

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: April 30, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0284. Concession Agreement**

REQUEST

PB 19-0284. Concession Agreement. AMENDED AND RESTATED CONCESSION AGREEMENT BETWEEN CITY OF MIAMI BEACH, FLORIDA AND BOUCHER BROTHERS MIAMI BEACH, LLC FOR MANAGEMENT AND OPERATION OF PUBLIC BEACHFRONT CONCESSIONS, PURSUANT TO SECTION 1.03(f) OF THE CITY CHARTER, WHICH REQUIRES APPROVAL OF A MAJORITY 4/7 VOTE OF THE PLANNING BOARD FOR CONCESSION AGREEMENTS HAVING A TERM OF TEN (10) YEARS OR LONGER, INCLUDING OPTION PERIODS, FOR THE MANAGEMENT, OPERATION, AND/OR USE OF CITY-OWNED PROPERTY, INCLUDING PUBLIC BEACH AREAS.

In accordance with Section 1.03((f) of the City Charter, the City shall not enter into a management agreement or concession agreement with a private party or operator, having a term of ten (10) years or longer (including option periods), for the management, operation, and/or use of City-owned property, or of a City-owned facility, without obtaining the approval of a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission.

RECOMMENDATION

Approve the proposed Amended and Restated Beachfront Concession Agreement with Boucher Brothers Miami Beach LLC.

BACKGROUND

The City of Miami Beach and Boucher Brothers Miami Beach LLC (Concessionaire) are parties to a public beachfront concession agreement for the exclusive right to operate certain concessions in Lummus Park, Ocean Terrace, North Shore Open Space Park and South Pointe Park Beach, for the rental of beach equipment, food & beverage service, sale of beach related sundries and skin care products, and watersports equipment rentals.

The concession agreement, dated February 2, 2012 (Agreement), was for an initial term of five (5) years, commencing retroactively on November 5, 2011 and ending on November 4, 2016, with one (1) renewal term, for a period of five (5) years, subject to the approval of the Mayor and City Commission. On September 14, 2016, the Mayor and City Commission approved Amendment No.1 to the Concession Agreement, providing for the renewal of the Agreement for a period of five (5) years, ending on November 4, 2021.

Concessionaire is a known entity with organizational experience and capacity. Boucher Brothers Management has been in business for over 29 years providing pool, beach, water sports, large corporate group events and food and beverage concessions. In addition to the Agreement for Lummus Park, Boucher Brothers also serves the public beachfront concessions at 21st & 46th Streets for the City, and approximately 30 Miami Beach condominium and hotel properties encompassing over 11,000 Rooms and four water sports locations.

In addition to Miami Beach, Boucher Brothers operates beachfront concessions for approximately 60 hotel and condominium properties throughout Florida's east coast. Boucher Brothers manages 23 blocks of city-contracted beach concessions in Ft. Lauderdale, 20 Blocks in Hollywood, 2 Blocks in Pompano, and in Miami-Dade County Boucher Brothers manages the entire beachfront for Haulover Park. In Virginia Beach, Boucher Brothers operates 50 blocks of city-contracted public beach and in Chicago, IL Boucher Brothers operates three beaches and four blocks of city-contracted public beach on Lake Michigan. Boucher Brothers has over 1,200 employees during peak season, with well over 600 in Miami Beach alone. 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. Petersburg Beach. For reference, James, Michael, Steven and Perry Boucher started with one hotel pool deck over 34 years ago and today all the brothers are actively involved in the City of Miami Beach concession.

Over the term of the existing Agreement, the Concessionaire has consistently provided the following service and benefits to the City:

- Increased revenues
- Improved patron service
- Introduced luxury initiatives in concert with hotels
- Increased tourist usage through creative partnerships with oceanfront hotels and those on Ocean Drive
- Sale of City's branded and licensed sun care products
- Exclusive Sale of Coca-Cola products
- Towel Program
- Ashtray Program
- Solar Panels on all Huts in Lummus Park
- Mobile payment options
- LGBT Branded Equipment on 12th Street
- Beach Locker Program - \$150,000 Investment
 - AquaVault Beach Safety Program to replace above Beach Lockers
- Garnered high social media ratings and accolades for reviews
- Supported the community through a wide variety of corporate initiatives
 - \$5,000 Annual Scholarship for Environmental Issues
 - \$5,000 Annual Scholarship for Philanthropic endeavors

FINANCIAL ANALYSIS

At the June 27, 2018 Commission meeting, the Mayor and City Commission directed staff to explore revenue generating opportunities and guest/customer satisfaction. Subsequently, staff discussed, with Concessionaire, additional revenue opportunities which may be derived from the public beachfront concessions, as well as additional services which may be provided to

enhance the experience of visitors and residents.

Below are the basic terms and conditions contained in the current agreement along with the new terms and conditions contained in the proposed agreement.

CURRENT TERMS:**PROPOSED TERMS:**

1.	<p>Concession Area: Lummus Park, Ocean Terrace, North Shore Open Space Park and South Pointe Park Beach (currently not activated).</p>	<p>Same – with the following modifications:</p> <p>Lummus Park/Muscle Beach Food Trailer – to provide healthy food concession options west of the dunes. An illustration of the proposed food trailers is attached to the Agreement as Exhibit 3.2.1 (<u>Muscle Beach Food Trailer</u>).</p> <p>Ocean Terrace - this concession area would be extended to the south to include Bandshell Park Beach to provide free beach equipment to seniors 65 years of age or older, on Tuesdays, or additional days as requested by the City; and extended to the north to include the library and Altos del Mar Park</p> <p>Allison Park – to serve the temporary Sabrina Cohen Adaptive Beach Program, and potentially at 53rd Street to serve the permanent location.</p> <p>The Concession Areas are attached to the Agreement as Exhibit 3.1.3 (<u>Site Plan – Concession Areas</u>).</p>																		
2.	<p>Concession Fee: A Percentage of Gross Sales (PG), in the amounts as follows:</p> <table><tr><td>Food and Beverage Sales</td><td>15%</td></tr><tr><td>Beach-related Sundries Sales</td><td>20%</td></tr><tr><td>Beach Equipment Rentals</td><td>20%</td></tr><tr><td>Watersports Equipment Rentals</td><td>20%</td></tr><tr><td>Displacement Fee</td><td>20%</td></tr></table>	Food and Beverage Sales	15%	Beach-related Sundries Sales	20%	Beach Equipment Rentals	20%	Watersports Equipment Rentals	20%	Displacement Fee	20%	<p>Same – with the additional categories as follows:</p> <table><tr><td>Sand Sifting Services</td><td>20%</td></tr><tr><td>Team Building Events</td><td>25%</td></tr><tr><td>Advertising/Sponsorships</td><td>50%</td></tr><tr><td>Displacement Fee</td><td>30%</td></tr></table>	Sand Sifting Services	20%	Team Building Events	25%	Advertising/Sponsorships	50%	Displacement Fee	30%
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3.	<p>Minimum Guarantee (MG): \$900,000 annually, payable in advance in three (3) payments</p>	<p>Effective January 1, 2020, the MG shall be \$1,200,000 annually, payable in advance in two (2) payments, subject to increases at the beginning of each renewal term based on the average of the previous five years'</p>																		

		Percentage of Gross Sales (PG).
4.	<p>Value-Added Enhancements:</p> <p>Annual donation of \$5,000 to be utilized by the City for scholarships and contributions to philanthropic organizations with an emphasis on marine-related and children-related recipients.</p> <p>Annual donation of \$5,000 to be utilized by the City in support of environmental organizations and programs.</p> <p>Promotional Towel Program – 600 initial towels, replaced with 600 additional towels once during the initial term, and twice during the renewal term. Such design and content shall be subject to City Manager's approval.</p> <p>Concessionaire shall offer a personal beach storage vault rental program, at a cost of \$5.00 each, to any Concession patrons wishing to store personal items.</p> <p>Concessionaire shall provide, at its sole cost and expense, City-approved individual, disposable ashtrays for all patrons smoking within the Concession Area.</p>	<p>Annual donation of \$7,500 to be utilized by the City for scholarships and contributions to philanthropic organizations with an emphasis on marine-related and children-related recipients.</p> <p>Annual donation of \$7,500 to be utilized by the City in support of environmental organizations and programs.</p> <p>Same</p> <p>Same</p> <p>Same</p>
5.	<p>Maintenance:</p> <p>Concessionaire shall provide sand sifting equipment, whether manual or motorized, and staff appropriately trained and/or certified to operate same, within all Concession Areas and those "areas outside of the Concession Areas". Sand sifting shall occur no less than two (2) times weekly.</p>	<p>Same except frequency and location of sifting shall be as mutually agreed by Concessionaire and the City.</p> <p>Furthermore, in the event Concessionaire provides mechanized sand sifting services to private upland properties, Concessionaire shall pay the City 20% of the fees charged to said upland properties. In exchange for the enhanced sifting services, and the share of revenue, Concessionaire shall be permitted to expand its storage area at 10th Street to accommodate sand sifting equipment.</p>

Enhanced Services / Benefits

1. Concessionaire shall be permitted to provide food heating by means of battery power,

solar power, or propane gas systems. Furthermore, Concessionaire shall be permitted to deploy two food trailers daily within the Lummus Park Concession Area. An illustration of the proposed food trailers is attached to the Agreement as Exhibit 3.2.1 (Hot Food Trailers).

2. Concessionaire shall be permitted to utilize up to five (5) carts in the Lummus Park Concession Area, to dispense ice cream and frozen food and beverage (non-alcoholic) products. Concessionaire may use vehicles and other motorized equipment to deploy the carts to the Concession Area. All carts must be stationary once located within the Lummus Park Concession Area. The design, size, type, material, and color of such carts shall be reviewed and approved in writing by the City Manager. The location of same shall be designated within Concessionaire's approved site plan. An illustration of the proposed ice cream and beverage carts is attached to the Agreement as Exhibit 3.2.2 (Ice Cream/Beverage Cart).
3. Concessionaire shall provide additional watersports equipment within Lummus Park, to include up to 14 Wave Runners – (12 Wave Runners Rentals + 2 Chase Boat Wave Runners), 2 Banana Boats, 1 Parasail and a total of 6 Stand-Up Paddleboards and/or Kayaks). An illustration of the proposed watersports equipment is attached to the Agreement as Exhibit 3.1.2 (Equipment Design - Watersports).
4. Subject to the 76th Street channel being designated as a motorized water channel, Concessionaire shall provide motorized Watersports Equipment in the Ocean Terrace Concession Area during the summer months and kiteboarding equipment/lessons during the winter (windier) months.
5. Concessionaire's uses of the Concession Area, as defined in the current agreement, do not contemplate the production, promotion or sponsorship by the Concessionaire of special events in any of the Concession Areas. However, Concessionaire routinely produces corporate teambuilding events within the Concession Areas under a special events permit for each event. The proposed Agreement allows Concessionaire to obtain a master permit to conduct teambuilding events within the Concession Areas, which shall be considered an approved use. The City shall receive 25% of all revenue generated by the teambuilding events.
6. Concessionaire is currently prohibited from negotiating all forms of endorsement and/or sponsorship agreements based on the marketing value of any City trademark, property, brand, logo and/or reputation and that any and all benefits derived from an endorsement and/or sponsorship agreement based on the marketing value of a City Mark, including any monetary contributions, shall belong solely and exclusively to the City. Going forward, the Concession Agreement shall be modified, in order that the prohibition on Concessionaire entering into endorsements or sponsorship agreements, shall not be deemed to include nor prohibit the Concessionaire's right to sell advertising for display in locations that are not plainly visible to the general public, such as the underside of umbrellas or menu display boards contained within a kiosk or hut. The prohibition shall also be deemed to not include nor prohibit the Concessionaire's right to offer the exclusive sale, rental or use of any particular brand or product that would otherwise be permitted for use or sale pursuant to the Agreement, subject to the Concessionaire's disclosure of same, and subject to the City's rights contained in the Agreement (which City rights shall be superior to any rights or permissions granted to Concessionaire).

The City will not limit Concessionaire's ability to negotiate a reduced rate for purchase from any vendor whose product(s) Concessionaire uses or offers for sale or rent pursuant to this Agreement; however, the value of such reduced rate shall be treated as gross receipts and the City shall receive a percentage of said value. Prior to entering in to any such agreements, Concessionaire shall provide the City with an itemized list describing any agreements or arrangements which may be imminently entered to or made. It shall also be Concessionaire's sole responsibility and obligation to update such list/exhibit within thirty (30) days of a particular brand or product being added or deleted, as the case may be.

7. In addition to the items outlined above, Concessionaire shall implement an electronic and primarily cashless Point of Sale (P.O.S.) system to provide greater control and monitoring, which allows for revenue reports and trends analysis, streamlines the sales transaction process, allows for guest reservations, sets algorithmic pricing on luxury items and provides the City with full access to monitor revenues in real time. Concessionaire has agreed to invest a minimum of \$250,000 during the initial renewal term, and any subsequent renewal term, to purchase, implement, maintain and support a P.O.S. system. Concessionaire further agrees to provide City with 24/7 access for real-time review, inspection and audit of all records.
8. Concessionaire shall provide three (3) team building events (for up to 100 participants each) annually to the City.
9. Concessionaire shall accommodate the Convention Center Headquarter Hotel and its hotel guests at the Lummus Park Concession Area on substantially equal terms and conditions as it provides to upland private properties on Miami Beach.
10. Concessionaire is in the process of negotiating with a service provider to provide Wi-Fi services at the Concession Areas to allow real time download speeds similar to a T1 connection, whereby patrons at the Concession Areas would be able to access the Wi-Fi in return for payment of a daily connection fee. Any such service provider is subject to the approval of the City Manager or his or her designee. If implemented, the Concessionaire shall pay to the City a fee based upon the revenue generated from Concession Area patrons, to be mutually determined at such time as Concessionaire has a proposed service agreement for approval by the City Manager or his or her designee.
11. Concessionaire shall donate its existing security deposit of \$68,500, to the City, as a \$13,700 annual donation for each of the next five years. The City shall use such funds to host an event, as determined by the City, for the benefit of Miami Beach seniors.

Miscellaneous Provisions

1. Concessionaire shall be permitted to offer such services, equipment and pricing for Lummus Park (including the proposed Muscle Beach location), Ocean Terrace, North Beach Oceanside Park, South Pointe Park and Allison Park, as contained in Exhibit 3.1 (Equipment Rental and Pricing Schedule) of the Agreement.

2. Concessionaire shall provide, within each Concession Area, the types and quantities of equipment, as contained in Exhibit 3.1.1 (Equipment Inventory) of the Agreement.
3. Concessionaire shall have the ability to utilize the Miami Beach Convention Center, subject to availability and authorization by the City Manager, to store Beach Equipment and Watersports Equipment in the event of a Hurricane or other similar storm related event. Concessionaire shall maintain private off-site hurricane storage facility in the event the Miami Beach Convention Center is not available or does not have sufficient available space to accommodate all Beach Equipment and Watersports Equipment.
4. Subject to the State of Florida's designated turtle nesting season regulations, Concessionaire shall be permitted to set-up and breakdown Beach Equipment at sunrise and until sunset, respectively, provided that business may not be conducted until 1 hour after sunrise and within 1 hour before sunset daily.
5. In order to invest the additional capital outlined above, Concessionaire has requested an extension of the existing agreement, which contains approximately 2.5 years remaining, for a period of five (5) years, with two (2) renewal options for five (5) years each.

PLANNING ANALYSIS

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease.

The following is an analysis based on the criteria delineated in the Code.

1. **Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.**

Consistent – The future land use designation of the various areas covered by the Agreement is **Recreation and Open Space (ROS)**. The proposed use is consistent with the following goal:

RECREATION AND OPEN SPACE ELEMENT

GOAL:

Develop and Maintain a Comprehensive Systemt of Parks and Recreational Open spaces to Meet the Needs of the Existing and Future Population by Maximizing the Potential Benfits of Existing Facilities and Open Space While Encouraging the Preservation and Enhancement of the Natural Environment.

2. **The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other**

infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.

Consistent – No negative impacts are anticipated by the proposal. The agreement balances the desired and needed services for beachfront users and common beachfront activities with the public access and maintenance of open space.

3. **A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**

Consistent – This proposed use does keep with the public purpose and community needs. The lease agreement acknowledges that the public's use of the beach is a prime consideration and must be balanced with the services to be provided to the public, and the respective financial remunerations to the City and Concessionaire.

4. **A determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**

Consistent – The surrounding neighborhood will not be negatively affected. The lease agreement has provisions to ensure that concession areas have a maximum limitation, as well as provisions to reduce the areas based upon actual volume on a day to day basis.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**

Consistent – The impact on adjacent properties should be minimal. The concession areas themselves do not generate parking needs.

6. **Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.**

Not applicable – The Planning Department has no other issues it deems appropriate to analyze for this proposal.

FINANCE AND CITYWIDE PROJECTS COMMITTEE

At the February 22, 2019 Finance and Citywide Projects Committee (FCWPC) meeting, staff presented initial terms and conditions it would seek in conjunction with the extension of the public beachfront concession agreement with Boucher Brothers. The FCWPC recommended in favor of directing staff to further negotiate the terms and conditions which were presented, including, without limitation, the minimum guarantee, displacement fees, branding and enhanced sand sifting, and to submit the final negotiated agreement to the Mayor and City Commission for approval.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board approve the subject Concessionaire Agreement.

TRM/MAB