

CONCESSION LICENSE AGREEMENT

THIS CONCESSION LICENSE AGREEMENT, made and entered into as of the 5th day of May, 2016 ("Effective Date"), by and between the City of Long Beach, a political subdivision of the State of New York, hereinafter referred to as the "City", and Beachside Services, NY, Ltd. whose address is 740 West Bay Drive, Long Beach, NY 11561 hereinafter referred to as the "Licensee". This license Agreement is being entered into under the authority conferred to the City Manager of the City of Long Beach by City Council Resolution 33/2016, annexed hereto as Exhibit A

WITNESSETH:

WHEREAS, the City has previously determined that it has a need for Concession Services, as defined herein, at the Ocean Beach Park, a City operated park facility whose boundaries are defined in the City of Long Beach City Charter and the City of Long Beach Code of Ordinances; and

WHEREAS, the City, after soliciting competitive proposals for such services pursuant to a Request for Proposal ("RFP"), has accepted the proposal of the Contractor; and

WHEREAS, Licensee has represented that it is able to satisfactorily provide the services according to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Definitions:

- a) "Contract Documents" shall mean the following documents which are incorporated herein by reference with this Agreement:
 - (i) City's Request for Proposal, addenda and attachments issued as, as maintained by its Purchasing Department and annexed hereto as Exhibit B; To avoid ambiguity, to the extent there are any terms in the City's Request for Proposal that conflict with the terms herein, the terms and conditions of the City's Request for Proposal shall prevail.
 - (ii) Licensee's Certificate of Insurance;
 - (iii) Licensee's Proposal, amendments and revisions as maintained by the Purchasing Department and incorporated by reference herein and made a part hereto.
- b) "Concession Services" shall mean the services provided by the Contractor to the general public at the Ocean Beach Park as provided in the Contract Documents, and as described in Exhibit B attached hereto, which shall not be revised or changed in any way without the prior written consent of the City including but not limited to mobile and stationary concession services.
- c) "Contract Year" shall mean each 12 month period during the term of this Agreement with the first Contract Year commencing on May 1, 2016.

- d) "Facilities" shall mean any food truck, cart, or push cart utilized by the Contractor to provide Concession Services
- (e) "Beachfront" shall mean the beach area of the Ocean Beach Park, and any other location that the City may deem appropriate or desirable in its sole discretion.
- (f) "Minimum Operating Standards" shall mean the operational requirements contained in the Request for Proposal described in Exhibit A attached hereto and incorporated herein by reference;

2. Services to be Performed:

The Licensee hereby agrees to provide the City with mobile Concession Services on certain locations of the Beachfront and stationary cart Concession Services in certain locations of the boardwalk in accordance with the Minimum Operating Standards and as provided in the Contract Documents. The Licensee is not authorized to provide any other services of any type not expressly authorized herein without the express written authorization of the City.

- a. **Mobile Beachfront Concession Locations:** From Nevada Avenue and the beachfront extending eastward to Neptune Boulevard and the beachfront.
- b. **Stationary Boardwalk Concession Locations:** On the Boardwalk at: (1) New York Avenue; (2) Lindell Boulevard; (3) Washington Boulevard; (4) Lafayette Boulevard; (5) Laurelton Boulevard; (6) Magnolia Boulevard; (6) Edwards Boulevard; (7) Riverside Boulevard (Licensee shall only sell ice cream at this location); (8) Long Beach Boulevard; (9) Monroe Boulevard; and (10) Franklin Boulevard

3. Term:

The Term shall consist of five (5) Ocean Beach Park season from the Effective Date of this Agreement. The City may, at its sole discretion, opt to extend Licensee's license under this Agreement for an additional five (5) Ocean Beach Park Seasons at its sole discretion. Should the Licensee be desirous of extending its terms past the 2020 Ocean Beach Park Season, the Licensee must express same in writing to the City at least five (5) months prior to the commencement of the 2020 Ocean Beach Park season. The Ocean Beach Park Season shall be defined by the City of Long Beach City Charter, the City of Long Beach's Code of Ordinances, and any applicable City Council Resolution, which are specifically incorporated by reference herein

4. Compensation:

As compensation for the privilege of providing Concession Services to the City as described herein for each Contract Year, the Licensee shall pay the City the following annual fee:

2016: \$24,000
2017: \$24,500
2018: \$25,000
2019: \$25,500
2020: \$26,000

Payment shall be made annually on or before May 1 of the calendar year throughout the Term of this Agreement (the "Due Date"), with the first payment due on May 5, 2016. If payments are

are not received within ten (10) calendar days of the Due Date, then the City may terminate this Agreement, begin procedures to pursue any remedies as provided in this Agreement or by law. The annual payments shall be made payable to "City of Long Beach" and sent to Office of the Comptroller, City of Long Beach, 1 West Chester Street, Long Beach, New York 11561.

