



**POLICIES
AND
REGULATIONS
AGREEMENT**



PROCEDURES AND REGULATIONS

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1. PRODUCT/SERVICE TYPE

SERVICES:

- Rentals – Recreational Equipment
- Transportation
- Communication
- Banking
- Information
- Marketing & Promotion
- Education & Training

PRODUCTS:

- Retailed Goods
- Food & Consumables

2. AGREEMENT TYPE

- ANNUAL – 52 weeks
- SEASONAL – Summer weeks

3. EXPECTED ANNUAL GROSS RECEIPTS

- > \$125,000
- \$100,000 - \$124,999
- \$50,000 - \$99,999
- < \$49,999

4. PREMISIS SPECIFICATIONS

- Type 1 - PERMANENT
52 week operation, storage, site facility, utility usage
- Type 2 - SEMI-PERMANENT
seasonal operation, no storage, portable facility, utility usage
- Type 3 – TRAVELING / MOBILE
seasonal operation, no storage, traveling cart, removed daily, non-permanent location,
no utilities (self-contained), removed daily

5. RENT

Rent shall be paid according to the payment schedule indicated with a checkmark. Payments to MSO shall be made to the order of Main Street Oceanside, Inc. and delivered to the MainStreet Office identified herein below or at such other location as may from time to time be designated by MSO. See "Concession Agreement" for specific rent terms.

□ MONTHLY PAYMENTS

Beginning with the fifteenth (15th) day of the month following the execution of the agreement, and on or before the fifteenth (15th) day of each month thereafter, Vendor shall furnish to MSO a verified statement of the concession's gross receipts for the preceding month. Such statement shall be provided on the "Statement of Gross Receipts", to be provided by MSO and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding month for the then current agreement period.

□ SEMI-WEEKLY PAYMENTS

Beginning with the first (1st) or fifteenth (15th) day of the month, whichever is first, following the execution of the agreement and on or before first (1st) and fifteenth (15th) of each month thereafter, Vendor shall furnish to MSO a verified statement of the concession's gross receipts for the preceding weeks. Such statement shall be provided on the "Statement of Gross Receipts", to be provided by MSO and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding week for the then current agreement period.

□ WEEKLY PAYMENTS

Beginning with the first Friday of the month following the execution of the agreement, and on or before every Friday of each week thereafter, Vendor shall furnish to MSO a verified statement of the concession's gross receipts for the preceding week. Such statement shall be provided on the "Statement of Gross Receipts", to be provided by MSO and shall specify the current period and cumulative total of gross receipts for the concession through the end of the preceding week for the then current agreement period.

6. HOURS

□ Type 1 - PERMANENT

From Memorial Day through Labor Day (High Season), concession services shall be provided seven (7) days a week between the hours of 9:00 am. and sunset. From Labor Day through Memorial Day (Low Season), concession services shall be provided on weekends and holiday periods between the hours of 10:00 am. and 6 pm, or sunset, whichever occurs first. In the event MSO deems the hours of operation inadequate for proper service to the public, MSO may require Vendor to adjust the days and/or hours of operation to a schedule provided by MSO. Vendor may remain open on other dates, observing same (or longer) hours, at Vendor's discretion with the concurrence of MSO. In the event of adverse weather or other operating conditions, MSO may permit the concession to close at any time during the term of this agreement. Vendor shall not use or permit the Premises to be used in whole or in part during the term of this agreement for any purpose other than as herein set forth without the prior written consent of MSO.

□ Type 2 - SEMI-PERMANENT

From Memorial Day through Labor Day (High Season), concession services shall be provided seven (7) days a week between the hours of 9:00 am. and sunset. From Labor Day through Memorial Day (Low Season), no concession services shall be provided unless otherwise arranged and approved by MSO. In the event MSO deems the hours of operation inadequate for proper service to the public, MSO may require Vendor to adjust the days and/or hours of operation to a schedule provided by MSO. Vendor may remain open on other dates, observing same (or longer) hours, at Vendor's discretion with the concurrence of MSO. In the event of adverse weather or other operating conditions, MSO may permit the concession to close at any time during the term of this agreement. Vendor shall not use or permit the Premises to be used in whole or in part during the term of this agreement for any purpose other than as herein set forth without the prior written consent of MSO.

