

**CITY OF RIVIERA BEACH CITY COUNCIL
AGENDA ITEM SUMMARY**

MEETING DATE: December 1, 2010

AGENDA ITEM SUMMARY NO. H10-121-1

- AWARDS / PRESENTATIONS / PETITIONS
- CONSENT
- PUBLIC HEARING
- ORDINANCE ON SECOND READING
- ORDINANCE ON FIRST HEARING

- REGULAR
- RESOLUTION
- DISCUSSION & DELIBERATION
- BOARD APPOINTMENT
- WORKSHOP

TITLE/SUBJECT: Award of bid for Annual Franchise Agreement for Cabana Services, Beach Equipment Rental and Beach Cleaning Service.

RECOMMENDATION / MOTION:

Staff recommend Council approve the attached Resolution and Contract Agreement for the award of Bid No. 278-10 for a Franchise agreement for Cabana Services, Beach Equipment Rental and Beach Cleaning Services to Oceanside Beach Service Inc. of Riviera Beach, FL, at a total revenue of \$42,000 the first year and \$48,000 the second year.

INTER-DEPARTMENTAL REVIEW & DATE

Assistant City Manager <i>PRW 11/22/10</i>	Library
• City Attorney <i>PHC 11/22/10</i>	Marina
City Clerk	Police
Community Development	Public Works
• Finance <i>11-19-2010</i>	• Purchasing <i>11-19-19/10</i>
Fire	• Recreation & Parks <i>11/22/10</i>
Human Resources	Utility District
Information Technology	

APPROVED BY CITY MANAGER: *Ruth C. Jones*

DATE: 11-22-10

Originating Dept. <i>PHC</i> Purchasing User Dept. Parks and Recreation <i>PHC</i> Advertised: Date: 09/28/10 Paper: P.B. Post & City's Website <input type="checkbox"/> Not Required Affected Parties <input type="checkbox"/> Notified <input type="checkbox"/> Not Required	Costs: \$ _____ Current FY: <u>2011</u> Funding Source: <input type="checkbox"/> Capital Improvement <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Other: (Revenue-Generating) \$42,000 1 st year, \$48,000 2 nd year Budget Account Number: 001-362-104	City Council Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions <input type="checkbox"/> Denied <input type="checkbox"/> Tabled to _____ <input type="checkbox"/> Referred to Staff _____ Attachments: 1. Resolution 2. Bid Tabulation Sheet 3. Contract Agreement
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SUMMARY/BACKGROUND:

Request for Bids were solicited from firms with at least four (4) years of experience in providing Cabana Services, Beach equipment Rental and Beach Cleaning Services for the City Municipal Beach.

In accordance with the Procurement Code Ordinance (2412) the solicitation was publicly advertised in the "Legal Notices" section of the Palm Beach Post. Also, it was on the City's Internet Web Site. For additional exposure copies of the solicitation were also individually forwarded to five (5) qualified bidders. One (1) firm responded to the City's public solicitation.

Item No. 6

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In addition to providing a much needed source of annual revenue, this contract will provide a valuable public convenience to visitors and also provide for the maintenance of the beach grounds east of the dune line.

This bid is awarded to the highest, qualified, responsive and responsible bidder meeting the specifications of the bid. Oceanside Beach Services Inc. of Riviera Beach is recommended for the award of this contract based upon their qualifications, experience, and revenue offered.

Accordingly, staff recommends the City Council authorize the Mayor and City Clerk to execute an agreement with Oceanside Beach Services Inc. of Riviera Beach for the Annual Franchise agreement for Cabana Services, Beach Equipment Rental and Beach Cleaning Services.

EXHIBIT A-1

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	_____
Capital Expenditures	<u>0</u>	<u>0</u>	<u>0</u>	_____
Operating Costs	<u>0</u>	<u>0</u>	<u>0</u>	_____
External Revenues	<u>NA</u>	_____	_____	_____
Program Income (City)	<u>NA</u>	_____	_____	_____
In-Kind Match (City)	<u>NA</u>	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____

NO. ADDITIONAL FTE POSITIONS (Cumulative) N/A _____

Is Item Included In Current Budget? Yes XX No.
 Budget Account No.: Fund 0 Dept/Division 00 Org. 000 Object 000
 Budget Account No.: Fund 0 Dept/Division 00 Org. 000 Object 000

