

South Portland City Council  
***Position Paper of the City Manager***

***Subject:***

**ORDER #197-16/17 – Award of Bid #31-17 to Chicago Dogs, of South Portland, ME, for the lease of the Willard Beach Concession Building. Passage requires majority vote.**

***Position:***

This item is brought forward to award a bid for the lease of the Willard Beach Concession Building. The bid was advertised, mailed and e-mailed to eight vendors. The City received one proposal. Chicago Dogs, of South Portland, ME, submitted a bid of \$2,758.03 for the 2017 season. This vendor has operated the concession for the last five years.

The lease is for the period of May 27, 2017 to September 4, 2017. Chicago Dogs may renew for four successive additional terms running from the Saturday of the Memorial Day holiday weekend until the conclusion of Labor Day of each year at a negotiated rental fee.

Kevin Adams, Director of Parks and Recreation, and Joseph Palmieri from Chicago Dogs, will be at Monday's meeting to answer any questions.

***Requested Action:***

Council passage of ORDER #197-16/17

  
\_\_\_\_\_  
City Manager

## MEMORANDUM

**To:** Scott Morelli, City Manager

**From:** Kevin Adams, Director of Parks, Recreation, and Waterfront

**Date:** May 8, 2017

**Re:** Award of Bid for Lease of Willard Beach Concession Stand

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**BACKGROUND:** Located inside the Beach House at Willard Beach is a concession stand. The City of South Portland's Parks, Recreation, and Waterfront Department oversees the operation of the Beach House. A concession stand has been in operation for many years at the site. The concession stand is equipped with fryolator, kitchen appliances, commercial grill, and exhaust hood.

The city leases the facility to a business with a food establishment license each season. For the past 4 seasons Chicago Dogs has operated out of the facility. The Lease agreement ended at the end of the 2016 season. The city distributed Request for Proposals on March 31, 2017 with all bid materials due and opened on April 26, 2017.

One bid was entered and it was once again Chicago Dogs. The City's Legal Counsel wrote a Lease Agreement for the facility with a lease term from May 27, 2017 – September 4, 2017, with the option to renew the lease for 4 successive additional terms. Chicago Dogs will pay the city \$2758.03 for the season, to lease the space.

**PROPOSALS:** The city has reviewed the Lease Agreement; it is complete and meets specifications. Chicago Dogs has been a reputable food establishment and has worked well with the city in the past with this endeavor.

**RECOMMENDATION:** It is recommended to award the bid and accept the Lease Agreement for Chicago Dogs to operate a food establishment at the Willard Beach facility.

I will attend the City Council meeting on May 15, 2017 to answer any questions.  
As will Joseph Palmieri, owner of Chicago Dogs.

Encl: Lease Agreement for Chicago Dogs to operate a food service at the Willard Beach Concession Stand



CITY OF SOUTH PORTLAND

PATRICIA A. SMITH  
Mayor

SCOTT T. MORELLI  
City Manager

EMILY F. SCULLY  
City Clerk

SALLY J. DAGGETT  
Jensen Baird Gardner & Henry

District One  
CLAUDE V.Z. MORGAN

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District Two  
PATRICIA A. SMITH

\_\_\_\_\_

District Three  
EBEN ROSE

\_\_\_\_\_

District Four  
LINDA C. COHEN

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District Five  
BRAD FOX

\_\_\_\_\_

At Large  
Maxine R. Beecher

\_\_\_\_\_

At Large  
SUSAN J. HENDERSON

**IN CITY COUNCIL  
ORDER #197-16/17**

**ORDERED**, that award of Bid #31-17 be and hereby is made to Chicago Dogs, of South Portland, ME, for the lease of Willard Beach Concession from May 27, 2017 to September 4, 2017 for a rental fee of two thousand seven hundred fifty-eight dollars and three cents (\$2,758.03).

**BE IT FURTHER ORDERED**, that commencing in 2017, Chicago Dogs may renew this Lease Agreement for four successive additional terms running from the Saturday of the Memorial Day holiday weekend until the conclusion of Labor Day of each year at a rental fee to be negotiated.

Said amount shall be deposited in the Rent/Leases Account #14000032-432019.

Fiscal Note: \$2,758.03 Revenue

Dated: May 15, 2017

# LEASE AGREEMENT

**LEASE AGREEMENT** ("Lease") made this \_\_\_\_ day of May, 2017, by and between the **CITY OF SOUTH PORTLAND**, a Maine municipal corporation situated in Cumberland County, Maine ("**City**"), and **DIAMOND DOGS "L.L.C." d/b/a Chicago Dogs ("Concession Operator")**, a Maine limited liability company with a mailing address of 35 Jennies Court, South Portland, ME 04106.

