

Agenda Item:

DISCUSS AND CONSIDER EXTENDING OF CONTRACT WITH ISLAND ICE FOR AREA #2 AT STEWART BEACH FOR FROZEN NOVELTIES.

Background:

Staff is requesting extend the agreement with Island Ice for Area #2 Stewart Beach in the amount of \$17,500.00. Staff is requesting one-year extension to the current agreement that expires in March of 2019, the reason for the extension is to take of the contract extension to Oct 30, 2020 in line with the other agreements. Staff has added language for the vendor to enroll their staff in the CTA program per the PAC committee. Scott Johnson currently has other agreements with Galveston Park Board, Scott provides a nice product and payments are always on time.

Staff Recommendation:

Staff is recommending to extend the agreement with Island Ice at Stewart Beach, the terms of the contract would be a one-year extension on top of the one year left on the current agreement with the rate of \$17,500.00. The new agreement would expire October 30, 2020, and once this agreement expires the area will be bided out.

Funding Source (if a budgetary item):

CONTRACT EXTENSION AGREEMENT

RE: Concession Agreement for Scott Johnson LLC Island Ice, Area #2 Stewart Beach

Whereas, on 3/24/2017 date, the Park Board of Trustees of the City of Galveston (Park Board) entered into an Agreement with Scott Johnson LLC Island Ice for area #2 Frozen Novelties (Agreement);

Whereas, the Agreement terminates on March 23, 2019

Whereas, the Parties wish to extend the termination date until October 31, 2020.

Therefore, for the mutual premises contained herein, the Parties do agree as follows:

1. All terms in the Agreement, attached as Exhibit A, remain the same except for the termination date and the payment amount and payment dates.
2. The Agreement will terminate on October 31, 2020, rather than March 23, 2019.
3. The rental amount for the extension \$17,500.00 total per year and will be broken into three payments. For 2019 and 2020 there will be three payments each year; \$5,833.33 due March 1, and June 1, \$5,833.33, \$5,833.34 and due Aug 1.
4. The vendor agrees to enroll at least one of their employees in the CTA program by Memorial Day weekend for each of the contract years. The CTA program is offered by the Galveston CVB program.
5. The vendor must complete the applicable items on the vendor checklist. Once the checklist items are submitted and reviewed for compliance, Park Staff will provide written approval for continuance of operations.
6. All other terms and conditions of the Agreement remain the same.

Park Board of Trustees of the City
of Galveston

By: Kelly de Schaun
Title: Executive Director

Scott Johnson

Scott Johnson
Concessionaire

CONCESSION AGREEMENT
WITH SCOTT JOHNSON D/B/A ISLAND ICE
AT STEWART BEACH PAVILION

THIS AGREEMENT is made and entered into effective _____, 2017, by and between the Park Board of Trustees of the City of Galveston (hereinafter referred to as "Park Board") and Scott Johnson d/b/a Island Ice (hereinafter referred to as "Concessionaire").

WHEREAS, the City has turned over the management and control of Stewart Beach to Park Board.

WHEREAS, Concessionaire has a desire to enter into such Concession Agreement with Park Board;

NOW, THEREFORE, for and in consideration for the premises contain herein, Park Board and Concessionaire agree as follows:

1. **Term.** The term of this Agreement shall commence on March 24, 2017, and terminate on March 23, 2019, unless sooner terminated under the provisions herein.

2. **Concession Fee.** Concessionaire agrees, on a yearly basis, to pay Park Board the amount of \$17,500.00. The payment of \$17,500.00 is due each year, in three equal payments, on March 25, June 25 and August 25.

3. **Laws & Restrictions.** Concessionaire shall, in connection with any current or future improvements, use or maintenance of the premises and all activities associated therewith, strictly comply with all applicable laws, rules, ordinances, restrictions, and regulations. Concessionaire shall secure and maintain all permits and licenses required for his activities at his own expense, including, without limitation, a vendor permit from the City, if applicable. No non-moveable structure may be constructed or allowed on the premises.