□ Type 3 – TRAVELING / MOBILE

From Memorial Day through Labor Day (High Season), concession services shall be provided seven (7) days a week between the hours of 9:00 am. and sunset unless otherwise approved by MSO. From Labor Day through Memorial Day (Low Season), no concession services shall be provided unless otherwise arranged and approved by MSO. In the event MSO deems the hours of operation inadequate for proper service to the public, MSO may require Vendor to adjust the days and/or hours of operation to a schedule provided by MSO. Vendor may remain open on other dates, observing same (or longer) hours, at Vendor's discretion with the concurrence of MSO. In the event of adverse weather or other operating conditions, MSO may permit the concession to close at any time during the term of this agreement. Vendor shall not use or permit the Premises to be used in whole or in part during the term of this agreement for any purpose other than as herein set forth without the prior written consent of MSO.

7. CASH DEPOSIT

- A. Vendor agrees to pay a cash deposit in the amount indicated by the expected annual gross incomes listed below:
- \$4,500 for businesses grossing more than \$125,000 annually
 - \$2,500 for businesses grossing between \$100,000 - \$124,999 annually
 - \$1,000 for businesses grossing between \$50,000 - \$99,999 annually
 - \$500 for businesses grossing less than \$49,999 annually
- B. Vendor, at Vendor's own cost and expense, agrees to obtain and deliver to MSO, prior to the commencement date of this agreement and prior to entering the Premises, and shall maintain throughout the term of this agreement, a cash deposit in the sum indicated above. This deposit shall insure faithful performance by Vendor of all the covenants, terms, and conditions of this agreement inclusive of, but not restricted to, the payment of all rentals, fees, and charges and prompt performance of and/or payment for all maintenance obligations.

- C. Vendor acknowledges that allowing the deposit to expire or otherwise terminate and/or allowing the total secured amount to fall below the security required herein will cause MSO to incur costs and significant risks not contemplated by this agreement, the exact amount of which will be difficult to ascertain. These costs include, but are not limited to, administrative costs and other expenses necessary to ensure continued performance of services for the public and protection of the Premises. Accordingly, if Vendor allows the Performance Bond or other security instrument to expire or otherwise terminate and/or allows the total secured amount to fall below the security required pursuant to this agreement, Vendor shall pay to MSO an amount equal to five percent (5%) of the required security or \$125, whichever is greater. The parties agree that this charge represents a fair and reasonable estimate of the costs MSO will incur. Acceptance of this charge by MSO shall not constitute a waiver of Vendor's default, nor prevent MSO from exercising the other rights and remedies available to it under this agreement or applicable law, including the right to terminate this agreement and seek the payment of damages.
- D. Any unused portion of the deposit shall be returned upon completion, cancellation, or termination of this contract.
_____ **[Initials of Vendor(s)]**

8. INSURANCE

- A. Vendor shall provide before entering the Premises and shall maintain in force throughout the term of this agreement the following insurance:
- 1) Liability Insurance:
 - Commercial General Liability
 - Products / Operations Liability
 - Liquor Liability (where the sale of alcohol is permitted)
 - Automobile Liability (for all owned, non-owned and hired vehicles used by Vendor in the conduct of business under this agreement)Each policy of liability insurance described above shall be in an amount of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damages combined.
 - 2) Workers' Compensation Insurance: A program of workers' compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Such insurance shall include employer's liability coverage of ONE MILLION DOLLARS (\$1,000,000) and shall specifically cover all persons providing services by or on behalf of the Vendor and shall cover all risks to such persons under this agreement.
 - 3) Fire Insurance: Fire insurance with extended coverage endorsements thereon on all improvements located on the Premises, whether furnished by MSO or constructed upon the Premises by Vendor, in an amount equal to the full replacement cost and/or value thereof. This policy shall contain a replacement

cost endorsement naming the Vendor as the insured provided that if there is a lender on the security of the improvements so insured, the proceeds of any such policy or policies may be made payable to such lender.

