



MEMORANDUM

Parks, Recreation & Cultural Arts

Memorandum 16-A090

DATE: June 30, 2016

TO: Dennis W. Beach, City Manager

FROM: Mark A. Beaudreau, Recreation Programs Administrator *MB*

SUBJECT: Agenda Items – Boucher Brothers Management, Inc. License Agreement and Assignment and Assumption Agreement

Please place the attached resolutions on the Agenda for the City Commission meeting of July 12, 2016. These two Agreements are in response to Request for Proposals L-13-16, wherein Boucher Brothers Management, Inc. ("BBMI") submitted the highest ranking response which was approved by the City Commission on April 12, 2016.

The License Agreement is with BBMI for concession services to include public rental of beach equipment and cabanas on certain areas adjacent to the City's Fishing Pier. The Agreement has a five year term commencing on September 1, 2016, and ending on August 31, 2021, with a renewal option for an additional five years. As set forth in Article 6, the City is guaranteed an annual rate of \$60,000 - \$100,000 over the initial five year term.

The companion item to this License Agreement is the next item on your Agenda regarding an Assignment and Assumption Agreement wherein BBMI, as the parent company, is assigning its rights and obligations under the License Agreement to a newly formed entity, Boucher Brothers Pompano Beach, LLC ("BBPB"). In its transmittal letter in response to the RFP, BBMI advised it was submitting said Proposal on behalf of a to-be-formed limited liability company, BBPB. It is BBMI's standard practice to wait until an actual award under an RFP before going through the time and expense of forming the new Boucher entity.

In terms of the Selection/Evaluation Process under the RFP, BBPB ranks on par with BBMI with all seven (7) criteria. Under Items 1 through 4 regarding prior experience, qualification of personnel, availability of personnel and proximity of the company's headquarters to the City, BBPB is identical to BBMI. Under Items 5 and 7 regarding financial responsibility and payment guaranty to City, per the terms of the Assignment, BBMI is providing the City a Continuing and Unconditional Payment Guaranty which unconditionally promises to pay any and all of BBPB's indebtedness as well as a Letter of Credit so BBPB's financial wherewithal is comparable to BBMI. Item 6 regarding equipment will also be identical to BBMI.

All parties agree the assignment to BBPB as a standalone servicing entity makes good sense as it provides an ease of administration both for the City and the Bouchers. In addition, BBPB will have the exact same ownership, management, personnel, experience and expertise as BBMI. Since the License Agreement has detailed requirements on reporting, recordkeeping, bank accounts and annual certified financial statements, preparation of these as well as the City's audit rights will be much simpler and transparent utilizing BBPB whose sole purpose will be to provide the services to the City.

If you have any questions or require additional information, please call me at 954-786-4191.

MB/afh

cc: Cynthia Kitts, Recreation Manager



City Attorney's Communication #2016-966
June 27, 2016

TO: Mark A. Beaudreau, Recreation Programs Administrator
FROM: Fawn Powers, Assistant City Attorney
RE: Boucher Brothers – Assignment and Assumption Agreement

As requested, the above-referenced Agreement has been prepared and is attached along with the appropriate Resolution captioned as follows:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE CITY OF POMPANO BEACH, BOUCHER BROTHERS MANAGEMENT, INC. AND BOUCHER BROTHERS POMPANO BEACH, LLC; PROVIDING AN EFFECTIVE DATE.

Please feel free to contact me if I may be of further assistance.



FAWN POWERS

I:\cor\recr\2016-966f
Attachments

RESOLUTION NO. 2016-_____

CITY OF POMPANO BEACH
Broward County, Florida

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE AN ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE CITY OF POMPANO BEACH, BOUCHER BROTHERS MANAGEMENT, INC. AND BOUCHER BROTHERS POMPANO BEACH, LLC; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That an Assignment And Assumption Agreement between the City of Pompano Beach, Boucher Brothers Management, Inc. and Boucher Brothers Pompano Beach, LLC, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. That the proper City officials are hereby authorized to execute said Agreement between the City of Pompano Beach, Boucher Brothers Management, Inc. and Boucher Brothers Pompano Beach, LLC

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this _____ day of _____, 2016.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into on this ___ day of _____, 2016, by and between Boucher Brothers Management, Inc., a Florida profit corporation (the "Assignor"), Boucher Brothers Pompano Beach, LLC, a Florida limited liability company ("Assignee"), and The City of Pompano Beach, a municipal corporation located in Broward County, Florida (the "City").

WHEREAS, the CITY issued Request for Proposals L-13-16 to provide beach concession services which include the rental of beach equipment and cabanas to the public (the "Services") on certain areas adjacent to the Fishing Pier on the Municipal Beach (the "Concession Areas"); and

WHEREAS, BBMI submitted a Proposal in response to the aforesaid RFP which was subsequently deemed to be the highest ranked response; and

WHEREAS, the City and BBMI thereafter entered into that certain License Agreement dated July __, 2016, (the "License Agreement" attached hereto and made a part hereof as Exhibit A); and

WHEREAS, pursuant to Section 2 of the License Agreement, BBMI desires to assign the License Agreement to BBPB, which has the identical ownership, expertise and experience as BBMI with respect to the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Assignment of License Agreement. BBMI does hereby sell, transfer and assign unto BBPB, its successors and assigns, the License Agreement and all of its books and records related thereto, in each case free and clear of any and all liens and encumbrances whatsoever. Subject to the other provisions of this Assignment, BBPB hereby purchases, assumes and accepts the License Agreement and all obligations arising thereunder from and after the date hereof.

2. Assumption of Obligations. From and after the date hereof, BBPB assumes and agrees to abide by, pay, discharge and perform all obligations and liabilities when due and otherwise in accordance with their respective terms under the License Agreement. As consideration for City's approval of this Assignment to BBPB, BBMI agrees to provide the Continuing and Unconditional Payment Guaranty attached hereto and made a part hereof as Exhibit B.

3. Binding Effect. This Assignment and the covenants, conditions and agreements contained herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Assignment shall be construed and interpreted in accordance with the laws of the State of Florida without regard to conflicts of law principles

thereunder, and shall not be strictly construed for or against either party hereto. Headings are inserted herein for convenience only and shall not limit the content of any paragraph hereof.

4. Modifications. Any modification or waiver of any provision of this Assignment must be in writing signed by the party or parties against which enforcement of the modification or waiver is sought.

5. Counterparts. This Agreement may be executed in counterparts and each such counterpart when taken together with all other counterparts, shall be deemed one and the same original document. Delivery of executed signature pages hereof by facsimile transmission shall constitute effective and binding execution and delivery of this Agreement.

6. Governing Law. This Assignment shall be governed by and interpreted in accordance with the laws of the State of Florida, without regard to conflict of law principles thereunder.

IN WITNESS WHEREOF, the parties have caused the execution of this Agreement as of the day and year first above written.

"ASSIGNOR":

Witnesses:

BOUCHER BROTHERS MANAGEMENT, INC.

[Signature]
Adam Cecerati
Print Name

By: [Signature]
James R. Boucher
Typed or Printed Name

[Signature]
James Pampolina
Print Name

Title: President/CEO

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 24 day of June, 2016, by Jim Boucher as _____ of Boucher Brothers Management, Inc., a Florida corporation, on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Carolina Tesillo
(Name of Acknowledger Typed, Printed or Stamped)
FF 097434
Commission Number



CAROLINA TESILLO
MY COMMISSION # FF 097434
EXPIRES: March 22, 2018
Bonded Thru Budget Notary Services

"ASSIGNEE":

Witnesses:

BOUCHER BROTHERS POMPANO BEACH, LLC

[Signature]
Print Name Adam Cedeno

By: [Signature]
Printed Name James R. Boucher

[Signature]
Print Name JAMES PAMPOLINA

Title: President/Manager

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 29 day of June, 2016, by Jim Boucher as OWNER of Boucher Brothers Pompano Beach, LLC., a Florida limited liability company. He/she is personally known to me or who has produced (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Carolina Tesillo
(Name of Acknowledger Typed, Printed or Stamped)
FF 097434
Commission Number



"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2016 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Exhibit A

City of Pompano Beach

LICENSE AGREEMENT

with

Boucher Brothers Management Inc.

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Exhibit

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- B Description of the Concession Areas
- C Concessionaire's Proposal
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LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), entered into this _____ day of _____, 2016, by and between:

CITY OF POMPANO BEACH, a municipal corporation located in Broward County, Florida (hereinafter “CITY”),

and

BOUCHER BROTHERS MANAGEMENT, INC., a Florida profit corporation (hereinafter “CONCESSIONAIRE”).

WHEREAS, the CITY issued Request for Proposals L-13-16 (the “RFP” attached hereto and made a part hereof as Exhibit A) to provide beach concession services which include rental of beach equipment and cabanas to the public on those areas adjacent to the Fishing Pier on the Municipal Beach (the “Concession Areas” more particularly described in Exhibit B); and

WHEREAS, in response to RFP L-13-16, the CITY received CONCESSIONAIRE’s Proposal, a copy of which is attached hereto and made a part hereof as Exhibit C; and

WHEREAS, on March 16, 2016, the CITY’s Selection/Evaluation Committee deemed CONCESSIONAIRE’s Proposal the highest ranked response to the RFP; and

WHEREAS, on April 12, 2016, the City Commission of Pompano Beach approved the foregoing ranking by the Selection/Evaluation Committee and directed CITY staff to negotiate a contract with CONCESSIONAIRE; and

WHEREAS, in accordance with the terms and conditions set forth herein, CONCESSIONAIRE is able and prepared to provide the merchandise, services and insurance described in this Agreement; and

WHEREAS, the CITY and CONCESSIONAIRE desire to enter into this Agreement setting forth the parties’ mutual understandings and undertakings; and.

WHEREAS, the City Commission has determined that entering into this Agreement with CONCESSIONAIRE is the best interest of the public.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and CONCESSIONAIRE agree as follows.

ARTICLE 1 REPRESENTATIONS

A. **Representations of CITY.** CITY makes the following representations to CONCESSIONAIRE which CITY acknowledges CONCESSIONAIRE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. CONCESSIONAIRE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of Boucher Brothers Management, Inc.** CONCESSIONAIRE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Boucher Brothers Management, Inc. is a Florida for profit corporation duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. CONCESSIONAIRE's execution, delivery, consummation and performance under this Agreement will not violate or cause Boucher Brothers Management, Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which CONCESSIONAIRE is a party or constitute a default thereunder or cause acceleration of any obligation of CONCESSIONAIRE thereunder.

3. The individual executing this Agreement and related documents on behalf of Boucher Brothers Management, Inc. is duly authorized to take such action which action shall be, and is, binding on CONCESSIONAIRE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Boucher Brothers Management, Inc. or its principals that CONCESSIONAIRE is aware of which would have any material effect on CONCESSIONAIRE's ability to perform its obligations under this Agreement.

5. CONCESSIONAIRE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all professional services furnished by CONCESSIONAIRE and its employees, subcontractors or other agents under this Agreement will be the skill and care used by other professional beach concessionaires currently practicing under similar circumstances in the same locality.

7. CITY shall be entitled to rely upon the professional and technical skills of CONCESSIONAIRE or by others authorized by CONCESSIONAIRE under this Agreement.

8. CONCESSIONAIRE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

ARTICLE 2 NON-ASSIGNMENT, SUBLETTING OR SUBCONTRACTING

This Agreement is not assignable and CONCESSIONAIRE agrees it shall not sell, assign, transfer, merge, sublet or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by CONCESSIONAIRE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the prior written consent of the City Commission of Pompano Beach which shall not be unreasonably withheld.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of CONCESSIONAIRE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of CONCESSIONAIRE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and CONCESSIONAIRE.

ARTICLE 3 TERM AND RENEWAL

The City hereby engages CONCESSIONAIRE to serve as its CONCESSIONAIRE at its Municipal Beach for a term of five (5) years, commencing Sept 1, 2016 (the "Effective Date"), and ending on Aug 31, 2021. The CITY reserves the right to extend this Agreement for a maximum of one additional five (5) year term provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination. For purposes of this Agreement, a "Contract Year" means the five (5) twelve (12) month periods commencing upon the Effective Date

ARTICLE 4 RESPONSIBILITIES OF CONCESSIONAIRE

CONCESSIONAIRE shall operate the Concession Areas on the Municipal Beach in accordance with this Agreement. Specifically, CONCESSIONAIRE shall, at all times, perform

its obligations hereunder in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. CONCESSIONAIRE shall exercise its reasonable judgment in discharging its duties hereunder.

A. CONCESSIONAIRE shall be responsible for the general cleanliness of the Concession Areas, which includes providing the requisite janitorial services and coordinating daily collection of debris from the aforesaid areas prior to opening them to the public and from time to time throughout the day as conditions require to maintain a state of cleanliness.

B. At CONCESSIONAIRE's sole risk and expense, CONCESSIONAIRE shall manage and maintain the inventory of merchandise for public sale and rental listed in Exhibit D at the Concession Areas in accordance with the minimum specifications listed on Page 5 of the RFP.

C. CONCESSIONAIRE shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against CONCESSIONAIRE's provision of services or merchandise sales under this Agreement.

D. CONCESSIONAIRE shall utilize the Concession Areas exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. CONCESSIONAIRE shall not allow, suffer or permit the concessions to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling, provided that CONCESSIONAIRE shall not be responsible for acts of the public at the Concession Areas.