**WHEREAS**, in consideration of the mutual conditions and covenants contained herein, the parties agree as follows:

1. **Leased premises.** The City leases to the Concession Operator and the Concession Operator does hereby rent and take as tenant, subject to the terms and conditions contained herein, the refreshment and concession stand located on the real property commonly known as Willard Beach (hereafter "**leased premises**"), together with the right to use in common with others such other portions of Willard Beach as are reasonably required by the Concession Operator to provide access to the stand for the uses herein prescribed. The City makes no representation as to its title to the leased premises or to Willard Beach.
2. **Products and services.** Subject to the terms and conditions contained herein, the City grants to the Concession Operator during the term of this Lease an exclusive right to sell to the public at said refreshment and concession stand non-alcoholic beverages, food items, notions, souvenirs, and such other products and services as shall first be approved in writing by the City's City Manager or his designee (hereafter "City Manager"), and the Concession Operator agrees to provide all such products and services under the terms and conditions contained herein. The City acknowledges that the Concession Operator has submitted to the City Manager a proposed price list of all products and services to be sold at said stand. For any renewal term as herein provided, the Concession Operator shall submit this proposed price list on or before the April 30 which precedes the renewal term. All such products and services shall be of fair or better quality and reasonably priced, provided, however, that no product or service may be sold under this Lease until its price is first approved in writing by the City Manager.

3. **Lease term.** The initial term of this lease shall be from May 27, 2017 through and including September 4, 2017. The Concession Operator may renew this Lease for four (4) successive additional terms running from the Saturday of the Memorial Day holiday weekend until the conclusion of Labor Day of each year, commencing in 2018, at a rent to be negotiated, but subject to all other terms and conditions herein, provided that for each renewal term the Concession Operator notifies the City Manager in writing of its election to renew no later than the December 31 that precedes the renewal term and is not in default of any provision of this Lease or renewal thereof, and provided further that the parties agree in writing on a rent for the renewal term no later than the January 31 that precedes the renewal term.
4. **Use and maintenance of premises.** The Concession Operator may use the leased premises only for the sale of products and services under the provisions of paragraph 2 above. The Concession Operator shall keep and maintain the leased premises in good clean order and condition, and shall not cause or permit any portion of the leased premises or of Willard Beach to become unsightly or offensive due to litter, garbage, or otherwise. Rubbish disposal associated with the Concession shall be the responsibility of the Concession Operator. The Concession Operator shall remove all property and personal belongings of the Concession Operator and return keys for the leased premises to the City Manager on or before September 30 of the then current lease year. The public restrooms adjoining the leased premises shall be maintained by the City.
5. **Rent.** The Concession Operator shall pay the City as rent the amount of Two Thousand Seven Hundred and Fifty Eight Dollars and Three Cents (\$2,758.03), payable in one installment no later than July 15 of the then current lease term. Without prejudice to any other remedy it may seek for nonpayment or lack of timely payment, the City may designate as additional rent due and payable, by thirty days after the installment date, interest on the unpaid balance at a rate of eighteen percent (18%) per annum. In addition, the City shall have a lien upon the Concession Operator's equipment to secure said amount. No such equipment may be removed from the leased premises until said amount and accrued interest, if any, have been paid in full by the Concession Operator.
6. **Hours of operation.** The refreshment and concession stand shall be open for business each day of the lease or renewal term, except in the event of inclement weather. The stand shall open no later

than 11:00 a.m. and close no earlier than 4:00 p.m. In the event of noncompliance with this provision, the City shall impose a penalty of \$250 for each day the Concession Operator fails to comply with the hours of operation set forth herein. Said penalty shall be assessed by written notice to the Concession Operator identifying the date(s) of noncompliance, and said penalty shall be paid by the Concession Operator to the City within fourteen (14) days of the date of such written notice. Furthermore, if there are three (3) separate days of failure to comply with the hours of operation set forth herein within any lease term, the City shall have the right to terminate the Lease at the end of the then current lease term.