- B. In the event of destruction, loss, or damage by fire or other cause of any of the city-owned buildings, improvements, or fixtures located on the Premises that MSO determines (1) to be essential to the continued operation of the agreement and / or (2) cannot be repaired within one-hundred-eighty (180) days of the occurrence, MSO may terminate this agreement. A decision by MSO to terminate the agreement under this provision shall be communicated in writing to Vendor as soon as practicable. If the agreement is so terminated, MSO shall be entitled to the proceeds payable under any applicable insurance policies pertaining to the loss as its interest may appear. Receipt of such proceeds by MSO shall be in addition to the right of MSO to pursue whatever other remedies it may have to recover any losses due to the occurrence. If MSO determines not to terminate the agreement, then, in MSO's discretion, any buildings, improvements, or fixtures built in replacement of any damaged or destroyed property shall be subject to the terms and provisions of this agreement as if they had existed at the onset. In no event shall the provisions of this paragraph be deemed or construed to relieve Vendor from the requirement to repair or replace any damaged or destroyed property except as specifically excepted by express terms of this agreement.
- C. Each policy of liability insurance shall contain "Primary" Additional Named Insured endorsements as specified in item 1 below, as to all insurable interests of MSO including, but not limited to, the premises and all contents as follows:
- 1) Main Street Oceanside, Incorporated, Main Street Foundation, Incorporated, Kimyon Corporation, their officers, employees, and servants are included as additional insured but only insofar as operations and facilities under this agreement are concerned;
 - 2) The insurer will not cancel or reduce the insured's coverage without thirty (30) days prior written notice to MSO.
- D. No cancellation provision in any insurance policy shall diminish the responsibility of Vendor to furnish continuous insurance throughout the term of this agreement. Each policy shall be underwritten to the satisfaction of MSO. A signed certificate of insurance with each endorsement required shall be submitted to MSO at the time this agreement is executed, showing that the required insurance has been obtained. Further, at least thirty (30) days prior to the expiration of any such policy, Vendor shall submit to MSO a signed and complete certificate of insurance with all endorsements required by this paragraph, showing to the satisfaction of MSO that such insurance coverage has been renewed or extended. Within fifteen (15) days of MSO's request, Vendor shall furnish MSO with a signed and complete copy of the required policy.

9. ALCOHOLIC BEVERAGES

Notwithstanding anything to the contrary, the sale of liquor, beer, or other alcoholic beverages on the Premises is expressly prohibited. Exception to this restriction may be allowed through the special event permit process, as approved by MSO.

10. GROSS RECEIPTS

The term "gross receipts", wherever used in this agreement, is intended to and shall mean all moneys, property, or any other thing of value received by Vendor and any sub-Vendor or operator, if other than Vendor, through or in connection with the operation of the concession, including any concession related business carried on through the internet or catalog sales, or from any other business carried on or in connection with the Premises, or from any other use of the Premises, and/or of any business of any kind that uses the names licensed by this agreement, or that associates with or implies an endorsement by MSO, all without deduction. The term "gross receipts" shall not include any sales taxes imposed by any governmental entity and collected by Vendor.

11. RECORDS AND REPORTS

- A. Recordkeeping: Vendor shall keep separate true and accurate books and records showing all of Vendor's business transactions under this agreement in a manner that conforms to industry standards and practices and in a manner acceptable to MSO. Vendor shall keep all records for a period of at least four years.
- B. Sales & Use Tax: Copies of all sales and use tax returns submitted by Vendor to the California State Board of Equalization, the Employment Development Department, the Franchise Tax Board, or any other governmental agency shall be concurrently submitted to MSO.
- C. Audit: MSO shall have the right through its representative and at all reasonable times to conduct such audits as it deems necessary and to examine and copy Vendor's books and records including all tax records and returns. Vendor hereby agrees to make all such records, books, and tax returns available to MSO upon MSO's request therefor. Vendor further agrees to allow interviews of any employees who might reasonably have information related to such records.
- D. Annual Financial Statement: Vendor will submit to MSO, no later than May 1st of each year during the term of this agreement, a verified profit and loss statement for the previous calendar year. Such statement shall be submitted on the attached, "Vendor's Financial Statement", or in a format previously approved by MSO, and shall contain an appropriate certification that all gross receipts during the yearly accounting period covered by said statement shall have been duly and properly reported to MSO. Within forty-five (45) days of the expiration or termination of this agreement, Vendor shall submit to MSO a profit and loss statement for the period of operation not previously reported prepared in the manner stated above.

