



MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: December 6, 2011

SUBJECT: **DISCUSSION REGARDING THE PUBLIC BEACHFRONT CONCESSIONS AGREEMENT**

BACKGROUND

In accordance with Management Agreement No. 750-0006 by and between the State of Florida and the City, the City is vested with the management, jurisdiction, and control of all beaches in the City of Miami Beach. On October 2, 1985, the Mayor and City Commission approved a Concession Agreement, dated November 7, 1985, between the City and Penrod Brothers for rental of beach equipment, water recreation equipment and food and beverage service at Pier Park, Oceanfront Park and Lummus Park. The agreement expired in November, 2001. On February 21, 2001, the Mayor and City Commission authorized the issuance of an RPP which resulted in the selection of Boucher Brothers Miami Beach, LLC (Boucher Brothers) for the operation and management of beachfront concessions including beach equipment rentals, food and beverage sales, and watersport rentals on the beaches seaward of Lummus Park, Ocean Terrace and North Shore Open Space Park. The agreement commencing on November 5, 2001, and expiring on November 4, 2006 with an option to renew for an additional five (5) year term. An Amended and Restated Concession Agreement was entered into on May 18, 2005, which clarified and memorialized operational issues. An Amendment to Amended and Restated Concession Agreement was entered into on January 11, 2006, which granted a renewal term through November 5, 2011, and memorialized value added enhancements from the Concessionaire to the City. A Second Amendment to Amended and Restated Beachfront Concession Agreement was executed on April 16, 2008, said amendment providing for the addition of a concession area adjacent to Bandshell Park. A Third Amendment to Amended and Restated Beachfront Concession Agreement was executed on July 15, 2009, which provided for the reconfiguration of a fenced storage area for storage and for a dumpster facility. The original Concession Agreement and all subsequent amendments will be referred to collectively as the "Concession Agreement" throughout this Committee Memorandum.

COMMISSION RETREAT

During the City Commission retreat held May 20 and 21, 2011, a discussion was held regarding the Public Beachfront Concession Agreement/Program and the expiration of the current agreement. The Commission discussed two options for the continued operation of the public beachfront concessions currently managed by Boucher Brothers, whether to issue a competitive process to seek a concessionaire or to renegotiate and enter into a new agreement with the existing entity. If the City elects to waive competitive bidding, it may do so with a 5/7th vote of the City Commission.

In light of satisfaction with the performance of the current concessionaire, and a desire to ensure that the concession agreement addressed desirable items, such as non-motorized water sports in North Beach, additional cleaning services, and the installation of beach lockers, staff was directed to negotiate a new concession agreement with Boucher Brothers.

Last month, the Concession Agreement was extended on a month-to-month basis pending the review and consideration by the City Commission of a new concession agreement. In order to maintain concession services, and in consideration of the parties' agreement to continue the terms of the Concession Agreement in full force and effect, until such time as there was Commission consideration of a proposed new agreement, on November 4, 2011, the City accepted the payment of fifty percent (50%) of the Year 10 Minimum Guarantee amount under the Concession Agreement.

BOUCHER BROTHERS, INC.

The current concessionaire is a known entity with organizational experience and capacity. Boucher Brothers Management has been in business for over 20 years providing pool, beach, water sports, large corporate group events and food and beverage concessions. In addition to the Concession Agreement for Lummus Park, Boucher Brothers concession operation serves over 60 hotel and condominium properties throughout Florida's East Coast, with close to 20 Miami Beach Condominium and hotel properties encompassing over 4,000 rooms and six water sports locations in Miami Beach; 15 blocks of city-contracted beach concessions in Ft. Lauderdale; Miami-Dade County contracted Haulover Park; 50 blocks of city-contracted public beach in Virginia Beach, VA; and four beaches and six blocks of city-contracted public beach on Lake Michigan, Chicago, IL. Boucher Brothers has over 500 employees during peak season, well over 300 of which are employed in Miami Beach. Boucher Brothers also serves five hotels in Sunny Isles and Hollywood, three hotels in Bal Harbour, and three hotel properties on the West Coast of Florida, including Naples and St. Pete's Beach.

The City of Ft. Lauderdale recently re-bid the beachfront concession area rights after contracting with Boucher Brothers for three years and although several prospective bidders requested applications, the sole and successful bidder for the new Ft. Lauderdale contract was Boucher Brothers.

