

**Three Arch Bay
Community Services District**

Special Board of Directors Meeting

March 9, 2022

4:00 P.M.

Action and Information Items

**Three Arch Bay Clubhouse
50 South La Senda**

(If you are unable to attend, please call the Office)

Three Arch Bay Community Services District

Special Meeting Agenda

Wednesday, March 9, 2022 – 4:00 p.m.

50 S. La Senda Laguna Beach, CA 92651

1. CALL TO ORDER – 4:00 p.m.

2. PUBLIC COMMENT

Public comments on all agenda items, as well as public comments not pertaining to agenda items, will be heard during the public comment period. Public comments are limited to thirty (30) minutes total and three (3) minutes per item.

3. ADJOURNMENT TO CLOSED SESSION

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraphs (2) and (3) of subdivision (d) of Section 54956.9: (One potential cases)

4. NEW BUSINESS

A. **Consideration of Approval of Amended and Restated Lease Agreement; Professional Services Agreement; and Direction to Legal Counsel to Terminate Existing Lease and Management Agreements with the Three Arch Bay Association.....1-17**

B. **Consideration of Approval of Revised Security Contract with Nordic Security Services.....18-24**

5. NEXT MEETING – March 23, 2022 at 5:00pm

All documents available for public review are at 5 Bay Drive, Laguna Beach, CA 92651 or on file with the District’s General Manager located at 5 Bay Drive, Laguna Beach, CA 92651

In compliance with the Americans with Disabilities Act, if special assistance is needed to participate in the Board Meeting, please contact the General Manager during regular business hours at (949) 499-4567. Notification received 48 hours prior to the meeting will enable the District to make reasonable accommodations; if sign language interpreter is required, notification 1 week in advance is strongly recommended. All accommodation requests will be processed swiftly and resolving any doubt in favor of accessibility.



THREE ARCH BAY CSD

DATE: March 9, 2022
TO: BOARD OF DIRECTORS
FROM: ALLISON E. BURNS, General Counsel
SUBJECT: Amended and Restated Lease Agreement; and Professional Services Agreement

BACKGROUND

The District historically entered into two contracts with the Three Arch Bay Association, a California nonprofit public benefit corporation ("Association"), (i) a Lease Agreement dated July 1, 1987, which lease agreement was restated in its entirety in a lease agreement dated April 10, 2000, as amended from time to time (the "Prior Lease"); and (ii) a Management Agreement dated March 1, 2007, as amended from time to time (the "Management Agreement"). The Amended and Restated Lease Agreement and Professional Services Agreement presented for approval by the Board of Directors would terminate and replace the Prior Lease and Management Agreement, respectively.

Amended and Restated Lease:

The Amended and Restated Lease provides for the lease by the District of certain real property and appurtenances owned by the Association, namely, the upper and lower traffic gates and entrances and further provides for the District's use of the clubhouse. The Amended and Restated Lease provides for a monthly rental payment of \$4,550.00 from the District to the Association.

Professional Services Agreement:

The Professional Services Agreement (i) sets forth the services to be provided by the Association to the District for security, facilities to intercept, contain and transport storm and dry weather water flows to the ocean, general administration, financial management, and contract management, all as further described in Exhibit A to the Professional Services Agreement and all of which are to be performed in accordance with such policies as the District board of directors may set from time to time in writing, (ii) sets forth the employment relationship of individuals providing services to the District, and (iii) provides fair compensation to the Association for the costs of the Services. The Professional Services Agreement provides for security staffing, including, but not limited to, one full time security manager and no fewer than three full time patrol supervisors. The Professional Services Agreement provides for a monthly payment of \$40,000 from the District to the Association for the identified services.

RECOMMENDATION

1. That the Board of Directors approve the following agreements with the Association; each member of the District Board of Directors is a nonsalaried member of the Association.
 - a. Amended and Restated Lease Agreement; and
 - b. Professional Services Agreement.
2. That the Board of Directors direct General Counsel to issue a Notice of Termination of the Prior Lease and Management Agreement, respectively.

Prepared and Submitted by:

Allison E. Burns
General Counsel, Three Arch Bay Community Services District

FIRST AMENDED AND RESTATED

LEASE AGREEMENT

THIS FIRST AMENDED AND RESTATED LEASE AGREEMENT (the "Agreement") is made this ____ day of _____, 2022, and is by and between Three Arch Bay Association, a non-profit California corporation (the "Association") and Three Arch Bay Community Services District, a community services district organized under the laws of the state of California (the "District").

RECITALS

- A. WHEREAS, the District is a California community services district, formed to benefit the residents of Three Arch Bay; and
- B. WHEREAS, the Association is the owner of the Leased Premises, as hereinafter defined;
- C. The District and the Association entered into a lease agreement dated July 1, 1987, which lease agreement was restated in its entirety in a lease agreement dated April 10, 2000, as amended from time to time (the "Prior Lease").
- D. The District and the Association and desire to terminate and replace the Prior Lease in its entirety by this Agreement.