- E. Cash Registers: Vendor shall obtain and install cash registers or other accounting equipment acceptable to MSO, through which Vendor shall record all gross receipts from the operation of the concession.
- Type 1 – PERMANENT
Register equipment shall be meet the following minimum standards:
 - Non-adjustable Grand Totals
 - Non-adjustable Z counter and Z reading
 - Registers must have a dual tape, one that stays in the machine (detail/journal) and one that serves as a receipt tape for the customer
 - Registers must be able to print the date and time on the detail tape.
 - All registers must have a NO SALE transaction counter
 - All registers must have two-way displays and be in plain view of the customerVendor shall make all cash register tapes available to MSO upon MSO's request. Vendor shall provide a cash register receipt to each customer setting forth the full amount of a sale. Currently the following are approved register brand and model numbers. Any other registers must be approved in advance by MSO.
 - Royal CMS8160 Plus
 - Royal 482 Plus
 - Royal 487 Plus
 - Sharp 2385 Sharp 2386
 - Type 2 – SEMI - PERMANENT
Register equipment shall be meet the following minimum standards:
 - Non-adjustable Grand Totals
 - Non-adjustable Z counter and Z reading
 - Registers must have a dual tape, one that stays in the machine (detail/journal) and one that serves as a receipt tape for the customer
 - Registers must be able to print the date and time on the detail tape.
 - All registers must have a NO SALE transaction counter
 - All registers must have two-way displays and be in plain view of the customerVendor shall make all cash register tapes available to MSO upon MSO's request. Vendor shall provide a cash register receipt to each customer setting forth the full amount of a sale. Currently the following are approved register brand and model numbers. Any other registers must be approved in advance by MSO.
 - Royal CMS8160 Plus
 - Royal 482 Plus
 - Royal 487 Plus
 - Sharp 2385 Sharp 2386
 - Type 3 – TRAVELING / MOBILE
Registers not required; however, Vendor shall record by journal all gross receipts from the operation of the concession.

12. RATES, CHARGES AND QUALITY OF GOODS AND SERVICES

Vendor shall staff, operate, manages and provide all goods, services, and facilities offered in a first-class manner and comparable to other high quality concessions providing similar facilities and services. MSO reserves the right to prohibit or modify the sale or rental of any item, accommodation, or service for public safety and/or to ensure that the public receives, in MSO's view, fair pricing, proper service, and appropriate quality. MSO reserves the right to prohibit the sale or use of non-recyclable containers or plastics. A competent person shall be on the premises at all times while the concession is in operation. If the on-site manager is other than the Vendor, MSO reserves the right to approve such manager.

Vendor shall at all times maintain a complete list or schedule of the prices and charges for all goods or services, or combinations thereof, supplied to the public on or from the premises whether the same are supplied by vendor or by vendor's contractors, vendors, concessionaires, permittees or licensees.

13. PERFORMANCE EVALUATIONS AND INSPECTION

As part of its administration of this agreement, MSO will conduct periodic inspections of concession facilities, equipment, services, and programs and prepare written performance evaluations based upon its observations. A "Vendor Performance Rating" attached, or other similar format(s) as may be adopted by MSO will be utilized for evaluation purposes. MSO further reserves the right of ingress and egress without notice to inspect concession operations for the purposes of evaluating Vendor's performance of the terms and conditions of this agreement; to inspect, investigate, and/or survey the Premises; and to do any work thereon of any nature necessary for preservation, maintenance, and operation of the Beach Services infrastructure. Vendor agrees to cooperate with MSO in all respects related to the implementation of MSO's Concession Performance Evaluation program and with MSO's activities on the Premises. MSO shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising out of MSO's entry in the Premises as provided herein., except damage resulting from the active negligence or willful misconduct of MSO or its authorized representatives.

14. TAXES

- A. By signing this agreement, Vendor acknowledges that occupancy interest and rights to do business on MSO property being offered Vendor by this agreement may create a possessory interest as that term is defined in Revenue and Taxation Code Section 107.6, which possessory interest may subject Vendor to liability for the payment of property taxes levied on such possessory interest.
- B. Vendor agrees to pay all lawful taxes, assessments, or charges that at any time may be levied by MSO, County, City, or any tax or assessment levying body upon any interest in or created by this agreement, or any possessory right that Vendor may have in or to the premises covered hereby, or the improvements thereon by reason of Vendor's use or occupancy thereof or otherwise, as well as all taxes, assessments, and charges on goods, merchandise, fixtures, appliances, equipment, and property owned by Vendor in or about the Premises.

15. MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS

- A. In the event that Vendor desires to make modifications, improvements, or additions to the Premises or any part of the Premises, including changes to structural design, required accessibility barrier removal work, landscape design, or interior or exterior fixtures, design, and/or furnishings, (collectively "Alteration(s)"), the approval in writing of MSO shall be obtained prior to the commencement of any Alterations. MSO shall dictate the plan approval process.
- B. Once any Alteration has been approved by MSO and the work has begun, Vendor shall, with reasonable diligence, prosecute to completion all approved Alterations. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to MSO as required herein, and shall comply with all applicable governmental permits, laws, ordinances, and regulations. It shall be the responsibility of Vendor, at its own cost and expense, to obtain all licenses, permits, and other approvals necessary for the construction of approved Alterations.
- C. Title to all Alterations and improvements existing or hereafter erected on the Premises, regardless of who constructs such improvements, shall immediately become MSO's property and, at the end of the Term, shall remain on the Premises without compensation to Vendor. Vendor agrees never to assail, contest, or resist title to the Alterations and improvements. The foregoing notwithstanding, MSO may elect, by notice to Vendor, that Vendor must remove any Alterations that are peculiar to Vendor's use of the Premises and are not normally required or used by MSO and/or future occupants of the Premises. In this event, Vendor shall bear the cost of restoring the Premises to its condition prior to the installment of the Alterations.

16. PERSONAL PROPERTY

Except to the extent covered by **Paragraph 15**, MODIFICATIONS, ADDITIONS, TITLE TO IMPROVEMENTS, title to all personal property provided by Vendor shall remain in Vendor. Vendor shall not attach any personal property to any building without first obtaining MSO's written approval. Unless approved in writing by MSO, all property attached to real property will be considered a real property improvement and shall become property of MSO at the time this agreement is terminated.

17. HOUSEKEEPING, MAINTENANCE, REPAIR AND REMOVAL

During the term of this agreement at Vendor's own cost and expense, Vendor shall maintain and operate the Premises and areas in, on, or adjacent to a distance of not less than fifty (50) feet, including personal property and equipment, in a clean, safe, wholesome, and sanitary condition free of trash, garbage, or obstructions of any kind. Vendor shall remedy without delay any defective, dangerous, or unsanitary conditions.

- A. Housekeeping: Housekeeping activities are defined as all those activities concerned with keeping facilities clean, neat, and orderly, and includes, but is not limited to, mowing, raking, sweeping, vacuuming, mopping, stripping, waxing, dusting, wiping, washing, hosing, and other general care or cleaning of interior and exterior floors, walls, ceilings, doors, windows, facility fixtures, and all adjacent grounds and walks. Concession housekeeping shall conform to MSO standards.

- B. Maintenance and Repairs: Vendor shall maintain all concession facilities and personal property and equipment on the Premises in good condition and repair at Vendor's sole cost and expense at all times during the term of this agreement. Such maintenance shall conform to MSO standards. For the purposes of this agreement, the term "maintenance" is defined as all repair and preservation work necessary to maintain concession facilities and personal property and equipment in a good state of repair, as well as to preserve them for their intended purpose for an optimum useful life. Should Vendor fail, neglect, or refuse to undertake and complete any required maintenance, MSO shall have the right to perform such maintenance or repairs for Vendor. In this event, Vendor shall promptly reimburse MSO for the cost thereof provided that MSO shall first give Vendor ten (10) days written notice of its intention to perform such maintenance or repairs. MSO shall not be obligated to make any repairs to or maintain any improvements on the Premises. Vendor hereby expressly waives the right to make repairs at the expense of MSO. MSO has made no representations respecting the condition of the Premises, except as specifically set forth in this agreement.
- C. Removal and Restoration. At the expiration or sooner termination of this agreement, Vendor at its own expense shall remove all personal property brought onto the Premises by Vendor. Vendor, at Vendor's expense, shall restore and repair the Premises, and any of Vendor's improvements or fixtures remaining thereon, to a good, clean, safe, and fit condition, reasonable wear and tear excepted, and shall completely remedy all injuries to the Premises.

18. UTILITIES AND SERVICES

Vendor shall be responsible for all costs associated with the installation and provision of all utilities necessary to and used in connection with the Premises, including but not limited to sewage disposal. When installing facilities, no trees shall be trimmed or cut without permission of MSO. Removal and disposal of all rubbish, refuse, and garbage resulting from concession's operations shall be the Vendor's responsibility and shall be disposed of outside the park unit and in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened to the satisfaction of MSO.

