



NOTICE OF REGULAR MEETING
Park Board of Trustees of the City of Galveston
Parks and Amenities Committee
Thursday, January 5 at 9:00 a.m.
Park Board Plaza, Board Room - First Floor
601 Tremont Street, Galveston, Texas 77550

- I. Call Meeting To Order
- II. Pledge Of Allegiance
- III. Roll Call And Declaration Of A Quorum
- IV. Requests To Address The Committee
The public shall be allowed to address the Committee regarding one or more agenda or non-agenda items. All requests to address the Board must be submitted in writing to the Board Reporter the day of the Board meeting. Each person shall be limited to three (3) minutes regardless of the number of items addressed.
- V. Conflict Of Interest Declarations
- VI. Approval Of Minutes
 - A. November 3, 2016 Minutes For Approval
Documents:
[MINUTES 11.3.16 FOR APPROVAL.XLSX.PDF](#)
- VII. Introduction Of New Committee Members (Kelly)
- VIII. Discuss And Consider 2016-2017 Committee Workplan (Kelly)
- IX. Discuss And Consider Award Of Contract To Bennett Beach Services For Areas 21-23 For Umbrella And Chair Rentals (Chris)
 - A. Jack Bennett Area 21
Documents:
[JACK BENNETT AREA 21.PDF](#)
 - B. Jack Bennett Area 22
Documents:
[JACK BENNETT AREA 22.PDF](#)
 - C. Jack Bennett Area 23
Documents:

[JACK BENNETT AREA 23.PDF](#)

- X. Discuss And Consider Award Of Contract To Brown Food Service For Area Park Board Plaza For Special Event Parking (Chris)

A. Jeff Brown - Parking

Documents:

[2017.AGREEMENT FOR THE USE OF THE PARK BOARD PLAZA PARKING LOTS.PDF](#)

- XI. Discuss And Consider Award Of Contract To Charlies Beach Service For Areas Dellanera Park And Pocket Park 1 For Umbrella And Chair Rentals (Chris)

A. Adam Musick Dellanera And Pocket Park 1

Documents:

[ADAM MUSICK DELLANERA.POCKET PARK 1.PDF](#)

- XII. Discuss And Consider Award Of Contract To Corporate Aircraft Solutions For Area 2 (Stewart Beach) For Bike Rental Program (Chris)

A. Steve Olive And Corporate Aircraft Solutions

Documents:

[STEVEN OLIVE AND CORPORATE AIRCRAFT SOLUTIONS.PDF](#)

- XIII. Discuss And Consider Award Of Contract To Gulf Coast Vending Service For Areas Dellanera Park And Park Board Plaza For Vending Services (Chris)

A. Gulf Coast Vending.Dellanera

Documents:

[GULF COAST VENDING.DELLANERA.PDF](#)

B. Gulf Coast Vending.Park Board Plaza

Documents:

[GULF COAST VENDING.PARK BOARD PLAZA.PDF](#)

- XIV. Discuss And Consider Contract For Puro Gusto Service For East End Lagoon And Pocket Park 1 (Chris)

- XV. Discuss Offseason Plan For Stewart Beach/East Beach And Seawall Parking (Urban Park) (Chris)

XVI. Future Agenda Items

XVII. Announcements

XVIII. Adjournment

Approved
to Format
___Approved via Email___
via Email___
Kelly de Schaun
McLean
Park Board Executive Director
of Trustees

Approved as
-----Approved
Joyce Calver
Chair, Park Board

Please Note Members of the City Council may be attending and participating in the discussion.

In accordance with the provisions of the Americans with Disabilities Act (ADA), persons in need of a special accommodation to participate in this proceeding shall, within three (3) days prior to any proceeding, contact the Park Board Administration

Office, 601 Tremont, Galveston Texas 77550 (409-797-5147)

PAC -- PARK BOARD OF TRUSTEES

MEETING DATE: November 3, 2016 @ 9am -- Call the meeting to order at 9:00 am

Staff: Chris Saddler

NAME	ATTENDANCE	CONFLICT OF INTEREST	AGENDA VI.			AGENDA VII.			AGENDA VIII. 1st 2nd		
			1st	FOR	AGAINST	1st	FOR	AGAINST	1st	FOR	AGAINST
Thayer Evans, Chair	✓										
Melvin Williams, Vice Chair	✓										
Jason Worthen	✓										
Wanda Buttner											
Liz Torres											
Brandon Cook	✓										
Joyce Calver											

Resource Members Present/via Phone:

Guests Present: None

PUBLIC COMMENT & ADDL. NOTES	
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PAC -- PARK BOARD OF TRUSTEES

MEETING DATE: November 3, 2016 @ 9am -- Call the meeting to order at 9:00 am

Staff: Chris Saddler

NAME	ATTENDANCE	CONFLICT OF INTEREST	AGENDA IX.			AGENDA X.			AGENDA XI. 1st 2nd		
			1st 2nd	FOR	AGAINST	1st 2nd	FOR	AGAINST	1st 2nd	FOR	AGAINST
Thayer Evans, Chair	✓			✓							
Melvin Williams, Vice Chair	✓		2nd	✓							
Jason Worthen	✓		1ST	✓							
Wanda Buttner											
Liz Torres											
Brandon Cook	✓			✓							
Joyce Calver											

NAME	ATTENDANCE	CONFLICT OF INTEREST	AGENDA XII.			AGENDA XIII. 1st 2nd					
			1st 2nd	FOR	AGAINST	1st 2nd	FOR	AGAINST			
Thayer Evans, Chair	✓										
Melvin Williams, Vice Chair	✓										
Jason Worthen	✓										

PAC -- PARK BOARD OF TRUSTEES

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Wanda Buttner										
Liz Torres										
Brandon Cook	✓									
Joyce Calver										

MOTION AGENDA VI.	Approval of Minutes
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Motion was made and seconded, no comments, voted unanimous to approve.

MOTION AGENDA VII.	Discuss Vending Opportunities For The 2017 Beach Season
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Chris Saddler updated the committee of the upcoming vendor opportunities for the 2017 beach season, Chris also let the committee know that at the next meeting there would be contracts that would have to approved.

MOTION AGENDA VIII.	Discuss Website Updates For Concessionaires
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PAC -- PARK BOARD OF TRUSTEES

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Staff: Chris Saddler

Chris Saddler presented the new Park Board website for the Vending, he walked the committee through the new application process and showed all the supporting documents that a vendor would need to become a vendor.

