ITEM NO. 17

STAFF REPORT

CITY OF OCEANSIDE

DATE: March 21, 2007

TO: Honorable Mayor and City Council Members
Chairman and Members, Community Development Commission

FROM: Economic Development and Redevelopment Department

SUBJECT: **BUDGET APPROPRIATION, AMENDMENT TO MAINSTREET AGREEMENT, STREET CLOSURES RELATED TO A PROPOSED EVENING FARMERS' MARKET, AND RESOLUTIONS ESTABLISHING NO-PARKING/TOW-AWAY ZONES IN THE DAYTIME AND EVENING FARMERS' MARKET AREAS**

SYNOPSIS

Staff recommends that the City Council approve a budget appropriation in the amount of $100,000 from Redevelopment Funds to assist in the startup of a weekly Evening Farmers Market to be located within Pier View Way and Tremont Street from 5:00-9:00 p.m. on Thursdays; approve Amendment 1 in the amount of $100,000 to the professional services agreement with MainStreet Oceanside, adding the management and operation of the Evening Farmers' Market to the scope of work; authorize the City Manager to execute the amendment; approve the weekly street closures of Pier View Way between North Coast Highway and Cleveland Street, and Tremont Street between Civic Center Drive and Mission Avenue from 2:00-10:00 p.m. every Thursday for the market; adopt a resolution establishing a No-Parking/Tow-Away Zone within the street closure area from 2:00-10:00 p.m. on Thursdays; and adopt a resolution establishing a No-Parking/Tow-Away Zone on both sides of Pier View Way between Ditmar Street and Coast Highway from 5:00 a.m. to 2:00 p.m. on Thursdays for the Daytime Farmers' Market.

BACKGROUND

In 1992, the Community Development Commission approved the current Daytime Farmers' Market that is held every Thursday from 9:30 a.m. – 12:30 p.m. At that time, the City contracted with an independent manager to oversee market operations. In 2001, the management and operation of the Daytime Farmers' Market was turned over to MainStreet Oceanside and has become one of the largest income generators for the organization.

Due to the success of the Daytime Farmers' Market, MainStreet Oceanside has proposed adding an Evening Farmers' Market in the downtown. The MainStreet Board and staff

researched what was needed to have a thriving evening market by visiting successful Evening markets, then meeting and interviewing the managers who operated them.

When MainStreet Oceanside's annual contract came before the Community Development Commission for approval last year, a proposal to hold an Evening Farmers' Market was discussed. MainStreet has submitted a plan that includes finding a farmers' group that is available for the evening market time slot, and startup costs for capital improvements, management, security, maintenance, and promotional items associated with the creation of an evening market (see Exhibit 1). The startup costs to get the Evening Farmers Market open will ultimately benefit the City, the Downtown Redevelopment Area and MainStreet by generating additional visitors to Oceanside, foot traffic in the downtown area and income to fund MainStreet.

ANALYSIS

The streets that are proposed for the Evening Farmers' Market are Pier View Way from North Coast Highway to Cleveland Street and Tremont Street from Mission Avenue to Civic Center Drive (see Exhibit 2). Pier View Way and Tremont Street would be closed from 2:00 pm – 10:00 p.m. on Thursdays to accommodate vendor setup and tear-down. During this time, traffic will not be able to access the alleyways that intersect with Pier View Way, but access to the alleys could be gained from Civic Center Drive from the north and Mission Avenue from the south. Both Mission Avenue and Civic Center Drive would remain open to through traffic at all times during the evening market.

Staff is recommending adoption of a resolution to establish a No-Parking/Tow-Away Zone on both sides of Pier View Way and Tremont Street within the street closure area from 2:00-10:00 p.m. every Thursday. Pier View Way and Tremont Street have approximately 119 parking spaces that would not be available for use during the proposed event. Since ample parking is currently available on the CityMark lots to the west and in the new public parking structure located just south of Seagaze, the loss of the 119 spaces should not adversely affect merchants in the downtown area. In addition, a future 450-space parking garage is proposed for City-owned lot 23, which is located east of Cleveland Street between Civic Center Drive and Pier View Way (see exhibit 3).

Because the City currently does not have the ability to tow vehicles during the Daytime Farmers' Market, a second resolution is proposed which would establish a No-Parking/Tow-Away Zone on both sides of Pier View Way between Coast Highway and Ditmar Street from 5:00 a.m. to 2:00 p.m. on Thursdays.

The proposed Evening Farmers' Market would include the typical "Certified Farmers" vendors, arts, crafts, and children activities and would operate on Thursdays from 5:00 – 9:00 p.m. in the winter months and possibly be open later in the summer months. In addition, MainStreet would be programming weekly musical entertainment from a variety of sources and venues to further enhance the cultural activities in the downtown. MainStreet is also proposing a mascot as part of the marketing plan for the Evening

Farmers' Market, similar to the six-foot bear mascot that was created for the San Luis Obispo evening market.

