

APPROVED
APR 17 2013

REPORT OF GENERAL MANAGER

NO. 13-098

DATE April 17, 2013

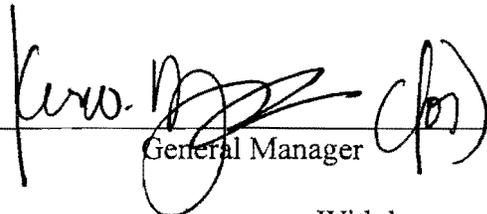
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**BOARD OF RECREATION
& PARK COMMISSIONERS**

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH RIVERSIDE AND VERMONT CANYON TENNIS PROFESSIONAL CONCESSION – RESCISSION OF PREVIOUSLY APPROVED CONCESSION AGREEMENT; APPROVAL OF REVISED PROPOSED CONCESSION AGREEMENT (REVISED AGREEMENT)

R. Adams _____	K. Regan _____
H. Fujita _____	M. Shull _____
V. Israel _____	*N. Williams <u>NDW</u>



 General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATIONS:

That the Board:

1. Rescind the approval given on November 21, 2011 (Board Report No. 11-307) of the Concession Agreement (Proposed Agreement), between the City of Los Angeles Department of Recreation and Parks and LA Tennis Incorporated, for the operation and maintenance of the Griffith Riverside and Vermont Canyon Tennis Professional Concession;
2. Approve a revised proposed Concession Agreement (Revised Agreement), as described herein, substantially in the form on file in the Board Office, between the City of Los Angeles Department of Recreation and Parks and LA Tennis Incorporated, for the operation and maintenance of the Griffith Riverside and Vermont Canyon Tennis Professional Concession for a term of five (5) years with two (2) five-year renewal options exercisable at the sole discretion of the General Manager, subject to the approval of the Mayor and City Council, and of the City Attorney as to form;
3. Direct the Board Secretary to transmit the Revised Agreement to the Mayor in accordance with Executive Directive No. 3 and, concurrently, to the City Attorney for review and approval as to form; and,
4. Authorize the Board President and Secretary to execute the Revised Agreement upon receipt of the necessary approvals.

REPORT OF GENERAL MANAGER

PG. 2

NO. 13-098

SUMMARY:

On February 2, 2011 the Board of Recreation and Park Commissioners (Board) approved the release of a Request for Proposals (RFP) for the Operation and Maintenance of the Griffith Riverside and Vermont Canyon Tennis Professional Concession (Board Report No. 11-033). A sample Concession Agreement (Sample Agreement) was approved as part of the RFP.

On November 21, 2011 the Board approved a proposed Concession Agreement (Proposed Agreement) between the City of Los Angeles Department of Recreation and Parks (Department) and LA Tennis Incorporated (LA Tennis) for the operation and maintenance of the Griffith Riverside and Vermont Canyon Tennis Professional Concession (Board Report No. 11-307).

During a subsequent review of the Proposed Agreement by the office of the City Administrative Officer (CAO), two contract language issues were discovered and discussed with the City Attorney. The City Attorney recommended as follows:

- 1) Contract language in Section 6 of the Sample Agreement concerning the minimum annual revenue sharing payment requirement had been inadvertently omitted from the Proposed Agreement with LA Tennis. The City Attorney recommended that the Department make changes to Section 6 of the approved Proposed Agreement with LA Tennis to restore the omitted language.

The omitted language from the Sample Agreement, Section 6.A (“Revenue Sharing Fee and Payment”) states:

“The minimum annual revenue sharing payment for this concession is (refer to Pro Forma section of the proposal) per calendar year. If the minimum annual revenue sharing payment is not met by December 31 of each calendar year, the difference between the actual revenue sharing payments received by the City of Los Angeles and the minimum annual revenue sharing payment will be due to the City of Los Angeles by January 15 of the following subsequent year. If the agreement has not been in effect a full calendar year, the minimum annual revenue sharing payment due will be pro-rated accordingly.”

The revised language in the proposed Revised Agreement will require minimum annual revenue sharing payments from the contractor.

- 2) Section 6.G (“Annual Accounting Adjustment”) found in both the Sample and the Proposed Agreements contains language that is inconsistent with contract language in Section V.A.4 (“Proposed Revenue Sharing Payment”) of the RFP regarding

REPORT OF GENERAL MANAGER

PG. 3

NO. 13-098

minimum annual revenue sharing payments and was not negotiated between the Department and LA Tennis. The City Attorney recommended the elimination of Section 6.G (“Annual Accounting Adjustment”) of the Proposed Agreement.

Section 6.G (“Annual Accounting Adjustment”) states:

“At the end of each twelve (12) month period during the term hereof, Concessionaire shall prepare and submit to City a statement showing the total gross receipts for the said twelve (12) month period and the revenue sharing payments paid for the said twelve (12) months. If the sums paid by Concessionaire during the period exceed the minimum annual fees as well as the annual percentage charges computed as set forth in this Section, whichever is greater, such overpayment shall be credited to the revenue sharing payment thereafter due from Concessionaire.

Any breach of this condition for the revenue sharing fee and payment shall be a material breach of this Concession Agreement.”

Section V.A.4 (“Proposed Revenue Sharing Payment”) of the RFP states:

“The minimum annual revenue sharing payment for this concession per calendar year will be set by the revenue sharing payments specified by the proposer in the Pro Forma section of the selected proposal. If the minimum annual revenue sharing payment is not met by December 31 of each calendar year, the difference between the actual revenue sharing payments received by the City of Los Angeles and the minimum annual revenue sharing payment for the preceding year will be due to the City of Los Angeles by January 15 for the preceding year, pro-rated as necessary of the first year of operation, or fractional part thereof.”

The proposed Revised Agreement will incorporate both contract language changes recommended by the City Attorney and described herein, to Section 6 (“Revenue Sharing Fee and Payment”) of the Proposed Agreement with LA Tennis.

The Department notified LA Tennis via written correspondence dated January 15, 2013 about the need for the contract language changes to Section 6 (“Revenue Sharing Fee and Payment”) incorporated in the proposed Revised Agreement. The letter asked LA Tennis to submit a signed statement indicating acceptance of the revised terms and conditions as indicated in the letter.

The Department is in receipt of a signed statement dated February 12, 2013 from LA Tennis indicating acceptance of the terms and conditions of the letter.

REPORT OF GENERAL MANAGER

PG. 4

NO. 13-098

Upon the approval of the Board Report, the Revised Agreement will be transmitted to the Mayor's Office in accordance with Executive Directive No. 3 and concurrently to the City Attorney for review and approval as to form.

FISCAL IMPACT STATEMENT:

During the initial five-year term of the concession agreement, it is expected that based on the concession's rent history, a minimum of \$289,408.10 will be paid in rent to the Department. Of that amount, \$260,467.29 will be deposited in the Department's General Fund and \$28,940.81 will be deposited into the Concession Improvement Account (Fund 302, Department 89, Account 070K).

Rescission of the Proposed Agreement and approval of the Revised Agreement which restores the minimum annual revenue sharing payment requirement will guarantee a minimum of \$228,618.11 in rent payments over the initial five years of the concession agreement as stated in the proposer's Pro Forma Financial Statement. Of that amount, \$205,756.29 will be deposited into the Department's General Fund and \$22,861.81 will be deposited into the Concession Improvement Account (Fund 302, Department 89, Account 070K).

Report prepared by Mark Stipanovich, Management Analyst II, Concessions Unit, Finance Division.