonably withheld.

With a copy to:

Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044
ATTN: Legal Department

10.11. This Agreement shall be construed under and in accordance with the laws of the State of Florida, and all obligations of the parties created hereunder are enforceable in the federal or state court having appropriate jurisdiction thereof.

To District:

South Bay CDD
Attn: Board Chairperson
2654 Cypress Ridge Blvd., Suite 101
Wesley Chapel, FL 33544

10.12. All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the parties by each other will be addressed to:

10.13. All records compiled by Service Company with information and material gathered when performing this Agreement are the property of District.

To Service Company:
Inframark, LLC

10.14. This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date at the top of this Agreement.

INFRAMARK, LLC

**SOUTH BAY COMMUNITY
DEVELOPMENT DISTRICT**

DocuSigned by:
Chris Tarase
41808B12D02B415...
By: Chris Tarase
Title: Vice President – Management Services
Date: 2/28/2023

DocuSigned by:
Lean Popelka
82D7EFDC859D4381
Printed Name: Lean Popelka
Title: Chairman
Date: 2/28/2023

**Schedule A
Scope of Services**

The Service Company shall provide the following services to, for, and on behalf of the District:

A- FINANCIAL ACCOUNTING SERVICES

- 1- Prepare the District's budget at the District's direction.
- 2- Implement the District's budget directives.
- 3- Prepare of monthly financial reports for the regular District meetings.
- 4- Submit preliminary budget to the District as required under applicable law or District policy.
- 5- Modify preliminary budget for consideration by the District at the District's advertised Public Hearing.
- 6- Coordinate budget preparation with District's Board, Engineer, and Attorney.
- 7- Prepare budget resolution approving the District's budget and authorization to set public hearing.
- 8- Prepare budget and assessment resolutions as required by applicable law.
- 9- Prepare annual financial report for units of local government.
- 10- Prepare of Public Depositor's Report and distribution to State Treasurer.
- 11- Provide all required annual disclosure information to the local government in the County in which the District resides
- 12- Coordinate and distribute Annual Public Facilities Report and distribute to appropriate agencies.
- 13- Prepare of all required schedules for year-end audit.
- 14- Oversee capital and general fund accounts.
- 15- Prepare required investment policies and procedures at the District's direction.
- 16- Administer purchase order system, periodic payment of invoices.
- 17- Coordinate tax collection and miscellaneous receivables.
- 18- Establish Government Fund Accounting System in accordance with the Uniform Accounting System prescribed by Department of Banking and Finance for Government Accounting, Generally Accepted Accounting Principles (GAAP) and Government Accounting Standards Board (GASB).

- 19- Prepare and coordinate applications for federal ID numbers and tax exemption certificates.

B- MANAGEMENT AND RECORDING SERVICES

- 1- Attend up to 13 Meetings of the District Board of Supervisors and provide meaningful dialogue on the issues before the District Board of Supervisors for action.
- 2- Record all meetings of the District.
- 3- Organize, conduct, and provide summary minutes for all meetings of the District. This includes, but is not limited to, scheduling meetings, providing agenda packages and meeting materials in the form requested by the Board of Supervisors, and publishing Board meeting, public hearing notices, and landowner election notices as directed by the District; for avoidance of doubt, the Service Company does not provide any legal advice and does not make any recommendations as to how to apply with applicable laws.
- 4- Consult with the Board of Supervisors and its designated representatives, and when necessary, organize such meetings, discussions, project site visits, workshops, and hearings as may pertain to the administration and accomplishment of the various projects and services provided by the District.
- 5- Provide Oath of Office and Notary Public for all newly elected members of the District Board of Supervisors.
- 6- Prepare agenda for budget hearings.
- 7- Prepare all the District's Board of Supervisor agendas and coordination of receipt of sufficient material for the District's Board of Supervisors to make informed policy decisions.
- 8- Prepare and advertise all notices of meetings as required.
- 9- Maintain the District's seal.
- 10- Act as the primary point of contact for District-related matters
- 11- Ensure all required procedures for the District are properly followed and executed, including provision of required compliance and disclosure information to local governments; Service Company shall work with the District as need be to ensure all required procedures are properly followed and executed.
- 12- Solicit bids for the District's contract services for the District's approval and serve as a liaison between the District and contractors to observe the monthly performance of the work of companies supplying the services related to the operation and maintenance of the District's public infrastructure
- 13- Make recommendations and assist in matters relating to solicitation, approval, rejection, amendment, renewal, and cancellation of contracts for services to the District. In advance

