

AMENDMENT NO. 3 TO MASTER CONCESSIONAIRE PROPERTY USE AGREEMENT

This Amendment No.3 to the Master Concessionaire Property Use Agreement is made this 7 day of June 2023 ("Amendment"), by and between the City of Oceanside, a California charter-city, hereinafter called ("City"), and MainStreet Oceanside, Inc., a California non-profit corporation, hereinafter called ("Permittee").

RECITALS

WHEREAS, City and Permittee entered into a Master Concessionaire Property Use Agreement ("Agreement") dated July 6, 2005, whereby Permittee was given authorization for non-exclusive use of certain real property (the "Premises"), commonly known as the "The Strand";

WHEREAS, City and Permittee entered into Amendment No. 1 to the Agreement, which was approved by the City Council on December 7, 2016, and Amendment No. 2 approved by City Council on June 3, 2020; and

WHEREAS, City and Permittee are desirous of extending the term of the Agreement for an extension period of 3 years commencing July 15, 2023 and terminating on July 14, 2026.

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

AGREEMENT

The Agreement shall be amended to read as follows:

1. **Section 1 USES** is hereby amended by adding Subsection 1.03b with the following language:

1.03 Permittee Authority**b. Strand Plaza Area**

Permittee's vendors with canopies, pop-ups and carts are not permitted to operate in the Junior Seau Beach Community Center Plaza. The bike rental kiosk and watersports "Dip n Dots" vendors are the only vendors allowed in that plaza and no other vendors.

2. **Section 2: TERM**, Subsections 2.01 **Commencement** and 2.02 **Extension Option**, are hereby deleted in their entirety and replaced with the following language:

2.01 Extended Term for Premises. The term of this Agreement for the Premises is extended for three (3) years commencing July 15, 2023 and terminating on July 14, 2026.

2.02 Extension Option. The term of this Agreement may be extended for **one (1) additional (3)-year period** under the terms and conditions of this Agreement at the City's calculated fair market property use payment rate of similar businesses provided that Permittee is not in default of this Agreement. The Permittee may request a three (3)-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 three (3)-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 that 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/her capacity as the City's authorized representative, shall, in his/her 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.

3. **Section 6: GENERAL PROVISIONS**, Subsection 6.01 **Maintenance** is hereby deleted in its entirety and replaced with the following language.

6.01. Maintenance. With respects to Permittee's operations at or near the Premises, PERMITTEE shall regularly inspect and ensure all vendors kiosks, building, modular(s), trailer(s), cart(s), displays, are in good shape and repair, and aesthetically appealing. Permittee will maintain a preventative maintenance plan and 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, to include but not limited to, fresh paint, fixtures and signage.

In the event that the Premises are not in a decent, safe, healthy, sanitary condition or aesthetically pleasing 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 and all costs incurred by City in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, sanitary condition and aesthetically pleasing. 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 or 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 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 obligation on City or increase obligations elsewhere in this Agreement imposed on City.

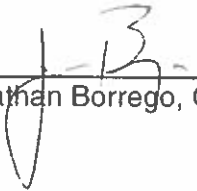
4. All other terms, conditions, covenants and provisions of this Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

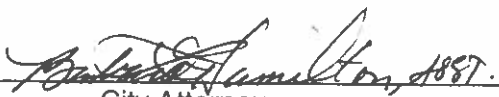
IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment.

"City"

City of Oceanside, a municipal corporation

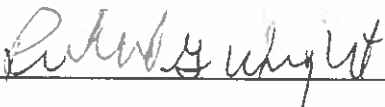
APPROVED AS TO FORM:
City Attorney's Office

By: 
Jonathan Borrego, City Manager

By: 
City Attorney

"Permittee"

MainStreet Oceanside, Inc.,
a California non-profit corporation

By: 
Print Name: Richard Wright
Title: Chief Executive Officer

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

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 San Diego)

On May 10, 2023 before me, Candice Diaz, Notary Public
(insert name and title of the officer)

personally appeared Richard Wright
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 signature(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.

Signature Candice Diaz (Seal)