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Revenues from this contract will be posted to account number 001-362-104.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:

Nydia Reynolds
Finance Department

Purchasing and Grants

B. Other Department Review:

Department Director

RESOLUTION NO.: _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AWARING THE AGREEMENT FOR BID NO. 278-10 – ANNUAL FRANCHISE AGREEMENT FOR CABANA SERVICES, BEACH EQUIPMENT RENTAL AND BEACH CLEANING SERVICE, TO OCEANSIDE BEACH SERVICES OF RIVIERA BEACH, FLORIDA, AT A TOTAL REVENUE OF \$42,000 AND \$48,000 FOR THE FIRST AND SECOND YEARS OF THE CONTRACT, RESPECTIVELY; AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE THE CONTRACT AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with the provisions of the City's Procurement Ordinance (2412), request for bids were publicly solicited to provide Annual Franchise Agreement for Cabana Services, Beach Equipment Rental and Beach Cleaning Services for the City's Municipal Beach; and

WHEREAS, Bids were received and publicly announced in the Council Chambers with Staff from the Purchasing Department, Finance Department and City Clerk on hand to record the official results; and

WHEREAS, Oceanside Beach Services of Riviera Beach was the sole bidder and agrees to pay the City REVENUE OF \$42,000 the first year and \$48,000 the second year; and

WHEREAS, The Annual Franchise Agreement will provide much needed revenues; provide an important public convenience service to beachgoers; and provide needed maintenance services for the beach grounds east of the dune line

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. That City Council accepts staff's recommendation to award the contract for Annual Franchise Agreement for Cabana Services, Beach Equipment Rental and Beach Cleaning Service to the highest, qualified, responsive and responsible bidder, Oceanside Beach Services of Riviera Beach, Florida.

RESOLUTION No. _____
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SECTION 2. That the Mayor and City Clerk are hereby authorized to execute the contract agreement which forms a part of this resolution.

SECTION 3: This resolution shall take effect immediately upon its passage and adoption by the City Council.

PASSED AND APPROVED this _____ day of _____ 2010.

RESOLUTION NO. _____
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APPROVED:

THOMAS A. MASTERS
MAYOR

DAWN S. PARDO
CHAIRPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK

JUDY L. DAVIS
CHAIR PRO TEM

BILLIE E. BROOKS
COUNCILPERSON

CEDRICK A. THOMAS
COUNCILPERSON

SHELBY L. LOWE
COUNCILPERSON

MOTIONED BY: _____

SECONDED BY: _____

D. PARDO _____

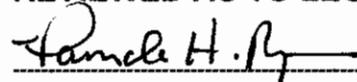
J. DAVIS _____

B. BROOKS _____

C. THOMAS _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 11/22/10

BID TABULATION SHEET
BID #278-10 - CONTRACT FOR CABANA SERVICES, BEACH EQUIP RENTAL AND BEACH CLEANING SERVICES
OPENED: MONDAY, OCTOBER 18, 2010 AT 3:30 PM

DESCRIPTION	OCEANSIDE BEACH SERVICES INC. 2650 LAKE SHORE DRIVE RIVIERA BEACH, FL 33404		
YEAR ONE	\$	42,000.00	
YEAR TWO	\$	48,000.00	
TOTAL TWO YEAR CONCESSION FEE	\$	90,000.00	
TOTAL COST:	\$	90,000.00	\$
REQUIRED FORMS:	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>
% MWBE	0%	%	%
COMMENT:			

**ANNUAL FRANCHISE AGREEMENT
FOR CABANA SERVICES, BEACH EQUIPMENT RENTAL
AND BEACH CLEANING SERVICE**

This agreement is made as of the day of _____, 2010, by and between the City of Riviera Beach, a Municipal Corporation, hereinafter referred to as the "CITY", and Oceanside Beach Services Inc. 2650 Lake Shore Drive, Riviera Beach, FL 33404, a Beach Franchise company, hereinafter referred to as the "FRANCHISE HOLDER".

WHEREAS, on October 18, 2010, the City advertised an Invitation for Bid for an annual franchise contract for cabana services, beach equipment rental and beach cleaning services at the municipal beach.

WHEREAS, Oceanside Beach Services of Riviera Beach was the highest responsive responsible bidder.

