

# STAFF REPORT



ITEM NO. 11  
CITY OF OCEANSIDE

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DATE: June 11, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF PROPERTY USE AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND HISTORICAL SOCIETY INC., FOR THE USE OF CITY-OWNED PROPERTY AT 305 N. NEVADA STREET**

## **SYNOPSIS**

Staff recommends that the City Council approve a four-year property use agreement with Historical Society, Inc., a California nonprofit corporation, for their use of City-owned property at 305 N. Nevada Street as a public historical center, and authorize the City Manager to execute the agreement.

## **BACKGROUND**

In March 1996, Historical Society, Inc., entered into a three-year Property Use Agreement with the City of Oceanside for their use of City-owned property at 305 N. Nevada Street as a public historical center, and has been occupying the premises since March 1999 on a month-to-month basis.

## **ANALYSIS**

The proposed Property Use Agreement will allow the Historical Society to continue to use the City-owned property at 305 N. Nevada Street, comprising 971.5 square feet, as a public historical center commencing May 13, 2008, and terminating on May 12, 2012.

## **FISCAL IMPACT**

There is no cost to the Historical Society, Inc., for the use of the property; the programs, services and activities provided by the Historical Society are a valuable consideration. Historical Society, Inc., will be required to submit an annual summary of its programs, services and activities.

## **COMMISSION OR COMMITTEE REPORT**

Does not apply.

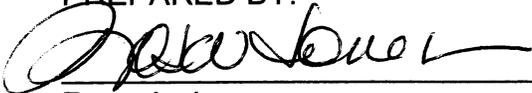
**CITY ATTORNEY'S ANALYSIS**

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

**RECOMMENDATION**

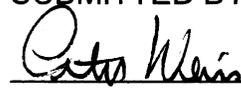
Staff recommends that the City Council approve a four-year property use agreement with Historical Society, Inc., a California nonprofit corporation, for their use of City-owned property at 305 N. Nevada Street as a public historical center, and authorize the City Manager to execute the agreement.

PREPARED BY:



Rosa A. Jones  
Program Specialist

SUBMITTED BY:



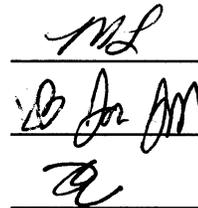
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic and Community Development Director

Douglas E. Eddow, Real Property Manager



**PROPERTY USE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**THE OCEANSIDE HISTORICAL SOCIETY**

**FOR THE USE OF CITY OWNED REAL PROPERTY**

**LOCATED AT**

**305 NORTH NEVADA STREET**

**DATED**

**May 8, 2008**

PROPERTY USE AGREEMENT BETWEEN  
THE CITY OF OCEANSIDE  
AND THE OCEANSIDE HISTORICAL SOCIETY, INC.

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PROPERTY USE AGREEMENT BETWEEN  
THE CITY OF OCEANSIDE  
AND THE OCEANSIDE HISTORICAL SOCIETY, INC.

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

**RECITALS**

WHEREAS, CITY is owner of the real property described herein below; and

WHEREAS, PERMITTEE is a recognized California nonprofit corporation providing management of a historical center and related displays, promotional programs, services and activities to the general public, including the citizens of the City of Oceanside;

WHEREAS, PERMITTEE has maintained and operated a public historical center and its offices from 305 North Nevada Street, Oceanside, California, since March 6, 1996;

WHEREAS, at a regular meeting of PERMITTEE's Board of Directors on May 8, 2008, the board approved requesting a four (4) year agreement for use of said premises;

WHEREAS, CITY hereby acknowledges said programs, services and or activities provided by PERMITTEE as valuable consideration received from PERMITTEE in return for its use of said real property in accordance with the terms, covenants, conditions and provisions contained herein below.

**AGREEMENT**

**NOW THEREFORE, THE PARTIES HERETO MUTUALLY AGREE AS FOLLOWS:**

**SECTION 1: USES**

**1.01 Premises.** CITY hereby permits PERMITTEE to use, in accordance with the terms, covenants, conditions and provisions hereof, certain real property situated in the City of Oceanside, County of San Diego, State of California, commonly known as a portion of the Fire Station No. 1 building of the Civic Center Complex, located at **305 North Nevada Street**. Said real property is hereinafter 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.

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**1.02 Uses.** It is expressly agreed that the PREMISES shall be used by PERMITTEE solely and exclusively for the purpose of **maintaining and operating a historical center open to the public and for PERMITTEE's offices**, 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.

PERMITTEE covenants and agrees to use the PREMISES for the above-specified purposes and to diligently pursue said purposes throughout the term hereof. PERMITTEE shall not use the PREMISES in any manner, which disturbs the quiet enjoyment of surrounding property owners' use of their property. 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.