MainStreet has prepared a business plan which lays out the income and expenses for the Evening Farmers' Market over the next three years (see Exhibit 4). In order to entice farmers to participate in our market, the initial rental amount for the 123 booth spaces would be at reduced rates. Once the market becomes more established, MainStreet would increase the booth rental rates to be more competitive and profitable, as seen in year three. The initial startup costs include one-time capital improvement items such as meter pedestals, distribution equipment and signage totaling $44,127. Ongoing startup costs needed for the first year equal $55,873 which includes labor, insurance, marketing, events, traffic control, supplies and equipment, and cleanup. The business plan estimates the income and expense; until the Evening Farmers' Market opens and MainStreet has a year of operations to track, these are only approximations and it is possible the market may need additional funding in following years until it is self sufficient. The MainStreet Professional Service Agreement would be amended to include the operations; management and additional funding necessary for the Evening Market (see Exhibit 6).

FISCAL IMPACT

The funding commitment for the Evening Farmers' Market startup would be $100,000 for FY 2006-2007 and FY 2007-2008 total. Staff recommends an appropriation of $55,873, from Redevelopment Plan Check revenue account #591.5910.4502.01007, to be set up in a new Evening Farmers' Market expenditure account #591.319433.5241 and approving the use of $44,127 from the Downtown Streetscape Capital Improvement Project # 591.879421.5392 where funds are currently available.

INSURANCE REQUIREMENTS

The City's standard insurance is required for the Evening Farmers' Market. MainStreet Oceanside has provided proof of insurance for Workers' Compensation, General Liability and Property Damage, and Directors and Officers coverage. All policies name the City of Oceanside as additionally insured. Proof of insurance for the various special events will be provided as required for each individual event.

COMMISSION/COMMITTEE REPORT

The Evening Farmers' Market proposal was presented to the Economic Development Commission on February 8, 2007, and the Transportation Commission on February 20, 2007. Both Commissions recommended approval. The Redevelopment Advisory Committee reviewed the proposal on March 21, 2007, and also recommended approval.

The proposed closure of streets for the Evening Farmers Market has been found to be exempt from the provisions of the California Environmental Quality Act.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve a budget appropriation in the amount of $100,000 from Redevelopment Funds to assist in the startup of a weekly Evening Farmers Market to be located within Pier View Way and Tremont Street from 5:00-9:00 p.m. on Thursdays; approve Amendment 1 in the amount of $100,000 to the professional services agreement with MainStreet Oceanside, adding the management and operation of the Evening Farmers' Market to the scope of work; authorize the City Manager to execute the amendment; approve the weekly street closures of Pier View Way between North Coast Highway and Cleveland Street, and Tremont Street between Civic Center Drive and Mission Avenue from 2:00-10:00 p.m. every Thursday for the market; adopt a resolution establishing a No-Parking/Tow-Away Zone within the street closure area from 2:00-10:00 p.m. on Thursdays; and adopt a resolution establishing a No-Parking/Tow-Away Zone on both sides of Pier View Way between Ditmar Street and Coast Highway from 5:00 a.m. to 2:00 p.m. on Thursdays for the Daytime Farmers' Market.

PREPARED BY:

Kathy Baker
Redevelopment Manager

SUBMITTED BY:

Peter A. Weiss
Interim City Manager

REVIEWED BY:
Michelle Skaggs Lawrence, Deputy City Manager
Mike Blessing, Deputy City Manager
Jane McVey, Economic Development & Redevelopment Director
Nita McKay, Financial Services Director

ATTACHMENTS/EXHIBITS:

1. Evening Farmers' Market work plan
2. Evening Farmers' Market map
3. Downtown Parking
4. Evening Farmers' Market three year business plan
5. Original Professional Services Agreement
6. Amendment No. 1, Professional Service Agreement
7. Resolution – "No Parking/Tow-Away Zone" Daytime Market
8. Resolution – "No Parking/Tow-Away Zone" Evening Market

EVENING FARMERS MARKET
Oceanside, CA

Legend;
- √ Completed
- X In-Process
- O Post City Approval

Naming / Branding / Logo Development
A. Identify final name
- √ 1. Complete brain storming session
- 2. Committee feels some key items must be in name
  - √ a. Oceanside must be in title
  - √ b. Some descriptive "name" for the event is in title but not necessarily the name "Market"
- 3. Current ideas floating
  - Oceanside Twilight Market
  - √ Oceanside Sunset Market

√ B. Develop "tag line" for marketing

X C. Develop logo concept for promotional and marketing materials

Mapping & Layout
√ A. Finalize preliminary site plan with committee

√ B. Review booth allocations and placements - farmers / nursery, hot food, prepared foods, crafters

√ C. Review entertainment locations - quantity of locations and sites.

