

BEACH COMFORT SERVICES AGREEMENT

between the

CITY OF LONG BEACH

and

BEACH COMFORT, INC.

THIS AGREEMENT made this 21st day of ~~May~~ ^{NOVEMBER} 2016 by and between the City of Long Beach, a municipal corporation of the State of New York with a business address at 1 West Chester Street, Long Beach, Nassau County, New York, 11561 (hereinafter "City") and Beach Comfort, Inc., a domestic corporation with a business address at 74 West Park Avenue, Suite 2, Long Beach, New York 11561 (hereinafter "Beach Comfort").

WITNESSETH

WHEREAS, the City desires to enter into an Agreement with Beach Comfort to perform the services described herein; and

WHEREAS, Beach Comfort desires to perform the services described in this Agreement;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the Parties agree as follows:

1. **AUTHORITY:** This Agreement is entered into pursuant to City Council Resolution No. 134/2015 adopted on December 1, 2015. A true copy of the aforementioned resolution is annexed hereto as "Exhibit A" and incorporated herein.

2. **TERM OF AGREEMENT:** This Agreement shall commence on December 2, 2015, and terminate on December 1, 2020. Upon termination, this Agreement shall include two, five year options to extend which may be executed upon mutual consent of the parties. Consent to execute the options on behalf of the City shall be based on the sole discretion of the City Manager.

3. **COMPENSATION:**

(a) The City shall be paid an annual license fee of \$8,000 subject to five percent (5%) annual increases of said licensing fee throughout the Term of this Agreement. Half of the annual license fee payment to the City shall be due on or before July 15 of each year included in the Term of this Agreement, while the second half of the annual license fee payment shall be due on or before September 15 of each year included in the Term of this Agreement.

(b) In addition to its annual license fee, the City shall receive the following in kind services from Beach Comfort:

(1) Beach Comfort shall supply no less than one hundred (100) chairs for the City of Long Beach Summer Fireworks VIP Seating Area.

(2) Beach Comfort shall supply chairs and umbrellas for the Wounded Warriors Weeklong Beach event, which shall consist of no less than fifty chairs and fifty umbrellas. In addition, Beach Comfort must have at least one individual on staff prepared to service the Wounded Warriors Weeklong Beach event throughout its duration.

(3) Beach Comfort shall supply chairs and umbrellas to Special Police Units, on request, for selected undercover police operations. For these occasions, Beach Comfort shall supply approximately two chairs and one umbrella on at least ten separate occasions throughout the beach season.

(4) Beach Comfort shall make best efforts to assist in ordering new umbrellas and umbrella replacement parts for Ocean Beach Park lifeguards and Ocean Beach Park ticket taker posts.

(5) Beach Comfort shall supply chairs and umbrellas for the Special Needs Surf Event, consisting of no less than fifty chairs and fifty umbrellas.

4. **SCOPE OF SERVICES:** The City hereby retains Beach Comfort to implement a Beach Chair and Umbrella Rental program as follows:

(a) Beach Comfort may solicit advertisers for the purpose of selling advertising space on beach chairs and umbrellas. Advertising on beach chairs and umbrellas may only be located on the outside and inside umbrella tops, umbrella poles, chair backs, fronts, and seats, and on beach chair insert cards.

(b) Beach Comfort shall only solicit advertising of a reputable nature. No alcohol or tobacco advertising shall be permitted. Proof of the ads to be placed on the beach chairs and umbrellas shall be submitted to the City Manager for final approval, to be made in the City Manager's sole discretion. Beach Comfort may have advertisers distribute, free of charge, information and promotional materials during Beach Comfort's business hours.

(c) Beach Comfort shall establish and maintain Beach Chair and Umbrella rental concessions at a minimum of five (5) locations on the Ocean Beach Park. The locations are: (1) Riverside Boulevard; (2) Edwards Boulevard; (3) National Boulevard; (4) Long Beach Boulevard; and (5) Lincoln Boulevard. During the Term of this Agreement Beach Comfort may provide additional rental locations with prior written consent from the city manager, which consent is to be provided at the city managers' sole discretion. Beach Comfort will provide services to best meet the beach visitors' needs in a professional manner. If the City should desire additional beach chair and umbrella locations, the City shall provide a right of first refusal to Beach Comfort. The City shall notify Beach Comfort of any beach chair and umbrella rental proposal received by from a third party during the term of this Agreement. Beach Comfort shall have thirty (30) days after said notification to elect to exercise its right of first refusal in writing, on such terms and conditions contained in the third party proposal.

(d) Beach Comfort may be permitted to use their ATV (All Terrain Vehicle) for the transport of the chairs and umbrellas from their overnight storage facilities at to the rental locations on the beach. The vehicle shall be driven by a supervisor of Beach Comfort, must be driven in the beach emergency lane only, and shall be subject to any

regulations or directives given by the Long Beach Police or the Long Beach Lifeguards. Beach Comfort must provide the City with proof of insurance of said vehicle prior to it being driven on the Ocean Beach Park.