MOTION AGENDA IX. A Discuss Offseason Plan For Seawolf

Seawolf Park Manager gave a presentation on the off season items that where being worked on.

MOTION AGENDA IX. B Discuss Offseason Plan for Dellanera and Pocket Parks

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Staff: Chris Saddler

Dellanera Park Manager gave a presentation on the off season items that where being worked on.

MOTION AGENDA X.	Discuss And Consider Camping At East Beach For 2017 Jeep Go Topless Day
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Staff gave a presentation of the agenda item talked by the fees that would be collected for the over night camping. Staff also talked about noise and that it would follow any recommendation that the committee set. The committee recommended that the quite time would be 11:00pm. Motion was made and seconded, no comments, voted unanimous to approve.

MOTION AGENDA XI.	Future Agenda Items
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PAC -- PARK BOARD OF TRUSTEES

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N/A

MOTION AGENDA XII.	Announcements
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PAC -- PARK BOARD OF TRUSTEES

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Staff: Chris Saddler

N/A

MOTION AGENDA XIII.	Adjournment
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**CONCESSION AGREEMENT WITH JACK BENNETT FOR CONCESSION
AREA 21 (70th TO 71st) FOR BEACH UMBRELLA AND CHAIR RENTAL**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS AGREEMENT made and entered into effective January 17, 2017, by and between the Park Board of Trustees of the City of Galveston ("Park Board") and Jack Bennett, dba Bennett's Beach Service (Concessionaire").

WHEREAS, the Park Board has leased a portion of the beach south of the Seawall between 61st Street and 103rd Street ("West Beach") from the State of Texas under a surface lease ("Surface Lease"); and

WHEREAS, the Surface Lease expires on January 31, 2035.

NOW THEREFORE, Park Board does agree as follows:

1. **Term.** The Term of this Agreement will commence on March 11, 2017 and terminates on March 11, 2019, unless this agreement is terminated. Concessionaire will operate during the season and will be required to be open every weekend from Spring Break to Labor Day.
2. **Concession Fee.** The concession fee for Area 21 is a yearly fee of \$8,200 payable in three installments on March 1, June 1 and August 1 of 2017 and 2018.
3. **Laws & Restrictions.** Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.
4. **Scope and Use.** The only activities which Concessionaire shall be permitted to engage in on the premises of Concession Area 21 is the rental or sale of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive concession.
5. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance herewith prior to delinquency.

6. **No Assignment.** Concessionaire shall not mortgage, pledge, transfer or assign this Agreement or any privileges hereunder.

7. **Park Board Rules.** The use and occupation of the premises shall be subject to any and all rules and regulations as may be prescribed by Park Board from time to time. Violation of any rule or regulation of Park Board, after a notice and a ten-day (10) opportunity to cure, is grounds for termination.

8. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, Texas, and to the state of Texas, their officers, agents, and employees to enter upon the said premises at any time for inspection or for any governmental purpose, to remove therefrom persons, equipment, fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, or the state of Texas, or any officer, agent, or employee thereof.

9. **Exoneration.** Park Board and the City, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the incident to the use or occupation of the said premises by Concessionaire; (2) damages to the property of Concessionaire; (3) injuries to the person of Concessionaire's officers, agents, servants, or employees, or any other persons who may be on said premises at their invitation or the invitation of any one of them, and Concessionaire shall hold Park Board and the City harmless from any and all such claims, even though such claims may be caused or alleged to be caused in whole or in part by the negligence of Park Board, the City, or its respective officers, agents, or employees.

10. **Notice.** Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage pre-paid in a post office or branch post office regularly maintained by the United States Government, to the following addresses:

Concessionaire:	Jack Bennett
Address:	3126 Pine Street Galveston, Texas 77551
Telephone:	409.795.4926
Email:	jackabennett@tamu.edu
	Park Board of Trustees of City of Galveston, Texas
	Attention: Ms. Kelly de Schaun Executive Director
Address:	601 Tremont Galveston, Texas 77550
Telephone:	409.763.6564
Telefax:	409.762.8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

11. **Termination.**

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

(1) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation, which termination may be immediate and without advance notice;

(2) The commission by Concessionaire of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors, an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises.

(3) A breach by Concessionaire of any other terms or conditions of this Agreement, provided that Concessionaire, subject to any express provision in this Agreement to the contrary, shall first be entitled to ten (10) days written notice with the opportunity to cure the default of any other such term or condition within such period, but provided further that Concessionaire will be entitled to notice of default and an opportunity to cure only twice during the term of this Agreement. Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire, nor shall it constitute a waiver by Park Board of its right to enforce all provisions of this Agreement.

(4) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(5) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license; or

(6) In the event that a storm or other natural force causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises.

(7) The violation of any Park Board rule, after being given ten (10) days to cure the violation.

(8) Ninety days written notice.

12. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater amount as shall be from time to time required by Park Board, and shall name Park Board and the City as additional named insureds under said policy, and said policy shall provide for thirty (30) days' notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in form and with an insurance carrier acceptable to the Executive Director of Park Board. Concessionaire agrees that it will make no claim nor authorize any claim to be made against and will provide waivers of subrogation from its insurers as to Park Board, its employees, servants, or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days' notice prior to cancellation or revision as above provided.

13. **INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM ITS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.**

14. **Limits of Liability.** Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is the

City or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

15. **Access and Signage.** Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. Concessionaire, and its agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising the premises shall be subject to prior approval of the Executive Director of Park Board. All signage must include Park Board's logo, name, and telephone number, and shall request that any problems be reported.

16. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

17. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

18. **Miscellaneous.**

A. Concessionaire agrees that all its employees in and about the premises will wear neat and attractive uniforms which are compatible with those worn by Park Board employees or as Park Board shall otherwise direct, and all employees of Concessionaire will at all times maintain a neat and attractive appearance, a professional demeanor and be polite and courteous at all times.

B. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels.

C. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from its duties and activities hereunder.

D. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of Park Board.

19. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

20. Concessionaire agrees to pay \$500.00 for fees associated with the drafting of this Agreement.

21. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges it will comply with all beach patrol rules, Coast Guard rules, and any and all city ordinances. The Galveston Beach Patrol shall have full authority to shut down Concessionaire's operation if they believe, in their sole discretion, there is a safety issue. Concessionaire acknowledges that there may be other concessionaires in the same area.

