

Memo



Date: July 6, 2010
File: 1140-51
To: City Manager
From: Manager, Property Management
Subject: Gyro Beach Paddleboat Concession Agreement - Gyro Beach Watersports
Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approve the City entering into a Concession Agreement, in the form attached to the Report of the Manager, Property Management dated July 6, 2010, between the City of Kelowna and Gyro Beach Watersports to provide exclusive concession and paddleboat services to City-owned property for a term of three (3) years from May 15, 2010 to September 15, 2012 at a rate of \$5,100 per term and renewal of two (2) further one (1) year terms at the sole discretion of the City;

AND THAT the Director, Real Estate & Building Services be authorized to execute the Concession Agreement.

Purpose:

To enter into an exclusive Concession Agreement for concession and paddleboat services at Gyro Beach Park.

Background:

The City entered into a three (3) year contract, with two (2) further one (1) year renewals for mobile concession services in April, 2005. Both renewal terms were granted and the contract expired in September, 2009.

The City issued a new Request for Proposals (RFP) to provide, equip and operate paddleboat concession services at Gyro Beach Park for a three (3) term for the period May 15th to September 15th annually. Two (2) further one (1) year renewals will be granted at the sole discretion of the City.

Two proposals were received pursuant to the RFP and judged on criteria of relevant experience and qualifications, rental items available, overall proposal for a service oriented venture, and best value to the City. Gyro Beach Watersports was the successful bidder.

Considerations not applicable to this report:

Internal Circulations:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

A handwritten signature in the bottom right corner of the page.

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:


External Agency/Public Comments:

Communications Considerations:

Alternate Recommendation:

In light of the above, the Property Management branch of the Real Estate & Building Services department request Council's support of this matter.

Submitted by:



Ron Forbes, Manager
Property Management

Approved for inclusion:



Doug Gilchrist, Director, Real Estate & Building Services

REVENUE AGREEMENT

Reference Gyro Beach Paddleboat Concession 2010

THIS AGREEMENT made the 27th day of April 2010-04-26

BETWEEN

City of Kelowna

1435 Water Street

Kelowna, BC V1Y 1J4

(hereinafter called the "City")

AND:

Gyro Beach Watersports

5134 Horn Crt,

Kelowna ,BC, V1W 4Y6

(hereinafter called the "Tenant")

WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the City hereby demises and leases unto the Tenant the premises hereinafter described all on the terms conditions and covenants as hereinafter set forth.

1.01 THE PREMISES. The Premises hereby leased comprise those lands and buildings as described in Schedule "A" the said lands and buildings are hereinafter referred to as the "Premises"

2.01 TERM OF THE LEASE. To have and to hold the said Premises for three seasons as follows:

May 20 through September 15, 2010; and

May 15 through September 15, 2011; and

May 15 through September 15, 2012.

With and option to renew as outlined in Article 3.02 of this agreement

3.01 RENT. Yielding and paying to the City rental for the Premises for the total term the sum of

2010 – 2012 season

May 15 - \$1,000

June 15 - \$1,000

July 15 - \$1,000

August 15 - \$2,100

- 3.02 RENEWAL OF TERM. The lease may be renewed for one (1) – two (2) year term at the sole option and discretion of the City but subject to:
- (a) The extending agreement being duly executed by the parties prior to November 1, 2012
 - (b) Retention of the terms and conditions of the original lease; and
 - (c) Such retention period will be negotiated at the sole option of the City on the basis that the rate schedule for the option year will not be less than the greater of either 2010, 2011 or 2012
- 4.00 TENANT'S COVENANTS. The Tenant covenants with the City;
- 4.01 RENT. To pay rent.
- 4.02 TAXES. That it will pay promptly as the same becomes due all rates, taxes, property taxes and assessments, of whatsoever description, that may at any time during the existence of these Presents be lawfully imposed, or become due and payable upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 4.03 BUSINESS LICENCES AND PERMITS. That it will procure and maintain, at the cost and expense of the tenant, such licences, permits or approvals from any Federal, Provincial, Municipal or other Government authorities, and such private permits as may be necessary to enable the Tenant to furnish the services and conduct the operations provided for in this Agreement.
- 4.04 ALL UTILITIES. That it will pay promptly as the same becomes due all other utility rates, charges and assessments, of whatsoever description, that may at any time during the existence of these Presents be lawfully imposed, or become due and payable, upon, or in respect of the business of the Tenant, the said leased premises and the operations of the Tenant hereunder, or any part thereof.
- 4.05 REPAIR. To repair, save and except only damage by fire, lightning, tempest or other casualty; to permit the City, its agents or employees, to enter and view the state of repair, to repair accordingly to notice in writing and to leave the premises in good repair, all repairs to be made in a first class workmanlike manner and to the approval of the City.
- 4.06 NUISANCE AND NEGLIGENCE. Not to do, suffer or permit any act which may in any manner, directly or indirectly, cause injury or damage to the premises or to any fixtures appurtenances thereof or which may be or become a nuisance to or interference with any one who occupies or has access to any part of the premises or which may, render the Premises or any part thereof less desirable or injure the reputation thereof.
- 4.07 ASSIGNMENT. The Tenant shall not assign or sub-license in whole or in part without the City's prior consent in writing, which consent may be withheld without reason. The Tenant also agrees to reimburse the City for all costs that it may incur to effect any assignment or sub-licence agreement at the Tenant's request. The minimum amount for such assignment shall be \$500.00