WHEREAS, Oceanside Beach Services desires to provide an exclusive franchise for cabana services, beach equipment rental and beach cleaning services at the City's municipal beach and the City desires to engage the services of Oceanside Beach Services.

NOW THEREFORE, in consideration of the mutual promises contained herein, the CITY and the FRANCHISE HOLDER agree as follows:

ARTICLE 1-SERVICES

The FRANCHISE HOLDER'S responsibility under this Agreement is to provide an exclusive Franchise for cabana services, beach equipment rental and beach cleaning services under the direction of the City Manager or designee. Cabana services, beach equipment rental and beach cleaning services will be provided for as set forth more fully in the scope of work and specifications of Bid No. 278-10, attached hereto as Exhibit "A" and incorporated herein by reference.

The CITY'S representative/liaison during the performance of this Agreement shall be the Recreation & Parks Director of the City of Riviera Beach, telephone number (561) 845-4070.

ARTICLE 2-CONTRACT TERM

The term of this agreement shall be for a period of two (2) years with the option to renew for two (2) additional twelve (12) month periods. The option for renewal shall be exercised upon mutual written agreement and with all original terms, conditions and prices adhered to with no deviations.

ARTICLE 3-PAYMENTS TO THE CITY

The CITY and the FRANCHISE HOLDER, for the considerations named, agree to follow all Terms, Conditions, and Prices in accordance with Bid No. 278-10 opened October 18, 2010, which forms a part of this agreement, herein. Specifically, the FRANCHISE HOLDER agrees to pay the CITY the sum of \$42,000.00 the first year, payable to the CITY in twelve (12) monthly installments of \$3,500.00 per month; and \$48,000.00 the second year, payable to the CITY in twelve (12) monthly installments of \$4,000 per month. Said payments are due on the 1st day of each month; if payment is not received by the 10th day of the month, a penalty shall be assessed at 1.5% of the amount due.

ARTICLE 4-RIGHT TO TERMINATE

In the event that any provisions of the agreement are violated by the FRANCHISE HOLDER, the CITY shall serve thirty (30) days written notice to the FRANCHISE HOLDER of its intention to terminate. The liability of the FRANCHISE HOLDER for any and all such violation(s) shall not be affected by any such termination and his surety, if any, may be forfeited.

At the end of the term, all beach rental equipment shall remain the property of the FRANCHISE HOLDER and it shall be the FRANCHISE HOLDER's responsibility to remove all such property from the municipal beach in a timely manner but no later than thirty (30) days after the termination of this Agreement.

ARTICLE 5- CANCELLATION CLAUSE

Either party has the right to cancel this agreement by giving the other party at least forty-five (45) days advance written notice of such intent. The notice from one party to the other must be made in writing and sent by certified mail, return receipt requested.

ARTICLE 6-PERSONNEL

The FRANCHISE HOLDER represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the CITY.

All of the services required hereunder shall be performed by the FRANCHISE HOLDER, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The FRANCHISE HOLDER warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the Company's personnel (and all Subcontractors) while on City premises, will comply with all CITY requirements governing conduct, safety, and security.

ARTICLE 7-SUBCONTRACTING

The FRANCHISE HOLDER is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities. If the FRANCHISE HOLDER uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress, as required by this Agreement, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the FRANCHISE HOLDER shall promptly do so, subject to acceptance of the new subcontractor by the CITY.

ARTICLE 8-LIABILITY INSURANCE

The Franchise Holder hereby agrees to, at all times, maintain public liability insurance relative to its business operations with limits of not less than \$1,000,000.00 individual/\$1,000,000.00 aggregate coverage. If any such insurance is cancelled or threatened or harmed in any way, the FRANCHISE HOLDER shall immediately notify the CITY in writing of such happening. The FRANCHISE HOLDER further agrees to indemnify, save and hold the CITY harmless from any and all damages to third parties resulting from the FRANCHISE HOLDER negligent performance of the services hereunder. In addition, the FRANCHISE HOLDER agrees to add and always maintain the CITY as an additional insured under said insurance policy.

ARTICLE 9-FEDERAL AND STATE TAX

The CITY is exempt from payment of Florida State Sales and Use Taxes and will not be responsible for the payment of any taxes. The FRANCHISE HOLDER shall not be exempted from paying sales taxes, nor is the FRANCHISE HOLDER authorized to use the CITY's Tax Exemption Number.

