

**AMENDMENT NO. ONE TO THE
ENCROACHMENT AND LANDSCAPE MAINTENANCE AGREEMENT
BETWEEN THE CITY OF NEWPORT BEACH
AND
BALBOA ISLAND IMPROVEMENT ASSOCIATION
(EPN2010-0097)**

THIS AMENDMENT NO. ONE TO THE ENCROACHMENT AND LANDSCAPE MAINTENANCE AGREEMENT (“Amendment No. 1”) is made and entered into this 9th day of June, 2026, by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city (“City”) and the BALBOA ISLAND IMPROVEMENT ASSOCIATION, a California non-profit IRS 501 (c)(4) corporation (“Association”).

RECITALS

WHEREAS, City is the owner of certain real property on Balboa Island at 124 Marine Avenue, at the intersection of Park Avenue and Marine Avenue, more commonly known as Balboa Island Fire Station No. 4;

WHEREAS, City holds easements over certain real property on Balboa Island for the purpose of providing and maintaining public rights of way for vehicular and pedestrian transportation;

WHEREAS, City and Association have entered into that certain Encroachment and Landscape Maintenance Agreement (EPN2010-0097), dated December 22, 2010 (Contract No. C-5759) (“Agreement”);

WHEREAS, City and Association desire to amend the Agreement to allow installation of a new flagpole, commemorative donation plaque, City approved specialized landscaping improvements, and uplighting within the Park Avenue median west of the intersection of Park Avenue and Marine Avenue and revise the Encroachment Area depicted in Exhibit A, page 2 of the Agreement; and

WHEREAS, City and Association desire to amend the Agreement to update contact information for notices as set forth in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, the parties hereto agree as follows:

1. The above Recitals are true and correct and are hereby incorporated by reference into this Amendment No. 1.
2. Subsection (c) of Section 2, Permitted Improvements, set forth in the Agreement is hereby amended to read as follows:

“(c) Landscaping, artificial grass, and irrigation modification improvements at 124 Marine Avenue along the Park Avenue frontage as depicted on Exhibit “A.” Landscaping includes, but is not limited to, shrubs, hedges, bushes, flowers, annuals, and groundcover. Association shall maintain landscaping and artificial grass at its own expense. The City will provide water and irrigation of landscaped area without charge to Association.”

3. Section 2, Permitted Improvements, set forth in the Agreement is hereby amended to add Subsection (k) as follows:

“(k) The installation of a flag pole for the display of the American Flag, State of California Flag, Balboa Island Flag and other authorized flags in strict compliance with City policy, the conditions of this Agreement, and applicable Flag Code requirements. The installation further includes associated lighting, landscaping improvements and donation plaque, all to be located within the Park Avenue median at a specific location approved by the City, as depicted on Exhibit “D,” attached hereto and incorporated herein by reference. The installation may include a permanent in-ground flagpole, halyards, foundation, spotlighting for flag illumination, and a plaque recognizing the 250 anniversary of the USA and the funding support for this City improvement. The Association shall be responsible for the installation, maintenance, operation, and repair of the flagpole, lighting, landscape in and around the flagpole and all related appurtenances at its sole expense. In addition, the Association may, at its option and subject to City approval, fully landscape and maintain the entire median area, planting, groundcover, and decorative treatments, at the Association’s sole expense. The City will provide water and/or electrical service for irrigation and lighting without charge to the Association. The Association also has the option to light the existing median trees at their expense.”

4. Exhibit A of the Agreement shall be amended in its entirety and replaced with the Exhibit A attached hereto and incorporated herein by reference.

5. Section 16 of the Agreement is amended in its entirety and replaced with the following:

“Insurance. Without limiting Association’s indemnification of City, and prior to entry onto City property, Association shall obtain, provide and maintain at its own expense during the term of the Agreement, a policy or policies of insurance of the type, amounts and form acceptable to City. The policy or policies shall provide, at minimum, those items described below.

A. Coverage and Limit Requirements.

- (1) Workers’ Compensation. Association shall maintain Workers’ Compensation Insurance, statutory limits, and Employer’s Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily

injury by disease in accordance with the laws of the State of California. In addition, Association shall require each vendor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, for all of the vendor's employees and in the event the vendor does not employ anyone, then they are required to execute the City's Workers Compensation Exemption form. The insurer issuing the Workers' Compensation insurance shall amend its policy by endorsement to waive all rights of subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees. Association shall submit to City, along with the required certificate of insurance, a copy of such waiver of subrogation endorsement.

