

**CITY OF LAKE WORTH BEACH  
BEACH EQUIPMENT RENTAL CONCESSION CONTRACT**

This CITY OF LAKE WORTH BEACH - BEACH EQUIPMENT RENTAL CONCESSION CONTRACT ("Contract") is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF LAKE WORTH BEACH, a Florida municipal corporation ("CITY"), and OCEANSIDE BEACH SERVICE, INC., a Florida corporation, with a mailing address of P.O. Box 13018, North Palm Beach, FL 33408 ("CONTRACTOR").

**RECITALS**

**WHEREAS**, the CITY issued RFP No. 23-204 for Beach Equipment Rental Concession services ("RFP") which is incorporated herein as if set forth in full; and

**WHEREAS**, the CONTRACTOR submitted its proposal in response to the RFP ("Proposal") which proposal is attached hereto as **Exhibit A** and is incorporated herein; and

**WHEREAS**, the CITY desires to accept CONTRACTOR's Proposal in order for CONTRACTOR to render the services to the CITY as provided herein; and

**WHEREAS**, the CONTRACTOR further warrants that it is experienced and capable of performing the required services hereunder in a professional and competent manner; and

**WHEREAS**, the CITY finds entering into this Contract with the CONTRACTOR for provision of the services as described herein serves a valid public purpose.

**NOW THEREFORE**, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. **Term of Contract:** The term of this Contract shall be for a period of five (5) years. In its sole discretion, the CITY may extend this term by an additional ninety (90) days if it is in the best interest of the CITY. All the same terms and conditions shall apply to an extension of this Contract unless otherwise agreed to in writing by the parties.

2. **Scope of Services:** The CONTRACTOR shall perform all services as described in the RFP and the Proposal in accordance with this Contract (hereinafter "Services," "services," or "Concession"). Such services shall be performed in accordance with the RFP, the Proposal, and all applicable laws, ordinances, rules and regulations applicable to this Contract or otherwise applicable to beach concessionaires. At its sole discretion, the CITY may require the addition or deletion of Services from the Contract, during the Contract term (and any extension thereof), as the requirements and needs of the CITY change. This may include, but not be limited to, additional items of a similar nature but not specifically listed in the Contract, increases in the quantity of equipment, changes or elimination of equipment, modifications in operating hours, or similar type changes. The CONTRACTOR's rights under this Contract are nonexclusive.

The CITY has entered into the "Accessibility of Beach Services Agreement," dated August 25, 2022, with Gulfstream Owner, LLC, the owner of the Gulfstream Hotel, located at 1 Lake Avenue, Lake Worth Beach, Florida ("Hotel"). Pursuant to this Accessibility Agreement,

the CONTRACTOR agrees to make beach concessions available to Hotel guests at a commercially reasonable rate not to exceed the rate charged to the general public. Hotel guests may utilize the beach concessions provided by the CONTRACTOR to the same extent as other users of the beach. All beach concession services will be available on a first come, first served basis to both the public and Hotel guests. Such beach concession services for Hotel guests must be obtained by the Hotel guests in person directly with the CONTRACTOR and not by Hotel staff or by appointment. If and when the Hotel requests an agreement with the CONTRACTOR to establish a commercially reasonable rate for Hotel guests for beach concession services, the procedures for the CONTRACTOR to charge the Hotel directly for its guests' concession services, and other terms and conditions, the CONTRACTOR agrees to negotiate in good faith with the Hotel.

3. **Compensation:** The CONTRACTOR shall pay to the CITY a fixed annual concession fee in the amounts set forth below for each year of this Contract:

- A. For year one- \$126,000.00;
- B. For year two- \$137,000.00;
- C. For year three-\$148,000.00;
- D. For year four- \$159,000.00;
- E. For year five- \$170,000.00; and
- F. For any extension – Existing monthly payment.