NOW, THEREFORE, the parties hereby agree and covenant as follows:

ARTICLE I

THE LEASE

- 1.1 Grant of Lease. The Association hereby leases to the District, subject to all applicable rights of way and other easements, pursuant to the terms of this Agreement, the upper traffic gate and entrance to the Three Arch Bay District inland of Pacific Coast Highway, and the lower traffic gate and entrance to the Three Arch

Bay District on the ocean side of Pacific Coast Highway and all land and improvements appurtenant thereto as well as nonexclusive use of portions of the clubhouse for office and meeting purposes (collectively, the “Leased Premises”).

1.2 District Powers. The District shall have full power to use the Leased Premises for the use and enjoyment of the inhabitants of the Three Arch Bay District, and for their safety and security, and the administration of the affairs of the District.

1.3 Use of Clubhouse. The District shall have the right to use the clubhouse and the office located in the Three Arch Bay District for the purposes of meetings, administration of the District and other such matters related to the purposes of the District.

1.4 Term. The Lease granted herein shall commence upon March __, 2022 (the “Effective Date”) and shall continue for a term of ten (10) years (the “Term”). Either party may request that the provisions of this lease agreement be renegotiated at any time.

1.5 Rent.

(a) Initially. The District agrees to pay to the Association a rental of \$4,550.00 per month, payable in advance on the first day of each and every month of the Term, or any extension thereof.

(b) Adjusted. Every year, from the date of execution of this Lease throughout its Term, the rent provided for in 1.5(a) shall be adjusted on the anniversary date of this agreement by three (3%) percent of the base rate. The total of each such rent increase shall then be considered the base upon which the three (3%) percent annual increase will be calculated for the succeeding year.

ARTICLE II

REPRESENTATIONS, CONDITIONS AND COVENANTS

- 2.1 Repair and Improvements. The Association shall be responsible for the maintenance and repair of the Leased Premises in a condition suitable to the use by the District provided, however, the District may at its own cost and expense make any repairs upon the Leased Premises which it considers to be appropriate subject to the prior consent of the Board of Directors of the Association.
- 2.2 Termination. At the expiration of the Term, or any sooner termination of this Agreement, the District will quit and surrender possession of the Leased Premises, to the Association in as good condition as reasonable wear and tear will permit, damage by the elements or other casualty excepted.
- 2.3 Payment of Utilities. Association shall pay when due all water, electric and telephone charges accruing or payable in connection with the operation of the Leased Premises.
- 2.4 Property Taxes. Property taxes shall be the sole responsibility of the Association.
- 2.5 Sublease. No interest or right granted herein shall be assigned, let or sublet in whole or in part, without the prior written consent in writing of the Association. In the event that the District should dissolve or otherwise cease to be an entity during the Term of this Agreement, the Association shall have the option at such time to terminate this Agreement and all rights and obligations of the parties hereunder.
- 2.6 Insurance. The parties agree that they will endeavor to obtain a joint insurance policy covering both the District and the Association as well as casualty insurance on the property with the cost thereof to be shared equally. In the event that such policy is unavailable or financially impractical to obtain, then each party shall secure liability insurance to cover that party's use of the Premises in the minimum sums of

\$1,000,000.00 per person and \$2,000,000 total per occurrence for personal injury and \$2,000,000 per occurrence for property damage. The Association shall further secure casualty and/or property damage insurance for the purpose of covering the Leased Premises. Each Party shall secure additional insured certificate(s) naming and endorsing the other as an additional insured on their respective insurance policies. The parties hereto shall indemnify and hold each other harmless from all costs, loss and expense, including, by not by way of limitation, attorney's fees and court costs arising out of any liability or claim of liability for injury, damage, or loss sustained or claimed to have been sustained arising out of or incidental to the other party's negligent, Reckless, and/or intentional acts or failures to act.

2.7 In the event of fire or other casualty or calamity which substantially destroys any part of the Leased Premises, the Association agrees, at its own expense, to repair and replace the Leased Premises within a reasonable time. During such time that the Leased Premises is not useable the District shall not be obligated to pay the rent provided for herein.

2.8 If the District holds possession of the Leased Premises after the expiration of the Term of the Lease or any renewals or extensions thereof, the District shall become a tenant from year to year upon the terms and conditions herein specified until such tenancy shall be terminated by the Association by a written notice given at least thirty (30) days prior to the date of termination.

ARTICLE III

GENERAL PROVISIONS

3.1 Power and Authority. The Association and the District each represent and warrant that it is a duly formed and validly existing non-profit California corporation or

California community services district, respectively, with all requisite power and authority to enter into this Agreement and the transactions contemplated herein.

3.2 Waiver. The waiver by the Association of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained.

3.3 Notices. All notices and demands which may or are required or permitted to be given by either party to the other hereunder shall be in writing, and delivered to the following address:

If to the Association: Three Arch Bay Association
 5 Bay Drive
 Laguna Beach, CA 92651 .

If to District: Three Arch Bay Community Services District
 5 Bay Drive
 Laguna Beach, CA 92651

3.4 Headings. The headings and title to this Agreement are not a part of this Agreement and shall have no affect upon the construction or interpretation of any part hereof.