B. There may be third parties having rights or claims of rights to the New Beach, including, without limitation, the premises. Concessionaire acknowledges that it takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. Park Board will have the right but not the obligation to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted is not an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire by acceptance of this concession represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for its purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion. Concessionaire acknowledges that Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that Park Board may add sand or nourish certain portions of the beach and not add sand or nourish the premises leased by Concessionaire.

22. **Environmental Stewardship.** The Park Board of Trustees of the City of Galveston recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Island's natural resources. In this important effort Park Board reaches out and partners with its concessionaires in the implementation of environmental stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating under the jurisdiction of Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service

**CONCESSION AGREEMENT WITH JACK BENNETT FOR CONCESSION
AREA 22 (72nd TO 73rd) FOR BEACH UMBRELLA AND CHAIR RENTAL**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS AGREEMENT made and entered into effective January 17, 2017, by and between the Park Board of Trustees of the City of Galveston ("Park Board") and Jack Bennett, dba Bennett's Beach Service (Concessionaire").

WHEREAS, the Park Board has leased a portion of the beach south of the Seawall between 61st Street and 103rd Street ("West Beach") from the State of Texas under a surface lease ("Surface Lease"); and

WHEREAS, the Surface Lease expires on January 31, 2035.

NOW THEREFORE, Park Board does agree as follows:

1. **Term.** The Term of this Agreement will commence on March 11, 2017 and terminates on March 11, 2019, unless this agreement is terminated. Concessionaire will operate during the season and will be required to be open every weekend from Spring Break to Labor Day.

2. **Concession Fee.** The concession fee for Area 22 is a yearly fee of \$7,000 payable in three installments on March 1, June 1 and August 1 of 2017 and 2018.

3. **Laws & Restrictions.** Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.

4. **Scope and Use.** The only activities which Concessionaire shall be permitted to engage in on the premises of Concession Area 23 is the rental or sale of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive concession.

5. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance herewith prior to delinquency.

6. **No Assignment.** Concessionaire shall not mortgage, pledge, transfer or assign this Agreement or any privileges hereunder.

7. **Park Board Rules.** The use and occupation of the premises shall be subject to any and all rules and regulations as may be prescribed by Park Board from time to time. Violation of any rule or regulation of Park Board, after a notice and a ten-day (10) opportunity to cure, is grounds for termination.

8. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, Texas, and to the state of Texas, their officers, agents, and employees to enter upon the said premises at any time for inspection or for any governmental purpose, to remove therefrom persons, equipment, fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, or the state of Texas, or any officer, agent, or employee thereof.

9. **Exoneration.** Park Board and the City, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the incident to the use or occupation of the said premises by Concessionaire; (2) damages to the property of Concessionaire; (3) injuries to the person of Concessionaire's officers, agents, servants, or employees, or any other persons who may be on said premises at their invitation or the invitation of any one of them, and Concessionaire shall hold Park Board and the City harmless from any and all such claims, even though such claims may be caused or alleged to be caused in whole or in part by the negligence of Park Board, the City, or its respective officers, agents, or employees.

10. **Notice.** Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage pre-paid in a post office or branch post office regularly maintained by the United States Government, to the following addresses:

Concessionaire:	Jack Bennett
Address:	3126 Pine Street Galveston, Texas 77551
Telephone:	409.795.4926
Email:	jackabennett@tamu.edu Park Board of Trustees of City of Galveston, Texas Attention: Ms. Kelly de Schaun Executive Director
Address:	601 Tremont Galveston, Texas 77550
Telephone:	409.763.6564
Telefax:	409.762.8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

11. **Termination.**

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

(1) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation, which termination may be immediate and without advance notice;

(2) The commission by Concessionaire of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors, an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises.

(3) A breach by Concessionaire of any other terms or conditions of this Agreement, provided that Concessionaire, subject to any express provision in this Agreement to the contrary, shall first be entitled to ten (10) days written notice with the opportunity to cure the default of any other such term or condition within such period, but provided further that Concessionaire will be entitled to notice of default and an opportunity to cure only twice during the term of this Agreement. Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire, nor shall it constitute a waiver by Park Board of its right to enforce all provisions of this Agreement.

(4) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(5) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license; or

(6) In the event that a storm or other natural force causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises.

(7) The violation of any Park Board rule, after being given ten (10) days to cure the violation.

(8) Ninety days written notice.

12. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater amount as shall be from time to time required by Park Board, and shall name Park Board and the City as additional named insureds under said policy, and said policy shall provide for thirty (30) days' notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in form and with an insurance carrier acceptable to the Executive Director of Park Board. Concessionaire agrees that it will make no claim nor authorize any claim to be made against and will provide waivers of subrogation from its insurers as to Park Board, its employees, servants, or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days' notice prior to cancellation or revision as above provided.

13. **INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM ITS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.**

14. **Limits of Liability.** Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is the

City or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

15. **Access and Signage.** Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. Concessionaire, and its agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising the premises shall be subject to prior approval of the Executive Director of Park Board. All signage must include Park Board's logo, name, and telephone number, and shall request that any problems be reported.

16. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

17. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

18. **Miscellaneous.**

A. Concessionaire agrees that all its employees in and about the premises will wear neat and attractive uniforms which are compatible with those worn by Park Board employees or as Park Board shall otherwise direct, and all employees of Concessionaire will at all times maintain a neat and attractive appearance, a professional demeanor and be polite and courteous at all times.

B. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels.

C. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from its duties and activities hereunder.

D. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of Park Board.

19. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

20. Concessionaire agrees to pay \$500.00 for fees associated with the drafting of this Agreement.

21. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges it will comply with all beach patrol rules, Coast Guard rules, and any and all city ordinances. The Galveston Beach Patrol shall have full authority to shut down Concessionaire's operation if they believe, in their sole discretion, there is a safety issue. Concessionaire acknowledges that there may be other concessionaires in the same area.

B. There may be third parties having rights or claims of rights to the New Beach, including, without limitation, the premises. Concessionaire acknowledges that it takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. Park Board will have the right but not the obligation to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted is not an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire by acceptance of this concession represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for its purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion. Concessionaire acknowledges that Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that Park Board may add sand or nourish certain portions of the beach and not add sand or nourish the premises leased by Concessionaire.