Said annual fee shall be paid in twelve (12) equal installments on a monthly basis in advance. The CONTRACTOR shall be responsible for the payment of all applicable taxes, including but not limited to state sales taxes, associated with the operation of the concession and the use of public property. All such taxes shall be paid by the CONTRACTOR at the same time as the monthly fee. The first monthly payment shall be due by 5:00 P.M. on October 1, 2023, and shall thereafter be due ten (10) days prior to the commencement of each month thereafter without further notice or demand. Said payment shall be due without billing. Late payments shall bear interest at a rate of 1 1/2% per month. If the payment is not received within fifteen (15) days of the payment due date, the CITY may take possession of the CONTRACTOR's assets located on CITY property and terminate this Contract without penalty to the CITY.

4. **Equipment; Storage:** Equipment as referred to herein shall generally mean strap lounges and cushions, cabana hoods, umbrellas, sand armchairs with footrests, wooden armchairs, tables, welcome station beach chairs, welcome station umbrellas, boogie boards, and any other equipment required under the RFP and as otherwise set forth in the Proposal. The CONTRACTOR shall not be authorized to rent any equipment, which is not scheduled in its Proposal and covered by CONTRACTOR's insurance policy furnished to the CITY, unless prior to such rental, the CONTRACTOR shall have furnished an additional list of equipment to the CITY's Leisure Services Director and received approval from the CITY in writing. The CONTRACTOR has secured the CITY's Leisure Services Director's approval of the design, type, material and color (as defined and shown in the Proposal) of the equipment. CONTRACTOR shall not change, alter, or modify CITY-approved design, type, material or color of any beach equipment without the prior written consent of the City Manager or the City Manager's designee.

All equipment shall be maintained in excellent working condition and clean and free of defects such as visible rust, wear, tears, stains, fading, dirt, grime or any other condition that would

diminish its appearance. All equipment shall meet strict safety standards, and equipment which is broken or poses a potential safety risk shall be immediately removed and replaced. The contractor will be solely responsible for ensuring that all equipment is safe and meets all regulations and other safety requirements. All equipment shall be inspected on a schedule as is necessary to ensure the sound mechanical and working condition and appearance. The CITY's Leisure Services Director or designee, in his/her sole discretion, shall have the right to have equipment not meeting the minimum standards removed from the beach. The CONTRACTOR's detailed plan for the method to secure umbrellas and cabana hoods while in use, to ensure the safety of customers and beachgoers is set forth in the Proposal and the CONTRACTOR shall abide by the same. If such method fails to ensure the safety of others, the CONTRACTOR shall use another method to secure such equipment and shall seek the approval of the CITY for the same. The CONTRACTOR shall only be permitted to sell the items covered by this Contract. No food or beverages may be sold. The CONTRACTOR shall not interfere with a private owner's use of their equipment on the public beach and shall not in any other way interfere with persons using the beach.

The CONTRACTOR shall secure all equipment using proper means and locking devices and otherwise in accordance with the Proposal. Equipment storage shelters are not permitted without the prior written approval of the Department of Environmental Protection and the CITY. The CITY shall not be responsible for any loss, damage or theft of any equipment. The security for all property, equipment and supplies owned and provided by the CONTRACTOR shall remain the responsibility of the CONTRACTOR. Costs relating to the repair or replacement of such items, stolen or lost, or damaged shall be at the sole expense of the CONTRACTOR.

5. **Use of Beach:** This Contract is for concession services at the municipal beach and is not a lease or a franchise. The CONTRACTOR acknowledges that all of the beach areas are public and, as such, concession operations must not restrict, or appear to restrict, the general public's access to the beach or any other public place, or in any way limit the public nature or ambiance of the beach. The CONTRACTOR will conduct its operations so as to maintain a reasonably quiet and tranquil environment for the adjacent area and make no public disturbances. The CONTRACTOR shall operate in a manner that will ensure the convenience and safety of the public. The CONTRACTOR's operations shall include an awareness of and measures to ensure the protection, conservation, and preservation of the resources of the municipal beach.

Notwithstanding the Concession Area (generally, the north side of Lake Worth Beach Pier that has access for the general public or as otherwise defined by the CITY), CONTRACTOR understands, agrees and acknowledges that such Concession Area along with any and all other public beach areas not specifically identified herein, are public and, as such, must remain available for the use and enjoyment of the general public whether or not the public chooses to use any of the CONTRACTOR's equipment. In the event that a member of the public is within the Concession Area, as set forth herein, CONTRACTOR agrees to allow for his/her continued peaceful enjoyment of said area.