3.5 Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

3.6 Quiet Possession. Upon District paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on District's part to be observed and performed hereunder, District shall have quiet possession of the Leased Premises, for the entire Term hereof, subject to all provisions of this Agreement.

- 3.7 Prior Agreements. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters, including, but not limited to, the lease agreement of July 1, 1987 and the Prior Lease shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.
- 3.8 Attorney's Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all costs and expenses including the fees of its attorneys in such action or proceeding in such amounts as the court may adjudge reasonable as attorneys' fees.
- 3.9 Sale of Premises by Association. In the event of any sale of the Leased premises, Association shall be and is hereby entirely free and released of all liability under any and all of its covenants and obligation contained in or derived from this Agreement arising out of any act, occurrence or omission occurring after the consummation of such sale and the purchaser, at such sale or any subsequent sale of such premises shall be deemed, without any further agreements between the parties or their successors-in-interest or between the parties and any such purchaser to have assumed and agreed to carry out any and all of the covenants and obligations of the Association under this Agreement.
- 3.10 Severability. Any provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

3.11 Governing Law. This Agreement shall be governed by the laws of the state of California.

IN WITNESS WHEREOF, the parties hereto agree to the foregoing. Executed the day, month and year set forth above.

Association

Three Arch Bay Association, a non-profit California corporation

By: _____

Title: _____

Date: _____

District

Three Arch Bay Community Services District, a community services district organized under the laws of California

By: _____

Title: _____

Date: _____

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (hereinafter, "Agreement") is entered into by and between **THREE ARCH BAY SERVICE DISTRICT** ("DISTRICT"), a California community services district, and **THREE ARCH BAY ASSOCIATION** ("ASSOCIATION"), a California nonprofit public benefit corporation. DISTRICT and ASSOCIATION are at times referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. DISTRICT desires to receive, and ASSOCIATION desires to perform, the professional services as described in Exhibit A hereto on behalf of DISTRICT pursuant to California Government Code Sections 53060, 61050, 61060 and 61116.

B. The Parties executed that certain Management Agreement dated March 1, 2007 and, thereafter have amended the same from time to time (collectively, the "Original Agreement"), which Original Agreement is terminated as of the effective date of this Agreement.

C. It is the desire of the Parties to (i) set forth clearly the services to be provided by the ASSOCIATION to the DISTRICT for security, facilities to intercept, contain and transport storm and dry weather water flows to the ocean, general administration, financial management, and contract management, all as further described in Exhibit A hereto and all of which are to be performed in accordance with such policies as the DISTRICT board of directors may set from time to time in writing, (ii) set forth the employment relationship of individuals providing services to the DISTRICT, and (iii) to provide fair compensation to the ASSOCIATION for the costs of the Services.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, DISTRICT and ASSOCIATION hereby agree as follows:

1. **Term of Agreement.** This Agreement shall be effective as of March __, 2022 and continue thereafter until terminated by either Party with or without cause upon thirty (30) days written notice.

2. **Statement of Work.** The ASSOCIATION will provide the services identified and described in Exhibit "A" hereto ("Services"). All Services by ASSOCIATION will be performed at the ASSOCIATION's main place of business unless otherwise mutually agreed. The scope of ASSOCIATION's Services may be revised from time to time by mutual written agreement of the Parties.

3. **Independent Contractor.** **DISTRICT and ASSOCIATION agree that ASSOCIATION will be performing services under this Agreement as an Independent Contractor, not as an employee.** While the DISTRICT will set the policies for implementation of the Services, the ASSOCIATION will determine the means, methods and details of daily performing the Services subject to the requirements of this Agreement.. DISTRICT only has the right to direct ASSOCIATION as to the desired end results with respect to any Services to be provided hereunder. Neither ASSOCIATION nor any employee of ASSOCIATION shall be eligible for any employee benefits provided by DISTRICT in connection with the performance

of services under this Agreement. Except for fees and costs paid to ASSOCIATION as provided in this Agreement, DISTRICT shall not pay salaries, wages, expenses, benefits, payroll costs, costs related to withholding, Federal State and Social Security taxes, Federal and State Unemployment Taxes, statutory benefits, workers' compensation insurance, and/or any other compensation to ASSOCIATION, or to any employee of ASSOCIATION, for performing services hereunder. ASSOCIATION hereby represents that it has in force at present, and shall maintain during the term of this Agreement, worker's compensation insurance covering all ASSOCIATION employees providing any service pursuant to this Agreement to the extent required by California law. To the extent ASSOCIATION deems necessary, ASSOCIATION is responsible for providing, at its own expense, disability, unemployment, and other insurance, training, permits, and licenses for itself and its employees. ASSOCIATION is responsible for paying all income taxes, including estimated taxes, incurred as a result of the compensation paid by DISTRICT to ASSOCIATION for services under this Agreement. ASSOCIATION shall have the sole responsibility for employment decisions including evaluation of employees; provided, however, ASSOCIATION shall employ individuals qualified and capable of providing services required by this Agreement and shall notify DISTRICT in the event of any change of ASSOCIATION employees assigned to perform services for DISTRICT.

