

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: February 21, 2022

Agenda Item: 7B	Prepared for: Chris Noury, City Attorney
Agenda Section: Consent: Ordinance. Second Reading	Date: February 15, 2022
Subject: Award of the Banana Boat Franchise Agreement in the vicinity of the North Beach Plantation Oceanfront Tower in the Windy Hill section of North Myrtle Beach	Division: Legal

**Background:**

The Franchise Agreement for Banana Boat operations in the area of the North Beach Plantation Oceanfront Tower in the Windy Hill section of the City expired on December 31, 2021. A Request for Proposals (RFP) was advertised, at large, to the public. The sole responder was the prior franchise operator, Jeff Ray d/b/a NMB Watersports LLC. The offer presented is reasonable and past performance of the franchise operator is satisfactory.

**Recommended Action:**

Award the Banana Boat Franchise Agreement in the area of the North Beach Plantation Oceanfront Tower in the Windy Hill section of the City to Jeff Ray d/b/a NMB Watersports LLC.

Reviewed by Department Head	Reviewed by City Manager	Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

**AN ORDINANCE TO GRANT A FIVE-YEAR FRANCHISE AGREEMENT WITH A FIVE-YEAR OPTION TO EXTEND  
THE TERMS THEREOF TO JEFF RAY FOR THE OPERATION OF A BANANA BOAT FRANCHISE IN THE  
VICINITY OF THE NORTH BEACH PLANTATION OCEANFRONT TOWER  
IN THE WINDY HILL SECTION OF NORTH MYRTLE BEACH**

**WHEREAS**, the Banana Boat Franchise Agreement for Windy Hill was bid and RFP responses due on February 14, 2022 prior to 4 p.m.; and

**WHEREAS**, the offer was reasonable and deemed in the best interest of the City; and

**WHEREAS**, the Franchisee has entered into an Agreement with the City of North Myrtle Beach for the operation of a banana boat franchise on the public beaches within the City; and,

**WHEREAS**, the undersigned have agreed to guarantee full performance to the Franchisee pursuant to the terms of the Franchise Agreement.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA:**

**Section 1:** The Banana Boat Franchise Agreement in the vicinity of the North Beach Plantation Oceanfront Tower in the Windy Hill Section of North Myrtle Beach be awarded to Jeff Ray, d/b/a NMB Watersports, LLC.

**Section 2:** The Franchise Agreement shall be solely for watercraft specified within this Agreement.

**Section 3:** The Franchise Agreement shall expire December 31, 2026 at midnight.

**Section 4:** The City Manager is authorized to sign the Franchise Agreement on behalf of the City.

**Section 5:** The ordinance shall become effective upon the date of passage.

**DONE, RATIFIED AND PASSED, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.**

ATTEST:

\_\_\_\_\_  
Mayor Marilyn Hatley

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

FIRST READING: 2-21-2022

SECOND READING: \_\_\_\_\_

REVIEWED:

\_\_\_\_\_  
City Manager

ORDINANCE: \_\_\_\_\_



Procurement Office

## **REQUEST FOR PROPOSALS**

**2022-001JK**

### **WINDY HILL AREA BANANA BOAT FRANCHISE AGREEMENT**

**Proposals must be received prior to  
4:00 PM, Monday, February 14, 2022**

**Submit questions to [BidNetDirect.com](http://BidNetDirect.com), prior to  
4:00 PM, Wednesday, February 9, 2022**

**SUBMIT TO:  
Jan L. Knorr  
Procurement Office  
1120 Second Avenue South  
North Myrtle Beach, SC 29582**

**Telephone 843-280-5660**

City of North Myrtle Beach, South Carolina

Procurement Office  
RFP NO. 2022-001JK

WINDY HILL AREA BANANA BOAT  
FRANCHISE AGREEMENT

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CITY OF NORTH MYRTLE BEACH  
SOLICITATION #2022-001JK

**BIDDER REGISTRATION FORM**

**Email your information to [jlknorr@nmb.us](mailto:jlknorr@nmb.us)**

Please complete and email this form to become registered as an interested entity in this solicitation and to ensure receipt of any amendments to the solicitation referenced above.

FIRM NAME: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

# "NO BID" RESPONSE FORM

RFP-2022-001JK

To submit a **"No Bid"** response for this project, this form must be completed for your company to remain on our bidders list for commodities/services referenced. If you do not respond your name may be removed from this bidders list.

Note: Please show the solicitation number on the outside of the envelope and submit prior to the bid due date.

Please check statement(s) applicable to your **"No Bid"** response:

- Specifications are restrictive or noncompetitive (please explain below)
- Specifications are ambiguous (please explain below)
- We are unable to meet specifications
- Insufficient time to respond to the solicitation
- Our schedule would not permit us to perform
- We are unable to meet bond requirements
- We are unable to meet insurance requirements
- We do not offer this product or service
- Remove us from your vendor list for this commodity/service
- Other (specify below)

## Comments

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FIRM NAME: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

City of North Myrtle Beach, South Carolina

**REQUEST FOR PROPOSALS (RFP) ADVERTISEMENT**

**WINDY HILL AREA BANANA BOAT FRANCHISE AGREEMENT**

The City of North Myrtle Beach, South Carolina solicits competitive proposals from qualified sources for a BANANA BOAT FRANCHISE AGREEMENT. The Franchise is a limited and non-exclusive agreement for banana boat operations at a designated location on public beaches within the City. These services are clearly delineated in the franchise agreement. The franchise operating location is in the area of the North Beach Plantation Oceanfront Tower in the Windy Hill area of the City. Actual operating sites may deviate up to 300 yards from these locations.

Proposals must be submitted strictly in accordance with the instructions in the RFP package. The RFP package may be accessed (FREE of charge) from the City's e-bidding platform at <https://www.bidnetdirect.com/south-carolina/cityofnorthmyrtlebeach>.

Proposals (Offers) will be accepted until 4:00 PM EST on Monday, February 14, 2022. No public opening or reading will be held. Proposals will be available once the selection process is complete.

The City of North Myrtle Beach reserves the right to accept or to reject any and all proposals (offers) and to waive informalities in the proposal process.

PURCHASING DIVISION

## REQUEST FOR PROPOSALS (RFP) SOLICITATION NOTICE

Proposals (Offers) from qualified sources for a limited and non-exclusive **BANANA BOAT FRANCHISE AGREEMENT AT A DESIGNATED LOCATION ON PUBLIC BEACHES WITHIN THE CITY** will be received at this office until 4:00 PM, Monday, February 14, 2022. The services furnished must meet the requirements specified in the Request for Proposals (RFP) package.

IF SENDING HARDCOPY RFP, PLEASE ADDRESS TO:

**Attn: Jan Knorr**  
**Assistant Purchasing Agent**  
**1120 2<sup>nd</sup> Avenue South**  
**North Myrtle Beach, SC 29582-3106**

Also, please show the RFP number in the lower left corner of the envelope: **RFP-2022-001JK**.

## **I. ADMINISTRATIVE RULES FOR THE RFP**

**GENERAL:** The City of North Myrtle Beach, South Carolina, is seeking competitive proposals (offers) from qualified sources for a Banana Boat Franchise Agreement(s). One franchise agreement will be awarded by the city in the area of the North Beach Plantation Oceanfront Tower in the Windy Hill section of the City. Actual operating sites may deviate up to 300 yards from this location. The Franchise Agreement contained in this Request for Proposals (RFP) is the "**SCOPE OF WORK**" governing banana boat operations. The franchise is a limited and non-exclusive agreement for banana boat operations. Proposers should carefully read the Franchise Agreement prior to developing and submitting a proposal.

### **1. ADDITIONAL INFORMATION INQUIRIES**

- A. This Request for Proposals is prepared and administered by the City of North Myrtle Beach, hereinafter referred to as Owner.
- B. All inquiries concerning this RFP should be directed to:  
Jan Knorr  
Phone: (843) 280-5660  
Email: [jlknorr@nmb.us](mailto:jlknorr@nmb.us)
- C. Submit questions to BidNetDirect.com no later than 4:00 PM, February 9, 2022.
- D. Please do NOT call other employees of the City during this process. All calls are to be directed to the procurement office!

### **2. RECEIPT OF PROPOSALS AND BOND REQUIREMENTS**

- A. Proposals are to be submitted no later than 4:00 PM, February 14, 2022 to the City of North Myrtle Beach, Procurement Office, 1120 Second Avenue South, North Myrtle Beach, SC 29582. Due to the possibility of negotiation with any Offeror submitting a proposal which appears to be eligible for contract award pursuant to the selection criteria set forth in this Request for Proposal, prices will not be divulged until the evaluation process is complete. A notice of award will be sent to all Offerors at that time.
- B. Any proposals received after the scheduled deadline, will be immediately disqualified. The City of North Myrtle Beach assumes no responsibility for delivery of proposals that are mailed.
- C. Proposers must submit the proposal including all RFP Forms, Declaration, Proposal Form, Insurance Checklist, Proposer's Operational Concepts and Plans, and Proposal.
- D. Proposers must submit a separate proposal for each desired franchise location. If multiple proposals are submitted, the offeror must indicate its order of priority for award since any offeror will only be awarded one franchise agreement, unless it is deemed in the best interest of the City to do otherwise.