- 4.08 ABIDE BY LAWS. To abide by and comply with at its own expense all laws, rules, and regulations of every authority which in any manner relates to or affects the business or profession of the Tenant or the use of the Premises by the Tenant and to save harmless the City from all costs, charges or damages to which the City may be put or suffer by reason of any breach by the Tenant of any such law, rule or regulation.
- 4.09 INSURANCE. The Tenant shall, without limiting its obligations or liabilities under this Agreement, procure and maintain, at its own expense and cost, the insurance policies listed in Schedule "B" attached to this agreement. The insurance policies shall be maintained continuously for the term of the lease or such further period as may be specified in Schedule "B"
- 4.10 NOT TO VOID INSURANCE. Not to do or permit anything to be done which would render any other policy of insurance on the Premises or any part thereof void or voidable or which would cause an increase in the insurance premiums. In the event that the Tenant does anything that would cause an increase in the insurance premiums on the Premises, the Tenant shall pay to the City that amount which represents the increase in the insurance premium by virtue of the Tenant's use or occupation of the Premises.
- 4.11 RULES AND REGULATIONS. That the Tenant and its agents and employees and all persons visiting or doing business with the Tenant shall comply strictly with such reasonable rules and regulations as the City may from time to time adopt, and of which written notice shall have been given to the Tenant. The rules and regulations as aforesaid shall be deemed to be incorporated into and form part of this agreement.
- 4.12 CLEANLINESS. Not to permit the Premises to become untidy, unsightly or hazardous or permit unreasonable quantities of waste or refuse to accumulate in the Premises, including clean-up of litter within a 30 meter radius of the Premises, to the satisfaction of the City. The Tenant shall be totally responsible for the removal and disposal garbage from the identified containers and supply and insert plastic liner bags in these containers at the end of each business day or more frequently as business dictates. In no case shall the garbage containers be allowed to overflow, become unsanitary or create noxious odours, daily clean-up of debris and garbage (and removal from site) within the concession operations (30 meter) and the immediate surrounding area.
- 4.13 USE OF PREMISES. Not to use the Premises for any purpose other than the operation of a paddle boat concession or such other activity as may be properly authorized, in writing, by the City and to operate to the satisfaction of the City and in accordance with any conditions or requirements as may from time to time be detailed by the City.
- 4.14 PROVISION OF EQUIPMENT. Tenant to provide at a minimum all the equipment listed in the "City of Kelowna RFP Gyro Beach Paddle Boat Concession document submitted by Dave Manual dated 4/13/2010, "Schedule C" at the Tenant's expense, all equipment required and to install the same to the specifications and with the approval of the City. The Tenant shall ensure that all equipment is properly maintained and in good working order prior to renting it to a customer.
- 4.15 CONDUCT OF BUSINESS. Recognizing that it is in the best interests of the City and the Tenant that the Tenant should have exclusive use of the Premises only for the purpose described in Section 4.13 above, the Tenant agrees with the City as follows;