4. **Payment.** DISTRICT will pay ASSOCIATION \$40,000 per month for the Services provided during the preceding month, commencing on April 15, 2022 and continuing on the 15th of each month thereafter.

5. **Insurance.** ASSOCIATION hereby represents that it has in force at present, and shall maintain during the term of this Agreement, comprehensive general liability insurance with limits of no less than \$1,000,000 per occurrence from an insurer with at least an A(-) rating in Best Insurance Guide and which is admitted in California. ASSOCIATION will obtain an endorsement listing DISTRICT as an additional insured on such general liability policy.

6. **Termination.** Either Party may terminate this Agreement with thirty (30) days written notice to the other Party. DISTRICT has the right to suspend performance under this Agreement if the ASSOCIATION engages in any employment or business activity contrary to DISTRICT's interests. In the event of termination for any reason, DISTRICT will be obligated to pay ASSOCIATION any earned and unpaid fees and approved expenses for services rendered prior to termination, and such fees and expenses shall become immediately due and payable upon receipt of the final invoice.

7. **Confidential Information.** To the extent permitted by law, ASSOCIATION agrees to keep all of its work product confidential, even after the termination of this Agreement.

8. **Liaisons.** The President of the ASSOCIATION and the President of the DISTRICT shall each serve as the liaison with the other for purposes of addressing issues that arise pursuant to this Agreement. In the event an issue arises for which either ASSOCIATION or DISTRICT president requests an immediate decision which requires Board of Director's approval, ASSOCIATION and/or DISTRICT each agree to convene a special meeting of its Board of Directors to make the decision which would otherwise not be made until the next regular meeting.

9. **Indemnity.** ASSOCIATION shall indemnify, defend and hold harmless DISTRICT and DISTRICT's officers, directors, and agents from claims brought by ASSOCIATION's employees to the extent such claims arise out of or are related to their employment by the ASSOCIATION, except to the extent any such claims result from actions by DISTRICT or its officers, directors, and agents and are not covered by ASSOCIATION's workers compensation insurance coverage, in which event and to that extent DISTRICT shall indemnify, defend and hold harmless ASSOCIATION.

10. **Notices.** All notices hereunder shall be delivered by personal delivery, by First Class Mail (postage prepaid), certified mail - return receipt requested, or by overnight air courier to the address for each Party set forth below. All notices shall be deemed given and effective upon the earlier to occur of: (a) personal delivery; (b) one business day after the timely deposit of such notice with an overnight air courier; or (c) three calendar days after depositing such notice with the United States Postal Service. The Parties reserve the right to change their respective addresses by giving notice thereof to the other Party. Notices shall be sent to the Parties as follows:

If to DISTRICT: President, Board of Directors
 Three Arch Bay Service District
 5 Bay Drive
 Laguna Beach, CA 92651

If to ASSOCIATION: President, Board of Directors
 Three Arch Bay Association
 5 Bay Drive
 Laguna Beach, CA 92651

11. **Savings Clause.** If any provision or part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this Agreement and a complete set of all signature and acknowledgment pages. A facsimile signature shall be deemed an original signature.

13. **Further Acts.** The Parties agree to perform any and all additional acts, and to execute any and all additional documents or instruments, that may be necessary to carry out the terms of this Agreement.

14. **Assignment or Transfer.** The Parties shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other Party.

15. **Entire Agreement.** With the sole exception of that certain Lease Agreement of even date herewith, this document contains the entire agreement between the Parties relating to the subject matter of this Agreement. The Parties hereby expressly terminate the Original Agreement in its entirety as of the effective date of this Agreement.

16. **Amendments.** This Agreement may be modified only by a written agreement signed by both Parties or their respective successors or assigns.

17. **Interpretation of this Agreement; Venue.** Each Party hereto represents that prior to the execution of this Agreement, the Party has consulted with, or has had an opportunity to consult with, their attorney in order that they may intelligently exercise their own judgment in deciding whether to execute this Agreement, and in deciding on the contents of this Agreement. This Agreement shall be construed as though mutually drafted and not against one or the other Party because that Party drafted the Agreement. This Agreement is made in, and shall be construed in accordance with, the laws of the State of California. Venue for any dispute between the Parties arising hereunder shall be in Orange County, California.

18. **Other Contracts.** Nothing contained herein shall prevent the District from separately hiring independent contractors or employing technical supervisory personnel as the DISTRICT in its sole discretion deems necessary to provide services including, but not limited to, security, storm drain and street sweeping services.

19. **Substitution of Key Personnel.** ASSOCIATION has represented to DISTRICT that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, ASSOCIATION may substitute other personnel of at least equal competence upon written approval of DISTRICT. In the event that DISTRICT and ASSOCIATION cannot agree as to the substitution of key personnel, DISTRICT shall be entitled to terminate this Agreement. The key personnel for performance of this Agreement are as follows: **Jeremy Pipp, General Manager** and **Jay Owens, Security Manager**.