7. **Fixtures, equipment, alterations and signs.** There is included in this Lease all fixtures and equipment contained within the leased premises as of the commencement of the Lease or any renewal term. The Concession Operator shall maintain these fixtures and equipment in good working condition and repair, and shall install and maintain all additional fixtures and equipment it desires to operate said concession stand. No fixture may be installed, nor may any alteration to said stand or the leased premises be made, without the prior written approval of the City Manager. Title to all fixtures and equipment installed by the Concession Operator shall rest in the City if not removed within ten (10) days after expiration or other termination of this Lease or renewal thereof; provided, however, no fixtures or equipment may be removed if the City Manager determines that such removal will damage property of the City. All signs must first be approved by the City Manager or his/her designee.
8. **Liens and attachments.** The Concession Operator shall not suffer or permit any lien or attachment, including mechanics or judicial lien, to be placed against the leased premises or any portion thereof.
9. **Utilities.** All applications and connections for utility services on the leased premises shall be made in the name of the Concession Operator only, and the Concession Operator shall be solely liable for all utility charges as they become due.
10. **Public Service.** The Concession Operator shall exercise its rights granted hereunder with the utmost regard for maintaining good public relations and the highest standards of business ethics. It shall be the sole and exclusive province of the City Manager to determine whether the obligation imposed upon the Concession Operator by this paragraph has been satisfied.

11. **Employees.** The Concession Operator shall provide and compensate all employees necessary to operate said refreshment and concession stand. All employees shall be courteous to the public, neatly attired and groomed, and clearly identified by uniform, badge, or otherwise as employees of the Concession Operator. Neither the Concession Operator, nor its employees, shall be deemed to be an employee or agent of the City for any purpose whatsoever. The Concession Operator is responsible for assuring that a competent person is in charge of said stand at all times it is open for business.
12. **Alcohol prohibited.** No alcoholic beverages shall be sold or used at any time on the leased premises.
13. **Compliance with applicable law.** The Concession Operator shall comply with all federal, State and local laws and ordinances during the lease term. The Concession Operator agrees to obtain and maintain all necessary licenses and/or permits at its own cost, including, without limitation, a food and beverage license from the City Clerk, and to promptly pay all taxes properly assessed against it with respect to the leased premises and its personal property thereon, notwithstanding the fact the premises are owned by the City. No taxes shall be assessed to the Concession Operator for real or personal property owned by the City.
14. **Non-discrimination.** The Concession Operator shall not discriminate in its employment practices or in its provision of products and services to the public on account of sex, race, color, creed, religion, national origin, age or in any other manner prohibited by law.
15. **Insurance.** The Concession Operator shall not commence work under this Agreement until he/she/it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

- (a) **Commercial General Liability** to include products and completed operations, and blanket contractual. The limits of liability shall be as follows:

Bodily Injury and Property Damage	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
Per Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Medical Payments	\$10,000

(b) **Business Automobile Liability**

The Concession Operator shall maintain business automobile liability insurance covering all owned, non-owned, leased, rented or hired automobiles (symbol 1). The limits of liability shall be as follows:

Bodily Injury and Property Damage	\$1,000,000
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Automobile physical damage coverage shall be at the option of the Concession Operator. The City shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile.

(c) **Workers' Compensation Insurance**

The Concession Operator shall maintain Workers' Compensation and Employers Liability in accordance with the laws and regulations of the State of Maine. The limits of liability provided shall be as follows:

Coverage A:	Statutory
Coverage B:	\$100,000/\$500,000/\$100,000

(d) **Certificates of Insurance** of the types and in the amounts required shall be delivered to the City prior to the commencement of any operations by the Concession Operator or any person or entity working at the direction or under control of the Concession Operator.

(e) The Certificate of Insurance and the policies of insurance shall include at least a ten (10) day notice to the City of cancellation, non-renewal or material change in coverage or form.

(f) It is a requirement that the City be named as an Additional Insured on the General Liability and Automobile Liability policies.

(g) **Waiver of Subrogation.** Payment of any claim or suit including any expenses incurred in connection therewith by the City, or any insurance company on behalf of the City shall not constitute a waiver of subrogation against the Concession Operator in the event that such claim or suit was caused by or contributed to as a result of the negligent acts of the Concession Operator.

**16. Indemnification.**

The Concession Operator shall and does hereby agree to indemnify, save harmless and defend the City from the payment of any sum or sums of money to any person whomsoever on account of claims or suits growing out of injuries to persons, including death, or damages to property, caused by the Concession Operator, his/her/its employees, agents or subcontractors or in any way attributable to the performance and execution of the operations herein contracted for, including (but without limiting the generality of the foregoing), all claims for service, labor performed, materials furnished, provisions and suppliers, injuries to persons or damage to property, liens, garnishments, attachments, claims, suits, costs, attorney's fees, costs of investigation and defense. It is the intention of this paragraph to hold the Concession Operator responsible for the payment of any and all claims, suits, or liens, of any nature character in any way attributable to or asserted against the



City, or the City and the Concession Operator, which the City may be required to pay. In the event the liability of the Concession Operator shall arise by reason of the sole negligence of the City and/or the sole negligence of the City's agents, servants or employees, then and only then, the Concession Operator shall not be liable under the provisions of this paragraph.