√ D. Determine locations for trash dumpsters or use of existing City dumpsters (additional weekly dumps could be one solution to dedicated dumpsters)

√ E. Finalize power availability with Dan Koser and SDG&E area planner

Finalize market's location and boundaries
A. Present map to City staff for issues :
- √ 1. Police tentatively ok. Needs to be cleared with Chief
- X 2. Fire Dept. needs to review
- √ 3. Traffic Dept. tentatively ok
- √ 4. Public Works needs to clear new utility pedestals.
- X 5. Complete review by any other City departments
- X 6. Plan meetings with City Council members and City Manager

Personnel
A. Market Manager
- √ 1. Finalize job description
- √ 2. Place ads for prospects
- X 3. Interview candidates
- O 4. Finalize recruitment effort - hire Manager

EXHIBIT NO. 1

Merchant and Property Owner Notification

Coastal Approval

A. Sign off of merchants

X 1. Make appointments with merchants

X 2. Provide packet of promotional info. on market

B. 300 ft. mail notification

O 1. Goes to all property owners of title

O 2. Allow 30 day response time to lapse

Permits & Final Approvals

A. City of Oceanside / Redevelopment Department

1. Redevelopment needs to approve plan

√ a. Create staff report with recommendation to approve

2. City Council approvals (set for March Council Agenda)

O a. Permit to operate market - ammend Professional Services Agrrement with City

O b. Authorization to close the streets

O c. Authorization to tow vehicles

B. California Dept. of Agriculture

√ 1. Determine if MSO needs additional permit for Evening Market

X 2. Apply for new Farmers Market Permit

O 3. Finalize and secured all require State permits

C. County of San Diego / Health Department

√ 1. Determine if MSO needs additional permit for Evening Market

O 2. Apply for new Health Permit

O 3. Finalize and secure all required County permits

Infrastructure Items

A. Signage

1. No parking / tow away signs

X a. Finalize design of signs with City, signs to include with "Market" logo and times of the Market's operation

O b. Have signs fabricated and installed.

2. Traffic control signage

√ a. Finalize number required.

O b. Source out and secure.

3. Barricades

√ a. Finalize number required and secure

O b. Source out and secure.

4. Market Signs used to promote at the entries and light pole banners

O a. Finalize the designs

O b. Fabricate

B. Electrical

1. New electric meter pedestals

√ a. Complete drawings (Dan Koser)

X b. Submit for review and approval

O c. Pull building permits

O d. Install new electrical equipment

O e. SDG&E completes final connection

2. Electrical equipment

√ a. Finalize electrical equipment for power grid to booths

O b. Source out, purchase and secure

3. Street Lighting - New pole lighting with overhead low voltage lighting

X a. Redevelopment to finalize pole selection and write contract

O b. Identify and secure over-street lighting

O c. Install (anticipated late March)

C. Sanitation

1. Trash

√ a. Location / enclosure for two - 3yd. dumpsters

X b. Alternative: resolve use of City dumpsters behind Surf Museum by ordering additional weekly service to existing dumpsters

2. Toilets & Hand Wash Facilities

√ a. Location / approval for placement in Parking Lot # 35

X b. Finalize annual contract for service

D. Insurance

1. New Policy Requirements

√ a. Submit request for review and approval

X b. Secure commitment from underwritting

2. Coverage

O a. Ammend existing MSO policy / or secure new policy

Operations

A. Create Operational Plans

√ 1. Develop electrical distribution

X 2. Develop security and policing plan

3. Develop traffic control plan

√ a. Barricading and road closed / turn restriction signage

X b. Who will close street

X 4. Develop Vendor parking management plan

√ 5. Develop trash and sanitation plans

X 6. Develop Performance Area plans

X 7. Develop Kids Area plans

B. Programming Elements
- X 1. Weekly themes and activities
- 2. Food related demonstrations
- √ 3. Develop a mascot for the Market - big with getting kids to come and stay
- 4. Kids activities (if desired)
- X 5. New ideas to create a fresh and innovating Market experience

Marketing / Promotional

A. Promotional / Logo
- √ 1. Complete logo concept
- √ 2. Recruit and contract with graphic artists for development
- X 3. Digitize all production art for future promotional pieces

B. Promotional / Artist Rendering
- √ 1. Secure all available architectual data for artist
- √ 2. Recruit and contract with artists for renderings
- X 3. Digitize all renderings for future promotional pieces

C. Print / Broadcast
- O 1. Oceanside Magazine
- O 2. Local newspapers
- O 3. KOCT, COX

D. Electronic
1. Web Site presence
   - X a. Secure appropriate URL - direct to MSO site
   - O b. Coordinate with office staff and draft content for Market's section of website
   - O c. Assist with development of both a *"Vendors"* area of site as well as a *"Visitors"* area

Administration

A. Vendor Section
- O 1. Secure computers and software to establish database for vendors
- O 2. Develop "pitch pieces" for Vendor recruitment
- O 3. Develop Vendor contracts for weekly reservations and holding deposits
- √ 4. Finalize insurance requirements for food service Vendors
5. Market Rules
   a. Finalize and publicize
      - √ Hard copy
      - O Electronic - Web Site
   - X b. Rear view mirror hang tags for Vendor's vehicles
   - X c. Develop Vendor parking passes

B. "Back Office" Section
- O 1. Set up spreadsheets for weekly accounting
- O 2. Develop "Load Sheets" for Vendor reporting