E. CONCESSIONAIRE is responsible for hiring and managing its own staff to operate the Concession Areas at the Municipal Beach during regular hours of operation. CONCESSIONAIRE's staff shall be a minimum of eighteen years old, under CONCESSIONAIRE's exclusive direction and control and not deemed employees or agents of the CITY.

F. CONCESSIONAIRE shall be solely responsible for compensating its employees and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

G. CONCESSIONAIRE shall promptly respond to complaints about its employees from the CITY and patrons of the Municipal Beach and timely take appropriate disciplinary action as warranted by the circumstances.

H. CONCESSIONAIRE shall immediately inform the CITY's Contract Administrator of any repairs or maintenance necessary to keep all Concession Areas in good and safe condition.

I. CONCESSIONAIRE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of

Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. CONCESSIONAIRE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

J. CONCESSIONAIRE shall give CITY's Contract Administrator prompt written notice of any accidents occurring at the Concession Areas in which damage to property or injury to a person occurs.

K. CONCESSIONAIRE shall ensure the Concession Areas are open and properly staffed and stocked at all times that a reasonable demand for such services exists during daylight hours which, for purposes of this Agreement, begins at sunrise. Concessions shall not be operated during hours of darkness which, for purposes of this Agreement, begins one hour after sunset.

L. CONCESSIONAIRE shall not make any improvements, additions or repairs to the Concession Areas without prior written approval from the CITY's Recreation Programs Administrator. If modification or revisions are made, CONCESSIONAIRE agrees to return the Concessions Areas to their original condition at its own expense at the end of contract if CITY so requests.

M. CONCESSIONAIRE may install signage to promote the sale of its merchandise and services provided the CITY's Recreation Programs Administrator has approved their size, wording and number and the signs otherwise comply with all applicable laws, ordinances and regulations.

N. CONCESSIONAIRE and its employees shall provide courteous and professional customer service during the term of this Agreement.

O. CONCESSIONAIRE shall use commercially reasonable efforts to secure and insure the concession facilities against vandalism.

P. CONCESSIONAIRE shall at all times comply with all Rules For Use of Motor Vehicles and Small Off-Road Vehicles on the Municipal Beach as set forth on Pages 5 and 6 of the RFP. In addition, CONCESSIONAIRE understands and agrees that under no circumstances shall any such vehicle be allowed to go under the Municipal Pier.

Q. CONCESSIONAIRE shall adhere to a maintenance schedule set up by the CITY's Recreation Program Administrator and also provide personnel to remove cabanas and rental equipment according to that schedule to facilitate cleaning of the Municipal Beach.

R. CONCESSIONAIRE shall at all times provide service to the public in a dignified manner without pressure, coercion, persuasion or hawking in an attempt to influence the public to use CONCESSIONAIRE's services.

S. CONCESSIONAIRE shall not install its equipment in an area outside of the Concession Areas described in Exhibit 2 nor shall CONCESSIONAIRE interfere with the operation of other concessionaires.

**ARTICLE 5
RESPONSIBILITIES OF CITY**

A. The CITY's Recreation Program's Administrator or such other person designated by the City Manager shall be responsible for enforcement of this Agreement. In the event any violation is reported, the CITY's Recreation Program's Administrator shall investigate same and report the findings to the City Manager who has sole discretion to take action and make recommendations as deemed necessary. The City Manager's actions and recommendations pursuant to this Article shall be final and binding on CONCESSIONAIRE.

B. CITY shall consult with CONCESSIONAIRE regarding the maintenance schedule for cleaning the Municipal Beach.

C. CITY shall be responsible to review the safety course certificate CONCESSIONAIRE presents in order to obtain authorization to utilize a "small off-road vehicle" and any trailer attachment on the Municipal Beach and to inform Beach Patrol of said authorization.

**ARTICLE 6
COMPENSATION AND METHOD OF PAYMENT**

A. CONCESSIONAIRE shall provide the following annual guaranteed payment amount to CITY for the initial five-year term of the Agreement and pay CITY the advance monthly payments required pursuant to the provisions of the RFP and this Agreement.

<u>Contract Year</u>	<u>Guaranteed Annual Rate</u>
Year One	\$60,000*
Year Two	\$70,000*
Year Three	\$80,000*
Year Four	\$100,000*
Year Five	\$100,000*

*Fixed annual amount or 15% of gross sales, whichever is greater

B. The minimum monthly payment payable to CITY for the first five-year term shall be the foregoing Guaranteed Annual Rate divided by twelve (12) plus applicable Florida State Sales Tax or 15% of annual gross sales, whichever is greater. If 15% of annual gross sales exceeds the proposed Guaranteed Annual Rate, CONCESSIONAIRE shall remit the additional amount to CITY in one payment within one hundred twenty (120) days of the end of that Contract Year. The Guaranteed Annual Rate payable to CITY for any renewal period shall be subject to negotiation.

C. Beginning upon the Effective Date of the Agreement, and then fifteen (15) days prior to the beginning of each month thereafter, CONCESSIONAIRE shall pay the monthly payment plus sales tax provided that such monthly payment shall be prorated according to the number of actual days in such month that CONCESSIONAIRE provides services hereunder.

D. Other than due to a force majeure event as provided in Article 20, if CONCESSIONAIRE fails to make any payments to CITY more than seven (7) days after same is due, CONCESSIONAIRE shall pay CITY an additional charge of One Hundred Dollars (\$100.00) per day for each day's delay in payment retroactive to the first day the payment was due.

ARTICLE 7

ACCOUNTING, RECORDKEEPING AND PUBLIC RECORDS PROCEDURES

A. CONCESSIONAIRE shall be required to submit monthly statements of gross receipts to the CITY's Contract Administrator in a format approved by the CITY's Recreation Program Administrator and shall use accounting methods and procedures in accordance with generally accepted accounting principles, which shall include but not be limited to, those methods and procedures set forth in this Article.

B. CONCESSIONAIRE and its employees providing merchandise hereunder shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of five (5) years after its termination or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of the audit findings.

CONCESSIONAIRE shall retain any and all records relating to the concession operation pursuant to this agreement for a period of five (5) years from the date of final payment under this agreement, or as otherwise required by applicable laws including the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes. These records shall include, but not be limited to, Florida State sales tax returns, federal payroll tax returns and all supporting payroll records, bank statements, canceled checks and any other records requested by the CITY's Internal Auditor.

C. Incomplete and incorrect entries in CONCESSIONAIRE's records will be grounds for the CITY's allowance of any fees based upon such entries as well as termination of this Agreement to the extent that such incomplete or inaccurate entries indicate a systemic problem as opposed to a simple error.

D. At the time of each rental or sale, CONCESSIONAIRE shall furnish the customer a true, complete, and accurate pre-numbered receipt and retain a duplicate copy.

E. CONCESSIONAIRE shall open and maintain a dedicated bank account as well as a separate ledger of accounts within its accounting system to account for all its revenues and expenditures under this Agreement. CONCESSIONAIRE shall make daily bank deposits that

mirror all daily gross revenues received, including sales tax. Specifically, CONCESSIONAIRE shall not deduct from its daily bank deposit for any expenditures incurred hereunder.

F. Within thirty (30) days after the end of each Contract Year, CONCESSIONAIRE shall promptly furnish the CITY's Contract Administrator a quarterly report of income by type that shall be true, accurate, and complete.

G. CONCESSIONAIRE shall furnish CITY an annual financial report prepared by an independent certified public accountant within one hundred twenty (120) calendar days of the end of each Contract Year.

H. Public Records. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. CONCESSIONAIRE shall comply with Florida's Public Records Law, as amended and as applicable to CONCESSIONAIRE. Specifically, CONCESSIONAIRE shall:

1. Keep and maintain public records required by the CITY in order to perform the services hereunder.

2. Upon request from the CITY's custodian of public records, provide the CITY with a copy of 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 by law.

3. 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 Agreement and following completion of the contract term if the CONCESSIONAIRE does not transfer the records to the CITY.

4. Upon termination of this Agreement, transfer at no cost to the CITY, all public records in possession of the CONCESSIONAIRE, or keep and maintain public records required by the CITY to perform the service. If the CONCESSIONAIRE transfers all public records to the CITY upon termination of this Agreement, CONCESSIONAIRE shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONCESSIONAIRE keeps and maintains public records, upon termination of this Agreement, CONCESSIONAIRE 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.

5. Failure of the CONCESSIONAIRE to provide the above described public records to the CITY within a reasonable time may subject CONCESSIONAIRE to penalties under 119.10, Florida Statutes, as amended.

PUBLIC RECORDS CUSTODIAN

IF THE CONCESSIONAIRE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONCESSIONAIRE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK

100 W. Atlantic Blvd., Suite 253

Pompano Beach, Florida 33060

(954) 786-4611

RecordsCustodian@copbfl.com

I. Letter of Credit. CONCESSIONAIRE shall provide CITY an initial Irrevocable Letter of Credit in a form reasonably acceptable to CITY fifteen (15) days in advance of the Effective Date of this Agreement and a new Letter of Credit thirty (30) days prior to expiration of the current annual Contract Year to provide security for the succeeding Contract Year. Each Irrevocable Letter of Credit shall be in an amount equal to the Guaranteed Annual Rate for that Contract Year. CONCESSIONAIRE's failure to timely provide CITY a new Irrevocable Letter of Credit shall be a breach of this Agreement and entitle CITY to demand payment under the current Letter of Credit. Demand by CITY under the Letter of Credit shall not serve as a waiver of any other rights or remedies the CITY may have.

ARTICLE 8

CONCESSIONAIRE'S INDEMNIFICATION OF CITY

A. Subject to the limitations set forth in Paragraph D of this Article, CONCESSIONAIRE shall at all times indemnify, hold harmless and defend the CITY and its authorized agents hereunder from and against any and all claims, demands, suit, damages, attorneys' fees, fines, penalties, defense costs or liabilities of whatsoever kind arising directly or indirectly out of or in connection with CONCESSIONAIRE's provision of goods and services hereunder whether same occurs or the cause arises on or away from the Concession Areas). CONCESSIONAIRE agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and to bear all costs and expenses related thereto, even if the claim(s) is/are groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by CONCESSIONAIRE for any causes of action it has or may have for breaches or defaults by the CITY under this Agreement.

B. CONCESSIONAIRE acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by CONCESSIONAIRE. The parties agree that one percent (1%) of the total in-kind benefits provided to CONCESSIONAIRE by

CITY shall constitute specific consideration to CONCESSIONAIRE for the indemnification provided under this Article.

C. CONCESSIONAIRE shall be solely responsible for insuring all merchandise at the concessions against damage or loss of any nature or kind. CONCESSIONAIRE acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the concessions and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of CONCESSIONAIRE's presence and occupancy at the Concession Areas.

D. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, it is acknowledged and agreed that the CONCESSIONAIRE is not liable for the acts or omissions of the members of the public or other third persons in the Concession Areas. CITY further acknowledges and agrees that neither CONCESSIONAIRE nor its officers, directors, members, managers, employees or agents are lifeguards and, as such that CONCESSIONAIRE shall have no responsibility or liability for the safety or health of any person(s) due to weather, water conditions or the competency of any persons in the Concession Areas or elsewhere.

E. The indemnification and other provisions of this Article shall survive the expiration or termination of this Agreement in accordance with applicable statutory limitations.

ARTICLE 9 INSURANCE

CONCESSIONAIRE shall maintain insurance in the amounts and subject to all conditions set forth in Exhibit E.

ARTICLE 10 INDEPENDENT CONTRACTOR

Both CITY and CONCESSIONAIRE agree that CONCESSIONAIRE is an independent contractor and not a CITY employee. CONCESSIONAIRE shall have no authority to employ any person as an employee or agent on behalf of the CITY for any purpose. Regardless of CONCESSIONAIRE's request, actual or implied consent, neither CONCESSIONAIRE nor any of its employees or agents hereunder shall be deemed an employee or agent of the CITY nor shall any such person represent himself to others as an employee or agent of CITY. Should any person indicate by written or oral communication to CONCESSIONAIRE or any of its employees or agents, that they believe CONCESSIONAIRE or any of its employees or agents are employees or agents of the CITY, CONCESSIONAIRE shall use its best efforts to correct that mistaken belief.

ARTICLE 11 DEFAULT AND DISPUTE RESOLUTION

A. If either party claims the other is in default of this Agreement, such party shall provide written notice to the other party describing in reasonable detail the alleged default and

the parties shall timely schedule a conference or meeting and make every reasonable effort to reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other describing in reasonable detail the alleged default.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar days of receipt or the alleged default has not been remedied within ten (10) calendar days after written notice of same and is continuing, either party may appeal in writing to the City Manager in accordance with Article 15 herein.

D. Upon receipt of said written appeal or demand, the City Manager may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager shall schedule a meeting between the parties and each party shall be permitted to give testimony and evidence on the matter in dispute. The City Manager, acting in good faith, shall make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the ten (10) day advance written notice provision set forth in Article 12 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by CONCESSIONAIRE.

ARTICLE 12 TERMINATION

A. Termination for Cause. Breach or default of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. In the event of a breach or default, the defaulting party shall be given written notice which describes in reasonable detail the alleged breach or default and ten (10) calendar days to cure same, and either party may avail itself of the informal Default and Dispute Resolution Procedures set forth in Article 11 above or seek other remedies as provided hereunder or by law.

B. The acceptance of a single or repeated payment(s) by CITY after it falls due or after knowledge of any breach by CONCESSIONAIRE shall not be construed as a waiver of any of the CITY's rights hereunder.