- (a) To use only professionally fabricated signs on the Premises which have been approved by the City, as to quality, content and location;
 - (b) To use its best efforts to operate an attractive and efficient concession which will reflect positively upon the image of the City;
 - (c) Not to establish or erect any structure on the Premises except those approved in writing by the City;
 - (d) Ensure that no person too young to operate any of the Equipment are permitted to used them, and that no persons operating the equipment will do so in an unsafe manner or endanger persons swimming at any beach.
 - (e) To operate the Concession between 10 am and 8 pm 7 days per week weather permitting.
 - (f) Not to sell food or beverages.
- 4.16 NO OTHER AGREEMENT. No verbal agreement or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.
- 5.00 CITY 'S COVENANTS. The City covenants with the Tenant;
- 5.01 QUIET ENJOYMENT. For quiet enjoyment of the Premises.
- 5.02 PARKING. The City will allow the Contractor the free use of one (1) parking stall at the Gyro Beach parking lot.
- 6.00 PROVIDED ALWAYS AND IT IS HEREBY AGREED AS FOLLOWS;
- 6.01 PROVISO FOR RE-ENTRY ON DEFAULT. If and whenever the rent is not paid in full when due or in case of breach of, or non-observance or non-performance by the Tenant of any of the provisions of this Agreement, and if the default continues for TEN (10) days after written notice thereof to the Tenant, or if the Premises are vacated or remain unoccupied for Ten (1) days or if the term shall be taken in execution or attachment for any cause whatever, then, in every such case, the City, in addition to any other remedy now or hereafter provided by law may, at its option, cancel this Agreement and re-enter and take possession of the premises or any part thereof by force if necessary, without any previous notice of intention to re-enter and may remove all persons and property therefrom and may use such force and assistance in making such removal as the City may deem advisable and such re-entry shall not operate as a waiver or satisfaction in whole or in part of any right, claim, or demand arising out of or connected with any breach or violation by the Tenant of any covenant or agreement on its part to be performed.
- 6.02 ALTERATIONS BY TENANT. The Tenant agrees not to make any alterations, additions or improvements in or to the Premises without obtaining the City's prior written consent and all such work shall be done only by contractor's or tradesmen or mechanics approved in writing by the City at the Tenant's sole expense and at such time, in such manner as the city may approve.
- 6.03 REMOVAL OF ALTERATIONS BY TENANT. If any alterations, additions or improvements are made to the premises by the Tenant, it shall, on written request of the City, restore the

Premises to their condition at the commencement of the term of this Agreement not later than Fifteen (15) days prior to the termination of this Agreement of, if the City would prefer that any alterations, additions and improvements remain, the city may require the Tenant to restore the premises to such extent as the City may deem expedient although retaining as far as possible the alteration, additions and improvements, without any compensation to the Tenant.

- 6.04 REMOVAL OF TENANTS PROPERTY. All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant in the premises at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this Agreement, provided that the Tenant, at its own expense, shall repair any damage to the Premises or to the building caused by such removal or by the original installation.
- 6.05 NO WARRANTY OF SERVICES BY CITY. The City does not warrant that any service or facility provided by it in accordance with the provisions of this Agreement will be free from interruption caused by any cause beyond the City's reasonable care and control. No such interruption shall be deemed to be a disturbance of the Tenant's enjoyment of the Premises nor render the City liable for injury to or in damages to the Tenant nor relieve the parties from their obligations under this Agreement. The City shall without delay take all reasonable steps to remove the cause of any such interruption.
- 6.06 CITY NOT LIABLE FOR INTERFERENCE. The City shall not be liable to the Tenant for any interference or inconvenience cause by any labour dispute or by damage to the Premises or by repairs, alterations, improvements or construction in or adjacent to the Premises, or by failure or interruption of any supply of any utility.
- 6.07 CITY NOT LIABLE FOR INJURY TO TENANT. The City shall not be liable for any injury or damage to the Tenant, his agents, employees, customers or invitees as to any of their property while in the Premises or the building, regardless of the cause of such injury or damage, except such injury or damage which may be caused by the negligence of the City, its agents, servants or employees.
- 6.08 HOLD HARMLESS AND IDEMNIFICATION. The Tenant shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the City, its elected officials, officers employees and agents (the Indemnitees) included but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the indemnities.

The Tenant shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Agreement, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the indemnities.

- 6.09 NO REPRESENTATION. The Tenant agrees that is has leased the Premises after examining the same and that no representations, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the City unless it is made in writing and signed on behalf of the City.

