



City Council Meeting - Final

April 21, 2025
7:00 PM

-
- E. AGR2025-016** Approve an addendum to the amendment extending the term of the concession agreement with Gonna Fly Now, LLC until January 31, 2056, and authorize the mayor to execute all related documents.



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: AGR2025-016

Agenda Date: 4/21/2025

In Control: City Council

File Type: Agreement

Agenda Section:
Formal Business

Department: Administration

Agenda Title:

Approve an addendum to the amendment extending the term of the concession agreement with Gonna Fly Now, LLC until January 31, 2056, and authorize the mayor to execute all related documents.

Ward 3 Councilmember - Travis Lindley

ISSUE AND BACKGROUND:

The City of Smyrna has a concession agreement with Gonna Fly Now, LLC covering the operation of the Fox creek Golf Course on Windy Hill Road and Cobb County has a similar agreement with Gonna Fly Now, LLC covering the operation of the abutting Legacy Golf Course. The city recently approved an amendment to the concession agreement extending the term until January 31, 2056. The National Park service has requested that its standard Concession Agreement guidelines be incorporated into the Concession Agreement guidelines and this addendum does that.

RECOMMENDATION / REQUESTED ACTION:

Staff recommends approval of an addendum to the amendment extending the term of the concession agreement with Gonna Fly Now, LLC until January 31, 2056, and authorize the mayor to execute all related documents.



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**ADDENDUM TO SECOND AMENDMENT
TO CONCESSION AND FRANCHISE AGREEMENT**

THIS ADDENDUM TO SECOND AMENDMENT TO CONCESSION AND FRANCHISE AGREEMENT (“**Addendum**”) is attached to and made a part of that certain Second Amendment to Concession and Franchise Agreement (“**Second Amendment**”), dated _____, 2025, by and between The City of Smyrna, Georgia (“**City**”), and Gonna Fly Now, LLC, a Georgia limited liability company (herein, “**Concessionaire**” or “**Franchisee**”). The Agreement (as defined in the Second Amendment), as amended by the Second Amendment, is referred to herein as the “**Concession Agreement**.”

1. **Capitalized Terms:** Capitalized terms used in this Addendum shall have the meanings given to them in the Concession Agreement unless otherwise provided in this Addendum.

2. **Recitals:** The following recitals are included in the Concession Agreement:

Whereas, the City, owns certain land totaling 76.55 acres, obtained by the City from the United States of America (hereinafter referred to as the “USA”, as surplus property nearby Dobbins Airforce Base, and deeded to the City by the United States of America pursuant to Quitclaim Deed, dated July 28, 1977, and recorded at Cobb County, Georgia, Registry of Deeds/Clerks Office at Book 1802, Page 566 (as affected by Corrective Quitclaim Deed from the United States of America to the City, dated May 6, 1985, and recorded at Cobb County, Georgia, Registry of Deeds/Clerks Office at Book 3510, Page 551). Said Corrective Quitclaim Deed is attached and hereinafter referred to as **Exhibit B**; and

Whereas, a covenant of said Corrective Quitclaim Deed states “The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreation purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.”; and

Whereas, the National Park Service, Federal Lands to Parks Program is the designated representative of the Secretary of the Interior for the approval of concession agreements; and

Whereas, since 1984 the Premises have been utilized for public recreational purposes, including a public golf course and related uses, for the use and benefit of the general public, and the City and Concessionaire desire that the Premises shall continue to be used for public recreational purposes, including a public golf course and related uses, for the use and benefit of the general public; and

Whereas, the City is satisfied that provision of said services and facilities on the Premises is in the best interest of the City and of the general public; and

Whereas, the City and Concessionaire desire to enter into the Second Amendment in furtherance thereof.

3. **Use of Premises:** Concessionaire shall use, occupy and maintain the Premises in a business like, careful, clean and non-hazardous manner for the sole purpose of public recreational purposes, including a public golf course and related uses in accordance with all applicable terms and provisions of the Concession Agreement and as set forth in Exhibit B. Written approval by the City and written concurrence by the Secretary of the Interior or its delegated representative, NPS, shall be required for any other proposed use

in conjunction with or in addition to those uses specified above. The City has approved (i) the golf swing instruction on a portion of the Premises provided by GolfTEC and (ii) GolfTEC's teaching facility on a portion of the Premises. The Premises shall generally be open to the public during daylight hours (generally beginning at 8 a.m. and ending at 8 p.m.), on a 365 day per year basis, weather permitting ("Open Hours").

4. **Concession Payments:** Fees charged by Concessionaire must be reasonable so as not to deny participation by the general public and must be approved by the City, which approval shall not be unreasonably withheld, delayed, or conditioned. The City has approved of the current fees charged by Concessionaire.

5. **Concessionaire's records and documents:** With respect to all matters covered by the Concession Agreement, Concessionaire's records and documents shall be subject at all times to inspection review or audit by the City. Concessionaire will supply the City any documentation that may be needed by the City to file required compliance reports to the Secretary of the Interior or its delegated representative, NPS.

6. **Operations and Maintenance:** Concessionaire agrees (i) to the Open Hours as the minimum hours of operation, (ii) to provide courteous service to the public, and (iii) that Concessionaire is responsible for all costs to repair, maintain and operate the Premises, including all improvements and equipment located on the Premises, in good operational and working condition.