O 3. Coordinate with office staff for weekly hand off of raw accounting
   a. Coordinate development of reporting forms to office accounting
   b. Assist with cash management plan

Financing

A. Equipment - Start Up Costs (one-time)

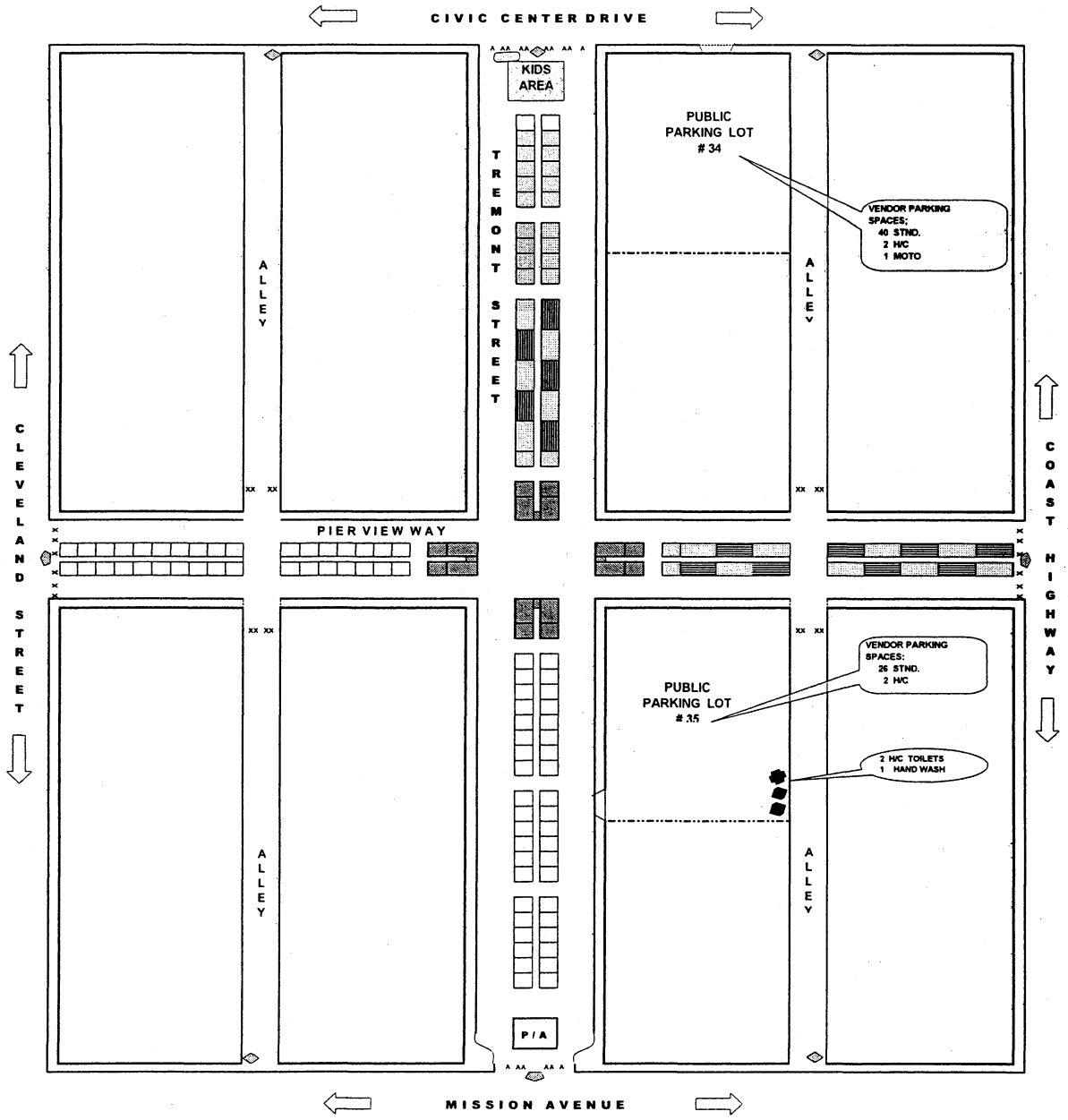
X MSO will request municipal assistance to fund the following;

O 1. Venue electrical
   O a. Installation of new power supply / meter pedestals
   O b. Power distribution equipment
      O Cables
      O Distribution boxes
      O Cable ramps
O 2. Signage
   O a. Traffic control
   O b. Parking control
      O Finalize design with Market logo
      O Fabricate and install
   O c. Market Entrance signs
      O Finalize design with Market logo
      O Fabricate
O 3. Barricades
O 4. Street delineators (if required for pre-notification to the public)
O 5. Dumpsters or dumpster enclosure
O 6. Toilets and hand wash