22. **Environmental Stewardship.** The Park Board of Trustees of the City of Galveston recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Island's natural resources. In this important effort Park Board reaches out and partners with its concessionaires in the implementation of environmental stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating under the jurisdiction of Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service

**CONCESSION AGREEMENT WITH JACK BENNETT FOR CONCESSION
AREA 23 (74th TO 75th) FOR BEACH UMBRELLA AND CHAIR RENTAL**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS AGREEMENT made and entered into effective January 17, 2017, by and between the Park Board of Trustees of the City of Galveston ("Park Board") and Jack Bennett, dba Bennett's Beach Service (Concessionaire").

WHEREAS, the Park Board has leased a portion of the beach south of the Seawall between 61st Street and 103rd Street ("West Beach") from the State of Texas under a surface lease ("Surface Lease"); and

WHEREAS, the Surface Lease expires on January 31, 2035.

NOW THEREFORE, Park Board does agree as follows:

1. Term. The Term of this Agreement will commence on March 11, 2017 and terminates on March 11, 2019, unless this agreement is terminated. Concessionaire will operate during the season and will be required to be open every weekend from Spring Break to Labor Day.

2. Concession Fee. The concession fee for Area 23 is a yearly fee of \$6,050 payable in three installments on March 1, June 1 and August 1 of 2017 and 2018.

3. Laws & Restrictions. Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.

4. Scope and Use. The only activities which Concessionaire shall be permitted to engage in on the premises of Concession Area 23 is the rental or sale of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive concession.

5. Taxes. Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance herewith prior to delinquency.

6. **No Assignment.** Concessionaire shall not mortgage, pledge, transfer or assign this Agreement or any privileges hereunder.

7. **Park Board Rules.** The use and occupation of the premises shall be subject to any and all rules and regulations as may be prescribed by Park Board from time to time. Violation of any rule or regulation of Park Board, after a notice and a ten-day (10) opportunity to cure, is grounds for termination.

8. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, Texas, and to the state of Texas, their officers, agents, and employees to enter upon the said premises at any time for inspection or for any governmental purpose, to remove therefrom persons, equipment, fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, or the state of Texas, or any officer, agent, or employee thereof.

9. **Exoneration.** Park Board and the City, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the incident to the use or occupation of the said premises by Concessionaire; (2) damages to the property of Concessionaire; (3) injuries to the person of Concessionaire's officers, agents, servants, or employees, or any other persons who may be on said premises at their invitation or the invitation of any one of them, and Concessionaire shall hold Park Board and the City harmless from any and all such claims, even though such claims may be caused or alleged to be caused in whole or in part by the negligence of Park Board, the City, or its respective officers, agents, or employees.

10. **Notice.** Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage pre-paid in a post office or branch post office regularly maintained by the United States Government, to the following addresses:

Concessionaire:	Jack Bennett
Address:	3126 Pine Street Galveston, Texas 77551
Telephone:	409.795.4926
Email:	jackabennett@tamu.edu
	Park Board of Trustees of City of Galveston, Texas
	Attention: Ms. Kelly de Schaun Executive Director
Address:	601 Tremont Galveston, Texas 77550
Telephone:	409.763.6564
Telefax:	409.762.8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

11. **Termination.**

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

(1) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation, which termination may be immediate and without advance notice;

(2) The commission by Concessionaire of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors, an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises.

(3) A breach by Concessionaire of any other terms or conditions of this Agreement, provided that Concessionaire, subject to any express provision in this Agreement to the contrary, shall first be entitled to ten (10) days written notice with the opportunity to cure the default of any other such term or condition within such period, but provided further that Concessionaire will be entitled to notice of default and an opportunity to cure only twice during the term of this Agreement. Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire, nor shall it constitute a waiver by Park Board of its right to enforce all provisions of this Agreement.

(4) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(5) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license; or

(6) In the event that a storm or other natural force causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises.

(7) The violation of any Park Board rule, after being given ten (10) days to cure the violation.

(8) Ninety days written notice.

12. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater amount as shall be from time to time required by Park Board, and shall name Park Board and the City as additional named insureds under said policy, and said policy shall provide for thirty (30) days' notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in form and with an insurance carrier acceptable to the Executive Director of Park Board. Concessionaire agrees that it will make no claim nor authorize any claim to be made against and will provide waivers of subrogation from its insurers as to Park Board, its employees, servants, or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days' notice prior to cancellation or revision as above provided.

13. **INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM ITS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.**

14. **Limits of Liability.** Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is the

City or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

15. **Access and Signage.** Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. Concessionaire, and its agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising the premises shall be subject to prior approval of the Executive Director of Park Board. All signage must include Park Board's logo, name, and telephone number, and shall request that any problems be reported.

16. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

17. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

18. **Miscellaneous.**

A. Concessionaire agrees that all its employees in and about the premises will wear neat and attractive uniforms which are compatible with those worn by Park Board employees or as Park Board shall otherwise direct, and all employees of Concessionaire will at all times maintain a neat and attractive appearance, a professional demeanor and be polite and courteous at all times.

B. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels.

C. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from its duties and activities hereunder.

D. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of Park Board.

19. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

20. Concessionaire agrees to pay \$500.00 for fees associated with the drafting of this Agreement.

21. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges it will comply with all beach patrol rules, Coast Guard rules, and any and all city ordinances. The Galveston Beach Patrol shall have full authority to shut down Concessionaire's operation if they believe, in their sole discretion, there is a safety issue. Concessionaire acknowledges that there may be other concessionaires in the same area.

B. There may be third parties having rights or claims of rights to the New Beach, including, without limitation, the premises. Concessionaire acknowledges that it takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. Park Board will have the right but not the obligation to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted is not an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire by acceptance of this concession represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for its purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion. Concessionaire acknowledges that Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that Park Board may add sand or nourish certain portions of the beach and not add sand or nourish the premises leased by Concessionaire.

22. **Environmental Stewardship.** The Park Board of Trustees of the City of Galveston recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Island's natural resources. In this important effort Park Board reaches out and partners with its concessionaires in the implementation of environmental stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating under the jurisdiction of Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service

AGREEMENT FOR THE USE OF THE PARK BOARD PLAZA PARKING LOTS

Whereas, the Park Board of Trustees of the City of Galveston (Park Board) owns two parking lots (Parking Lots) located at 601 Tremont, Galveston, Texas; and

Whereas, Jeff Brown dba Brown Food Services, Inc. (Brown) has requested the use of the Parking Lots to sell parking spaces for three events: Dickens on the Strand, Lone Star Rally and Galveston Mardi Gras; and

Whereas, Park Board has agreed to allow Brown the use of the two Parking Lots for parking under certain conditions as stated below.

