

**MASTER CONCESSIONAIRE PROPERTY USE AGREEMENT
WITH MAIN STREET OCEANSIDE
FOR USE OF CITY OWNED PROPERTY AT
THE STRAND, OCEANSIDE, CA**

This MASTER CONCESSIONAIRE PROPERTY USE AGREEMENT, hereinafter called "AGREEMENT", is executed between the CITY OF OCEANSIDE, a municipal corporation, hereinafter called "CITY", and MAINSTREET OCEANSIDE, INC., a California non-profit corporation, hereinafter called "PERMITTEE".

RECITALS

WHEREAS, CITY is owner of certain real property located in the City of Oceanside as more particularly described herein below; and

WHEREAS, CITY is interested in entering an agreement with a master concessionaire to provide beach-related services to the general public along said real property; and

WHEREAS, PERMITTEE is an entity capable of operating as a master concessionaire and is interested in providing the services required of a master concessionaire with respect to the management and supervision of vendors and concessionaires of beach-related services to the general public; and

WHEREAS, CITY and PERMITTEE are desirous of entering into an agreement to provide the master concessionaire services that are necessary to provide beach-related services to the general public.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein below, the parties hereto, agree as follows:

AGREEMENT

SECTION 1: USES

1.01 Premises. CITY hereby authorizes PERMITTEE, in accordance with the terms, covenants, conditions and provisions of this Agreement, the non-exclusive use of that certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as the "Strand Area", as more particularly described and illustrated in Exhibits "A" and "B", attached hereto and by this reference made part of this Agreement. The City reserves the right, at its sole discretion, to determine the exact location within the Strand Area upon which PERMITTEE shall conduct its operations, which exact location may change from time to time depending on other City of Oceanside approved activities within the Strand Area. Said exact locations within the Strand Area are hereinafter collectively called the "Premises". In return for this permission, PERMITTEE hereby agrees to act in accordance with and abide by the terms, covenants, conditions and provisions of this Agreement.

1.02 Uses. It is expressly agreed that the Premises shall be used by PERMITTEE solely and exclusively for the purpose of: operating as a master concessionaire providing management and supervision of contractors, vendors, concessionaires, permittees and/or licensees or other such parties ("Operators") providing beach-related services to the general public, which are typically provided in other similar Southern California beach communities providing beach-related services to the general public; to operate upon the Premises as an Operator; and for such other related or incidental purposes as may be first approved in writing by the City Manager and for no other purpose whatsoever. In the event that there is a discrepancy or ambiguity as to what is a typical beach-related service to the general public, CITY, in its sole and absolute discretion, shall make the determination as to what is an allowable use under this Agreement.

PERMITTEE covenants and agrees to use the Premises for the above specified purposes and to diligently pursue said purposes throughout the term hereof. In the event that PERMITTEE fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, the PERMITTEE shall be deemed in default under this Agreement.

1.03 Permittee Authority. As the master concessionaire under this Agreement, PERMITTEE shall have the exclusive right to enter into agreements with contractors, vendor, concessionaires, permittees and/or licensees or other such parties to provide the beach-related services to the general public contemplated under this Agreement. Provided, however, any beach-related use shall first be approved by CITY. Further, PERMITTEE, as master concessionaire shall have the right to negotiate all terms and conditions with said contractors, vendor, concessionaires, permittees and/or licensees or other such parties and accordingly, shall also be solely responsible and liable for any disputes or disagreements arising therefrom and shall indemnify CITY pursuant to Section 5.01 below.

a. Limitations. PERMITTEE'S exclusive right, as set forth in Section 1.03 above, shall be subject to any agreement for beach-related services existing prior to the date of this Agreement. Further, PERMITTEE'S exclusive right, as set forth in Section 1.03 above, shall also be subject to any private use of any portion of the Strand Area that is subsequent to the date of this Agreement, which is approved through the City of Oceanside's Special Events Permit process and/or any activity or use described in Section 7.08 below.

1.04 Operating Plan. PERMITTEE agrees to use the Premises and operate as a master concessionaire in accordance with the Operating Plan set forth in Exhibit "C", attached hereto and by this reference made part of this Agreement, which Operating Plan sets forth the PERMITTEE'S goals and objectives, the schedule of proposed uses, rental rates, insurance requirements and general contract terms for beach related vending during the term of this Agreement. CITY and PERMITTEE shall annually review the Operating Plan no later than sixty (60) days after each year of the Agreement and the parties may mutually agree to amend, modify or eliminate any part of the Operating Plan.

