

REPORT OF GENERAL MANAGER

NO. 04-109

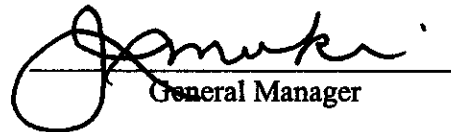
DATE April 7, 2004

CD _____

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: APPROVAL OF SECOND AMENDMENT TO HANSEN DAM GOLF PROFESSIONAL CONCESSION NO. 233 TO ALTER MINIMUM ANNUAL PAYMENTS; CEASE REIMBURSEMENT FOR LIVING WAGE DIFFERENTIAL; REDUCE RENTAL PERCENTAGE IN DRIVING RANGE AND PRO SHOP; TRANSFER UTILITY PAYMENTS; AND WAIVE PENALTIES FOR CAPITAL IMPROVEMENT CONTRIBUTIONS PAID LATE

H. Fujita _____ F. Mok _____
J. Kolb _____ K. Regan _____
*G. Stigile AS K. Chan _____
M. Mariscal _____ J. Combs _____


General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Approve the Second Amendment of the Hansen Dam Golf Professional Concession Contract (Concession Agreement No. 233), substantially as attached, to reduce rental percentages in the categories of Golf Professional Shop and Driving Range, remove the monthly payment requirement of one-twelfth (1/12) of the Annual Minimum Guarantees, remove Annual Minimum Guarantee for Driving Range, and cease the reimbursement for the increased costs mandated by the Living Wage Ordinance, which were stipulated in the First Amendment, subject to approval of the Mayor, the City Council, the City Attorney, and U.S. Army Corp of Engineers;
2. Direct the Board Secretary to transmit the proposed Second Amendment to the Mayor in accordance with Executive Directive No. 16, and concurrently to the City Attorney for review as to form;
3. Waive the late fees and accrued interest applied to the Capital Improvement Contribution Account of the Hansen Dam Golf Professional Concession Contract with John Wells Golf Shops, Inc. in the amount of \$73,367.33; and,
4. Authorize the Board President and Secretary to execute Second Amendment

REPORT OF GENERAL MANAGER

PG. 2 No. 04-109

subsequent to approval of the Mayor, City Attorney, and City Council.

SUMMARY:

John Wells of John Wells Golf Shops, Inc., has operated the Hansen Dam Golf Course Pro Shop, Lesson Service, and Driving Range Concession since 1987, and is currently operating through Concession Agreement No. 233 executed on October 1, 1997. Concession Agreement No. 233 is a ten-year contract which will expire on September 30, 2007.

The contract's current rental percentages and Annual Minimum Rental Guarantee are:

- Seven percent (7%) of the gross receipts from the Golf Professional Shop and Lesson Service Operation or an Annual Minimum Rental Guarantee of \$16,100.00;
 - Thirty five percent (35%) of the gross receipts from the Driving Range or an Annual Minimum Rental Guarantee of \$122,500.00; and,
 - Additional, ten percent (10%) of the gross receipts from the Driving Range for the Capital Improvement Contribution or an Annual Minimum Rental Guarantee of \$35,000.00.
- This constitutes overall a forty five percent (45%) rent on the Driving Range.

The contract's First Amendment provides a Living Wage Ordinance Adjustment whereby Mr. Wells is reimbursed monthly by the City for the cost increase mandated by the Living Wage Ordinance. Mr. Wells is allowed to retain monthly rentals from concession revenues to offset those increases in labor costs, including wages, payroll taxes, and Workers' Compensation that are directly attributable to the Living Wage Ordinance. Additionally, when the legally applicable minimum wage increases, the monthly reimbursement is adjusted accordingly. The current monthly Living Wage Ordinance Adjustment is \$3,137.24 or \$37,646.84 annually.

Over the past year, Department Staff has been working with Mr. Wells to rectify issues discovered upon an audit of this concession. The audit findings for the period of October 2, 2000, through September 30, 2002, included outstanding back payments owing in the amount of \$82,594.00, consisting of \$118.18 for Pro Shop and Lessons, \$12,475.82 for the Driving Range, and \$70,000.00 of unpaid Capital Improvement Contributions. Based on these findings, Staff expanded the audit to include the entire contract period of October 1, 1997, to present; the outstanding balance increased to \$158,355.54, which consisted of \$129,101.35 for unpaid Capital Improvements and \$29,254.19 for the Driving Range. Mr. Wells has begun a repayment program for the outstanding balance which will continue through the end of his contract. The repayment program consists of an additional monthly payment, in the amount of \$3,299.07, to the Department with the final payment scheduled in the last month of the contract, September 2007.

REPORT OF GENERAL MANAGER

PG. 3 No. 04-109

Mr. Wells explained he was unaware that the Capital Improvements required by his contract had to be made or paid to the Department on a monthly basis. He was under the impression that Capital Improvements required only had to be completed by the end of his contract until Auditing Staff had notified him of the outstanding Capital Improvement balance owing. No documentation from or investigation with former concession administration staff suggests that the Department ever advised the Concessionaire otherwise, until the audit. Therefore, staff recommends waiving the cumulative late fees and interest in the amount of \$73,367.33 (\$5,725.47 in late fees and \$67,641.86 in interest) that would be applied to the outstanding Capital Improvement balance. The waiver of the applied late fees and accrued interest on Capital Improvements would not affect the General Fund since the revenue collected for Capital Improvements is deposited into the Concession Improvement Account and reinvested into the concession.