C. Termination for Convenience of City. Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to CONCESSIONAIRE, CITY may without cause and without prejudice to any other right or remedy, terminate this Agreement for convenience whenever it determines that such termination is in the best interest of the CITY. If the Agreement is terminated for the CITY's convenience, the notice of termination to CONCESSIONAIRE shall state so and also define the extent of the termination. Upon receipt of such notice, CONCESSIONAIRE shall use commercially reasonable efforts to discontinue all

services hereunder to the extent indicated on the notice of termination and CITY shall be responsible to refund CONCESSIONAIRE a prorated portion of the advance monthly payment based on the date CONCESSIONAIRE discontinues such services. Notwithstanding the foregoing, in the event of a partial termination by the CITY, if CONCESSIONAIRE in good faith determines that the elimination of such services and/or goods would have an adverse effect on its ability to pay CITY the Guaranteed Annual Rate payable under Article 6 herein, then CONCESSIONAIRE shall have the right to terminate this Agreement upon sixty (60) days written notice to CITY.

ARTICLE 13 NO DISCRIMINATION

CONCESSIONAIRE shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations hereunder, including compliance with the Americans with Disabilities Act. In addition, CONCESSIONAIRE's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. CONCESSIONAIRE's compliance with the foregoing non-discrimination provisions are express conditions hereof and any failure by CONCESSIONAIRE to so comply shall be a breach of this Agreement and the CITY may exercise any right as provided herein and as otherwise provided by law.

ARTICLE 14 PUBLIC ENTITY CRIMES ACT

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, CONCESSIONAIRE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

ARTICLE 15 NOTICES AND DEMANDS

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

For CITY:

City Manager
City of Pompano Beach
P.O. Drawer 1300
Pompano Beach, Florida 33061
dennis.beach@copbfl.com
(954) 786-4601 office
(954) 786-4504 fax

With a copy to:

Recreation Program's Administrator
City of Pompano Beach
1801 NE 6th Street
Pompano Beach, Florida 33060
mark.beaudreau@copbfl.com
(954) 786-4191 office
(954) 86-4113 fax

For CONCESSIONAIRE:

James R. Boucher, President
Boucher Brothers Management, Inc.
1451 Ocean Drive, Suite 205
Miami Beach, FL 33139
jboucher@boucherbrothers.com
(305) 535-8177 phone

With a copy to:

Abigail C. Watts-Fitzgerald
2800 Ponce de Leon Boulevard, Suite 1400
Coral Gables, FL 33134
awf@devinegoodman.com
(305) 374-8200 office
(305) 374-8202 fax

**ARTICLE 16
GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and CONCESSIONAIRE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward 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 in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 17
CONTRACT ADMINISTRATOR**

The CITY's Recreation Program's Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Unless otherwise provided for in writing by James R. Boucher shall serve as CONCESSIONAIRE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 18
NO CONTINGENT FEE**

CONCESSIONAIRE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONCESSIONAIRE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONCESSIONAIRE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of CONCESSIONAIRE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 19
ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 20
FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God, red tide, oil spills or other environmental issues adversely impacting the Concession Areas or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or CONCESSIONAIRE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure and the Guaranteed Annual Rate shall be prorated for the period affected by such force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure to the extent commercially reasonable given the circumstances provided that CONCESSIONAIRE shall not be required to correct the adverse effect on the Concession Areas such as beach erosion. The parties agree that, as to this Article, time is of the essence.

**ARTICLE 21
WAIVER AND MODIFICATION**

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and CONCESSIONAIRE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

ARTICLE 22
MISCELLANEOUS TERMS AND CONDITIONS

A. In case there is conflict between the terms of RFP L-13-16 (Exhibit A), CONCESSIONAIRE's Proposal (Exhibit C), and this Agreement, the terms of this Agreement shall prevail.

B. CITY shall not be held responsible for repairs to concession stands or equipment due to vandalism.

C. CONCESSIONAIRE is only authorized to rent, sell and/or provide the products and equipment listed in Exhibit D at the prices listed thereon and shall ensure a schedule of rates/prices for same is at all times posted at the Concession Areas in plain view of patrons waiting for service. However, CONCESSIONAIRE shall also be permitted to change the products and equipment it rents, sells or otherwise provides as well as the prices it charges subject to CITY's Contract Administrator's written approval which shall not be unreasonably withheld a minimum of ten (10) days prior to any such changes taking place.

D. CONCESSIONAIRE shall ensure that all its equipment, supplies and other concessionaire facilities are at all times situated in accordance with Exhibit 2.

E. Any additional buildings required for storage by CONCESSIONAIRE shall conform to all applicable CITY codes and building requirements, and be removed by CONCESSIONAIRE upon termination of this Agreement. Size and color of storage shall be decided by the CITY's Recreation Program's Administrator.

F. The public in general, shall, at all times, have the free use of space allocated to the public in front of the CONCESSIONAIRE's location.

G. All staffing of CONCESSIONAIRE shall be neatly attired in approved uniforms properly identifying both the CONCESSIONAIRE and the staff person. No person convicted of any offense involving moral turpitude or a felony shall be employed or utilized by CONCESSIONAIRE to provide services hereunder.

H. The CITY reserves the right to approve or reject, for any reason, any of CONCESSIONAIRE's staff hereunder. Criminal background checks for all persons providing services on CONCESSIONAIRE's behalf under this Agreement shall be required and also paid for by CONCESSIONAIRE. No employee or agent of CONCESSIONAIRE shall be authorized to provide services hereunder unless and until the CITY has provided its written approval of such person(s).

I. CONCESSIONAIRE shall provide all equipment in good and serviceable condition, in sufficient quantity to service the public, and shall repair and replace broken or weather-beaten equipment. CITY shall have right to inspect such equipment periodically to determine its condition, but shall be under no obligation to do so.

J. CONCESSIONAIRE understands and agrees that CITY shall not be liable for any damage or injury by water which CONCESSIONAIRE may sustain in its performance hereunder or for any other damage or injury resulting from CONCESSIONAIRE's carelessness, negligence or improper conduct or by reason of the breakage, leakage, or obstruction of water.

K. The CITY has established a Small Business Enterprise Program and a Local Business Program and encourages CONCESSIONAIRE to seek small and local business participation in its procurement of goods and services hereunder.

L. CONCESSIONAIRE understands and agrees that the CITY does not provide free parking to its vendors and that it is responsible to locate and pay for its own parking.

ARTICLE 23 SEVERABILITY

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

ARTICLE 24 APPROVALS

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

ARTICLE 25 ABSENCE OF CONFLICTS OF INTEREST

CONCESSIONAIRE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. CONCESSIONAIRE further represents no person having any interest shall be employed or engaged by it for said performance.

CONCESSIONAIRE shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence CONCESSIONAIRE's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that CONCESSIONAIRE intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by CONCESSIONAIRE.

**ARTICLE 26
BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 27
NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 28
LICENSE NOT LEASE**

Both parties acknowledge and agree this license shall not be deemed a lease of the concessions at Municipal Beach but rather a license granted to CONCESSIONAIRE by CITY.

**ARTICLE 29
DRUG FREE WORKPLACE**

CONCESSIONAIRE acknowledges and agrees that it shall at all times operate a "Drug Free Workplace" as outlined in Florida Statute, Section 287.087.

**ARTICLE 30
ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and CONCESSIONAIRE and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

“CITY”:

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND, CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by LAMAR FISHER, as Mayor, DENNIS W. BEACH as City Manager and ASCELETA HAMMOND, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY’S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"CONCESSIONAIRE":

Witnesses:

BOUCHER BROTHERS MANAGEMENT, INC., a Florida corporation

[Signature]
Adam Cedati

By: *[Signature]*
James R. Boucher, President

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 29 day of June, 2016, by James R. Boucher, President of Boucher Brothers Management, Inc., a Florida corporation. He is personally known to me or has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

[Signature]
NOTARY PUBLIC, STATE OF FLORIDA
Carolina Tesillo
(Name of Acknowledger Typed, Printed or Stamped)
FF 097434
Commission Number



CAROLINA TESILLO
MY COMMISSION # FF 097434
EXPIRES: March 22, 2018
Bonded Thru Budget Notary Services

L:agr/rccr/2016-826f
6/27/16

Exhibit A

RFP L-13-16

Beach Equipment Concession

Names of Comms.	M	S	Y	V	V
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CITY COMMISSION MEETING MINUTES

April 12, 2016

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CONSENT ITEMS – CONTINUED

Mr. Danovich replied, the City who is the owner, is not in a position to tell the Contract Manager (CM) at risk who they should work with and explained the process in details.

Comr. Phillips indicated that he likes the small business participation that staff is using, which is the 15% for Small Business Enterprise (SBE), and wondered if this is being achieved. Therefore, he asked if staff had formulated anything definitive to assist.

Mr. Danovich replied yes, and explained the process in place to determine the meeting of the City's goals and that the criteria they provided is met.

Tom Terwilliger, 3160 Northwest 1st Avenue, Pompano Beach, FL, asked what financial and other audits rights the City would have that is specified in the contract during its duration.

Mr. Danovich responded that the Request for Quote (RFQ) is explicit on the City having full auditing rights over the contractor and their subcontractors.

TIME 00:46:10

ITEM 2

Approve ranking order for RFP L-13-16 Beach Equipment Concession, and authorize staff to negotiate a contract with the highest ranked firm, Boucher Brothers Management, Inc. (Revenue contract)

MOTION: To approve ranking order and authorize staff to negotiate contract with the highest ranked firm.

ROLL CALL

Dockswell				x	
Hardin	x			x	
Moss				x	
Phillips				x	
Burrie		x		x	
Fisher				x	

Comr. Moss asked for the actual financial payments to the City, which was not included in the backup material.



City of Pompano Beach, Florida

Names of Comms.	M	S	V	V
			Y	N

CITY COMMISSION MEETING MINUTES

April 12, 2016

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CONSENT ITEMS – CONTINUED

Mark Beaudreau, Recreation Programs Administrator, noted that on page 13 of the RFP, the starting point is listed from the first year through to the fifth year, with a total amount of approximately \$380,000. The current vendor bid the opening minimum; therefore, staff is recommending the Boucher Brothers, who bid a total of \$410,000. The current agreement is a three (3) year arrangement at \$24,000 a year with a total of \$72,000, an increase of over 560%.

Comr. Moss asked why were the actual RFP's submitted by the bidders not included in the backup material.

Mr. Beaudreau responded that he would have to check with the purchasing department on why it was not included.

Comr. Moss questioned, if Oceanside financials were found to be weak on the RFP, why were they initially awarded the contract a few years ago.

Mayor Fisher responded that they went through the bidding process and were awarded the bid. As well as, Mr. Beaudreau confirmed that staff put the RFP out for bid.

Comr. Moss asked if at the time were they considered to be in a financially weak position.

Mr. Beaudreau replied he did not think it was a weak position and explained his reasons.

Comr. Moss asked how the 15% would be audited, as this is a cash business.

Mr. Beaudreau indicated that they are required to submit the daily receipts so there will be a financial reconciliation of those receipts.

Tom Terwilliger, 3160 Northwest 1st Avenue, Pompano Beach, FL, stated that the City's beach is approximately the same size as the City of Deerfield Beach's and their concession company is currently receiving approximately \$100,000 per year for their beach concession. However, the City of Pompano Beach contract is for \$50,000 and asked for the reason why one City generated twice as much revenue than the other.

MEMORANDUM

Purchasing #16-059
March 22, 2016

To: Dennis W. Beach, City Manager
Through: Otis J. Thomas, General Services Director *OT*
From: Cassandra LeMasurier, Purchasing Supervisor *CL*
Subject: Background for RFP L-13-16 "Beach Equipment Concession"

Contract Need/Background

The Request for Proposals (RFP) #L-13-16 was issued to select a firm to provide rental of beach equipment and concession at the public beach. Scott Moore, Recreation Manager, provided the project scope of services.

Bidders List

The bidder list for this project was created by using companies suggested by the requesting department, companies that have responded to prior solicitations, companies that have requested their names be placed on the mailing list, and companies from appropriate listings in other sources.

Number of firms submitting proposals2

Advertising

The Bid was advertised in the Sun Sentinel, and notices were sent to bid notice agencies throughout the nation. Bid notices are also posted on the City's web page and sent to all registered bidders by email.

Market Research

The General Services Department conducted outreach to one (1) Pompano Beach beach concession company to notify them of this bid opportunity.

Selection/Evaluation Committee

Two (2) responses were received to the solicitation. The Selection/Evaluation Committee met on March 16, 2016 (in a public meeting) to review and evaluate the responses. Copies of the minutes from the meeting, and the voting matrix, are attached.

Recommendation

The recommendation from the Selection/Evaluation Committee to the City Commission is to approve the ranking order, and authorize the City staff to negotiate a contract with the highest ranked firm Boucher Brothers Management, Inc. with the additional authorization to continue negotiations with the succeeding ranked firm should an impasse occur in the negotiations with the recommended firm.

