

**PROFESSIONAL SERVICES AGREEMENT
FOR LIFEGUARD SERVICES AT FENWICK ISLAND**

AMENDMENT I

WHEREAS, the Department of Natural Resources and Environmental Control, Division of Parks and Recreation (“Delaware”) entered into an Agreement with the Town of Fenwick Island (“CONTRACTOR”), to obtain lifeguard services and coverage on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland State Line, for the term of May 15, 2022, through December 31, 2024; and

WHEREAS, the Agreement between the CONTRACTOR and Delaware may be renewed for one (1) two (2) year period; and

WHEREAS, CONTRACTOR has successfully met all terms and conditions of the contract;

WHEREAS, CONTRACTOR and Delaware would like to continue their mutually beneficial relationship by exercising the renewal period through December 31, 2026;

WHEREAS, Delaware hereby authorizes the following amendment to the listed section and subsection:

2. Payment for Services and Expenses. – Add to the end of Section 2.1

The Term of this Agreement shall be renewed through December 31, 2026. There are no additional renewal terms remaining.

All other terms and conditions of the original Agreement remain unchanged and shall continue in full force and effect.

SIGNATURE PAGE TO FOLLOW

CONTRACTOR hereby agrees to comply with Amendment No. I and all terms and conditions contained in the original Agreement for Lifeguard Services at Fenwick Island.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENTAL
CONTROL, DIVISION OF PARKS AND
RECREATION**

Witness

Shawn M. Garvin, Secretary

Date

Date

THE TOWN OF FENWICK ISLAND

Witness

Lori Dabbondanza, Town Manager

Date

Date

PROFESSIONAL SERVICES AGREEMENT
FOR LIFEGUARD SERVICES AT FENWICK ISLAND

This Agreement ("Agreement") is entered into as of May 15, 2022 ("Effective Date") and will end on December 31, 2024, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation, 89 Kings Highway, Dover, DE 19901 ("Delaware"), and the Town of Fenwick Island, 800 Coastal Highway, Fenwick Island, DE 19944 ("CONTRACTOR").

WHEREAS, Delaware desires to obtain lifeguard services and coverage on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland state line; and

WHEREAS, CONTRACTOR has provided lifeguard services and coverage successfully since 2009;

WHEREAS, CONTRACTOR and Delaware desire to continue their partnership in providing such services to the terms set forth below;

WHEREAS, Delaware and CONTRACTOR represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and CONTRACTOR agree as follows:

1. Services.

1.1 CONTRACTOR shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.

1.2 When either Delaware or CONTRACTOR desires any addition, deletion or change in the Services to be provided under this Agreement, an Amendment to this Agreement shall be accomplished through written mutual agreement by both parties. The Amendment shall state whether the change shall cause an alteration in the fees or the time required by CONTRACTOR for any aspect of its performance under this Agreement.

2. Payment for Services and Expenses.

2.1 The term of the Initial Agreement shall be from May 15, 2022 through December 31, 2024. This Agreement may be renewed for one (1) two (2) year period through negotiation between the CONTRACTOR and Delaware. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current Agreement. Renewals of this Agreement shall be executed by December 31st of the calendar year.

2.2 DELAWARE will pay fees for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix A. The fee shall cover the full spectrum of services required.

2.3 It is expressly understood that the work defined in the appendices to this Agreement must be completed by CONTRACTOR and it shall be CONTRACTOR's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fee.

2.4 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by CONTRACTOR.

2.5 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.6 CONTRACTOR shall be responsible for all damages, costs and expenses caused by CONTRACTOR's negligence, resulting from or arising out of errors or omissions in CONTRACTOR's work products.

2.7 Invoices shall be submitted to:

Delaware Division of Parks and Recreation
Office of Business Services
Attn: Lifeguards Fenwick Island
89 Kings Highway
Dover, DE 19901

2.8 Payment shall be submitted to:

The Town of Fenwick Island
Attn. Lifeguards Fenwick Island
800 Coastal Highway
Fenwick Island, DE 19944

3. Responsibilities of CONTRACTOR.

3.1 CONTRACTOR shall furnish all labor, personnel, equipment and supplies necessary to provide lifeguard services and coverages on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland state line, weekends and holidays per the terms and conditions as described herein. CONTRACTOR shall demonstrate customer service, professionalism, and operations/management in accordance with the specifications listed.

