




MEMORANDUM

Date: October 12, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress 
City Manager

From: Gary Moreira
Senior Property Manager

Subject: **Amendment to Assignment and Minor Modification of Lease Agreement waiving Letter of Credit requirement for SBY Key West, LLC**

Introduction

This is a request by SBY Key West, LLC, as Assignee of the former A1 Boat Services, dba Spencer's Boatyard, to waive the provisions of Paragraph 6 of the Assignment and Minor Modification of Lease Agreement, which provides for Assignee to provide Lessor with a Letter of Credit as security for the faithful performance of the lease by assignee.

Background

A-1 Boat Services, LLC, dba Spencer's Boat Yard, located on city property at 701 Palm Avenue was sold to SBY Key West, LLC in November of 2021. Messer's Richard McChesney and Felix Wiggins are the managing members of SBY Key West, LLC and Assignees under the Assignment and Minor Modification Agreement, Resolution 21-250. Both are personally involved in the daily operation of the boat yard. In January of 2023 a portion of the city's seawall at the Palm Avenue property collapsed causing the tenant to halt their heavy boat lift services. In April of this year, by resolution 23-079, structural and design services were approved to begin the repair project.

While the process for city repairs is taking place, the tenant is proceeding with their own plans to improve the city's property and is proposing to add boat racks, concrete slabs and footings, and concrete drive areas to cover a portion of the now dirt covered site. Their improvement plans also call for a heavier forklift to service the new rack storage amenity, however its increased weight would exceed the rating of the city's planned apron repair adjacent to the seawall. Tenant has proposed a change order, at tenant's expense, to the city's design proposal from Artibus Design that will result in an additional cost of \$32,000.00 to the city's design and permitting service proposal. Using a change order would prevent a prolonged permitting process by eliminating the need to submit the work as an independent project and mitigate tenant's business loss from tenant's inability to use its lift. Rather than asking to reimburse the city over a short period of time for the change order, Tenant prefers to reimburse the city immediately upon approval and asks that the

city consider waiving the letter of credit requirement under the assignment agreement, thereby preserving their current level of operating capital.

Messer's McChesney and Wiggins are estimating the cost of improvements they will contribute to the property at approximately \$700,000.00 over the next two years, which includes boat racks, equipment and concrete site work. The tenants have been excellent with a perfect record of payment and lease compliance and have personally guaranteed performance of the lease. Additionally, a tenant security deposit of \$4,126.88 is on file with accounting. In the unlikely event tenant defaults under the lease, the Assignor, Richard Spencer is still responsible for lease performance under the assignment and confirmed by the signed amendment. The city's boat yard property is valuable and will become more so upon completion of city repairs and tenant improvements. Staff is confident the property's rare waterfront location and infrastructure will continue to provide strong and steady income now and in future years regardless of any risk of tenant turnover. The city will also receive the \$32,000.00 change order amount following commission approval.

Procurement

No financial impact to the city.

Recommendation

Staff recommends approving the elimination of Assignees Letter of Credit requirement.

ATTACHMENTS:

Assignment Amendment

Spencer's Letter

Change order

Amendment to the Assignment and Minor Modification of Lease Agreement.