


DATE November 5, 2003

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: MUTUAL TERMINATION OF CONCESSION CONTRACT FOR WOODLEY CLUBHOUSE FOOD SERVICE AND BUYOUT OF OPERATOR EQUIPMENT AND IMPROVEMENTS

J. Corbys _____	H. Fujita _____
A. Corrales _____	J. Kolb _____
F. Mok _____	B. Lukehart _____
L. Barth 	



 General Manager

Approved _____ Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board agree, in concurrence with operator Burrito King, Inc., to mutually terminate Concession Contract No. 243 for operation of Woodley Clubhouse Food Service, effective immediately; and,

That the Board authorize forthwith payment of \$164,961.92 to Burrito King, Inc., from Golf Surcharge Account 270K, Department 89, to purchase equipment and improvements necessary for operation of the restaurant by a subsequent concessionaire.

SUMMARY:

Burrito King, Inc., was awarded the concession contract for Woodley Clubhouse in 2001. Due to severe challenges in completing construction of the new Clubhouse, however, the contract for operation was not executed until 2002, and the concessionaire was not able to begin regular food and bar service operations until January of 2003. From the beginning, the operator faced a serious cash flow problem because the concessionaire had invested significantly more than the \$120,000 required in the contract to build-out, furnish, and equip the concession premises, yet he was starting operation at the slowest period of the year. A slow upward trend in revenues after several months of operation was insufficient to offset the cash flow situation exacerbated by aggressive financial projections and rental requirements. In May, the Department engaged the services of Manask & Associates, food service consultants on contract with the Department, to review the operation of Woodley Clubhouse, the contract terms, marketing approach, and general operations, to determine how to improve the viability of the concession. In simple terms, the Manask report concluded that success was not possible unless a multi-faceted solution was applied, which would include changes to contract terms and a complete revision of the operation (menu, staffing, prices, hours, marketing).

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The current concessionaire, with an on-going negative cash flow, despite never having paid rent to the Department, did not wish to invest more in a re-make of his operation, and instead formally requested that the Department consider a buy-out of improvements and equipment. In July, the Department offered a potential buy-out of \$120,000, the contractually required investment, less rent owed of \$33,725.28, giving a net buy-out of \$86,274.72. The concessionaire declined that offer and eventually, through his attorney, made a counter offer of \$600,000, and further indicated that a claim of \$1,200,000 would be filed if the counter offer was not acceptable. Upon consultation with City Attorney in closed session, the Board authorized a best and final counter offer of \$215,826.59 (representing most of the equipment and improvement items purchased by the concessionaire to initiate operations), less rent owed and unpaid of \$50,864.67, giving a net buy-out of \$164,961.92. The concessionaire accepted the offer, and all conditions required by the City, to wit that the City and Burrito King, Inc., would mutually agree to terminate the contract for operation of the Woodley Clubhouse concession, and that Burrito King, Inc., would agree that this was the full and final settlement of all claims, waiving any right to future claims or actions. The inventory of equipment and improvements included in the buy-out, which were selected because of their usefulness in resumed operations and which will become and remain City property, is shown in Exhibit 1. Equipment that was more business related, such as a photocopier, decor, and small equipment that successor operators are likely to already own were not included in the buy-out list. The current operator will remove those items and resell them or use them elsewhere.

The current concessionaire gave notice of intent to cease operation and vacate the premises as of October 31, 2003. As the negotiation of a possible buy-out was proceeding, and mindful Burrito King would be vacating whether a buy-out was successful or if instead a claim was filed, staff executed an emergency plan to have a new concessionaire in place to reduce or prevent a break in service. Similarly to a previous emergency concessionaire replacement process, staff contacted all current food service concession operators as already-qualified potential operators. After a review of gross receipts and a tour of the facilities, three of the Department's current operators expressed interest in proposing on the operation. On October 22, 2003, the proposal process was opened, with proposal elements limited to rent percentage, transition plan, sufficiency of funds to start up operation, and vision for the concession's menu and marketing. Two proposals were received on October 28, 2003, and OmniEnt Corporation (Kenneth Hong, principal) was issued an emergency administrative permit, with a goal to avoid any break in service for the golfing public. A Request for Proposals for a new multi-year contract will be prepared and conducted as soon as practical.

Staff supports the recommendation that we mutually terminate the concession contract and buy-out the equipment and improvements of the current operator. The unfortunate situation at the Woodley is a complex consequence of a lengthy construction process, tension with the golf clubs over intended room use, bad timing, and nagging premises problems. Rather than engage in a protracted legal process that might result in no service to the public or a facility requiring all new furniture and equipment, staff concludes that the best course is to terminate the current contract, start up a new operation, and look forward to a more viable and thriving operation, which will ultimately bring the greatest revenue to the Department. Sufficient funds are available in the Golf Surcharge account to pay the buy-out.

