STAFF REPORT

ITEM NO. 8

CITY OF OCEANSIDE

DATE: May 6, 2015

TO: President and Directors of the Harbor District Board

FROM: Property Management

SUBJECT: **APPROVAL OF AMENDMENT 4 TO THE PROPERTY USE AGREEMENT WITH JAMES GARDNER, DBA OCEANSIDE BAIT COMPANY, INC., EXTENDING THE TERM OF THE AGREEMENT THROUGH AUGUST 31, 2020**

SYNOPSIS

Staff recommends that the Harbor District Board of Directors approve Amendment 4 to the Property Use Agreement with James Gardner, dba Oceanside Bait Company, Inc., for the use of Oceanside Small Craft Harbor District-owned property within the Oceanside Harbor, extending the term of the agreement from September 1, 2015 through August 31, 2020, for a five-year minimum total revenue of $33,317; and authorize the Administrative Officer to execute the amendment.

BACKGROUND

The Oceanside Small Craft Harbor District ("District") entered into a Property Use Agreement with Oceanside Bait Company, Inc., ("Permittee") dated August 1, 1995, Amendment 1 dated March 21, 2001; Amendment 2 dated April 21, 2005; and Amendment 3 dated September 22, 2010 (collectively "Agreement"), for the storing of live bait to be dispensed commercially to the public and sportfishing boats from the Oceanside Harbor ("Harbor"). The Agreement terminates on August 31, 2015, and provides Permittee with an additional five-year renewal option. The Permittee has elected to exercise the renewal option and has requested an additional five-year option.

ANALYSIS

Permittee's continued use at the Harbor provides for a needed service to sportfishing boats, as well as the patrons of the Harbor. Amendment 4 extends the term of the Agreement for five years, effective September 1, 2015, and terminating on August 31, 2020, with a provision for an additional five (5)-year extension to the term. The property use payment is subject to annual adjustment by the amount of percentage change in the San Diego County Consumer Price Index, or four percent, whichever is greater.

FISCAL IMPACT

Effective September 1, 2015, the annual property use payment is adjusted to $6,170. Amendment 4 will result in revenue to the District over the five-year term in the minimum amount of $33,317 and deposited into Account No.1751.4496-100361.

INSURANCE REQUIREMENTS

The Permittee will be required to maintain the City's standard insurance requirements over the 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 District Board of Directors approve Amendment 4 to the Property Use Agreement with James Gardner, dba Oceanside Bait Company, Inc., for the use of Oceanside Small Craft Harbor District-owned property within the Oceanside Harbor, extending the term of the agreement from September 1, 2015 through August 31, 2020, for a five-year minimum total revenue of $33,317; and authorize the Administrative Officer to execute the amendment.

PREPARED BY:

Julie Cook
Program Specialist

SUBMITTED BY:

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

ATTACHMENTS:

1. Amendment
2. Rent Adjustment Worksheet

AMENDMENT NO. 4 TO PROPERTY USE AGREEMENT

THIS AMENDMENT NO. 4 TO PROPERTY USE AGREEMENT is made and entered into this ____ day of _____ 2015, by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, (hereinafter referred to as "DISTRICT"), and JAMES GARDNER, doing business as Oceanside Bait Company, Inc. (hereinafter referred to as "PERMITTEE").

RECITALS

WHEREAS, DISTRICT and PERMITTEE are parties to a Property Use Agreement, dated August 1, 1995, Amendment 1 dated March 21, 2001, Amendment 2 dated April 20, 2005, and Amendment 3 dated September 22, 2010, hereinafter collectively referred to as the "Agreement.

WHEREAS, the Agreement terminates on August 31, 2015 and PERMITTEE desires to extend term.

WHEREAS, the parties hereto desire to extend the term of the Agreement for five (5) years and to provide for an option to extend the term for an additional five (5)-year period.

AGREEMENT

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

1. The Agreement shall be amended as follows:

SECTION 2: TERM

Subsections 2.01 Term and 2.02 Extension of Term shall be deleted in their entirety and replaced with the following language.

2.01 Term. The term of this Agreement for use of the PREMISES is extended for five (5) years effective from **September 1, 2015 and terminating August 31, 2020**.

2.02 Extension of Term.

The PERMITTEE may request an extension of the term of this Agreement for use of

the PREMISES for an additional five (5) years under the terms and conditions of this Agreement at the DISTRICT's calculated fair market Property Use Payment 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) five (5)-year extension of term by providing the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Agreement. The City Manager or City Manager'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 City Manager 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. City Manager'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 City Manager does not constitute DISTRICT approval of the extension request. The City Manager in his capacity as the DISTRICT's authorized representative, shall, in his 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.

In no event shall the term of this Agreement be extended in excess of five (5) years beyond the expiration of the term of this Agreement without the mutual written agreement of the parties and the prior approval of the Harbor Board.

SECTION 3: PROPERTY USE PAYMENT

Subsection 3.02 Property Use Payment shall be deleted in its entirety and replaced with the following language.

3.02 Property Use Payment. The minimum annual Property Use Payment for the first (1st) year of the extended term, beginning September 1, 2015, shall be **Six Thousand One Hundred Sixty-Nine Dollars and Seventy-Eight Cents ($6,169.78)** which shall be payable quarterly in advance at the rate of **One Thousand Five Hundred Forty-Two Dollars and Forty-Four Cents ($1,542.44)** on or before the fifteenth (15th) day of each new quarter.

2. All other terms, conditions, covenants and provisions of the Agreement shall remain in full force and effect.

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 Amendment No. 4 to Property Use Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

DISTRICT

THE OCEANSIDE SMALL CRAFT HARBOR DISTRICT

Date _____

By_____
Name: Michelle Skaggs Lawrence
Title: Interim Administrative Officer

APPROVED AS TO FORM:

By Patricia Hamilton, ASST.
City Attorney

PERMITTEE

James Gardner
dba Oceanside Bait Company, Inc.

Date 4-23-2015

By_____
Name:
Title: JAMES M GARDNER
PRESIDENT

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) 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 April 23, 2015 before me, Elizabeth S. Hedrick Notary Public
Date *Here Insert Name and Title of the Officer*

personally appeared James Gardner
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.

ELIZABETH S. HEDRICK
Commission # 2027371
Notary Public - California
San Diego County
My Comm. Expires Jul 1, 2017

Signature Elizabeth S. Hedrick
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: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

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

©2014 National Notary Association • www.NationalNotary.org • 1-800-US NOTARY (1-800-876-6827) Item #5907

Oceanside Bait Company, Inc.

Property Use Agreement

CPI Increase or minimum 4% maximum 8%

		Initial Min Rent
9/1/2010	$	5,344.42

Adjust Year		Existing Min Rent	SD CPI 14Half 1	SD CPI 15 Half 1	Percent Change		*CPI Adjustment		New Min Rent	
9/1/2015	$	5,956.00				$	-	$	5,956.00	N/A
9/1/2015	**$**	**5,956.00**	**N/A**	**N/A**	**4%**	**$**	**213.78**	**$**	**6,169.78**	**Annual**
								$	**1,542.44**	**Qtrly**

Note: CPI Increase not available, 4% min. used
Computation at 4% minimum per 3.05 of Property Use Agreement

5 Year's Annual @ 4% min.

9/1/2015	6,169.78	**New Initial Min Rent**
9/1/2016	6,416.57	
9/1/2017	6,663.36	
9/1/2018	6,910.15	
9/1/2019	7,156.94	
	$ 33,316.81	