Therefore, for the mutual consideration contained in this Agreement, the parties agree as follows:

1. Brown may rent parking spaces on the two Parking Lots for three special events: Dickens on the Strand in December 2017 and 2018. Mardi Gras 2017 and 2018 and Lone Star Rally in 2017 and 2018.
2. The rental fee will be as follows: Dickens on the Strand will be \$600 for Saturday and Sunday, (\$600 for 2017 and \$600 for 2018). Mardi Gras will be \$2,000.00 for two weekends, which includes Friday evening, Saturday and Sunday for each weekend, plus Tuesday night on the second weekend for the Fat Tuesday parade. The rental fee will be \$2,000 for 2017 and \$2,000 for 2018. Lone Star will be \$1,000.00 for Thursday, Friday, Saturday and Sunday in 2017 and \$1,000.00 for Thursday, Friday, Saturday and Sunday in 2018. Payment is due in full 7 days in advance of the event each year.
3. If an event needs to be rescheduled because of weather, the rental fee will apply for the rescheduled date.
4. Brown will obtain a \$2 million general liability insurance listing Park Board and City of Galveston as additional insureds. Brown will provide a certificate of insurance to Park Board at least 7 days in advance of each event.
5. BROWN WILL INDEMNIFY AND HOLD THE PARK BOARD AND THE CITY OF GALVESTON HARMLESS FOR ANY AND ALL LIABILITY RELATED IN ANY WAY TO BROWN'S USE OF THE PARKING LOTS INCLUDING ANY AND ALL DAMAGES, COSTS AND ATTORNEY FEES.
6. This Agreement expires on March 1, 2018. An additional 2 year option may be available if approved by the Trustees of the Park Board.
7. Brown is an independent contractor and this Agreement creates no employer/employee relationship.
8. Brown is responsible for all clean up in the two Parking Lots. Brown agrees to return the Parking Lots to the Park Board in the same condition, including cleanliness, as they were before Brown's use.
9. The Agreement may be terminated by the Park Board if any of the following occurs:
 - a. Failure to pay in full 7 days prior each event.
 - b. Failure to provide a certificate of insurance in the amount of \$2,000,000 naming the Park Board and City as named insureds at least 7 days prior to each event.

- c. Failure to return the Parking Lots to the Park Board in the same condition as they were before use, including cleanliness.
- 10. Either party may terminate by giving 90 days written notice.
- 11. Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage pre-paid in a post office or branch post office regularly maintained by the United States Government, to the following addresses:

Concessionaire: Jeff Brown / Brown Food Services, Inc.
Address: 2819 Beluche
Galveston, Texas 77550
Telephone: 409-457-8118
Email:

Park Board: Park Board of Trustees of City of Galveston, Texas
Attention: Ms. Kelly de Schaun
Executive Director
Address: 601 Tremont
Galveston, Texas 77551
Telephone: 409.763.6564
Facsimile: 409.762.8911
Email: kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

DATE: January , 2017.

Park Board of Trustees of the City of Galveston

Kelly de Schaun, Executive Director

Jeff Brown

Jeff Brown, Individually

Brown Food Services, Inc.

Jeff Brown, Owner
2819 Beluche
Galveston, Texas 77551
409-457-8118

**CONCESSION AGREEMENT WITH ADAM MUSICK
TO RENT UMBELLAS AND CHAIRS AT DELLANERA PARK
AND POCKET PARK # 1**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

This Agreement is effective on _____, 2017, by and between the Park Board of Trustees of the City of Galveston (hereinafter referred to as "Park Board") and Adam Musick dba Charlies Beach Service (hereinafter referred to as Concessionaire).

WHEREAS, the City has transferred management and control of Dellanera Park to Park Board; and

WHEREAS, the County has transferred management and control of Beach Pocket Park #1, to Park Board; and

WHEREAS, Concessionaire has a desire to enter into such Concession Agreement with Park Board;

NOW, THEREFORE, for and in consideration for the premises hereinafter set forth, and in accordance with the above quoted authority, Park Board hereby grants to Concessionaire non-exclusive authority to rent umbrellas and chairs.

This Agreement is granted subject to the following conditions:

1. Concession Fee and Term for Dellanera Park

Concessionaire will operate from Spring Break, March 2017 to Labor Day, September 4, 2017. Concessionaire will be open every weekend during this period. The rental fee for this 2017 season is \$5,500 payable in five installments of \$1,100 due on March 1, April 1, May 1, June 1 and July 1, 2017.

Concessionaire will operate from Spring Break, March 2018 to Labor Day, September 3, 2018. Concessionaire will be open every weekend during this period. The rental fee for this 2018 season is \$5,500 payable in five installments of \$1,100 due on March 1, April 1, May 1, June 1 and July 1, 2018.

2. Concession Fee and Term for Pocket Park #1

Concessionaire will operate from Spring Break, March 2017 to Labor Day, September 4, 2017. Concessionaire will be open every weekend during this period. The rental fee for this 2017 season is \$3,100 payable on March 1, 2017.

Concessionaire will operate from Spring Break, March 2018 to Labor Day, September 3, 2018. Concessionaire will be open every weekend during this period. The rental fee for this 2018 season is \$3,100 payable on March 1, 2018.

An additional two year option may be available for the 2019 and 2020 seasons, if approved by the Trustees of the Park Board. There is no guarantee the two- year option will be approved and it could be subject to additional terms and conditions.

3. This agreement will be from March 1, 2017 and terminate on March 1, 2019.

4. Concessionaire shall furnish Park Board its annual sales tax report each year no later than January 30.

5. **Laws & Restrictions.** Concessionaire shall strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense. No non-moveable structure may be constructed or allowed on the premises.

6. **Restriction on Sales.** The only activities which Concessionaire shall be permitted to engage in on the premises shall be the rental of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive use.

7. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board.

8. **No Assignment.** Concessionaire shall not mortgage, pledge, hypothecate, transfer or assign this Agreement or any privileges hereunder, or any interest whatsoever in connection with this Agreement, without permission in writing from Park Board. No assignment shall relieve Concessionaire of its obligations hereunder. In the event Concessionaire is a legal entity other than an individual, any change in ownership of said entity shall be considered a transfer for the purposes of this Agreement.

9. **Park Board Rules.** The use and occupation of the premises shall be subject to any and all additional rules and regulations as may be prescribed by Park Board from time to time.

