

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: January 9, 2017
	Agenda Item No. 30 Roll Call No. <u>17-0038</u> Communication No. <u>17-021</u> Submitted by: Benjamin R. Page, Park and Recreation Director

AGENDA HEADING:

Set date of hearing for the approval of an amendment of the concession agreement for the Birdland Marina concessions between the City and Less Than Trinity, LLC, d/b/a Captain Roy’s, for food and beverage concession services and fuel sales at the Birdland Marina.

SYNOPSIS:

Through an assessment of the current situation and internal discussions between the Parks and Recreation, Engineering, and Legal departments, staff recommends approval of an amendment of the concession agreement for the Birdland Marina concessions between the City and Less Than Trinity, LLC, d/b/a Captain Roy’s, for the construction of the utility services to connect to the concession building in the concession area. These improvements are intended to be constructed during Spring-Summer 2017. The map showing that specific area of concession service and an additional map showing the anticipated project area and current utility services are included below.

FISCAL IMPACT:

Amount: \$80,000 – Construction of utility services to connect to the concession building in the established concession area.

Funding Source: 2016-2017 Capital Improvement Program (CIP), Page Parks-13, Road, Sidewalk, and Utility Improvements, G.O. Bonds

ADDITIONAL INFORMATION:

In early discussion following the approval of the agreement for provision of concession services at Birdland Marina, combined with more detail coming forth about achieving the full functionality of those services, it has been determined that a fire hydrant must be relocated for appropriate service to the area, which requires a larger water line at an additional cost from that provided in Captain Roy’s proposal under the agreement. It has also been determined that a grease interceptor will be required plus a sanitary sewer line servicing that interceptor, at a significant cost exceeding \$180,465 for all improvements provided for under the Agreement.

City staff and Captain Roy’s have negotiated an Amendment to the Agreement to provide that the City will be responsible for the construction of the sanitary sewer and water lines, fire hydrant, and grease interceptor and to extend the Agreement for one (1) year during its initial term and to amend the Agreement regarding sewer construction by the Des Moines Metropolitan Wastewater Reclamation Authority during 2017-2018 in the vicinity of the Birdland Marina.

The proposed concession amendment and actions will be part of the original vision of the agreement to provide for the long-term use of the established area of the Birdland Marina facility. The City will continue to monitor that all official policies and procedures are followed as part of any improvements.

Significant components of the amendment include the following:

- The City shall be responsible for the funding and construction of the following utility services to connect to the concession building in the concession area: sanitary sewer line, a 4-inch water service line, fire hydrant, and grease interceptor of at least 1,500 gallons (“the City Improvements”). The City Improvements are intended to be constructed during Spring-Summer 2017, pending the approval and permits from the U.S. Army Corps of Engineers and the Iowa Department of Natural Resources.
- Concessionaire shall be responsible for plumbing and utility lines within the concession building, including the connection to the City Improvements. Upon completion and acceptance by the City of the City Improvements, Concessionaire agrees to accept the City Improvements “as is” and agrees that Concessionaire will be responsible at its cost for maintenance of the City Improvements within the Concession Area pursuant to Section II.A.I.2 of the Agreement and to keep the City Improvements within the Concession Area in good working condition.
- Concessionaire acknowledges that Des Moines Metropolitan Wastewater Reclamation Authority intends to construct a new sanitary sewer line in the vicinity of Birdland Marina during a period from Spring 2017- December 2019, which construction will close the entrance drive and portions of the parking lot in the Concession Area for up to approximately 4-5 weeks (“the WRA Sewer Construction”). Concessionaire further acknowledges that the WRA Sewer Construction will result in the severance of water and sewer line connections to the Concession Area during the WRA Sewer Construction, construction period which Concessionaire acknowledges will or is likely to reduce or cease business to the Concession Area during such construction period.
- By accepting the consideration of the City constructing and paying for the City Improvements, Concessionaire fully and completely releases, acquits and forever discharges the City of Des Moines, Iowa, and the Des Moines Metropolitan Wastewater Reclamation Authority and their respective elected and appointed officials, employees, agents, contractors, successors and assigns from any and all liability whatsoever as to any and all injuries and damages of any nature whatsoever, including all claims, demands, and causes of action of every nature, including economic loss, which may occur to or affect Concessionaire as a result of the above mentioned City Improvements construction and WRA Sewer Construction.



PREVIOUS COUNCIL ACTION(S):

Date: November 7, 2016

Roll Call Number: [16-1939](#)

Action: [On](#) Concession Agreement for the Birdland Marina with Less Than Trinity, LLC d/b/a Captain Roy's. ([Council Communication No. 16-627](#)) Moved by Westergaard to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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