



Council Communication

Office of the City Manager

Date:	December 17, 2012
Agenda Item No.	55
Roll Call No.	<u>12-1977</u>
Communication No.	<u>12-633</u>
Submitted by:	Allen McKinley, Deputy City Manager; Benjamin R. Page, Director of Park and Recreation

AGENDA HEADING:

Approving settlement agreement and amendment to management agreement with C Corporation for Bright Grandview and Waveland Golf Courses.

SYNOPSIS:

Approving settlement agreement and amendment to management agreement with C Corporation for Bright Grandview and Waveland Golf Courses. Since the commencement of the management agreement with C Corporation both parties have identified several items that need clarified as well as amended in the agreement.

FISCAL IMPACT:

Amount: \$279,850.84

Funding Source: FY2013 Operating Budget, Park and Recreation, Golf Contracted Operations EN201 PKS010700, page 193

ADDITIONAL INFORMATION:

On December 22, 2008, by Roll Call No. 08-2220, the City Council approved the Golf Request for Proposal (RFP) Evaluation and Selection Committee's and Park and Recreation Board's recommendations to authorize the City Manager to negotiate and execute a contract with C Corporation, (Jeff Chiodo, president) for the management of Grandview and Waveland Golf Courses effective January 15, 2010. The term of the approved agreement is from January 15, 2010 to January 15, 2019 and will automatically renew for up to two, 4 year renewal terms.

On March 2, 2009, the City entered into a management agreement with C Corporation to operate Grandview and Waveland Golf Courses.

Since the commencement of the management agreement on January 15, 2010, C Corporation has been managing Bright Grandview and Waveland golf courses. While in this capacity for the past three (3) golf seasons, C Corporation has had the opportunity to better understand the clientele and the needs of each golf course. C Corporation was required to invest \$127,500 in clubhouse equipment as part of the contract. C Corporation has reported over \$200,000 in equipment purchases. The following items are being proposed for an amendment as well as a settlement for business interruptions credits for 2010, 2011 and 2012 related to the construction of the Bright Grandview clubhouse facility.

Business Interruption Credit

The current management agreement provided C Corporation a credit against the annual consideration to be paid to the City to compensate for loss of use of the clubhouse at Bright Grandview golf course. It was not anticipated that, and the management agreement did not include any terms to provide a credit for, any other type of adjustment to annual payments to the City if other significant disruptions in the use of facilities during construction of the Bright Grandview Clubhouse occurred. However due to an evolving project resulting in a superior clubhouse, the number of parking spaces was significantly reduced (which was not anticipated at the time of the agreement), and the number 9 green sustained some damage and was not in use for some time. C Corporation alleges that these two events resulted in reduced play and revenues at Bright Grandview. C Corporation initially sought a business interruption credit of about \$370,000. City staff reviewed actual rounds played and the associated revenues generated over the prior four years and proposed a credit of \$233,000. After extensive negotiations both parties have agreed to terms on the following proposed "business interruption" credits as a settlement of C Corporation's allegations regarding the loss of play and revenues during and following construction of the Bright Grandview Clubhouse and other course improvements:

For the alleged loss of number 9 green in 2010: \$29,850.84

For the alleged loss of food, beverage, and merchandise sales due to clubhouse construction: \$18,420.52

For the alleged loss of the clubhouse and significant parking restrictions due to new construction:
\$231,579.48

Other terms included in the amendment are:

C Corporation agrees to release the City from further liability that is construction related regarding the #9 green and Tee-Box #1 and for construction to the clubhouse for those issues known to C Corporation prior to January 1, 2013. Damages related to defective design, materials or construction of the clubhouse, and a few specified clubhouse items relating to repair, maintenance and operational training of HVAC systems, are also excluded from the release. In the event of a disagreement concerning whether a future matter is related to defective design, materials, or construction or is C Corporation's responsibility as "wear and tear", the City will retain an independent construction professional to make such determination and the parties agree to abide by his/her decision. Nothing herein changes C Corporation's responsibilities for replacement, repair or maintenance pursuant to property insurance coverage's.

Equipment Payment

The Management Agreement is amended by extending the payment in full date for equipment purchased from the City by C Corporation from June 1, 2012 for two equal installments of \$39,520.00 on July 15, 2013, and on July 15, 2014.