of expiration of contracts, the Service Company shall advise the District as to need for renewal or additional procurement activities and implement same. The Service Company shall work with the District's attorney and engineer in fulfilling these requirements. The Service Company's project management (the onsite management of specific large maintenance and/or capital projects) will require an additional project management fee. Any such project management fee must be approved in advance the District; provided, however, that in the event of an emergency, the Service Company may provide project management services for a reasonable project management fee.

- 14- Coordinate and provide contract administration for any services provided to the District by outside vendors. Contract administration will not require any "project management" (i.e. oversight of construction and/or engineering work that may require professional certifications or other expertise that the Service Company's personnel may not possess).
- 15- If required, provide day-to-day management of in-house operations by performing the following:
 - a- Hire and maintain a highly qualified staff.
 - b- Coordinate all personnel applications, benefits, and payroll and submit in an accurate and timely manner.
 - c- Prepare and implement operating schedules.
 - d- Prepare and implement operating policies.
 - e- Interface with residents to ensure anticipated levels of service are being met.
 - f- Implement internal purchasing policies.
 - g- Prepare and bid services and commodities as necessary.
 - h- Coordinate with the District's residents to determine the services and levels of service to be provided as part of the District's budget preparations.
- 16- Preparation of specifications and coordination for insurance and independent auditor services.
- 17- Responding to any community complaints or requests for service from residents.

C- SPECIAL ASSESSMENT SERVICES

- 1- Prepare assessment resolution levying the assessments on the property in the District and prepare assessment rolls.
- 2- Prepare and maintain a property database by using information obtained by local Property Appraiser's secured roll.
- 3- Review and compare information received from the Property Appraiser to prior years' rolls, to ensure that the District rolls are in compliance with the law and that the Service Company has obtained all the pertinent information to prepare accurate assessments.

- 4- Periodically update the database for all activity such as transfer of title, payment of annual assessment, prepayment of principal.
- 5- Act as the primary contact to answer property owner questions regarding special assessments, tax bills, etc. and provide pay off information upon request to property owner.
- 6- Upon adoption of the budget and assessments, coordinate with the office of the Property Appraiser and Tax Collector to ensure correct application of assessments and receipt of District funds.
- 7- Act as primary contact to answer property owners' questions regarding the Capital Assessment.

D- FIELD SERVICES

Upon request by the District and written agreement by the Service Company, the Service Company shall perform the following field services for an annual fee of \$12,000.00:

- 1- Perform a monthly inspection of District property and maintenance responsibilities
- 2- Perform a follow up inspection on follow up items prior to the meeting (mid-month)
- 3- Provide monthly inspection reports to the District with pictures, analysis, and recommendations.
- 4- Notify District vendors about deficiencies in service.
- 5- Monitor District vendors' progress in remedial work and provide the Board with a progress report.
- 6- Provide input to the District Manager for annual budgetary consideration.
- 7- Obtain proposals for various projects.
- 8- Assist in drafting competitive procurement packages (such as instructions to proposers and scope of services) and conduct pre-application meetings with interested proposers.
- 9- Attend Board meetings or workshops as needed or requested.

**Schedule B
Rate Schedule**

I. ANNUAL BASE FEE

The Annual Base Fee for the first Agreement year shall be \$48,996.00 (\$4,083.00 per month). Base fee includes District Management, Accounting, Recording, Assessments and annual Disclosure filing.