3.2 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by CONTRACTOR and their principals, officers, employees and agents under this Agreement. In performing the specified services, CONTRACTOR shall follow practices consistent with generally accepted professional and technical standards. CONTRACTOR is responsible for ensuring that all personnel associated with services furnished by CONTRACTOR are fully qualified and shall be authorized under State and local law to perform such services.

3.3 It shall be the duty of the CONTRACTOR to assure that all services of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations.

3.4 Permitted or required approval by Delaware of any services furnished by CONTRACTOR shall not in any way relieve CONTRACTOR of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of CONTRACTOR's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and CONTRACTOR shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by CONTRACTOR's performance or failure to perform under this Agreement.

3.5 CONTRACTOR shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.6 CONTRACTOR agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.7 CONTRACTOR has or will retain such employees, at CONTRACTOR's expense, as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.8 CONTRACTOR will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.9 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Schedule.

4.1 The Scope of Service schedule is included in Appendix A.

4.2 Any delay of services or change in scheduling must be approved in writing by Delaware.

5. Delaware Responsibilities.

5.1 In connection with CONTRACTOR's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in Appendix A.

5.2 Delaware agrees that its officers and employees will cooperate with CONTRACTOR in the performance of services under this Agreement and will be available for consultation with CONTRACTOR at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by CONTRACTOR under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's

designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall so inform CONTRACTOR by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to CONTRACTOR. It is understood that Delaware's representatives' review comments do not relieve CONTRACTOR from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by CONTRACTOR as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

CONTRACTOR shall return any original data provided by Delaware.

5.6 Delaware shall assist CONTRACTOR in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 CONTRACTOR will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware shall have the right to use CONTRACTOR's name, either express or implied, in any of its advertising or sales materials for promotion of beach activities at Fenwick Island. Delaware must have approval from CONTRACTOR for company logo and information prior to usage.

5.9 Delaware shall give prompt notice to the CONTRACTOR whenever Delaware observes or otherwise becomes aware of any development that affects the scope or

timing of the CONTRACTOR's services.

5.10 When Delaware first experiences a relatively minor problem or difficulty with CONTRACTOR, Delaware will contact the CONTRACTOR directly and attempt to informally resolve the problem. This includes failure to perform by the date specified and any unacceptable difference(s) between the Agreement scope of work and services delivered to the public. Delaware will stress to the CONTRACTOR that they should expedite correction of the differences because failure to reply may result in an unfavorable rating in the execution of the awarded Agreement.

5.11 Delaware has several remedies available to resolve non-performance issues with the CONTRACTOR. Delaware shall refer to the Agreement Terms and Conditions to view these remedies. When a default occurs, Delaware should first review the Agreement to confirm that the issue is a part of the Agreement. If the issue is not covered by the Agreement, Delaware cannot expect the CONTRACTOR to perform outside the agreement. If the issue is a part of the Agreement, Delaware must then contact the CONTRACTOR, discuss the reasons surrounding the default and establish a date when the CONTRACTOR will resolve the non-performance issue.

5.12 Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this Agreement, the work performed, or any reference to the State of Delaware with regard to any project or Agreement performance. Any such news or advertising releases pertaining to this Agreement shall require the prior express written permission of Delaware.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by CONTRACTOR for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. CONTRACTOR shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

7. Confidential Information.

7.1 To the extent permissible under 29 Del. C. § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

7.2 CONTRACTOR may declare information identified in 7.1 of this Agreement as "Confidential Business Information". To declare information as confidential, Delaware must receive a letter from the CONTRACTOR's legal counsel describing the documents being identified as confidential, representing in good faith that the information is not "public record" as defined by 29 Del. C. § 10002, and briefly stating the reasons the information or documents meet the said definitions.

7.3 CONTRACTOR's allegation as to its Confidential Business Information shall not be binding to Delaware. Delaware shall independently determine the validity of any designation as set forth in this section. CONTRACTOR expressly accepts Delaware's absolute right and duty to independently assess the legal and factual validity of any information designated as Confidential Business Information. CONTRACTOR assumes the risk that Confidential Business Information may enter the public domain.