1.05 Parking. Operator acknowledges that there are no specific parking spaces assigned to and/or designated for the Premises.

SECTION 2: TERM

2.01 Commencement. The term of this Agreement shall be for a period of five (5) years commencing on July 15, 2005, and terminating on July 14, 2010.

2.02 Extension Option. The PERMITTEE shall have the option to extend the term of this Agreement for four (4) additional five (5)-year periods under the terms and conditions of this Agreement at the CITY'S calculated fair market property use payment rate of similar businesses, provided that the PERMITTEE is not in default of this Agreement. The PERMITTEE may request a five (5)-year extension of the term by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Agreement or a five (5)-year extended term, as applicable. The City Manager or City Manager's designee shall notify the PERMITTEE not later than thirty (30) days after receipt of such request whether such request will be recommended to the City Council for approval. Upon notification that the request will be recommended for approval, the City Manager shall provide PERMITTEE with CITY'S calculated fair market payment rate amount which the CITY is willing to accept for PERMITTEE'S use and occupation of the Premises during the extension term. City Manager's failure to provide the new payment rate amount within said timeframe shall not defeat CITY'S ability to make adjustments to the payment rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY'S authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to PERMITTEE not later than thirty (30) days from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the renewal request in sufficient time as to provide PERMITTEE with thirty (30) days notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed thirty (30) days, to allow for such thirty (30) day notice of termination.

2.03 Termination Provisions. Notwithstanding any other provisions contained in this Agreement, either party may terminate this Agreement by giving the other party at least ninety (90) days prior written notice of such termination.

2.04 Business License. PERMITTEE agrees to obtain and maintain, at its sole cost and expense, a current Business License issued from the City of Oceanside during the full term of this Agreement, provided such a license is required for PERMITTEE'S operations under this Agreement.

SECTION 3: Property Use Payment

3.01 Time and Place of Payment. Percentage rent payments shall be due to CITY and payable by PERMITTEE in arrears on or before the tenth (10th) day of the month following the quarter for which the percentage rent is calculated. In addition PERMITTEE shall provide CITY with a percentage rent statement showing how the percentage rents were calculated. Also, if applicable, PERMITTEE shall, concurrently with the filing of its quarterly State Board of Equalization tax statement, provide CITY with a copy of said statement. The requirements of this section shall survive the expiration or sooner termination of this Agreement.

Checks should be made payable to the City of Oceanside and delivered to the CITY at the address set forth in Section 6.04 of this Agreement. The CITY may change the place and time of payment at any time upon thirty (30) days written notice to PERMITTEE. PERMITTEE assumes all risk of loss and responsibility for late payment charges.

3.02 Percentage Rent Payment. PERMITTEE agrees to pay CITY, as set forth above, for its use and occupation of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement, a quarterly percentage rent payment, which shall be the total applicable percentages of the gross revenue, (as defined in Subsection 3.03 below) as follows:

<u>Gross Annual Revenue from Vendors</u>	<u>Percentage Rent Payment</u>
\$0 - \$50,000	0.0%
\$50,001 - \$100,000	5.0%
\$100,001 and above	7.5%

3.03 Definition of Gross Revenue. Gross revenue as used herein shall mean all income received by PERMITTEE from its beach-related vendor and/or concessionaire contractors, permittees, licensees or other parties as a result of occupancy or use of the Premises arising from the sale of goods or services on or from the Premises or any other income received by PERMITTEE as a result of the occupancy or use of the Premises. Gross revenue shall include the amount of any manufacturer's or importer's excise tax included in the price of any property or material sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether the amount of such excise tax is stated as a separate charge, Provided, however, gross revenue shall not include federal, state or municipal taxes collected from the consumer regardless of whether the amount thereof is stated to the consumer as a separate charge and paid over periodically by PERMITTEE to a governmental agency accompanied by a tax return or statement as required by law or revenue received by PERMITTEE from providing services directly to the general public. Possessory interest taxes or other property taxes shall not be deducted by PERMITTEE in computing gross revenue. Gross revenue shall not include refunds for goods returned for resale on the Premises or refunds of deposits. The amount of such taxes and refunds shall be clearly shown on the books and records of PERMITTEE. The quarterly gross revenue shall be calculated at the end of each quarter of the term of this Agreement. The first quarterly gross revenue calculation shall be made one quarter after the commencement date of this Agreement.