20. **Standard of Care; Performance of Employees.** ASSOCIATION shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California performing similar services. ASSOCIATION represents and maintains that it is skilled in the professional calling necessary to perform the Services. ASSOCIATION represents that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, ASSOCIATION represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including any required Business Licenses, and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from DISTRICT, any services necessary to correct errors or omissions which are caused by the ASSOCIATION's failure to comply with the standard of care provided for herein.

21. **Laws and Regulations.** ASSOCIATION, in accordance with the above standard of care, shall keep itself informed of and in compliance with all applicable local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. If the ASSOCIATION performs any work knowing it to be contrary to such laws, rules and regulations

and without giving written notice to DISTRICT, ASSOCIATION shall be solely responsible for all costs arising therefrom. ASSOCIATION shall defend, indemnify and hold DISTRICT, its officials, directors, officers, employees and agents free and harmless, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

22. **Attorney's Fees.** If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees, expert witness fees and costs, and all other costs of such action.

23. **Assignment or Transfer.** ASSOCIATION shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of DISTRICT. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

24. **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

25. **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties hereunder.

26. **Equal Opportunity Employment.** ASSOCIATION represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. ASSOCIATION shall also comply with all relevant provisions of any applicable Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

[signature page to follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

THREE ARCH BAY SERVICE DISTRICT:

DATE: _____

By: _____
Gary Rubel, President

THREE ARCH BAY ASSOCIATION:

DATE: _____

By: _____
Jerry Hayden, President

EXHIBIT A

SCOPE OF SERVICES

In addition to implementing such policies for the operation of the DISTRICT as the DISTRICT Board of Directors may establish from time to time in writing, the ASSOCIATION shall provide the following services to the DISTRICT:

1. General Services
 - A. General management services;
 - B. Secretarial services to DISTRICT's governing board;
 - C. Clerical services and other incidental services necessary to fulfill DISTRICT's duties and responsibilities to its constituency, including, but not limited to:
 1. Preparing board agendas, notices of board meetings, board minutes and attending all board meetings; responding to the needs of DISTRICT's constituency including responding to complaints;
 2. Staffing DISTRICT's office during normal business hours and addressing any emergencies that may arise during and after normal office hours;
 - D. Determining work that needs to be done on behalf of DISTRICT and either performing that work or providing for that work through a contract subject to approval by the DISTRICT's Board of Directors;
 - E. Preparing reports as necessary for the DISTRICT's Board of Directors and providing backup materials for board meeting agendas;
 - F. Posting and distributing board meeting agendas in accordance with the requirements of law.
2. Contracts
 - A. Developing and assisting DISTRICT in awarding contracts, managing contracts and supervising all DISTRICT activities; and
 - B. In accordance with direction and/or polic(ies) set by the DISTRICT'S Board of Directors, directing independent contractors on behalf of DISTRICT including engineers, auditors and attorneys.
3. Accounting
 - A. Overseeing the development of a DISTRICT budget and maintaining records that relate to all sources of income to DISTRICT including tax receipts, user fee receipts and any other collections;
 - B. Performing accounts payable and receivable functions;

C. Managing DISTRICT funds and preparing financial information for DISTRICT's governing board;

D. Reviewing and maintaining records and bank statements;

E. Preparing financial reports as necessary for the board of directors and providing backup materials for board meeting agendas;

F. Ensuring the timely completion of the annual audit of the DISTRICT's financial records; and

G. Assisting DISTRICT in procuring appropriate insurance and making claims as necessary under that insurance.

4. Storm Water

A. Constructing, operating and maintaining facilities to intercept, contain and transport storm and dry weather water flows to the ocean.

B. Keeping storm drains maintained and clear of debris.

C. Coordinating with the DISTRICT's engineer(s) to ensure any construction within the DISTRICT's boundaries does not conflict with, overwhelm, damage, or otherwise impair the DISTRICT's stormwater system.

D. Other services necessary or appropriate for the protection and maintenance of the stormwater system.

5. Security

A. Security services in accordance with such policies as the DISTRICT board of directors may set in writing from time to time.

B. Security staffing, including, but not limited to, one full time security manager and no fewer than three full time patrol supervisors.

6. All services performed by ASSOCIATION pursuant to this Agreement shall be in accordance with all rules, laws and regulations governing DISTRICT, including, but not limited to, the Ralph M. Brown Act, Public Records Act, Public Contracts Code, and California Prevailing Wage laws.

THREE ARCH BAY
COMMUNITY SERVICES DISTRICT
5 BAY DRIVE, LAGUNA BEACH, CALIFORNIA 92651-6780
(949) 499-4567 FAX: (949) 499-2352

DATE: March 9, 2022

TO: BOARD OF DIRECTORS

SUBJECT: Consideration of Approval of Revised Security Contract with Nordic Security Services

RECOMMENDATION

That the Board of Directors approve the revised security contract with Nordic Security Services for full time gate guards and a summer patrol rover in an annual estimated amount of \$571,934.00

FISCAL IMPACT

The monthly amount for manning the upper and lower gate houses 24 hours per day, 7 days per week is \$40,781.00 per month and the monthly amount for a summer patrol rover (approximately 4 months) is \$20,640.50 for a total contract cost of \$571,934.00. This amount does not include any extra security personnel required at community or special events.