On December 23, 2003, Mr. Wells meet with Staff to discuss reducing the rental percentages paid on the Hansen Dam Golf Pro Shop and Driving Range due to a stagnant economy and a decline in golf. These two factors have negatively impacted the total gross revenues generated at the Hansen Dam Golf Course significantly over the past five years. In addition, the stagnant economy and decline in golf has contributed to Mr. Wells being unable to meet his Annual Minimum Rental Guarantee for the operation of the Driving Range of \$122,500.00 for the calendar years of 2001, 2002, and 2003. The following table illustrates the Total Gross Revenue reported by the Hansen Dam Golf Course Pro Shop, Lesson Service and Driving Range Concession since 1997, as well as the total number of rounds of golf played at Hansen Dam.

Year	Total Gross Revenue	Percent Change	Total Rounds Played	Percent Change
1997	\$ 758,695.62		108,169	
1998	\$ 761,919.49	0.4%	104,304	-3.6%
1999	\$ 822,561.85	8.0%	108,823	4.3%
2000	\$ 715,757.45	-13.0%	101,937	-6.3%
2001	\$ 658,484.42	-8.0%	98,796	-3.1%
2002	\$ 666,700.71	1.2%	99,466	0.7%
2003	\$ 680,684.52	2.1%	96,118	-3.4%

The overall drop from 1997 to 2003 gross is ten percent (10%), while rounds played in the same period have experienced a net drop of eleven percent (11%). Mr. Wells has requested, and Staff concurs, that the rental percentages paid for the Golf Professional Shop be reduced from seven percent (7%) to five percent (5%), and the Driving Range from thirty five percent (35%) to thirty percent (30%). The average rent at our driving ranges is thirty percent (30%) to thirty five percent (35%). Since the ten percent (10%) Capital Contribution remains, this Contract will effectively be at forty percent (40%) rent. The rental percentage for the Lesson Service will remain at seven percent (7%). Staff recommends that the Annual Minimum Rental Guarantee for

REPORT OF GENERAL MANAGER

PG. 4 No. 04-109

the operation of the Driving Range be removed from the contract. The Annual Minimum Rental Guarantee for the operation of the Golf Pro Shop and Lesson Service operation will remain at \$16,100.00 as well as the Annual Minimum Capital Improvement Contribution of \$35,000.00. The reduction in the rental percentages and the elimination of the Annual Minimum Rental Guarantee for the operation of the Driving Range would allow the Hansen Dam Golf Professional Concession to be more viable by permitting flexibility of payments to follow seasonal fluctuations of business and allow Mr. Wells an opportunity to increase his business through more aggressive promotion and advertising at key points in the year.

For the same purpose of sharing seasonal revenue changes, staff also recommends amending Mr. Wells' contract to allow him to submit payments based on percentage of gross receipts for the previous month. This would replace the current requirement of submitting the greater of the following: One-twelfth (1/12) of the sum of the Annual Minimum Rental Guarantees or the percentages of gross receipts received in said previous month, which also creates a convoluted auditing trail and is a provision no longer used in contracts. On an annual basis, Staff will review the prior years' annual gross revenue and rent received to ensure that Mr. Wells has met the Annual Minimum Rental Guarantees remaining on the operation of the Golf Pro Shop and Lesson Service and Capital Improvement Contribution.

In exchange for the reduction in rental percentages and the elimination of the Annual Minimum Rental Guarantee for the operation of the Driving Range, Mr. Wells has agreed to forfeit the Living Wage reimbursement he is allowed to deduct from his monthly rental payment through the First Amendment to Concession Agreement No. 233. Currently, Mr. Wells is allowed \$3,137.24 per month for his Living Wage reimbursement or \$37,646.88 annually. The Living Wage reimbursement is calculated by the Accounting Section on an annual basis, when the new Living Wage Rate becomes available from the City Administrative Officer's Office. For the past three years, the Living Wage Rate has increased by three percent (3%).

Average Annual Pro Shop Rent @ 7%	\$	20,503.99
Average Annual Year Pro Shop Rent @ 5%	\$	14,645.71
Difference in Pro Shop Rent	\$	5,858.28

Average Annual Driving Range Rent @ 35%	\$	130,567.54
Average Annual Driving Range Rent @ 30%	\$	111,915.04
Difference in Driving Range Rent	\$	18,652.51

Total Average Annual Difference In Rent	\$	(24,510.79)
Current Annual Living Wage Adjustment	\$	37,646.88
Total Impact to General Fund	\$	13,136.09

REPORT OF GENERAL MANAGER

PG. 5 No. 04-109

The above table illustrates that the reduction in the rental percentages for the Pro Shop and Driving Range would be offset by the elimination of the Living Wage reimbursement. The Department would also save minimally on auditing costs.

Finally, in the Department's ongoing effort to transfer all utility costs of for-profit concessions located on Department property to the concessionaires, all utilities associated with the Hansen Dam Golf Professional Shop, Lesson Service and Driving Range would be transferred to Mr. Wells. He would then pay all utilities associated with the concession directly to the utility companies. The Department would no longer receive the \$850.00 monthly (\$10,200.00 annually) utility fee, which is used to reimburse the Department of General Services for the payment of actual utility costs. The actual utility costs for calendar year 2002 for only the Hansen Dam Golf Pro Shop were \$3,697.11. This change conforms to City policy and fulfills the goal of General Services which installed separate meters about two years ago.

This Amendment, in conformance with the Administrative Code, also adds or updates language in regard to the Contractor Responsibility Ordinance, Equal Benefits Ordinance, Contractor Evaluation Ordinance, and Slavery Disclosure Ordinance.

Staff has found Mr. Wells to be cooperative in his efforts to bring his contract into compliance with all of its terms and conditions. Staff does not foresee any further contractual issues for this concession and will make the necessary 12-month annual adjustments to ensure the annual minimum guarantees for the Pro Shop and Lessons and Capital Improvement Contribution are met.

Report prepared by Heather Tarumoto and Michael Honan, Administrative Resources Division.
Attachment