6. **Management and Staffing; Subcontractors:** CONTRACTOR shall provide and manage the Services provided during the term of this Contract in compliance with this Contract. An experienced manager shall be available for access to oversee the daily operation of this concession and with the full authority to direct the operation and immediately take all corrective action required to correct erroneous procedures and ensure complete and continuous

compliance with requirements and specifications of this Contract at all times while the concession is in operation. CONTRACTOR shall, at all times, maintain an adequate staff to provide efficient, competent and experienced service, on a full-time basis and necessary for the satisfactory completion of Services hereunder. Staff shall also advise all persons thereon, when necessary, of applicable rules, regulations and ordinances pertaining to the use and enjoyment of the beach rental equipment. An employee shall be present at all times at the concession location during the hours of operation. CONTRACTOR shall provide all Services in a business-like and professional manner so as to encourage its use and shall assure that the public is treated courteously.

The CONTRACTOR shall employ workers to service this operation who are literate, neat, clean, well-groomed, courteous, and conversant in the English language. All of the CONTRACTOR's employees shall wear an appropriate uniform to include a standardized uniform shirt and shorts identifying the name of the company, and such uniform shall be pre-approved by the CITY. All uniforms worn shall be maintained in a neat and clean manner. "Hawking" to attract attention and/or summoning or accosting any person is prohibited. The playing of music or allowing other activity that disturbs the public is prohibited. The CITY's Leisure Services Director shall have the right to require any employee(s) of the CONTRACTOR to be permanently removed from the beach premises whenever it appears to be in the best interest of the CITY. In the event the CITY finds that an employee of the CONTRACTOR is not satisfactory, it will notify the CONTRACTOR and request a substitution of personnel satisfactory to the CITY.

Any subcontractor of the CONTRACTOR shall be subject to the prior approval of the CITY. CONTRACTOR shall ensure that all of CONTRACTOR's subcontractors perform in accordance with the terms and conditions of this Contract. CONTRACTOR shall be fully responsible for all of CONTRACTOR's subcontractors' performance, and liable for any of said subcontractors' non-performance and acts and omissions.

7. **Hours of Operation:** During the term of this Contract, CONTRACTOR shall provide the Services seven (7) days per week, on a 52 week per year schedule. CONTRACTOR shall operate the Concession from 9:00 a.m. to 5:00 p.m. or as otherwise directed by the CITY due to daylight savings time or other circumstances, as determined in the sole discretion of the CITY. CONTRACTOR-requested exceptions shall only be considered when inclement weather conditions do not warrant the operation of the Concession or Services or with an advance request for such change and approval by the City Manager or the CITY'S Leisure Services Director at their sole discretion.

8. **Advertising:** Unless approved in advance by the CITY in writing, the CONTRACTOR shall not display any signs or advertising matter, except a list of prices/rental rates charged, and a pennant at the Concession Area not larger than twelve (12) inches wide and twenty-four (24) inches long, which shall show the name of the CONTRACTOR. Notwithstanding anything to the contrary set forth in this Contract, the CONTRACTOR shall have no right to display any advertising except as set forth in this Section. The CONTRACTOR may not have any advertisements on the equipment except the small name of the concession as approved by the CITY. CONTRACTOR shall remove any object or promotional material which the CITY, in its sole discretion, deems inappropriate.

9. **Rental Rates:** Rental rates and prices for concession services shall be consistent with those charges for similar services and merchandise in the area of recreational facilities

and tourist attractions in the Palm Beach County area. The rates and charges for rental of CONTRACTOR's equipment which are included in the Proposal are specifically incorporated herein and made a part of this Contract. Such rates have been reviewed and approved by the CITY prior to the commencement of this Contract. Such stated rates and charges shall be consistent throughout the term of this Contract. The stated rates/prices for equipment shall be posted and visible to all customers. Any requests for modification and changes in such rates must be presented to the CITY with a minimum of 30 days prior to the desired date of rate change. Such change requests must be in writing and directed to the CITY's Leisure Services Director. The Director shall review and accept, refuse or modify such rate change requests. The CITY shall have the final decision, in its sole discretion, relating to any such change requests.

