



CITY OF DELRAY BEACH
100 NW 1st AVENUE, DELRAY BEACH, FL 33444

PURCHASE AGREEMENT FOR
SOLICITATION NO. RFP 2018-046
AGREEMENT FOR BEACH EQUIPMENT RENTAL CONCESSIONS

OCEANSIDE BEACH SERVICES

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Delray Beach, a Florida municipal corporation ("City"), whose address is 100 NW 1st Avenue, Delray Beach, Florida 33444, and Oceanside Beach Services, Inc., a corporation (hereafter referred to as "Contractor"), whose address is PO Box 13018 North Palm Beach, FL 33408.

WHEREAS, the City desires to retain the services of the Contractor to provide the goods and services in accordance with the City's Request for Proposals No. 2018-046, 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 PROPOSALS

The terms and conditions of this Agreement shall include and incorporate the terms, conditions, and specifications set forth in the City's Request for Proposals No. 2018-046 and the Contractor's response thereto, including all documentation required thereunder.

ARTICLE 2. DESCRIPTION OF GOODS OR SCOPE OF SERVICES

The Contractor shall provide the goods and/or perform those services identified in the specifications accompanying the City's Request for Proposals, which are incorporated herein by reference.

ARTICLE 3. COMPENSATION

The Contractor shall pay to the City, in compliance with the Pricing Schedule attached hereto and incorporated herein, 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 NW 1st Street
Delray Beach, Florida 33444
Attn: City Manager
Email: lauzier@mydelraybeach.com
- ii. with a copy to: City of Delray Beach
200 NW 1st Street
Delray Beach, Florida 33444
Attn: City Attorney
- iii. As to the Contractor: Oceanside Beach Services, Inc
P.O. Box 13018
North Palm Beach, FL 33408
Attn.: Michael J. Novatka, President
Email: info@beachservices.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. Effective Date. The effective date of this Agreement shall be as of the date it has been executed by both the parties hereto.

d. Termination. The City, at its sole discretion, reserves the right to terminate this Agreement with or without cause immediately upon providing written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement. The City shall be liable only for reasonable costs incurred by Contractor prior to the date of the notice of termination. The City shall be the sole judge of "reasonable costs."

e. Representation. The Contractor certifies that the price and rate represents the lowest price and rate for the products and services of any contract between the Contractor and any other governmental entity within the State of Florida.

f. Indemnity. The Contractor shall indemnify and hold harmless the City and its officers, employees, agents, and instrumentalities from any and 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 arising out of, relating to, or resulting from the performance of the agreement by the Contractor or its employees, agents, servants, partners, principals, or subcontractors. 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 by this 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 the obligations of this section shall survive the term of this Agreement.

g. Assignment. Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party.

h. Law and Venue. This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court.

i. Public Records. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a

reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.

iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.

iv. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

v. If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

j. Inspector General. Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

k. Fiscal Funding. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

l. Insurance. Contractor shall not commence any performance pursuant to the terms of this Solicitation until certification or proof of insurance has been received and approved by the Client. The required insurance coverage is to be issued by an insurance company authorized and licensed to do business in the State of Florida, with the minimum rating of A- VIII or better, in accordance with the latest edition of A.M. Best's Insurance Guide. This insurance shall be documented in certificates of insurance which provides that the Client shall be notified at least thirty (30) days in advance of cancellation, non-renewal, or adverse change. The receipt of certificates or other documentation of insurance or policies or copies of policies by the Client or by any of its representatives, which indicate less coverage than is required, does not constitute a waiver of Contractor's obligation to fulfill the insurance requirements herein. Deductibles must be acceptable to the Client. Contractor must submit a current Certificate of Insurance, naming the Client as an additional insured and list as such on the insurance certificate. New certificates of insurance are to be provided to the Client upon expiration. Contractor shall provide insurance coverage as follows, and shall carry:

- a. Workers' Compensation Insurance – as required by law.
- b. Employer's Liability Insurance - \$1,000,000 per occurrence, \$1,000,000 for each disease, and \$1,000,000 for aggregate disease
- c. Comprehensive General Liability Insurance – with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for Bodily Injury and Property Damage which must include:

- i. Premises and/or Operations on an occurrence basis.
- ii. Independent contractors.
- iii. Products and/or Completed Operations Liability on an occurrence basis.
- iv. Explosion, Collapse, and Underground Coverages.
- v. Broad Form Property Damage.
- vi. Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- vii. Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

m. Complete Agreement. This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

n. Advice of Counsel. The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

o. Modification. No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto, with the same formality and of equal dignity herewith.

p. Attorney's Fees. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.

ARTICLE 5. CONTRACT TERM

The Contract and Agreement shall be effective for five (5) years beginning on or about November 1, 2018, as of the effective date of this Agreement, and shall expire on October 31, 2023.

(The remainder of this page is intentionally left blank)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter written.

CITY OF DELRAY BEACH, FLORIDA

[SEAL]

By: _____
Mark R. Lauzier, City Manager

ATTEST:

By: _____
Katerri Johnson, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
City Attorney

CONTRACTOR

[SEAL]

By: [Signature]
Michael S. Novatka
Printed Name
President
Title

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 13th day of November, 2018, by Michael Novatka, as president (name of officer or agent, title of officer or agent), of Oceanside Beach Service (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced FL driver's license (type of identification) as identification



[Signature]
Notary Public – State of Florida

PRICING SCHEDULE

REVENUE PROPOSAL

Proposers should use this form for submitting its revenue proposal. Proposed revenues to the City will include the annual concession fee that is generated, in accordance with the requirements identified in this Scope of Services, and as set forth in this RFP document.

Annual Fee		Contractor's Proposed
Year One Annual Concession Fee:	(minimum acceptable \$405,000.00)	\$405,000.00
Year Two Annual Concession Fee:	(minimum acceptable \$405,000.00)	\$405,000.00
Year Three Annual Concession Fee:	(minimum acceptable \$415,000.00)	\$415,000.00
Year Four Annual Concession Fee:	(minimum acceptable \$415,000.00)	\$415,000.00
Year Five Annual Concession Fee:	(minimum acceptable \$415,000.00)	\$415,000.00
Total Five Year Concession Fee:		\$2,055,000.00

NOTE: APPLICABLE FLORIDA STATE SALES TAXES SHALL BE ADDED TO THE ABOVE LISTED ANNUAL CONCESSION FEE.