3.04 Delinquent Rent. If PERMITTEE fails to pay the rent when due, PERMITTEE will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days, PERMITTEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

In the event that the CITY audit, if applicable, discloses that the rent for the audited period has been underpaid in excess of five percent (5%) of the total required rent, then PERMITTEE shall pay CITY the cost of the audit plus ten percent (10%) per year on the

amount by which said rent was underpaid in addition to the unpaid rents as shown to be due CITY as compensation to CITY for administrative costs and loss of interest as previously described herein. PERMITTEE agrees to pay such amount and further agrees that the specific late charges represent a fair and reasonable estimate of the costs that CITY will incur from PERMITTEE'S late payment. Acceptance of late charges and any portion of the late payment by CITY shall in no event constitute a waiver by CITY of PERMITTEE'S default with respect to late payment, nor prevent CITY from exercising any of the other rights and remedies granted in this Agreement.

3.05 Utilities. PERMITTEE agrees to order, obtain, and pay for all utilities and service and installation charges in connection with the occupation, operation and/or use of the Premises.

SECTION 4: RECORDS AND REPORTS

4.01 Annual Program Report. PERMITTEE shall be required to provide CITY with a written annual financial and operations report regarding all phases of PERMITTEE use and occupation of the Premises. PERMITTEE shall submit said report to CITY within sixty (60) days of each anniversary date of this Agreement.

4.02 Inspection of Records. PERMITTEE shall maintain accurate financial books and records for the operation at, or from, the Premises. Said books and records shall be maintained on an accrual basis in accordance with good accounting practice and standards within the industry. The records must be supported by source documents of original entry such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents.

All retail sales shall be recorded by means of cash registers, which displays to the customer the amount of the transaction and automatically issue a receipt. All cash registers shall be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter, which counters are locked in, constantly accumulating, and which cannot be reset. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record. Retail sales may be recorded by a system other than cash registers provided such system is approved in writing by the City Manager. In addition to the above, in the event of admission, cover charges, rentals, and any other fares or charges, whatsoever, PERMITTEE shall also issue serially numbered tickets for each such charge and keep an adequate record of said tickets, both issued and unissued.

PERMITTEE agrees to make any and all records and accounts available to CITY for inspection at all reasonable times, so that CITY can determine PERMITTEE'S compliance with this Agreement. These records and accounts will be made available by PERMITTEE at the Premises or CITY'S offices, at CITY'S sole discretion, and will be complete and accurate showing all income and receipts from PERMITTEE'S use of the Premises. PERMITTEE'S failure to keep and maintain such records and make them available for inspection by CITY shall be deemed a default of this Agreement. These records shall include, but are not limited to, federal quarterly and annual income tax statements, the California State Board of Equalization income statements, sales statements, cash register tapes, purchase invoices, or other pertinent documentation, and all other generally accepted business books, documents, and records.

CITY shall have the discretion to require the installation of any additional accounting methods or controls it may deem necessary.

PERMITTEE shall maintain all such books, records and accounts for the term of this Agreement, and a minimum period of five (5) years thereafter. This provision shall survive the expiration or sooner termination of this Agreement.

SECTION 5: INSURANCE RISKS/SECURITY

5.01 Indemnity. PERMITTEE shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct of the PERMITTEE or its employees, agents, contractors, vendors, concessionaires, permittees and/or licensees or others in connection with its use and occupation of the Premises under this Agreement, except only for those claims arising from the sole negligence or sole willful conduct of the CITY, its officers, agents, or employees. PERMITTEE'S indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the CITY, its officers, agents, or employees in defending against such claims, whether the same proceed to judgment or not. Further, PERMITTEE at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

5.02 Insurance. PERMITTEE shall take out and maintain at all times during the term of this Agreement the following insurance at its sole expense:

a. PERMITTEE shall maintain the following minimum limits:

General Liability

Combined Single Limit Per Occurrence

\$1,000,000

General Aggregate

\$2,000,000

b. All insurance companies affording coverage to the PERMITTEE shall be required to add the City of Oceanside as "additional insured" under the insurance policy(s) required in accordance with this Agreement.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations acceptable to the CITY, and authorized by the Insurance Commissioner of the State Department of Insurance to transact business of insurance in the State of California.