CITY covenants and agrees that during the term of this Agreement, the CITY shall not permit any other person or entity to manage or use PREMISES for a public historical center.

**1.03 Related Actions.** By permitting PERMITTEE to use the PREMISES, the City Council is not obligating itself to any other governmental agent, board, CITY, or agency with regard to any other discretionary action relating to development or operation of the PREMISES. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the PREMISES.

**1.04 Reservation of Rights.** CITY shall not unreasonably or substantially interfere with PERMITTEE'S use of the PREMISES while PERMITTEE is in possession of the PREMISES; however, the CITY specifically retains the following rights:

**a. Subsurface Rights.** CITY hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the PREMISES.

**b. Easements.** CITY reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased PREMISES for utilities, thoroughfares, or access as it deems advisable for the public good.

**c. Right to Enter.** CITY has the right to enter the PREMISES for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services that do not interfere with the designed use of the PREMISES by the PERMITTEE.

PROPERTY USE AGREEMENT BETWEEN  
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**SECTION 2: TERM**

**2.01 Commencement.** The term of this Agreement shall be for a period of three (4) years commencing on **May 13, 2008** and terminating on **May 12, 2012**

If CITY for any reason cannot deliver possession of the PREMISES to PERMITTEE at the commencement of the term, or if during the term of this Agreement PERMITTEE is dispossessed for any reason whatsoever, CITY shall not be liable to PERMITTEE for any loss or damage resulting therefrom.

**2.02 Earlier Termination.** Notwithstanding any other provision contained in this Agreement, CITY at its discretion may terminate this Agreement, prior to the expiration of the term hereof, by first giving thirty (30) days prior written notice to PERMITTEE. In the event PERMITTEE is unable to provide the activities, programs and uses authorized herein, PERMITTEE may terminate this Agreement, prior to the expiration of the term hereof, by first giving thirty (30) days prior written notice to CITY.

**2.03 Holdover.** Any holding over by PERMITTEE after the expiration or termination of this Agreement shall not be considered as a renewal or extension of this Agreement. The occupancy of the PREMISES by PERMITTEE or by PERMITTEE's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms, conditions, covenants and provisions of this Agreement shall continue in full force and effect; provided, however, CITY shall have the right to apply a reasonable rent for PERMITTEE's use and occupation of the PREMISES, to bring the rent to fair market value and to terminate the holdover tenancy at will.

**2.04 Surrender of Premises.** At the expiration or earlier termination of this Agreement, PERMITTEE shall surrender the PREMISES to CITY free and clear of all liens and encumbrances, except those liens and encumbrances which existed on the date of the execution of this Agreement by CITY. The PREMISES, when surrendered by PERMITTEE, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

**2.05 Time is of Essence.** Time is of the essence of all of the terms, covenants, conditions and provisions of this Agreement.

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**SECTION 3: CONSIDERATION**

**3.01 Consideration.** CITY hereby agrees that the PERMITTEE's performance in maintaining and managing of a historical center, and public information, educational, promotional programs, services and activities provided by PERMITTEE at the PREMISES are valuable consideration received from PERMITTEE, that the provision of such programs, services and activities shall constitute all the property use payment to be paid by PERMITTEE for its use of the premises in accordance with the terms, covenants, conditions and provisions of this Agreement, and that PERMITTEE shall not be required to pay any further monetary rent to CITY for its use and occupation of the PREMISES.

**3.02 Annual Program Report.** PERMITTEE shall be required to provide CITY with a written annual report of PERMITTEE's performance of this Agreement and of all activities through use and occupation of the PREMISES. PERMITTEE shall submit said report to CITY within sixty (60) days after each anniversary date of this Agreement. This provision of this Section 3.02 shall survive the expiration or earlier termination of this Agreement.

**3.03 Inspection of Records.** PERMITTEE shall 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, after reasonable notice from CITY, 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. **PERMITTEE shall maintain all such records and accounts for a minimum period of five (5) years.** The provision of this Section 3.03 shall survive the expiration or earlier termination of this Agreement.

**SECTION 4: INSURANCE/RISKS/SECURITY**

**4.01 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, 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 misconduct 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

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expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees.

**4.02 Insurance.** PERMITTEE shall, throughout the duration of this AGREEMENT, maintain comprehensive general liability or commercial general liability insurance and property damage insurance covering all operations and activities of PERMITTEE, its agents and employees, performed in connection with this AGREEMENT including but not limited to PREMISES and automobile.

- a. PERMITTEE shall maintain the following minimum limits:

**Commercial General Liability Insurance**

Combined Single Limit Per Occurrence	\$1,000,000
General Aggregate	\$2,000,000

Fire, extended coverage, and vandalism insurance policy(s) on all insurable property on the PREMISES, including the PREMISES.