- E. Proposers must submit **an original and five (5) copies** of the proposal to Jan Knorr, Assistant Purchasing Agent, properly signed in ink and enclosed in a sealed envelope or box showing the name of the Proposer and number of the RFP document.
- F. All proposals should be concise and clear and should convey all of the information requested by the Owner. Emphasis should be on completeness and clarity of content. Failure to provide all required information may result in the proposal being non-responsive. There is no intent, however, to limit the contents of proposals. Offerors may include any information they deem pertinent. If the proposal includes any information or materials other than that requested by the Owner, however, it should be included as a separate appendix to the proposal.
- G. There are no pre-award bond requirements for this RFP.

### **3. WITHDRAWAL OF PROPOSALS**

- A. An Offeror may withdraw his/her proposal without prejudice to himself/herself not later than the day and hour set in the advertisement for receiving proposals, by communicating the purpose in writing to the contact person listed above. When received, said proposal will be returned to the Offeror unopened. Notification of withdrawal is the sole responsibility of the Offeror.
- B. No Offeror who is permitted to withdraw a proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit directly, or indirectly, from the performance of the project for which the withdrawn proposal was submitted.

### **4. REGISTRATION OF OFFERORS**

- A. There will NOT be a pre-proposal conference, however, Offerors may submit questions via the e-bid platform Bidnetdirect.com. Deadline for submitting questions is 4:00 PM, February 9, 2022. All questions will be answered in the form of an addendum and sent to all registered Offerors via Bidnetdirect.com.
- B. Each Offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this bid. The failure or omission of a bidder to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this solicitation or to the contract.

Each Offeror shall carefully examine all RFP documents and thoroughly familiarize itself with all requirements prior to submitting a proposal. Should an Offeror find discrepancies, ambiguities, or omissions in RFP, or should the Offeror be in doubt as to their meaning, the Offeror shall at once request written clarification from the Assistant Purchasing Agent, Jan Knorr, no later than the date indicated herein.

- C. Before submitting a proposal, each Offeror shall be responsible for making all investigations and examinations that are necessary to ascertain conditions and requirements affecting the requirements of this proposal. Failure to make such investigations and examinations shall not relieve the successful Offeror from the obligation to comply, in every detail, with all provisions and requirements of the request for proposal.
- D. No proposal will be considered from any firm that has failed to perform acceptably on any other contract with the Owner.
- E. If the Offeror is a corporation, the proposal shall be signed in the name of and under the seal of the corporation by a duly authorized officer of the corporation with the designation of the signor's official capacity. The proposal shall show the state in which the corporation is chartered, and, if that state is other than South Carolina, the proposal shall show that the corporation is authorized to do business in the state of South Carolina. If the Offeror is a partnership, the proposal shall be signed in the name of the partnership by a general partner or other person who is duly authorized to bind the partnership. The signor's official capacity and authority shall be shown. If the Offeror is an individual or sole proprietorship, the proposal shall be signed by the individual in person, stating the name or style under which the Offeror is doing business. In any case, the proposal shall show the current business address of the Offeror which is to be used for receiving communications from the City of North Myrtle Beach.

## **5. DISQUALIFICATION OF OFFERORS**

- A. Any or all proposals will be rejected if there is reason to believe that collusion exists among the Offerors. No participants in such collusion will be considered in future proposals for the same work.
- B. Proposals in which the prices are obviously unbalanced will be rejected.

## **6. CORRECTIONS MADE BY OFFEROR**

- A. Offerors are cautioned not to obliterate, erase, or strike over any printed material as set forth in this Request for Proposal. In quoting prices, wherever the Offeror has made an error and correction, each change should be initialed by the person signing the proposal. Failure to comply with this provision may result in rejection of the proposal.
- B. All documents submitted must be legible.

## **7. EVALUATION OF PROPOSALS**

- A. In evaluating the proposals, the Owner reserves the right to accept or reject all or any part of any proposal, waive minor technicalities, and award the contract to the Offeror deemed to best serve the interests of the Project; and adopt any part or all of a proposal if it is judged in the best interests of the Project.

- B. Each proposal will be evaluated on the content of the Offeror's proposal (i.e., the burden of information clarification and research rests solely on each Offeror's effort) and will be considered a reflection of interest and efficiency.
- C. During the review process, the review panel shall have the right to request from Offerors any other information or evidence which it deems necessary for evaluation of the proposal and relevant to any one or more of the stated evaluation factors. The failure of an Offeror to promptly provide such requested information or evidence shall be sufficient grounds for determining the Offeror to be non-responsive and for rejection of the proposal.
- D. The Owner reserves the right to contact an Offeror for clarification of information submitted, to contact references, and to use other sources of obtaining information regarding the Offeror that is deemed appropriate and would assist in the evaluation.
- E. Proposals that are determined to meet the specifications of the Request for Proposal, after discussion and submission of any additional clarification and/or supplementary information, will be classified as "acceptable". Proposals found not to be acceptable will be classified as "unacceptable" and no further discussion concerning the same will be conducted.
- F. Any proposal which is incomplete, conditional, obscure, or which contains irregularities of any kind, may be cause for rejection of the proposal.
- G. Proposals may NOT be withdrawn for a period of sixty (60) days after the date set for receipt of proposals.

## **8. EVALUATION CRITERIA**

- A. The Owner intends to award a contract resulting from this request for proposal to the responsive and responsible Offeror whose proposal is determined to be the most advantageous to the Owner taking into consideration price and other evaluation factors set forth herein, however, the right is specifically reserved to reject any and all proposals. The Owner shall be the sole judge of whether or not a proposal meets the requirements of this Request for Proposal.
- B. The right is reserved by the City of North Myrtle Beach to waive any irregularities in any proposal, to reject any or all proposals, to re-advertise for proposals and, upon recommendation and justification by the City, to accept the proposal which in the judgment of the City is deemed the most advantageous for the public and the City of North Myrtle Beach.
- C. Proposals will be reviewed and evaluated by a review panel. Consideration shall be given to all of the following:
  - 1. Past performance of similar contracts
  - 2. Experience, financial qualifications, and professional reputation
  - 3. Proposed operational concept

4. Type, quantity, and condition of proposed equipment
5. Maintenance and safety program
6. Financial offer

## **9. BASIS FOR AWARD**

- A. An award resulting from the RFP shall be awarded to the responsive and responsible Offeror whose proposal is determined to be the most advantageous to the Owner, taking into consideration price and other evaluation factors set forth herein. The Owner reserves the right to reject any and all proposals received. In all cases, the Owner will be the sole judge as to whether an Offeror's proposal has or has not satisfactorily met the requirements of this RFP.
- B. An evaluation committee has been established in order to review and evaluate all proposals submitted in response to this Request for Proposal. The committee shall conduct a preliminary evaluation of all responsive technical proposals. Based upon this review, the cost proposals of the highest rated Offeror(s) will be reviewed.
- C. Based on the results of the preliminary evaluation, the highest rated Offeror(s) may be invited by the Assistant Purchasing Agent to make oral presentations to the Evaluation Committee. The Evaluation Committee will then conduct a final evaluation of the Offerors. The Evaluation Committee shall then negotiate a proposed contract with the highest qualified Offeror. At the time the proposed contract is negotiated, the Offeror and the Evaluation Committee may negotiate any changes desired in the Request for Proposal, if deemed in the best interest of the City. If a satisfactory proposed contract cannot be negotiated with the highest qualified Offeror, negotiations will be formally terminated. Negotiations shall then be undertaken with the second most qualified Offeror and so on.

## **10. ORAL PRESENTATIONS**

- A. Each Offeror who submits a response to this Request for Proposal may be required to make an oral presentation of the submitted proposal to the Owner. Such presentations provide an opportunity for the Offeror to clarify the proposal, to ensure mutual understanding, and will in no way change the Offeror's original proposal. Subsequent travel expense by the Offeror will be at the Offeror's expense.
- B. Offerors are advised that, in the event of receipt of an adequate number of proposals, which in the opinion of the Evaluation Committee require no clarifications and/or supplementary information, such proposals may be evaluated without further discussion. Hence, proposals should be submitted initially on the most complete and favorable terms from a technical standpoint which Offerors are capable of submitting to the Owner. Should proposals submitted require additional clarification and/or supplementary information, Offerors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when so requested.

## **11. CONTRACT**

Upon award of the proposal, this document and the successful Offeror's proposal, including all correspondence supporting documents and completed forms, shall become part of the contract. All written communications between the Owner and the successful Offeror after the proposal opening may also be incorporated into the contract.

## **12. AMENDMENTS**

All amendments to and interpretations of this solicitation shall be in writing. The Owner shall not be legally bound by any amendment or interpretation that is not in writing. Only information supplied by the Owner in writing or in this RFP should be used in preparing Offeror responses. All contacts that an Offeror may have had before or after receipt of this RFP with any individuals, employees, or representatives of the Owner and any information that may have been read in any news media or seen or heard in any communication facility regarding this proposal should be disregarded in preparing responses.

## **13. OWNER RESPONSIBILITY TO PROPOSAL**

This Solicitation does not commit the Owner to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The Owner reserves the right to accept or reject any or all proposals received as a result of this request, or to cancel in part or in its entirety this proposal if it is in the best interest of the Owner to do so. If the proposal fails to conform to the essential requirements of the RFP, the Owner and the Owner alone will be the judge as to whether that variance is significant enough to consider the RFP non-responsive and, therefore, not considered for award.

