

Agenda Item: Discuss and Consider Award of Contract to Bennett Beach Service for Area 21, 22, and 23 for Umbrella and Chair Rentals.

Staff posted a Legal notice on November 13th, 20th, and 27th in the Galveston Daily News and on the Galveston Park Board website, all bids were opened on November 30, 2016 at 10:15am. Staff received 3 bid for umbrella and chairs in Area 21, 22, and 23. Staff is requesting awarding Bennett Beach Service a 2-year contract for Area 21, 22, and 23 for Umbrella and Chairs, staff presented to PAC and the committee supported the request.

At this time, we do not have a vendor in this area.

Staff Recommendation:

Staff is recommending to award Area 21 (70th – 71st) to Bennett Beach Service in agreement for a two-year contract with a one two-year renewal. Bennett Beach Service would pay \$8,200 per year for Area 21, this area is a Tier II with the minimum price of \$2,600.00 per city block.

Staff is recommending to award Area 22 (72nd – 73rd) to Bennett Beach Service in agreement for a two-year contract with a one two-year renewal. Bennett Beach Service would pay \$7,000.00 per year for Area 22, this area is a Tier II with the minimum price of \$2,600.00 per city block.

Staff is recommending to award Area 23 (74th – 75th) to Bennett Beach Service in agreement for a two-year contract with a one two-year renewal. Bennett Beach Service would pay \$6,050.00 per year for Area 21, this area is a Tier II with the minimum price of \$2,600.00 per city block.

Funding Source (if a budgetary item):

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

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

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

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

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

NOW THEREFORE, Park Board does agree as follows:

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

2. **Concession Fee.** The concession fee for Area 21 is a yearly fee of \$8,200 payable in three installments on March 1, June 1 and August 1 of 2017 and 2018.

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

4. **Scope and Use.** The only activities which Concessionaire shall be permitted to engage in on the premises of Concession Area 21 is the rental or sale of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive concession.

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

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

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

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

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

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

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

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

11. **Termination.**

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

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

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

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

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

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

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

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

(8) Ninety days written notice.

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

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

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

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

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

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

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

18. **Miscellaneous.**

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

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

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

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

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

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

21. **Concessionaire's Acknowledgement.**

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

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

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

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

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

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

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service

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

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

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

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

NOW THEREFORE, Park Board does agree as follows:

1. **Term.** The Term of this Agreement will commence on March 11, 2017 and terminates on March 11, 2019, unless this agreement is terminated. Concessionaire will operate during the season and will be required to be open every weekend from Spring Break to Labor Day.
2. **Concession Fee.** The concession fee for Area 22 is a yearly fee of \$7,000 payable in three installments on March 1, June 1 and August 1 of 2017 and 2018.
3. **Laws & Restrictions.** Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for its activities at its own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.
4. **Scope and Use.** The only activities which Concessionaire shall be permitted to engage in on the premises of Concession Area 23 is the rental or sale of umbrellas and chairs. No glass containers will be allowed on or about the premises. All city codes must be complied with and all needed permits obtained prior to the sale or lease. This is a non-exclusive concession.
5. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance herewith prior to delinquency.

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

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

11. Termination.

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

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

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

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

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

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

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

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

(8) Ninety days written notice.

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

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18. **Miscellaneous.**

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

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

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

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

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

21. **Concessionaire's Acknowledgement.**

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

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

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

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

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

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

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service

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

THE STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

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

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

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

NOW THEREFORE, Park Board does agree as follows:

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

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

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

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

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

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

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

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

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

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

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

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

11. **Termination.**

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

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

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

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

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

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

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

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

(8) Ninety days written notice.

