



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

COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager

DATE: July 28, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 3 TO THE CONCESSION AGREEMENT WITH BETTOLI TRADING CORP (CONCESSIONAIRE) FOR THE OPERATION OF SNACK MACHINES AT VARIOUS LOCATIONS ON CITY PROPERTIES; WITH SAID AMENDMENT REDUCING THE ANNUAL MINIMUM GUARANTEE PAYMENT FOR THE FINAL ONE-YEAR RENEWAL TERM, FROM \$12,380.60 TO \$3,350.00, IN ORDER TO ADDRESS THE FINANCIAL IMPACT THAT THE COVID-19 PANDEMIC HAS HAD ON THE CONCESSIONAIRE'S OPERATIONS.**

BACKGROUND

On May 3, 2012, the City entered into a Concession Agreement (the "Agreement") with Bettoli Trading Corp. (Bettoli), (Concessionaire) for operation of snack machine concessions at various locations on the City of Miami Beach facilities. The Agreement provided for an initial term of five (5) years commencing on May 1, 2012 and ending on April 30, 2017. The Agreement also provides for five (5) additional one (1) year renewal options at the City's option.

On October 19, 2016 the Mayor and City Commission adopted Resolution 2016-29609 approving Amendment No. 1 to the Agreement, modifying the scope of the Agreement to require the implementation of the Miami Dade County Public Schools (MDCPS) healthy snacks standards as approved by the Mayor and City Commission, and reducing the annual Minimum Guarantee (MG) payment which Concessionaire paid from \$12,731 to \$11,000 annually; said MG increased annually, on the anniversary of the Commencement Date, by the greater of (i) the Consumer Price Index (CPI), or (ii) three percent (3%).

Consequently, the Minimum Guarantee increased over time as indicated below:

Year	MG Amount
2016	\$ 11,000.00
2017	\$ 11,330.00
2018	\$ 11,669.90
2019	\$ 12,020.00
2020	\$ 12,380.60

The Current Minimum Guarantee is at \$12,380.60.

On May 17, 2017 the first renewal option was exercised, commencing on May 1, 2017 and ending April 30, 2018. Subsequently, on March 13, 2018, the Finance and Citywide Projects Committee (FCWPC) recommended in favor of renegotiating all revenue-generating contracts at the time of renewal to include a contribution for the City's educational initiative to fund Miami Beach's public schools. The Agreement was one of the contracts identified to include an educational funding component, and Concessionaire also agreed to a public benefits contribution in conjunction with the second renewal commencing on May 1, 2018 ending in April 30, 2019. On April 10, 2019, the City and Concessionaire exercised the third renewal option, commencing on May 1, 2019, and ending April 30, 2020. On April 10, 2020 the City and Concessionaire exercised the fourth renewal option commencing on May 1, 2020 and ending April 30, 2021. Subsequently, the City and the Concessionaire have entered into a month-to-month agreement commencing on May 1, 2021 and ending on September 30, 2021. The City and Concessionaire are desirous of exercising the fifth and final renewal option, retroactively commencing on May 1, 2021, and ending April 30, 2022 in order to continue the snack machine services until the City has an opportunity to go through a procurement process and secure a new agreement for similar services.

ANALYSIS

In the past year of the Agreement, the Concessionaire has suffered a loss in revenue due to the removal of various machines citywide, which included:

- (1) Vending machines at the Convention Center are now managed by the Concessionaire (Center Plate);
- (2) The 7th Street Garage had to be removed because of the handicap parking lot zoning;
- (3) The machine at 17th Street Garage southeast corner had to be removed because of the new payment systems installed;
- (4) A machine was installed in the ground floor office of 1755 Meridian, but it was later removed;
- (5) Historic City Hall requested the removal of the machine;
- (6) South Pointe Park had an ice cream machine which had to be removed when the Concessionaire opened operations;
- (7) Scott Rakow was the number one location for the City in vending machine sales and the City staff asked Concessionaire to move the machines outside to accommodate lockers. The machines were no longer easily accessible, and due

to the COVID 19 pandemic, the Concessionaire further suffered a significant loss of revenue due to building closures.

Minimum Guarantee:

Under the terms of the Agreement, Concessionaire pays a Percentage of Gross sales (PG) in the amount of twenty percent (20%). Regardless of the actual gross sales, Concessionaire pays a Minimum Guarantee (MG) at the beginning of each contract year in the amount of \$12,380.60. For the contract year ending April 30, 2020, Concessionaire's gross sales were significantly impacted due to the COVID 19 pandemic and other loss of machine operation throughout the City. Due to the decrease in sales, in connection with the fifth and final renewal term, Concessionaire has requested to reduce the Minimum Guarantee for the final renewal term from \$12,380.60 to \$3,350.00, and will continue honoring the education contribution per Amendment No.2, in the amount of four percent (4%) of the Minimum Guarantee ($\$3,350 \times 4\% = \underline{\$134.00}$).