19. RESOURCE CONSERVATION

- A. Environmental Conservation Program:
Vendor shall set a positive example in waste management and environmental awareness that shall lead to preservation of the resources of the State of California and MSO's resource conservation plan.
- B. Recycling and Beverage Container Programs:
The Vendor shall implement a source reduction and recycling program designed to minimize concession and patron use of disposable products, per Public Contract Codes Sections 12161 and 12200 et seq. Reusable and recyclable products are preferred over "throwaways". Where disposable products are needed, products that have the

least impact on the environment will be selected. **No Styrofoam containers or other non-biodegradable containers are to be used or sold by Vendor.** The use of “post-consumer” recycled products is encouraged wherever possible.

The Vendor shall participate fully in the California beverage container redemption/ recycling program. Products to be recycled include, but are not limited to, paper, newsprint, cardboard, bimetal, plastics, aluminum and glass. At the start of each agreement year, Vendor and MSO shall review items sold, and containers or utensils used or dispensed by Vendor, and, whenever possible, eliminate the use of non-returnable or non-recyclable containers or plastics.

- C. Water and Energy Conservation: The Vendor shall implement water and energy conservation measures. As new technologies are developed, Vendor shall explore the possibility of integrating them into existing operations where there is potential for increased efficiency, reduced water or energy consumption, and/or reduced impacts on the environment.
- D. Erosion Control/Water Quality/Environmental Sensitivity: The Vendor shall comply with all requirements set forth by various oversight agencies that have jurisdiction and oversight authority relating to the Premises and surrounding properties, including, but not limited to, erosion control, water quality and environmental sensitivity standards.

20. HAZARDOUS SUBSTANCES

- A. Use of Premises: On the premises, Vendor shall not:
 - 1) Keep, store, or sell any goods, merchandise, or materials that are in any way explosive or hazardous;
 - 2) Carry-on any offensive or dangerous trade, business, or occupation;
 - 3) Use or operate any machinery or apparatus that shall injure the premises or adjacent buildings in any way; or
 - 4) Do anything other than is provided for in this agreement.
 - 5) Nothing in this paragraph shall preclude Vendor from bringing, keeping, or using on or about said premises such materials, supplies, equipment, and machinery as is appropriate or customary in carrying-on Vendor’s business.
 - 6) Gasoline, oil, and other materials considered under law or otherwise to be hazardous to public health and safety shall be stored, handled, and dispensed as required by present or future regulations and laws.
 - 7) Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of MSO.
 - 8) Storage of Hazardous Materials: Vendor shall comply with all applicable laws pertaining to the use, storage, transportation, and disposal of hazardous substances. Vendor shall protect, indemnify, defend, and hold harmless MSO or any of its affiliates, successors, principals, employees, or agents against any liability, cost, or expense, including attorney’s fees and court costs, arising from illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, by Vendor. Where Vendor is found to be in breach of this provision due to the issuance of a government order directing Vendor to cease and desist any illegal action in connection with a hazardous

substance, or to remediate a contaminated condition directly caused by Vendor or any person acting under Vendor's direct control or authority, Vendor shall be responsible for all cost and expense of complying with such order, including any and all expenses imposed on or incurred by MSO in connection with or in response to such government order. Notwithstanding the foregoing, in the event a government order is issued naming Vendor, or Vendor incurs any liability during or after the term of the agreement in connection with contamination that preexisted the Vendor's obligations and occupancy under this agreement or prior agreements, or that were not directly caused by Vendor, MSO shall be solely responsible as between Vendor and MSO for all expenses and efforts in connection therewith, and MSO shall reimburse Vendor for all reasonable expenses actually incurred by Vendor therewith.

