

**COPY****AMENDMENT NO. 2 TO MASTER CONCESSIONAIRE PROPERTY USE AGREEMENT**

This Amendment No. 2 to the Master Concessionaire Property Use Agreement is made this 3rd day of June, 2020 ("Amendment No. 2") by and between the City of Oceanside, a California municipal corporation ("City") and MainStreet Oceanside, Inc., a California non-profit corporation ("Permittee").

**RECITALS**

- A. City and Permittee entered into a Master Concessionaire Property Use Agreement ("Agreement") dated July 6, 2005, wherein Permittee was given authorization for non-exclusive use of certain real property ("Premises") commonly known as The Strand;
- B. Subsequently, the City and Permittee entered into Amendment No. 1 to the Agreement, which was approved by the City Council on December 7, 2016, and dated November 11, 2016 for identification ("Amendment No. 1"). Amendment No. 1 extended the term of the Agreement to July 14, 2020;
- C. City and Permittee desire to extend the term of the Agreement for a period of three (3) years commencing July 15, 2020 and terminating on July 14, 2023; and
- D. In addition to the extension, Amendment No. 2 modifies the terms of the Agreement as set forth below.

**AGREEMENT**

The Agreement shall be amended to read as follows:

1. **SECTION 1: USES.** Subsection 1.03 a. is hereby deleted in its entirety and replaced with the following language
  - 1.03 **Permittee Authority.**
    - a. **Limitations.** Permittee's exclusive right, as set forth in Section 1.03 in the Agreement, shall be subject to any agreement for beach-related services existing prior to the date of the Agreement. Further, Permittee's exclusive right, as set forth in Section 1.03 in the Agreement, shall also be subject to any private use of any portion of the Premises that is subsequent to the date of the Agreement, which is approved through the City's Special Events Permit process and/or any activity or use described in Section 7.08 of the Agreement. In addition, Permittee's exclusive right, as set forth in Section 1.03 of the Agreement, shall be subject to any agreement for beach-related services that the City chooses to allow to be provided by the operator of either or both of the two hotels now under construction on Pacific Street, currently referred to as the Oceanside Beach Resort.

2. **SECTION 2: TERM.** Subsections 2.01 and 2.02 are hereby deleted in their entirety and replaced with the following language:

2.01 **Extended Term for Premises.** The term of the Agreement shall be for a period of three (3) additional years commencing on July 15, 2020, and terminating on July 14, 2023.

2.02 **Extension Option.** Permittee shall have the option to extend the term of this Agreement for two (2) additional three (3)-year periods under the terms and conditions of this Agreement at the City's calculated fair market property use payment rate, provided that Permittee is not in default of this Agreement. Permittee may request extensions by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term. 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. Recommendation by the City Manager does not constitute City approval of the extension request. The City Manager shall, however, have sole discretion 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.

If the request will be recommended for approval, not later than thirty (30) days after receipt of such request the City Manager shall provide Permittee with the fair market payment rate that the City is willing to accept for Permittee's continued use of the Premises. City Manager's failure to provide the new payment rate amount within said timeframe shall not defeat City's ability to adjust the payment rate. If the City Council is unable to consider the request in sufficient time to provide Permittee with a thirty (30)-day notice of denial of the request, then the term of the Agreement shall be extended to allow for such notice.

## **SECTION 6: GENERAL PROVISIONS**

6.11 **Amendment.** Except as amended by written agreement of the parties, all other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect. In the event of conflict between the terms of the Agreement and this Amendment No. 2, the terms of this Amendment No. 2 shall control.

IN WITNESS THEREOF, the parties hereto and any successors in interest agree to the full performance of this Amendment No. 2.

**CITY**

**APPROVED AS TO FORM**

By: 

Name: Deanna Lorson

Title: City Manager

By: 

Name: Barbara Hamilton

Title: Asst. City Attorney

**PERMITTEE**

By: 

Name: Kim Millwood

Title: Board Chair

By: 

Name: David Schulz

Title: Board Secretary

5/22/2020: Due to COVID 19, Notary Requirement has been waived.