- (2) General Liability. Association shall maintain commercial general liability insurance, and if necessary excess/umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) General Aggregate for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. None of the policies required herein shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to City and approved in writing.
- (3) Automobile Liability. Association shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Association arising out of or in connection with work to be performed under the Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.
- (4) Excess/Umbrella Liability. If any Excess or Umbrella Liability policies are used to meet the limits of liability required by this contract, then said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this contract, including, but not limited to, the additional insured and primary & non-contributory insurance requirements stated herein. No insurance policies maintained by the City, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess/umbrella liability policies are exhausted.

B. Other Insurance Provisions.

(1) Evidence of Insurance. Association shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and an additional insured endorsement for general liability. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance or issuance of any permit. Current evidence of insurance shall be kept on file with City at all times during the term of the Agreement. All of the executed documents referenced in the Agreement must be returned prior to entry onto City property so that the City may review and approve all documentation. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(2) Liability Insurance Provisions. Liability policies are to contain, or be endorsed to contain, the following provisions:

All liability policies including general liability, excess/umbrella liability, and automobile liability, if required, shall provide or be endorsed to provide that City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.

- i. Association's insurance coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- ii. Association's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(4) Notice of Cancellation. Association agrees to oblige its insurance broker and insurers to provide to City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required.

(5) Self-Insured Retentions. Association agrees not to self-insure or to use any self-insured retentions on any portion of the insurance

required herein and further agrees that it will not allow any indemnifying party to self-insure its obligations to City. If Association's existing coverage includes a self-insured retention, the self-insured retention must be declared to City. City may review options with the Association, which may include reduction or elimination of the self-insured retention, substitution of other coverage, or other solutions. Association agrees to be responsible for payment of any deductibles on their policies.

- (6) Timely Notice of Claims. Association shall give City prompt and timely notice of any claim made or suit instituted arising out of or resulting from Association's performance under the Agreement, and that involve or may involve coverage under any of the require liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.
- (7) Waiver. All insurance coverage maintained or procured pursuant to the Agreement shall be endorsed to waive subrogation against City of Newport Beach, its City Council, boards and commissions, officers, agents, volunteers and employees, or shall specifically allow Association or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Association hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its vendors.
- (8) Enforcement of Agreement Provisions. Association acknowledges and agrees that any actual or alleged failure on the part of the City to inform Association of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- (9) Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- (10) Coverage not Limited. All insurance coverage and limits provided by Association and available or applicable to the Agreement are intended to apply to the full extent of the policies. Nothing contained

in the Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

- C. Coverage Renewal. Association will renew the coverage required here annually as long as Association continues to provide any services or participate in any activities under this or any other contract or agreement with the City. Association shall provide proof that policies of insurance required herein expiring during the term of the Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Association's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of the coverages."

6. Section 19 of the Agreement is amended in its entirety and replaced with the following:

"Notices. All notices, demands, requests or approvals to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Association to City shall be addressed to City at:

City of Newport Beach
Public Works Department
100 Civic Center Drive
Newport Beach, CA 92660

All notices, demands, requests or approvals from City to Association shall be addressed to Association at:

Susan Pearl
Balboa Island Improvement Association
P.O. Box 64
Newport Beach, CA 92662"

7. Except as expressly modified herein, all other provisions, terms, covenants and conditions set forth in Agreement shall remain unchanged and shall be in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed on the dates written below.

**APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE**

Date: 5/21/26

By: *José Montoya for*
Aaron C. Harp *5.21.26*
City Attorney *AF*

ATTEST:
Date: _____

By: _____
Lena Shumway
City Clerk

**CITY OF NEWPORT BEACH,
a California municipal corporation**

Date: _____

By: _____
Lauren Kleiman
Mayor

**ASSOCIATION: BALBOA ISLAND
IMPROVEMENT ASSOCIATION**

Date: 5-22-26

By: *Susan Pearl*
Susan Pearl
President

Date: 5-22-24

By: *Kristine Taft*
Kristine Taft
Vice President

[END OF SIGNATURES]

ATTACHMENTS: Exhibit A – Landscaping Improvements
Exhibit D – Depiction of Improvements

ACKNOWLEDGMENT

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

State of California
County of ORANGE } ss.
On MAY 22, 2021 before me, ROMANA PATEL NOTARY PUBLIC
Notary Public, personally appeared SUSAN PEARL, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Handwritten Signature]

Signature



(seal)