The FRANCHISE HOLDER shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

ARTICLE 10-INDEMNIFICATION

The FRANCHISE HOLDER shall indemnify and save harmless and defend the CITY, its agents, servants, and employees from and against any and all claims, liability, losses, and/or cause of action which may arise from any negligent act or omission of the FRANCHISE HOLDER, its agents, servants, or employees in the performance of services under this Agreement.

The FRANCHISE HOLDER further agrees to indemnify, save harmless and defend the CITY, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the FRANCHISE HOLDER not included in the paragraph above and for which the CITY, its agents, servants or employees are alleged to be liable.

Nothing contained in this Article shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE 11-SUCCESSORS AND ASSIGNS

The CITY and the FRANCHISE HOLDER each binds itself and its partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the CITY nor the FRANCHISE HOLDER shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the CITY which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and the FRANCHISE HOLDER.

ARTICLE 12-REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 13-CONFLICT OF INTEREST

The FRANCHISE HOLDER represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Section 112.311, Florida Statutes, et. seq. The FRANCHISE HOLDER further represents that no person having any such conflicting interest shall be employed for said performance.

The FRANCHISE HOLDER shall promptly notify the CITY'S representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the FRANCHISE HOLDER'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the FRANCHISE HOLDER may undertake and request an opinion of the CITY as to whether the association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by the FRANCHISE HOLDER. The CITY agrees to notify the FRANCHISE HOLDER of its opinion by certified mail within thirty (30) days of receipt of notification by the FRANCHISE HOLDER. If, in the opinion of the CITY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the FRANCHISE HOLDER, the CITY shall so state in the notification and the FRANCHISE HOLDER shall, at its option, enter into said association, interest or circumstance and it shall be

deemed not in conflict of interest with respect to services provided to the CITY by the FRANCHISE HOLDER under the terms of this Contract.

ARTICLE 14-ARREARS

The FRANCHISE HOLDER shall not pledge the CITY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The FRANCHISE HOLDER further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 15-CONTINGENT FEES

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

ARTICLE 16-ACCESS AND AUDITS

The FRANCHISE HOLDER shall maintain adequate records to document all rental revenues collected, as well as, expenses, and costs incurred in performing the work for at least one (1) year after completion of this Agreement. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal hours, at the FRANCHISE HOLDER'S place of business.

ARTICLE 17-NONDISCRIMINATION

The FRANCHISE HOLDER warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 18- AUTHORITY TO PRACTICE

The FRANCHISE HOLDER hereby represents and warrants that it has and will continue to maintain all licenses and approvals required conducting its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

ARTICLE 19- SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term

and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 20-PUBLIC ENTITY CRIMES

As provided in Section, 287.132, Florida Statutes, by entering into this agreement or performing any work in furtherance hereof, the FRANCHISE HOLDER certifies that, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section, 287.133(3)(a), Florida Statutes.

ARTICLE 21- NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the CITY shall be mailed to:

City Manager
600 West Blue Heron Boulevard
Riviera Beach, FL 33404

With a Copy to:

City Attorney
600 West Blue Heron Blvd.
Riviera Beach, FL 33404

and if sent to the FRANCHISE HOLDER shall be mailed to:

Oceanside Beach Services Inc.
2650 Lake Shore Drive
Riviera Beach, FL 33404

ARTICLE 22- ENTIRETY OF CONTRACTUAL AGREEMENT

The CITY and the FRANCHISE HOLDER agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Sealed Bid No. 278-10, opened October 18, 2010.

IN WITNESS WHEREOF, the parties have hereunto signed their names and affixed their seals at Riviera Beach, Palm Beach County, Florida, this ____ day of _____, 2010.

CITY OF RIVIERA BEACH

OCEANSIDE BEACH SERVICES INC.

BY: _____
THOMAS A. MASTERS,
MAYOR

BY: _____
MICHAEL J. NOVATKA, OWNER

ATTEST:

BY: _____
CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
BENJAMIN GUY
PURCHASING DIRECTOR

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: Pamala H. Ryan
PAMALA H. RYAN,
CITY ATTORNEY

Date: 11/22/10