EXHIBIT NO. 2

SUNSET MARKET VENUE PLAN

FEBRUARY, 2007



BOOTH SCHEDULE

CFM - BOOTH	=	13
CFM - TRUCK	=	13
HOT FOOD - Reg.	=	8
HOT FOOD - Lrg.	=	8
PREP'D FOOD & BAKED	=	22
CRAFT	=	78
TOTAL BOOTHS	=	142
PERFORMANCE AREAS (P/A)		5
KIDS AREA		1
NON-PROFITS		TBD

EQUIPMENT SCHEDULE

- = Meter Pedestral 200A / 240V / 1PH
- = Market Signage
- = Road Closed
- = Handicap Restroom
- = Hand Wash Station
- = Barrier Vehicle

Downtown Public Parking

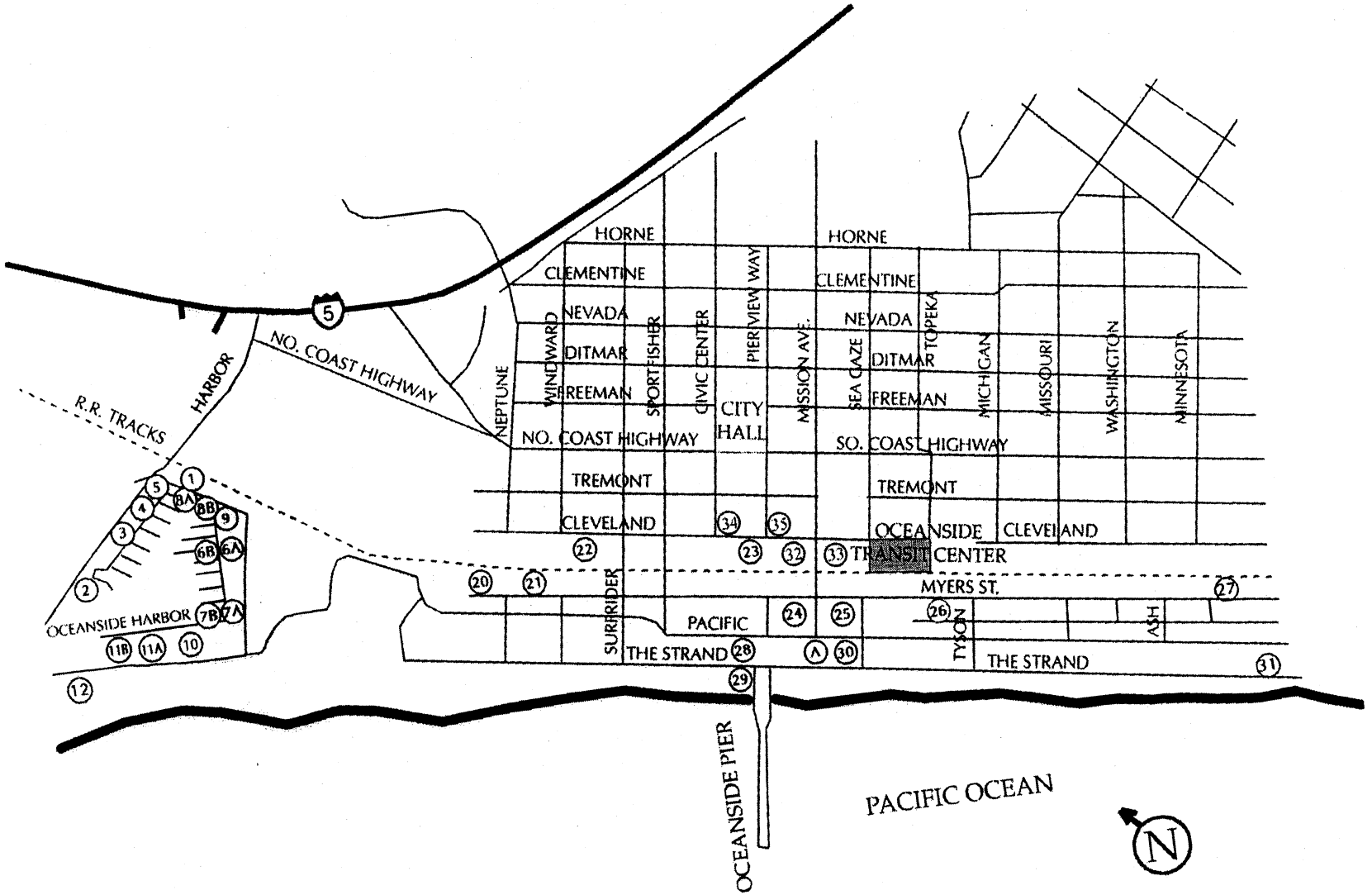


EXHIBIT NO. 3

EVENING FARMERS MARKET PROFORMA

Oceanside, CA

Income

Booth Revenue Estimates (See attached sheets for Yr.1 thru Yr.3 estimates)		# of Stalls	Oceanside Year 1 Months 1 thru 12	Oceanside Year 2 Months 13 thru 24	Oceanside Year 3 Months 25 thru 36
CFM - Booth	(10'x20')	13	$7,800	$7,800	$7,800
CFM - Truck Space	(10'x20')	13	$5,200	$5,200	$8,775
Hot Food - Sml.	(10'x12')	6	$9,600	$11,900	$14,720
Hot Food - Lrg.	(10'x18')	8	$12,800	$15,300	$18,400
Prep'd Foods & Baked	(10'x12')	12	$11,550	$17,600	$25,300
Craft Booth -	(10'x10')	84	$43,875	$78,000	$99,450
Market Place Gross Income			**$90,825**	**$135,800**	**$174,445**