4. Time of Service:

Licensee shall provide Concession Services at the locations specified in Section 2 of this Agreement and at those location alone, as delineated by the terms and conditions of the Request for Proposals, at all times when the Ocean Beach Park is open for business except when the Park is closed as determined in the sole discretion of the City, in accordance with the Licensee's Concession Services schedule, as approved in writing by the City, which shall be submitted by Licensee prior to offering Concession Services at the Park. In the event of inclement weather, Licensee may cease operations until the weather improves with the consent of the City, its attorneys, or the City's designee(s).

5. License for Facilities:

The City hereby grants to the Licensee, for the term of the Agreement the right, privilege and permission to provide Concession Services at the locations delineated in Section 2 of this Agreement. These rights and privileges are subject to the following:

- a) This Agreement is made on the express condition that the Concession Services shall be provided in conformance with the applicable laws and ordinances, including the terms and conditions of the Request for Proposals. All rights of the Licensee hereunder may be terminated by the City, effective upon receipt of written notice in the event that any other use is made thereof.
- b) The Licensee shall not allow activities which are prohibited in all other City owned land under the provisions of federal, state, county or City laws, rules, regulations or ordinances.
- c) City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in utility services.
- d) Licensee shall be responsible for supplying and paying for all utility services needed to perform under this Agreement, including but not limited to electricity, gas, water, and trash pick-up. If such charges are not paid, they may be paid by the County and billed to the Contractor, and shall be due upon the billing and be collectible.
- h) All property of any kind that may be within the Ocean Beach Park during the continuance of the Agreement shall be at the sole risk of Licensee, and City shall not be liable to Licensee or any other person for any injury, loss or damage to property or to any person arising out of Licensee's activity on the Ocean Beach Park.
- i) Licensee agrees that any signs or advertising utilized at the Ocean Beach park or in marketing Concession Services must have prior written approval from the Department which shall not be unreasonably withheld.

- j) Licensee agrees to maintain a conspicuously posted price list for items sold at the Ocean Beach Park
- k) Licensee agrees to conform with such other reasonable rules and other requirements which may be imposed by the City from time to time
- k) Licensee hereby agrees that:
 - (i) no activity will be conducted in the Ocean Beach Park that will produce any hazardous substance, except for such activities that are part of the ordinary course of Contractor's business (the "Permitted Activities") provided. Said Permitted Activities shall be conducted in accordance with all applicable laws and shall be approved in advance, in writing, by the City.
 - (ii) The City will not be used in any manner for the storage of any hazardous substances except for the temporary storage of such materials that are used in the ordinary course of Licensee's business (the "Permitted Materials") provided such Permitted Materials are properly stored and disposed of in a manner and location meeting all applicable laws and approved, in advance, in writing by the City.
 - (iii) no portion of the Ocean Beach Park will be used as a landfill or a dump.
 - (iv) Licensee will not install any underground tanks of any type.
 - (v) Licensee will not allow any surface or subsurface conditions to come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.
 - (vi) Licensee will not permit any hazardous substances to be brought onto the Park property and if so brought thereon, Contractor shall immediately remove same with proper disposal and all required clean-up procedures shall be diligently undertaken pursuant to all applicable laws.

7. Amendment of the Contract:

This Agreement may be amended only by mutual written consent of the parties.

8. Assignment/Subcontracting:

The Licensee shall provide all services required by this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the City, at the City's sole discretion. In the event of a corporate acquisition and/or merger, the Licensee shall provide written notice to the City within thirty (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. The City shall have the right to terminate this Agreement at its sole discretion

9. Termination and or Cancellation:

Failure of the Licensee to comply with any of the provisions of this Agreement, including the terms and conditions of the Request for Proposal, shall be considered a material breach of contract and shall be cause for immediate termination of the Agreement at the sole discretion of the City.

10. Permits / Licenses:

Licensee must secure and maintain any and all permits and licenses to provide services pursuant to this Agreement. Licensee shall comply with all laws, regulations, and ordinances, whether state, local, or federal concerning its operation.