10. **Appearance of Premises:** The CONTRACTOR shall be responsible for having a neat, sanitary, and organized operation at all times and for maintaining this condition during the operating hours of the Concession Area and otherwise where equipment is used. The concession operation and Concession Area shall be maintained by the CONTRACTOR to provide an aesthetically pleasing appearance and to ensure that its operations are not detrimental to the immediate surroundings. The CITY shall provide, at the CITY's expense, all trash and rubbish receptacles which will be placed within the confines of the Concession Area in quantity adequate for the CONTRACTOR'S own use and that of the public. The CONTRACTOR shall be responsible for ensuring all trash and rubbish within the Concession Area is placed in the provided receptacles. The removal and disposal of the trash and rubbish from the receptacles shall be the responsibility of, and at the expense of the CITY.

11. **Location of Services:** The CONTRACTOR shall set up its operations as set forth in the Beach Concession Operations Map, which is attached hereto as **Exhibit B** and incorporated herein. Such Map is subject to change as determined in the sole discretion of the CITY. Equipment may not be placed or installed closer to the water mark than the lifeguard stations maintained by the CITY. The area between the waters of the Atlantic Ocean and the lifeguard station(s) shall be for the use of the public in general. No equipment may be placed in picnic areas. The daily staging location of all cabanas and umbrellas shall be subject to CITY approval, in its sole discretion. The CITY shall have the right to require a change in such location. There shall not be placement of chairs, umbrellas or cabanas within a 20-foot perimeter of the lifeguard stand. The CONTRACTOR also agrees to relocate any of its equipment used in connection with this concession upon demand of the City Manager or designee, if the CITY determines that a hazardous or unsightly condition exists in an area where such equipment is used or where the CITY is undertaking a special event.

12. **Improvements:** CONTRACTOR may make alterations, additions or improvements in or to the premises used for concessions only with the written consent of the City Manager or designee. All proposed improvements by the CONTRACTOR shall meet all applicable federal, state and local requirements and shall be subject to written approval by the City Manager or designee in his/her sole discretion. During any improvements, CONTRACTOR is to continue providing the Services required herein. The CONTRACTOR shall coordinate such improvements with the CITY. All additions, fixtures or improvements affixed to the premises shall remain as part of the premises at the expiration or termination of this Contract unless the CITY specifically requests that said additions, fixtures or improvements be removed. If the CITY requests removal, the CONTRACTOR shall remove said additions, fixtures or improvements within thirty (30) days of the expiration or termination of this Contract. All such fixtures and

improvements shall become the sole property of the CITY immediately upon installation or construction; however, CONTRACTOR shall maintain the same at its sole cost, unless otherwise agreed to in writing by the CITY. All equipment, furnishings, signage, etc. shall be in keeping with the appropriate standards of decor within the beach environment/atmosphere. CONTRACTOR agrees that all equipment, furnishings and improvements shall meet all qualified application, construction, environmental, and health and safety codes, and any other applicable codes.

13. **Compliance with Law:** The CONTRACTOR, its officers, employees, agents, and subcontractors shall comply with all applicable City, County, State, and Federal laws, ordinance, rules, regulations, permits, and licenses in the provision of Services and its operations under this Contract and the use of the beach. This shall include all laws, ordinance, rules, regulations, permits, and licenses currently in force and those adopted hereafter. For all uses, the CONTRACTOR shall, at its own expense, obtain all necessary permits, pay all license fees and taxes required for the operation of the concession. The CONTRACTOR shall maintain a valid business tax receipt at its expense from all applicable authorities.

14. **Independent Contractor:** The CONTRACTOR is an independent contractor under this Contract. Personnel services provided by the CONTRACTOR shall be by employees of the CONTRACTOR and subject to supervision by the CONTRACTOR, and not as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security, workers' compensation, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Contract shall be those of the CONTRACTOR.