## **14. TERMINOLOGY**

The terminology used and the organization of the RFP are not intended to be restrictive in any way. Appropriate interpretation of the intent of the RFP should be made by the Offeror in these situations.

## **15. PROPRIETARY/CONFIDENTIAL INFORMATION**

- A. Trade secrets or proprietary information submitted by an Offeror in connection with a procurement transaction shall not be subject to public disclosure under the Freedom of Information Act; however, the Offeror must invoke the protections of this section prior to or upon submission of the data or other materials and must identify the data or other materials to be protected and state reasons why protection is necessary. Disposition of materials after award is made should be stated by the Offeror. No information, materials or other documents relating to this procurement will be presented or made otherwise available to any other person, agency, or organization until after award.
- B. All Offerors must visibly mark as "Confidential" each part of their proposal which they consider contains proprietary information. All unmarked pages will be subject to release in accordance with the guidelines set forth under Chapter 4 of Title 30 (The Freedom of Information Act) South Carolina Code of Laws and Section 11-

35-410 of the South Carolina Consolidated Procurement Code. Privileged and confidential information is defined as "information in specific detail not customarily released to the general public, the release of which might cause harm to the competitive position of the part supplying the information." The examples of such information provided in the statute are:

1. Client lists
  2. Design recommendations and identification of prospective problem areas under an RFP
  3. Design concepts, including methods and procedures
  4. Biographical data on key employees of the Offeror
- C. Evaluative documents pre-decisional in nature such as inter or intra-agency memoranda containing technical evaluations and recommendations are exempted so long as the contract award does not expressly adopt or incorporate the inter- or intra-agency memoranda reflecting the pre-decision deliberations.
- D. Marking an entire proposal confidential/proprietary is not in conformance with the South Carolina Freedom of Information Act.

## **16. OWNERSHIP OF MATERIAL**

All Proposals submitted in response to this document become the property of the Owner. Proposals submitted may be reviewed and evaluated by any person(s) at the discretion of the Owner upon award of contract. Ownership of all data, material and documentation originated and prepared for the Owner, pursuant to this contract, shall belong exclusively to the Owner and its subsidiaries.

## **17. DISCUSSIONS/NEGOTIATIONS**

By submission of a proposal, the Offeror agrees that during the period following issuance of the RFP and prior to final award of contract, the Offeror shall not discuss this procurement with any party except the Purchasing Department buyer listed in this document. The Offeror shall not attempt to discuss with or attempt to negotiate with the using agency/department, any aspects of the procurement without prior approval of the Purchasing Department buyer listed in this document.

## **18. MINIMUM QUALIFICATIONS**

Unless the Offeror has been pre-qualified by the Owner, the Owner reserves the right to determine whether Offerors have the minimum qualifications to conduct the requirements of this solicitation. The determination by the Owner, Inc. concerning Offeror qualifications shall be final.

## **19. NOTIFICATION OF AWARD**

A Notification or Statement of Award will be posted for all Offerors on BidNetDirect.

## **II. CONTRACTUAL REQUIREMENTS**

### **1. THE SUCCESSFUL OFFEROR'S RESPONSIBILITY**

The Successful Offeror that is awarded a contract for these services shall provide all of the proposed work and services as finally agreed upon and accepted by the Owner. Each Offeror shall fully acquaint himself with conditions relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will sometimes require on-site observation. The failure or omission of an Offeror to acquaint himself with existing conditions shall in no way relieve him of any obligation with respect to this proposal or to the contract.

### **2. SC LAW CLAUSE – LICENSE AND PERMITS**

Upon award of a contract under this proposal, the person, partnership, association, or corporation to whom the award is made must comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business in this State. Notwithstanding the fact that applicable statutes may exempt or exclude the successful Offeror from requirements that it be authorized and/or licensed to do business in this State, by submission of this signed proposal, the Offeror agrees to subject itself to the jurisdiction and process of the courts of the State of South Carolina, County of Horry, as to all matters and disputes arising or to arise under the contract and the performance thereof, including any questions as to the liability for taxes, licenses, or fees levied by the State. All costs for required licenses, insurance and taxes shall be borne by the Contractor.

### **3. COMPLIANCE WITH LAWS**

The successful Offeror shall keep fully informed of all existing and future State and Federal Laws and Municipal Ordinances and Regulations in any manner affecting those engaged or employed in the work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the specifications for this work in relation to any such law, ordinance, regulation, order, or decree, he shall forthwith report same to the Purchasing and Support Services Supervisor, in writing. The Successful Offeror shall at all times observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees; and he shall protect and indemnify the Owner, its officers, and agents, against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order, or decree whether by themselves or their employees.

### **4. HOLD HARMLESS AGREEMENT**

The Franchisee and its guarantor or guarantors shall hold harmless and indemnify the City and its agents, officers and employees from and against any and all claims, damage, loss, expenses, injury, action or any other demand of any nature and description whatsoever, either related directly or indirectly hereto; which the City may suffer or will suffer as a result of any claims, costs, judgements, demands, actions of any and every nature and description arising either directly or indirectly from the activities of the Franchisee, any

subcontractor, anyone employed by any one of them or anyone whose acts of them is found to be liable hereunder. The Franchisee and its guarantor or guarantors shall also totally and absolutely be responsible for any and all investigative fees, costs or attorney's fees that may be incurred related to any matter herein.

## **5. SOUTH CAROLINA SALES TAX**

By submission of a signed bid, you are certifying, under penalties of perjury, that you comply with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes. This will certify to the Owner your compliance.

## **6. GOVERNING LAW**

The Successful Offeror hereby agrees to subject itself to the jurisdiction and process of the courts and to the law of the State of South Carolina of all matters and disputes arising or to arise under this contract and the performance thereof, including all matters pertaining to the validity, construction, interpretation, and effect of a resulting contract. In the event of any dispute between the parties hereunder, all such disputes shall be pursued in Circuit Court for the State of South Carolina, County of Horry.

## **7. ATTORNEY FEES**

In the event that the Owner is required to enforce any provision of this agreement or to compel performance or recovery for any breach of any stipulation, covenant, term or condition of this agreement, the City would be entitled to reasonable attorney fees. Otherwise, attorney fees in connection with any suit or action hereunder will be borne by the parties experiencing said expenses.

## **8. ASSIGNMENT AND MODIFICATION**

- A. The contract resulting from this RFP shall be binding upon the Successful Offeror, its successors, and assigns in accordance with its terms and conditions. No assignment of the work under the contract (franchise) or any right occurring under it shall be made in whole or in part by the Franchisee without the express written consent of the City of North Myrtle Beach. The granting of such consent is to be within the sole discretion of the Owner. Any change in majority ownership or operational control of the Successful Offeror shall be deemed as assignment by operation of law and shall not be permitted except as provided for herein.
- B. No agreement to modify the formal contract shall be binding on the part of the Owner unless such modification is reduced to writing and executed by an authorized agent of the Owner.

## **9. CONTRACT ADMINISTRATION**

Administration of the contract (franchise) by the City will be accomplished strictly in accordance with all terms and conditions therein. The City reserves the rights of terminating the contract (franchise) for convenience when it is in the City's best interest to do so, and to terminate the contract (franchise) for default due to the Franchisee's failure to

perform the services as required or for failure to comply with any or all of the contract's terms and conditions.

#### **10. LICENSES AND TAXES**

The Franchisee shall be required to obtain and pay for all necessary licenses for his/her operation. The Franchisee shall also be solely responsible for payment of any and all taxes levied on his/her operation. The Franchisee shall NOT be required to purchase a City of North Myrtle Beach business license for banana boat operations.

#### **11. SALES TAX**

The Franchisee must pay the prevailing sales tax and Hospitality Fees.

#### **12. FORCE MAJEURE**

The Successful Offeror shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Successful Offeror. Such causes may include but are not restricted to acts of God or of the public enemy, acts of the Governments in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Successful Offeror. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Successful Offeror and subcontractor, and without the fault or negligence of either of them, the Successful Offeror shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Successful Offeror to meet the required delivery schedule.

#### **13. SUBCONTRACTING**

Subcontracting any portion of the Franchise Agreement shall not be allowed. Any violation of this shall result in the immediate revocation of the Franchise.

#### **14. CONVEYING**

This Agreement and any portion hereof shall not be alienated, conveyed, sold, leased, granted, donated, pledged, or encumbered, or in any manner whatsoever, or by whatever name or form assigned by the Franchisee to any other person, firm or corporation without the prior, express written consent of the North Myrtle Beach City Council. Such consent shall be conveyed by the adoption of an ordinance granting a banana boat franchise to the new owner. Any ownership change during the term of this Franchise shall be construed as a sale of the Franchise and shall result in the immediate revocation of the Franchise.

#### **15. DRUG-FREE WORKPLACE**

The State of South Carolina has amended Title 44, Code of Laws of South Carolina, 1976, relating to health, by adding Chapter 107, so as to enact the Drug-Free Workplace Act. (See Act No. 593, 1990 Acts and Joint Resolutions). By submission of a signed proposal, you are certifying that you will comply with this Act (see Section 44-107-30). This will

certify to the Owner your compliance.