(e) Beach Comfort shall staff each location with competent employees who shall be in attendance at all times during business hours. Supervisory personnel shall also be in attendance on a daily basis.

(f) Beach Comfort shall rent the beach chairs and umbrellas to the public at reasonable rates. Said rates shall be approved by the City Manager prior to the opening of the summer beach season, approval of which lies in the discretion of the City Manager, which shall not unreasonably be withheld. The rates for Beach Comfort's services shall be visibly displayed at all Beach Comfort locations.

(g) City acknowledges that, notwithstanding anything else to the contrary in this Agreement, the beach chairs and umbrellas provided for rent pursuant to the scope of services in this Agreement are and will remain the sole and exclusive property of Beach Comfort.

(h) In addition to beach chair and beach umbrella rentals, Beach Comfort may provide beach chair rental services at all musical events located in the vicinity of the Ocean Beach Park and the Long Beach Boardwalk. Chairs which are rented at the musical events may not be rented for more than five dollars (\$5.00) per chair.

(i) In addition to beach chair and beach umbrella rentals, Beach Comfort may sell towels at a price no greater than twenty five dollars (\$25.00) per towel throughout the term of this Agreement.

(j) Beach Comfort shall, at all times, follow direction of the Long Beach Lifeguards, Ocean Beach Park Supervisors, Long Beach Police Department, and any and all other City of Long Beach City Officials.

(k) Beach Comfort shall not interfere with the operation of the gates to the Ocean Beach Park or separate entrances pursuant to § 18-17 of the Code of Ordinances of the City of Long Beach.

(l) Beach Comfort shall submit to the City Manager for final approval the make, type, style and design of the beach chairs and umbrellas to be used within the scope of services of this Agreement. Said approval may be granted at the sole discretion of the City Manager.

(m) Beach Comfort shall be responsible for compliance with all laws, rules, and regulations applicable to its business in general and to safety in particular. Beach Comfort shall therefore comply with all applicable provisions of the Charter and Code of Ordinances of the City of Long Beach, and all other promulgations of federal, state, and local authorities. Beach Comfort agrees to defend and indemnify the City for all claims arising out of its failure to comply with any rule or law intended for the safety of any person.

5. **INDEMNIFICATION:** Beach Comfort shall hold and save the City, its officers, employees, and agents harmless from any claim, demand, or injury of any person or property that may result from the services provided pursuant to this Agreement, including but not limited to the rental and use of beach chairs and umbrellas, as well as usage of an ATV to provide said services. Beach Comfort shall maintain at a minimum the following insurance giving evidence of same to the City in the amounts of \$1,000,000.00 per person and

\$1,000,000.00 per occurrence and General Liability insurance in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate coverage. Such policy shall name the City of Long Beach as the Certificate Holder and as an additional insured. Beach Comfort shall provide evidence of Workers' Compensation Insurance in accordance with the laws of the State of New York.

6. **PERMITS, LAWS, AND ORDINANCES:** Beach Comfort shall obtain a Mercantile License from the City Clerk of the City of Long Beach and shall be responsible for all fees and other costs associated with the proper operation of the business including all required Nassau County permits. Beach Comfort shall keep fully informed of all municipal, county, and state ordinances, laws and regulations in any manner affecting the work specific by this Agreement.

7. **LABOR LAW:** Beach Comfort agrees to comply with all provisions of the Labor Law of the State of New York and New York Workers' Compensation law.

Beach Comfort further agrees that no person shall be denied employment in any capacity on the grounds of race, creed, sex or national origin; nor shall any person be discriminated against in any manner by reason thereof, in connection with or in the performance of any work or services of any kind, by, for, on behalf of, or for the benefit of the City.

8. **ASSIGNMENT:** Unless expressly provided herein, this Agreement and any interest arising hereunder may not be assigned by either party without the prior written consent of the other party, consent to be granted at the sole discretion of the other party. This Agreement shall be binding upon and inure to the benefit of each of the parties' successors and, if permitted, assigns.

9. **CONFIDENTIALITY OF RECORDS:** Any records, reports, or other documents of the City's used by Beach Comfort pursuant to this Agreement, or any document created as part of this Agreement shall be kept confidential, unless non-disclosure be inconsistent with State and/or Federal Law or by compelled to disclose by legal process.

10. **RELATIONSHIP OF PARTIES:** The City and Beach Comfort acknowledge and agree that the relationship arising from this Agreement does not constitute or create a general or limited agency, joint venture, partnership, employment relationship, or franchise between them. Each agree and acknowledge Beach Comfort is an independent business and is an independent contractor and not an employee of the other for any purpose. Neither party has the power to bind the other to any contract or other obligation and all transactions obtained and proposed by Beach Comfort for the benefit of the City must be approved by a representative of the City in accordance with their respective powers and authority.