BACKGROUND

Nordic Security Services has been providing gate and roving patrol services since March 2021. The contract is currently between and being paid for by the Three Arch Bay Association With the recent update to the Lease Agreement with the Three Arch Bay Association the Contract with Nordic has been revised to show that it is now between the Three Arch Bay Community Services District and Nordic Security Services. The payment amounts have not changed but they will be up for review in the next few months.

Prepared and Submitted by:

Jeremy Pipp

General Manager, Three Arch Bay Community Services District

NORDIC SECURITY SERVICES

3419 Via Lido, #345, Newport Beach, CA 92663

714/751-0347 Fax 714/751-0351

State License #PPO 12035

SERVICE AGREEMENT

1. This Service Agreement (this "Agreement") is entered into on this 3rd day of February, 2021 by and between **THREE ARCH BAY COMMUNITY SERVICES DISTRICT** (hereinafter referred to as "Client") and Dansk Enterprises, Inc., doing business as **NORDIC SECURITY SERVICES** (hereinafter referred to as "N.S.S.").

2. **GENERAL:** Client and N.S.S. hereby agree that N.S.S. shall furnish security patrol service located at **Three Arch Bay Community Services District located at 5 Bay Drive, Laguna Beach, CA 92651.** Security service will be provided in accordance with mutually approved, written post orders and shall be subject to all of the terms and conditions hereof. The following is the scope of service on said property:

SCOPE OF SERVICE: On-Site Gate Concierge Service: Gate concierge officer seven days per week: 48-hours per day during the winter and 72-hours per day during the summer.

- Manage access to the community gated entrances
- Daily reports, parking tickets, warning notices, and incident reports will be dropped nightly at the association or faxed/e-mailed to the place of Client's choice.

3. **MONTH TO MONTH TERMS:** Service provided by N.S.S. to Client under this Agreement shall commence on the 10th day of March, 2021 however at no cost to the Client, N.S.S. shall be on site to begin service at 2:00 p.m. on the 9th day of March, 2021. This Agreement will remain in effect unless and until a written notice to terminate the Agreement is sent by either party to the other party at least 30 days in advance.

4. **EMPLOYEES:** N.S.S. will hire, train and pay all wages, benefits and appropriate expenses of guards as well as employer's Federal and State withholding and Social Security taxes, Federal and State Employment taxes and any other required personnel taxes. Uniforms, badges and necessary equipment will be provided by N.S.S. as will direct supervision of guard personnel. Any guard personnel who, in Client's opinion, are not qualified to perform the work assigned will be replaced promptly by N.S.S. Client agrees not to hire any guard personnel assigned to Client's facility in connection with the performance of the Agreement for one year after the termination of such employee's employment by N.S.S. or of this Agreement.

a. N.S.S. will employ 2 Gate Guards and 1 Rover position for Three Arch Bay Community Services District

5. **N.S.S. PROPERTY:** Any and all property, equipment and supplies furnished by N.S.S. shall remain the sole property of N.S.S. and N.S.S. shall at all times during and after the term of this Agreement have the sole right to install, maintain, and remove such property, equipment and supplies.

6. Any Client-provided equipment necessary for the conduct of services that is entrusted to the custody of N.S.S. will be given proper care and returned to the Client upon demand in original condition, subject to normal wear and tear.

7. **INITIAL SERVICE RATES:** At the time of commencement of service hereunder, the amount of service, price and related data shall be as follows:

Client: _____

N.S.S. WKS

The cost for the gate concierge service is \$40,781.00 per month invoiced to *Three Arch Bay Community Services District*. The Gate concierge service is invoiced for 12 monthly payments.

The cost for the Rover position service is \$20,640.50 per month invoiced to *Three Arch Bay Community Services District*. The Rover position will be used primarily during Summer months and invoiced monthly as needed (approx. 4 months per year).

8. **Hourly rates: AS LISTED IN SCOPE OF SERVICE.**

Overtime and holiday rates: Time and one half. *Holiday rates are included in the flat monthly rate above. **Overtime for additional service requested with more than 24 hours-notice outside of this contract listed in paragraph #9 below.

9. **OTHER RATES**

*Thermal Tag Guest Passes	* N/A
**Overtime Rate	**\$45.00 per hour
***Visitor Mgmt. Software	*** N/A
Patrol Service	N/A
All Other Services	\$_N/A_ per Hour (to be determined)

10. In the event the CLIENT is involved in any type of dispute regarding the property as to which Client has retained N.S.S. for security, and N.S.S. or any of its employees is required to testify, then the fee schedule contained herein shall be enforced and CLIENT shall be required to compensate N.S.S. according to its terms.