MINUTES
SELECTION / EVALUATION COMMITTEE

RFP #L-13-16
BEACH EQUIPMENT CONCESSION
Purchasing Conference Room
1190 NE 3rd Ave. Building C, Pompano Beach, FL
1:00 p.m. 3/16/2016

The committee consisted of:

Kate Belcher, Recreation Supervisor (Voting)
Lieutenant James Gray, Ocean Rescue (Voting)
Cynthia Kitts, Recreation Manager (Voting)
Scott Moore, Recreation Manager (Voting)
Also in attendance: Cassie LeMasurier, Purchasing Supervisor (Non-Voting)

The meeting was held to evaluate the proposals received in response to the City's solicitation to establish a contract to provide public rental of beach equipment and cabanas. This meeting was posted as a "Public Meeting" both at City Hall and at the Purchasing Division office, and on the City's website. Two firms submitted responses to the City's Request for Proposals.

Scott Moore led the technical discussion. The Purchasing Supervisor reviewed evaluation procedures and distributed Conflict of Interest Statements for completion by all voting members.

Each Committee member had reviewed all of the responses in advance of the meeting.

The Committee discussed each of the proposals in alphabetical order, and scored the responses using voting forms containing the evaluation criteria published in the RFP, with the following results:

(1)	Boucher Brothers Management, Inc.	353
(2)	Oceanside Beach Service, Inc.	287

A copy of the voting matrix is attached. The Committee decided oral presentations would not be required as the scoring results showed sufficient distinction between the responding firms. An agenda item will be prepared to present the ranking to the City Commission for their approval to negotiate a contract with the highest-ranked firm, Boucher Brothers Management, Inc.

The Committee meeting adjourned at 3:10 p.m.

RFP L-13-16 Beach Equipment Concession Ranking Summary

	Boucher Brothers Management, Inc.	Oceanside Beach Service, Inc.
Kate Belcher	87	74
James Gray	85	43
Cynthia Kitts	96	90
Scott Moore	85	80
Total	353	287
Ranking	1	2

Analysis Comparison L-13-16 Beach Equipment Concession RFP

	Total Potential Points	Boucher Brothers Management, Inc.	Oceanside Beach Service, Inc.
Committee Member	Potential Points		
<u>Kate Belcher</u>			
Prior Experience	0-15	8	13
Qualifications of Personnel	0-10	10	8
Availability of Personnel	0-10	10	10
Proximity of the Nearest Office	0-5	2	5
Financial Responsibility	0-20	20	10
Equipment and Services	0-20	17	18
Payment guarantee to the City	0-20	20	10
	Total =	87	74

	Potential Points		
Committee Member	Potential Points		
<u>James Gray</u>			
Prior Experience	0-15	13	8
Qualifications of Personnel	0-10	7	5
Availability of Personnel	0-10	9	5
Proximity of the Nearest Office	0-5	3	5
Financial Responsibility	0-20	18	6
Equipment and Services	0-20	17	9
Payment guarantee to the City	0-20	18	5
	Total =	85	43

Analysis Comparison L-13-16 Beach Equipment Concession RFP

	Total Potential Points	Boucher Brothers Management, Inc.	Oceanside Beach Service, Inc.
Committee Member	Potential Points		
<u>Cynthia Kitts</u>			
Prior Experience	0-15	14	15
Qualifications of Personnel	0-10	10	8
Availability of Personnel	0-10	9	10
Proximity of the Nearest Office	0-5	3	5
Financial Responsibility	0-20	20	19
Equipment and Services	0-20	20	18
Payment guarantee to the City	0-20	20	15
	Total =	96	90

	Potential Points		
Committee Member	Potential Points		
<u>Scott Moore</u>			
Prior Experience	0-15	10	15
Qualifications of Personnel	0-10	10	10
Availability of Personnel	0-10	10	8
Proximity of the Nearest Office	0-5	0	5
Financial Responsibility	0-20	20	12
Equipment and Services	0-20	15	15
Payment guarantee to the City	0-20	20	15
	Total =	85	80

	Total Potential Points	Boucher Brothers Management, Inc.	Oceanside Beach Service, Inc.
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Committee Members (Average)	Potential Points		
Prior Experience	0-15	11	13
Qualifications of Personnel	0-10	9	8
Availability of Personnel	0-10	10	8
Proximity of the Nearest Office	0-5	2	5
Financial Responsibility	0-20	20	12
Equipment and Services	0-20	17	15
Payment guarantee to the City	0-20	20	11
	Average Score =	88	72

Committee Members (Total)	Potential Points		
Prior Experience	0-60	45	51
Qualifications of Personnel	0-40	37	31
Availability of Personnel	0-40	38	33
Proximity of the Nearest Office	0-20	8	20
Financial Responsibility	0-80	78	47
Equipment and Services	0-80	69	60
Payment guarantee to the City	0-80	78	45
	Grand Total=	353	287

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: oceanside beach service

<u>Criteria</u>	<u>Point Range</u>	<u>Score</u>
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>13</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>8</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>10</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>5</u>
5 Financial Responsibility	0-20 points	<u>10</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan	0-20 points	<u>18</u>
7 Payment guarantee to the City	0-20 points	<u>10</u>
TOTAL		<u>74</u>

List the reasons for this evaluation (justify the rating/scoring):

- + • COPB prior experience
- + • office located in pompano beach
- • semi-healthy financials
- • minimum payment guarantee

K. Belcher
Signature of Evaluator

3.16.16
Date

Kate Belcher
Printed Name

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: Boucher Brothers

<u>Criteria</u>	<u>Point Range</u>	<u>Score</u>
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>13</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>7</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>9</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>3</u>
5 Financial Responsibility	0-20 points	<u>18</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan [4]	0-20 points	<u>17</u>
7 Payment guarantee to the City	0-20 points	<u>18</u>
TOTAL		<u>85</u>

List the reasons for this evaluation (justify the rating/scoring):

This company seemed to have adequate experience with similar projects. The size of the company with 910 employees in combination with strong financial responsibility was appealing. Also bringing all new equipment to Pompano Beach would improve our beach appearance.

[Signature]
Signature of Evaluator

3-16-16
Date

James Gray
Printed Name

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: Oceanside

Criteria	Point Range	Score
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>8</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>5</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>5</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>5</u>
5 Financial Responsibility	0-20 points	<u>6</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan	0-20 points	<u>9</u>
7 Payment guarantee to the City	0-20 points	<u>5</u>
TOTAL		<u>43</u>

List the reasons for this evaluation (justify the rating/scoring):

This vendor offered the minimum payment guarantee. The financial responsibility is questionable. I am unclear as to the overall size of the company. The schedule of rental fees was not complete.

[Signature]
Signature of Evaluator

3-16-16

Date

James Gray

Printed Name

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: Boucher Brothers

Criteria	Point Range	Score
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>14</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>10</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>9</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>3</u>
5 Financial Responsibility	0-20 points	<u>20</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach. Marketing Plan	0-20 points	<u>20</u>
7 Payment guarantee to the City	0-20 points	<u>20</u>
TOTAL		<u>96</u>

List the reasons for this evaluation (justify the rating/scoring):

~~Overall~~, The proposal was hard to follow - unclear on the amount of current contracts, they list another city instead of City of Pompano in several areas as well.

however, seems as though the company is strong with their professional personnel with commitment to strong customer service.

A. Missal Kitts
Signature of Evaluator

3/16/16
Date

A. Missal Kitts
Printed Name

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession.

VENDOR NAME: Oceanside Beach Services

<u>Criteria</u>	<u>Point Range</u>	<u>Score</u>
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>15</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>8</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>10</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>5</u>
5 Financial Responsibility	0-20 points	<u>19</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan	0-20 points	<u>18</u>
7 Payment guarantee to the City	0-20 points	<u>15</u>
TOTAL		<u>90</u>

List the reasons for this evaluation (justify the rating/scoring):

Although they list staff members, not clear on the total number of staff. The list of services + equipment lacks information such as multi-day rate. Payment guarantee is the minimum asking price

C. Missy Kitt
Signature of Evaluator

3/16/16
Date

C. Missy Kitt
Printed Name

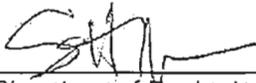
EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: BOUCHAL BROTHERS

Criteria	Point Range	Score
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>10</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>10</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>10</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>0</u>
5 Financial Responsibility	0-20 points	<u>20</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan	0-20 points	<u>15</u>
7 Payment guarantee to the City	0-20 points	<u>20</u>
TOTAL		<u>85</u>

List the reasons for this evaluation (justify the rating/scoring):

- LACK OF ATTENTION TO DETAIL WITH SOME ASPECTS OF PROPOSAL
- STAFF TRAINING, PRESENTATION & EQUIPMENT = EXCELLENT
- SEEM TO BE A VERY WELL RUN & ESTABLISHED BUSINESS.


Signature of Evaluator

3-16-16
Date

SCOTT R MOORE
Printed Name

EVALUATION CRITERIA
RFP L-13-16 – Beach Equipment Concession

VENDOR NAME: OCEANSIDE BEACH

<u>Criteria</u>	<u>Point Range</u>	<u>Score</u>
1 Prior experience with projects of similar size: a. Number of similar projects b. Prior experience with the City of Pompano Beach c. Three references	0-15 points	<u>15</u>
2 Qualification of personnel: a. Number of staff b. Experience of staff in this type of environment	0-10 points	<u>10</u>
3 Availability of personnel: a. Current number of concession contracts	0-10 points	<u>8</u>
4 Proximity of the headquarters or nearest office to the City of Pompano Beach:	0-5 points	<u>5</u>
5 Financial Responsibility	0-20 points	<u>12</u>
6 Equipment and services to be provided: Beach Equipment Rental a. Type (cabanas, chaises, umbrellas, floats, etc.) b. Age of equipment c. Schedule of rental fees for all equipment indicated above d. Additional services to be offered at beach Marketing Plan	0-20 points	<u>15</u>
7 Payment guarantee to the City	0-20 points	<u>15</u>
TOTAL		<u>90</u>

List the reasons for this evaluation (justify the rating/scoring):

- FINANCIALS WORRIED ME WITH TOTAL REVENUE VS TOTAL EXPENSES. - COULD THEY HANDLE PROPOSED FEES?
- PAYMENT GUARANTEE CHANGED LAST MINUTE.
- PROFESSIONAL SERVICE / HANDLED CITY FOR YEARS.


Signature of Evaluator

3-16-16
Date

SCOTT R. MOORE
Printed Name

Exhibit A



Florida's Warmest Welcome

REQUEST FOR PROPOSALS

L-13-16

BEACH EQUIPMENT CONCESSION

RFP OPENING: FEBRUARY 23, 2016, 2:00 p.m. (local)

PURCHASING OFFICE

1190 N.E. 3RD AVENUE, BUILDING C (Front)

POMPAÑO BEACH, FLORIDA 33060

CITY OF POMPANO BEACH, FLORIDA

REQUEST FOR PROPOSALS

L-13-16

The City of Pompano Beach, Florida invites qualified firms to submit proposals, qualifications, and experience for consideration to provide Beach Equipment Concession.

SECTION I

A. PROJECT SCOPE

The City of Pompano Beach desires to enter into a contract with a concessionaire to provide public rental of beach equipment and cabanas. The term of Agreement will be five (5) years, with the option to renew for a maximum of one (1) additional five-year period, subject to mutual agreement.

Beach equipment rental may occur on the area of Pompano Beach described as follows:

South of the Pier – Starting 150 yards north of south line of public beach extending north to 150 yards south of municipal pier and west to 25 yards from lifeguard station line. Equipment will not be located within 15 yards of lifeguard stands.

North of the Pier – Starting 150 yards north of pier extending north to 150 yards of north boundary line of public beach and west to 25 yards west of lifeguard stand line. Equipment will not be located within 15 yards of lifeguard stands.

Any concessionaire equipment is not to exceed of the line of sight of the following:

- East - between 2 adjacent lifeguard towers (*rationale: lifeguard visibility*)
- West – between 2 adjacent cement garbage cans placed mid beach (*rationale – emergency vehicle access*)

Total beach attendance figures at the municipal beach for 2013 were 1,880,603 patrons, and for 2014 were 2,235,832 patrons.

1. Equipment And Services

- a. Beach Equipment

The beach equipment and cabanas shall not be installed or operated beyond the area protected by the Ocean Rescue Division. Beach equipment as referred to in this RFP shall mean chairs, umbrellas, cabanas, wind screens, and related beach equipment.

The Concessionaire shall be permitted to operate as a free enterprise and to establish rates for renting beach equipment and services. A list of the rates must be on file with the City of Pompano Beach and posted by the Concessionaire. A schedule of rate revisions must be provided to the City Manager or designee at least ten (10) days prior to posting to the public.

Any additional buildings required by the Concessionaire for storage shall conform to all applicable City codes and building requirements, and shall remain the property of the City of Pompano Beach upon termination of this Agreement. Size and color of storage shall be decided by the Parks and Recreation Department.

The Concessionaire shall not be authorized to rent any equipment which is not scheduled in the response to the RFP, or covered by the insurance policy furnished the City, unless prior to such rental, the Concessionaire shall have furnished an additional list of equipment to the City Manager or designee and received approval by the City Commission.

The Concessionaire shall provide adequate year-round service to take care of the needs and demands of the public, and shall provide a variety of equipment according to the needs of each season.

The services covered by this RFP and ensuing Agreement shall be offered to the public at all times that a reasonable demand for such services exist during daylight hours. Concessions shall not be operated during the hours of darkness, which for the purposes of this RFP and ensuing Agreement begins one hour after sunset.

2. Beach Equipment Rules and Regulations

1. Beach chairs shall be deployed in a manner and number that will assure public access and will encourage public use of the beach.
2. The Concessionaire must prepare a written evacuation plan for the prompt removal of all facilities and equipment used in the concession operations from the beachfront within one (1) hour of notification by appropriate City authorities and/or within eight (8) hours of issuance of a Hurricane Warning by the Broward County Office of Emergency Management.