15. **Force Majeure:** The CITY and CONTRACTOR will be excused from the performance of their respective obligations under this Contract when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. No obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. The non-performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the CITY may excuse performance for a longer term. Economic hardship of the CONTRACTOR will not

constitute Force Majeure. The term of the Contract shall be extended by a period equal to that during which either party's performance is suspended under this Section.

16. **Time:** The parties agree that time is of the essence relative to the performance of any term, condition, or covenant herein.

17. **Scrutinized Companies:** CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate the Contract at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Contract. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of the Contract, including any and all renewals. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

18. **E-Verify:** Pursuant to Section 448.095(5), Florida Statutes, the CONTRACTOR shall: (1) Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees; (2) Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien; (3) Maintain copies of all subcontractor affidavits for the duration of this Contract; (4) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes; (5) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and (6) Be aware that if the CITY terminates this Contract under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Contract.

19. **Parking Requirements:** No parking spaces will be provided by the CITY as part of this Contract. CONTRACTOR and its employees shall utilize those parking facilities available to the general public.

20. **Use of Premises:** The CONTRACTOR shall not use the Concession Area for any other purpose than the rental of equipment as specifically provided for herein, and the CONTRACTOR shall so conduct its business as to render a service to the public in a dignified manner.

21. **Special Events:** The CITY will hold sponsored and co-sponsored events, activities and productions on the beach from time to time ("Special Events"). In such cases, the CITY may request that the CONTRACTOR cease and desist operations during the term of and in the area of the Special Event, and the CONTRACTOR shall cease and desist as requested.

CONTRACTOR agrees to cooperate with the CITY for all Special Events. During Special Events, the CONTRACTOR may be allowed to continue operations or, if available, be assigned a temporary location elsewhere within close proximity of the Concession Area. During the Special Event, the CONTRACTOR has the option of operating its equipment from the temporary site or stopping operations until the Special Event is over. The CITY reserves the right to allow other rental of concessions to operate upon the Concession Area or in close proximity to that site during Special Events as may be approved by the CITY.

22. **Sea Turtles:** CONTRACTOR agrees and understands that the State of Florida has advised that in order to place facilities and/or equipment on the beach, surveys for marine turtle nesting activity must be on-going between the period of March 1 and October 31, or as determined by the State of Florida each year. The following is agreed by the CONTRACTOR in order to be in compliance with State of Florida and local laws as they relate to sea turtles:

A. It is the responsibility of the CONTRACTOR to comply with section 379.2431, Florida Statutes and Chapter 68E-1, F.A.C., as applicable, and to abide by any order issued by the State of Florida and/or cooperate with Palm Beach County to ensure that nesting surveys may be conducted in accordance with the conditions set forth by the State and/or the County.

B. In the event an unmarked marine turtle nest is exposed, or a dead, injured, or sick marine turtle is discovered, the CONTRACTOR shall immediately call the Florida Fish and Wildlife Conservation Commission (FWC) at 1-888-404-3922 or immediately notify the appropriate CITY authority such that appropriate conservation measures may be taken.

C. If CONTRACTOR, its officers, employees or agents sees someone harassing a sea turtle or poaching a nest, the CONTRACTOR shall immediately call the FWC at 1-888-404-3922 to report the matter.

D. No temporary lighting associated with the concession will be permitted at any time during the marine turtle nesting season and no permanent lighting is authorized.

E. The placement and removal of facilities and equipment on the beach shall be conducted during daylight hours and shall not occur in any location prior to completion of the necessary marine turtle protection measures.

F. Disturbing the existing beach and dune topography and vegetation is prohibited.

23. **Annual Reports:** If requested by the CITY, the CONTRACTOR shall submit an annual CPA certified statement of gross revenue to the CITY, in a form consistent with generally accepted accounting principles. Such statement shall be accompanied by a report from an independent CPA firm. The period covered by the certified statement of gross revenue shall coincide with the previous Contract year and will be submitted to the CITY within sixty (60) days after the end of each Contract year. The annual CPA certified gross revenue statement shall be submitted to the Director of Finance. The form of all records and reports shall be subject to the approval of the City Manager or designee. Recommendations for changes, additions, or deletions by the City Manager or designee must be complied with by the CONTRACTOR. The City Manager or designee must be permitted, during normal business hours, to audit and examine the books of account, reports, and records of the CONTRACTOR relating to this Contract.