11. **BILLING TERMS, INVOICES AND RATES:** N.S.S. will deliver invoices to Client's address as specified on page 4. A detailed statement of the number of hours worked by each officer will also be supplied or made available at Client's request. Except for the first statement, which maybe prorated depending of the starting date of service, **invoices will be delivered to Client by the 1st day of each month of service. Client agrees to pay said invoices in cash (U.S. dollars) by the 30th day of such month of service.** A deposit of \$_N/A_ will be paid to N.S.S. prior to services being rendered. This deposit will be applied to the final bill upon proper written notification as set forth in this Agreement. Deposits will not be refunded in cash, only credited toward the last month of service. Client agrees that N.S.S. will be awarded an annual increase at a rate equivalent to the increase in the Consumer Price Index for all urban consumers, or four percent (4%), whichever is greater.

12. All balances which are not paid within said (30) days of the billing are subject to a late charge of one and one half percent (1.5%) per month, eighteen percent (18% per annum) or the maximum allowed by law, whichever is less.

13. Overtime or double time rates will be billed when worked time requires overtime or double time wage payments. If Client requests extra service with less than 24 hours' notice, the first 24 hours of such service will be billed at the double time rate. All extra service requested by Client shall be billed at the overtime rate. (Additional service subject to availability)

14. Holiday rates shall be billed at time and one half, for work on the following holidays: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

15. The original service location(s) amounts of service and rates for service may be amended in letterform by mutual agreement of both parties without otherwise affecting the understanding contained in the Agreement.

16. Client agrees to pay reasonable attorneys fees if legal action is required to obtain payment of invoiced amounts.

Client: _____

N.S.S. WPS

17. Should there be change in State or Federal minimum wage rates, change in any legislation or regulation, or change in Worker's Compensation or liability insurance rates, including taxes related to such changes, that are beyond the control of N.S.S. and that adversely affect the operating costs of N.S.S., Client and N.S.S. shall determine revised rates that will reimburse N.S.S. for its added costs.
18. It is understood that a special condition or emergency situations may arise requiring a special billing rate. N.S.S. and Client shall determine a reasonable special rate under such circumstances because of new hazards, overtime and/or special conditions.
19. **INSURANCE AND INDEMNIFICATION:** N.S.S. agrees to use reasonable efforts to perform such duties as are specified in the guard orders. Client recognizes that N.S.S. is not an insurer and that amounts payable by Client are based on the value of the service rendered and are not related to the value of the Client's property. N.S.S. makes no warranty, expressed or implied, that guard services will prevent injury to persons or loss or damage to property. Client waives any and all rights to recovery against N.S.S. for damages to premises, service or loss to Client occurring as a result of fire or other casualty. The N.S.S. employees are not trained to perform duties as lifeguards or other rescue workers, and will not assume any duties as such. N.S.S. shall not be liable for any accident or injury to any person arising from use of any facilities, including without limitation any swimming pool or related facilities, or otherwise. Client agrees to and does hereby indemnify, hold harmless, and defend N.S.S., its officers, directors, shareholders, employees, agents, representatives and affiliates (the "NSS Parties") from and against any claim, liability, loss, damage, award, fine, judgment, cost, or expense, including reasonable attorneys' fees, of any nature whatsoever arising out of or encountered in connection with (a) the gross negligence or willful misconduct of Client, (b) the performance in the ordinary course by N.S.S. or its employees or agents of the obligations of N.S.S. under this Agreement, or (c) any use of the facilities at the Property by any resident, guest or any other person. In case any litigation is brought against an NSS Party in respect of which indemnity may be sought hereunder, N.S.S. shall give prompt notice of that litigation to Client, and Client upon receipt of that notice shall have the obligation to assume the defense of such litigation, provided that failure of N.S.S. to give that notice shall not relieve Client from any of its obligations except to the extent that such failure prejudices the defense of such litigation by said parties. At its own expense, N.S.S. may employ separate counsel and participate in the defense.
20. If Client requires N.S.S. personnel to drive any vehicle during the course of their duties, other than the guard's own personal vehicle or a vehicle furnished by N.S.S., Client agrees that its insurance is primary and to carry comprehensive Fire and Theft, Collision and Liability Insurance on Client's vehicle(s) and further agrees that it will waive all rights of recovery from N.S.S. and indemnify and hold harmless and defend N.S.S., its directors, officers, agents, servants and employees, from any and all such losses, claims, suits, damages, thefts and expenses which may arise out of the authorized or permitted use of Client's vehicle(s).
21. It is expressly understood that under no circumstances will N.S.S. be responsible for theft of Client's property by others not employed by N.S.S. In the event of allegations of theft by N.S.S. employees, Client waives all right to recover against N.S.S. unless N.S.S. is notified of such allegations within seventy-two (72) hours after discovery of the theft by Client and unless Client fully cooperates with N.S.S. in the investigation. Client further agrees that any and all claims of loss or damage will be submitted in writing to N.S.S. no later than 15 days after the date of discovery of the occurrence.
22. Should Client unilaterally alter the guard orders or directions given to the guards, or assume any supervision of the guards, Client shall be solely liable for any and all consequences arising therefrom.
23. **FORCE MAJEURE:** This Agreement N.S.S. will not be liable for any failure to perform under this Agreement due to any cause beyond its control.