10. **Courtesy to All Beachgoers.** Concessionaire understands that all park and beachgoers are to be treated with absolute courtesy. Concessionaire acknowledges that the beach is open and no one can be prevented from access to the beach. Concessionaire will treat all park and beachgoers with politeness and professionalism.

11. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, the County, and the State of Texas, their officers, agents, and employees to enter upon the premises at any time for inspection or for any governmental purpose, to remove therefrom persons, equipment,

fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, the County or the State of Texas, or any officer, agent, or employee thereof.

12. **Exoneration.** Park Board, the City, and the County, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the incident to the use or occupation of the premises by Concessionaire; (2) damages to the property of Concessionaire; (3) injuries to the person of Concessionaire's officers, agents, servants, or employees, or any other persons who may be on the premises at their invitation or the invitation of any one of them, and Concessionaire shall hold Park Board, the City, and the County harmless from any and all such claims, even though such claims may be caused or alleged to be caused in whole or in part by the negligence of Park Board, the City, and the County, or its respective officers, agents, or employees.

13. **Notice.** Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, sent by certified mail, addressed and deposited postage pre-paid in a post office or branch office regularly maintained by the United States Government, to the following addresses:

Concessionaire:	Adam Musick
Address:	5 Borando Stretch La Marque, Texas 77568
Telephone:	409.771.1076
Email:	musickmn1@yahoo.com
Park Board:	Park Board of Trustees of City of Galveston, Texas Attention: Ms. Kelly de Schaun Executive Director
Address:	601 Tremont Galveston, Texas 77550
Telephone:	409.797.5141
Telefax:	409.762.8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

14. **Termination.**

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

- (1) Nonpayment of rental amount;

(2) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation, which termination may be immediate and without advance notice;

(3) The commission by (either) Concessionaire (either individually or jointly) of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors, an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises.

(4) A breach by Concessionaire of any other terms or conditions of this Agreement and/or violation of any Park Board rules (Concessionaire shall be given ten days' written notice to cure the default, however, Concessionaire shall be given the opportunity to cure only twice during the term of this Agreement);

(5) Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire, nor shall it constitute a waiver by Park Board of its right to enforce all provisions of this Agreement; and

(6) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(7) Failure to provide sales tax reports.

(8) Ninety days written notice.

B. This Agreement may be terminated by either party within thirty (30) days prior written notice upon the happening of any of the following events:

(1) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license; or

(2) In the event there is a terroristic act, or if a storm or other natural force, including global warming, causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises.

15. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater

amount as shall be from time to time required by Park Board, and shall name Park Board, the City and the County of Galveston as an additional named insured under said policy, and said policy shall provide for thirty (30) days' notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in form and with an insurance carrier acceptable to the Executive Director of the Park Board. Concessionaire agrees that it will make no claim nor authorize any claim to be made against and will provide waivers of subrogation from its insurers as to Park Board, its employees, servants, or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days' notice prior to cancellation or revision as above provided.

16. INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY, THE COUNTY, AND THEIR INDIVIDUAL TRUSTEES, COMMISSIONERS, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM ITS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, THE COUNTY, AND THEIR INDIVIDUAL TRUSTEES, COMMISSIONERS, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, THE COUNTY, AND THEIR INDIVIDUAL TRUSTEES, COMMISSIONERS, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, THE COUNTY, AND THEIR INDIVIDUAL TRUSTEES, COMMISSIONERS, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.

17. Limits of Liability. Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is the City, the County or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

18. **Access and Signage.** Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. Concessionaire, and its agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising the premises shall be subject to prior approval of the Executive Director of Park Board. All signage must include Park Board's logo, name, and telephone number, and shall request that any problems be reported.

19. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

20. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

21. **Miscellaneous.**

A. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels and routine raking of sand.

B. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from its duties and activities hereunder.

C. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of Park Board. No motor vehicles shall be permitted to remain on the premises except for such limited period of time as may be necessary for loading or unloading equipment without the prior written approval of Park Board.

D. Concessionaire acknowledges that there may be other concessionaires in the same area.

22. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

23. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges and understands the recitals in this Concession Agreement and takes the premises subject to the matters identified therein.

B. There may be third parties having rights or claims of rights to the premises, including, without limitation, the premises. Concessionaire acknowledges that it takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. Park Board will have the right but not the obligation to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted is not an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire by acceptance of this concession represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for its purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion. Concessionaire acknowledges that Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that Park Board may add sand or nourish certain portions of the beach and not add sand or nourish the premises leased by Concessionaire.

24. **Environmental Stewardship.** The Park Board of Trustees of the City of Galveston recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Island's natural resources. In this important effort Park Board reaches out and partners with its concessionaires in the implementation of environmental stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating under the jurisdiction of Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Adam Musick dba Charlies Beach Service

By: Adam Musick

Adam Musick

**CONCESSION AGREEMENT WITH STEVEN OLIVE AND
CORPORATE AIRCRAFT SOLUTIONS, LLC AND
ITS SUBSIDIARY GALVESTON BIKES, LLC FOR
BIKE RENTALS AT STEWART BEACH (AREA 2)**

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

THIS AGREEMENT made and entered into effective January 17, 2017, by and between the Park Board of Trustees of the City of Galveston (hereinafter referred to as "Park Board") and Steven Olive and Corporate Aircraft Solutions, LLC and its subsidiary, Galveston Bikes, LLC hereinafter referred to as ("Concessionaire").

WHEREAS, the City has turned over the management and control of the Stewart Beach to the Park Board; and

WHEREAS, Concessionaire has a desire to enter into such Concession Agreement with the Park Board;

NOW, THEREFORE, for and in consideration for the premises set forth herein, and in accordance with the above quoted authority, Park Board hereby grants to Concessionaire authority to use a portion of Stewart Beach Park, located in the City of Galveston, Texas, as more fully shown in **Exhibit A**, attached hereto (hereinafter "the premises"), for a term as hereinafter provided.

This Agreement is granted subject to the following conditions:

1. **Concession Fee.** The concession fee for the first year shall be \$5,850 payable in three (3) payments in the amount of \$1,950 each and due on March 11, 2017, May 1, 2017 and June 1, 2017. The concession fee for the second year is \$6,000 payable in three (3) payments of \$2,000, due on March 1, 2018, May 1, 2018 and June 1, 2018. The concession fee for the third year shall be \$6,250 due in three (3) payments of \$2,083, due on March 1, 2019, May 1, 2019 and June 1, 2019.