II. MISCELLANEOUS SCHEDULE OF CHARGES

| | |
|--|---|
| Special Meetings - Beyond those defined in the negotiated agreement | \$125.00 per hour |
| Mail Distribution | |
| General Distribution- Includes label, folding, insertion of up to two items and delivery to the post office | \$0.35 per piece |
| General Distribution - Additional inserts over two | \$0.03 per additional page |
| Labels | \$0.07 each |
| Certified Mail | Current rate charged by postmaster plus handling charge of \$5.00 |
| Postage | Current rate charged by postmaster (no add on) |
| Copies | |
| Black and white, single sided | \$0.18 per copy, up to 100 copies \$0.10 per copy thereafter |
| Color (single sided) | \$0.50 per copy |
| Black and white, duplex (two-sided) | \$0.21 per duplex copy |
| Special Services- includes court appearances, performance of tasks other than contract schedule(s), requested attendance for special committee functions and research for special projects | \$125.00 per hour |
| File Storage - Records preceding those included in base fee (current year records plus two years previous) (Any boxes may be transferred to the District upon the request of the District) | \$15.00 per box per month |
| Notary service | Included |
| Estoppel letters for Sellers of Property- the Service Company will charge the seller directly | Per market rates |

MEMORANDUM

TO: South Bay Board of Directors
FROM: David L. Smith
DATE: October 3, 2022 Client-Matter Number: 40242-2
SUBJECT: Agenda Items - Fiscal Year 2022-2023

Board Members,

This memorandum is for the purpose of summarizing the primary issues that need to be addressed and resolved in the upcoming fiscal year for South Bay CDD prior to turnover of control. (See below.) For your ease of reference, I will consolidate here issues on which you have been briefed, at least in part, via various other memoranda previously.

The point is to resolve these matters while we have a Board, which has the institutional knowledge associated with most of these issues. It is also important to address these issues while we have the District Management, District Counsel and District Engineer with that background knowledge.

These items are identified as follows, with additional information to be provided subsequently so that each can be addressed thoroughly:

I. Harborside Suites Issues

A. Amendment to Settlement Agreement. The original Settlement Agreement with Harborside Suites was dated November 1, 2013. Since then, many of the requirements and conditions have been met or are no longer relevant. In order to provide a clear go-forward basis governing the District's relationship with Harborside Suites, it is important that we revise the Settlement Agreement to reflect the current state of affairs.

B. Harborside Seawall Repairs. Harborside Suites has previously undertaken to repair the seawalls along the eastern and southern edge of its properties contiguous to the Harborside Cove Marina. The question is whether this is part of a District-wide seawall repair obligation or is simply the obligation of Harborside Suites. Both the Settlement Agreement and the Seawall Repair and Assessment Methodology will need to be reviewed in answering this question.

II. Global Title and Survey Issues

A. District Engineer Efforts. The District Engineer has been gathering all available surveys that have been generated in conjunction with transfers and sales of property within the District. It is the goal to consolidate those surveys and get an overall understanding of the exact locations of the various boundaries of the property. It may nonetheless be necessary to incur expense for completion of this survey work. The survey and title work was not done with great care by the Developer and yet those matters have significant ramifications for many of the issues identified in this memorandum and otherwise applicable to the District.

B. Ownership Obligations. Many of the issues discussed herein relate to the actual ownership of the various properties comprising the District and the obligations attendant to that ownership. It is for this reason that the District needs to consider whether it wants to obtain a global title insurance policy to clarify once and for all the exact ownership situation. It could very well be that this title work, if done in conjunction with the above-referenced survey work could be immensely valuable on a go-forward basis. It is, however, not an inexpensive process.

III. Pending Litigation

A. SunTex Marinas. There is existing litigation with the successor-in-interest to Little Harbor Ltd. We need to attempt to resolve this litigation in conjunction with addressing other issues related to the property owned or controlled by SunTex Marinas.

