

AGREEMENT

THIS AGREEMENT is hereby made and entered into this _____ day of _____, 2024, (the “Effective Date”) by and between the City of Delray Beach, a Florida municipal corporation (“City”), whose address is 100 N.W. 1st Avenue, Delray Beach, Florida 33444, and Oceanside Beach Service Inc., (hereafter referred to as “Contractor”), A Florida corporation authorized to do business in the State of Florida, whose address is PO Box 13018 North Palm Beach, FL 33408.

WHEREAS, the City desires to retain the Contractor to provide beach equipment rental concession services in accordance with the City’s Request for Proposal 2023-069 (the “RFP”) and the Contractor’s response thereto, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the Contractor and the City agree as follows:

ARTICLE 1. INCORPORATION OF REQUEST FOR PROPOSAL

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City’s RFP, and the Contractor’s response to the Request for Proposal, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide beach equipment rental for beach equipment rental concession services as identified in the specifications accompanying the City’s RFP, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The City shall pay to the Contractor, in compliance with the Pricing Schedule attached hereto and incorporated herein as Exhibit “A”, according to the terms and specifications of the referenced Request for Proposal.

ARTICLE 4. MISCELLANEOUS PROVISIONS

a. Notice Format. All notices or other written communications required, contemplated, or permitted under this Agreement shall be in writing and shall be hand delivered, telecommunicated, or mailed by registered or certified mail (postage prepaid), return receipt requested, to the following addresses:

- i. As to the City:
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, FL33444
Attn: City Manager

The Contractor shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The Contractor expressly understands and agrees that any insurance protection required but this contract agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the City or its officers, employees, agents, and instrumentalities as herein provided.

ARTICLE 7. ADDITIONAL PROVISIONS

- a. Section 3.3, Beach Equipment, of the RFP is amended to read as follows.

3.3 BEACH EQUIPMENT.

1. Contractor is to start with four hundred (400) set-ups (as defined above and below) are permitted on the beach. The four hundred (400) total includes equipment for Atlantic Dunes Park. This includes no more than three hundred and fifty (350) on the main beach and fifty (50) at Atlantic Dunes Park location. Contractor may increase set-ups to accommodate increased demand.
2. The maximum allowable amount of equipment may be lowered by the City of Delray Beach as needed due to beach erosion, diminished beach size, special events, or other circumstances. The City shall have the right to increase or decrease the number of locations at the discretion of the City Manager.
3. All beach chairs, cabanas, umbrellas, cushions, etc. will be uniform in material, and colors and style must be approved by the City. All equipment must be of very high quality in both form, function, and appearance. Equipment must be in new or like-new condition at all times. Any proposed modifications to the amenities provided herein shall be subject to the prior written approval by the City (this includes any personalization, logos, or other special wording/markings or signage). Setups shall be defined as:
 - a. One (1) umbrella with two (2) chairs or two (2) recliners with cushions and one (1) table; or
 - b. One (1) cabana with two (2) chairs or two (2) recliners with cushions and one (1) table
4. The Contractor shall not be authorized to rent any equipment or products which are not scheduled in their proposal.
5. The City reserves the right to perform random inspections of the equipment to determine quality, safety, and compliance with contract. Violations of the contract will result in monetary penalties as follows:
 - a. Warning: The Contractor will receive a warning of a potential violation (first time only) and be allowed 48 hours to rectify the violation.

- ii. With copy to:
City of Delray Beach
200 N.W. 1st Avenue
Delray Beach, FL 33444
Attn: City Attorney

- iii. As to the Contractor:
Oceanside Beach Service Inc
P.O. Box 13018
North Palm Beach, FL 33408
Attn: Michael J. Novatka, President
Email: mike@beachservice.com

b. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

c. E-Verify. By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if your subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the City or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

ARTICLE 5. CONTRACT TERM

The term of this Agreement shall remain in effect for a term of five (5) years, unless terminated earlier in accordance with terms of the RFP.

ARTICLE 6. INDEMNIFICATION

The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any all liability, losses, or damages, including attorney's fees and costs of defense, which the City or its officers, employees agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors.

RFP 2023-069

Beach Equipment Rental Concession Services

- b. First violation: \$1,000
 - c. Second violation: \$2,500
 - d. Third violation: \$5,000
 - e. Fourth violation: Potential contract termination
- b. Section 4.2, “Annual Net Collections In Excess Of Minimum Annual Guarantee (Revenue Sharing)” is amended to read as follows:

4.2 ANNUAL NET COLLECTIONS IN EXCESS OF MINIMUM ANNUAL GUARANTEE (REVENUE SHARING):

In addition to the Minimum Annual Guarantee (the “MAG”), each quarter, Contractor shall remit an additional flat fee in the amount of \$3,000, to reflect the City’s portion of collections in excess of the MAG from the Contractor’s rental and/or sale of any and all items offered to customers in the operation of the Beach Equipment Rental Concession and Additional Amenities in accordance with the terms of this bid. All payments shall be submitted to the Parks and Recreation Department.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

OCEANSIDE BEACH SERVICE INC.

By: Michael J. Novatka
Print Name: Michael J. Novatka
Title: President 2/15/24

(SEAL)

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization, this 15th day of February, 2024 by Michael Novatka (name of person), as President (type of authority) for Oceanside Beach Service (name of party on behalf of whom instrument was executed).

Personally known OR Produced Identification

[Signature]
Notary Public - State of Florida

