

**Agenda Item: Discuss and Consider the Transfer of Contract for Frozen Novelties at Izard Battery Park from William Stephenson, d.b.a. Hawaiian Chill, to Kona Ice.**

**Background:**

Mr. Stephenson approached staff to request transferring his current agreement for frozen novelties to Kona Ice. Mr. Stephenson currently owns Hawaiian chili which is on Fort Crockett and he is looking to sell the business. Mr. Stephenson and Kona Ice both understand that the sale of the business does not include the contract which is owned by the Park Board. Staff has met with Legal and they both agree that the request to transfer the contract should be brought to the board per the agreement. The agreement will not change and will expire in 2018. All terms of the agreement will remain the same. Once the agreement expires that area will be put up for sealed bids in 2018.

**Staff Recommendation:**

Staff is recommending approval to transfer the agreement to Kona Ice for the set terms of the agreement. The transfer will only happen if the business is sold to Kona Ice. If Kona Ice does not purchase Hawaiian Chili then the contract will stay with Mr. Stephenson.

**Funding Source (if a budgetary item):**

**APPROVAL OF THE ASSIGNMENT OF THE CONCESSION AGREEMENT WITH  
WILLIAM STEPHENSON AT IZARD BATTERY PARK TO  
THERESA KASHUDA AND MTM ICE D/B/A  
KONA ICE GALVESTON BAY AREA**

THIS APPROVAL OF THE ASSIGNMENT is made and entered into effective March 29, 2017, by and between the Park Board of Trustees of the City of Galveston (Park Board) and William Stephenson (Assignment Concessionaire) and Theresa Kashuda and MTM Ice dba Kona Ice Galveston Bay Area (New Concessionaire).

WHEREAS, on September 30, 2015, the Park Board signed an agreement (Agreement) with William Stephenson for the non-exclusive sale of non-alcoholic beverages, frozen novelty products, soft drinks, water, chips and ice from a vending cart at IZARD BATTERY PARK; and

WHEREAS, the term of the Agreement (attached as Exhibit A) commenced on September 30, 2015 and terminates on September 29, 2018, unless terminated sooner under the provisions of the Agreement; and

WHEREAS, the concession fee is an annual fee of \$4,723.01 which increases by the Consumer Price Index on March 15, 2018; and

WHEREAS, Paragraph 7 of the Agreement provides that no assignment may occur without permission in writing from the Park Board; and

WHEREAS, William Stephenson desires to sell his business and his equipment associated with this beach concession; and

WHEREAS, Theresa Kashuda and MTM Ice dba Kona Ice Galveston Bay Area have expressed an interest in buying this business from William Stephenson; and

WHEREAS, the Park Board's recent concession agreement do not allow for assignments;

WHEREAS, this concession agreement (Exhibit A) allows for an assignment if approved by the Park Board; and

WHEREAS, on March 28, 2017 at a regularly scheduled meeting of the Park Board, the Trustees voted to approve the assignment to Theresa Kashuda and MTM Ice d/b/a Kona Ice Galveston Bay Area subject to the conditions in this document.

NOW THEREFORE, for the mutual consideration set forth herein, the Park Board and William Stephenson (Assignment Concessionaire) and Theresa Kashuda and MTM Ice dba Kona Ice Galveston Bay Area (New Concessionaire) do agree as follows:

1. When and if the sale between William Stephenson and Theresa Kashuda and MTM Ice dba Kona Ice Galveston Bay Area occurs, they will notify the Park Board in writing the date the sale is finalized.
2. If the sale occurs:
  - a. New Concessionaire will pay the Park Board \$500 for the cost connected with preparation of this Assignment.
  - b. New Concessionaire agrees that she will follow all the terms and conditions in the Agreement attached as Exhibit A.
  - c. Park Board and Concessionaire agree that for all purposes Concessionaire will be substituted for William Stephenson in the Agreement attached as Exhibit A.
  - d. William Stephenson's obligations under Exhibit A will be terminated.
3. If the sale does not occur, William Stephenson's obligations remain as set out in Exhibit A.

[SIGNATURES ON FOLLOWING PAGE]

IN TESTIMONY WHEREOF, the parties hereto have each caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Park Board of Trustees of the City of Galveston

\_\_\_\_\_  
By: Kelly de Schaun  
Title: Executive Director

\_\_\_\_\_  
William Stephenson, Individually

\_\_\_\_\_  
Theresa Kashuda, Individually

\_\_\_\_\_  
Theresa Kashuda d/b/a Kona Ice Galveston Bay Area





Seawall Blvd

Mr. Stephenson current location

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Google Earth

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Imagery Date: 11/21/2015 29°16'22.54" N 94°48'52.18" W elev 9 ft eye alt 781 ft