Payments

C Corporation has agreed to make twice a year payments to the City, rather than the currently required annual payments to the City. In consideration of this increased payment schedule, the requirement of a performance bond is removed.

Depreciation Schedule

C Corporation and the City will agree to use an IRS depreciation schedule for capital improvement projects and all other future improvements which begin after January 1, 2013. Additionally, the parties will agree to the depreciation schedule prior to commencement of the improvement.

Capital Improvements

As a part of the settlement agreement and amendment, the following improvement projects will be completed by C Corporation at Bright Grandview Golf Course:

- Construction of a Practice Green at an estimated cost of \$60,000 to be completed by no later than December 31, 2013.
- #9 Tee-Box Area Enlargement at an estimated cost of \$15,000 to be completed by no later than December 31, 2015.
- Repair of #9 Green at an estimated cost of \$35,000 to be initiated by no later than January 1, 2013 and completed on a timely schedule as determined by normal industry standards.
- The requirement to build a new maintenance facility valued at \$250,000 will be deleted for Bright Grandview Golf Course and will be replaced with a requirement that the current Maintenance Facility be renovated at an estimated cost of \$140,000, with the work to be started by December 31, 2014.
- Additionally, the capital improvement projects described in original Management Agreement may be changed by written addendum to the Agreement approved and executed by the City Manager, in his sole discretion, if such change in the Project(s) will not result in a reduction in the combined total of the estimated costs for both the Bright Grandview and Waveland Golf Courses. In addition, the City Manager may approve a change in the date of implementation for projects by written addendum to the Agreement, as long as the date of initiation of a project shall be no later than January 1, 2014. The City Manager's approval is subject to the review and recommendation of all applicable City boards and commissions, including the Park and Recreation Board, the Park and Recreation Board Golf Subcommittee, and the Access Advisory Board.

ADA Golf Carts

The Amendment also specifies that C Corporation will continue to offer the City-owned Americans with Disabilities Act (ADA) compliant golf carts at the same prices as the other golf carts offered at the Golf Courses and that the City will continue to provide the maintenance for, and receive all revenues generated from, rental of the ADA golf carts. C Corporation will be responsible for marketing the availability of the Golf Carts on the Golf Course websites, on-site and through all other media used by C Corporation to market the golf courses and their facilities.

In conclusion, other than the above described "business interruption" credits listed above, the financial payment to the City from C Corporation is not changing. C Corporation continues to pay the City an amount not to exceed 10% of gross revenues, based on an index factor (percentage difference) of gross revenues from Bright Grandview compared to gross revenues from Blank Golf Course (example: if Blank generates \$1,000,000 in gross revenues and Bright Grandview generates \$850,000, then the City would receive $(850,000/1,000,000)$ 8.5% of gross revenues from the Bright Grandview golf operations), and an amount not less than 15% of gross revenues from Waveland Golf Course annually. Gross revenues do not include tax. Additionally, C Corporation is still required to provide a capital investment of \$1,097,500 to the two courses over ten-years. Over the past ten years (prior to the start of the agreement on January 15, 2010) the City funded \$425,550 in capital improvements.

PREVIOUS COUNCIL ACTION(S):

Date: December 22, 2008

Roll Call Number: 08-2220

Action: [Accepting](#) proposal from C Corporation for the management of Grandview and Waveland Municipal Golf Courses, and authorizing the City Manager to negotiate an agreement. ([Council Communication No. 08-753](#)) Moved by Meyer to include in the contract early termination provisions for both parties, with the City's right to terminate early if C Corporation does not meet their Capital Improvement obligations. Motion Carried 5-1-1. Nays: Mahaffey Pass: Vlassis

Date: March 9, 2009

Roll Call Number: 09-431

Action: Exception to the procurement ordinance RFP process for good cause and approving maintenance agreement with C Corporation to maintain Grandview and Waveland Golf Courses. (Council Communication No. 09-155) Moved by Meyer to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Park and Recreation Board

Date: December 9, 2008

Resolution Number: 08-109

Action: On recommendation of the Golf RFP Selection Review committee to negotiate an agreement with C-CORPORATION (Jeff Chiodo, President) for the management of Grandview and Waveland Golf courses. Motion carried 8-2.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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