d. All insurance companies affording coverage shall provide thirty (30) days written notice to the City of Oceanside should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

e. PERMITTEE shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City

Attorney, concurrently with the submittal of this Agreement and applicable endorsements.

f. PERMITTEE shall provide a substitute certificate of insurance no later than thirty (30) days prior to the policy expiration date. Failure by the PERMITTEE to provide such a substitution and extend the policy expiration date shall be considered a default by PERMITTEE and may subject the PERMITTEE to a termination of this Agreement.

g. Maintenance of insurance by the PERMITTEE as specified in this Agreement shall in no way be interpreted as relieving the PERMITTEE of any responsibility whatever and the PERMITTEE may carry, at its own expense, such additional insurance as it deems necessary.

h. If PERMITTEE fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, CITY has the right to obtain the insurance. PERMITTEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s) and rate of interest. Said reimbursement and interest shall be paid by PERMITTEE on the first (1st) day of the month following the notice of payment by CITY.

Notwithstanding the preceding provisions of this Subsection, any failure or refusal by PERMITTEE to take out or maintain insurance as required in this Agreement, or failure to provide the proof of insurance, shall be deemed a default under this Agreement.

i. CITY, at its discretion, may require the revision of amounts and coverage at any time during the term of this Agreement by giving PERMITTEE sixty (60) days prior written notice. CITY'S requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. PERMITTEE also agrees to obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Agreement.

5.03 Accident Reports. PERMITTEE shall, within seventy-two (72) hours after occurrence, report to CITY any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

SECTION 6: GENERAL PROVISIONS

6.01 Maintenance. With respects to PERMITTEE'S operations at or on the Premises, PERMITTEE shall make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition satisfactory to CITY and in compliance with all applicable laws.

In the event that the Premises are not in a decent, safe, healthy, and sanitary condition, as a result of PERMITTEE'S operation at or on the Premises, CITY shall have the right, upon written notice to PERMITTEE, to have any necessary maintenance work done at the expense of PERMITTEE, and PERMITTEE shall promptly pay any and all costs incurred by CITY in having

such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy and sanitary condition. PERMITTEE shall make payment no later than thirty (30) days after written notice from the CITY. Further, if at any time CITY determines that said Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, upon written notice, require PERMITTEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. PERMITTEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Agreement imposed on CITY.

6.02 Signs. PERMITTEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of CITY. If any such unauthorized item is found on the Premises, PERMITTEE shall remove the item at its expense within twenty-four (24) hours of written notice thereof by CITY, or CITY may thereupon remove the item at PERMITTEE'S cost.

6.03 Taxes. PERMITTEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon PERMITTEE or the Premises, including, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by PERMITTEE or levied by reason of the business or other PERMITTEE activities related to the Premises, including any licenses or permits.

PERMITTEE recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that PERMITTEE may be subject to the payment of taxes levied on such interest, and that PERMITTEE shall pay all such possessory interest taxes.

6.04 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

To CITY:

**City of Oceanside
Property Management
300 North Coast Highway
Oceanside, CA 92054**

To PERMITTEE:

**Mainstreet Oceanside, Inc.
214 North Coast Highway
Oceanside, CA 92054
Attention: Executive Director**

herein. Either party may change its address by notice to the other party as provided

Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

6.05 City Approval. The City Manager shall be the CITY'S authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing PERMITTEE in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the Real Property Manager of the Public Works Department.

6.06 Entire Agreement. This Agreement comprises the entire integrated understanding between CITY and PERMITTEE concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement.

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

The PERMITTEE shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

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

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

6.07 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

6.08 Assignment and Subletting-No Encumbrance. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the PERMITTEE'S duties be delegated, except as to the contractors, vendors, concessionaires, permittees and/or licensees or other such parties providing beach-related services to the general public of which PERMITTEE is required to manage and supervise as contemplated in Section 1.02 of this Agreement, without the express written consent of CITY. Any attempt to assign or delegate this Agreement without the express written consent of CITY shall be void and of no force or effect. Consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be consent to any subsequent assignment, transfer, sublease, or delegation.