## **16. PAYMENT TERMS**

The Franchisee shall be required to pay a franchise fee in the amount of \$26,800 each year. The fees for any optional period shall increase by five percent (5%) successively for each year. The franchise fee shall be payable in one installment due by July 15th of each year. In the event this date falls on a weekend, payment shall be due the first Monday after July 15<sup>th</sup>. If payment has not been received within 15 days after the due date a \$100 per day penalty will be assessed until payment is received in full.

## **17. NON-APPROPRIATION**

Any contract entered into by the City of North Myrtle Beach resulting from this proposal shall be subject to cancellation without damages or further obligation when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period of appropriated year.

## **III. SPECIAL PROVISIONS**

### **1. CHANGES**

No services, for which an additional cost or fee will be charged by the Company, will be provided without the prior written authorization of the Owner.

### **2. INSURANCE REQUIREMENTS**

The Contractor shall not commence work under this RFP/Contract until he has obtained all insurance under this section and the City Manager and the City Attorney of the City of North Myrtle Beach, South Carolina have approved such insurance coverage. Insurance certificates are required from the Prime Contractor or service providers and all subcontractors.

#### **A. WORKER'S COMPENSATION INSURANCE**

The Contractor shall provide and maintain during the life of this contract, the statutory Workers Compensation Insurance as required by all applicable Federal, State, Maritime or other laws including Employers Liability for all of his/her employees to be engaged in work on the project under this contract, and in case any such work is sublet, the Contractor shall require the subcontractor similarly to provide Statutory Workmen's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work. Out of state contractors' workers compensation insurance coverage must extend to South Carolina or have an "all-states" endorsement. The requirements for workers compensation insurance will not be waived.

#### **B. OTHER INSURANCE COVERAGE**

1. It shall be unlawful for any Franchisee to operate a Banana Boat franchise unless the Franchisee shall have first procured and filed with the City of North Myrtle Beach Risk Management Department, a liability insurance policy or policies, the terms, and conditions of which shall provide for the protection of all persons suffering injury, loss or damage to the person, or to property, by reasons of the operation of this concession.
2. The insurance policies and certificate of insurance shall provide an umbrella policy of \$2,000,000, over the Franchisee general liability, automobile, and watercraft policies. The coverage shall be executed by an AM Best rating of A-rated or greater insurance company or companies authorized to do business in the State of South Carolina. The coverage shall include products liability, personal injury, property damage and medical expenses. See specifications in the franchise agreement. It shall be stated that these coverages are primary to all other coverages the City of North Myrtle Beach may possess.
3. Each insurance required by the Owner shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, or altered in any other material manner unless thirty (30) days prior written notice has been given to the Owner.
4. The City of North Myrtle Beach shall be named as additional insured on all policies. The City, its officials, employees, and volunteers are to be covered as additional insured's with respect to: liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the contract; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its officials, employees, or volunteers.
5. All certificates and endorsements must be received and approved by the Owner within five (5) days after notification of award. The Procurement Office at 1120 Second Avenue South, North Myrtle Beach, SC 29582, shall receive an original Certificate of Insurance. Faxed copies are not acceptable. All questions should be addressed to the Assistant Purchasing Agent, Jan Knorr, at 843-280-5660.

#### **IV. ADDITIONAL TERMS AND CONDITIONS**

These additional terms and conditions supplement the terms and conditions contained in the Scope of Work (Banana Boat Franchise Agreement).

##### **1. SITE VISIT**

Offerors are expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of

performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after the award of a franchise. A site visit may be arranged by contacting Jan Knorr, Assistant Purchasing Agent, at 843-280-5660.

- A. The Offeror acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: (1) Conditions bearing upon transportation, handling and storage of equipment; (2) The availability of beach access; and (3) Uncertainties of weather or similar physical conditions at the site.
- B. The Offeror also acknowledges that it has satisfied itself as to the character, quality and quantity of surface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site.
- C. The City assumes no responsibility for any conclusions or interpretations made by the Offerors based on the information made available by the City. Nor does the City assume responsibility for any understanding reached or representation made concerning conditions which can affect work by any of its employees before the execution of the Franchise Agreement, unless that understanding or representation, is expressly stated in the Franchise Agreement.

## **2. METHOD**

It is expressly agreed that the Scope of Work (Franchise Agreement) is specific in nature and portrays only the work which must be done. The method to be employed to accomplish the work shall be the responsibility of the Franchisee, unless otherwise provided in the Scope of Work. It is expressly agreed and understood that the Franchisee is, in all respects, independent as to the operation; however, in certain aspects, the Franchisee is bound to follow the directions of the City Manager or appointed designee(s), and that the Franchisee is in no respect an agent, servant or employee of the City.

## **3. PERFORMANCE**

The Franchisee's performance of the work shall be monitored by appropriate City employees. If at any time the Franchisee is performing less than satisfactory work, the Franchisee, upon notification by the City Manager or appointed designee, shall do whatever is necessary to perform the work properly. Failure to give such notification shall not relieve the Franchisee of his/her obligation to perform the work at the time and in the manner specified.

## **4. COMPLIANCE WITH LAWS AND REGULATIONS**

The Franchisee hereby agrees to abide by applicable Federal, State, County, and City laws and regulations. The Franchisee and surety shall indemnify, defend, and hold harmless the City, all of its officers, representatives, agents and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, orders, or decrees whether by itself or its employees.

## **5. BEACH RENOURISHMENT**

The Franchisee may be required to suspend operations during periodic beach

renourishment construction.

## **6. PROTECTION OF THE DUNE SYSTEM, EXISTING STRUCTURES, VEGETATION, AND EQUIPMENT**

Operational and employee access across the dune shall be through existing dune walkways or pathways. New access points through the dune shall not be established or permitted. Equipment storage and/or operations may not be conducted on the established dune system.

The Franchisee shall use reasonable care to preserve and protect all structures and equipment on or adjacent to the work site. Additionally, if the Franchisee's failure to use reasonable care causes damage to adjacent structures or vegetation, the Franchisee shall repair or replace the damage at no expense to the City. If the Franchisee fails or refuses to make such repair or replacement, the City shall make the repairs and the Franchisee shall be liable for the cost.

## **7. OPERATIONS AND STORAGE AREAS**

The Franchisee shall confine all operations to the area designated for work. No equipment shall be stored at the operational site or street-end when daily operations have ceased. Equipment storage and/or operations may not be conducted on the established dune system.

## **8. CONTRACT MODIFICATION**

No oral statement of any person shall modify or otherwise affect the terms, conditions, provisions, or specifications stated in the contract (Franchise Agreement). Any modification shall be made in writing by the City Manager or authorized designee.

## **9. ACCIDENT PREVENTION**

The Franchisee shall provide and maintain work environments and procedures which will safeguard its employees, the public and City employees, property, material, supplies, and equipment exposed to Franchisee operations.

# **V. SPECIAL INSTRUCTIONS TO OFFERORS**

## **1. INTERPRETATION OF PROPOSAL DOCUMENTS**

Each Offeror shall thoroughly examine the RFP documents and judge for himself/herself all matters relating to the location and the character of the services he/she agrees to perform. If the Offeror should be of the opinion that the meaning of any part of the RFP documents is doubtful or obscure, or contains errors or omissions, he/she should request clarification from the Assistant Purchasing Agent, Jan Knorr, no later than February 9, 2022, in order that appropriate addenda may be issued, if deemed necessary. The City will not be responsible for oral interpretation given by any City employee; the issuance of written addendum being the only official method whereby

such interpretation will be given.

## **2. GENERAL**

The City of North Myrtle Beach is looking for the best proposal meeting the terms and conditions stated in the Scope of Work (Franchise Agreement). All of the following forms and items must be included in the RFP response for the bid to be considered responsive.

## **3. PRE-BID FORMS TO BE COMPLETED AND RETURNED IMMEDIATELY**

- A. “Bidder Registration” Form (Page 3)
- B. “No Bid” Response Form (Page 4) – You do not need to return this form unless your corporate entity is currently on our vendors list and you do not intend to bid on this offering but want to remain on our list of vendors.

## **4. PROPOSAL (OFFER) PREPARATION**

The Proposer (Offeror) must demonstrate experience in the required services and is expected to examine the entire contents of this solicitation package. Failure to do so will be at the Proposer's risk. Also, the City of North Myrtle Beach is not liable for any costs incurred by the Proposer to develop a proposal (offer).

## **5. PROPOSAL FORMAT AND INSTRUCTIONS**

Provide all necessary information for a comprehensive proposal (offer). The Proposer should submit the proposal organized as follows:

- A. Proposer's Cover or Transmittal Letter to the City
- B. Declaration Form (Page 24)
- C. Non-Collusion Affidavit (Page 24)
- D. Certificate of Familiarity (Page 25)
- E. Proposal Form for Banana Boat Franchise (Page 26)
- F. Insurance Checklist (Page 28)
- G. Proposer's Operational Concepts and Plans Form (Page 29) and the requested documents attached (i.e., Proposer's Operational Concepts and Plans Narrative addressing, in detail, how the Proposer will accomplish and comply with all areas of the Scope of Work (Banana Boat Franchise).
- H. Proposer Information Narrative (i.e., Reputation, History of Performance, Experience at Similar Operations, Financial Health, and Business References). Business references should include the name, telephone number and email address of the person(s) who can be contacted regarding the Offeror's performance. The Offeror may attach letters from such facility managers with comments regarding the Offeror's performance and reputation at those facilities, if desired. The Offeror should also include a short description of the services provided.
- I. If additional, pertinent information is included which has not been requested by the Owner, please include it as Appendix “A”. This could include information or

materials which may be helpful to explain or evaluate the proposal.

