



City of Huntington Beach

File #: 23-211

MEETING DATE: 3/21/2023

REQUEST FOR CITY COUNCIL ACTION

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Al Zelinka, City Manager

VIA: Chris Slama, Director of Community & Library Services

PREPARED BY: Chris Cole, Community & Library Services Manager

Subject:

Approve Amendment No. 1 to the Lease Agreement between the City of Huntington Beach and Michael Ali, dba Zack's Too Beach Concession

Statement of Issue:

The City Council is being asked to approve a 5-year Amendment No. 1 to the Lease Agreement, with an option to renew for two additional 5-year terms, between the City of Huntington Beach and Michael Ali for the continued operation of the beach concession known as Zack's Too, located at 21579 E. Pacific Coast Highway, Huntington Beach, California.

Financial Impact:

Monthly, the City will receive a minimum base rent or a percentage of gross revenues generated at the facility, whichever is greater. Beginning with Year 2 of the Amendment, the base rent will increase annually by the Consumer Price Index for the Los Angeles - Long Beach - Anaheim, CPI-U.

Season	Minimum Base Rent (Year 1)	Percentage Rent
Low Season - (January, February, November & December)	\$327.29	4.5% of Gross Sales
Mid-Season - (March, April, September & October)	\$975.95	8.0% of Gross Sales
Peak Season - (May, June, July & August)	\$1,951.89	11% of Gross Sales

Recommended Action:

Approve and authorize the Mayor and City Clerk to execute "Amendment No. 1 to Lease Agreement between the City of Huntington Beach and Michael Ali, dba Zack's Too" for the continued operation of Zack's Too Beach Concession.

Alternative Action(s):

Do not approve the recommended action and direct staff accordingly.

Analysis:

On January 1, 1995, the City entered into a Lease Agreement with Michael Ali (Lessee) to operate the City-owned beach concession at 21579 E. Pacific Coast Highway (Premises), adjacent to Beach Boulevard. The concession is known as Zack's Too, and has served beach patrons for many years, providing goods and services such as food, drinks, rental equipment, and souvenirs. Previous lease agreement extensions were approved and authorized by City Council in October 2002 and November 2012.

In November 2012, City Council approved a 10-year lease with Lessee. The lease with Zack's Too expired on December 1, 2022. Per Section 5 of the previous lease agreement, "the agreement shall terminate unless extended, or sooner terminated, as provided for herein." Lessee agrees to a 5-year lease term, with an option to renew for two 5-year terms. Monthly, Lessee agrees to a minimum base rent, with annual CPI increases beginning in year 2, or a percentage rent based on gross sales, whichever is greater. Lessee shall operate the concession for a minimum of 200 days per year. Lessee at his/her sole cost and expense shall equip, operate, manage and maintain in the premises in good safe working condition.

Lessee agrees to the new terms of the Amendment and the lease rates are consistent with current market rates for comparable City concession agreements. Lessee shall rebrand the business, including new menu items and outdoor seating within the original 4,500 square foot lease footprint.

A summary of the Lessee's obligations as included in the Amendment is provided below.

- Maintain and operate the premises and adjacent areas within 50 feet in clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all present and future laws, codes, rules or regulations.
- Maintain & repair drain lines and grease traps within the building, along with repair and maintenance of ventilation & fire suppression systems.
- Repair and replace rollup doors where needed, interior walls, ceilings, and floors within the building.
- Paint, stain or seal the Premises' exterior surfaces a minimum of every three years unless City determines in its sole discretion that such work shall be done on a more frequent basis.
- All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year.
- Paint colors must be approved by City prior to application.
- Remove any and all graffiti on the Premises at its sole cost and expense within 48 hours of Lessee receiving notice thereof or Lessee becoming aware of such graffiti.
- Shall repair and/or replace any broken glass within 48 hours regardless of cause, except by fault of City, at its sole cost and expense.
- Repair and/or replace all damage or destruction to the Premises caused by act(s) of vandalism as soon as possible but in no event later than 14 days after the date such damage or destruction occurred.
- Responsible for the payment of all utility charges, including, without limitation, gas, electricity, water, telephone services, cable TV services, internet services, and any other technology services available during the term of this Leases, as well as sewage disposal.
- Responsible for all trash containers and/or trash bins shall be adequately screened and located to the satisfaction of the City.

A summary of the City's obligations as included in the Amendment is provided below.

- May close the Premises for Specific Events with prior notice to Lessee. City shall not close the Premises unnecessarily and will take every step to reopen the Premises in a timely manner.
- May at their discretion waive Lessee's monthly rent fee as compensation should City require a closure for the aforementioned reasons. City shall not be liable for any loss of revenue during such closures.

Based on Lessee's qualifications and previous experience with the City, staff recommends approval of the lease Amendment.

Environmental Status:

Not applicable.

Strategic Plan Goal:

Community Engagement

Attachment(s):

1. Amendment No. 1 to Lease Agreement between the City of Huntington Beach and Michael Ali, dba Zack's Too Beach Concession
2. Lease Agreement Between the City of Huntington Bach and Michael Ali, dba Zack's Too dated November 19, 2012