3. Beach Chairs will be permitted to remain on the sand overnight, as long as they are in good condition, neatly stacked (a maximum of 10 chairs per stack for plastic and 4 chairs per stack for wood) and arranged side by side.
4. Concession facilities used for dispensing services and/or storage will be allowed to remain on beach, as long as they are well maintained and kept west of the lifeguard stands.
5. Violators will have their concessions closed and the City shall have the right to confiscate any and all facilities and equipment left on beach overnight.
6. The Concessionaire will be responsible for any damage caused to any City owned property and/or beachfront during the time of its usage of said area.
7. The Concessionaire and their employees shall wear a City approved identification badge and must present themselves in a professional and courteous manner, at all times during hours of operation.
8. Concession facilities, furnishings and equipment shall be neat, clean and well maintained at all times. The concession operation must be aesthetically pleasing and non-detrimental to the surrounding environment.
9. Proposers should include as part of their submission photographs of all actual beach equipment to be used.
10. All Umbrellas, chairs and Cabanas will be blue and white.
11. Advertising will not be permitted without the express written consent of Parks and Recreation.
12. The concessionaire will be required to submit monthly statements of gross receipts in a format approved by Parks and Recreation.
13. The concessionaire will comply with all City, State and Federal laws relating to access for people with disabilities.
14. Beach Concession Services shall be limited to the rental of beach chairs and lounges, beach umbrellas and cabanas. No motorcrafts of any kind including jet skis, wave runners or motorboats. No sailboats, kayaks, scuba equipment or kite boarding allowed on public beach area. Concessionaire may have boogie boards, paddle board, snorkel equipment and lotions available to the public.

3. Equipment for Beach Service

Equipment proposed must meet the following minimum specifications.

1. Strap Lounge
 - a. Style: Chaise Lounge
 - b. Construction: Aluminum
 - c. Size: 79.5 x 24
 - d. Weight: 19 lbs.
 - e. Frame color: off white
 - f. Strap width: 2"
 - g. Stacking quantity: 10
 - h. Strap Colors: blue and white
2. Double Wooden Lounge
 - a. Construction: Pressure treated pine with galvanized hardware
 - b. Size: 13"H x 56"W x 72"L
3. Cabana
 - a. Fabric: Sunbrella
 - b. Size: 52"H x 47"l x 57"W
 - c. Construction: Aluminum Ribs and stainless steel bolts
 - d. Color: Blue
4. Umbrella
 - a. Fabric: Sunbrella
 - b. Size: 7.5'H x 8' W
 - c. Color: Blue
5. Cushion for Lounge
 - a. Fabric: Texaline
 - b. Thickness: 3"
 - c. Color: Blue
 - d. Size: 69.5" x 22.5"

4. Rules for Use of Motor Vehicles and Small Off-Road Vehicles on Beach

1. "Small off-road vehicle" shall mean golf carts and all terrain vehicles (ATV's) and any trailer attachment. Anyone driving a "small off-road" vehicle must present an approved safety course certificate before driving vehicle on beach.
2. Concessionaire's motor vehicle, small off-road vehicle and any trailer attached shall only be allowed on beachfront for purposes of supplying the concession operation and to initially deploy equipment at the beginning of the day, remove equipment at the close of operations each day and must be

removed from the beachfront immediately thereafter. Anyone operating a motor vehicle or small off-road vehicle on behalf of Concessionaire must have a current Florida Drivers License. Supplying and removing will only be permitted during Concessionaire's regular hours of operation, and shall be completed safely. No Motor vehicle, or small off-road vehicle or any trailer attached will be permitted on the beach after sunset or prior to sunrise. Access to the beach will only be permitted via the predetermined and assigned beach access points.

3. Motor vehicles or small off-road vehicles including any attached trailers operated on the beachfront shall not exceed 5mph.
4. All motor vehicles and small off-road vehicles must have signage, on each side with the name of the concession operator.
5. Concession operation shall be limited to use of one (1) "Small off road Vehicle" and one (1) attached trailer to supply and service the concession operation.
6. Prior to entering Beach Area lights of vehicle must come on.
7. Passenger and Drivers front windows must be down
8. All small off-road vehicles must stay in hard packed sand west of area provided by Ocean Rescue.

5. Concessionaire's Responsibility

Concessionaire shall provide all equipment in good and serviceable condition at the commencement of the Agreement in sufficient quantity to service the public in respect to the best interest and convenience of the patrons of the Municipal Pier, concession areas, and Beach, as described herein. The Concessionaire shall maintain the equipment in a good state of repair at all times, and shall repair and replace broken or weather-beaten equipment. City shall have right to inspect such equipment periodically to determine its condition, but shall be under no obligation to do so. Advertising signs shall not be displayed except for identification signs approved by the City Manager or designee for size, wording, and number, and in accordance with the applicable City of Pompano Beach Ordinances. The Concessionaire shall insure that the rates for pier admissions, beach concessions, vending, etc. are posted.

The Concessionaire shall not place or install equipment in any location other than herein specified.

At all times, cabanas shall be placed so that there shall be minimum clearance of ten feet between each cabana on all sides. The Concessionaire's placement of

equipment must never interfere with Ocean Rescue Division's observation of the public for said public's welfare and safety. Areas for placement of umbrellas and regulations of water-borne equipment shall be under the regulation of the Beach Safety Division.

The Concessionaire must, at the time of an official hurricane warning, arrange to remove all equipment from the beach area being served.

The public in general, shall, at all times, have the free use of space allocated to the public in front of the Concessionaire's location.

All vendor attendants shall be neatly attired in approved uniforms properly identifying the Concessionaire and the attendant. No person convicted of any offense involving moral turpitude or a felony shall be employed by the Concessionaire.

The City of Pompano Beach reserves the right to approve or reject, for any reason, Concessionaire's staff assigned to this project at any time. Criminal background checks will be required and will be paid for by the Concessionaire.

The Concessionaire shall so conduct their business as to render a service to the public in a dignified manner and with no pressure, coercion, persuasion or hawking done by the Concessionaire or their attendant(s) in an attempt to influence the public to use this service.

The Concessionaire shall furnish the necessary janitorial services to maintain all areas in a proper state of cleanliness, i.e.: litter and debris as a result of this operation.

The Concessionaire shall not install their equipment in an area outside of their own concession area, nor shall the Concessionaire interfere with the operation of other concessionaires. Disputes arising between Concessionaires concerning their rights under their Agreements shall be reported to the City Manager or designee for review and necessary action.

In the event of complaints made by the public as to the manner of operation of the concession area, such matter at the discretion of the City Commission, may be heard by the City Commission after due notice to the Concessionaire.

The Parks and Recreation Program Administrator, or such other person properly designated by the City Manager, shall be responsible for the enforcement of this Agreement and in the event any violation is reported to that office or is brought to the attention of that office, the Director or designee shall investigate the same and report the findings to the City Manager. The City Manager shall then take such action and make such recommendations as are necessary. The action of the City Manager pursuant to this paragraph shall be final and binding on Concessionaire.

The Concessionaire shall adhere to a maintenance schedule set up by the City Manager's designee and shall provide personnel to remove cabanas and rental equipment according to that schedule to facilitate the cleaning of the Municipal Beach. The Concessionaire will be consulted on the maintenance scheduling.

The Concessionaire is responsible for the acquisition of all City and County business tax receipts, fees and permits as applicable.

6. Non-Discrimination

The Concessionaire shall not unlawfully discriminate against any person in its operations and activities in fulfilling its obligations under this Agreement. This shall include compliance with the Americans with Disabilities Act. In addition, Concessionaire's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery. Compliance and performance by the Concessionaire of the non-discrimination provisions of this Agreement is an express condition hereof and any failure by the Concessionaire to so comply and perform shall be a default as provided in this Agreement and the City may exercise any right as provided herein and as otherwise provided by law.

7. Water Damage

It is expressly agreed and understood by and between the parties to this Agreement that the City shall not be liable for any damage or injury by water, which may be sustained by the Concessionaire or for any other damage or injury resulting from the carelessness, negligence or improper conduct on the part of the Concessionaire, its agents or employees, or by reason of the breakage, leakage, or obstruction of the water.

8. No Assignment or Subletting

Neither the premises described herein nor any portion thereof shall be sublet nor shall this Agreement or any interest therein be assigned, hypothecated, or mortgaged by Concessionaire without the prior written consent of the City. Consent shall not be unreasonably withheld.

9. Reports And Records

The Concessionaire shall furnish promptly to the City Treasurer, a quarterly report of income by type that shall be true, accurate, and complete. At the time of each rental, the Concessionaire shall furnish to the customer a true, complete, and accurate pre-numbered receipt, and retain a duplicate copy. The Concessionaire shall open a bank account and deposit on a daily basis each day's receipt intact.

All records of the Concessionaire shall be made available for check and audit by the City of Pompano Beach Internal Auditor at all reasonable times, during the period of this Agreement, and for three (3) years from the date of final payment under this Agreement.

These records shall include, but not be limited to, Florida State sales tax returns, federal payroll tax returns, and all supporting payroll records, bank statements, canceled checks and any other records requested by the Internal Auditor of the City. The Concessionaire shall furnish to the City an annual financial report prepared by an independent certified public accountant within sixty (60) calendar days of the end of each annual Agreement period.

10. Termination for Cause

Violation of any of the covenants, duties, or terms of this Agreement shall be cause for termination of this Agreement. The Concessionaire shall also comply in all particulars with all rules, regulations or ordinance and particularly in activities conducted upon the public beach by the City of Pompano Beach which shall in no way at any time be improper, immoral or illegal and gambling of any type, kind or nature, direct or indirect is specifically prohibited.

In the event of a violation of any of the terms of the Agreement, the Concessionaire shall be given fifteen (15) days notice of the violation and the City Commission at its discretion shall have the right to cause a hearing to be had on said violation, and at such hearing may cancel said Agreement or compel Concessionaire to comply with the terms of this Agreement. No Agreement fees shall be refunded but same shall be forfeited to the City as liquidated damages.

The acceptance of payments by the City, whether in a single instance or repeatedly, after it falls due or after knowledge of any breach hereof by the Concessionaire, where the giving or making of any notice or demand, whether according to any statutory provision or not, or any active or series of acts except an express waiver in writing shall not be construed as waiver of the City's right or of any other right hereby given the City or as an election not to proceed under the provisions of this Agreement.

The failure of the City to enforce any covenant, duty, term, or condition of the Agreement shall not be deemed to void or affect the right of the City to enforce the same covenant, duty, term, or condition on a subsequent default or breach.

11. Termination for Convenience of City

Upon thirty (30) calendar days written notice delivered by certified mail, return receipt requested, to the Concessionaire, the City may without cause and without prejudice to any other right or remedy, terminate the agreement for the City's convenience whenever the City determines that such termination is in the best

interest of the City. Where the agreement is terminated for the convenience of the City the notice of termination to the Concessionaire must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of the termination. Upon receipt of such notice, the Concessionaire shall promptly discontinue all work at the time and to the extent indicated on the notice of termination. The City will refund to the Concessionaire a prorated portion of the quarterly payment, calculated based on the date of termination.

12. Monthly Payments

Proposer is to state the amounts on the Proposal Signature Page that they will pay to the City in exchange for operation of the beach equipment concession. The selected proposer will pay to the City of Pompano Beach, monthly payments (based on fiscal year) in advance of each month, as indicated in their proposal, in full accordance with all terms and conditions as set forth in this proposal, which will become part of said Agreement.

The minimum monthly payment payable to the City for the first five-year Agreement term, shall be the minimum annual guarantee divided by twelve (12) as proposed herein plus applicable Florida State Sales Tax, or 15% of annual gross sales, whichever is the greater of the two. If 15% of annual gross sales exceeds the proposed minimum annual guarantee the proposer will remit the additional amount to the City in one payment within ninety (90) days of the end of that calendar year. The minimum monthly payment payable to the City for any renewal period shall be subject to negotiation.

Beginning upon commencement of the Agreement, and then fifteen (15) days prior to the beginning of each month thereafter, the Concessionaire shall pay the monthly payment, plus sales tax.

In the event the Concessionaire fails to make any payments to the City more than seven (7) days after the same is due, the Concessionaire shall pay to the City for such privilege an additional charge of One Hundred Dollars (\$100.00) per day for each day's delay in payment retroactive to the first day the payment was due.

13. Proposal Surety

Each proposal must be submitted on the prescribed form and accompanied by a certified check or proposal bond executed on the prescribed form, payable to the City of Pompano Beach, Florida, in an amount not less than 5 percent (5%) of the amount bid. (The total amount is the Proposed Grand Total for the Five Year Concession Period as stated on the Proposal Signature Page.)

If the successful proposer fails to enter into a concession Agreement with the City due to the fault of the proposer, the proposal surety will be forfeited to the City.

The proposal surety of the successful proposer will be returned upon receipt of an acceptable Irrevocable Letter of Credit as described below.

14. Letter Of Credit

The successful proposer shall provide a continuous security in the form of an Irrevocable Letter of Credit in a form acceptable to the City. This letter of credit will provide a source of funds to help cover any damages to the City upon failure of the successful proposer to perform any or all of its obligations under the terms of this RFP and ensuing Agreement. The successful proposer shall provide the initial Irrevocable Letter of Credit to the City fifteen (15) days in advance of the effective date of this Agreement and a new Irrevocable Letter of Credit shall be provided thirty (30) days prior to the expiration of the current period to provide security for the succeeding period. Each Irrevocable Letter of Credit shall be in an amount equal to the concession fee for that period.