CONCLUSION

Based upon the foregoing, I recommend that the Mayor and City Commission adopt the Resolution approving and authorizing the Mayor and City Clerk to execute Amendment No. 3 to the Agreement; said Amendment approving the fifth and final renewal term for a period of one year and a reduction in the annual MG to \$3,350.00 annually.

Attachments:

- 1) Exhibit "1" – Amendment No. 3
- 2) Resolution

**AMENDMENT NO. 3
TO CONCESSION AGREEMENT BY AND BETWEEN CITY OF MIAMI
BEACH, FLORIDA AND BETTOLI TRADING CORP. FOR OPERATION
OF SNACK MACHINE CONCESSIONS AT VARIOUS LOCATIONS ON
CITY OF MIAMI BEACH PROPERTIES PURSUANT TO REQUEST FOR
PROPOSALS #44-10/11**

THIS AMENDMENT NO. 3 (Amendment) to the Concession Agreement (Agreement) for operation of snack machines by Bettoli Trading Corp. dated, May 3, 2012, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (City), and Bettoli Trading Corp. a Florida corporation, with offices at 6095 NW 167 street, Suite D, Miami, Florida 33015 (Concessionaire), is entered into retroactively as of the 1st day of May, 2021 (Effective Date).

RECITALS

WHEREAS, the City and Concessionaire are parties to an Agreement, dated May 3, 2012, for the operation of snack machine concessions at various locations on City of Miami Beach properties; and

WHEREAS, the Agreement has an initial term of five (5) years, commencing on May 1, 2012 and ending on April 30, 2017, which may be extended, at the City's sole discretion, for five (5) additional periods of one (1) year each; and

WHEREAS, on October 19, 2016 the Mayor and City Commission adopted Resolution 2016-29609 approving Amendment No. 1 to Concession Agreement, modifying the scope of the Agreement to require the implementation of the MDCPS healthy snacks standards as approved by the Mayor and City Commission, and reducing the annual Minimum Guaranty payment which Concessionaire pays under the Concession Agreement from \$12,731 to \$11,000 annually; and

WHEREAS, on May 17, 2017 the first renewal option was exercised, with the renewal term commencing on May 1, 2017 and ending April 30, 2018; and

WHEREAS, on March 13, 2018, the Finance and Citywide Projects Committee recommended in favor of renegotiating all revenue-generating contracts at the time of renewal to include a contribution for the City's educational initiative to fund Miami Beach public schools; and

WHEREAS, the Agreement was one of the contracts identified to include an educational funding component, and Concessionaire agreed to a public benefits contribution in conjunction with the second renewal term, commencing on May 1, 2018 ending in April 30, 2019; and

EXHIBIT "1"

WHEREAS, on April 10, 2019, the City approved the third renewal term, commencing on May 1, 2019, and ending April 30, 2020; and

WHEREAS, on April 10, 2020, the City approved the fourth renewal option, with the term commencing on May 1, 2020 and ending April 30, 2021; and

WHEREAS, due to the COVID-19 Pandemic, the Concessionaire suffered a significant loss of revenue due to building closures; and

WHEREAS, in connection with the fifth and final renewal term, the Concessionaire has asked the City to reduce the annual Minimum Guarantee payment which Concessionaire pays under the Agreement from \$12,752.02 to \$3,350.00 annually.

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Concessionaire hereby agree to amend the Agreement as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The Agreement is hereby modified (deleted items ~~struck through~~ and inserted items underlined) as follows:

(a) Subsection 4.2 of the Agreement is hereby modified to read as follows:

4.2 Minimum Guarantee (MG).

In consideration of the City executing this Agreement and granting the rights provided in this Agreement, commencing May 1, 2012, and thereafter on May 1st of each year during the Term of this Agreement, the Concessionaire shall pay to the City a Minimum Guaranteed (MG) Annual Concession Fee of Twelve Thousand Dollars (\$12,000), plus applicable Sales and Use Taxes (as provided in Section 4.6 herein); said MG shall be subject to the annual increases in Subsections 4.2.1. and 4.2.2 below. Effective November 1, 2016, the MG shall be reduced to Eleven Thousand Dollars (\$11,000) plus applicable Sales and Use Taxes (Amended MG). The past due annual MG payment for the current Contract Year, due May 1, 2016, shall be prorated for the portion of the year covering May 1, 2016 to October 31, 2016. Correspondingly, the Amended MG payment shall be prorated from November 1, 2016 to the remainder of the current Contract Year, ending April 30, 2017. The Amended MG payment shall continue to be due May 1st of each Contract Year during the Term and subject to the annual increases pursuant to Subsection 4.2.1

Effective May 1, 2021, the Amended MG shall be reduced to Three Thousand Three Hundred and Fifty (\$3,350.00) plus applicable Sales and Use Taxes, as provided in Section 4.6 herein.

(b) Subsection 4.2.2 of the Agreement is hereby deleted in its entirety

(c) Subsection 4.2.3 of the Agreement is hereby deleted in its entirety

3. RATIFICATION.

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

[REMAINDER OF THIS PAGE INENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

FOR CONCESSIONAIRE:

BETTOLI TRADING CORP.

ATTEST:

By: _____
Secretary

President

Print Name

Print Name

Date