Expenses

Labor			
Market Manager	$32,000	$35,000	$38,000
Market Assistance	$4,600	$5,500	$5,900
Custodians	$6,000	$7,000	$7,500
Payroll Taxes	$3,237	$3,561	$3,917
Workers Comp	$3,582	$4,008	$4,334
Health Benefits	N/a	N/a	N/a
Student Intern(s)	$1,500	$2,000	$2,500
Accounting & Administrative (12 hrs. / month)	$2,016	$2,150	$2,300
Insurance			
SLIP - Market Policy (annual premium)	$2,810	$3,100	$3,350

EXHIBIT NO. 4

Licenses / Permits			
Dept. of Environmental Health (Annual Health Permit)	$270	$292	$315
Dept. of Environmental Health (Organizer Permit)	$180	$194	$210
Dept. of Agriculture (Annual Market Certificate)	$150	$162	$175
Dept. of Agriculture (Req. Qrtly. Market Inspections)	$1,080	$1,166	$1,260
Memberships / Dues			
Entertainment /			
Holiday Programming & Special Entertainment			
Childrens ($150 / week)	$7,200	$7,776	$8,398
General ($1000 / month)	$12,000	$12,960	$13,997
Market Place /			
Special Events	$2,000	$2,160	$2,333
Venue Decorations	$2,000	$2,160	$2,333
Advertising			
Graphic design	$1,000	$2,000	$2,200
NCT ad - annual (weekly placement)	$5,098	$5,506	$6,057
Promotion & Development			
Graphic design - "Market" rack card"	$500	$625	$688
Postage	$180	$198	$218
Printing			
"Market" rack card (for public information) (distribution at City Hall, Welcome Center, Sprinter, etc.)	$1,500	$2,250	$2,475
Misc. promotional printings	$850	$1,700	$1,870
Traffic Control / Road Closure			
Street Closing - OPD	N/a	N/a	N/a
Towing - Parking Enforcement	N/a	N/a	N/a
Contracted Services			
Trash			
Fees for addt'l. Friday dump (of existing 3 yd. dumpster behind Calif. Surf Museum)	$2,160	$4,320	$4,752
Cleaning			
Street Cleaning - Public Works	N/a		
Sidewalk Cleaning	$1,200	$2,400	$2,640
Security			

1 person, wkly. @ 4hrs. - RSF Security	$8,160	$8,976	$9,425
1 addt'l. person wkly. @ 4 hrs. - RSF Security	$8,160	$8,976	$9,425
Equipment Rental			
Toilets			
2 H/C units (weekly delivery & pick-up)	$9,291	$10,220	$11,242
Hand Sanitizers in H/c units (weekly)	$480	$528	$581
Hand Wash			
1 unit (weekly delivery & pick-up)	$3,877	$4,265	$4,692
Supplies & Equipment			
Trash Liners	$456	$524	$577
Mark-out Chalks	$288	$331	$364
Soaps, Detergents	$288	$331	$364
Buckets & Rags	$144	$166	$182
Brooms	$180	$207	$228
Maintenance (estimate: $150 / mo)	$1,800	$2,070	$2,277
Utilities			
Telephone			
Cell Phone for Market Mgr.	$600	$648	$713
Electrical			
Meter usage from street pedestals ($15 / month per pedestal)	$1,200	$1,296	$1,426
Automotive			
Fuel (estimate: $60 / mo)	$720	$756	$794
Rent			
Office Space (pro-rata for Mrkt. Mgr. / 200 sf.)	$2,880	$3,082	$3,297
Storage Space (pro-rata for market equipment / 300 sf.)	$4,320	$4,622	$4,946
Volunteer Expenses (estimate: $30 / mo)	$360	$450	$495
Total Market Place Expenses	**$136,317**	**$155,636**	**$168,746**
Market Place Net Income	**-$45,492**	**-$19,836**	**$5,699**

EXHIBIT NO. 5

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of September, 2006, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and MAIN STREET OCEANSIDE, INC., hereinafter designated as "CONSULTANT."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows: A detailed Scope of Work is more particularly described in the attached Work Plan as Exhibit "A." Generally, through the Main Street program, the CONSULTANT shall assist in the revitalization of the commercial downtown district through the development and implementation of strategies that bring people into the downtown district, the promotion of a pedestrian friendly community, and enhancement of the appearance of the downtown district, the retention of existing businesses and recruitment of new businesses in the downtown district.