11. **TERMINATION OF AGREEMENT:** The City reserves the right to terminate this Agreement at any time due to inadequate or poor performance, and/or the removal from the concession, at any time, vendor employees or persons who are violating any law or Code of Ordinances. Beach Comfort shall have thirty (30) days from the date of written notice from the City to rectify any issues due to inadequate or poor performance and/or to correct any violation.

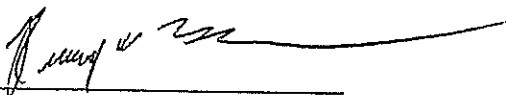
13. **SPECIFICATIONS:** The parties agree that the proposal submitted by Beach Comfort and the specifications are made a part hereof and incorporated herein by reference and do form a part of this Agreement.

14. **NON-WAIVER:** The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

15. **NOTICE:** Any notice hereunder shall be addressed to Beach Comfort, Inc., at 74 West Park Avenue, Suite 2, Long Beach, New York 11561 and to the City at its office, City, City Hall, 1 West Chester Street, Long Beach, New York 11561, attention City Manager.

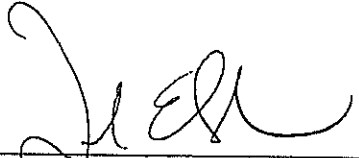
IN WITNESS WHEREOF, the parties have set their hands as of the date first written above.

Signed, Sealed and Delivered
in the presence of



City Clerk


CITY OF LONG BEACH

By: 

Jack Schnitzman
City Manager

Dated: _____

BEACH COMFORT, INC.

By: 

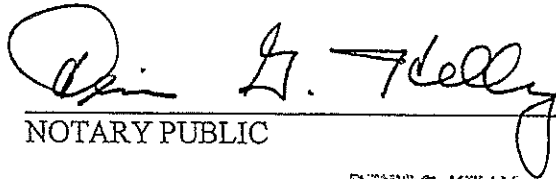
Brian T. Berkery
President

Dated: 11/21/16

ACKNOWLEDGEMENTS

STATE OF NEW YORK
COUNTY OF NASSAU, ss:

On the 25th day of NOVEMBER in the year 2016, before me the undersigned, BRIAN BERKERY, personally appeared personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.




NOTARY PUBLIC

ERIN G. KELLY
Notary Public, State of New York
No. 01AM6070030
Qualified in Nassau County
Commission Expires Feb. 17, 2017

STATE OF NEW YORK
COUNTY OF NASSAU, ss:

On the 21st day of November in the year 2012, before me the undersigned, JACK SCHNIRMAN, personally appeared personally known to me or proved to me on the basis of satisfactory evidence, to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

ERASMIA AMOROSA
Notary Public, State of New York
No. 01AM6070030
Qualified in Nassau County
Commission Expires Feb. 19, 2018

December 1, 2015

Item No. 5
Resolution No. 134/15

The following Resolution was moved by Ms. Goggin
and seconded by Pres. Torres :

Resolution Authorizing the City Manager to Enter into a
Contract for Beach Chair and Umbrella Rental Services
at the Ocean Beach Park.

WHEREAS, Beach Comfort Inc., 74 West Park Avenue, Suite 2, Long Beach, New York
11561 has successfully provided beach chair and umbrella rental services on the Ocean Beach Park for
the past six years; and

WHEREAS, after due advertising therefore, Beach Comfort Inc., was the sole proposer
for the continued providing of this service; and

WHEREAS, Beach Comfort Inc. will pay an annual license fee of \$8,000 with a
5% yearly increase, as well as the providing of in-kind services: such as the supplying of 50
chairs and umbrellas for Wounded Warriors Weeklong Beach Events and chairs and umbrellas
for Special Needs Surf Event (valued at \$4,740), for a contract period of five years beginning
December 2, 2015 through December 1, 2020, with two renewal option periods;

NOW, THEREFORE, be it

RESOLVED, by the City Council of the City of Long Beach, New York that the
City Manager be and he hereby is authorized to enter into a contract with Beach Comfort Inc., 74
West Park Avenue, Suite 2, Long Beach, New York 11561 for the providing of beach chairs and
umbrellas as well as in-kind services (valued at \$4,740), for an annual license fee of \$8,000 with
a 5% yearly increase for a contract period of five years beginning December 2, 2015 through
December 1, 2020, with two renewal option periods; and be it further

RESOLVED, that said agreement shall contain such other terms and conditions as
the City Manager shall deem proper.

APPROVED:



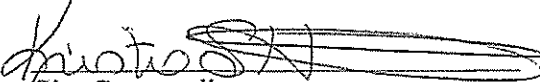
City Purchasing Agent

APPROVED AS TO ADMINISTRATION:



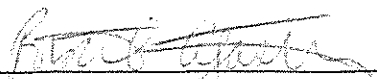
City Manager

APPROVED AS TO FUNDS:



City Comptroller

APPROVED AS TO FORM & LEGALITY:



Corporation Counsel

VOTING:

Council Member Adelson - ABSTAIN

Council Member Eramo - AYE

Council Member Goggin - AYE

Council Member Mandel - AYE

President Torres - AYE