2. **Rental Bicycles.** Concessionaire will operate a bicycle rental rack kiosk with approximately 50 bicycles (of three sizes; men's 26", unisex 20" and children's). The kiosk will open each day at 10:00 a.m. and close at sunset or to coincide with the helicopter tour opening and closing times. The kiosk may operate year round with a 7 day per week operating days in the high season (April-September) and reduced opening times in shoulder and off seasons (typically 5 days a week).

3. **Term.** The term of this Agreement shall commence on March 11, 2017 and terminate on March 11, 2020, unless sooner terminated under the provisions herein.

4. **Laws & Restrictions.** The Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.

5. **Scope and Use.** The Concessionaire has a non-exclusive right to operate a bicycle rental kiosk for the recreation of the public.

6. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of the Concessionaire on the premises shall be paid promptly by the Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance herewith prior to delinquency.

7. **No Assignment.** The Concessionaire shall not mortgage, pledge, hypothecate, transfer or assign this Agreement or any privileges hereunder, or any interest whatsoever in connection with this Agreement without permission in writing from Park Board. In the event Concessionaire is a legal entity other than an individual, any change in ownership of said entity shall be considered a transfer for the purposes of this Agreement. No assignment shall relieve Concessionaire or any guarantors of their obligations hereunder.

8. **Park Board Rules.** The use and occupation of the premises shall be subject to any and all rules and regulations as may be prescribed by Park Board from time to time.

9. **Courtesy to All Beachgoers.** Concessionaire understands that all beachgoers are to be treated with absolute courtesy. Concessionaire acknowledges that the beach is an open public beach, and no one can be prevented from access to the beach. Concessionaire will treat all beachgoers with politeness and professionalism.

10. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, Texas, and to the state of Texas, their officers, agents, and employees to enter upon the said premises at any time for inspection or for any governmental purpose, to remove therefrom persons, equipment, fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, or the state of Texas, or any officer, agent, or employee thereof.

11. **Exoneration.** Park Board and the City, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the incident to the use or occupation of the premises by Concessionaire; (2) damages to the property of the Concessionaire; (3) injuries to the person of the Concessionaire's officers, agents, servants, or employees, or any other persons who may be

on the premises at their invitation or the invitation of any one of them, and the Concessionaire shall hold Park Board and the City harmless from any and all such claims, even though such claims may be caused or alleged to be caused in whole or in part by the negligence of Park Board, the City, or its respective officers, agents, or employees.

12. **Notice.** Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed and deposited postage pre-paid in a post office or branch post office regularly maintained by the United States Government, to the following addresses:

Concessionaire:	Steven G. Olive
Address:	Corporate Aircraft Solutions, LLC 68 Dale Pepper Drive Newman, Georgia 30263
Phone:	678.870.3085
Email:	solive@flyoasis.net
Park Board:	Park Board of Trustees of City of Galveston, Texas
Address:	Attention: Kelly de Schaun Executive Director 601 Tremont Street Galveston, Texas 77550
Telephone:	409.797.5141
Telefax:	409.762.8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

13. **Termination.**

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

- (1) Nonpayment of rental amount or nonpayment of the water invoice;
- (2) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation, which termination may be immediate and without advance notice;
- (3) The commission by (either) Concessionaire (either individually or jointly) of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors,

an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises;

(4) A breach by the Concessionaire of any other terms or conditions of this Agreement, provided that Concessionaire, subject to any express provision in this Agreement to the contrary, shall first be entitled to ten (1) days written notice with the opportunity to cure the default of any other such term or condition within such period, but provided further that Concessionaire will be entitled to notice of default and an opportunity to cure only twice during the term of this Agreement. Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire, nor shall it constitute a waiver by Park Board of its right to enforce all provisions of this Agreement; or

(5) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(6) 90 days written notice.

B. This Agreement may be terminated by either party within thirty (30) days prior written notice upon the happening of any of the following events:

(1) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license;

(2) In the event that a storm or other natural force causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises; or

(3) Construction at Stewart Beach such that operations are impractical.

14. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of the Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater amount as shall be from time to time required by Park Board, and shall name Park Board and the City as additional insureds under said policy, and said policy shall provide for thirty (30) days notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in form and with an insurance carrier acceptable to the Executive Director or Park Board. Concessionaire agrees that it will make no claim nor authorize any claim to be made against and will provide waivers of subrogation from its insurers as to Park Board, its employees, servants,

or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days notice prior to cancellation or revision as above provided.

15. INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY OF GALVESTON, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM ITS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.

16. Limits of Liability. Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is the City or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

17. Access and Signage. Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act.

Concessionaire, and its agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising the premises shall be subject to prior approval of the Executive Director of Park Board. All signage must include the Park Board logo, name, and telephone number, and shall request that any problems be reported.

18. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

19. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

20. **Cross-Default.** In the event that either Concessionaire (individually or jointly) or any guarantor of Concessionaire's obligations hereunder, shall be in material default on any other concession agreement wherein Concessionaire has contracted with Park Board, such event of default may be deemed by Park Board to also be an event of default under this Agreement, and shall entitle Park Board to exercise its remedies hereunder.

21. **Right of First Refusal.** Concessionaire will have the right of first refusal for a bicycle rental kiosk at the other parks and locations managed by the Park Board. Concessionaire agrees that the yearly rental cost for each location would be \$3,600. This amount is subject to increase after the first year.

22. **Miscellaneous.**

A. Concessionaire agrees that all its employees in and about the premises will wear neat and attractive uniforms which are compatible with those worn by Park Board employees or as Park Board shall otherwise direct, and all employees of Concessionaire will at all times maintain a neat and attractive appearance, a professional demeanor and be polite and courteous at all times.

B. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels and routine raking of sand.

C. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from its duties and activities hereunder.

D. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of the Park Board. No motor vehicles shall be permitted to remain on the premises except for such limited period of time as may be necessary for loading or unloading equipment without the prior written approval of Park Board.

23. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by the Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

24. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges and understands the recitals on Page 1 of this Concession Agreement and takes the premises subject to the matters identified therein.

B. There may be third parties having rights or claims of rights to the New Beach, including, without limitation, the premises. Concessionaire acknowledges that it takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. The Park Board will have the right but not the obligation to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted may not be an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire by acceptance of this concession represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for its purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises, regardless of whether the personal property or equipment consists of items sold or rented by Concessionaire. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges the Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion. Concessionaire acknowledges that the Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that the Park Board may add sand or nourish certain portions of the beach and not add sand or nourish the premises leased by Concessionaire.