ANALYSIS

While several entities may be qualified and interested in undertaking a large-scale beachfront concession operation, the organizational capacity and financial of the concessionaire that will service our highly visited public beachfronts is very important. There are a total of 12 other concessionaires providing beachfront concession services on behalf of 27 private condos/hotels in Miami Beach; one of the concessionaires services six concessions; one concessionaire services four concessions; and the other ten concessionaires service between one and three properties each.

The existing Concession Agreement requires the Concessionaire to remit to the City a minimum guaranteed rent, which was set at \$412,500 the first year and was adjusted annually by 5% per annum. In addition, in the event that the percentage of the Concessionaire's food and beverage gross receipts (ranging from 15% to 25% based on volume) and its sundries and beach equipment gross receipts (20%), exceeded the minimum guarantee, then the Concessionaire pays the City the difference between the two (Percentage of Gross). The minimum guarantee is paid in full at the beginning of each Concession Agreement year, with a "true-up" occurring at the end of the Concession Agreement year, if needed. The minimum guaranteed concession payment, which was paid for 2010 (year ten of the current Agreement) was \$686,562.73. The existing Concession Agreement also required the Concessionaire to invest in new equipment during the renewal term, as well as provide some value added cash contributions.

PROPOSED TERMS

The Administration has discussed the status of the Concession Agreement with the Boucher

Brothers and their interest in continuing to service our public beach areas. Consequently, the current opportunities afforded under the existing contract, as well as other options that can generate potential new revenue for the City, have been researched and negotiated. In addition to allowing the rental of new types of luxury beachfront equipment, servicing new areas, and allowing for "heating" of certain foods, they have expressed a willingness to develop a non-motorized water sports program in North Beach Open Space Park, as well as continuing to provide (and offer additional) "Value-Added Enhancements" (VAE). The VAE would continue to include annual donations to the City for scholarships and in support of environmental organizations, and a "promotional towel program" in the "Luxury" areas of the Concession Areas that would provide for the promotion of the City of Miami Beach. Additionally, the proposed New Agreement requires that the Concessionaire shall provide, at its sole cost, enhanced beach cleanliness in areas adjacent to their Concession areas, and assistance in the supervision of cleanliness in Lummus Park, including the area outside of the Concession areas, beginning at the west foot of the sand dunes and extending westerly to, and including, the east sidewalk of Ocean Drive. Furthermore, under the proposed New Agreement, Concessionaire will provide a public beachfront outdoor ashtray program as generally described in the attached Summary of Terms, and implement a beach locker program.

In reviewing the current public beachfront concession program, the Administration considered potential changes to the existing contract with Boucher Brothers that would address other issues, opportunities and concerns that have been identified and for which the public beachfront concession program can provide assistance, including beach cleanliness, the extension of public beachfront concession areas to underserved areas, the addition of non-motorized water sports, and the implementation of a beach locker program. These items, as well as others, were negotiated and the resulting terms are included in the attached Boucher Brothers Miami Beach LLC Public Beachfront Concession Agreement Summary of Terms – 12/01/11.

The proposed terms reflect a flat minimum guarantee for Year One (same as year ten of current Agreement) and a deferred escalator that is intended to offset the capital investment necessary to implement the non-motorized sports concession in North Beach and the beach locker program.

At Boucher Brothers' request, the City has revisited the Special Events language to ensure that adverse impacts to the concession operations are offset.

CONCLUSION

The City's public beachfronts are used by both residents and millions of visitors to our beaches. The provision of a quality beachfront concession program, to include food and average services, equipment rental, motorized/non-motorized water sports, and the sale of sundries and lotions, provides an important and valuable amenity. These concession areas are regulated and monitored to ensure appropriate levels of cleanliness, and the provision of safe and reliable services.

While providing a beneficial service to our residents and visitors, the current public beachfront concession program provides the City with revenues through a minimum guaranteed annual payment. Value Added Enhancements, provided at no cost to the City, are funding environmental and educational programs, assisting the City in promoting the destination, providing support to our Public Works and code Compliance staff in ensuring that Lummus Park is clean and free of issues, and assisting in our beach cleanliness efforts through the implementation of an outdoor beachfront ashtray program. The new proposed terms also provide for the implementation of a non-motorized water sports concession in Ocean Terrace that we will promote in conjunction with Boucher Brothers, as a means of economic development for our North Beach Area, as well as a beach locker program to address issues regarding petty thefts on our public beach areas (as reported to us by our Police Department).