ACKNOWLEDGMENT

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

State of California
County of ORANGE } ss.
On MAY 22, 2021 before me, ROMANA PATEL NOTARY PUBLIC
Notary Public, personally appeared KRISTINE TART,
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

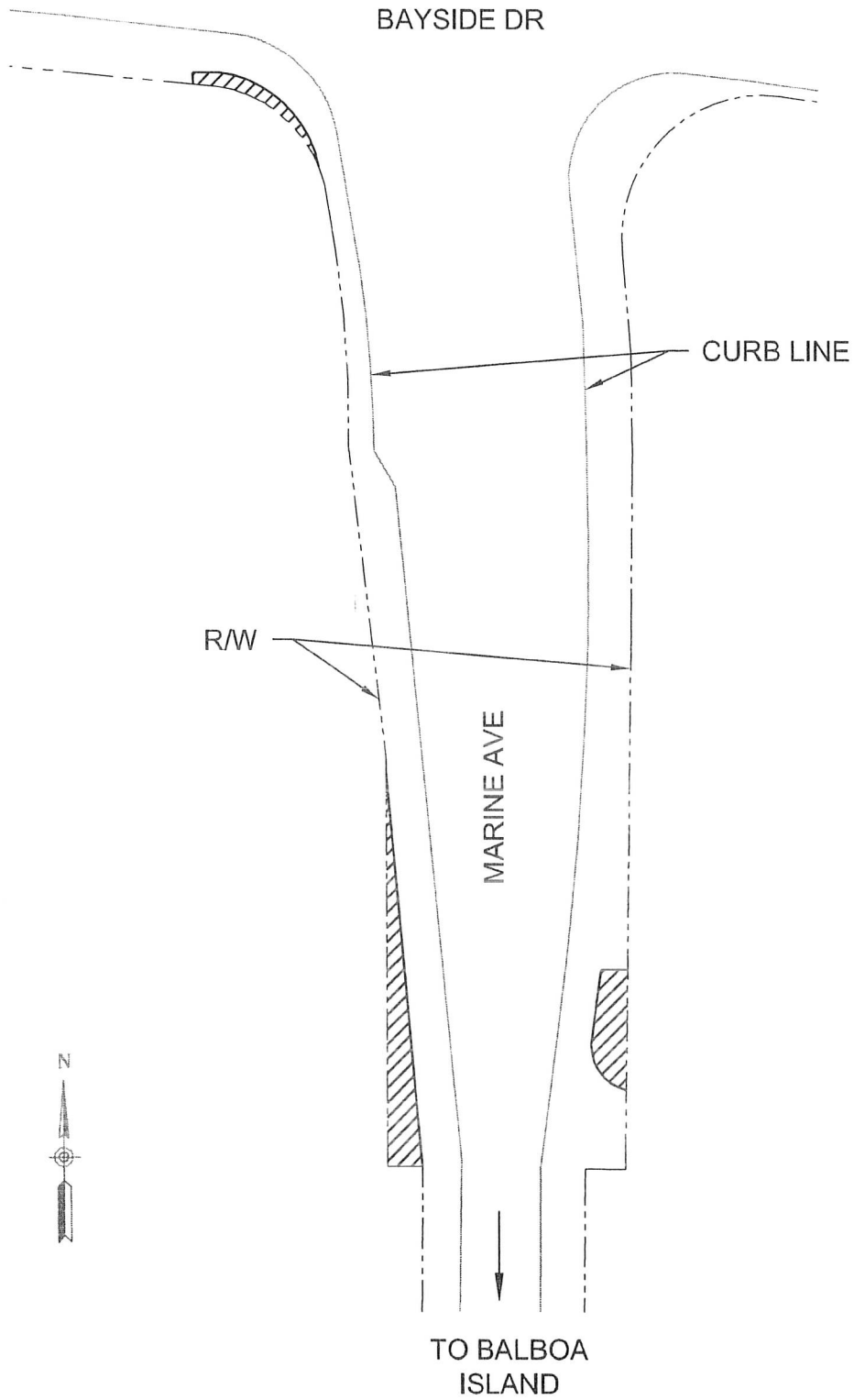
[Handwritten Signature]

Signature



(seal)

EXHIBIT A
LANDSCAPING IMPROVEMENTS



NOTE:

 - ENCROACHMENT AREA MAINTAINED BY BIIA

LANDSCAPING IMPROVEMENTS	
EXHIBIT A (1 OF 2)	
NOT TO SCALE	DATE: 12/13/10

MARINE AVE

PARK AVE



CURB LINE

R/W

FIRE STATION
NO. 4

NOTE:



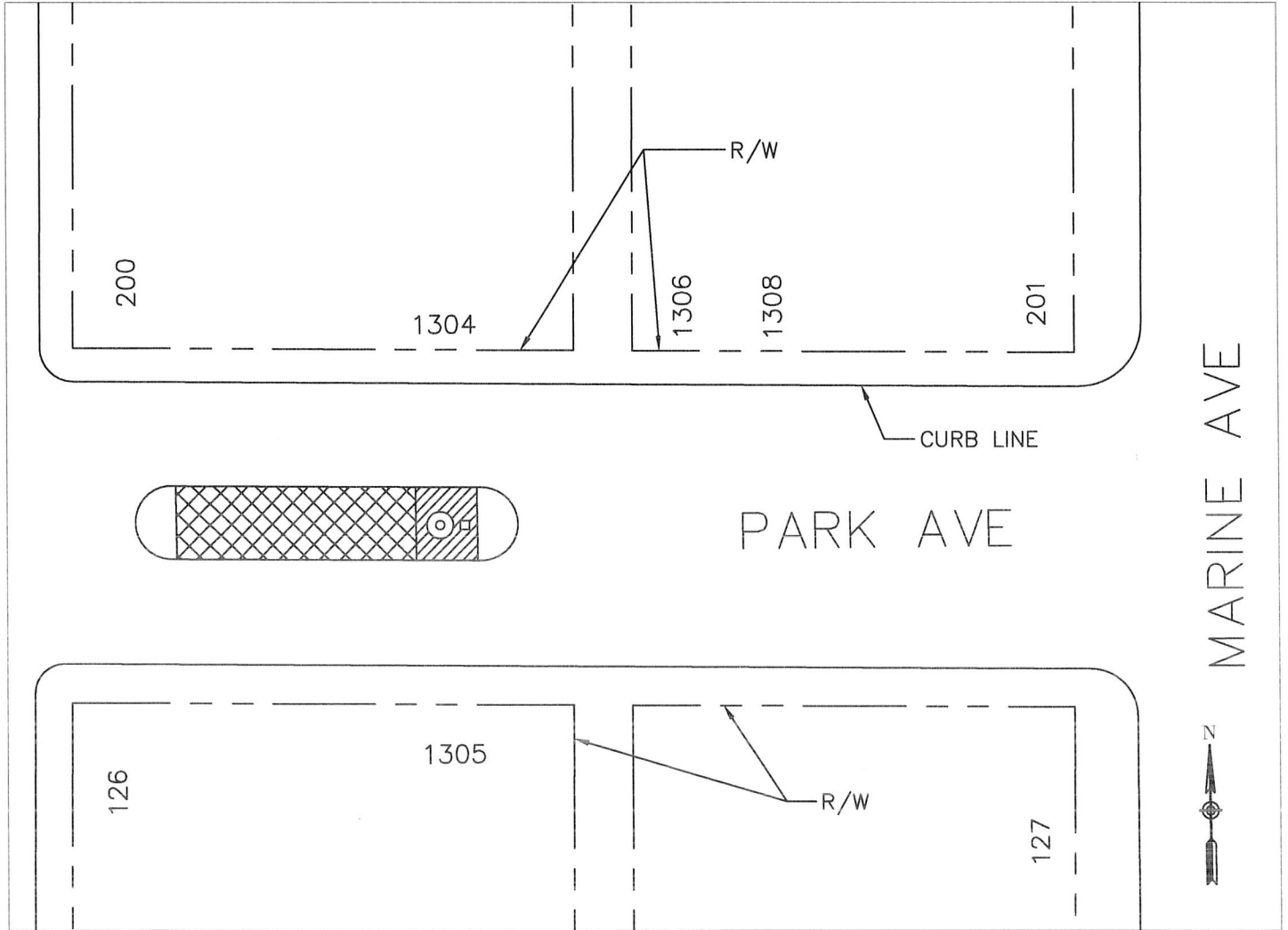
- ENCROACHMENT AREA
MAINTAINED BY BIIA

LANDSCAPING
IMPROVEMENTS



EXHIBIT A (2 OF 2)

NOT TO SCALE | DATE: 12/13/10

EXHIBIT D
DEPICTION OF IMPROVEMENTS



Note:

-  Optional encroachment area maintained by BIIA
-  Encroachment area maintained by BIIA

LANDSCAPING IMPROVEMENTS	
EXHIBIT D (1 OF 1)	
NOT TO SCALE	5/6/26