2. **INDEPENDENT CONTRACTOR.** CONSULTANT'S relationship to the CITY shall be that of an independent contractor. CONSULTANT shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever. CONSULTANT shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONSULTANT shall report to the CITY any and all employees, agents, and consultants performing work in connection with this program. Such reporting shall not include volunteers, however, CONSULTANT shall be solely responsible for action of the volunteers consistent with the above.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONSULTANT hereby certifies that the CONSULTANT is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONSULTANT will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. LIABILITY INSURANCE.

4.1. CONSULTANT shall, throughout the duration of this Agreement maintain comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONSULTANT, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONSULTANT shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance (bodily injury and property damage)	
Combined Single Limit per Occurrence	$ 1,000,000
General Aggregate	$ 2,000,000*
Commercial General Liability Insurance (bodily injury and property damage)	
General limit per occurrence	$ 1,000,000
General limit project specific aggregate	$ 2,000,000
Automobile Liability Insurance	$ 1,000,000

*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONSULTANT under this Agreement.

4.3 If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONSULTANT to restore the required limits. The CONSULTANT shall also notify the Redevelopment Manager promptly of all losses or claims over $25,000 resulting from work performed under this contract, or any loss or claim against the CONSULTANT resulting from any of the CONSULTANT'S work.

4.4 All insurance companies affording coverage to the CONSULTANT for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.

4.5 All insurance companies affording coverage to the CONSULTANT pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best or otherwise approved by the City.

4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY 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.

4.7 CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.

4.8 CONSULTANT shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONSULTANT to provide such a substitution and extend the policy expiration date shall be considered a default by CONSULTANT and may subject the CONSULTANT to a suspension or termination of work under the Agreement.

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

5. **CONSULTANT'S INDEMNIFICATION OF CITY.** CONSULTANT 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 negligent acts, errors or omissions or wrongful acts or conduct of the CONSULTANT, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONSULTANT'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONSULTANT 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 resulting or arising from the conduct, tortuous acts or omissions of the CONSULTANT.

CONSULTANT'S indemnification of CITY shall not be limited by any prior or subsequent declaration by the CONSULTANT.

6. **COMPENSATION.** CONSULTANT'S compensation for all work performed in accordance with this Agreement, shall not exceed $50,000 for fiscal year 2005-2006, $100,000 for fiscal year 2006-2007 and $100,000 for fiscal year 2007-2008, for a total contract price of $250,000.

CONSULTANT shall submit a quarterly written report describing its activities in relation to the Scope of Work along with a request for a 25% partial payment of the annual total for the applicable fiscal year.

No work shall be performed by CONSULTANT in excess of the total contract price without prior written approval of the Redevelopment Manager. CONSULTANT shall obtain approval by the Redevelopment Manager prior to performing any work, which results in incidental expenses to CITY.

7. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONSULTANT concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

8. **INTERPRETATION 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 CONSULTANT 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.

9. **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.

10. **NO CONFLICT OF INTEREST**. The CONSULTANT shall not be financially interested in any other contract which may create a conflict with the scope of work for this agreement. For the limited purposes of interpreting this section, the CONSULTANT shall be deemed a "city officer or employee," and this section shall be interpreted in accordance with Government Code Section 1090. In the event that the CONSULTANT becomes financially interested in any other contract which may create a conflict with this agreement, that other contract shall be void. The CONSULTANT shall indemnify and hold harmless the CITY, under Section 5

above, for any claims for damages resulting from the CONSULTANTS'S violation of this Section.

11. **SIGNATURES**. 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 CONSULTANT 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 Professional Services Agreement to be executed by setting hereunto their signatures this 13TH day of September 2006.

MAIN STREET OCEANSIDE, INC.

By: _____
Kim Heim, Executive Director

By: EXECUTIVE DIRECTOR

33-0923965
Employer ID No.

CITY OF OCEANSIDE

By: _____
Barry E. Martin
Interim City Manager

APPROVED AS TO FORM:

_____, ASST.
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On Sept. 6, 2006 (Date) before me, K. Stockwell, Notary Public (Name and Title of Officer (e.g. "Jane Doe, Notary Public"))

personally appeared Charles Kim Heim (Name(s) of Signer(s)),

- ☐ personally known to me
- ☒ 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.

K. STOCKWELL
Commission # 1510978
Notary Public - California
San Diego County
My Comm. Expires Sep 2, 2008

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CITY OF OCEANSIDE

AMENDMENT NO. 1 TO
PROFESSIONAL SERVICES AGREEMENT

PROJECT: MainStreet Oceanside Three Year Agreement

THIS AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT (herein after "Amendment") is made and entered into this ____ day of _____, 2007, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and MAIN STREET OCEANSIDE, INC., hereinafter designated as "CONSULTANT."

RECITALS

WHEREAS CITY and **CONSULTANT** ENTERED INTO A PROFESSIONAL SERVICES AGREEMENT DATED September 13, 2006, whereby **CONSULTANT** shall assist in the revitalization of the commercial downtown district through the development and implementation of strategies that bring people into the downtown district, the promotion of a pedestrian friendly community, and enhancement of the appearance of the downtown district, the retention of existing businesses and recruitment of new businesses in the downtown district.