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

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

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

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

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

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

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

18. **Miscellaneous.**

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

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

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

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

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

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

21. **Concessionaire's Acknowledgement.**

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

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

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

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

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

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

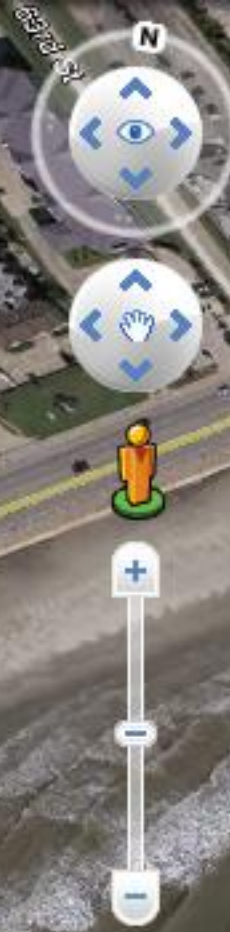
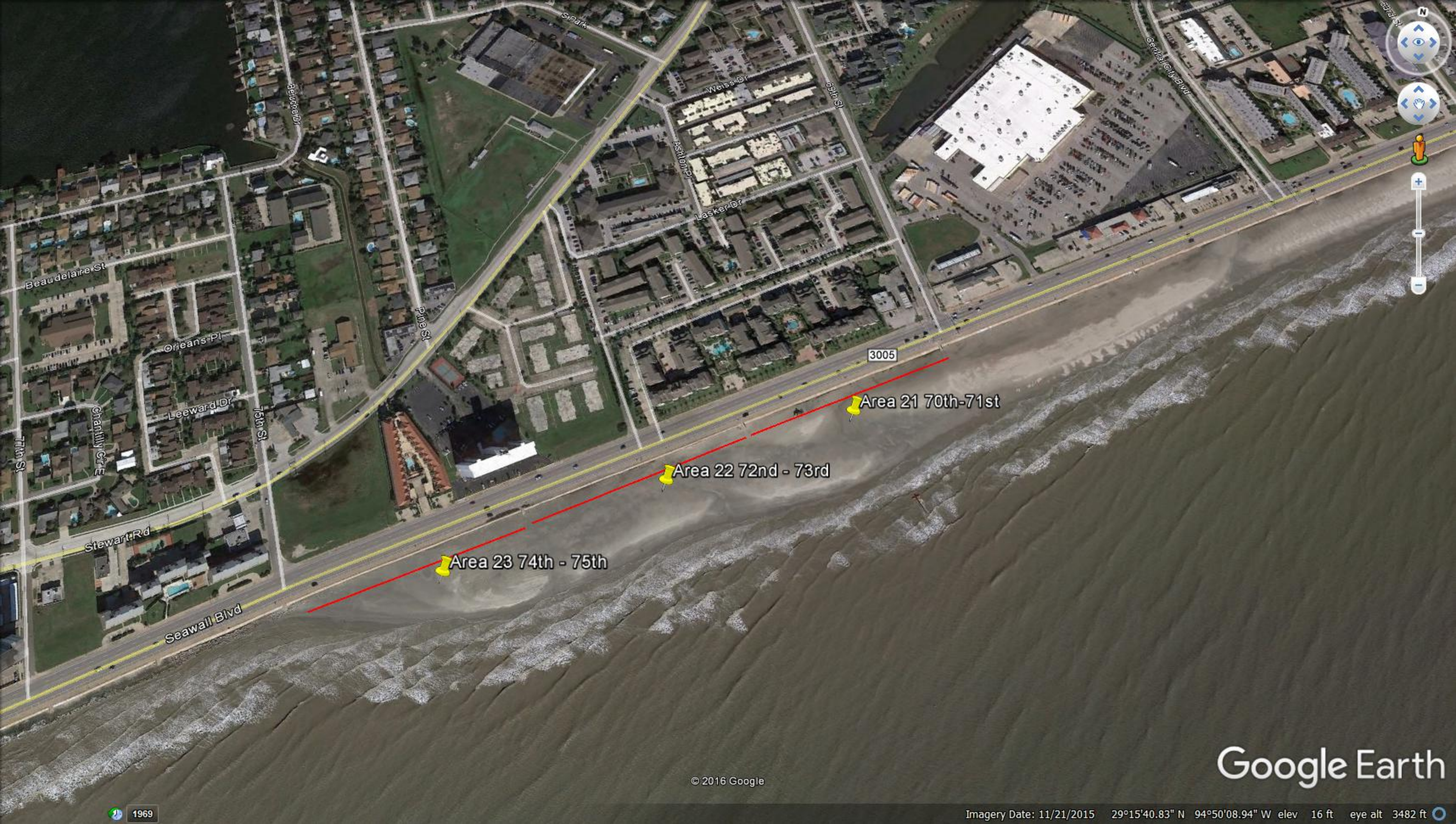
Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Jack Bennett
Concessionaire

By: Jack Bennett, Individually

By: Jack Bennett, DBA Bennett's Beach Service



Beaudelaire St
Orleans Pl
Leeward Dr
75th St
Stewart Rd
Seawall Blvd
77th St
Charlilly Cr E

19th St

St Park

Ashtabula Dr

Lasker Dr

Weiss Dr

69th St

Central City Blvd

3005

Area 21 70th-71st

Area 22 72nd - 73rd

Area 23 74th - 75th

Google Earth

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Imagery Date: 11/21/2015 29°15'40.83" N 94°50'08.94" W elev 16 ft eye alt 3482 ft

2017 Seal Bid results for Area 21 22 23

Area	21	22	23	Total
Bennett Beach Service	\$8,200.00	\$7,000.00	\$6,050.00	\$21,250.00
Adrian Saucedo	\$6,200.00	\$6,000.00	No Bid	\$12,200.00
Mark Porretto	\$2,780.00	\$2,780.00	\$2,780.00	\$8,340.00