24. **Surrender Of Concession Area:** At the expiration of this Contract, or earlier termination in accordance with the terms of this Contract, CONTRACTOR shall surrender the beach premises and the Concession Area in same condition as the premises and Concession Area(s) were prior to the commencement of this Contract, reasonable wear and tear excepted (including any beach erosion not directly caused by CONTRACTOR and/or its operation). CONTRACTOR shall remove all of its equipment, fixtures, and personal property, etc., upon forty- eight (48) hours written notice from the City Manager or designee, unless a longer time period is agreed to by the CITY. CONTRACTOR's obligation to observe or perform this covenant shall survive the expiration or other termination of this Contract. Continued occupancy of the beach premises and/or Concession Area(s) after termination of this Contract shall constitute trespass by the CONTRACTOR, and may be prosecuted as such.

25. **Liability and Insurance:** The CONTRACTOR assumes all risks in the operation of the concession and the provision of all Services herein. The CONTRACTOR agrees that it shall be solely responsible and answerable in damages for all accidents or injuries (including death) to persons or property, whether directly or indirectly arising out of or related to the operation of this concession, the services provided, or arising by virtue of the negligence or improper conduct of the CONTRACTOR, its officers, employees, agents, subcontractors, or any other individual or entity engaged by the CONTRACTOR to perform under this Contract. The CONTRACTOR shall be responsible for all damage to CITY property or the CITY beach caused by the CONTRACTOR, its officers, agents, employees and subcontractors. The CONTRACTOR shall promptly notify the CITY of any such damage and promptly correct such damage at the sole expense of the CONTRACTOR. If the CONTRACTOR fails to correct the damage to the reasonable satisfaction of the CITY, the CITY may correct the damage and invoice the CONTRACTOR which invoice shall be paid upon receipt. Except as may be provided specifically herein, neither party shall be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

The CONTRACTOR shall submit certificates of insurance in compliance with all insurance coverages, amounts, and other requirements set forth in the RFP at the time of execution of this Contract. The coverage is to remain in force at all times during the Contract term and any extension thereof, and no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY. The "City of Lake Worth Beach, its officials, employees and agents" are to be added as an "additional insured" with relation to General Liability and Automobile Insurance on a primary, non-contributing basis. Any costs for adding the City as "additional insured" will be at the CONTRACTOR's expense.

Certificate holder should be addressed as follows:

City of Lake Worth Beach  
Risk Manager  
7 North Dixie Hwy  
Lake Worth, FL 33460

It is agreed by and between the CONTRACTOR and the CITY that in the event any person, firm or corporation should sustain damages not covered by the insurance furnished by the CONTRACTOR as herein provided or in excess of the limits of said insurance, then in that event,

the CONTRACTOR agrees to indemnify and hold harmless the CITY in accordance with the Indemnification and Hold Harmless section in this Contract. This section shall survive the termination of this Contract.

26. **Rights of Entry; Inspections:** The CITY, its officers, agents, employees, and representatives shall have the right, at all reasonable times, to enter upon the beach premises and/or Concession Area for the purpose of inspecting and observing the performance of the CONTRACTOR, officers, employees and agents under its obligation herein. The CITY may schedule mandatory inspections of the equipment and operations areas, but is not required to do so.

27. **Termination by City:** The City may terminate this Contract in any one of the following circumstances:

A. For Cause: In the event of any of the following defaults, the CITY may terminate this Contract:

- 1) If the CONTRACTOR fails to perform in the manner called for in the Contract;
- 2) If the CONTRACTOR fails to comply with any term or condition of the Contract or with applicable law, ordinance, rule, regulation, permit or license;
- 3) If CONTRACTOR fails to provide the required Services and/or abandons or vacates the beach premises or Concession Area(s) prior to the expiration of the term hereof; or
- 4) If CONTRACTOR fails to make the payments as set forth herein.