17. **Damage to or destruction of leased premises.** If all or any part of the leased premises is so damaged or destroyed by fire or other casualty without fault of the Concession Operator as to be unfit for use by the Concession Operator as provided herein, then the rent, or a fair and just proportion thereof, according to the nature and extent of the damages sustained, shall be suspended or abated until the premises are rebuilt and put in proper condition for use and occupation by the City; or this Lease shall, at the election of either the Concession Operator or the City, upon written notice to the other within fifteen (15) days after such damage or destruction, be terminated.
18. **Financial records.** The Concession Operator agrees to keep accurate records, books and accounts covering the operation of said refreshment and concession stand in a manner approved by the City Manager, and to make available for examination and audit by the City Manager said records, books and accounts at such time or times as the City Manager may reasonably request. A detailed statement of income and expenses shall be provided to the City Manager by the Concession Operator no later than September 30 of the then current lease year.
19. **Surrender of premises.** At the expiration or other termination of this Lease or renewal thereof, the Concession Operator shall deliver up and surrender to the City the leased premises, including all City-owned fixtures and equipment, in as good condition as existed at the commencement of the lease or renewal term, reasonable wear and tear excluded. The Concession Operator shall promptly deliver to the City Manager all keys to the leased premises on or before September 30 of the then current lease year.
20. **Default.** If the Concession Operator shall fail to pay any amount or installment called for by this Lease when due, or shall fail or neglect to perform any obligation imposed on it by this Lease or renewal thereof, then the City, in addition to any other rights or remedies it may have, provided herein or otherwise, shall have the right to re-enter the premises to remove all property therefrom and to store such property at the Concession Operator's expense. The Concession Operator shall be given written

notice of any such failure or neglect, and the City's right to re-enter hereunder shall not arise if, within three (3) days after delivery of the notice, the Concession Operator has made the required payment or has performed the required obligation (except no such grace period shall exist in the event the City Manager determines that the Concession Operator has not satisfied its obligation under paragraph 10 above). The City will not be deemed guilty of trespass or liable for loss or damage occasioned by exercise of its right of re-entry herein. No such re-entry shall be construed as a termination of this Lease or renewal thereof unless a written notice of such intention is given to the Concession Operator by the City, or unless the leased premises are re-leased to a new concession operator. All rights of the City which shall have accrued prior to such termination, including all rights relating to the condition of the leased premises, shall survive such termination. The Concession Operator shall also be liable for any reasonable attorney fees incurred by the City in enforcing any of its rights hereunder.

21. **Non-assignability.** The Concession Operator agrees that the rights granted herein are personal and non-assignable without the prior written consent of the City. The Concession Operator shall not assign, sublet, mortgage or otherwise encumber the leased premises, nor permit the premises to be used or occupied by others, without the prior written consent of the City.
22. **Waiver.** The waiver by the City of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance by the City of a payment shall not be deemed to be a waiver of any preceding breach by the Concession Operator of any term, covenant or condition of the Lease or renewal thereof, other than the failure of the Concession Operator to pay the particular payment so accepted.
23. **Notices.** Any notice, demand or request which may be or is required to be given pursuant to this Lease or renewal thereof shall be delivered in person or sent by United States certified mail, postage prepaid, (except that payments need not be sent by certified mail), and shall be addressed:

(a) To the City: City Manager  
City of South Portland  
25 Cottage Road  
South Portland, ME 04106

(b) To the Concession Operator: DIAMOND DOGS "L.L.C." d/b/a Chicago Dogs  
c/o Joe Palmieri  
35 Jennies Court  
South Portland, ME 04106

or at such other address as either party may from time to time designate by written notice.

24. **Amendment, Severability, Jurisdiction.** This Lease can be amended only by written consent of the City, acting by and through its City Manager. If any provision of this Lease is declared by a court to be void or unenforceable, the rest of the Lease continues to be valid and effective. This Lease is made and shall be construed under the laws of the State of Maine without regard to conflict of law rules. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any civil action shall be in Maine Superior Court (Cumberland County).

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals as of the date first above written.

CONCESSION OPERATOR –  
DIAMOND DOGS "L.L.C." d/b/a Chicago Dogs

\_\_\_\_\_  
By: Joseph Palmieri  
Its: Member/Manager, duly authorized

CITY OF SOUTH PORTLAND

\_\_\_\_\_  
By: Scott T. Morelli  
Its: City Manager, duly authorized