7.4 CONTRACTOR is advised that they have no right to declare their pricing confidential.

8. Warranty.

8.1 CONTRACTOR warrants that its services will be performed in a good and workmanlike manner.

9. Indemnification.

9.1 CONTRACTOR shall indemnify and hold harmless the State of Delaware, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorney's fees) directly arising out of:

- a. The negligence or other wrongful conduct of the CONTRACTOR, its agents or employees under this Agreement; or

- b. CONTRACTOR's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided CONTRACTOR shall have been notified promptly in writing by Delaware of any notice of such claim.

10. Employees.

10.1 CONTRACTOR has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by CONTRACTOR in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, CONTRACTOR shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. CONTRACTOR shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 CONTRACTOR acknowledges that CONTRACTOR and any agents or employees employed by CONTRACTOR shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any

of its officers, employees or other agents.

11.3 CONTRACTOR shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, CONTRACTOR has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by CONTRACTOR under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to CONTRACTOR at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay CONTRACTOR its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. CONTRACTOR shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by CONTRACTOR for any cause other than the error or omission of the CONTRACTOR, for an aggregate period in excess of 30 days, CONTRACTOR shall be entitled to an equitable adjustment of the compensation payable to CONTRACTOR under this Agreement to reimburse CONTRACTOR for additional costs occasioned as a result of such suspension of performance by Delaware.

13. Termination.

13.1 Emergency Termination of Agreement:

- a. Due to restrictions which may be established by the United States Government on material, or work, an Agreement may be terminated by the cancellation of all or portions of the Agreement.
- b. In the event the CONTRACTOR is unable to obtain the services or materials required to complete the items of work included in the

Agreement because of restrictions established by the United States Government and if, in the opinion of Delaware, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the Agreement may be terminated.

13.2 Termination for Cause:

- a. If, for any reasons, or through any cause, the CONTRACTOR fails to fulfill in timely and proper manner its obligations under this Agreement, or if the CONTRACTOR violates any of the covenants, agreements, or stipulations of this Agreement, Delaware shall thereupon have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the CONTRACTOR under this Agreement shall, at the option of Delaware, become its property, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to Delaware.
- b. On receipt of the Agreement cancellation notice from Delaware, the CONTRACTOR shall have not less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A CONTRACTOR response shall not affect or prevent the Agreement cancellation unless the State provides a written acceptance of the CONTRACTOR response. If the Delaware does accept the CONTRACTOR's method and/or action plan to correct the identified deficiencies, Delaware will define the time by which the CONTRACTOR must fulfill its corrective obligations. Final retraction of Delaware's termination for cause will only occur after the CONTRACTOR successfully rectifies the original violation(s). At its discretion, Delaware may reject in writing the CONTRACTOR's proposed action plan and proceed with the original Agreement cancellation timeline.

13.3 Termination for Convenience:

- a. The State may terminate this Agreement at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

13.4 Termination for Non-Appropriations:

- a. In the event the General Assembly fails to appropriate the specific funds necessary to enter or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

13.5 If after termination for failure of CONTRACTOR to fulfill contractual obligations, it is determined that CONTRACTOR has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.6 The rights and remedies of Delaware and CONTRACTOR provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.7 Gratuities.

- a. Delaware may, by written notice to CONTRACTOR, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of Delaware with a view

toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

- b. In the event this Agreement is terminated as provided in 13.7.a hereof, Delaware shall be entitled to pursue the same remedies against CONTRACTOR it could pursue in the event of a breach of this Agreement by CONTRACTOR.
- c. The rights and remedies of Delaware provided in Section 13.7 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

14.1 If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 This Agreement shall not be assigned except by express prior written consent from Delaware. CONTRACTOR may not subcontract under this Agreement.

16. Force Majeure.

16.1 Neither the CONTRACTOR nor the ordering agency shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this Agreement.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for Agreement performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

18. Complete Agreement.

18.1 This agreement and its Appendices shall constitute the entire agreement between Delaware and CONTRACTOR with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 CONTRACTOR shall not procure services requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

19. Miscellaneous Provisions.

19.1 The CONTRACTOR is presumed to know and shall strictly comply with all Federal, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work and performance under this Agreement.