B. SunTex Marinas Access. As per a recent settlement in conjunction with the T-Docks, the District agreed to attempt to assist Little Harbor Ltd. address its access issues. We will need to elaborate exactly what those problems are and what path there may be to their resolution. We do not currently know whether the new owner is fully aware of these issues. Nonetheless, it is in at least their interest to get these matters resolved.

C. Personal Injury Suit on Property Near Pier. There was a claim asserted with regard to a fall by a visitor on the property located near the pier in the Tiki Hut. There is a need to clarify the exact ownership of that property, which has bearing on whose obligation it is to defend and/or pay any associated damages that may become due. As you can see, a lot of these matters are inter-related.

IV. Assessment Methodology Review

A. Changes in Use. We need to evaluate whether the initial development concept has vestigial impact on the Assessment Methodology which should be corrected. That is, there was a resort concept initially. We need to determine whether the allocation of certain expenses was attendant to the resort amenities concept and was included in the Assessment Methodology.

B. Zoning and Land Use Changes. We need to review the various zoning and land use changes associated with the property to determine whether it has altered the potential development on various parcels, thereby possibly altering the allocation of assessments among the parcels.

C. Changes per Settlement Agreements. We need to review each Settlement Agreement and determine whether any of those obligations have been altered by virtue of related subsequent developments.

That then would need to be translated through to any implications it has on the assessment methodology. In all events, it is important that the new Board understand what obligations are still outstanding.

D. Board Action. We need to review the various actions taken by the Board to determine whether they have any impact on the applicable assessment methodology in allocation of assessments, or otherwise impact the District.

E. Seawall Maintenance Decisions. We need to summarize exactly what decisions have been made with regard to seawall maintenance and what that impact has with respect to the allocation of assessments on a go-forward basis, if any.

F. Existing Agreements. There are certain existing agreements that create contractual obligations regarding seawall maintenance and other matters. We need to evaluate those in terms of what impact, if any, they have on a global seawall maintenance approach for governance of the District.

G. Additions, Deletions or Changes to Infrastructure. We need to evaluate whether there have been any changes to the available infrastructure and any associated amenities that create financial obligations that must be assessed against all or portions of the property owners of the District.

V. Seawall Access Easement Agreement

A. Ownership and Methodology Outcomes. Depending upon the ownership determination and the methodology evaluations described above, we will need to determine exactly what the maintenance obligations are for the District and what they are for private property owners.

B. Execution and Recording of Agreement. Once the items identified in paragraph A above are determined, we need to get the Seawall Access Easement Agreement executed and recorded in the public records so this is established on a go-forward basis clearly for all concerned.

VI. Notice and Opportunity to be Heard

A. Sufficient Notice. It is important that all property owners receive notice of these pending decisions so that they may have an opportunity to provide input in that process. This summary is a continuing effort to make sure the notice is provided through the agenda process to all concerned in order to meet this goal.

B. Opportunity to be Heard. Part of the due process requirements for the District is that in addition to providing notice there must be a legitimate and sufficient opportunity for the property owners to provide their input and provide any evidence or argument related to the issues to be determined by the Board. Accordingly, we need to set specific time periods for such participation to occur so that all members have that opportunity and the Board has the benefit of all of the information related to the decision the Board must make.

VII. Turnover of Control

A. Completion of Above Information Gathering. It is in part and parcel in connection with the turnover of control that we complete all of the above-referenced items so that the membership has had an

opportunity to participate and that there is clarity on exactly what will occur on a go-forward basis and what items remain for the new Board to determine.

B. Process. There is a process that must be followed in order to make sure that turnover occurs in a manner consistent with applicable law. Essentially, it is that all relevant parties must have notice and opportunity to be heard before a decision is made. This will be elaborated on as will the other items above.

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MEMORANDUM

TO: Board of Directors
South Bay Community Development District (“**District**”)

FROM: David L. Smith

DATE: November 17, 2022, Client-Matter Number: 40242-2
Final Revision
December 5, 2022

SUBJECT: Seawall Assessment Determination

This provides the information to the Board for making its final determination of seawall maintenance and the related assessment allocation. The primary concept is that the District will provide the appropriate structural improvements (“**Seawall Repairs**”) for sections of seawall owned by the District. This would include any seawalls for which third party owners authorize Seawall Repairs by the District. All other third parties will be left with the obligation of Seawall Repairs they determine appropriate for their respective properties.

