



Date May 24, 2021

SETTING DATE OF HEARING ON THIRD AMENDMENT OF CONCESSION AGREEMENT FOR THE BIRDLAND MARINA CONCESSION WITH LESS THAN TRINITY, LLC, D/B/A CAPTAIN ROY’S

WHEREAS, the City is the owner of Birdland Marina, which includes a concession building, surrounding space, boat ramp, and adjacent parking lot all adjacent to the Neal Smith Multi-Use Recreational Trail at 2100 Saylor Road, Des Moines; and

WHEREAS, on November 7, 2016, by Roll Call No. 16-1939, the City Council accepted the proposal of Less Than Trinity, LLC d/b/a Captain Roy’s (“Captain Roy’s”) and approved an agreement for the operation of concessions at Birdland Marina for the sale of beverages, food, fuel and other items helpful and ancillary to use of the Neal Smith Multi-Use Recreational Trail, which agreement was amended on January 23, 2017, by Roll Call No. 17- 0142, and on December 21, 2020 by Roll Call No. 20-2112 (“the Agreement”); and

WHEREAS, the City and Captain Roy’s desire that Captain Roy’s be granted the additional concession rights to offer canoe, kayak, stand up paddleboards, and bike rental and sales, boat tours, including shuttle services, sales of usual and customary water recreation supplies, and bicycle repair services, for the period from May 25, 2021 until November 1, 2023, and to offer certain other items of merchandise such as t shirts, hats, flags and stickers and other items approved by the Parks and Recreation Director at Birdland Marina, and

WHEREAS, the City and Captain Roy’s further desire that Captain Roy’s be granted an intellectual property rights license to use the Birdland Marina logo on certain items of merchandise and other items approved by the City of Des Moines Parks and Recreation Director; and

WHEREAS, Parks and Recreation Department staff and Captain Roy’s have negotiated a Third Amendment to the Agreement to provide that Captain Roy’s shall pay to the CITY 1% of all annual gross revenues received by Captain Roy’s, and also 1% of all annual gross revenues received by Captain Roy’s third- party providers, on such rentals, sales, and fees for services rendered and for items bearing the Birdland Marina logo beginning on May 25, 2021.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa:

1. That the City Council of the City of Des Moines shall consider a Third Amendment to Concession Agreement for Food, Beverage, and Fuel Concession at Birdland Marina, 2100 Saylor Road, Des Moines, between the City of Des Moines, Iowa, and Less Than Trinity, LLC, d/b/a Captain Roy’s, to grant Captain Roy’s the exclusive right to offer canoe, kayak, stand up paddleboards, and bike rental and sales, boat tours, including shuttle services, sales of usual and customary water recreation supplies, and bicycle

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repair services for the period from May 25, 2021 until November 1, 2023, and to offer certain other items of merchandise using the Birdland Marina logo, such as t shirts, hats, flags and stickers and other items approved by the Parks and Recreation Director at Birdland Marina during the term of the agreement. The concession payments for such rentals, sales and fees for services shall be 1% of all annual gross revenues received by Captain Roy's, and also 1% of all annual gross revenues received by Captain Roy's third-party providers, on such rentals, sales, and fees for services rendered beginning on May 25, 2021. Payments for sales of merchandise bearing the Birdland Marina logo shall be for sales from May 25, 2021 – December 31, 2021 - 0%; from January 1, 2022 – December 31, 2023 - 4%; from January 1, 2024 – December 31, 2032 - 5% ; from January 1, 2033 – December 31, 2037 (if the agreement is renewed for the first five year renewal term) - 6% from January 1, 2038 – December 31, 2042 (if the agreement is renewed for the second five year renewal term) - 7%.

2. A public hearing shall be held on June 14, 2021 at 5:00 pm in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
3. The City Clerk is authorized and directed to publish notice of the proposal and hearing in the form hereto attached not less than four or more than twenty days from the date of the hearing.

(Council Communication No. 21- 221 )

Moved by \_\_\_\_\_ to adopt.

APPROVED AS TO FORM:

  
 \_\_\_\_\_  
 Ann DiDonato  
 Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS     | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE         |      |      |          |        |
| BOESEN         |      |      |          |        |
| GATTO          |      |      |          |        |
| GRAY           |      |      |          |        |
| MANDELBAUM     |      |      |          |        |
| VOSS           |      |      |          |        |
| WESTERGAARD    |      |      |          |        |
| TOTAL          |      |      |          |        |
| MOTION CARRIED |      |      | APPROVED |        |
| _____ Mayor    |      |      |          |        |

**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_ City Clerk