Client: _____

N.S.S. WKS _____

24. **TERMINATION AND RIGHTS:** This Agreement may be terminated by either party by giving at least thirty (30) days advance written notice to the other party as provided in Section 3. However, should Client fail to pay invoices in a timely manner after demand, then N.S.S. may terminate this Agreement immediately.
25. This Agreement is entered into solely for the mutual benefit of the signatory parties and no benefit, right, duty or obligation is intended or created by the Agreement as to any third party.
26. **Change of ownership:** In the event Client transfers or sells its interest, or any portion thereof, in and to the serviced Property as referred to in this Agreement, Client shall not be relieved of its duties under the term of this Agreement but instead, shall continue to be responsible for any outstanding balances then due and owing. Client and N.S.S. agree that if any of the terms and provisions of this Agreement shall be invalid or inoperative, all the remaining terms and provisions shall remain in full force and effect.
27. **NOTICES:** Notices from Client to N.S.S. shall be sent by regular mail to:

NORDIC SECURITY SERVICES
3419 VIA LIDO #345
NEWPORT BEACH, CA 92663
(714) 751-0347
FAX: (714) 751-0351
ATTENTION: MR. PETER L. JENSEN

28. **NOTICES:** Notices from N.S.S. to Client shall be sent by regular mail to:

THREE ARCH BAY COMMUNITY SERVICES DISTRICT
5 BAY DRIVE
LAGUNA BEACH, CA 92651

29. **ADDITIONAL INFORMATION:** N.S.S. informs Client of the following information:

Employer Identification Number of N.S.S.: 33-0656012.

Workers' Compensation Insurance:

Policy Number __ Certificate 2246 __
 Barrett Business Services, Inc.
 1936 East Deere Avenue, Suite 115
 Santa Ana, CA 92705
 (949) 255-5322

General Liability Insurance

Allied World
 9101 LBJ Fwy, Suite 925
 Dallas, TX 75243-2038
 (800) 346-0942

Client: _____

N.S.S. WPS _____

Vehicle Insurance and Vehicle Identification Numbers:

Zurich
9101 LBJ Fwy, Suite 925
Dallas, TX 75243-2038
(800) 346-0942

Vehicles that may service your property:

VIN #	LIC #
2FABP7BV4AX128563	7GDG068
2B3KA43V79H639667	7BOY109
3FA6P0UUXGR175682	7KUJ255
3FA6P0UU8GR175678	7KUJ283
3FA6P0UUXGR175679	7KUJ284
3FA6P0UU0GR175688	7KUJ285
3FA6P0UU9GR175687	7KUJ286
3FA6P0UU7GR175686	7KUJ287
3FA6P0UU5GR175685	7KUJ288
3FA6P0UU3GR175684	7KUJ289
3FA6POUU9GR175690	7KUJ290
3FA6P0UU2GR175689	7KUJ291
3FA6P0UU1GR175683	7KUJ292
3FA6P0UUXGR175696	7KUJ294
3FA6P0UU8GR175695	7KUJ295
3FA6P0UU4GR175693	7KUJ296
3FA6P0UU6GR175694	7KUJ307
3FA6P0UU1GR175697	7KUJ308
3FA6P0UU3GR175698	7KUJ309
3FA6P0UU2GR175692	7KUJ310
3FA6P0UU5GR175699	7KUJ311
3FA6P0UU6GR175680	7KUJ312
3FA6P0UU0GR175691	7KUJ313
2FABP7BV2AX142378	7HPY504
2B3LA43G27H805225	6REN504
2FAHP71W77X128408	7HPY508
2FABP7BV1BX107509	7GSV526
2FABP7BV0BX167734	7BXZ624
2FABP7BV0AX124719	7DLP740
2FABP7BV1AX109047	6ZRZ785

Client: _____

N.S.S. *WBS* _____

Address to House employees: N.S.S. does not house its employees.

Number of Employees at Location and payment of wages:

Please refer to Section 2 above for the number of on-site employees servicing your property. Patrol accounts and will be serviced by one employee for day and or one for night service. Employees are paid every week on Friday.

Security Guard Pay Rates for Three Arch Bay Community Services District:

On-site Group "E" \$17.51 to \$18.50 per hour.

On-site Group "F" \$18.51 to \$19.50 per hour.

Employees past probation may participate with:

Health and Dental Insurance; (Nordic Security Services pays 50% of premium.)

Independent Contractors:

N.S.S. does not use independent contractors.

30. **ACCEPTANCE:** The entire Agreement of the parties is expressed herein and no understanding, agreement, purchase order, work order or other document shall either change or modify the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

CLIENT: THREE ARCH BAY COMMUNITY SERVICES DISTRICT

By: _____
Title: _____

N.S.S. DANSK ENTERPRISES, INC.
doing business as NORDIC SECURITY SERVICES

By: Wayne K. Spurlock
Wayne K. Spurlock, General Manager

2294-00220\ 599648.3

Client: _____

N.S.S. WKS _____