I. Varieties of Seawalls to be Repaired/Maintained

Based upon my review of the documentation, surveys and ownership of the various parcels of property, I believe we have the following four different seawall/retaining wall ownership situations. Hereinafter I will use the term Seawall to refer to both a seawall and/or a retaining wall:

1. Seawalls subject to the South Bay CDD Drainage and Retaining Wall Maintenance Easement, dated August 31, 2006 and recorded at Office Records Book 17074, Page 1376 (“**Seawall Maintenance Agreement**”).
2. Seawalls owned by the District including District ownership of significant uplands adjacent to the seawall.
3. Seawalls owned by the District without significant uplands owned by the District adjacent to the seawall.
4. Seawalls and attendant uplands owned by third parties, i.e. not the District.

The balance of this Memorandum discusses the allocation of Assessments for Seawall Repairs.

II. **Distinction Between Maintenance/Repair Obligations and Assessments/Seawall Maintenance Agreement**

There is a conceptual distinction between who is obligated to undertake the Seawall Repairs and who is assessed for those repairs. In some cases they may be the same. In others they may not.

That is, it may be that pursuant to the above-referenced Seawall Maintenance Agreement, the District has the obligation to repair and maintain the seawalls described therein, but a determination must be made whether such repairs are to be reimbursed by special assessments imposed on the contiguous upland property owner or whether it is a common amenity that would be spread over every property owner in the District. The argument for the special assessment of the adjacent property owner is that such owner is the primary beneficiary of the existence and function of the seawall and is consistent with the primary concept mentioned at the outset.

The argument for it being a District-wide common expense is that the basin is a common amenity requiring that the assessment be shared by every property owner in the District. It is unclear, however, how that particular basin would be distinguished from any other waterway within the District. That is, was the Antigua Cove basin for some reason seen as a common amenity whereas all of the other waterways were not? What is the basis for such a distinction?

III. **Seawalls Owned by the District with District Owning Significant Adjacent Uplands**

With respect to a seawall which is owned by the District along with the adjacent uplands, it would seem that would serve a purpose that is common to the District, such as the provision of a roadway, parking area, greenspace or the like on the upland. If in fact the upland provides a common amenity, the assessment would be assessed against all property owners in the District.

IV. **Seawall Owned by District with No Adjacent Upland Ownership**

In a situation where the seawall is owned by the District but the adjacent upland is not owned by the District, it would seem that such Seawall Repairs would be subject to a special assessment allocated to those who own the upland, if not in fact undertaken directly by the upland owner.

V. **Seawalls Owned by Third Parties**

The seawalls and attendant upland that are owned by private property owners, with no specific other contractual obligation for the District to maintain, should be maintained by those property owners at their sole expense. If so, and if the District were to undertake that maintenance and repair obligation by virtue of the failure of the adjacent upland owner to do so, it would be a special assessment against the upland property owners.

VI. **Seawall Access Maintenance and Easement Agreement.**

Attached is a copy of the Seawall Easement and Maintenance Agreement which is intended to provide the District the access to maintain any and all of the seawalls within the District for which it lacks the access to do so. Again, the assessments associated with such repairs so undertaken would be allocated as described in the preceding sections above.

VII. **Notice of Opportunity to Provide Additional Evidence/Argument.**

In order to make a final determination with respect to the Seawall Repairs and the allocation of the assessments therefor, the District is providing this summary to all of the relevant stakeholders in the District in order to make sure they have an opportunity to provide any additional information, analysis or argument for a different treatment of the Seawall Repairs.

The Board will make a determination in fiscal year 2022/2023 at properly noticed, publicly attended Board Meetings. As such, all property owners will have an opportunity to be heard and should take advantage of that opportunity, if in fact they want to be heard on the issue.

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