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. Insurance coverage provided to the CITY as an additional insured shall be primary insurance and other insurance maintained by the CITY, its officers, agents and employees shall be excess only and not contributing with the insurance provided pursuant to this AGREEMENT.

c. All insurance companies affording coverage to the PERMITTEE shall be insurance organizations 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 should the policy be canceled 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 and applicable endorsements, in a form satisfactory to the City Attorney, concurrently with the submittal of this AGREEMENT.

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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.

**4.03 Accident Reports.** PERMITTEE shall, within **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 5: IMPROVEMENTS/ALTERATIONS/MAINTENANCE/REPAIRS**

**5.01 Acceptance of Premises.** By signing this Agreement, PERMITTEE represents and warrants that it has independently inspected the PREMISES and made all tests, investigations, and observations necessary to satisfy itself of the condition of the PREMISES and their suitability for PERMITTEE's planned uses. PERMITTEE agrees it is relying solely on such independent inspection, tests, investigations, and observations in entering into this Agreement. PERMITTEE further acknowledges that the PREMISES are in the condition called for by this Agreement, and that PERMITTEE does not hold CITY responsible for any defects in the PREMISES.

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**5.02 Improvements/Alterations.** No improvements, structures, or installations shall be constructed or altered on the PREMISES by PERMITTEE without prior written approval by the City Manager. Further, PERMITTEE agrees that any structural or architectural design alterations to improvements, structures, or installations may not be made on the PREMISES without prior written approval by the City Manager. This provision shall not relieve PERMITTEE of any obligation under this Agreement to maintain the PREMISES in a decent, safe, healthy, and sanitary condition, including repair and restoration of damaged or worn improvements resulting from the misuse thereof by PERMITTEE.

**5.03 Ownership of Improvements.**

a. Any and all improvements, trade fixtures, structures, and installations or additions to the PREMISES now existing or constructed on the PREMISES by PERMITTEE, excepting such fixtures which may be removed without causing damage to the PREMISES, shall, at the expiration or termination of this Agreement, be deemed to be part of the PREMISES and shall become, at CITY's option, CITY's property, free of all liens and claims except as otherwise provided in this Agreement.

b. If CITY elects not to assume ownership of all or any improvements, trade fixtures, structures and installations, CITY shall so notify PERMITTEE in writing thirty (30) days prior to expiration or termination of this Agreement, and PERMITTEE shall remove all such improvements, structures and installations as directed by CITY at PERMITTEE's sole cost and expense on or before the expiration or termination of the term hereof. If PERMITTEE fails to remove any improvements, structures, and installations as directed, PERMITTEE agrees to pay CITY the full cost of any removal.

c. PERMITTEE owned machines, appliances, equipment (other than trade fixtures), and other items of personal property shall be removed by PERMITTEE by the date of the expiration or earlier termination of this Agreement. Any said items which PERMITTEE fails to remove will be considered abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove said items at PERMITTEE's expense.

d. If any removal of such personal property by PERMITTEE results in damage to the remaining improvements on the PREMISES, PERMITTEE shall repair all such damage.

**5.04 City's Maintenance.** CITY shall have responsibility for maintenance and repairs to all exterior portions of the building; maintenance and repair of the roof, roof

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membrane, HVAC units and components, electrical, plumbing and water and sewer lines outside the PREMISES, and for all structural components of the building.

**5.05 Permittee's Maintenance.** As part of the consideration for the use thereof, PERMITTEE agrees to assume full responsibility for the maintenance, repair, and/or replacement of all interior portions of the PREMISES, including, but not limited to windows and doors, throughout the term of this Agreement and without expense to CITY. PERMITTEE will perform all maintenance, 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. PERMITTEE further agrees to keep the PREMISES free and clear of rubbish and litter, or any other fire hazards. PERMITTEE waives all right to make repairs at the expense of CITY as provided in Section 1942 of the California Civil Code and all rights provided by Section 1941 of said code.

**SECTION 6: GENERAL PROVISIONS**

**6.01 Entry and Inspection.** For the purpose of keeping the PREMISES in a good, safe, healthy and sanitary condition, CITY shall always have the right, but not the duty, to enter, view, inspect, determine the condition of, and protect its interests in the PREMISES. In the event that CITY finds that the PREMISES are not in a decent, safe, healthy, and sanitary condition, PERMITTEE must perform the necessary maintenance, repair or replacement work within ten (10) days after written notice from CITY. In the event PERMITTEE fails to perform such work, 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 ten (10) days after CITY's written demand therefore. CITY shall not be required at any time to perform maintenance, or to make any improvements or repairs whatsoever, on or for the benefit of the PREMISES. The rights reserved in this section shall not create any obligations or increase obligations for CITY elsewhere in this Agreement.