- B. Certification: Upon termination of this agreement, when requested by MSO, Vendor shall provide certification prepared by a Certified Industrial Hygienist that there is no hazardous waste contamination and/or damage to the Premises.
- C. Pest Control: All pest control activities, chemical and non-chemical, shall be approved by MSO prior to action by the Vendor. Vendor, or the pest control business acting on behalf of Vendor, shall submit a written "Pest Control Recommendation" to MSO for approval. MSO has fourteen (14) days to approve or deny the request. Such approval shall be solely for compliance with MSO's policies and in no way shall relieve Vendor or its contractors, employees, agents or representatives from compliance with all laws and regulations concerning such activities and from carrying out the work in a workmanlike manner.
Vendor, or the pest control business acting on behalf of Vendor, shall submit a report of completed work for each pest management action to MSO no later than seven (7) days after performance of the work.
- D. Machinery: No machinery or apparatus shall be used or operated on or about the premises which will in any way injure the premises or improvement thereon, or adjacent or other premises, or improvement thereon, or to persons; provided, however that nothing contained in this section shall preclude vendor from bringing, keeping or using on or about the premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business or from carrying on its business in all usual respects.

21. EQUIPMENT

Vendor, at Vendor's own expense, shall completely equip the concession improvements described herein and shall keep the same equipped in a safe and first-class manner throughout the term of this agreement.

22. SIGNS AND ADVERTISING

Vendor shall not erect, paint, inscribe or display any banners, pennants, flags, posters, signs, logos, placards, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of MSO. If any such unauthorized item is found on the premises, vendor shall remove the item at its expense within twenty-four (24) hours of written notice thereof by MSO, or MSO may thereupon remove the item at vendor's cost.

23. PHOTOGRAPHY

MSO may grant permits to persons or corporations engaged in the production of still and motion pictures and related activities for the use of the Premises for such purposes when such permission shall not interfere with the primary business of Vendor. Such permits shall not be deemed to be a competitive activity with regard to Vendor's rights to possession and operation under this agreement.

24. INTELLECTUAL PROPERTY RIGHTS

Any names, logos, trademarks, and/or copyrights developed during and/or pursuant to this agreement that will in any way associate with, identify, or implicate an affiliation with MSO or Beach Services shall be approved by MSO, shall belong to MSO upon creation, and shall continue in MSO's exclusive ownership upon termination of this agreement. Further, any works developed pursuant to this agreement by Vendor, including all related copyrights and other proprietary rights therein, shall belong to MSO upon creation, and shall continue in MSO's exclusive ownership upon termination of this agreement.

25. PARTICIPATION IN MSO MARKETING PROGRAMS

Vendor acknowledges that MSO has an established advertising and marketing program designed to develop additional revenue for MSO and to deliver a consistent and positive image to the public. Vendor agrees to cooperate in this program in the manner described below without compensation from MSO for such cooperation.

- A. Vendor agrees to honor all MSO graphic standards, licensing, and merchandising agreements entered into with corporate sponsors of the MSO.
- B. Vendor agrees to place on the Premises any advertising that MSO approves under this program. Any advertising approved by MSO under this program will be placed at MSO's expense.
- C. Vendor agrees to rent or sell, along with all other items of merchandise that are part of the Vendor's normal and customary inventory, any item of merchandise that MSO approves under this program, provided that Vendor is authorized to sell or rent it under the terms of the agreement, and the Vendor receives reasonable compensation for its sale.

26. NONDISCRIMINATION

- A. During the performance of this agreement, Vendor and its employees shall not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, or any member of the public because of sex, sexual orientation, race, color, religious creed, marital status, need for family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, need for pregnancy disability leave, or need for reasonable accommodation. Vendor shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- B. Further, as part of compliance with the foregoing, Vendor and Vendor's employees shall not discriminate by refusing to furnish any person any accommodation, facility, service, or privilege offered to or enjoyed by the general public. Nor shall Vendor or Vendor's employees publicize the accommodation, facilities, services, or privileges in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any such person.
- C. Vendor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)-(f), are incorporated into this agreement by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). Vendor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Vendor shall include the non-discrimination and compliance provisions of this clause in all agreements to perform work under and/or in connection with this agreement.
- D. In the event of violation of this section, MSO will have the right to terminate this agreement, and any loss of revenue sustained by MSO by reason thereof shall be borne and paid for by the Vendor.

27. DISABILITIES ACCESS LAWS

- A. Without limiting Vendor's responsibility under this agreement for compliance with all laws, with regard to all operations and activities that are the responsibility of Vendor under this agreement, Vendor shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990 ("ADA") [Public Law 101-336, commencing at Section 12101 of Title 42, United States Code (and including Titles I, II, and III of that law)] and the Rehabilitation Act of 1973, and all related regulations, guidelines, and amendments to both laws.