7. **Licenses and Permits:** All necessary applicable licenses and permits to operate the concession have been obtained by Concessionaire from the appropriate offices and shall continue to be maintained by Concessionaire throughout the term of the Concession Agreement. All licenses are subject to Code of Enforcement for safety, health and fire inspections, as applicable.

8. **Operating Expenses and Utilities:** Concessionaire shall pay all operating expenses and costs of all utilities, as well as the costs associated with installation/upgrade of systems that are required by building codes and local ordinances relating to safety, health, and fire. These systems must meet all applicable local, state and federal requirements.

9. **Non-discrimination:** City and Concessionaire agree to comply with all applicable Federal laws relating to nondiscrimination in connection with any use, operation, program, activity on or related to the Premises, including, but not limited to the following (and as between City and Concessionaire, Concessionaire agrees it shall have primary responsibility):

All requirements imposed by or pursuant to the non-discrimination regulations of the U.S. Department of the Interior (43 C.F.R. Part 17);

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d-1), which prohibits discrimination on the basis of race, color, or national origin;

The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age;

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicap;

The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151), which requires facilities located on the property to be accessible to the physically handicapped;

The Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which requires that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance; and

Executive Order 13672, if in effect and applicable, which prohibits discrimination on the basis of sex, sexual orientation, or gender identity.

10. **Alterations and Improvements:** Concessionaire may not make material alterations or improvements to the Premises without written consent of the City Manager representing the City. Such written consent will not be unreasonably withheld, delayed, or conditioned. If structural changes are required, Concessionaire shall arrange for and supervise all necessary construction work and be responsible for all costs associated with providing the changes.

11. **Maintenance and Repair:** Concessionaire shall at its sole cost and expense maintain the Premises in good condition and perform such repairs that become necessary from time to time during the term of the Concession Agreement and any renewals hereof as set forth in the Concession Agreement.

12. **Inspection of Concession Areas:** Concessionaire shall allow the City Manager representing the City, or his designee and/or the Secretary of the Interior's designated representative, NPS, at any and all reasonable times to inspect any facility operated under the Concession Agreement.

13. **Insurance:** Concessionaire agrees to provide evidence to the City that the insurance required by the Concession Agreement is current based on subsequent renewal information.

14. **Assignment and Subletting:** Concessionaire acknowledges and agrees that (i) Section 15 of the Agreement provides that any proposed assignment of the Agreement or any interest therein by Concessionaire shall require the consent of the City, as would any proposed subletting of the Premises by Concessionaire, and (ii) in default thereof (if ever) by Concessionaire, such would in accordance with the provisions of Section 16 of the Agreement (captioned "Default and Cure of Default") provide grounds for the exercise of remedies thereunder by the City, including possible termination of the Concession Agreement by the City or possible reversion by the USA.

15. **Signage:** Concessionaire shall place no exterior sign or advertisement upon any location of the Premises unless prior written approval has been granted by the City Manager representing City, and the City Manager shall have the right, without first notifying Concessionaire, to remove at the expense of Concessionaire, any exterior sign or signs that may be erected without the approval of the City. The City hereby approves all existing signage on the Premises.

16. **Surrender; Waste:** Concessionaire agrees that upon expiration of the Concession Agreement or earlier termination thereof, it shall surrender the Premises to the City in as good or better condition as they were in at the time of execution of the Second Amendment, ordinary wear excepted. Concessionaire further agrees that it shall permit no waste nor suffer the same to be committed, nor injure nor misuse the Premises.

17. **Liens:** Concessionaire shall keep the Premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by Concessionaire during the term of the Concession Agreement or any extension or renewal thereof.

18. **Waiver:** Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of said party's rights hereunder. No waiver by either party at any time, expressed or implied, of any breach of any

provision of the Concession Agreement shall be deemed a waiver of breach of any other provision of the Concession Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under the Concession Agreement, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

19. **Termination:** The Concession Agreement shall terminate automatically upon the expiration of the term of the Concession Agreement, as now or hereafter amended, or any renewal thereof. The Concession Agreement is further subject to termination by the City as provided in Section 16 of the Agreement (captioned "Default and Cure of Default").

20. **Acknowledgement:** The Concession Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the deed from the United States of America to the City, dated July 28, 1977, and recorded at Cobb County, Georgia, Registry of Deeds/Clerks Office at Book 1802, Page 566 (as amended by corrective deed from the United States of America to the City, dated May 6, 1985, and recorded at Cobb County, Georgia, Registry of Deeds/Clerks Office at Book 3510, Page 551) which governs the use of the property. Pursuant to **Exhibit B**, violations of the applicable terms and conditions thereof may be grounds for reversion to the United States of America, at its discretion, and termination of the Concession Agreement. Upon any such violation and exercise of right of reversion, Concessionaire owned personal and real property improvements associated with the real property, may be subject to seizure, without compensation, by the USA.

21. **Notices:** Any notice by either party to the other shall be in writing and shall be deemed to be given only if delivered personally or mailed by registered or certified mail as follows:

City: City of Smyrna
2800 King Street
Smyrna, Georgia 30080
Attn: Mayor

Concessionaire: Gonna Fly Now, LLC
1024 Monroe Drive, NE
Atlanta, Georgia 30306
Attn: Managing Member/Manager

Other addresses may be established as the parties hereto may designate by written notice to the other party and delivered in accordance with the provisions of this paragraph.

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provision of the Concession Agreement shall be deemed a waiver of breach of any other provision of the Concession Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent and approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed to be a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under the Concession Agreement, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other; and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other.

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Atlanta, Georgia 30306
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