

STAFF REPORT



ITEM NO. 12
CITY OF OCEANSIDE

DATE: June 6, 2007
TO: Honorable President and Members of the Harbor Board
FROM: Public Works Department
SUBJECT: **APPROVAL OF AMENDMENT 3 TO THE PROPERTY USE AGREEMENT WITH BOAT RENTALS OF AMERICA, INC.**

SYNOPSIS

Staff recommends that the Harbor Board approve Amendment 3 to the property use agreement with Boat Rentals of America, Inc. (Boat Rentals), providing a five-year extension of the agreement through March 31, 2012, and authorize the City Manager to execute Amendment 3 to the property use agreement.

BACKGROUND

Boat Rentals originally entered into a property use agreement dated April 3, 1997, for non-exclusive use of portions of the Transient Vessel Harbor Village Long Dock, Harbor Village Transient Docks and Main Harbor Village Dock. Boat Rentals uses the premises to provide boat and personal watercraft rentals to the general public. Amendment 1 to the property use agreement provided for a change in the premises description, deleting a portion of the long dock and adding an additional portion of the transient dock. Amendment 2 extended the term of the agreement for five years, commencing on April 1, 2002 and terminating on March 31, 2007. Boat Rentals has used the premises on a month-to-month basis since April 1, 2007.

ANALYSIS

The proposed amendment, retroactive to April 1, 2007, would extend the agreement for a five-year term through March 31, 2012. Upon expiration of the agreement in 2012, there are no additional options to renew the agreement.

Boat Rentals will pay a minimum property use payment of \$10,200 per year, payable monthly in advance at the rate of \$600 for the months of October through March, and \$1,100 for the months of April through September in addition to a monthly percentage payment equal to 6 percent of gross income, when that amount exceeds the minimum monthly property use payment.

Boat Rentals' continued use of the premises will allow the Oceanside Harbor to provide residents and tourists an opportunity to enjoy safe recreational boating.

FISCAL IMPACT

Amendment 3 to the agreement will result in annual property use revenue for the premises of \$10,200, and a minimum of \$51,000 over the five-year term. The revenue will be recorded in account number 7510.4562.00022.

INSURANCE REQUIREMENTS

Boat Rentals will be required to maintain the City's standard insurance requirement over the extended term of the agreement.

COMMISSION OR COMMITTEE REPORT

Does not apply.

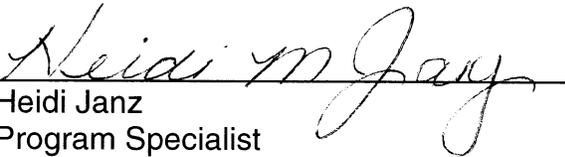
CITY ATTORNEY'S ANALYSIS

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

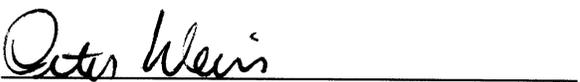
RECOMMENDATION

Staff recommends that the Harbor Board approve Amendment 3 to the property use agreement with Boat Rentals of America, Inc. (Boat Rentals), providing a five-year extension of the agreement through March 31, 2012, and authorize the City Manager to execute Amendment 3 to the property use agreement.

PREPARED BY:


Heidi Janz
Program Specialist

SUBMITTED BY:


Peter A. Weiss
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Joseph Arranaga, Acting Deputy Public Works Director

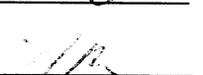
Donald L. Hadley, Harbor and Beaches Director

Douglas E. Eddow, Real Property Manager

Nita McKay, Financial Services Director







AMENDMENT NO. 3 TO PROPERTY USE AGREEMENT

This AMENDMENT NO. 3 TO PROPERTY USE AGREEMENT is made this 23 day of March 2007 ("Amendment"), by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, ("DISTRICT") and BOAT RENTALS OF AMERICA, INC. ("PERMITTEE").