6.09 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement,

the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

CITY may also terminate this Agreement upon written notice to PERMITTEE in the event that:

- PERMITTEE has previously been notified by CITY of PERMITTEE'S default under this Agreement and PERMITTEE, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or
- PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- PERMITTEE shall be adjudicated a bankruptcy, or
- PERMITTEE shall make a general assignment for the benefit of creditors.

Upon termination, CITY may immediately enter and take possession of the Premises.

6.10 Other Regulations. All use of the Premises under this Agreement shall be in accordance with the laws of the United States of America, the State of California and in accordance with all applicable rules and regulations and ordinances of the City of Oceanside now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by state or federal law.

SECTION 7: SPECIAL PROVISIONS

7.01 Ancillary Uses and Services. No additional uses or services, other than those provided for under Section 1.02 of this Agreement shall be provided by PERMITTEE from or at the demised Premises.

7.02 Standards of Operation. PERMITTEE agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first class manner and comparable to other similar facilities within the San Diego County and Southern California areas which provide like products and services.

7.03 Permittee's Employees. PERMITTEE shall provide an experienced and well-qualified "on-site" supervisor to oversee all operations conducted by PERMITTEE on the Premises. PERMITTEE shall ensure that its employees shall at all times conduct themselves in a creditable manner, and they shall conform to all rules, regulations and requirements, as well as all rules and regulations as hereafter may be promulgated, or put into operation by the CITY, provided that such rules, regulations and requirements are not in conflict with the terms of this

Agreement. PERMITTEE shall maintain a staff in adequate size and number, to CITY'S reasonable satisfaction, to effectively operate, maintain and administer all services offered and facilities located on the Premises.

7.04 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by PERMITTEE causes an increase in the rate of insurance on the Premises, PERMITTEE may, at its option, pay such increase and PERMITTEE shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises, which will in any way injure the Premises or improvements thereon, or adjacent or other Premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude PERMITTEE from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the CITY.

7.05 Merchandise and Equipment. CITY retains the right to require the PERMITTEE to discontinue the sale or use of those items that are of a quality unacceptable to the CITY.

7.06 Continued Occupancy. PERMITTEE covenants and agrees to, and it is the intent of this Agreement that the PERMITTEE shall, continuously and uninterruptedly during the term of the Agreement, occupy and use the Premises for the purposes hereinabove specified, except while Premises are un-tenantable by reason of fire, flood, or other unavoidable casualty, and, in that event, CITY shall be promptly notified by PERMITTEE.

7.07 Controlled Prices. PERMITTEE shall at all times maintain a complete list or schedule of the prices and charges for all goods or services, or combinations thereof, supplied to the public on or from the Premises whether the same are supplied by PERMITTEE or by PERMITTEE'S contractors, vendors, concessionaires, permittees or licensees.

7.08 Community Use of the Premises. PERMITTEE acknowledges that the paramount use of Premises is for public services and civic activities. The CITY reserves the right to schedule and use the Premises for community gatherings and other CITY sponsored activities. CITY agrees to coordinate such use of the Premises with PERMITTEE so as not to conflict with PERMITTEE'S programs and activities.

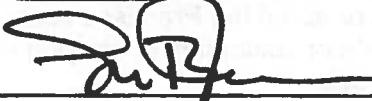
SECTION 8: SIGNATURES

8.01 Signature Page. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the PERMITTEE and the CITY.


IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Master Concessionaire Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CITY

THE CITY OF OCEANSIDE
a municipal corporation

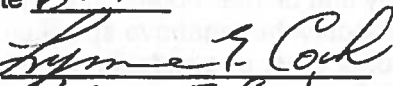
Date 7-7-05
By 
City Manager

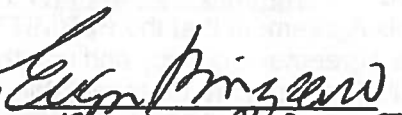
APPROVED AS TO FORM

By 
City Attorney

PERMITTEE

MAINSTREET OCEANSIDE, INC.
a California non-profit corporation

Date 6-24-05
By 
Name Lynne E. Cook
Title Board Chair

By 
Name Eugene Vizzaro
Title Secretary

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED

OFFICIAL CALIFORNIA NOTARIAL CERTIFICATE

ACKNOWLEDGMENT

State of California

County of San Diego

Title of Document Master Concessionaire

Property Use Agreement +
Paula Blazak

On June 24, 2005, before me,

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

WITNESS my hand and seal.