The failure to provide a new Irrevocable Letter of Credit in a form acceptable to the City, in the times indicated above, shall be a breach of this contract and entitle the City to demand payment under the outstanding document. Demand by the City under the Letter of Credit does not act as a waiver of any other rights or remedies that the City may have.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

SECTION II

A. SUBMISSION OF PROPOSALS

1. Eligibility

The firm must clearly indicate their experience in the field as a beach equipment concessionaire. In addition, staffing should be sufficient to this concession along with other concession areas the proposer may have.

2. Information to be Included in the Proposal

To assure consistency, proposals must conform to the following format:

a. Title Page

Show the RFP title, the name of proposer's firm, Federal Employer Identification Number for the firm, address, telephone number, name of contact person, and the date.

b. Table of Contents

Include a clear identification of the material by section and by page number.

c. Letter of Transmittal (limit to 2 pages)

- (1) Briefly state the Proposer's understanding of the service to be offered and make a positive commitment to perform the service.
- (2) Give the name(s) of the person(s) who will be authorized to make representations for the Proposer, their title(s), address, and telephone numbers.

d. City Provided Forms to be Returned

- (1) Completed "Proposal Signature Page," including proposer minimum guaranteed annual payments information.
- (2) Return all RFP pages, initialed where indicated.

e. Project Scope Section

The scope section must be in written form and include the following:

- (1) Identification and explanation of the services to be provided for the beach equipment concession.
- (2) Identification of types and age of equipment to be offered for rent.
- (3) Approach the firm will use to market the beach concession service.

f. Annual Guarantee

Proposer must provide the annual guaranteed payment amount to the City for each period for the initial three-year period of the Agreement and all subsequent renewals.

The City has established the minimum annual rates for each year of the contract below. Proposers must include a minimum annual rent rate for each year where indicated on the "Proposal Signature Page".

<u>Contract Year</u>	<u>City's Minimum Annual Rate</u>
Year One	\$50,000*
Year Two	\$65,000*
Year Three	\$75,000*
Year Four	\$90,000*
Year Five	\$100,000*

*Fixed annual amount, or 15% of gross sales, whichever is the greater of the two.

If applicable, provide details of any additional proposed revenue sharing and estimates of projected sales.

g. Profile of the Proposer

- (1) State whether the firm is local, regional or national.
- (2) Give the location of the office from which the concession will be administered and where additional equipment can be drawn from.
- (3) Describe the number of similar concession projects currently under contract to the firm.

h. References

Provide at least three references for which the firm has performed a concession project to include:

Name, address, and telephone number of firm.

Contact person at the referenced firm.

i. Summary of Proposers Qualifications

- (1) Identify the managers, supervisors, and/or individuals that will work on the concession.
- (2) Describe firm's experience in similar concession Agreements within the State of Florida.

j. Financial Information

Provide a copy of the most recent audited financial statements for the proposing firm. If audited financial statements are not available, provide a copy of the most recent compiled financial statements, and a copy of the most recent tax form.

You may include additional information that will assist the City in the evaluation of the financial stability of your firm.

k. Proposal surety for 5 percent (5%) of the total amount proposed.

l. Submit one (1) original unbound and four (4) bound copies of the proposal. All copies should be on 8 ½" x 11" plain white paper, typed. Proposers must submit one (1) original copy of the Proposal on electronic media in printable Adobe or Microsoft Word format (or other format approved by the City). Duplicate copies must contain all information included in the original submittal. Failure to adhere to the submittal quantity criteria may result in the Proposal being considered non-responsive.

B. QUESTIONS AND COMMUNICATION

All questions regarding the RFP are to be submitted in writing to the Purchasing Office, 1190 N.E. 3rd Avenue, Building C (Front), Pompano Beach, Florida 33060, fax (954) 786-4168, or email purchasing@copbfl.com. All questions must include the inquiring firm's name, address, telephone number and RFP name and number. Questions must be received at least seven (7) calendar days before the scheduled solicitation opening. Oral and other interpretations or clarifications will be without legal effect. Any addendum necessary to answer questions will be posted to the City's website, and it is the Proposer's responsibility to obtain all addenda before submitting a response to the solicitation.

C. ADDENDA

The issuance of a written addendum is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this solicitation the City will attempt to notify all known prospective Proposers, however, it shall be the responsibility of each Proposer, prior to submitting their response, to contact the City Purchasing Office at (954) 786 4098 to determine if addenda were issued and to make such addenda a part of their proposal.

D. ACCEPTANCE PERIOD

Proposals in response to this RFP must be valid for a period no less than 120 days from the closing date.

E. RFP CONDITIONS AND PROVISIONS

A duly authorized official of the proposing company must sign the proposal. The completed and signed proposal (together with all required attachments) must be returned to City on or before the time and date stated herein. All proposers, by submission of a proposal, shall agree to comply with all of the conditions, requirements and instructions of this RFP as stated or implied herein. Any alteration, erasure, or interlineations by the proposer in this RFP shall constitute cause for rejection. Exceptions or deviations to this proposal may not be added after the submittal date.

All proposers are required to complete all information requested in this RFP. Failure to do so may result in the disqualification of proposal.

The City reserves the right to postpone or cancel or this RFP, or reject all proposals, if in its judgment it deems it to be in the best interest of the City to do so.

The City reserves the right to waive any technical or formal errors or omissions and to reject all proposal(s), or to award contract for the items hereon, in part or whole, if it is determined to be in the best interests of the City to do so.

The successful proposer shall be in complete compliance with all of the specifications, terms, and conditions of this RFP as outlined above.

The City shall not be liable for any costs incurred by the proposer in the preparation of proposals or for any work performed in connection therein.

The City reserves the right to reject any or all proposals. All proposals and supporting materials submitted in response to this RFP will become the property of the City.

F. SMALL BUSINESS ENTERPRISE PROGRAM

The Pompano Beach City Commission has established a voluntary Small Business Enterprise (SBE) Program to encourage and foster the participation of Small Business Enterprises in the central procurement activities of the City. The City of Pompano Beach

is strongly committed to ensuring the participation of Small Business Enterprises (SBE's) as contractors and subcontractors for the procurement of goods and services. The definition of a SBE, for the purpose of the City's voluntary program, is taken from the State of Florida Statute 288.703(1).

As of the date of publication of this solicitation, a small business means an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in Florida that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.

The City encourages all firms to undertake good faith efforts to identify appropriate Small Business Enterprise partners. Sources of information on certified Small Business Enterprises include the Broward County Small Business Development Division, the State of Florida Office of Supplier Diversity, South Florida Water Management District, and other agencies throughout the State. The City includes links to these organizations from the City's website www.pompanobeachfl.gov. Please indicate in your response if your firm is a certified Small Business Enterprise.

Please note that, while no voluntary goals have been established for this solicitation, the City encourages small business participation in *all* of its procurements.

G. LOCAL BUSINESS PROGRAM

On March 23, 2010, the City Commission approved a Resolution establishing a Local Business Program, a policy to increase the participation of City of Pompano Beach businesses in the City's procurement process.

You can view the list of City businesses that have a current Business Tax Receipt on the City's website, and locate local firms that are available to perform the work required by the bid specifications. The business information, sorted by business use classification, is posted on the webpage for the Business Tax Receipt Division:

http://pompanobeachfl.gov/index.php/pages/dev_scv_btr/btr

Please note that, while no voluntary goals have been established for this solicitation, the City encourages Local Business participation in *all* of its procurements.

H. SELECTION/EVALUATION PROCESS

A Selection/Evaluation Committee will be appointed and will be responsible for selecting the most qualified firm. The Selection/Evaluation Committee will then present their findings to the City Commission and upon their approval, negotiate contract with the most qualified firm.

The City Commission has the authority to (including, but not limited to); approve the recommendation; reject the recommendation and direct staff to re-advertise the solicitation; or, review the responses themselves and/or request oral presentations and determine a ranking order that may be the same or different from what was originally presented to the City Commission.

I. INSURANCE

The insurance described herein reflects the insurance requirements deemed necessary for this project by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations, construction, and/or installation of improvements until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

1. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
2. Liability Insurance
 - a) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
 - b) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.
3. Real & Personal Property Insurance

The Contractor is responsible for any loss or damage to tools, equipment, and supplies at the job site and is responsible for any loss or damage to buildings being constructed until that building is completed and a certificate of occupancy is issued.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
GENERAL LIABILITY		
<i>MINIMUM \$1,000,000 OCCURRENCE/AGGREGATE</i>		
XX comprehensive form		
XX premises - operations	bodily injury	
— explosion & collapse		
— hazard	property damage	
— underground hazard		
XX products/completed		
— operations hazard	bodily injury and	
XX contractual insurance	property damage	
XX broad form property	combined	
— damage		
XX independent contractors		
XX personal injury	personal injury	

AUTOMOBILE LIABILITY		
<i>MINIMUM \$1,000,000 OCCURRENCE/AGGREGATE</i>		
	bodily injury	
	(each person)	
	bodily injury	
	(each accident)	
XX comprehensive form		
XX owned	property damage	
XX hired	bodily injury and	
XX non-owned	property damage	
	combined	

REAL & PERSONAL PROPERTY		
XX comprehensive form		Organization must show proof they have this coverage.

EXCESS LIABILITY		
XX umbrella form	bodily injury and	
— other than umbrella	property damage	
	combined	
		\$2,000,000.
		\$2,000,000.

The certification or proof of insurance must contain a provision for notification to the City ten (10) days in advance of any material change in coverage or cancellation.

The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

J. INDEMNIFICATION

Concessionaire assumes all risk in the operation of the Pier and beach equipment concession, and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property and hereby covenants and agrees to indemnify the save harmless City and its officers, agents, and employees form any and all claims, suits, losses, damage or injury to person or property of whatsoever kind and nature including the payment of all attorneys' fees, whether direct or indirect, arising out of the actions taken pursuant to this Agreement, the operation of said Pier and beach equipment concession, or the carelessness, negligence or improper conduct of Concessionaire or any agent, servant, employee, contractor, patron, customer and supplier, which responsibility shall not be limited to the insurance coverage herein provided.

K. INDEPENDENT CONTRACTOR

It is understood between the parties that the relationship of City and Concessionaire is that of an independent contractor. Applicant shall have no authority to employ any person as an employee or agent on behalf of the City for any purpose. Neither the Concessionaire nor any person engaging in any work relating to Concessionaire's rights and obligations set forth herein at the request of or with the consent (whether actual or implied) of Concessionaire shall be deemed an employee or agent of the City, nor shall any such person represent himself to others as an employee or agent of the City. Should any person indicate to the Concessionaire or any employee or agent of the Concessionaire by written or oral communication to the Concessionaire that the person believes the Concessionaire or an employee or agent of the Concessionaire to be an employee or agent of the City, the Concessionaire shall use its best efforts to correct or cause its employee or agent to correct that belief.

L. STANDARD PROVISIONS

1. Governing Law

Interested vendors will agree that Agreements shall be governed by the laws of the State of Florida, and the venue for any legal action will be Broward County, Florida.

2. Conflict Of Interest

For purposes of determining any possible conflict of interest, each Proposer must disclose if any City employee is also an owner, corporate officer, or an employee of his business. If any City employee is also an owner, corporate officer, or an employee, the Proposer must file a statement with the Broward County Supervisor of Elections pursuant to Florida Statutes 112.313.

3. Drug Free Workplace

The selected Proposer with whom an Agreement will be negotiated will be required to verify they will operate a “Drug Free Workplace” as outlined in Florida Statute, Section 287.087.

4. Public Entity Crimes

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a proposal on a contract to provide any goods or services to a public entity, may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit proposals on leases of real property to public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Florida Statute, Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

5. Patent Fees. Royalties. And Licenses

If the selected Proposer requires or desires to use any design, trademark, device, material or process covered by letters of patent or copyright, the selected Proposer and his surety shall indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, trademark, copyright, material or process in connection with the work agreed to be performed and shall indemnify the City from any cost, expense, royalty or damage which the City may be obligated to pay by reason of any infringement at any time during the prosecution of or after completion of the work.

6. Permits

The selected Proposer shall be responsible for obtaining all permits, licenses, certifications, taxes, etc., required by Federal, State, County, and Municipal laws, regulations, codes, and ordinances for the performance of the work required in these specifications and to conform with the requirements of said legislation.

7. Familiarity With Laws

The selected Proposer is assumed to be familiar with all Federal, State and local laws, ordinances, rules and regulations that may affect the lease and development of project. Ignorance on the part of the Proposer will in no way relieve him /her from responsibility.

8. Withdrawal Of Proposals

A Proposer may withdraw his proposal without prejudice to himself no later than the advertised deadline for submission of proposals, by communicating his

purpose in writing to the General Services Department, 1190 N.E. 3rd Avenue, Building C, Pompano Beach, Florida 33060.

9. Composition Of Project Team

Proposer will be required to commit that the personnel and/or principals named in the proposal shall remain assigned to the "project" throughout the period of the contract unless provided for otherwise in a negotiated contract. No diversion or substitution of personnel or principals will be allowed without submission of a written request with the qualifications and experience of the proposed replacement. The approval of the City will be required for any such diversion or substitution.

