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Date October 24, 2022

HOLDING HEARING AND APPROVING FOURTH AMENDMENT TO CONCESSION AGREEMENT FOR THE BIRDLAND MARINA CONCESSION WITH LESS THAN TRINITY, LLC, D/B/A CAPTAIN ROY’S, AND APPROVING EXCEPTION TO PROCUREMENT ORDINANCE COMPETITIVE PROCESS FOR GOOD CAUSE

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, on December 21, 2020 by Roll Call No. 20-2112, and on June 14, 2021 by Roll Call No. 21-0916 (“the Agreement”); and

WHEREAS, Captain Roy’s has requested to renegotiate the terms of the Agreement due to construction projects close to or adjacent to the concession premises that currently are impacting, and in the next year will impact, access to the concession premises negatively, including the City’s Second Avenue Bridge reconstruction, Penn Avenue reconstruction, and Birdland Pumping Station projects; and

WHEREAS, to address the concessionaire’s concerns, the City’s Parks and Recreation Department staff and Captain Roy’s have negotiated a Fourth Amendment to the Agreement, in form on file in the office of the City Clerk, to extend the termination date of the initial term of the Agreement by two additional years from December 31, 2032 to December 31, 2034, to defer the scheduled increase in payment by Captain Roy’s to the City of annual gross revenues until 2026, and to extend the consideration to be paid by Captain Roy’s to the City of annual gross revenues for concession payments, rentals, sales, services, and merchandise to mirror the extended initial and renewal terms of the Agreement; and

WHEREAS, on October 3, 2022, by Roll Call No. 22-1520, it was duly resolved by the City Council that the proposed Fourth Amendment to the Agreement be set down for hearing on October 24, 2022, at 4:30 p.m. in the City Council Chambers at City Hall; and

WHEREAS, due notice of said proposal to approve a Fourth Amendment to the Agreement was given as provided by law, setting forth the time and place for hearing on said proposal; and

WHEREAS, in accordance with said notice, those interested in said proposed amendment to the Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council; and

WHEREAS, the City Manager recommends that the granting of such additional concession rights be exempted from the competitive procurement requirements for good cause shown, pursuant to Section 2-710 of the Municipal Code of the City of Des Moines.



Date October 24, 2022

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

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed Fourth Amendment to Concession Agreement for Food, Beverage, and Fuel Concession at Birdland Marina between the City of Des Moines, Iowa, and Less Than Trinity, LLC, d/b/a Captain Roy's, for the Birdland Marina Concession Area located at 2100 Saylor Road, Des Moines, are hereby overruled and the hearing is closed.
2. That the Fourth 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, is hereby approved in form on file in the office of the City Clerk.
3. That good cause has been shown to exempt the procurement of the above-described concession rights from the Procurement Ordinance competitive procurement requirements.
4. That the Mayor is hereby authorized and directed to sign said Fourth Amendment on behalf of the City and the City Clerk is hereby directed to attest to his signature.

(Council Communication No. 22-483)

Moved by _____ to adopt.

Second by _____.

APPROVED AS TO FORM:

/s/ Glenna K. Frank
 Glenna K. Frank
 Assistant City Attorney

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

CERTIFICATE

I, Laura Baumgartner, 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