The proposed terms take into consideration the costs associated with Boucher Brothers' implementation of the new programs; in particular the investment of capital costs for those programs, while ensuring that the City secures a financial commitment that recognizes the value of this agreement.

JMG/HMF/AP
Attachments

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BOUCHER BROTHERS MIAMI BEACH LLC
PUBLIC BEACHFRONT CONCESSION AGREEMENT
Summary of Terms – 12/06/11

SECTION	SUMMARY OF TERMS
TERM	<p>Five (5) years commencing on November 5, 2011, and ending on November 4, 2016 (Initial Term).</p> <p>Provided that Concessionaire is not in default under the Agreement, City shall have the right, at its sole option and discretion, to extend for one additional five year term.</p>
CONCESSION AREA(S)	<p>Lummus Park – beach area bounded by 5th Street to 14th Lane</p> <p>Ocean Terrace – beach area bounded by 73 Street to 75 Street</p> <p>North Shore Open Space Park – This Concession Area, should it become serviceable during the Term, is limited to the beach area bounded by 79 Street to 87 Street</p> <p>South Pointe Park Beach (new) – This Concession Area, should it become serviceable during the Term, is limited to the beach area bounded by South Pointe Park Pier to lifeguard stand</p> <p>(above subject to restrictions on applicable buffer zones, handicap zones, etc.)</p>
USE(S)	<p>Rental of Beach Equipment – generally includes beach chairs, pads, umbrellas, sun canopies, and such other related equipment. The condition and quality of Beach Equipment shall be maintained in a first-class manner which is equal to, or better than, the condition and quality of beach equipment found in public beach concessions in other world class beach resorts. Beach Equipment must be replaced no later than the fifth year after purchase, unless it is necessary, due to the condition of Beach Equipment, to replace such Equipment prior to the fifth year after purchase.</p> <p>Beach Locker Program – To be implemented on a pilot program for one year. If the City and Concessionaire cannot mutually agree on whether to continue to operate the Program, then the City Manager may assume and undertake –whether through the City or by contracting with a third party vendor – operation of a beach locker program within the Concession Areas without any liability to the City.</p> <p>Food and Beverage Service – Concessionaire can sell cooked, prepared, and/or prepackaged foods and non-alcoholic beverages. Actual cooking from the Concessionaire’s on-site facilities shall not be allowed. Requests for food heating by means of battery power, solar power, or propane gas, is subject to the City Manager or his/her designee’s approval, and requires regulatory approvals. Up to five (5) non-motorized, stationary carts in the Lummus Park Concession Area to dispense ice cream and frozen lemonade (currently permitted).</p> <p>Sale of Beach-Related Sundries and Skin Care Products - Permitted.</p> <p>Watersports Equipment Rentals –Continue operation of existing active watersports channel within the Lummus Park Concession Area; rental of eight (8) waverunners, one (1) parasail boat, one (1) banana boat, and six (6) kayaks permitted. Any future requests for new and/or additional Watersports Equipment must be approved. City desires that Concessionaire establish and operate a non-motorized Watersports Equipment concession in the Ocean Terrace Concession</p>