WHEREAS, it is now necessary for CONSULTANT to operate and manage a newly created Evening Farmers' Market.

WHEREAS, CONSULTANT has provided the **CITY** with an expanded scope of services to carry out the ongoing operations and maintenance of the newly created Evening Farmers' Market.

AMENDMENT

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE TO AMEND THE PROFESSIONAL SERVICES AGREEMENT AS FOLLOWS:

A. SECTION 1, **SCOPE OF WORK**, IS HEREBY AMENDED TO INCLUDE THE FOLLOWING ADDITIONAL WORK DESCRIBED HEREIN:

CONSULTANT shall provide and maintain the following: operate and manage a newly created Evening Farmers' Market to be held every Thursday, rain or shine, except on holidays, from the hours of 4:00 p.m. until 8:00 p.m. and potentially extend the hours of operation during the summer months. This Amendment will run concurrent with the original Agreement dated September 13, 2006, through fiscal year 2007/08.

B. SECTION 6, **COMPENSATION**, IS HEREBY AMENDED BY ADDING AN AMOUNT NOT TO EXCEED $100,000 FOR THE ADDITIONAL WORK AS SET FORTH ABOVE, INCREASING THE TOATL COMPENSATION TO AN AMOUNT NOT TO EXCEED $350,000.

C. **ALL OTHER TERMS, CONDITIONS, COVENANTS AND PROVISON OF THE AGREEMENT AS WELL AS THE TERMS, SHALL REMAIN IN FULL FORCE AND EFFECT. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THE ORIGINAL AGREEMENT AND THIS AMENDMENT, THE TERMS OF THIS AMENDMENT SHALL CONTROL.**

SIGNATURES. 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 CONSULTANT and the CITY.

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

MAIN STREET OCEANSIDE, INC.

By: _____
Kim Heim, Executive Director

By: _____

33-0923965
Employer ID No.

CITY OF OCEANSIDE

By: _____
Peter Weiss
Interim City Manager

APPROVED AS TO FORM:

_____
City Attorney

NOTARY ACKNOWLEDGMENTS OF CONSULTANT MUST BE ATTACHED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On March 14, 2007 (Date) before me, K Stockwell, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Kim Heim (Name(s) of Signer(s))

☐ personally known to me

☒ 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.

WITNESS my hand and official seal.

Signature of Notary Public

K. STOCKWELL
Commission # 1510978
Notary Public - California
San Diego County
My Comm. Expires Sep 2, 2008

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document
Title or Type of Document: Amendment No. 1 to Professional Services Agreement
Document Date: March 14, 2007 Number of Pages: 2
Signer(s) Other Than Named Above: none at time of signing

Capacity(ies) Claimed by Signer(s)

Signer's Name: Kim Heim
☐ Individual
☒ Corporate Officer — Title(s): Executive Director
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: Main Street Oceanside

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ESTABLISHING CERTAIN TRAFFIC CONTROLS WITHIN THE CITY OF OCEANSIDE

("No Parking / Tow Away – Thursdays 2 p.m. to 10 p.m." zone; and the closure of Pier View Way from Coast Highway to Cleveland Street and Tremont Street from Mission Avenue to Civic Center Drive on Thursdays from 2 p.m. to 10 p.m.)

WHEREAS, based on staff recommendation, this Council finds that public health and safety will be benefited by establishment of certain traffic controls within the City of Oceanside;

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. There is established a "No Parking / Tow Away Zone – Thursdays 2 p.m. to 10 p.m." zone on the both sides of Pier View Way between Coast Highway and Cleveland Street, and the both sides of Tremont Street between Mission Avenue and Civic Center Drive.

SECTION 2: There is established a "No Parking / Tow Away Zone – Thursdays 2 p.m. to 10 p.m." zone in the public parking lots located on southeast corner of Civic Center Drive and Tremont Street (Lot 34) and the southeast corner of Pier View Way and Tremont Street (Lot 35).

SECTION 3: Pier View Way between Coast Highway and Cleveland Street, and Tremont Street between Mission Avenue and Civic Center Drive shall be closed each Thursday from 2 p.m. to 10 p.m. for the Farmers Market.

SECTION 4: Staff is directed to affect the foregoing controls as soon as possible.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this day of March, 2007, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

_____
CITY CLERK

_____
CITY ATTORNEY

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ESTABLISHING CERTAIN TRAFFIC CONTROLS WITHIN THE CITY OF OCEANSIDE

("No Parking / Tow Away – Thursdays 5 a.m. to 2 p.m." zone)

WHEREAS, based on staff recommendation, this Council finds that public health and safety will be benefited by establishment of certain traffic controls within the City of Oceanside;

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. There is established a "No Parking / Tow Away Zone – Thursdays 5 a.m. to 2 p.m." zone on the both sides of Pier View Way between Coast Highway and Ditmar Street.

SECTION 2: Staff is directed to affect the foregoing controls as soon as possible.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2007, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY