



DATE: May 6, 2015

TO: President and Directors of the Harbor District Board

FROM: Property Management

SUBJECT: **APPROVAL OF AMENDMENT 1 TO PROPERTY USE AGREEMENT WITH OCEANSIDE OUTRIGGER CANOE CLUB FOR USE OF OCEANSIDE SMALL CRAFT HARBOR DISTRICT-OWNED PROPERTY**

**SYNOPSIS**

Staff recommends that the Harbor District Board of Directors approve Amendment 1 to the Property Use Agreement with Oceanside Outrigger Canoe Club, for canoe storage on Oceanside Small Craft Harbor District-owned property, extending the term of the agreement retroactive from January 1, 2015, through December 31, 2015, for a minimum total revenue of \$15,256; and authorize the Administrative Officer to execute the amendment.

**BACKGROUND**

The Oceanside Small Craft Harbor District ("District") entered into a Property Use Agreement ("Agreement") dated January 30, 2013, with the Oceanside Outrigger Canoe Club ("Permittee") to store their canoes in the fenced 50-foot by 70-foot concrete lot located south of the Oceanside Harbor boat launch ramp and adjacent to the District's maintenance storage building. Permittee is a non-profit Oceanside-based club and is part of the Southern California Outrigger Racing Association ("SCORA"). The Agreement provides for two (2) additional one-year extensions. Permittee has requested a one-year extension of the Agreement for continued use of the lot for storage.

**ANALYSIS**

The Amendment extends the term of the Agreement for one year, retroactive to January 1, 2015, through December 31, 2015. The Amendment increases the minimum rent to the calculated fair market rental rate of similar businesses at the Oceanside Harbor.

**FISCAL IMPACT**

The Agreement will generate a one-year total revenue of \$15,256 and will be deposited into the District account no. 1751.4497.0001.

**INSURANCE REQUIREMENTS**

The City's standard insurance requirements will be met.

**CITY ATTORNEY'S ANALYSIS**

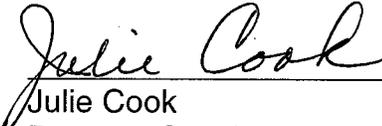
The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the Harbor District Board of Directors approve Amendment 1 to the Property Use Agreement with Oceanside Outrigger Canoe Club, for canoe storage on Oceanside Small Craft Harbor District-owned property, extending the term of the agreement retroactive from January 1, 2015, through December 31, 2015, for a minimum total revenue of \$15,256; and authorize the Administrative Officer to execute the amendment.

PREPARED BY:

SUBMITTED BY:

  
\_\_\_\_\_  
Julie Cook  
Program Specialist

  
\_\_\_\_\_  
Michelle Skaggs Lawrence  
Interim Administrative Officer

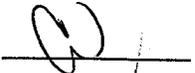
REVIEWED BY:

Peter A. Weiss, Assistant City Manager

Jane McPherson, Interim Financial Services Director

Paul C. Lawrence, Harbor Manager

Douglas E. Eddow, Real Estate Manager


## **AMENDMENT NO. 1 TO PROPERTY USE AGREEMENT**

This AMENDMENT NO. 1 TO PROPERTY USE AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 2015 ("Amendment"), by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, ("DISTRICT") and OCEANSIDE OUTRIGGER CANOE CLUB, hereinafter called ("PERMITTEE").

### **RECITALS**

WHEREAS, DISTRICT and PERMITTEE entered into a Property Use Agreement ("Agreement") dated January 30, 2013, for use of the fenced fifty foot by seventy foot (50' X 70') lot, located directly south of the boat launch ramp ("PREMISES") at the Oceanside Harbor in the City of Oceanside, County of San Diego, State of California.

WHEREAS, DISTRICT and PERMITTEE are desirous of extending the term of the Agreement for an additional one (1) year under the terms and conditions of the Agreement at the DISTRICT's calculated fair market property use payment rate.

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

### **AGREEMENT**

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

**2.01 Term.** The term of this Agreement for the PREMISES, is for an additional one (1) year retroactive to **January 1, 2015 and terminating December 31, 2015.**

**2.02 Extension of Term.** The LESSEE may request an extension of the term of this Agreement for the PREMISES for **one (1) additional one (1)-year term** under the terms and conditions of this Agreement at the DISTRICT's calculated fair market rental rate of similar businesses, provided that the PERMITTEE is not in default or breach of any term, condition, or covenant of this Agreement.

The PERMITTEE may request not more than one (1) one-year extension of term by providing the DISTRICT with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement. The DISTRICT's designee shall notify the PERMITTEE not later than **thirty (30) days** after receipt of such request whether

such request will be recommended to the Harbor Board for approval, at which time the DISTRICT shall provide PERMITTEE with DISTRICT's calculated fair market rent value and rental amount which the DISTRICT is willing to accept for PERMITTEE'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. DISTRICT's failure to provide the new rental amount within said timeframe shall not defeat DISTRICT's ability to make adjustments to the rental rate. Recommendation by the DISTRICT staff does not constitute DISTRICT approval of the extension request. The DISTRICT's Administrative Officer in his or her capacity as the DISTRICT's authorized representative, shall, in his or her sole discretion, have the authority to deny any such request. Any such denial shall be sent to PERMITTEE not later than **thirty (30) days** from receipt of the request for extension.

The Harbor Board, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the Harbor Board is unable to consider the extension request in sufficient time as to provide PERMITTEE with **thirty (30) days** notice of termination in the case of denial, the Agreement 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 Agreement be extended in excess of **one (1) year** beyond the expiration of the term of this Agreement without the mutual agreement of the parties and prior approval of the Harbor Board.

2. **SECTION 3: Property Use Payment, Subsection 3.02 Property Use Payment,** is hereby deleted in its entirety and replaced with the following language:

b. **Property Use Payment.** The minimum annual property use payment amount for the term of this Agreement shall be **Fifteen Thousand Two Hundred Fifty-Five Dollars and Seventy-Eight Cents (\$15,255.78)** which shall be payable monthly in advance at the rate of One Thousand Two Hundred Seventy-One Dollars and Thirty-Two Cents (**\$1,271.32**) without demand or invoice, on or before the first day of each new month.

3. All other terms, conditions, covenants and provisions of the 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.

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

Date \_\_\_\_\_

By \_\_\_\_\_  
Name: Michelle Skaggs Lawrence  
Title: Interim Administrative Officer

APPROVED AS TO FORM:

By   
Harbor Board Attorney

PERMITTEE  
OCEANSIDE OUTRIGGER CANOE CLUB  
a California corporation

Date April 27, 2015

By   
Name TIMOTHY E. METCALFE  
Title PRESIDENT

Date April 27 2015

By   
Name TAM T NGUYEN  
Title TREASURER

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURES MUST BE ATTACHED

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

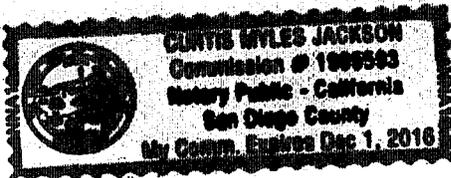
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Diego )  
On 4/27/15 before me, Curtis Jackson, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared Timothy Metcalfe and Tam Nguyen  
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 [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended 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: \_\_\_\_\_ Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  Partner --  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_ Signer Is Representing: \_\_\_\_\_