Paula Blazak
SIGNATURE OF NOTARY

OFFICIAL CALIFORNIA NOTARIAL CERTIFICATE

ACKNOWLEDGMENT

State of California

County of San Diego

Title of Document Master Concessionaire
Property Use agreement

On June 24, 2005, before me, Paula Blazak

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

WITNESS my hand and seal.



Paula Blazak
SIGNATURE OF NOTARY

EXHIBIT "A"

Description of the Master Concessionaire's Property Use Agreement Premises

The Premises is herein more particularly defined as those portions of real property owned by the City of Oceanside, which are adjacent to and/or part of the right-of-way known as the "Strand Area" running parallel to and east of the beach area between Breakwater Way to the north and Wisconsin Street to the south. Said Strand Area is generally illustrated on the attached diagram marked as Exhibit "B" to the Agreement.

The Premises along the Strand Area, in addition to the roadway and public sidewalk within the right-of-way, may include portions of the real property adjacent to or within the Beach Amphitheatre Plaza; Betty's Lot; the Beach Recreation Center Plaza; Tyson Park; Seagaze Park and the Wisconsin Street Parking Lot. The CITY reserves the right, at its sole discretion, to determine the exact location of the Premises within the Strand Area upon which PERMITTEE shall be restricted to and conduct its operations, which exact location may change from time to time as determined by the CITY, also at its sole discretion.

Notwithstanding anything in the Agreement or Exhibit "C" to the contrary, in the event of any discrepancy or ambiguity as to the description of the Premises, the Premises as described herein shall be controlling and binding upon the parties hereto.

EXHIBIT "C"



**Master Concessionaire
Operating Plan**

**Prepared by
MainStreet Oceanside, Inc.**

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Section I. Business Vision

See attached "Business Vision – Beach Vending in Oceanside" dated August, 2004.



Dedicated to preserving, promoting and revitalizing Downtown Oceanside

August, 2004

Business Vision – Beach Vending in Oceanside

MainStreet Oceanside is pleased to provide the leading role as the Master Concessionaire in the establishment of a successful program for beach vending in the City of Oceanside.

Mission

Provide the guests and residents of Oceanside a complement of quality seaside services and products which will produce a high value beach going experience for both individuals and families alike.

History

The background of coastal vending in the beach areas in and around the Downtown of Oceanside has experienced little success. In prior attempts, vending was established with a series of vendors that were sporadic and frequently closed. The effort was plagued by numerous problems; 1.) vendors failing to meet their original commitment for hours of operation, 2.) poorly maintained booths and canopies that served as their place of business and 3.) a lack of adherence to the approved lines of products or services which they were permitted to market to the public.

These prior vending experiences fell in disfavor with numerous Downtown merchants. Merchants perceived the beach vending practices as both predatory to their current customer base and unnecessary based upon the existing services and products that were already provided in the Downtown. As a result of these circumstances vending in the beach area was terminated.

The issue of beach vending has recently received new interest. Based upon initial concerns voiced by many of the Downtown merchants regarding the establishment of a new beach vending program, MainStreet Oceanside (MSO) was requested to consider the management and long term development of a beach vending program in Oceanside.

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Web: www.ms oceanside.com**

Phasing

To assure a symbiotic relationship between the merchants of Downtown and a new beach vending program, MSO conducted a series of informational and scoping meetings with numerous interested parties during the Spring / Summer of 2004. As a result of these meetings, various concerns were identified and MSO determined a two phased implementation for the beach vending program was the most appropriate approach.

Phase One - this phase will facilitate the establishment of a basic beach vending program in the City. The term of this period will run from the present until the substantial completion of both the time share and hotel projects that will be located on the north and south parcels adjacent to the pier. Phase One is to focus primarily on the delivery of tourism based services, information, limited food service and rental equipment related to beach recreation.

(The completion of the hospitality developments were deemed by many merchant / members as an important milestone in terms of the appropriate identifiable time at which expansion of the beach vending program would be supported. Merchants believe that until such time as the hotel industry and the associated spending which will surround these projects is realized, the placement and extensive marketing of products at the beach is unwarranted. In the near term, potentially many products would be duplications of products already offered by many of the Downtown businesses. As a result there would be a predictable dilution of sales and an unfavorable division in the limited dollars of merchandise sales which change hands annually Downtown.)

