



DATE: May 15, 2013
TO: Honorable Mayor and City Councilmembers
FROM: Property Management Division
SUBJECT: **AMENDMENT 1 TO THE PERCENTAGE LEASE AGREEMENT WITH PAMELA GONSALVES, DBA OCEANSIDE PIER BAIT STORE ON THE OCEANSIDE MUNICIPAL PIER**

SYNOPSIS

Staff recommends that the City Council approve Amendment 1 to the Percentage Lease Agreement with Pam Gonsalves, dba Oceanside Pier Bait Store on the Oceanside Municipal Pier, extending the term of the agreement retroactive from May 1, 2013 to April 30, 2018, for a five-year minimum total revenue of \$24,300, plus a percentage of gross sales; and authorize the City Manager to execute the amendment.

BACKGROUND

On May 1, 2008, the City entered into a Percentage Lease Agreement ("Agreement") with Ms. Pam Gonsalves, dba Oceanside Pier Bait Store ("Lessee") to operate a bait and tackle shop on the Oceanside Municipal Pier. Lessee has made improvements to the building space, provides pier related services and hosts an annual outreach fishing clinic to the community. The Agreement terminates on April 30, 2013, and Lessee has requested extension of the Agreement.

ANALYSIS

The proposed amendment extends the term of the Agreement for five years and includes a provision for one additional five-year extension of the term. The monthly rent shall remain the minimum rent or the percentage rent, whichever is higher. The minimum rent is adjusted annually based on the semi-annual Consumer Price Index, or five percent, whichever is greater.

FISCAL IMPACT

During the term of the Agreement, the City has received an average of \$40,000 per year in lease payments from Lessee. The amendment will result in minimum revenue over the extended five-year term of approximately \$24,300 and will be deposited into account no. 1101.4351.0002. Additional revenue can be realized based on a percentage of the gross sales, which is estimated at \$37,000 annually, based on the five-year average term of lease.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will continue to be met.

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 Amendment 1 to the Percentage Lease Agreement with Pam Gonsalves, dba Oceanside Pier Bait Store on the Oceanside Municipal Pier, extending the term of the agreement retroactive from May 1, 2013 to April 30, 2018, for a five-year minimum total revenue of \$24,300, plus a percentage of gross sales; and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:



Julie Cook
Program Specialist



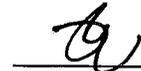
Peter A. Weiss
City Manager

REVIEWED BY:

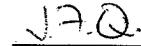
Michelle Skaggs Lawrence, Deputy City Manager



Douglas E. Eddow, Real Property Manager



Frank Quan, Harbor and Beaches Coordinator



Teri Ferro, Financial Services Director



AMENDMENT NO. 1 TO PERCENTAGE PROPERTY LEASE AGREEMENT

This AMENDMENT NO. 1 TO PERCENTAGE PROPERTY LEASE AGREEMENT is made this ____ day of _____ 2013 ("Amendment"), by and between the CITY OF OCEANSIDE, ("CITY") and PAM GONSALVES DBA OCEANSIDE PIER BAIT STORE, hereinafter called ("LESSEE").

RECITALS

WHEREAS, CITY and LESSEE entered into a Percentage Property Lease Agreement ("Lease") dated May 1, 2008, for lease of the building premises and storage room located at the Oceanside Municipal Pier in the City of Oceanside, County of San Diego, State of California, commonly known as 10 Pier View Way.

WHEREAS, CITY and LESSEE are desirous of extending the term of the Lease for an additional five (5) years under the terms and conditions of the Lease at the CITY's calculated fair market property lease payment rate.

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

AGREEMENT

1. **SECTION 2: TERM**, Subsection 2.01. Commencement is hereby deleted in its entirety and replaced with the following language:

2.01 Term. The term of this Lease, having commenced on May 1, 2008, is extended for an additional five (5) years retroactive to **May 1, 2013 and terminating April 30, 2018.**

The LESSEE may request an additional extension of this Lease, for a **five (5)-year term** under the same terms and conditions of this Lease except rent shall be at the CITY's calculated fair market rental rate of similar businesses, provided that the LESSEE is not in default or breach of any term, condition, or covenant of this Lease.

The LESSEE may request not more than one (1) five-year extension of term by providing the CITY with its written request no later than **ninety (90) days** prior to the expiration of the term of this Lease. The City Manager shall notify the LESSEE not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the Oceanside City Council, at which time the CITY shall provide

LESSEE with CITY's calculated fair market rent value and rental amount which the CITY is willing to accept for LESSEE's use and occupation of the PREMISES during the extension term. In no event shall the rental rate be less than that required during the preceding annual term. CITY's failure to provide the new rental amount within said timeframe shall not defeat CITY's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute CITY approval of the extension request. The City Manager in his capacity as the CITY's authorized representative, shall, in his sole discretion, have the authority to deny any such request. Any such denial shall be sent to LESSEE not later than **thirty (30) days** from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Lease. In the event the City Council is unable to consider the extension request in sufficient time as to provide LESSEE with **thirty (30) days** notice of termination in the case of denial, the Lease shall be extended for a period not to exceed **thirty (30) days**, to allow for such thirty (30) day notice of termination.

In no event shall the term of this Lease be extended in excess of **five (5) years** beyond the expiration of the term of this Lease without the mutual agreement of the parties and prior approval of the CITY.

2. **SECTION 3: RENT**, Subsection 3.02b **Initial Minimum Rent Amount**, under Subsection 3.02 Rent of Section 3: RENT, is hereby deleted in its entirety and replaced with the following language:

b. **Minimum Rent Amount.** The minimum annual rent amount for the year beginning May 1, 2013 shall be **Four Thousand Five Hundred Dollars (\$4,500.00)** which shall be payable monthly in advance at the rate of Three Hundred Seventy-Five Dollars (**\$375.00**) without demand or invoice, on or before the first day of each new month.

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

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

CITY

City of Oceanside, a municipal corporation

Date _____

By _____
Name: Peter Weiss
Title: City Manager

APPROVED AS TO FORM:

By *Paul Hamilton, Esq.*
City Attorney

LESSEE

Pam Gonsalves, sole proprietor

Date 4.26.13

By *Pam Gonsalves*
Name: Pam Gonsalves
Title: Owner

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)

County of San Diego)^{SS.}

On April 26, 2013 before me, Curtis Jackson, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Pamela Gonzalez,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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: _____