Woodley Lakes Clubhouse Improvements and Equipment Considered for Purchase

Exhibit 1

Description	Amount	Comments-Details	Ref. #
BEER TAP REFRIGERATOR, and ICE MACHINE - Bar	\$3,303.83	* Alpine - Invoice for full amt.	57
FIXED SHELVING - Halfway house	\$1,307.00	* Alpine - Invoice for full amt.	58
VARIOUS RESTAURANT APPLIANCES - Microwave, etc.	\$3,551.17	* Alpine - Invoice for full amt.	56
DRAPES - Banquet Room	\$485.62	PC Penney - Paid out slip and receipts.	55
EQUIPMENT/REFURBISHMENT - 1/2way house	\$490.00	* Jocael Palomino Invoice for full amt	60
BLINDS	\$461.15	Costco - Receipt for full amt.	65
EQUIPMENT/REFURBISHMENT - 1/2way house	\$425.48	* Anotonio Palafor - Paid out slip for full amt.	61
SAFES	\$1,260.34	* Atlas Safe Co. - Invoice for full amt.	40
WATER FILTER	\$584.23	* Leon Refrigeration - Invoice for full amt.	50
DINING ROOM FURNITURE	\$94,038.94	Office Systems Invoices	46
CHANDELIERS, PURCHASE AND INSTALLATION	\$23,949.00	* Burgess Electrical - Proposal/Invoice for full amt.	62
CASH REGISTER - (Samsung 4900)	\$790.00	* Kings Business Systems Invoice from for full amount.	43
STORAGE - (Equipment and storage pending Certificate of Occupancy)	\$2,547.42	Keep it Safe and U-haul, and movers - Invoices indicating payment.	26,41,47
DIRECT TV DISH AND INSTALLATION	\$870.00	* Direct TV - Proposal for full amt.	63
POINT OF SALE (P.O.S.) COMPUTER SYSTEM	\$13,000.00	* Interchange Data Systems - Invoices for full amount.	5,37
ALARM SYSTEM	\$2,125.00	* ADT - Invoices for full amt. equipment	69
KITCHEN WORK STATION	\$601.68	* Sterling - Invoices for full amt.	20,33
BANQUET TABLES	\$286.48	Costco - Paid out slip and receipt showing payment of full amt.	31
OFFICE FURNITURE - (Various-desk, credenza, table, cabinets, e	\$2,595.74	EOF Furniture Works - Invoices indicating payment for full amt.	9,28,30,38
STORAGE CONTAINER - 20 ft.	\$2,143.35	* Martin Container - Invoice from for full amt.	64
KITCHEN UTILITY CARTS	\$1,159.12	* WBSshelving.com - Invoice for total amt.	15,17
SHELVING AND WINE RACKS - Bar	\$3,830.00	* Brass Unique Metal Products Inc. - Invoice from for full amt.	15
BLINDS	\$156.96	Costco - Paid out slip and receipts for full amt.	65
TABLE TOPS AND RACKS - Bar	\$3,687.34	* Action Blass & mirror Co. - Invoices for full amt.	66
DANCE FLOOR - Portable	\$3,505.00	* California Portable Dance Floor Company - Invoice for full amount.	11
TELEVISIONS - 3 - 27" Phillips	\$1,298.97	Fry's Electronics - Invoice indicating payment for full amt.	13
PAINTING - Interior	\$1,891.83	Pam Boothy, Dunn Edwards, Restaurant Dept. Paid out slip and receipts for full amt.	59,67
EQUIPMENT HARDWIRING - Electrical connections and mounting of audiovisual components.	\$925.00	* Performance Data Com. - Invoice for	70
AUDIOVISUAL EQUIPMENT - Design and installation of integrate Clubhouse entertainment system. (LCD Projector, electric roll up screen, 3-27" Inch. Televisions, etc.)	\$32,414.19	* Sounds unlimited - Invoice for full amt.	4
TELEPHONE SYSTEM	\$1,816.75	* Mark Cargnan - Quote, invoices and paid out slip for full amt.	3
BANQUET TABLE TOPS AND CHAIRS - 20- 60" Round Tables Tops and 64 chairs	\$10,325.00	* West Coast Industries - Paid out slip and spec. sheet.	2
* Requires Proof of Payment			
Total	\$215,826.59		