4. **Scope and Use.** Concessionaire has a non-exclusive right to sell frozen novelties at the Stewart Beach Pavilion Vending Counter. The sales at the Stewart Beach Pavilion Vending Counter are limited to only sales of frozen novelties and Concessionaire agrees that he cannot sell anything else, including but not limited to soft drinks, water, ice, food types, chips, snacks, souvenirs, gifts, swimwear, or beach supplies.

A. Concessionaire is allowed to have sales at beachfront locations by selling from a stationary vending trailer and/or push carts. Sales at the beachfront locations, by either the vending trailer or push carts, are limited to frozen novelties, water, soft drinks, chips and candy. Concessionaire cannot sell any other item, including but not limited to other food types, souvenirs, gifts, swimwear, or beach supplies. All such sales are non-exclusive.

B. Concessionaire must operate the vending trailer and push carts in a safe manner. Park Board reserves the right, and Concessionaire agrees, to limit and/or restrict vending operations at any beachfront locations.

C. No other use under this concession agreement shall be permitted, other than the rights herein specifically granted, unless consent to such use is obtained, in writing, from Park Board's authorized representative.

D. No portion of the concession premises is being leased to Concessionaire. Concessionaire is a licensee and not a leasee of the concession premises, and the right of Concessionaire to occupy the concession premises shall continue only so long as all of the terms of this Agreement are strictly and promptly complied with by Concessionaire.

E. Park Board retains the right to award other concession agreements, licenses, or permits to other parties, and to make any and all improvements it deems necessary to the premises during the term of this Agreement. This Agreement is non-exclusive. There may be other vendors that sell the same or similar products. Also Park Board may have marketing agreements which allow for the free handout of items that may be the same or similar as the products sold by Concessionaire.

F. Concessionaire agrees that the Vending Counter space at the Stewart Beach Pavilion must close when the Pavilion restrooms and showers are closed. Concessionaire will be responsible for all his costs connected with his sales at the Vending Counter and the beachfront locations. All costs will be the sole responsibility of Concessionaire. Concessionaire will maintain, repair and/or replace, at his sole cost, all Vending Counter equipment and fixtures as needed, and immediately if an emergency response is warranted.

G. Concessionaire may operate in the Pavilion only at the Vending Counter. Concessionaire must operate and be open any time the toll booths at Stewart Beach are operating. Concessionaire may use only the storage space at the Vending Counter.

H. In the event that the Stewart Beach pavilion is torn down, this Agreement will terminate.

5. **Taxes.** Any and all taxes which may be lawfully imposed upon the property or business of Concessionaire on the premises shall be paid promptly by Concessionaire. On a quarterly basis, Concessionaire shall provide Park Board with proof of payment of all applicable sales taxes. Concessionaire shall furnish Park Board with receipts and any other verification requested by Park Board showing compliance prior to delinquency.

6. **No Assignment.** Concessionaire shall not mortgage, pledge, transfer or assign this Agreement or any privileges hereunder, or any interest whatsoever in connection with this Agreement.

7. **Park Board Rules and Right to Audit.** The use and occupation of the premises shall be subject to any and all rules and regulations as may be prescribed by Park Board from time to time. Park Board shall have the right to audit Concessionaire's books to monitor the payment of the Override Amount. Concessionaire shall allow access to Park Board to review his books and records, as needed.

8. **Right of Re-Entry.** The right is hereby reserved to Park Board, the City, and to the State of Texas, their officers, agents, and employees to enter upon the said premises at any time for inspection or for any governmental purpose, to remove persons, equipment, fixtures, goods, debris, improvements, or other material required or necessary for any official purpose, and Concessionaire shall have no claim for damages of any character on account thereof against Park Board, the City, or the State of Texas, or any officer, agent, or employee thereof.

9. **Exoneration.** Park Board and the City, and their officers, agents, and employees shall not be responsible to Concessionaire or any other person for: (1) damages to property or injuries to persons which may arise from the use or occupation of the premises by Concessionaire; (2) damages to the property of the Concessionaire; (3) injuries to the person of the Concessionaire's officers, agents, servants, or employees, or any other persons who may be on the premises at their invitation or the invitation of any one of them, and the Concessionaire shall hold Park Board and the City harmless from any and all such claims, even though such claims may be caused, or alleged to be caused, in whole or in part, by the negligence of Park Board, the City, or its respective officers, agents, or employees.