- a. CONTRACTOR shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 CONTRACTOR covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 CONTRACTOR acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. CONTRACTOR recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare CONTRACTOR in breach of the Agreement, terminate the Agreement, and designate CONTRACTOR as non-responsible.

19.6 CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this Agreement without liability or at its discretion deduct from the Agreement price or otherwise recover the full amount of such commission, percentage, brokerage or contingent

fee.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

19.8 CONTRACTOR shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit CONTRACTOR's performance and records pertaining to this Agreement at the CONTRACTOR business office during normal business hours.

- a. The CONTRACTOR shall maintain books, records, documents, and other evidence pertaining to this Agreement to the extent and in such detail as shall adequately reflect performance hereunder. The CONTRACTOR agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the CONTRACTOR. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The CONTRACTOR agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Agreement. Upon notice given to the CONTRACTOR, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and sales payment records or other material relative to this Agreement. The cost of any Agreement audit disallowances or under reporting of gross receipts and/or unpaid fees resulting from the examination of the CONTRACTOR's financial records will be borne by the CONTRACTOR. Reimbursement to the State for disallowances shall be drawn from the CONTRACTOR's own resources and not charged to Agreement cost or cost pools indirectly charging Agreement costs.

19.9 The CONTRACTOR must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred

business.

20. Insurance.

20.1 CONTRACTOR must obtain at its own cost and expense and keep in force and effect during the term of this Agreement, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. CONTRACTOR must carry the following coverage:

- a. Comprehensive General Liability - \$1,000,000.00 per occurrence and \$3,000,000 general aggregate (*in the event that CONTRACTOR carries \$2,000,000 general aggregate, an umbrella policy in the amount of \$1,000,000 or greater shall be acceptable in meeting the \$3,000,000 general aggregate requirement*),

and

- b. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others,

and

- c. CONTRACTOR shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this Agreement. The CONTRACTOR is an independent contractor and is not an employee of the State of Delaware.

20.2 CONTRACTOR must carry (a), (b), and (c).

20.3 CONTRACTOR shall provide forty-five (45) days written notice of cancellation or material change of any policies.

20.4 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the Agreement number stated herein, shall be filed with the State. The certificate holder is as follows:

Delaware Division of Parks and Recreation
Office of Business Services
Attn: Lifeguards Fenwick Island
89 Kings Highway
Dover, DE 19901

20.5 In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

21. Surviving Clauses

21.1 The following clauses survive the termination of this Agreement: Section 9.

22. Governing Law.

22.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. CONTRACTOR consents to jurisdiction and venue in the State of Delaware.

23. Permits and Licenses.

23.1 All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the CONTRACTOR at its own expense.

24. Required Reporting.

24.1 One of the primary goals in administering this Agreement is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the Agreement. The integrity of future Agreements revolves around our ability to convey accurate and realistic information to all interested parties.

24.2 CONTRACTOR shall submit an annual financial report (shall include lifeguard hours and rates) for the period of operation **on or before November 15th each year**. The reports shall be submitted and sent as an attachment to: Parks_OBS@state.de.us

25. Schedule of Performance of Work.

25.1 All work described in these specifications shall be completed with reasonable promptness. If the CONTRACTOR does not begin the work in a reasonable amount of time and/or does not adhere to the operating hours and provided services as specified in the Agreement, they will be notified that if they fail to initiate the work promptly, the Agreement may be terminated and Delaware will forthwith proceed to collect for nonperformance of work.

26. CONTRACTOR Background Check Requirements.

26.1 Pursuant to 29 Del. C. §6909B, the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. CONTRACTOR(s) doing business with the State are encouraged to adopt fair background check practices. CONTRACTOR(s) can refer to 19 Del. C. §711(g) for applicable established provisions.

26.2 Any CONTRACTOR that accesses State property or comes into contact with vulnerable populations, including children and youth, shall be required to complete background checks on employees serving the State's on premises Agreements. Unless otherwise directed, at a minimum, this shall include a check of the following registry: Delaware Sex Offender Central Registry at: <https://sexoffender.dsp.delaware.gov/>

26.3 Individuals that are listed in the registry shall be prevented from direct contact in the service of an awarded state contract or Agreement, but may provide support or off-site premises service for contract CONTRACTOR(s). Should an individual be identified and the CONTRACTOR believes their employee's service does not represent a conflict with this requirement, may apply for a waiver to the primary agency listed in the solicitation. Delaware's decision to allow or deny access to any individual identified on a registry database is final and at Delaware's sole discretion.