Phase Two - This phase will commence with the completion of the hotel facilities. The vending program will significantly ramp up to accommodate both the existing services established in Phase One but will also include a new more extensive delivery of products and services which will be sought by both hotel guests and their visitors, new tourists to the area and residents of the community. Products that have been traditionally offered in the Downtown will also be available in the beach vending program. Merchants have collectively agreed that there will be no prohibition applicable to the introduction of product sales at the beach.

MSO will carefully evaluate the annual growth in demand for various beach services during Phase One. Based upon these trends and information gained from investigation of other seaside "hotel based" communities, MSO expects to add a compliment of new and supplemental beach vending amenities consistent with the needs and preferences of the hospitality industry.

Image

Image and presentation of vending to the public is of particular importance to MSO. It is envisioned at this time that an identity package will be integrated into the vending program. Appearance packages will include use of colors and graphics unique to the Oceanside program. Articles to be included will be canopy tops with special graphics, booth / kiosk requirements, logo identification / credentials as well as a dress code requirement and wardrobe guidelines.

Marketing

MSO will develop a marketing plan within the first year of the vending program. Initial marketing of the program services will be through a collaboration of existing businesses and hospitality projects in the City. There will also be an outreach effort to the community through informative releases with the press, media and MSO staff presentations to local civics groups.

Management

MSO will provide day to day management and oversight typical of its management of the Thursday Farmers Market. MSO will develop a comprehensive set of guidelines and vending rules. These market rules will be distributed to all vendors participating in the beach program.

Management practices will include routine on-site inspections by a "Market Manger". This will also include enforcement of the vending rules, any corrective actions necessary as a result of repeated violations of the market rules, routine auditing of vendor sales activity and dispute resolution as a result of any unfavorable business practices between the public and vendors.

Insurance

MSO will secure and maintain a master policy of liability insurance for the beach vending program. Coverage for the program will be provided under the existing Special Liability Insurance Policy held by MSO to insure its Farmers Market. This policy is issued by Evanston Insurance, the same insurer of the City of Oceanside.

MSO will also seek at its sole discretion like-kind or appropriate levels of coverage from all participating vendors in the program.

Venue Enhancements

MSO will seek an initial financial partnership with the City to assist in the out of pocket expenses associated with the establishment of utility / infrastructure services to the approved vending location(s).

MSO anticipates the development and placement of an informational booth within the beach vending venue. This information booth will serve to anchor the vending area and distribute guest serving promotional information targeted for the Downtown Business District and Redevelopment Area.

MSO also envisions a series of future informational kiosks and way finding locations to assist in the marketing and promotion of Downtown. This kiosk / signage program will also be used to market and promote services and amenities available in the beach vending program.

MSO is currently in the study phase regarding the formation of a Business Improvement District for the Downtown area of Oceanside. Provided the Improvement District is formed and implemented it is envisioned that the beach vending program could benefit from the various services anticipated to be part of the Improvement District's service package, such as cleaning and private security.

Section II. Operational Area

A. Venue Area Description

1. Area:

The beach vending contract territory would encompass the public areas defined by these boundaries:

- Western: The Strand Street and Beach
- North: 1000 Block of N. Strand (North Coast Village)
- Southern: Wisconsin Street

2. Locations:

City owned properties to include but not be limited to:

- Beach Amphitheatre Plaza/ Beach Amphitheatre / Betty's Lot
- Locations below pier and adjacent to Beach Recreation Center
- Tyson Park
- Sea Gaze Park
- Wisconsin St. Lot
- Public Right of Way locations on the Strand (roadway and sidewalk)

B. Area Map

Attached

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Section III. Vendor Classifications

- A. Type 1 – Permanent (See Type 1 Contract for additional details)**
 - 1. 52 week operation, storage, site facility, utility usage**
 - 2. Vendor will be provided with and/or construct their own portable operating kiosk and storage facilities which will be situated in a specified location for day to day operation. It will be in keeping with the identity of our beach-vending venue, to include an approved structure and paint scheme.**

- B. Type 2 – Semi-Permanent (See Type 2 Contract for additional details)**
 - 1. Seasonal operation, no storage, portable facility, utility usage**
 - 2. Vendor will provide their own pop-up type structure. It will be a specified style and color in keeping with the identity of our beach vending venue.**

- C. Type 3 – Traveling/Mobile (See Type 3 Contract for additional details)**
 - 1. Seasonal operation, no storage, traveling cart, removed daily, non-permanent location, no utilities (self-contained), removed daily)**
 - 2. Vendor will provide a traveling/mobile type unit. It will have a specified color-scheme and will be approved by MainStreet Oceanside on an individual basis.**

Section IV. Program Operations

A. USE OF PREMISES

See "Section 1 - Uses" of the "Master Concessionaire Property Use Agreement with MainStreet Oceanside for use of City Owned Property".