- 6.10 ABATEMENT OF RENT. If the Premises are damaged by any cause for which the City is responsible by virtue of some act or neglect by the City, his servants or agents, then the rent shall be abated in whole or in part according to the portion of the Premises which is not usable by the Tenant until such damage is repaired.
- 6.11 DAMAGE OR DESTRUCTION OF PREMISES. Subject to the provisions of Article 6.12, if the Premises shall be damaged by fire or other casualty against which the City is insured, the damage to the premises shall be repaired by the City with reasonable diligence at its expense except that repairs to alterations, additions or improvements made by the Tenant shall be performed by the city at the expense of the Tenant and the Tenant shall, at its own expense, make all repairs and replacements of property which belongs to the Tenant.
- 6.12 PREMISES RENDERED UNTENABLE. If the Premises are rendered untenable by fire or other casualty against which the City is insured and if the City shall decide not to restore the same, the City shall within ninety (90) days after such fire or other casualty, give to the Tenant a notice in writing of such decision and thereupon the term of this Agreement shall expire forthwith and the Tenant shall vacate the Premises and surrender the same to the City. Upon the termination of this Agreement under the provisions of this Article, the Tenant's liability for rent shall cease as of the day following the fire or other casualty.
- 6.13 RIGHT OF ENTRY TO MAKE REPAIRS. The Tenant agrees that the City shall have the right to enter the premises at all reasonable times to examine the same and make such repairs, alterations, improvements or additions as the City may deem necessary or desirable or as the City may be required to make by law or in order to repair and maintain the Premises. The City shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations, improvements or additions are being made by reason of interruption of the business of the Tenant. The City will exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operations.
- 6.14 DISTRAINT. If the City levies distress against the goods and chattels of the Tenant, such force as may be deemed necessary for the purpose and for gaining admission to the Premises may be used without the City being liable to any action in respect thereof or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the City, its employees and agents from all actions, proceedings, claims or demands whatsoever for or on account or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.
- 6.15 COSTS TO RECOVER OF RENT. If the City shall consider it desirable to retain the services of a lawyer or any other person reasonably necessary for the purpose of assisting the City in enforcing any of its rights hereunder in the event of default on the part of the Tenant, it shall be entitled to collect from the Tenant the cost of all such services as if the same were rent.
- 6.16 INTEREST ADDED TO COSTS OF DEFAULT. Without prejudice to any other remedy of the City, and money payable by the Tenant to the City hereunder, other than the rent referred to in Article 3 of this Agreement, shall be deemed to be rent and shall be subject to "Interest Penalty on Overdue Rent" as outlined in Article 6.20 of this Agreement from the date due or the date the City shall have paid out the same, and shall be paid as additional rent and shall be collectable as rent and unless otherwise provided in this Agreement, shall be payable with the next ensuing instalment of rent.

- 6.17 NO WAIVER. The failure of the City to insist upon strict performance of any covenant or condition in this Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express waiver in writing. The acceptance of any rent or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the City of any right, title or interest of such person as a sub-lessee, assignee, transferee or otherwise in the place and stead of the Tenant.
- 6.18 OVERHOLDING. If the Tenant shall continue to occupy the Premises after the expiration of the term hereby granted and the City shall accept rent, the new tenancy thereby created shall be deemed to be a monthly tenancy and shall be subject to the covenants and conditions contained in this Agreement insofar as the same are applicable to a tenancy from month to month save and except that the rental payable shall be as determined by the City.
- 6.19 ENUREMENT. This Agreement and everything herein contained shall enure to the benefit and be binding upon the parties and their heirs, executors, administrators, successors and permitted assigns. Wherever the singular or masculine is used the same shall be construed as meaning the plural or feminine or body corporate or politic as the context may require.
- 6.20 INTEREST PENALTY ON OVERDUE RENT. Without waiving any right of action of the City in event of late payment or default of payment of rents due herein, the Tenant shall pay a penalty of two percent (2%) per month or any portion thereof compounded monthly (26.82% per annum) effective from the day the amount is due. In order to reflect prevailing interest rates, the City may review and adjust the penalty rate from time to time.
- 6.21 SECURITY/PERFORMANCE DEPOSIT. The Tenant agrees to provide the City with a security/performance deposit in the amount of one thousand dollars (\$1,000.00) to be retained by the City during the term of this Agreement or until this Agreement is terminated, whichever event shall first occur which security/performance deposit shall be held by the landlord as security for the payment of any and all sums which the Tenant may become liable to pay to the City as a result of the breach of any covenant by the tenant or any damage done by the Tenant, its servants, agents or employees to the concession, and to ensure that the Tenant performs for the term of this agreement. The application of the security deposit and any or all accrued interest by the City to any obligation of the Tenant shall not constitute a waiver nor in any way defeat or affect the rights of the landlord as stipulated herein or any or all other rights and remedies which the City may have by law.
- 6.22 TERMINATION. The City shall have the right to terminate this Agreement in any of the following instances:
- a) In the event the Tenant fails to pay rent by the prescribed due dates;
 - b) In the event the Tenant shall be in breach of the provisions of this Agreement and not remedy same after seven (7) days notice in writing from the City to do so; or
 - c) In the event that the City may require the use, for whatever purpose, of said Premises after giving the Tenant ninety (90) days notice of the City's intention to cancel said agreement.