- B. With regard to facilities for which Vendor is responsible for operation, maintenance, construction, restoration, or renovation under this agreement, Vendor also shall be responsible for compliance with Government Code Section 4450, et seq., Access to Public Buildings by Physically Handicapped Persons, and Government Code Section 7250, et seq., Facilities for Handicapped Persons, and any other applicable laws. Prior written approval from MSO is required to implementation of any plans to comply with accessibility requirements.

28. DRUG-FREE WORKPLACE

Vendor agrees to comply with Government Code Section 8355 in matters relating to the provision of a drug-free workplace.

- A. By signing this Agreement, the Contractor hereby certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. Any available counseling, rehabilitation and employee assistance programs.
 - d. Penalties that may be imposed upon employees for drug abuse violations.

Provide, as required by Government Code Section 8355(c), that every employee who works per this Agreement:

- 1) *will receive a copy of the company's drug-free policy statement and,*
- 2) *will agree to abide by the terms of the company's statement as a condition of employment per this Agreement.*

29. UNION ORGANIZING

Vendor shall not use the Premises to hold a meeting with any employee(s) or supervisor(s) if the purpose of the meeting is to assist, promote, or deter union organizing. This provision does not apply if the Premises are equally available, without charge, to the general public for holding a meeting. Breach of this provision shall subject Vendor to civil penalties and damages pursuant to California Government Code §§ 16645.5 and 16645.8.

30. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Vendor, by signing this agreement, does hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Vendor within the two-year period immediately preceding the date of this agreement because of Vendor's failure to comply with a Federal Court order that Vendor shall comply with an order of the National Labor Relations Board.

31. CHILD SUPPORT COMPLIANCE ACT

In the event the annual gross income generated as a result of this agreement shall exceed One Hundred Thousand Dollars (\$100,000.00), Vendor acknowledges that:

- A. The Vendor recognizes the importance of child and family support relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as obligations and shall fully comply with all applicable state and federal laws provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- B. The Vendor to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

32. EMPLOYEE TRAINING

All concession employees shall receive training to include an orientation on the city beach area, and local points of interest, provided by Vendor. Such orientation shall be sufficient to permit concession employees to reply adequately to inquiries from the visiting public. Training also shall include job or task-specific training necessary to ensure high-quality job performance in a manner consistent with the protection of the Oceanside public beach areas and its visitors. Vendor's Employee Training/Orientation Program is subject to approval by MSO.

33. ATTIRE / UNIFORM

All of vendor's employees must be appropriately uniformed, subject to the approval of the Beach Vending Manager. Uniforms must include a cap and sleeved shirt, which identify the business being represented. Uniform must be clean and in good condition. A name-tag identifying the specific employee will be provided by MSO and will contain the Beach Services logo. The following is considered inappropriate attire and will not be acceptable:

- Swim wear
- Tank tops
- Short shorts
- Flip-flops
- Offensive imagery or language
- Offensive Tattoos

34. ACCIDENT REPORTING

Vendor shall, within forty-eight (48) hours after occurrence, report to MSO any accident causing property damage or any serious injury to persons on the premises. This report shall be made on the attached "Accident Report" and 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.

35. INTEGRATION

This Agreement and any incorporated addenda constitute the entire agreement between the parties, and supersede any and all prior oral or written agreements or understandings between them. No representations, warranties, or inducements expressed or implied have been made by either party to the other, except as set forth herein.

36. INDEMNIFICATION

Vendor agrees to indemnify, defend, and save harmless MSO, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, or corporation furnishing or supplying work services, materials, or supplies, in connection of with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Vendor in the performance of this Agreement.

37. PARAGRAPH TITLES

The paragraph titles in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Agreement or in any way affect this Agreement.

38. NO PARTNERSHIP OR AGENCY CREATED

Nothing herein shall be construed to constitute the parties hereto as partners or joint ventures, nor shall any similar relationship be deemed to exist between them. Further, nothing in this Agreement shall make one party the agent of the other, and neither party has power or authority to bind the other.

39. INDEPENDENT CONTRACTOR

Vendor and the agents and employees of Vendor, in the performance of this Agreement shall act in an independent capacity and not as officers, employees or agents of MSO, except as expressly provided in this Agreement.

SAMPLE



701 Mission Avenue
Oceanside, California 92054
760.754.4512 • fax 760.754.4547
mainsto2@pacbell.net
www.ms oceanside.com