10. Invoicing/Payment

All invoices should be sent to City of Pompano Beach, Accounts Payable, P.O. Drawer 1300, Pompano Beach, Florida, 33061. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of a proper invoice.

11. Public Records

1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:
 - a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;
 - b. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
 - c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
 - d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the agency.

2. The failure of Contractor to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement and the City shall enforce the Default in accordance with the provisions set forth herein.

PROPOSAL SIGNATURE PAGE

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms and conditions, specifications, addenda, legal advertisement and conditions contained in the RFP L-13-16. I have read RFP L-13-16 and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions and specifications of this proposal.

Proposal submitted by:

Name (printed) _____ Title _____

Company Name (Legal Registered) _____

Federal Tax Identification Number _____

Address _____

City/State/Zip _____

Telephone Number _____ Fax _____

Email _____

Signature _____ Date _____

Addendum acknowledgment – Proposer acknowledges that the following addenda have been received and are included in this proposal:

Addendum No./Date Issued _____

<u>Contract Year</u>	<u>Minimum Annual Rate</u>	<u>Proposer's Guaranteed Annual Rate</u>
Year One	\$50,000*	\$ _____
Year Two	\$65,000*	\$ _____
Year Three	\$75,000*	\$ _____
Year Four	\$90,000*	\$ _____
Year Five	\$100,000*	\$ _____

PROPOSED GRAND TOTAL FOR FIVE YEAR CONCESSION PERIOD: \$ _____

*Fixed annual amount, or 15% of gross sales, whichever is the greater of the two.

PROPOSAL BOND

STATE OF FLORIDA)

SS

)

KNOW ALL MEN BY THESE PRESENTS, that we _____,

_____ as principal, and

_____ hereinafter called Surety, are held and firmly bound unto The City of Pompano Beach, Pompano Beach, Florida, a political subdivision of the State of Florida, and represented by its City Commission hereinafter called OWNER, in the sum of _____ Dollars (\$ _____) lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigned, jointly and severally, by these presents.

WHEREAS, the Principal contemplates submitting or has submitted a Proposal to the OWNER for the furnishing of all labor, materials, equipment, machinery, tools, apparatus, means of transportation for, and the performance of the work covered in the Proposal and the detailed Drawings and Specifications, entitled:

(RFP Name) _____

WHEREAS, it was a condition precedent to the submission of said proposal that a cashier's check or proposal bond in the amount of 5 percent of the five year grand total proposal amount be submitted with said proposal as a guarantee that the Proposer would, if awarded the Contract, enter into a written Contract with the OWNER for the performance of said Contract, within 10 consecutive calendar days after written notice having been given of the award of the Contract.

NOW, THEREFORE, the conditions of this obligation are such that is the Principal within 10 consecutive calendar days after written notice of such award being given to Principal, enters into the contract to such award and gives a Performance and Payment Bond, each in an amount equal to 100 percent of the five year grand total proposal amount, satisfactory to the OWNER, then this obligation shall be void; in the event of the failure of Principal to enter into such contract and bond, the sum herein stated shall be due and payable to the OWNER and the Surety herein agrees to pay the sum immediately upon demand of the OWNER in good and lawful money of the United States of America, as liquidated damages for failure thereof of said Principal; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the said _____,
as Principal herein, has caused these presents to be signed in the name by its _____
_____ and attested by its _____ under its corporate seal,
and the said _____
_____ as Surety herein, has caused these presents to be signed in its
name by its _____
under its corporate seal, this _____ day of _____ A.D. _____ (year)

Signed, sealed and delivered in
the presence of:

As to Principal

Principal - _____

By: _____

Surety

By: _____

Attorney-in-Fact
(Power-of-Attorney to be attached)

By: _____

Resident Agent

Exhibit B- Description of Concession Area

Beach equipment rental may occur on the area of Pompano Beach described as follows:

South of Pier – starting at the Atlantic Blvd main beach access path and extending north to approximately 100 feet south of the municipal pier (location of the red wooden posts)

North of Pier – starting approximately 100 feet north of the municipal pier (location of the red wooden posts) and extending north to the 5th street beach access line.

Equipment will not be located within 15 yards of lifeguard stands.

Any concessionaire equipment is not to exceed of the line of sight of the following:

- East - between 2 adjacent lifeguard towers (*rationale: lifeguard visibility*)
- West – shall be no closer than 60 feet to any sand dune on the west side of the beach (*rationale –emergency vehicle acces*)

PROPOSAL SIGNATURE PAGE

To: The City of Pompano Beach, Florida

The below signed hereby agrees to furnish the proposed services under the terms stated subject to all instructions, terms and conditions, specifications, addenda, legal advertisement and conditions contained in the RFP L-13-16. I have read RFP L-13-16 and all attachments, including the specifications, and fully understand what is required. By submitting this signed proposal, I will accept a contract if approved by the City and such acceptance covers all terms, conditions and specifications of this proposal.

Proposal submitted by:

Name (printed) JAMES R. BOUCHER Title PRESIDENT / CEO

Company Name (Legal Registered) Boucher Brothers Management, Inc.

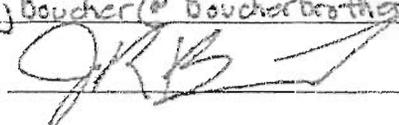
Federal Tax Identification Number 65-0884415

Address 1451 OCEAN DRIVE, SUITE 205

City/State/Zip Miami Beach, FL 33139

Telephone Number 305-535-8177 Fax 305-535-3288

Email j.boucher@boucherbrothers.com + Adam.CEO@boucherbrothers.com

Signature  Date 3/8/16

Addendum acknowledgment - Proposer acknowledges that the following addenda have been received and are included in this proposal:

Addendum No./Date Issued #1-2/4/16, #2-2/19/16, #3-2/23/16, #4 2/29/16

Contract Year	Minimum Annual Rate	Proposer's Guaranteed Annual Rate
Year One	\$50,000*	\$ <u>60,000</u>
Year Two	\$65,000*	\$ <u>70,000</u>
Year Three	\$75,000*	\$ <u>80,000</u>
Year Four	\$90,000*	\$ <u>100,000</u>
Year Five	\$100,000*	\$ <u>100,000</u>

PROPOSED GRAND TOTAL FOR FIVE YEAR CONCESSION PERIOD: \$ 410,000

*Fixed annual amount, or 15% of gross sales, whichever is the greater of the two.



Exhibit D

PRODUCTS AND EQUIPMENT FOR RESALE AND RENTAL:

Boucher Brothers takes pride in providing equipment of the highest quality. Based on this RFP, the Boucher Brothers will provide the following equipment to residents and visitors of Pompano Beach:

- Double Luxury Lounger – Daily Rental Price \$50 to \$75 depending on season
- Lounge Chair - \$15
- Sand Chair - \$10
- Umbrella - \$20
- Cabana - \$25
- AquaVault Chair Safe - \$5 – If allowed by City
- Lotions and Oils – Between \$10 and \$20
- Boogie Boards - \$20 per day
- Paddle Boards - \$30 per hour
- Snorkeling Equipment for Rent - \$15 for the set
- Snorkeling Equipment for Purchase– Between \$15 to \$20
- Branded Pompano Beach Towel (if permitted) - \$18
- Disposable Waterproof Camera (if permitted) - \$25

Boucher Brothers Membership Program

- 2 Lounge Chairs or Two Folding Chairs/ 1 Umbrella or 1 Cabana - \$850 Annual Membership or \$475 for a Half-Year Membership
- 2 Lounge Chairs/ 1 Umbrella - \$700 Annual Membership or \$400 for a Half-Year Membership
- 2 Folding Chairs/ 1 Umbrella - \$600 Annual Membership or \$350 for a Half-Year Membership
- 2 Lounge Chairs – No Umbrella - \$500 Annual Membership or \$300 for a Half-Year Membership
- 2 Folding Chairs – No Umbrella - \$400 Annual Membership of \$250 for a Half-Year Membership
- Shade Package – 1 Umbrella - \$350 Annual Membership

OutDesign Group
100 East Linton Blvd
Suite 403 A Delray Beach, FL 33483
561.922.6160
www.outdesigngroup.com

Double Luxury Lounger

Dimensions:
Ocean Bed Frame with adjustable back
66" w x 86" l x 19" seat ht.

Ocean Bed frame: Sand Blasted Powder Coated Aluminum
Frame finish: Multiple finish options available Manufactured in the USA



OutDesign Group
100 East Linton Blvd
Suite 403 A Delray Beach, FL 33483
561.922.6160
www.outdesigngroup.com

Beach Strap Stacking Chaise Lounge

Dimensions:
24"w x 79"l x 12"h
1" round extrusion

- Sand Blasted Powder Coated Aluminum Frame with nylon foot glides and double pin supports
- Double wrapped virgin vinyl straps
- Finish & Strap: Numerous color options

Manufactured in the USA





Sole, Inc.
8378 N.W. 56th Street
Doral, FL 33166
305-513-2603

Item# UB516D, 7.5' Octagonal Push-Up Umbrella

UMBRELLA





Sole, Inc.
8378 N.W. 56th Street
Doral, FL 33166
305-513-2603

Item# BC031D, 82" wide aluminum frame, four panels

EQUIPMENT CABANA



AquaVault – Chair Safe
20533 Biscayne Blvd, Suite 4947
Aventura, FL 33180
1800-939-0735



Kodak Waterproof Single Use Camera

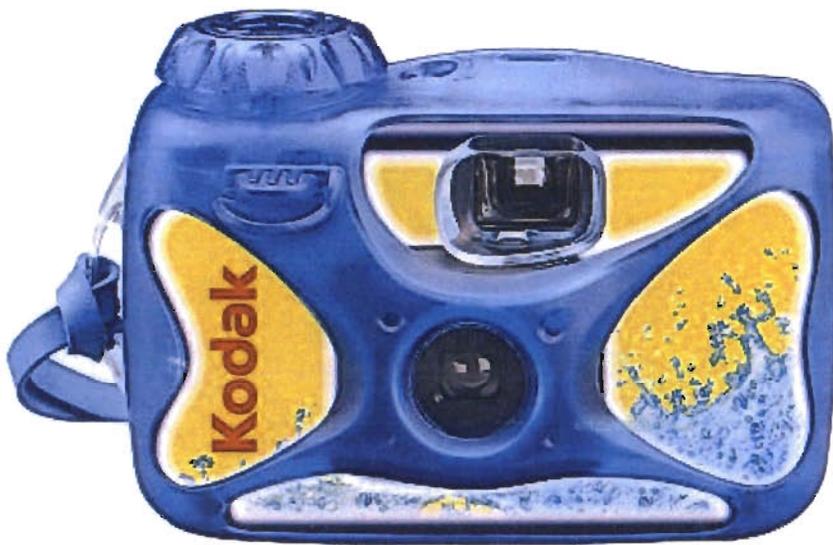


Exhibit E



City of Pompano Beach, Purchasing Division
1190 N.E. 3rd Avenue, Building C
Pompano Beach, Florida, 33060

February 4, 2016

ADDENDUM #1, RFP L-13-16 – BEACH EQUIPMENT CONCESSION

To Whom It May Concern,

Please review the following changes to the insurance requirements in section I. on page 18 of the RFP. The General Liability has been changed to require a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate. The Excess Liability requirement of \$2,000,000 has been removed.

The insurance requirements in this addendum will replace section I. of the RFP.

I. **INSURANCE**

The insurance described herein reflects the insurance requirements deemed necessary for this project by the City. It is not necessary to have this level of insurance in effect at the time of submittal, but certificates indicating that the insurance is currently carried or a letter from the Carrier indicating upgrade ability will speed the review process to determine the most qualified Proposer.

The successful Proposer(s) shall not commence operations, construction, and/or installation of improvements until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City of Pompano Beach Risk Manager.

The following insurance coverage shall be required.

1. Worker's Compensation Insurance covering all employees and providing benefits as required by Florida Statute, Chapter 440, regardless of the size of the company (number of employees). The Contractor further agrees to be responsible for employment, control and conduct of its employees and for any injury sustained by such employees in the course of their employment.
2. Liability Insurance
 - a) Naming the City of Pompano Beach as an additional insured, on General Liability Insurance only, in connection with work being done under this contract.
 - b) Such Liability insurance shall include the following checked types of insurance and indicated minimum policy limits.

3. Real & Personal Property Insurance

The Contractor is responsible for any loss or damage to tools, equipment, and supplies at the job site and is responsible for any loss or damage to buildings being constructed until that building is completed and a certificate of occupancy is issued.

LIMITS OF LIABILITY

Type of Insurance	each occurrence	aggregate
GENERAL LIABILITY	MINIMUM \$1,000,000/\$2,000,000 OCCURRENCE/AGGREGATE	
XX comprehensive form	bodily injury	
XX premises - operations		
— explosion & collapse hazard	property damage	
— underground hazard		
XX products/completed operations hazard	bodily injury and property damage combined	
XX contractual insurance		
XX broad form property damage		
XX independent contractors		
XX personal injury	personal injury	

AUTOMOBILE LIABILITY	MINIMUM \$1,000,000 OCCURRENCE/AGGREGATE	
	bodily injury (each person)	
	bodily injury (each accident)	
XX comprehensive form	property damage	
XX owned		
XX hired	bodily injury and property damage combined	
XX non-owned		

REAL & PERSONAL PROPERTY		
XX comprehensive form		Organization must show proof they have this coverage.