If CONTRACTOR is in default, the CITY shall provide written notice of said default to the CONTRACTOR and provide the CONTRACTOR fourteen (14) days to cure said default, or if such default cannot be cured within the 14 days, the period for curing shall be extended for a reasonable time provided the CONTRACTOR has made and continued to make a diligent effort to effect such cure. In no case shall the time to cure extend beyond thirty (30) days, unless agreed to in writing by the CITY. If such default is not cured within 14 days (or other time agreed to by the CITY) after written notice is given to CONTRACTOR, the CITY may, at its sole option and discretion, immediately terminate this Contract; take such action or institute such proceedings as in its opinion are necessary to cure such defaults; and/or, recover any and all expense to the CITY for damages resulting from such default(s). If a termination notice is given to the CONTRACTOR, the term of this Contract shall terminate upon the date specified in such notice from CITY to the CONTRACTOR. On the date so specified, CONTRACTOR shall then quit and surrender all beach premises and Concession Area(s) to CITY.

Upon the termination of this Contract, all rights and interest of CONTRACTOR in and to the beach premises and Concession Area(s) and to this Contract, and every part thereof, shall cease and terminate. The CITY shall have the right to pursue any and all of the following for the CONTRACTOR's default(s): take possession of all equipment and other personal property of CONTRACTOR and store it at CONTRACTOR's expense; the right to injunction or other similar relief available to it under Florida law against CONTRACTOR; and/or the right to maintain any and all other actions available at law or in equity.

B. For Convenience: Upon forty-five (45) calendar days' prior written notice to the CONTRACTOR, the City may, without cause and without prejudice to any other right or remedy, terminate this Contract in whole or in part for the CITY's convenience whenever the CITY determines that such termination is in the best interest of the CITY in its sole discretion. Where the Contract is terminated for the convenience of the CITY, the notice of termination to the CONTRACTOR will state that the Contract is being terminated for the convenience of the CITY and after forty-five (45) days, the Contract shall terminate except for the provisions stated as surviving termination. In the event of termination or partial termination by CITY of the Contract for convenience, CONTRACTOR hereby acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind of nature, against the CITY, its officers, employees or its agents, including but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations for beach equipment rental or any other service provided under this Contract.

28. **Termination by Contractor:** In the event of a material breach of this Contract by the CITY, the CONTRACTOR shall provide the CITY with notice of the breach and provide the CITY thirty (30) days to cure the breach, or if such default cannot be cured within the 30 days, the period for curing shall be extended for a reasonable time provided the CITY has made and continued to make a diligent effort to effect such cure. If the breach is not timely cured, the CONTRACTOR's sole exclusive remedy shall be to terminate this Contract upon thirty (30) days' prior written notice.

29. **Indemnification and Hold Harmless:** The CONTRACTOR agrees to indemnify, defend, and hold the CITY, its officials, employees, and agents harmless from and against any and all liability on account of any damages, injuries, death, omissions, commissions, actions, claims, suits, judgments, and damages accruing, including court costs and attorneys' fees at all levels of trial and appeal (collectively, "Claims"), as a direct or indirect result of the CONTRACTOR's performance (or lack thereof) under this Contract or the CONTRACTOR's violation of law, ordinance, rule or regulation while performing or failing to perform under this Contract. This section includes acts or omissions by the CONTRACTOR, its officials, employees, agents, contractors, subcontractors, and any other individual or entity engaged by the CONTRACTOR to perform under this Contract. Nothing contained in this Contract shall be construed or interpreted as consent by the CITY to be sued nor as a waiver of sovereign immunity beyond the waiver and limitations set forth in Section 768.28, Florida Statutes, as amended from time to time. The parties agree that the provisions, waiver, and limitations set forth in Section 768.28 shall apply to this Contract to claims arising in tort and to claims arising in contract. This section shall survive termination and expiration of the Contract.