**6.02 Waste, Damage, or Destruction.** PERMITTEE shall give notice to CITY of any fire or other damage that occurs on the PREMISES within seventy-two (72) hours of such fire or damage. PERMITTEE shall not commit or suffer to be committed any waste or injury or any public or private nuisance, agrees to keep the PREMISES clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the PREMISES shall be damaged by any cause that puts the PREMISES into a condition that is not decent, safe, healthy and

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sanitary, PERMITTEE agrees to make or cause to be made full repair of said damage and to restore the PREMISES to the condition that existed prior to said damage; or, at CITY's option, and upon receipt of written demand thereof, PERMITTEE agrees to clear and remove from the PREMISES all debris resulting from said damage and rebuild the PREMISES in accordance with plans and specifications previously submitted to CITY and approved in writing in order to replace in kind and scope the operation that existed prior to such damage. PERMITTEE shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the PREMISES.

**6.03 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.

**6.04 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 special licenses or permits.

This Agreement does not create a possessory or property interest in favor of PERMITTEE and rather shall be construed as a permit for use of the PREMISES.

**6.05 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:

President  
Oceanside Historical Society  
P.O. Box 125  
Oceanside, CA 92049-0125

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 certified mail, postage prepaid, return receipt requested,

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addressed to the offices of the party to whom the communication is to be sent, as designated above.

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

**6.06 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 Supervising Property Agent.

**6.07 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 this Agreement itself.

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

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

c. Should any provision herein be found or deemed to be invalid, This 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.

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

**6.08 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.

**6.09 Assignment and Subletting-No Encumbrance.** This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the

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PERMITTEE's duties be delegated, 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. A consent by CITY to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**6.10 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:

- a. 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
- b. PERMITTEE shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or
- c. PERMITTEE shall be adjudicated a bankruptcy, or
- d. PERMITTEE shall make a general assignment for the benefit of creditors.

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

**6.11 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 applicative rules, regulations and ordinances of the City of Oceanside and County of San Diego, now in force, or hereinafter prescribed or promulgated by resolution or ordinance or by state or federal law.

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THE CITY OF OCEANSIDE  
AND THE OCEANSIDE HISTORICAL SOCIETY, INC.

**6.12 Number and Gender.** Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense requires.

**6.13 Captions.** The Agreement outline, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers is intentional and shall have no effect on the enforceability of this Agreement.

**6.14 Nondiscrimination.** PERMITTEE agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in PERMITTEE's use of the PREMISES, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

## **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 PREMISES.

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

**7.03 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, occupy and use the PREMISES for the purpose hereinabove specified, except while PREMISES are untenable by reason of fire, flood, or other unavoidable casualty, and in that event City shall be promptly notified by PERMITTEE.

PROPERTY USE AGREEMENT BETWEEN  
THE CITY OF OCEANSIDE  
AND THE OCEANSIDE HISTORICAL SOCIETY, INC.

**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 Performance Option 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 \_\_\_\_\_

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

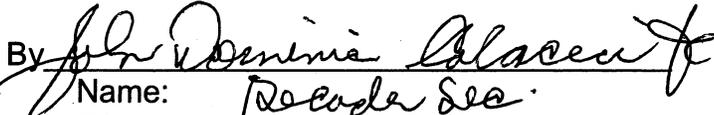
By , ASST.  
City Attorney

**PERMITTEE**  
OCEANSIDE HISTORICAL SOCIETY, INC.  
A California non-profit corporation

Date 6-3-08

By   
Name: Keisti Hawthorne  
Title: President

Date 6-3-08

By   
Name: Recorder See  
Title:

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN DIEGO

On JUNE 3, 2008 before me, JOEY LUDWICZAK NOTARY PUBLIC

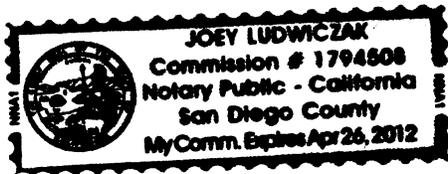
personally appeared JOHN D. COLACECI JR AND

KRISTI S. HAWTHORNE

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.



Place Notary Seal Above

Signature [Signature] 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: \_\_\_\_\_

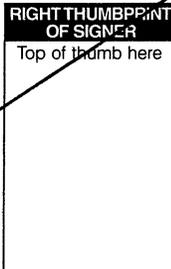
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

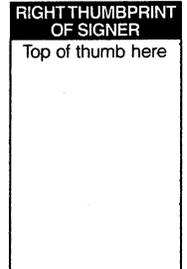
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_