26.4 By Delaware's request, the CONTRACTOR shall provide a list of all employees serving an awarded Contract or Agreement, and certify adherence to the background check requirement. Individual(s) found in the central registry in violation of the terms stated, shall be immediately prevented from a return to state property in service of a Agreement award. A violation of this condition represents a violation of the Contract/Agreement terms and conditions, and may subject the CONTRACTOR to penalty, including Contract/Agreement cancellation for cause.

Delaware may require additional background checks to be accomplished by the CONTRACTOR to comply with applicable state laws. If additional background checks are required, the CONTRACTOR will be notified by Delaware and shall accomplish checks and adhere to all requirements listed in this section. CONTRACTOR shall be responsible for all costs related to background checks.

27. Changes.

27.1 Both parties may, from time to time, require changes in the services to be provided by the CONTRACTOR under the Scope of Work. Such changes, including any increase or decrease in the amount of the prices and/or percent of gross receipts, which are mutually agreed upon by and between Delaware and the CONTRACTOR shall be incorporated in written amendments to the Agreement.

28. Remedies.

28.1 Except as otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between Delaware and the CONTRACTOR arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

29. Notices.

29.1 Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. Email communications shall be acceptable with confirmed receipt. All notices shall be sent to the following addresses:

TO DELAWARE:

Delaware Division of Parks and Recreation
Office of Business Services
Attn: Attn: Lifeguards Fenwick Island
89 Kings Highway
Dover, DE 19901

TO CONTRACTOR:

The Town of Fenwick Island
Attn. Lifeguards Fenwick Island
800 Coastal Highway
Fenwick Island, DE 19944

SIGNATURE PAGE TO FOLLOW

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL (DNREC)**

Megan Amoy
Witness

Eric D. Dawson
(For) Shawn M. Garvin, Secretary

5/16/2022
Date

5/16/2022
Date

Debra L. Gray
Witness

The Town of Fenwick Island
Pat Schuchman
Pat Schuchman, Town Manager

5/11/2022
Date

5-11-2022
Date

APPENDIX A

STATEMENT OF WORK

I. MINIMUM REQUIREMENTS

A. Introduction:

The Department of Natural Resources and Environmental Control, Division of Parks and Recreation ("Delaware"), requires the Town of Fenwick Island ("CONTRACTOR") to provide lifeguard services and coverage on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland state line.

Delaware and the CONTRACTOR have worked in partnership for this service for many years.

B. Products and Services:

CONTRACTOR shall provide lifeguard services and coverage (includes lifeguard salaries, equipment and supplies) on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland state line, weekends and holidays beginning the last Saturday in May and seven (7) days per week beginning the first Monday in June ending on Labor Day each year of the Agreement.

CONTRACTOR shall provide a minimum of six (6) lifeguards, employee by the CONTRACTOR, working from four (4) lifeguard stands daily.

C. Agreement Fees:

1. Delaware, as a fee for the Agreement and services included herein, agrees to pay to the CONTRACTOR annually as follows:
 - a. **Fee for Year 2022: \$58,250.00**
 - b. **Fee for Year 2023: \$60,000.00**
 - c. **Fee for Year 2024: \$61,800.00**
 - d. **Fee for Year 2025 (if Agreement is extended): \$63,654.00**
 - e. **Fee for Year 2026 (if Agreement is extended): \$65,564.00**

- f. **Annual Fee shall be due no earlier than August 15th and no later than September 15th.**

D. Taxes and Permits:

The CONTRACTOR shall pay all State and Federal taxes and/or license fees which may be imposed or legally chargeable, and, obtain all necessary permits and licenses, and other necessary permits at its own cost and expense.