10. **Notice.** Any notice shall be deemed to have been duly given if enclosed in a properly sealed envelope, addressed and deposited, postage pre-paid, in a post office to the following addresses:

Concessionaire:	Scott Johnson
Mailing Address:	501 Indlewood Drive Hitchcock, Texas 77563
Physical Address:	501 Indlewood Drive Hitchcock, Texas 77563
Telephone:	409-256-7227
Telefax:	
Email:	
Park Board:	Park Board of Trustees of City of Galveston, Texas Attention: Kelly de Schaun Executive Director
Address:	601 Treemont Galveston, Texas 77550
Telephone:	409-797-5106
Telefax:	409-762-8911
Email:	kdeschaun@galvestonparkboard.org

Either party may notify the other of any change of address by written notice.

11. Termination.

A. This Agreement may be terminated by Park Board upon the happening of any of the following events:

(1) Lapse in required insurance coverage by Concessionaire or failure by Concessionaire to strictly comply with any provisions in this Agreement relating to insurance coverage, allowing any unsafe or dangerous equipment or condition to exist, or by violation of any applicable law, ordinance, rule, or regulation. Termination may be immediate and without advance notice.

(2) The commission by Concessionaire of any act of insolvency, the filing of any voluntary or involuntary actions concerning Concessionaire under any state or federal bankruptcy or other laws for the protection of debtors, an assignment by Concessionaire for the benefit of creditors, or the appointment of a Receiver for Concessionaire or the business of Concessionaire conducted on the premises.

(3) A breach by the Concessionaire of any other terms or conditions of this Agreement, provided that Concessionaire, subject to any express provision in this Agreement to the contrary, shall first be entitled to ten (10) days' written notice with the opportunity to cure the default of any other such term or condition within such period, but provided further that Concessionaire will be entitled to notice of default and an opportunity to cure only twice during the term of this Agreement. Any such termination shall be without waiver of any cause of action which may have theretofore accrued. Any waiver by Park Board shall not operate to modify this Agreement, nor shall it in any manner prejudice any rights of Park Board regarding any future violation of any term of this Agreement by Concessionaire.

(4) Concessionaire is convicted of a felony or crime involving a moral turpitude.

(5) The Stewart Beach Pavilion is destroyed or torn down.

(6) By either party giving ninety (90) days' written notice.

B. This Agreement may be terminated by either party with thirty (30) days' prior written notice upon the happening of any of the following events:

(1) In the event that Park Board should lose the right to possession of the premises for any reason, including but not limited to, easement, lease, condemnation, exercise of power of eminent domain, failure to extend a license to use, reversion to prior owners, loss of title or loss of license or loss of management; or

(2) In the event that a storm or other natural force causes erosion of the beach on the premises to the extent that it is no longer practical for Concessionaire to conduct the activities permitted herein on the premises.

12. **Insurance.** Throughout the term of this Agreement or any extensions thereof, Concessionaire shall maintain insurance against public liability for injury to persons (including death) or damage to property resulting from or arising out of, or alleged to have arisen from or resulted from, the operations of the Concessionaire in or about the premises. Such insurance policy shall be in an amount not less than \$1,000,000, combined single limit coverage, or such greater amount as shall be from time to time required by Park Board, and shall name Park Board and the City as additional named insureds under said policy, and said policy shall provide for thirty (30) days' notice to Park Board prior to any cancellation or revision of said policy. Such policy shall be in a form and with an insurance carrier acceptable to the Executive Director of Park Board. Concessionaire agrees that he will make no claim, nor authorize any claim to be made, against and will provide waivers of subrogation from his insurers as to Park Board, its employees, servants, or agents in connection with or as a result of fire, explosion, or other casualty injuring persons or damaging the contents, equipment, furniture, or fixtures in or about the premises. Concessionaire shall at all times provide Park Board with a current copy of all such insurance policies, and with a current copy of certificates of insurance providing for thirty (30) days' notice prior to cancellation or revision as above provided.