- J. The financial proposal should be in a separate sealed envelope. (One copy of the financial proposal should accompany each copy of the submitted proposal.)

## PROPOSAL DOCUMENTS

**DECLARATION**

TO: CITY MANAGER  
CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA

SUBMITTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2022

The undersigned, as Proposer (herein used in the masculine, singular irrespective of actual gender and number), declares that the only persons interested in this Proposal are named herein; that no other person or entity has any financial or other interest in this Proposal, the contract to which this Proposal pertains, or the entity named as Proposer, except those listed below; that this Proposal is made without connection or arrangement with any other person and that this Proposal is in every respect fair and made in good faith, without collusion or fraud.

The Proposer further declares that he/she has complied in every respect with all the Instructions to Proposers issued prior to the opening of Proposals, and that he/she has satisfied himself/herself fully relative to all matters and conditions with respect to the general condition of the contract to which the Proposal pertains.

The Proposer proposes and agrees, if this Proposal is accepted, to execute an appropriate City of North Myrtle Beach document for the purpose of establishing a formal contractual relationship between him/her and the City of North Myrtle Beach, South Carolina, for the performance of all requirements to which the Proposal pertains.

The Proposer states that the Proposal is based upon the Proposal documents listed for RFP No. 2022-001JK as follows:

SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

TITLE OF CORPORATION \_\_\_\_\_

DATE \_\_\_\_\_

List name and address of all parties with an interest in the Proposal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NON-COLLUSION AFFIDAVIT  
RFP NO. 2022-001JK**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ of Offeror that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;

4. Neither the said Offeror nor any of its officers, partners, owners agents, representatives, employees or parties of interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Offeror, firm or person to submit a collusive sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposal in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Offeror, firm or person to fix the price or prices in the attached proposal or of any other Offeror, or to fix any overhead, profit or cost element of the proposal price of any other Offeror or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against The Owner or any person interested in the proposed contract; and
  
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Offeror or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Authorized Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

Company \_\_\_\_\_

Authorized Signature \_\_\_\_\_  
Notary Public

Printed Name \_\_\_\_\_

Commission Expires \_\_\_\_\_

**CERTIFICATE OF FAMILIARITY**  
**RFP NO. 2022-001JK**

The undersigned, having fully familiarized himself with the information contained within this entire solicitation and applicable amendments, submits the attached bid and other applicable information to the Owner, which I verify to be true and correct to the best of my knowledge. I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects, fair and without collusion or fraud. ***By submission of a signed bid, I certify, under penalties of perjury, that the below company complies with section 12-54-1020(B) of the SC Code of Laws 1976, as amended, relating to payment of any applicable taxes.*** I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid. I further certify that this bid is good for a period of ninety (90) days, unless otherwise stated.

\_\_\_\_\_  
Company Name as registered with the IRS

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Correspondence Address

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Remittance Address

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Toll-Free Number if available

\_\_\_\_\_  
Federal Tax ID Number

\_\_\_\_\_  
SC Sales Tax Number, if applicable

**PROPOSAL FORM**

**BANANA BOAT FRANCHISE AGREEMENT  
IN THE AREA OF NORTH BEACH PLANTATION OCEANFRONT TOWER  
IN THE WINDY HILL SECTION OF THE CITY**

TO: THE CITY OF NORTH MYRTLE BEACH

Proposer hereby offers to enter into an Agreement with the City of North Myrtle Beach, South Carolina for Banana Boat Operations on Public Beaches within the Corporate Limits of the City in accordance with the Scope of Work (Banana Boat Franchise Agreement) for a base period of five (5) years with one (1) five-year optional extension, as determined by the City of North Myrtle Beach. All effort, equipment, and trained manpower necessary to accomplish the services have been identified and addressed in the Proposer's Operational Concepts and Plans submitted with the Proposal.

SUBMITTED BY: \_\_\_\_\_  
PROPOSER (OFFEROR)

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

ATTEST: \_\_\_\_\_

It is understood by the Proposer that the City reserves the right to reject any or all Proposals, to waive formalities, technicalities, and irregularities, and to re-advertise.

**INSURANCE CHECKLIST - RFP NO. 2022-001JK**

1. UMBRELLA POLICY: \$2,000,000 umbrella policy over general liability, automobile and watercraft policies.
2. GENERAL LIABILITY: Premises operations included, products and completed operations included, independent contractors included, personal injury liability included.
  - A. \$1,000,000 per occurrence and \$2,000,000 in annual aggregate.
  - B. \$1,000,000 single limit bodily injury & property damage.
3. AUTOMOBILE LIABILITY: Owned, non-owned and hired vehicles included. \$1,000,000 combined single limit.
4. WATERCRAFT LIABILITY: \$1,000,000 combined single limit.
5. WORKERS COMPENSATION AND EMPLOYER’S LIABILITY: Meet the statutory requirements of the State of South Carolina.
6. Jones Act coverage by either an endorsement under the Protection and Indemnity Section of a General Liability policy or added as an Admiralty Act to the Worker’s Compensation Coverage.
7. Contractual indemnity/hold harmless endorsement, exactly as written in “Hold Harmless Agreement.”
8. The City must be named as an additional insured on the Certificate of Insurance and the following must also be stated on the certificate: “These coverages are primary to all other coverages the City of North Myrtle Beach possesses for this contract only.”
9. The Certificate of Insurance must state the RFP number and title.
10. Thirty (30) days cancellation notice is required.

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**PROPOSER AND INSURANCE AGENT STATEMENT:**

We understand the Insurance Requirement of these specifications and that evidence of insurability will be required before performance of services under the Banana Boat Franchise Agreement.

---

PROPOSER

---

NAME & LOCATION OF AGENCY

---

SIGNATURE OF PROPOSER

---

INSURANCE AGENCY

---

SIGNATURE OF SC RESIDENT AGENT

---

DATE

**PROPOSER'S OPERATIONAL CONCEPTS AND PLANS FORM**

The Proposer must attach a comprehensive narrative of proposed operational concepts and plans in regard to compliance with the terms and conditions of the Scope of Work (Banana Boat Franchise Agreement). Quality of the narrative proposal is essential in determining the proposer's understanding of the Scope of Work as well as for the City to use in evaluation of proposals.

The Proposer hereby acknowledges that these attachments and statements are an integral part of the Proposal Form and, as such, are truthful and complete. Furthermore, the Proposer affirms its liability to the City of North Myrtle Beach in carrying out its proposed operational concepts, financial commitments, and plan should it be the successful Proposer.

**WITNESS:**

\_\_\_\_\_  
  
\_\_\_\_\_

**PROPOSER:** (If Sole Proprietor or Partnership)

Name: \_\_\_\_\_

By: \_\_\_\_\_  
(SEAL)

Title: \_\_\_\_\_

**(CORPORATE SEAL)**

**PROPOSER:** (If Corporation)

Name: \_\_\_\_\_

By: \_\_\_\_\_  
(President)

Attest: \_\_\_\_\_  
(Secretary)

**SCOPE OF WORK  
(BANANA BOAT  
FRANCHISE AGREEMENT)**

**STATE OF SOUTH CAROLINA, COUNTY OF HORRY, CITY OF NORTH  
MYRTLE BEACH, BANANA BOAT FRANCHISE AGREEMENT**

**WHEREAS**, the City of North Myrtle Beach is a tourist community with nine (9) miles of public beach along the Atlantic Ocean; and

**WHEREAS**, the City is visited by hundreds of thousands of people each year; and

**WHEREAS**, the City has as its public purpose the provision of a safe environment for its visitors and residents; and

**WHEREAS**, Mayor and Council for the City of North Myrtle Beach, hereinafter called “City”, have determined in the interest of health, safety and general welfare of the citizens, residents, and visitors of the City, that a franchise for banana boat operations to be conducted in the area of the North Beach Plantation Oceanfront Tower in the Windy Hill section of the City should be granted to a suitable and proper person; and

**WHEREAS**, Mayor and Council have determined that \_\_\_\_\_, hereinafter called “Franchisee”, is a suitable person to whom such franchise should be granted.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:**

In consideration for providing banana boat operations on the public beach, and other good and valuable consideration, the City does hereby grant a limited Banana Boat Franchise to the within-named Franchisee for the purposes and under the conditions herein mentioned, such franchise to be operated under the following terms and conditions of this Agreement, hereinafter called the “Agreement”.

This Agreement supersedes and voids and nullifies all banana boat franchise agreements and addendums entered into between \_\_\_\_\_ and the City of North Myrtle Beach prior to the execution of this Agreement.

## **ARTICLE I: GENERAL**

**Section 1** The Franchisee shall have the right and privilege of conducting upon the public beaches of the City as herein designated and hereafter called “public beaches”, a banana boat business which consists of the sale of banana boat rides to the general public for profit.