11. Minimum Insurance Requirements:

Licensee shall procure, pay for and maintain during the term of the Lease insurance as required herein:

- a) Comprehensive General Liability including, but not limited to, Independent contractor, contractual, Premises/Operations and Personal Injury covering liability assumed under indemnification provisions of this Lease, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$1,000,000, each occurrence; and property damage of not less than \$100,000, each occurrence. (Coverage shall be on an "occurrence" basis and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability shall be included to limits of \$100,000, per occurrence.

13. Indemnification:

Licensee shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the City from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property by or from the said Licensee; or by, or in consequence of any neglect in safeguarding the work; or by or on account of any act or omission, neglect or misconduct of the said Licensee; or by, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, by-laws, ordinance, order or decree, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

14. Governing Law:

The laws of the State of New York shall govern this Agreement.

15. Independent Contractor Status:

The Licensee is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of City. Licensee acknowledges that it is responsible for complying all laws and regulations relating thereto. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the Agreement, at the discretion of the City.

16. Severability:

The terms and conditions of this agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

17. Notice:

Any notice required or permitted to be given hereunder shall be delivered personally or sent by mail with postage pre-paid to the following addresses or to such other places as may be designated by the parties hereto from time to time.

For the Licensee:

Beachside Services NY Ltd
c/o Brian Braddish
740 West Bay Drive
Long Beach, New York

For the City:

City of Long Beach
Attn: Corporation Counsel
1 West Chester Street
Long Beach, New York 11561

IN WITNESS WHEREOF the parties herein have executed this Concession License Agreement for Concession Services pursuant to a Request for Proposals dated February 10, 2016, as of the day and year first written above.

City of Long Beach

By: _____
Jack Schnirman, City Manager

Licensee

By: Brian Braddish

BRIAN BRADDISH
(Printed Name)

PRES.
(Title)

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this 6th day of May, in the year 2016, before me personally came BRIAN BRADIS to me known, who, being by me duly sworn did depose and say that he/she has a principal place of business at 740 West Bay Drive, Long Beach, NY 11561; that he/she is the President of Beachside Services NY Ltd., the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

WILLIAM MILLER
Notary Public, State of New York
No. 02M16251048
Qualified in Nassau County
My Commission Expires November 14, 2019

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this ____ day of May, in the year 2016, before me personally came Jack Schnirman, to me known, who, being by me duly sworn did depose and say that maintains a principal place of business at 1 West Chester Street, Long Beach, New York; that he/she is the City Manager of the City of Long Beach, the municipal corporation described in and which executed the above instrument; and that he/she signed his/her name hereto.

Notary Public

CONCESSION LICENSE AGREEMENT MODIFICATION

WHEREAS this CONCESSION LICENSE AGREEMENT MODIFICATION (the "Modification"), is being made and entered into as of the _____ day of June, 2017 by and between the City of Long Beach, a political subdivision of the State of New York, hereinafter referred to as the "City", and Beachside Services, NY, Ltd. whose address is 740 West Bay Drive, Long Beach, NY 11561 hereinafter referred to as the "Licensee" (Collectively referred to as the "Parties"). This Modification is being entered into under the authority conferred to the City Manager of the City of Long Beach by City Council Resolution 33/2016, annexed hereto as Exhibit A.

WHEREAS, Licensee has previously entered into a certain Concession License Agreement (the "License Agreement") with the City on or about May 5, 2016, which is annexed hereto as Exhibit B.

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the Parties agree as follows:

1. All terms and conditions of the License Agreement dated May 5, 2016, and annexed hereto as Exhibit B, shall remain in full force and effect, except the "Due Date", as that term is defined in Paragraph four, entitled "Compensation."

2. The "Due Date," and the "Due Date" alone is hereby modified as follows: The Due Date shall be June 15 and August 15 of every Calendar Year, with 50% of the annual fee due on each June 15 and 50% of the annual fee due on August 15 of any given calendar year except the annual fee for 2020, wherein the Due Date shall be May 1, 2020, with 100% of the annual fee due on that date.

IN WITNESS WHEREOF the parties herein have executed this Modification to a Concession License Agreement dated May 5, 2016, as of the date first written above.

City of Long Beach

By: _____
Jack Schnirman, City Manager

Licensee

By: Brian Braddish

BRIAN BRADDISH
(Printed Name)

PRESIDENT
(Title)