Upon termination of this agreement, the Tenant shall leave the Premises tidy and free of all impediments or equipment and shall peaceably surrender said Premises to the City.

6.23 SEVERABILITY. If any term or condition of this Lease or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Lease and the application of that term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and condition of this Lease shall be valid and enforced to the fullest extent permitted by law.

6.24 NOTICES - All notices provided hereunder to be given in writing shall be deemed given when hereby delivered to or mailed and addressed to the other party as follows;

If to the City;

The Real Estate and Building Services Department, Attention Property Manager
City of Kelowna
1435 Water Street
Kelowna, B.C. V1Y 1J4

If to the Tenant

Dave Manual. *RJ*
5134 Horn Crt,
Kelowna ,BC, V1W 4Y6

6.25 Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given (i) on the date of receipt if delivered personally, (ii) five (5) days after posting if transmitted by mail, or (iii) on the date of transmission if transmitted by fax (provided the sending machine gives confirmation that all pages have been transmitted to the fax number of the receiver without error), whichever shall be first.

IN WITNESS WHEREOF the parties hereto, by their respective representatives duly authorized in that behalf, have caused this Agreement to be executed on the day and year indicated below.

Accepted on behalf of

Accepted on behalf of the

Contractor:

CITY OF KELOWNA:

DAVID MANUEL

R. FORBES

Per: _____

Per: _____

Director, Real Estate & Building Services

Date Executed: _____

MAY 21 / 2010

"Schedule A"

Premises



**SCHEDULE B
CERTIFICATE OF INSURANCE**



This Certificate is issued to: **The City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1 J4**

Insured

Name:	
Address:	

Broker

Name:	
Address:	

Location and nature of operation or contract to which this Certificate applies:

Gyro Beach Paddleboat Concession – Gyro Beach, Kelowna BC

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ 5,000,000 Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.**
2. **The City of Kelowna is named as an Additional Insured.**
3. **30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**

Print Name

Title

Company (Insurer or Broker)

Signature of Authorized Signatory

Date

City of Kelowna RFP Gyro Beach Paddle Boat concession

Equipment list and pricing for beach rentals

Item	number of units	Rental Rates per 1/2 Hour	1 hour	Group rates (call in for all Group rates)
Paddle Trikes	8	\$ 16.00	\$ 28.00	
Paddle Boats	10	\$ 16.00	\$ 28.00	
Canoe	2	\$ 15.00	\$ 22.00	
our canoes are very wide and stable. The boats can hold 2-3 people plus gear				
Kayak (single)	2	n/a	\$ 18.00	
Kayak (Double)	2	n/a	\$ 22.00	
Row Boat	1	n/a	\$ 25.00	
Water Trampolines				
Small	3	\$ 10.00	\$ 18.00	
large	2			
Maximum 4 People Per Trampoline (Large)				
	4 per tramp	\$ 9.00 each		
	3 per tramp	\$ 12.00 each		
	2 per tramp	\$ 15.00 each		
	1 person	\$ 30.00 each		
			\$ 55.00	

USE REQUIRES
A LETTER OF
CONFIRMATION
FROM INSURANCE
PROVIDOR

ALL equipment comes with basic instruction and safety equipment (life jackets etc)