SECTION	SUMMARY OF TERMS								
	<p>Area, which shall be provided and implemented no later than ninety (90) days following the City's final approval of a designated non-motorized watersports channel within that Area.</p> <p>Storage – Concessionaire shall be entitled to storage facilities. Any new storage facilities requested are to be approved by the City Manager, paid solely and exclusively by Concessionaire, and are subject to all necessary regulatory approvals.</p>								
<p>VALUE-ADDED ENHANCEMENTS</p>	<p><u>Existing:</u></p> <ul style="list-style-type: none"> • Annual \$5,000 donation to the City to be utilized for scholarships and contributions to philanthropic organizations • Annual \$5,000 donation to the City to be utilized in support of environmental organizations and programs • Promotional towel program in the Luxury areas that provides for a minimum of 600 imprinted lounge chair towels, promoting the City of Miami Beach, and which shall be replaced with 600 new imprinted towels at least once during the Initial Term, and twice during the Renewal Term. <p><u>Expansion of existing:</u></p> <ul style="list-style-type: none"> • Enhanced beach cleanliness. Concessionaire shall provide assistance in the supervision of cleanliness in Lummus Park, including the area outside of the concession Area(s) beginning west of the sand dunes and extending westerly to the east sidewalk of Ocean Drive, coordination with the City's Sanitation Department for the collection of any litter garbage or debris that is identified by the Concessionaire, including notification of overflowing trash receptacles; notification to the Public Works Department of any issues regarding the operation of any beach showers and the cleanliness of beach restrooms; and coordination with the Code Compliance Division in identifying and reporting littering, illegal vendors, graffiti on city property or any other city code violation. <p><u>New:</u></p> <ul style="list-style-type: none"> • Public Beachfront Outdoor Ashtray Program requiring Concessionaire's purchase, daily placement/removal, and maintenance of no fewer than twenty (20) outdoor ashtrays (maximum cost of \$100/ashtray) for the use of the general public. The outdoor ashtrays (with appropriate signage) shall be placed daily along the existing public trash can line, adjacent to areas outside of the Concession Areas, and adjacent to the following additional areas: the public beachfront area between the private concession areas behind Penrod's and the Continuum; and the public beachfront area located east of Marjory Stoneman Park. Additionally, the Concessionaire is required to provide ashtrays to patrons using their concession areas. 								
<p>CONCESSION FEES</p>	<p>Minimum Guaranteed Annual Concession Fee (MG) of \$686,563 apportioned as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding-left: 20px;">• Food and Beverage Sales, Beach-related Sundries /Skin Care Products sales</td> <td style="text-align: right; vertical-align: bottom;">\$174,524.43</td> </tr> <tr> <td style="padding-left: 20px;">• Beach Equipment Rentals</td> <td style="text-align: right; vertical-align: bottom;">\$465,398.46</td> </tr> <tr> <td style="padding-left: 20px;">• Watersports Equipment Rentals</td> <td style="text-align: right; vertical-align: bottom;"><u>\$ 46,639.84</u></td> </tr> <tr> <td style="text-align: right; padding-right: 20px;">Total:</td> <td style="text-align: right; vertical-align: bottom;"><u>\$686,562.73</u></td> </tr> </table> <p>50% of the MG for each contract year is due and payable to the City on November</p>	• Food and Beverage Sales, Beach-related Sundries /Skin Care Products sales	\$174,524.43	• Beach Equipment Rentals	\$465,398.46	• Watersports Equipment Rentals	<u>\$ 46,639.84</u>	Total:	<u>\$686,562.73</u>
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	<p>5th of each year during the Term, and the remaining 50% is due on May 5th of each year during the Term.</p> <p>Escalator – Commencing with the fourth contract year, and on the subsequent anniversary of the commencement Date, the MG shall be automatically increased by the greater of the CPI or three percent (3%).</p> <p>Percentage of Gross (PG) vs. MG – for each contract year, Concessionaire shall pay the difference between the MG and the percentage of the gross receipts that exceeds the MG for Food and Beverage sales/Beach-Related Sundries/Skin Care Products; Beach Equipment rentals; and Watersports Equipment rentals, as follows:</p> <ul style="list-style-type: none"> • Food and Beverage Sales.....15% • Beach-related Sundries/Skin Care Products Sales...20% • Beach Equipment Rentals.....20% • Watersports Equipment Rentals.....20% <p>The payment of the PG shall be due and payable to the City no later than December 31st of each contract year.</p>
SECURITY DEPOSIT	<p>A Security Deposit is required in the amount of \$68,652 for the faithful performance of the terms and conditions of this Agreement, and shall be provided to the City in the form of a cash deposit, irrevocable letter of credit, or certificate of deposit. This is in lieu of a performance bond, in light of the established history of the Concessionaire with the City.</p>
SPECIAL EVENTS	<p>Should Concessionaire be displaced from a Concession Area due to a special event or film production, then the Concessionaire is entitled to a displacement fee based on the prior three-year average sales (per day) in the displaced area.</p>
MAINTENANCE	<p>Concessionaire shall maintain their Concession Area free of litter, garbage and debris. In addition, they shall be responsible for maintaining any “areas outside of the Concession Areas” identified in the Agreement, including: Buffer Zones, Lifeguard Zones, Handicap Zones; areas 50’ from storage facilities and concession facilities that heat food. Concessionaire is to develop a recycling plan for the City’s review.</p>
VEHICLES	<p>No increase in the number of permitted vehicles. Clarification on language regarding what types of vehicles are permitted east of the trash can line.</p>
PENALTY IN LIEU OF DEFAULT	<p>New language permitting the City to issue a fine for certain violations, as an alternative to Default. Examples include the sale of non-approved items, or certain violations of the vehicle policy.</p>