“**Operator**” means one that operates a banana boat or a non-propeller personal watercraft. The term also includes the operator serving as an observer on such watercraft.

“**Banana Boat Operations**” means rental of rides on a banana boat towed by a non-propeller personal watercraft. Banana boats shall not exceed six (6) passengers at any time.

**Section 2** The granting of this franchise shall in no way imply that said franchise is exclusive; and the City reserves the right at any time to grant an additional franchise to qualified applicants if and when the City Council shall determine that the public convenience and necessity would best be served by such additional franchise or franchises.

**Section 3** The Franchisee shall operate in the area of the North Beach Plantation Oceanfront Tower which area is seaward of the primary dune line as defined by South Carolina Coastal Council in the W-1 Waterfront Pleasure District which is under the control of the City of North Myrtle Beach, and which is shown on the official zoning map of the City of North Myrtle Beach. Upon the occurrence of a high tide that causes the beach in the area of the franchise operation to become too narrow to conduct franchise operations, the Franchisee may request authorization from the City Manager or his/her designee to temporarily relocate the area of operation within a distance not to exceed 500 feet north or south of the authorized area of operation. In evaluating the request to authorize the temporary relocation, the City Manager or his/her designee will consider how such temporary relocation may impact the health, safety, and welfare of the beachgoers. The right to grant any such relocation, temporary or otherwise, remains the sole right and judgment of the City and is undisputable.

**Section 4** The Franchisee shall not conduct any business activities upon the public beaches other than those enumerated in Section 3 hereof, or unless otherwise approved by the City.

**Section 5** The Franchisee shall conduct all business activities in a passive manner. Concession or sales personnel shall make no initial direct contact with beach patrons for the sale of banana boat rides and shall not be allowed to solicit any sales. No sale shall be practiced by the Franchisee or its employees, to influence, pressure, coerce, or hawk the general public to utilize its services. All employees of the Franchisee shall be properly attired at all times.

## **ARTICLE II: DURATION, FEES & REQUIREMENTS OF OPERATION**

**Section 1** This Agreement shall run for an initial base period, beginning on the 10<sup>th</sup> day of March 2022 and shall end on the 31<sup>st</sup> day of December 2026, unless earlier terminated as provided herein. However, the City may, at its option, extend the term of the franchise for an additional five (5) year term. Such extension shall be based upon the quality of service provided, the condition of the equipment and the anticipated service level and condition of equipment during the option period. The right to extend the agreement for the option period remains the sole right and judgment of the City. A decision not to extend the agreement period is undisputable.

**Section 2** Subcontracting any portion of the Franchise Agreement shall not be allowed. Any violation of this shall result in the immediate revocation of the Franchise.

**Section 3** This Agreement and any portion hereof shall not be alienated, conveyed, sold, leased, granted, donated, pledged or encumbered, or in any manner whatsoever, or by whatever name or form assigned by the Franchisee to any other person, firm or corporation without the prior, express written consent of the North Myrtle Beach City Council. Such consent shall be conveyed by the adoption of an ordinance granting a Banana Boat Franchise to the new owner. Any ownership change during the term of this Franchise Agreement shall be construed as a sale of the Franchise and shall result in the immediate revocation of the Franchise.

**Section 4** The Franchisee shall pay to the City a franchise fee of \$26,800 per year for the base period. The fees for the optional period shall increase by five (5) percent successively for each year. The franchise fee shall be payable in one installment due by July 15th of each year. In the event this date falls on a weekend, payment shall be due the first Monday after July 15. If payment has not been received within 15 days after the due date a \$100 per day penalty will be assessed until payment is received in full.

**Section 5** In addition to all other remedies available to the City, the City shall have the right to levy civil fines for each violation of the franchise terms and/or conditions. The amount of these fines may not exceed Five Hundred Dollars (\$500.00) per infraction. Within ten (10) days, the Franchisee may appeal the use of this remedy to the City Manager, whose decision shall be final. If any fines remain unpaid after the ten (10) day period set aside for appeal, the City may terminate this Agreement.

**Section 6** The Franchisee shall comply with all rules, regulations, laws and permitting requirements of the City of North Myrtle Beach, Horry County, the State of South Carolina and the United States Government now in force or hereinafter to be adopted.

**Section 7** The Franchisee shall be required to obtain and pay for all necessary permits and licenses for operation, and be solely responsible for payment of any sales tax, hospitality fees or any and all taxes levied upon this operation. A business license for this franchise operation is not required.

**Section 8** If the Franchisee is unable or unwilling to perform the franchise at any time for any reason, the paid franchise fee remains with the City and is non-refundable. Failure to perform shall constitute grounds for the City to terminate the Franchise Agreement in

whole or part without any termination liability on the part of the City.

### **ARTICLE III: OPERATING LOCATION AND EMPLOYEE GUIDELINES**

**Section 1** The operating location for this franchise is the public beach immediately seaward of the North Beach Plantation Oceanfront Tower in the Windy Hill section of North Myrtle Beach.

**Section 2** Banana boat operations, as required under Section 1 hereof, shall be in place, manned and fully operational in compliance with the starting and ending dates negotiated between the Franchisee and City Manager.

**Section 3** Franchisee operations personnel mentioned in this Article shall:

- A. Only conduct operations 8:00 AM until 7:00 PM on each day, unless precluded by weather and sea conditions. Franchisee may begin preparing for operations at 7:00 AM. on each day but cannot begin operation until 8:00 AM. Franchisee shall be allowed ingress and egress to the beach with a motor vehicle from the 45<sup>th</sup> Avenue South street-end beach access-way and shall operate the motor vehicle while on the beach only in the area twenty feet seaward of the dune-line parallel to the shoreline. Franchisee shall only operate one motorized vehicle on the beach at any time. The Franchisee shall be allowed to utilize a motorized vehicle on the beach to set up daily operations between the hours of 7:00 AM and 8:00 AM. Except in the event of inclement weather or some other circumstance that would require the Franchisee to cease banana boat operations between the hours of 8:00 AM and 7:00 PM, Franchisee shall be prohibited from utilizing or parking a motorized vehicle on the beach between the hours of 8:00 AM and 7:00 PM.

In the event of inclement weather or some other circumstance that would require the Franchisee to cease banana boat operations between the hours of 8:00 AM and 7:00 PM, Franchisee may operate a motor vehicle on the beach for the purpose of removing franchise equipment and shall operate the motor vehicle pursuant to the requirements established in this section; however, the Franchisee shall be required to notify the Beach Patrol Division of the North Myrtle Beach Department of Public Safety prior to operating a motor vehicle on the beach between the hours of 8:00 AM and 7:00 PM. At any time, the Franchisee or its employees are operating a motor vehicle on the beach, the motor vehicle shall not be operated at speeds in excess of 10 mph; however, a vehicle's speed shall not exceed what a reasonable person would consider safe. In addition, to minimize the risk of injury that unnecessary distractions may cause, Franchisee or his employees shall not utilize the vehicle's radio, mp3 player, or any device that produces audio and/or video signals or images or utilize a cell phone to receive or place calls or to text message while operating a motor vehicle on the beach. The driver of the motor vehicle shall provide his or her full attention to his or her surroundings and shall always yield the right-of-way to the public/beachgoers. In addition, other than when it is raining,

at any time Franchisee or its employees are operating a motor vehicle on the beach, the windows of the vehicle will be in the down position. In addition to the driver or operator of the motor vehicle, any time the Franchisee or its employees operates a motor vehicle on the beach, the Franchisee shall have a second person accompany the driver to serve as a spotter for beachgoers and or other obstructions and/or conditions that may exist on the beach. When approaching the beach in a motor vehicle, the driver will stop, turn on headlights, strobe lights or hazard warning flashers before entering the beach. The vehicle's headlights and strobes or warning flashers must be activated whenever the vehicle is in motion on the beach. Whenever the vehicle has been stopped or parked on the beach, prior to moving the vehicle, the driver or spotter of the vehicle shall complete a full walk around of the vehicle to ensure a clear and safe path of travel. At any time when it is necessary to operate the vehicle in reverse, prior to operating the vehicle in reverse, the driver or the spotter of the vehicle shall conduct a complete walk around the vehicle to ensure a safe and clear path. The Franchisee shall be authorized to utilize a motorized vehicle on the beach between the hours of 7:00 PM. and 8:00 PM, pursuant to the requirements established in this section, for the purpose of removing the franchise equipment from the beach. No motorized vehicles shall be authorized on the beach after 8:00 PM or before 7:00 AM.

- B. Be neatly attired in uniform supplied by the Franchisee and approved by the City. Swimming suits shall be of a bright, distinctive color, resistant to color fading, and shall have lettering easily seen by the public but shall not conflict with or in any way be identified as North Myrtle Beach City lifeguards.
- C. Be neat and clean in appearance, free of visible exotic body piercing and shall conduct themselves in a courteous manner to the general public.
- D. Shall have, while on duty, an approved safety system that will provide uninterrupted communications from shore operating locations to in-water operations and vice-versa. The Beach Patrol Division of the North Myrtle Beach Department of Public Safety shall be made aware of the radio type, frequency and channel(s) designated for franchise communication. Any changes to same shall be reported immediately to both the duty lifeguard and the Beach Patrol Division of the North Myrtle Beach Department of Public Safety.
- E. Not wear any part of his uniform while drinking beer, wine, or any alcoholic beverages, nor in a place where beer, wine, or any alcoholic beverages are consumed (except when obtaining lunch or a non-alcoholic beverage during on-duty breaks).