30. **Notice:** Whenever either party desires to give notice unto the other, it must be given by written notice sent by Certified or Registered mail, with return receipt requested; hand-delivery (with written receipt); or, nationally recognized over-night courier, addressed to the party to whom it is intended, at the place specified as the place for giving of notice. For the present, the parties designate the following as the respective places for the giving of notice to wit:

CITY OF LAKE WORTH: City Manager  
City of Lake Worth Beach

7 North Dixie Hwy  
Lake Worth Beach, FL 33460

CONTRACTOR: Oceanside Beach Service, Inc.  
Michael Novatka  
P.O. Box 13018  
North Palm Beach, FL 33408

31. **Modification; Waiver; Survival:** Except where specific authorization is delegated to the City Manager or designee or the City's Leisure Services Director or other City representative, no waiver or modification of this Contract or any covenant, condition, or limitation, contained in this Contract shall be valid unless in writing, and duly executed by all parties. Failure of a party to enforce or exercise any of its rights under this Contract shall not be deemed a waiver of that party's right to enforce or exercise said rights at any time thereafter. Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract (including an extension thereof) shall survive its expiration or earlier termination.

32. **Third-parties; Assignment; Successors:** Nothing under this Contract shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Contract shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Contract, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Contract. In the event the CITY consents to an assignment or delegation, the assignee, or the attorney for the assignee, on the assignee's behalf, shall agree in writing to personally assume, perform, and be bound by this Contract's covenants, conditions, obligations and provisions. Subject to the provision regarding assignment, this Contract shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

33. **Governing Law and Venue; Remedies; Waiver of Jury Trial:** The validity of this Contract and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue for any and all disputes shall be in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS CONTRACT.

34. **Enforcement Costs:** All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the

Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract. This provision does not apply to the Indemnification and Hold Harmless section of this Contract.

35. **Severability:** Should any part, term or provision of this Contract or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

36. **Counterparts:** This Contract may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. Each of the parties shall sign a sufficient number of counterparts, so that each party will receive a fully executed original of this Contract.

37. **Public Entity Crimes:** CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

38. **Preparation:** This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

39. **Palm Beach County Inspector General:** In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

40. **Public Records:** The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the CITY as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- A. Keep and maintain public records required by the CITY to perform the service.
- B. Upon request from the CITY's custodian of public records or designee, 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 Chapter 119, Florida Statutes, or as otherwise provided bylaw.
- C. 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 this Contract and following completion of this Contract if the

CONTRACTOR does not transfer the records to the CITY.

D. Upon completion of this Contract, 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 Contract, 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 Contract, 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 or designee, in a format that is compatible with the information technology systems of the CITY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE THEIR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: MELISSA COYNE, AT (561) 586-1659, MCOYNE@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HWY., LAKE WORTH BEACH, FL 33460.**

41. **Entire Agreement; Controlling Provisions; Effective Date:** This Contract represents the entire agreement between the parties. This Contract consists of the recitals set forth above (which are hereby incorporated herein), terms and conditions provided herein, the RFP, the Proposal and all other Exhibits attached hereto, if any. This Contract supersedes any and all other Contracts, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Contract, statement, or promise relating to the subject matter of this Contract which is not contained herein shall be valid or binding. Unless otherwise agreed to by the City in writing, to the extent that there exists a conflict between the Contract documents, the documents shall control in the following order: (1) Contract; (2) RFP; (3) Proposal; (4) Other Contract documents, if any.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, CMC, City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONTRACTOR: OCEANSIDE BEACH SERVICE, INC.**

[Corporate Seal, if required]

By: \_\_\_\_\_  
Michael Novatka, President

STATE OF FLORIDA)  
COUNTY OF PALM BEACH)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or  
• online notarization on this 29<sup>th</sup> day of August, 2023, by MICHAEL  
NOVATKA, as PRESIDENT of OCEANSIDE BEACH SERVICE, INC., a Florida corporation,  
and who is personally known to me or who has produced the following as identification:  
driver license

[Notary Stamp]

\_\_\_\_\_  
Signature of Notary Public