25. **Environmental Stewardship.** The Galveston Park Board recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Islands natural resources. In this important effort, the Park Board reaches out and partners with its concessionaires in the implementation of environmental

stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating "under the jurisdiction of the Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Corporate Aircraft Solutions, LLC and its subsidiary, Galveston Bikes, LLC

By: Steven G. Olive

Steven G. Olive, Individually

**AGREEMENT FOR SERVICES WITH
GULF COASTAL VENDING SERVICES
AT DELLANERA PARK**

Gulf Coastal Vending Services, L.L.C., (GCVS) or its assigns agrees to pay the Park Board of Trustees of the City of Galveston (Customer) quarterly, January, April, July and October for the immediately preceding quarter 22% commissions on the vending service at Dellanera Park. GCVS will provide documentation, each quarter, to the Customer to verify the amount of gross sales and sales tax paid. GCVS will document to the Customer's satisfaction that the commissions paid are accurate and properly reflect 22 percent of gross sales less sales tax. Upon request, GCVS will allow Customer to review its books to verify that commissions are accurate.

This agreement is for two (2) years beginning on March 11, 2017 and ending on March 11, 2019. This agreement can be terminated by either party by sending written thirty (30) days.

1. You agree to notify GCVS or its assigns promptly of any failure of the equipment to function properly, of any other matters affecting the proper operation of the equipment, and you further agree to permit only authorized agents of GCVS or its assigns to remove, open, repair or tamper with the equipment at any time. You agree that GCVS or its assigns shall have access to the above described equipment at all reasonable times in order to service and maintain the equipment properly.
2. Upon termination of this agreement by lapse of time or otherwise, GCVS or its assigns shall have the right to immediately remove the equipment installed. It is understood that the equipment remains the property of GCVS or its assigns and the title of the equipment is and shall remain in GCVS or its assigns at all times.
3. In the event of your default or breach of any of the terms of this agreement you acknowledge and agree that: (a) GCVS may immediately remove the equipment; and/or (b) GCVS may withhold your commission and shall not be obligated to pay your commission.
4. You acknowledge that you have the care, custody and control of the equipment owned by GCVS or its assigns, and you are not responsible for loss or damage to the equipment and its contents, except when it is being physically handled by employees of GCVS or its assigns. The equipment delivered to you shall be held at your sole risk for injury, loss or destruction. GCVS or its assigns agrees to install and properly service and maintain the equipment. GCVS or its assigns agrees to carry and continue in force the following insurance: General Liability, Property Damage, for damage caused by GCVS Worker's. A certificate is available upon request.
5. You further agree that this agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors or assigns.
6. You agree that GCVS or its assigns shall be the sole and exclusive vendor.
7. You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions. Further, you agree that it is the complete and exclusive statement of the agreement

between the parties relating to the subject matter of this agreement. The invalidity of any provision of the agreement shall not affect the validity of enforceability of the remaining provision hereof.

8. This agreement is performable in Galveston County, Texas.
9. Any notice hereunder shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, sent by certified mail, addressed and deposited postage pre-paid in a post office or branch office regularly maintained by the United States Government, to the following addresses:

Concessionaire: Mike Poorcio / Gulf Coastal Vending Service
Address: 3172 Cr 536
Alvin, Texas 77512
Telephone: 281.787.4636
Email: GCVSLLC@hotmail.com

Park Board: Park Board of Trustees of City of Galveston, Texas
Attention: Ms. Kelly de Schaun, Executive Director
Address: 601 Tremont
Galveston, Texas 77550
Telephone: 409.797.5141
Telefax: 409.762.8911
Email: kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Gulf Coastal Vending Services, L.L.C.

By: Mike Poorcio

Mike Poorcio

**AGREEMENT FOR SERVICES WITH
GULF COASTAL VENDING SERVICES
AT PARK BOARD PLAZA**

Gulf Coastal Vending Services, L.L.C., (GCVS) or its assigns agrees to pay the Park Board of Trustees of the City of Galveston (Customer) quarterly, January, April, July and October for the immediately preceding quarter 12% commissions on the vending service at Park Board Plaza. GCVS will provide documentation, each quarter, to the Customer to verify the amount of gross sales and sales tax paid. GCVS will document to the Customer's satisfaction that the commissions paid are accurate and properly reflect 12 percent of gross sales less sales tax. Upon request, GCVS will allow Customer to review its books to verify that commissions are accurate.

This agreement is for two (2) years beginning on March 11, 2017 and ending on March 11, 2019. This agreement can be terminated by either party by sending written thirty (30) days.

1. You agree to notify GCVS or its assigns promptly of any failure of the equipment to function properly, of any other matters affecting the proper operation of the equipment, and you further agree to permit only authorized agents of GCVS or its assigns to remove, open, repair or tamper with the equipment at any time. You agree that GCVS or its assigns shall have access to the above described equipment at all reasonable times in order to service and maintain the equipment properly.
2. Upon termination of this agreement by lapse of time or otherwise, GCVS or its assigns shall have the right to immediately remove the equipment installed. It is understood that the equipment remains the property of GCVS or its assigns and the title of the equipment is and shall remain in GCVS or its assigns at all times.
3. In the event of your default or breach of any of the terms of this agreement you acknowledge and agree that: (a) GCVS may immediately remove the equipment; and/or (b) GCVS may withhold your commission and shall not be obligated to pay your commission.
4. You acknowledge that you have the care, custody and control of the equipment owned by GCVS or its assigns, and you are not responsible for loss or damage to the equipment and its contents, except when it is being physically handled by employees of GCVS or its assigns. The equipment delivered to you shall be held at your sole risk for injury, loss or destruction. GCVS or its assigns agrees to install and properly service and maintain the equipment. GCVS or its assigns agrees to carry and continue in force the following insurance: General Liability, Property Damage, for damage caused by GCVS Worker's. A certificate is available upon request.
5. You further agree that this agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors or assigns.
6. You agree that GCVS or its assigns shall be the sole and exclusive vendor.
7. You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions. Further, you agree that it is the complete and exclusive statement of the agreement

between the parties relating to the subject matter of this agreement. The invalidity of any provision of the agreement shall not affect the validity of enforceability of the remaining provision hereof.

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Email: kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the _____ day of _____, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Gulf Coastal Vending Services, L.L.C.

By: Mike Poorcio

Mike Poorcio