**Section 4** The primary duty of Franchisee personnel is to protect the safety of the general public in the use of the public beaches and the ocean waters of the City while conducting banana boat operations. It is mandatory that the banana boat operator's attention be focused on this duty; therefore, the Franchisee's personnel on duty shall not:

- A. Conduct lengthy conversations with persons in a manner or in such a fashion as to

impair the performance of safety duties.

- B. Permit persons to be in the operations area unless they are qualified Franchisee employees or patrons.

**Section 5** It is the Franchisee's responsibility to monitor the health of its employees, and not assign an employee who is ill or physically unable to execute his or her responsibilities.

**Section 6** During the times and periods operations are conducted, the Franchisee shall keep their equipment and work areas neat, clean, and safe. All equipment shall be secured and kept from public nuisance when operations are not being performed. No equipment shall be stored at the operating site or street-end after daily operations have ceased.

**Section 7** Any employee or operator of a franchise, who pleads guilty, is found guilty, pleads nolo contendere or no contest to, or has any prior conviction within the last ten years, for any offense that carries a possible penalty of incarceration for a year or more shall be dismissed from the franchise operation. In addition, any employee or operator who consumes or is under the influence of an alcoholic beverage, unlawful controlled substance, or prescription drug(s) that could impair performance while on duty, shall be immediately dismissed. Failure of the Franchisee to dismiss any employee or operator pursuant to this section shall be grounds for revocation of the franchise at the discretion of the City Manager or his/her designee. The Franchisee shall not utilize any equipment including, but not limited to, any boats, personal watercraft, banana boat, or transport watercraft for any use in the operation of the franchise if the individual, or entity, or any officer of, board member of, shareholder, investor or director of the entity that owns the equipment pleads guilty, is found guilty, pleads nolo contendere to, or has any conviction within the last ten years for any offense that carries a possible penalty of incarceration for a year or more. If the Franchisee continues to use any equipment in the operation of the franchise in violation of the above terms, the City shall have the option to revoke the franchise.

The Franchisee shall submit copies of certificates of title to all boats, personal watercraft, banana boats and/or other watercraft to be used in the operation of the franchise. If a corporation, LLC, or other entity owns any of the equipment used for the operation of the franchise, the Franchisee shall provide the City with a certified copy of the articles of incorporation for that entity. If the Franchisee fails to provide this information, the City shall have the option to revoke the franchise.

**Section 8** If any employee of the franchise observes or becomes aware of a violation of the law or a violation of the beach rules, he or she shall report such violation immediately to a supervisor or on duty lifeguard, who shall immediately report such violation to the Beach Patrol Division of the North Myrtle Beach Department of Public Safety.

**Section 9** The Franchisee shall have at least one (1) experienced supervisor overseeing the operations, exclusively, at all times. The supervisor's qualifications shall include a minimum of two (2) years' experience as an operator.

## **ARTICLE IV: BANANA BOAT OPERATORS - QUALIFICATIONS AND TRAINING**

**Section 1** Operators furnished by the Franchisee shall be at least eighteen (18) years of age and shall hold and maintain in full force proper watercraft licenses and permits. Copies of such shall be furnished to the City prior to the commencement of franchise operations. Personnel replacements shall not be used in operations until such information is furnished to the City.

**Section 2** Banana boat operators and watercraft operators shall, in the presence of the City Manager or appointed designee, demonstrate lifesaving abilities and surf rescue operations at least once each year.

**Section 3** Every employee shall have successfully completed a course of instruction in CPR for the Professional Rescuer or Basic Life Support, AED, and First Aid and be certified to that effect. Every operator must also be certified by the Red Cross as a lifeguard. The Franchisee shall keep a record of the training conducted and make a copy available to the City Manager or his or her designee.

## **ARTICLE V: OPERATING REQUIREMENTS AND LIMITATIONS**

**Section 1** The Franchisee shall comply with all applicable Federal, State, County, and City laws and regulations, whether or not explicitly specified in this Article. These include but are not limited to those of the United States Coast Guard (CG) and the South Carolina Department of Natural Resources (SCDNR).

**Section 2** The following requirements apply to this Franchise Agreement and will be strictly enforced throughout the term of the Franchise Agreement:

- A. The Franchisee is limited to the use of three (3) banana boat vessels not exceeding six (6) passengers and three (3) non-propeller personal watercraft. Vessels engaged in banana boat operations must be designed by the manufacturer for such purposes.
- B. The Franchisee and its employees are required to abide by operating standards and guidelines established by the industry for best operating and safety practices. The City reserves the right to amend or adjust the operating standards, as it deems appropriate.
- C. Prior to Commencement of operations, if appropriate, vessels must be inspected by the United States Coast Guard for safety and proper equipment. Franchisee is required to have inspections readily available for review by the City at any time. All Franchisee employees who are engaged in the banana boat operations must be involved in a Federal Drug and Alcohol Testing Program making available the results to the City upon request.

- D. All commercial banana boat operators shall have, at all times, a current license for carrying passengers for hire issued by the United States Coast Guard.
- E. Non-propeller personal watercraft operators shall have the proper license and the Franchisee shall maintain, current at all times, evidence of drug tests performed.
- F. No more than six (6) banana boat riders at any given time shall be allowed on a banana boat.
- G. Non-propeller personal watercraft must be equipped with wide-angle rear-view mirrors.
- H. All rental patrons and franchise employees must wear an approved personal flotation device. All banana boat riders shall wear a United States Coast Guard approved Type I, II, III or V personal flotation device of the proper size.
- I. Banana boat operations conducted in the Atlantic Ocean shall be restricted to not less than two hundred (200) yards from the point where the ocean joins the strand. This restriction applies to the entire banana boat apparatus, including the personal watercraft and banana boat. In addition to the above restrictions, banana boat operations shall not be conducted within three hundred (300) feet of a public pier or persons in the water.
- J. The banana boat vessel shall be equipped with an 800 MHZ or VHF radio capable of sending and receiving radio traffic and weather reports from the National Weather Service.
- K. Franchisee shall set up daily, a fifty by one hundred foot (50' x 100') wide path, marked with buoys, through the surf that will enable the banana boat to approach and exit the beach with passengers. Franchisee shall ensure at all times that this area is free from swimmers or individuals other than its own patrons or employees.
- L. Franchisee shall require a consent/release form signed by all patrons. For those patrons less than eighteen (18) years of age, a parent or legal guardian shall sign the form. On the form, the patron must acknowledge that a safety briefing was given prior to operations. The City Attorney must approve the form prior to commencement of any franchise operations.
- M. Franchisee is authorized to use two (2) beach boxes for general storage purposes associated with the franchise operations. The beach boxes shall be constructed of exterior grade plywood and shall be painted low gloss dark blue. The beach boxes shall be placed at a distance no greater than five (5) feet from the sand fence. The dimensions of the beach boxes shall be: landward facing side): 55" height; seaward facing side: 48" inches height; Width: 98"; Depth: 39". The above dimensions include 4" x 6" skids mounted to the bottom of the box. The Franchisee is authorized to place the name of the banana boat franchise on the boxes on the seaward and landward sides of the beach boxes. The Franchisee may also place the phone number for the banana boat business three inches (3") below the name of the banana boat business. The height of the letters and numbers placed on the boxes cannot exceed four inches (4"). No other items, including but not limited to signs, symbols, letters, numbers, icons, or advertisements may be placed, painted, or drawn on, or otherwise affixed to the beach boxes. The beach boxes shall be removed from the beach no later than October 31<sup>st</sup> of each year and returned to the beach no sooner than April 1<sup>st</sup> of each year for the duration of the

franchise agreement. In addition, the Franchisee shall move or remove the beach boxes as directed by the City Manager or his/her designee as may be deemed necessary by the City Manager or his/her designee for safety purposes.

- N. Franchisee is permitted to use, as a temporary structure, one (1) portable tent not to exceed 12' x 12'. This structure must be removed at the end of each business day. An advertising banner that has been approved by the City Manager or his/her designee may be placed on the tent for the purpose of identifying the Franchisee's business.

**Section 3** The following administrative requirements shall be met, kept current at all times, and be subject to inspection or review by City representatives and other oversight agencies as necessary. This information must be presented to the Beach Patrol Division of the North Myrtle Beach Department of Public Safety, prior to commencement of any operations and as requested anytime thereafter.

- A. Evidence (e.g., servicing receipt, logbook, etc.) that the banana boat and all ancillary equipment have been inspected and serviced on an annual basis by a certified manufacturer's representative or facility.
- B. Maintain onboard the vessel, all appropriate manufacturer instructions, and manuals as to the maintenance, care, inspection, servicing, capacities, and capabilities of all banana boat equipment used onboard the vessel.
- C. Maintain a banana boat daily logbook that captures all required maintenance and inspection checks on the banana boats and all ancillary equipment. All required maintenance to banana boats and all ancillary equipment shall be in accordance with the manufacturer's guidelines.
- D. Maintain a daily weather logbook that documents the forecasted weather for the operational area prior to departure with passengers. All forecasted weather should be analyzed for the determination of safe banana boat operations in accordance with the vessel and banana boat equipment capabilities.
- E. Provide evidence of crew training and the company's training policies and procedures.
- F. Require that all banana boat towlines be fitted with anti-chaffing devices such as metal hardware (e.g., D-rings) or a thimble in the formed eye of the rope, either attached by a splice or through the use of a knot. Appropriate knots, such as a double figure eight knot or splices are to be used rather than a bowline to provide greater reliability and strength.
- G. Adequate stowage shall be provided for all banana boat equipment while not in use. Placement of the equipment in the bilge compartment of the engine is prohibited.