RECITALS

WHEREAS, DISTRICT and PERMITTEE entered into a Property Use Agreement ("Agreement") dated April 3, 1997, as amended on June 1, 2001, whereby PERMITTEE was given authorization for non-exclusive use of certain real property (the "Premises"), commonly known as: 1) the southerly 33.0 feet of the 102.5 feet of the west side of the Transient Vessel Harbor Village Long Dock; 2) the south inside ties of the Harbor Village Transient Dock 1, 2, 3 & 4; and 3) approximately 42 feet of the Main Harbor Village Dock that is immediately east of the Harbor Village Transient Dock 1 area.

WHEREAS, DISTRICT and PERMITTEE previously extended the term of their agreement for a period of five years commencing on April 1, 2002 and terminating on March 31, 2007.

WHEREAS, DISTRICT and PERMITTEE are desirous of extending the term of their agreement for the second extension period of five years commencing on April 1, 2007 and terminating on March 31, 2012.

WHEREAS, this extension is the final option to extend under the Property Use Agreement dated April 3, 1997. PERMITTEE shall have no further options to extend the above referenced Property Use Agreement.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND CONDITIONS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1. The Agreement shall be amended to read as follows:

Section 2: TERM

Subsections 2.01 and 2.02 under Section 2: TERM 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 five (5) years commencing on April 1, 2007 and terminating on March 31, 2012.

2.02 Extension of Term.

The PERMITTEE shall have no further extensions under the Property Use Agreement dated April 3, 1997. On or before the expiration of this extension, PERMITTEE may negotiate a new lease with DISTRICT.

Section 3: PROPERTY USE PAYMENT

Subsections 3.02 under Section 3: PROPERTY USE PAYMENT is hereby deleted in its entirety and replaced with the following language.

3.02 Minimum Property Use Payment. The minimum property use payment amount for the first three (3) years of this Agreement shall be TEN THOUSAND TWO HUNDRED DOLLARS (\$10,200.00) per year which shall be payable monthly in advance at the rate of SIX HUNDRED DOLLARS (\$600) per month for the months of October through March and ONE THOUSAND ONE HUNDRED DOLLARS (\$1,100) per month for the months of April through September.

2. 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 original agreement and this Amendment, the terms of this Amendment shall control.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

DISTRICT

THE OCEANSIDE SMALL CRAFT
HARBOR DISTRICT

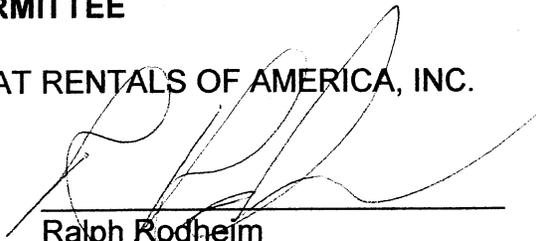
APPROVED AS TO FORM

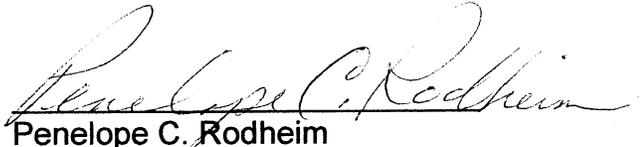
By: _____
Peter A. Weiss
Interim City Manager

By:  _____
City Attorney

PERMITTEE

BOAT RENTALS OF AMERICA, INC.

By:  _____
Ralph Rodheim
President

By:  _____
Penelope C. Rodheim
Corporate Secretary

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

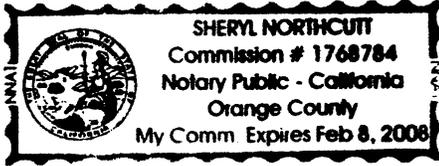
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Orange } ss.

On March 23, 2007 before me, Sheryl Northcutt, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Ralph Rodheim and Penelope C. Rodheim
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.
Sheryl Northcutt
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: Amendment No. 3 to Property Use Agmt
 Document Date: 3-23-07 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

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