E. Accounting and Reports:

The CONTRACTOR shall maintain proper and complete books and records of accounts of its operation under the Agreement granted. Internal control procedures implemented by the CONTRACTOR shall be adequate to ensure that all revenue is accounted for and recorded. All receipts of any nature from the operation of this Agreement provided by the CONTRACTOR shall be immediately and properly recorded. The CONTRACTOR shall permit Delaware or its authorized representatives to examine and audit financial records relative to this Agreement at any reasonable time during normal business hours, after receiving notice of the date and time of such examination and audit. The CONTRACTOR shall retain these financial records for a period of five (5) years beyond the termination of this Agreement, unless earlier disposal is approved by Delaware in writing.

F. Operating Schedule:

1. The CONTRACTOR shall maintain the following minimum schedule. **Any deviation from the schedule must be approved by Delaware.**
2. Operating Schedule (Coverage) Timeline:
 - Memorial Day weekend
 - 1st weekend in June
 - Full Time Coverage starting the 2nd Friday in June through Labor Day weekend
 - Service ends two (2) weekends after Labor Day; after Labor Day, additional weekend service shall be provided as guards are available

3. Hours of Operation:

Lifeguard services and coverage shall be provided on weekends and holidays beginning the last Saturday in May and seven (7) days per week beginning the second weekend in June ending the second week of September. The following hours shall be in effect:

- **Monday – Sunday 10:00 a.m. to 5:00 p.m.**

4. Lifeguard hours may be changed with prior written approval by Delaware. In addition, **CONTRACTOR is required to promptly contact Delaware prior to canceling any service for the day and receive permission to cancel service.**

- a. **Failure to receive Delaware approval to cancel service shall be considered a performance deficiency under this Agreement.**

5. Delaware reserves the right to revoke the Agreement of the CONTRACTOR if they do not adhere to the agreed-upon schedule of operations.

G. Emergencies:

The CONTRACTOR and Delaware or their designated agent(s) shall be available by phone twenty-four (24) hours a day, seven (7) days a week for emergencies during the entire term of the Agreement.

H. Parking.

Parking spaces for the CONTRACTOR and their employees will be assigned by the Park Superintendent.

1. Delaware shall provide two (2) Lifeguard Only spaces next to the dune crossing area.
2. For lifeguard "overflow", lifeguards may put a Town of Fenwick Lifeguard card in their front window/dash area when using regular parking spaces.

I. CONTRACTOR Responsibilities:

CONTRACTOR's responsibilities shall include the following:

1. **CONTRACTOR shall furnish all necessary lifeguard services and equipment on the Fenwick Island Unincorporated Area ocean beach from Atlantic Street, south to the Maryland state line.**
2. Notwithstanding the foregoing, CONTRACTOR shall, at its own expense, provide its own tools, equipment, machinery, supplies, or any other materials required to provide lifeguard services.
 - a. **CONTRACTOR shall provide uniforms, lifesaving certifications, first aid/CPR and related training, first aid kits, communications equipment, lifeguard stands, signs and other day-to-day supplies for the lifeguards during the performance of their duties in the Unincorporated Area.**
3. CONTRACTOR agrees to abide by Delaware of Delaware Parks and Recreation's vehicular rules and regulations, (as provided on the state's official website: www.destateparks.com/rules)
4. CONTRACTOR and its employees shall at all times generate and maintain a professional, inviting atmosphere for visitors. **Any visitor complaints may be considered performance deficiencies under this Agreement.**
5. CONTRACTOR shall be responsible in employing only competent, mature and orderly employees and ensure their employees shall keep themselves neat and clean and be courteous to all visitors and patrons. Further, CONTRACTOR and its employees will not use improper language, behave in a boisterous manner nor engage in any unlawful or unbecoming conduct during the course of their employment by the CONTRACTOR. CONTRACTOR recognizes that they are viewed by the public as an extension of Delaware and shall at all times exhibit positive. **Any visitor complaints may be considered performance deficiencies under this Agreement.**
 - a. **CONTRACTOR shall be fully responsible for its agents during the term of this Agreement.**
 - b. For any instance of inappropriate customer behavior the CONTRACTOR cannot manage effectively, the CONTRACTOR shall immediately report behavior to Park Enforcement.

J. Division Responsibilities:

1. Delaware shall supply signs and trash bags to continue and maintain the Carry-In, Carry-Out Trash Program at the Fenwick Unincorporated beach area.
2. Delaware shall give prompt written notice to CONTRACTOR wherever Delaware observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S services.