**Section 4** The City reserves the right to inspect operations and administrative requirements at any time and terminate operations at any time if the City believes that the operations are unsafe or administrative requirements have been violated.

## **ARTICLE VI: FRANCHISEE – REQUIRED INSURANCE COVERAGES**

**Section 1** The Franchisee shall carry and maintain in full force and effect at all times during the operation on City beaches, the following insurance coverage:

- A. A TWO MILLION DOLLAR (\$2,000,000) umbrella policy which should sit over the general liability, automobile, and watercraft policies and the same shall be clearly communicated to all underwriters.
- B. General Liability in the minimum amount of ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in annual aggregate for bodily injury and property damage, including coverage for any person renting or using the equipment furnished by the Franchisee or other third persons injured as a result of the use of the equipment rented of the Franchises. This policy must also contain coverage for operations, equipment, and contractual liability. This policy will insure against any personal injury, bodily injury or loss of life or damage to property sustained in or on the Franchisee's or City's premises by reason of or a as result of the Franchisee's use, activities, and operations thereon.
- C. Automobile Liability for owned, non-owned and hired vehicles with minimum of ONE MILLION DOLLARS (\$1,000,000) combined single limit.
- D. Watercraft Liability in the minimum amount of ONE MILLION DOLLARS (\$1,000,000) combined single limit.
- E. Worker's Compensation and Employer's Liability to meet the statutory requirements of the State of South Carolina.
- F. Jones Act coverage by either an endorsement under the Protection and Indemnity Section of a General Liability policy or added as an Admiralty Act to the Worker's Compensation Coverage.

**The City must be named as an additional insured on all policies required above in Section 1(A) through (E).**

**Section 2** The insurance policies shall be executed by an AM Best rating of A-rated or greater insurance company or companies authorized to do business in the State of South Carolina.

**Section 3** The City shall receive at least thirty (30) days advance written notice of cancellation or changes of the above-mentioned policies.

**Section 4** The Franchisee and its guarantor or guarantors shall hold harmless and indemnify the City and its agents, officers and employees from and against any and all claims, damage, loss, expenses, injury, action or any other demand of any nature and description whatsoever, either related directly or indirectly hereto; which the City may suffer or will suffer as a result of any claims, costs, judgements, demands, actions of any and every nature and description arising either directly or indirectly from the activities of

the Franchisee, any subcontractor, anyone employed by any one of them or anyone whose acts of them is found to be liable hereunder. The Franchisee and its guarantor or guarantors shall also totally and absolutely be responsible for any and all investigative fees, costs or attorney's fees that may be incurred related to any matter herein.

**Section 5** A copy of all insurance policies required under Section 1 hereof shall be furnished to the City Manager or his/her designated appointee, prior to the conduct of any business by the Franchisee. No business shall be conducted by the Franchisee until such proof of insurance is delivered to the City Manager; however, the failure to have such insurance shall not relieve the Franchisee of its other responsibilities set forth herein.

## **ARTICLE VII: SAFETY AND ACCOUNTABILITY**

**Section 1** The Franchisee shall be available to the City Manager or his/her designated appointee at all times beginning with the first day of operations and ending with the last day of operations; such availability to be either in person or by telephone at the option of the Franchisee.

**Section 2** No business may be conducted by the Franchisee until all requirements of the Franchise Agreement are met by the Franchisee and the required equipment and safety equipment is approved by the City Manager or his/her designated appointee, and such approval may be withheld if such equipment is found by the City Manager or his/her designated appointee to be in an unsafe condition or of an unsafe nature. The decision of the City Manager or his/her designated appointee regarding safety equipment shall be final. The failure of the Franchisee to meet the requirements of this section shall not relieve the Franchisee of its other responsibilities set forth herein.

**Section 3** The Franchisee shall keep on the beach only that equipment necessary for rental as specified in Article V. All such equipment shall be kept in a safe and sound state of repair at all times and shall be immediately removed from the public beach if found to be defective or in ill repair. All rental and operational equipment used by the Franchisee shall be new or in like new condition during the terms of this Agreement and shall be kept neat, clean, attractive and in a state of good repair.

## **ARTICLE VIII: INCIDENT REPORTING**

**Section 1** The Franchisee shall report, in writing, on Monday of each week, any incidents involving violations by the Franchisee of the requirements of this Agreement. All incidents involving personal injury, loss of life, rescue action or the administering of first aid shall be communicated immediately to the City's Beach Patrol Supervisor.

## **ARTICLE IX: REVOCATION OF FRANCHISE**

**Section 1** Upon the violation of Article II, Section 2, Article III, IV, V or the change of any of the principals involved with the Franchisee, or the conviction of or plea of guilty, or no contest or nolo contendere, by any of the principals or employees of the Franchisee and/or the Franchisee of a crime of moral turpitude, or the declaration of bankruptcy or proceedings of reorganization under Federal or State law by the Franchisee, or the failure of the Franchisee to comply with any of the terms or conditions of the Franchise Agreement, the City reserves the right to immediately revoke this Franchise.

## **ARTICLE X: FRANCHISE ENFORCEMENT AND SUPERVISION**

**Section 1** The City Manager or his/her designated appointee shall be responsible for the enforcement and supervision of this Franchise.

**Section 2** This Franchise Agreement may only be modified in writing as authorized by Mayor and City Council at a regular or special meeting of City Council, and no other changes to this Agreement shall be effective, including attempted modifications.

## **ARTICLE XI: SEVERABILITY/PERFORMANCE GUARANTEES**

**Section 1** This Franchise Agreement supersedes all other Agreements previously made, and all other Agreements, in writing or otherwise, regarding such previous Agreements.

**Section 2** This Franchise Agreement memorializes the complete understanding of all parties hereby, and any other statements, promises, representations, inducements and any and all negotiations of any nature, form or description previously had or contemporaneously conducted with the formation and execution hereof, are hereby deemed fully abandoned, and the same form no part of this Agreement, nor of the understanding of the parties, nor of the consideration of inducement heretofore.

**Section 3** The City shall have the right to revoke and terminate this Franchise Agreement at any time if provisions of the Franchise Agreement are not strictly adhered to. The provisions of the Franchise Agreement, particularly Articles II, III, IV, V, and VI, are intended to provide a safe environment for uses of the public beach in the City of North Myrtle Beach, and any regulation pertaining to the safe operation of the activities on the beach will be strictly construed to the benefit and safety of the general public. **No lapse of time, expenditure of money or any other thing shall be deemed to give the Franchisee any vested interests or right in the continuation of this Franchise Agreement.**

**Section 4** In the event of a default, the Franchisee agrees to pay all fees, including attorney's fees, necessarily incurred in enforcing the City's rights under this Agreement as

a result of said default.

**Section 5** The Franchisee hereby holds the City and its employees harmless from any damages, loss of revenue or any other losses of whatsoever nature resulting from legislative, judicial or other governmental action which renders the City unable to perform under this Agreement.

**Section 6** There shall be no discrimination as to race, religion, sex, color, creed or national origin in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation. All rental services on the beach shall be made available to the public, subject to the right of the Franchisee to establish and enforce rules and regulations to provide for the safety, orderly operation, and security of the banana boat operations.

**Section 7** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the law, but if any provision of this Agreement is prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of the Franchise Agreement.

**WHEREAS**, the Franchisee has entered into an Agreement with the City of North Myrtle Beach for the operation of a banana boat franchise on the public beaches within the City; and,

**WHEREAS**, the undersigned have agreed to guarantee full performance to the Franchisee pursuant to the terms of the Franchise Agreement.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**, that for and in consideration of the aforesaid Franchise Agreement to \_\_\_\_\_, the undersigned jointly and separately hereby absolutely and unconditionally guarantee to the City of North Myrtle Beach the full performance of the Franchise Agreement and the

prompt payment of all franchise fees to the City of North Myrtle Beach when due from the Franchisee to the City, together with any and all charges, and/or penalties and, in addition, the undersigned agrees to pay the cost of enforcement of any terms of the Franchise Agreement, including legal expenses and attorney's fees, paid or incurred by the City of North Myrtle Beach.

The undersigned expressly waives protest and notice of this honor or of default of any terms and the Franchise Agreement.

IN WITNESS WHEREOF, THE PARTIES DO HERETO AFFIX THEIR HANDS AND SEALS, THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022 BINDING THEMSELVES, THEIR SUCCESSORS, HEIRS AND ASSIGNS FOREVER.

IN THE PRESENCE OF:

CITY OF NORTH MYRTLE BEACH

\_\_\_\_\_

BY:

\_\_\_\_\_

Michael Mahaney

Its:

City Manager

\_\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_

\_\_\_\_\_  
Name of Franchisee and d/b/a Entity Name

\_\_\_\_\_