13. **INDEMNITY. CONCESSIONAIRE HEREUNDER AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL EXPENSES, DAMAGES, CLAIMS OR CAUSES OF ACTION THAT MAY ARISE IN CONNECTION WITH (A) CONCESSIONAIRE'S FAILURE TO PERFORM HIS OBLIGATIONS HEREIN OR (B) CONCESSIONAIRE'S USE AND OPERATION OF THE PREMISES, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS OF DEFENSE. THIS INDEMNITY AGREEMENT IS INTENDED TO ENCOMPASS ANY AND ALL MANNER OF CLAIMS (WHETHER FOR BODILY INJURY, DEATH, PROPERTY DAMAGE, FINES, OR CITATIONS FOR VIOLATIONS OF ANY LAW, STATUTE, ORDER, OR REGULATION, OR OTHERWISE), ARISING OUT OF ANY ACTIVITIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, CLAIMS CAUSED BY THE NEGLIGENCE OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES. IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INTENDED BY CONCESSIONAIRE TO INDEMNIFY AND PROTECT PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES FROM THE CONSEQUENCES OF PARK BOARD, THE CITY, AND THEIR INDIVIDUAL TRUSTEES, COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES, WRONGFUL ACTS AND NEGLIGENCE, WHETHER OR NOT THE NEGLIGENCE IS THE SOLE CAUSE OR CONCURRING CAUSE IN THE INJURY, DEATH, OR DAMAGE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS CONCESSION AGREEMENT FOR ANY REASON.**

14. **Limits of Liability.** Concessionaire agrees to look solely to Park Board for the performance of its obligations under this Concession Agreement, and agrees that in no event is

the City or the individual members of Park Board liable or responsible in any manner for this Concession Agreement, nor for any breach thereof.

15. **Access and Signage.** Concessionaire shall have reasonable access to the premises over the property of Park Board by virtue of such avenues of ingress and egress, and at such time as Park Board shall direct. Concessionaire shall have no rights, express or implied, in any property belonging to or subject to the management of Park Board, other than the premises. Concessionaire shall not in any manner restrict the public from free access to and use of the beach and to the waters of the Gulf of Mexico, as required by the Texas Open Beaches Act. Concessionaire, and his agents, employees, and vendors shall, in no way, interfere with, impede or adversely affect any property, business or patrons of Park Board. All signage on the premises or advertising on the premises must be approved prior to installation by the Executive Director of Park Board.

16. **No Obstruction.** Concessionaire shall not keep or display anything or otherwise obstruct the beaches, roads, driveways, walkways, or area ways adjacent to the premises.

17. **Fire Protection.** Concessionaire shall install and maintain fire extinguishers and other fire protection and safety devices as may be required from time to time by any governmental or other agency having jurisdiction.

18. **Miscellaneous.**

A. Concessionaire agrees that all his employees in and about the premises will wear neat and attractive uniforms which are compatible with those worn by Park Board employees or as Park Board shall otherwise direct, and all employees of Concessionaire will at all times maintain a neat and attractive appearance, a professional demeanor and be polite and courteous at all times.

B. Concessionaire will pay the cost of trash and garbage removal, except for routine removal of trash from barrels and routine raking of sand.

C. During the entire time during which this Agreement shall be in effect, Concessionaire will be responsible for all expenses in any manner arising from his duties and activities hereunder.

D. All equipment or other physical objects in or about the premises shall be safe, clean, in good working order, and aesthetically appealing in the opinion of the Park Board. Employees are required to park in the employee parking area as directed by the park manager.

E. Park Board is not responsible for providing security personnel to the Vending Counter location. This is the responsibility of Concessionaire.

F. Concessionaire may not host special events or groups or cater events unless (1) Concessionaire has submitted a request in writing to the Park Board at least ninety (90) days prior to the event and (2) received approval from Park Board.

G. If Concessionaire desires to make any upgrades, enhancements or additions to the Vending Counter, Concessionaire must make (1) a request in writing a minimum of ninety (90) days prior to the scheduled work and (2) receive approval from Park Board. All exterior signage must be approved by Park Board prior to installation.

H. If Concessionaire needs or desires to make repairs or perform maintenance that could potentially impact the integrity and/or general appearance of the pavilion, he must (1) request in writing a minimum of ninety (90) days prior to the scheduled work and (2) receive approval from Park Board.

I. Park Board has the right to hold special events that may include the sale of gift items, hand-outs and/or other items. Also Park Board may allow, at any time, free handouts or the sale of products for marketing and/or in connection with marketing efforts from sponsors. These gifts, hand-outs or marketing items may be similar or the same as sold by Concessionaire.

J. This concession is non-exclusive as other concessionaires may sell the same or similar products.

19. **Attorneys' Fees.** Concessionaire agrees to pay all attorneys' fees incurred by Park Board in any manner in connection with the preparation of this Concession Agreement, any negotiations associated therewith, securing all necessary approvals therefore, enforcing any provisions hereof, and any disputes or questions regarding this Agreement.

20. **Concessionaire's Acknowledgement.**

A. Concessionaire acknowledges and understands the terms of this Concession Agreement and takes the premises subject to the matters identified therein.

B. There may be third parties having rights or claims of rights to the beach, including, without limitation, the premises. Concessionaire acknowledges that he takes any concession rights subject to the rights, if any, of those third parties. The development and activities to be conducted on the premises may be subject to considerable restrictions, including, without limitation, the Texas Open Beaches Act and the Texas Dune Protection Act. Park Board will have the right, but not the obligation, to prevent others from establishing concessions upon certain areas of the premises, to the extent that third parties may have rights in those areas. Concessionaire recognizes that the concession to be granted is not an exclusive right to operate the desired concession, and that other persons may attempt to operate competing concessions. Concessionaire's rights with respect to the premises are granted by Park Board and accepted by Concessionaire in "AS IS" condition and "WITH ALL FAULTS" and without any representation or warranty of any nature whatsoever by Park Board. Concessionaire, by acceptance of this concession, represents that Concessionaire has made such inspection and investigation relating to the premises as Concessionaire deems necessary or appropriate for his purposes.

C. Concessionaire may not restrain or prevent the use of the premises by any person. All persons shall have the right to use their own personal property and equipment in or about the premises, regardless of whether the personal property or equipment consists of items sold or rented by Concessionaire. Concessionaire may not interfere with any person's right to use the beach.

D. Concessionaire acknowledges Park Board cannot assure Concessionaire that the beach will maintain its current configuration and that the beach is subject to erosion, seaweed landings, weather and tidal events. Park Board cannot assure that the impact of these environmental events will be addressed in a manner that is sufficient to Concessionaire. Park Board will not be held responsible for any loss of business due to the impact and management of these types of events. Concessionaire acknowledges that Park Board is not making any promise or warranty that it will add sand to the premises or otherwise nourish the premises in the future. Concessionaire acknowledges that Park Board may add sand or nourish certain portions of the beach and may not add sand or nourish the premises leased by Concessionaire.

21. **Hours of Operation.** Concessionaire shall operate the vending trailer on all days that Stewart Beach is open to the public as listed on the official website, www.galveston.com. Concessionaire shall open the Vending Counter any time the toll booths are operating. Concessionaire shall close the Vending Counter thirty minutes after the published closing time of Stewart Beach, as listed on the official website, www.galveston.com and if the pavilion restrooms and showers are closed. All operating hours stated are weather permitting. It is a condition of this agreement that Concessionaire will operate every weekend that the park is open.

22. **Force Majeure.** Neither party is required to perform any term of this Agreement if performance is prevented by force majeure, which includes acts of God, civil riot, flood, or other natural cause. If a hurricane or tropical storm hits Galveston and the Stewart Beach Pavilion is destroyed, this agreement shall be terminated.

23. **Environmental Stewardship.** The Park Board of Trustees of the City of Galveston recognizes a shared responsibility between it and its concessionaires to act as a positive force for the protection and enhancement of our Island's natural resources. In this important effort Park Board reaches out and partners with its concessionaires in the implementation of environmental stewardship and sustainability practices that can be applied to daily business operations. Concessionaires operating under the jurisdiction of Park Board are expected to participate in this effort and incorporate sound environmental practices that achieve the overarching goal of protection, sustainability and enhancement of our natural resources.

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed in duplicate originals, on this the ____ day of March, 2017.

Park Board of Trustees of the City of Galveston

By: Kelly de Schaun
Title: Executive Director

Scott Johnson

Scott Johnson
Concessionaire