See also, "Section 5 - Use of Premises" of "Concession Agreement between Vendor and MainStreet Oceanside".

B. ITEMS TO BE VENDED

Items to be vended include but are not limited to the following:

Services:

- Rentals – Recreational Equipment
- Transportation
- Communication
- Banking
- Information
- Marketing and Promotion
- Education and Training

Products:

- Retailed goods
- Food and Consumables

C. HOURS

1. Type 1 - PERMANENT

From Memorial Day through Labor Day (high season), concession services shall be provided seven (7) days a week between the hours of 9:00 a.m. and sunset. From Labor Day through Memorial Day (low season), concession services shall be provided on weekends and holiday periods between the hours of 10:00 a.m. and 6p.m, or sunset, whichever occurs first.

2. Type 2 - SEMI-PERMANENT

From Memorial Day through Labor Day (high season), concession services shall be provided seven (7) days a week between the hours of 9:00 a.m. and sunset. From Labor Day through Memorial Day (low season), concession services shall be provided on a case by case basis with the approval of MainStreet Oceanside.

3. Type 3 - TRAVELING/MOBILE

From Memorial Day through Labor Day (high season), concession services shall be provided seven (7) days a week between the hours of

9:00 a.m. and sunset. From Labor Day through Memorial Day low season, concession services shall be provided on a case by case basis with the approval of MainStreet Oceanside.

NOTE: In the event MainStreet Oceanside (MSO) deems the hours of operation inadequate for proper service to the public, MSO may require Vendor to adjust the days and/or hours of operation to a schedule provided by MSO. Vendor may remain open on other dates, observing same (or longer) hours, at Vendor's discretion with the concurrence of MSO. In the event of adverse weather or other operating conditions, MSO may permit the concession to close at any time during the term of this agreement. Vendor shall not use or permit the Premises to be used in whole or in part during the term of this agreement for any purpose other than as herein set forth without the prior written consent of MSO.

D. IDENTITY

A consistent identity package and marketing theme will be instituted to include banners, vendor booth colors, signage requirements, vending employee id badges and vendor required uniforms as described below:

All of vendor's employees must be appropriately uniformed, subject to the approval of the Beach Vending Manager. Uniforms must include a cap and sleeved shirt, which identify the business being represented. Uniform must be clean and in good condition. A name-tag identifying the specific employee will be provided by MainStreet Oceanside and will contain the "Beach Services" logo. The following is considered inappropriate attire and will not be acceptable unless prior approval has been received from MainStreet Oceanside:

- Swim wear
- Tank tops
- Short shorts
- Flip-flops
- Offensive imagery or language

E. RENT

1. MainStreet Oceanside Requirement

See "Section 3 - Property Use Payment," of "Master Concessionaire Property Use Agreement with MainStreet Oceanside for use of City Owned Property".

2. Vendor Requirement

See "Section 4 - Rent," of "Concession Agreement between Vendor and MainStreet Oceanside".

See also "Section 5 - Rent" of "Procedures and Regulations Agreement between Vendor and MainStreet Oceanside"

F. INSURANCE

1. MainStreet Oceanside Requirement

See Section 5, "Insurance, Risks/Security," of the Master Concessionaire Property Use Agreement with MainStreet Oceanside for use of City Owned Property.

2. Vendor Requirement

See Section 8, "Insurance" of the attached Procedures and Regulations Agreement

G. MainStreet Oceanside Conservation Plan

See "Section 19 - Resource Conservation," of "Procedures and Regulations Agreement between Vendor and MainStreet Oceanside".

H. Hazardous Substance Requirements

See "Section 20 - Hazardous Substances" of "Procedures and Regulations Agreement between Vendor and MainStreet Oceanside".

Section V. Procedures and Regulations

See attached "Procedures and Regulations Agreement between Vendor and MainStreet Oceanside."