EXCESS LIABILITY		
— umbrella form	bodily injury and property damage combined	
— other than umbrella		
		\$2,000,000.
		\$2,000,000.

The certification or proof of insurance must contain a provision for notification to the City ten (10) days in advance of any material change in coverage or cancellation.

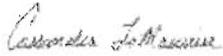
The successful Proposer shall furnish to the City the certification or proof of insurance required by the provisions set forth above, within ten (10) days after notification of award of contract.

Addendum #1 is posted on the City's website: www.pompanobeachfl.gov.
Acknowledge receipt of this Addendum in the area provided on page 24 of the RFP.

The deadline for acceptance of proposals in the Purchasing Office, 1190 N.E. 3rd Avenue, Bldg. C, Pompano Beach, 33060, is **2:00 p.m. (local), February 23, 2016.**

The remainder of the solicitation is unchanged at this time.

Sincerely,



Cassandra LeMasurier, Purchasing Supervisor

cc: website
file

EXHIBIT B

CONTINUING AND UNCONDITIONAL PAYMENT GUARANTY

1. The Guaranty. For valuable consideration, Boucher Brothers Management, Inc., a Florida corporation ("BBMI" or "Guarantor") hereby unconditionally guarantees and promises to pay promptly to The City of Pompano Beach (the "City"), in lawful money of the United States, any and all Indebtedness (as hereinafter defined) of Boucher Brothers Pompano Beach, LLC, a Florida limited liability company ("BBPB") which is under common ownership and control with BBMI and, accordingly, Guarantor acknowledges and agrees that there is adequate consideration to support this Guaranty to the City when due hereunder. The liability of Guarantor under this Guaranty includes, but is not limited to the compensation payable by BBPB under that certain License Agreement between the City and BBMI dated July ____, 2016 (as assigned to BBPB and as amended or modified from time to time, the "License Agreement"), and includes, without limitation, liability for all indemnities, interest and other costs, expenses and amounts payable to the City under the License Agreement. The liability of Guarantor is continuing and relates to any Indebtedness arising under the License Agreement. "Indebtedness" shall mean and includes any and all fees, compensation, obligations, costs and expenses due to the City from BBPB thereunder now or hereafter made, incurred or created, whether voluntary or involuntary, and however arising, when due.

2. Obligations Independent. The obligations under this Guaranty are independent of the obligations of BBPB, and a separate action or actions may be brought and prosecuted against Guarantor whether action is brought against BBPB or any other guarantor or whether BBPB or any other guarantor be joined in any such action or actions. Notwithstanding the foregoing or anything to the contrary contained herein (including, without limitation, Section 6 hereof), no amount is payable by BBMI hereunder until a failure of BBPB to pay any Indebtedness due and owing to the City in accordance with the License Agreement and subject to any applicable cure period. This Guaranty is a guaranty of payment and not collection. Guarantor hereby waives the right to require the City to proceed against any other guarantors or to require the City to pursue any other remedy or enforce any other right.

3. Rights of City. Guarantor authorizes City, without notice or demand and without affecting its liability hereunder, from time to time to alter, renew, compromise, extend, accelerate, or otherwise change the time for payment, or otherwise change the terms, of the Indebtedness or any part thereof, including increase or decrease of the rate of interest, or otherwise change the terms of the License Agreement.

4. Guaranty to be Absolute. Guarantor agrees that until the Indebtedness has been paid in full in immediately available funds and the License Agreement shall have expired or terminated, Guarantor shall not be released by or because of the taking, or failure to take, any action that might in any manner vary, discharge or otherwise reduce, limit, or modify Guarantor's obligations under this Guaranty. It is the express intent of Guarantor that Guarantor's obligations under this Guaranty are and shall be absolute and unconditional. If this Guaranty is revoked or canceled, and subsequently any payment or transfer of any interest in property by

BBPB to City is rescinded or must be returned by City to BBPB, this Guaranty shall be reinstated with respect to any such payment or transfer, regardless of any such prior revocation or cancellation. In the event that acceleration of the time for payment of any of the Indebtedness is stayed upon the insolvency, bankruptcy, or reorganization of BBPB or otherwise, all such Indebtedness guaranteed by Guarantor shall nonetheless be payable by Guarantor immediately if requested by City. The determination as to whether any amount so paid must be rescinded or restored shall be made by the City in its sole discretion; provided however, that if the City chooses to contest any such matter at the written request of Guarantor, Guarantor agrees to indemnify and hold the City harmless from and against all costs and expenses, including reasonable attorneys' fees, expended or incurred by the City in connection therewith, including without limitation, in any litigation with respect thereto.

5. Guarantor's Waivers of Certain Rights and Certain Defenses. Guarantor waives:

(a) any right to require the City to make any presentment or demand for performance, or give any notice of nonperformance, acceleration, protest, notice of protest or notice of dishonor hereunder or in connection with any obligations or evidences of Indebtedness held by City as security for or which constitute in whole or in part the Indebtedness guaranteed hereunder, or in connection with the creation of new or additional Indebtedness, or give any notice of acceptance of this Guaranty, or notices of any fact that might increase Guarantor's risk.

(b) any defense to its obligations under this Guaranty based upon or arising by reason of:

(i) any lack of authority of any manager, member officer, director, partner, agent or any other person acting or purporting to act on behalf BBPB or any defect in the formation of BBPB; or

(ii) any modification of the Indebtedness, in any form whatsoever, including, without limitation, the renewal, extension, acceleration or other change in time for payment of, or other change in the terms of, the Indebtedness, including increase or decrease of the rate of interest.

No provision or waiver in this Guaranty shall be construed as limiting the generality of any other waiver contained in this Guaranty.

6. Subordination; Subrogation. Until termination of this Guaranty, any obligations of BBPB to Guarantor are hereby subordinated to the Indebtedness. Guarantor agrees that, upon the occurrence and during the continuance of a payment default by BBPB under the License Agreement, if the City so requests, Guarantor shall not demand, take, or receive from BBPB, by setoff or in any other manner, payment of any other obligations of BBPB to Guarantor. If any payments are received by Guarantor in violation of such waiver or agreement, such payments shall be received by Guarantor as trustee for the City and subject to payment to the City as required under this Guaranty. Until all Indebtedness shall have been paid in full, Guarantor shall have no right of subrogation, and Guarantor waives any right to enforce any remedy which the City now has or may hereafter have against BBPB or any other person and waives any benefit of, or any right to participate in, any security now or hereafter held by City. Guarantor further

waives all rights and defenses Guarantor may have arising out of (i) any election of remedies by the City, even though that election of remedies destroys Guarantor's rights of subrogation or Guarantor's rights to proceed against BBPB for reimbursement, or (ii) any loss of rights Guarantor may suffer by reason of any rights, powers or remedies of BBPB in connection with any laws limiting, qualifying, or discharging BBPB's Indebtedness, whether by operation of law or otherwise.

7. Extent of Guaranty. If Guarantor is a subsidiary or affiliate of BBPB, Guarantor's liability hereunder shall not exceed at any one time the largest amount during the period commencing with Guarantor's execution of this Guaranty and thereafter that would not render Guarantor's obligations hereunder subject to avoidance under Section 548 of the bankruptcy Code (Title 11, United States Code) or any comparable provisions of any applicable state law.

8. Information Relating to BBPB. Guarantor acknowledges and agrees that it has made such independent examination, review, and investigation of the License Agreement as Guarantor deems necessary and appropriate and shall have sole responsibility to obtain from BBPB any information required by Guarantor about any modifications to the License Agreement. Guarantor further acknowledges that the City has no duty, and Guarantor is not relying on the City, at any time to disclose to Guarantor any information relating to the business operations or financial condition of BBPB.

9. Change of Status. Guarantor shall not enter into any consolidation, merger, or other combination unless Guarantor is the surviving business entity or with or into an Affiliate without the prior written consent of the City, which shall not be unreasonably withheld if this Guaranty is assumed by the surviving entity.

10. Remedies. If Guarantor fails to fulfill its duty to pay all Indebtedness guaranteed hereunder or shall breach or fail to comply with any term or provision of this Guaranty which is not cured within thirty (30) days after receipt of written notice thereof from the City describing in reasonable detail such breach or failure, the City shall have all of the remedies of a creditor and, to the extent applicable, of a secured party, under all applicable law. Without limiting the foregoing to the extent permitted by law, City may, at its option and without notice or demand:

(a) declare any Indebtedness due and payable at once; and

(b) pursue all available remedies.

All rights, powers and remedies of the City hereunder are cumulative. No delay, failure or discontinuance of the City in exercising any right, power or remedy hereunder shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by the City of any breach of this Guaranty, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.

11. Notices. All notices required under this Guaranty shall be personally delivered or sent by first class mail, postage prepaid, or by overnight courier, to the addresses on the signature page of this Guaranty, or sent by facsimile to the fax numbers listed on the signature page, or to such other addresses as Guarantor may specify from time to time in writing. Notices and other communications shall be effective (a) if mailed, upon the earlier of receipt or five (5) days after deposit in the U.S. mail, first class, postage prepaid, (b) if telecopied, when transmitted if a business day or, if not, the next succeeding business day, or (c) if hand-delivered, by courier or otherwise, when delivered if a business day or, if not, the next succeeding business day.

12. Successors and Assigns. This Guaranty is for the sole benefit of the City, and no other party (including without limitation any creditor of BBPB) shall have any right or claim against BBMI or under the Guaranty by reason of these provisions or be entitled to enforce any of these provisions against BBMI. This Guaranty (a) binds Guarantor and Guarantor's successors, and assigns, provided, that, Guarantor may not assign its rights or obligations under this Guaranty without the prior written consent of the City, and (b) inures to the benefit of the City and its successors and assigns. City may not assign the Indebtedness or this Guaranty, in whole or in part, without the prior written consent of BBMI.

13. Amendments, Waivers, and Severability. No provision of this Guaranty may be amended or waived except in writing. No failure by City to exercise, and no delay in exercising, any of its rights, remedies, or powers shall operate as a waiver of such rights, remedies or powers, and no single or partial exercise of any such right, remedy, or power shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision of this Guaranty.

14. Costs and Expenses. Guarantor shall pay to the City immediately upon demand the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees to outside counsel and all other costs and expense expended or incurred by the City in connection with the enforcement of this Guaranty or any of the City's rights, powers or remedies and/or the collection of any amounts which become due to the City under this Guaranty, and the prosecution or defense of any action in any way related to this Guaranty, whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by the City or any other person) relating to Guarantor or any other person or entity.

15. Representations and Warranties. When Guarantor signs this Guaranty, and until the Indebtedness is repaid in full and the License Agreement has expired or terminated, Guarantor makes the following representations and warranties:

(a) There is no lawsuit, tax claim or other dispute pending or threatened against Guarantor which, if lost, would impair Guarantor's financial condition or ability to repay the Indebtedness.

(b) Guarantor is not in default on any obligation for borrowed money, any purchase money obligation or any other material lease, commitment, contract, instrument or obligation which would have a material adverse effect on Guarantor.

(c) There is no event which is, or with notice or lapse of time or both would be, a default by Guarantor under this Guaranty or under any other instrument or agreement executed in connection with the Indebtedness or this Guaranty.

(d) Guarantor will not be rendered insolvent by the execution, delivery, and performance of its obligations under this Guaranty.

(e) This Guaranty has been duly and validly executed and delivered by Guarantor and is the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms.

(f) Neither the execution and delivery of this Agreement by Guarantor nor the consummation of the transactions contemplated by this Guaranty by such party will violate, conflict with or result in any breach of, otherwise give any contracting party the right to terminate, or constitute (or with notice or lapse of time or both constitute) a default under, any contract, agreement, indenture, trust or other instrument which is either binding upon or enforceable against Guarantor.

(g) The principal residence of Guarantor is located at the address listed on the signature page of this Guaranty.

16. Governing Law. This Guaranty shall be governed and interpreted according to the laws of the State of Florida (the "Governing Law State"), without regard to any choice of law, rules or principles to the contrary.

17. Waiver of Jury Trial. **EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER DOCUMENTS CONTEMPLATED HEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION AND (c) CERTIFIES THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE.**

18. Final Agreement. This Agreement constitutes the entire agreement between Guarantor and the City with respect to the subject matter of this Guaranty and with respect to the License Agreement between the City and BBPB and supersedes all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof.

Witnesses:

BOUCHER BROTHERS MANAGEMENT, INC.,
a Florida corporation

[Signature]
Adam Cecchi
Print Name

By: *[Signature]*
James R. Boucher
Typed or Printed Name

[Signature]
JAMES PAMPOLINA
Print Name

Title: President/CEO
(SEAL)

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 29 day of June, 2016, by Jim Boucher as owner of **BOUCHER BROTHERS MANAGEMENT, INC.,** a Florida corporation on behalf of the corporation. He/she is personally known to me or who has produced _____ (type of identification) as identification.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

Carolina Tesillo
(Name of Acknowledger Typed, Printed or Stamped)



CAROLINA TESILLO
MY COMMISSION # FF 097434
EXPIRES: March 22, 2018
Bonded Thru Budget Notary Services

FF 097434
Commission Number

Address for notices to City:
The City of Pompano Beach
100 West Atlantic Boulevard, Room 480
Pompano Beach, FL 33060
Attn: Suzette Sible, Finance Director

Address for notices to Guarantor:
Boucher Brothers Management, Inc.
1451 Ocean Drive, Suite 205
Miami Beach, FL 33139
Attn: James R. Boucher

L:agr/rece/2016-983f

