



**Roll Call Number**

21-0049

**Agenda Item Number**

38

**Date** January 11, 2021

**HOLD HEARING ON SECOND AMENDMENT TO 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, ("the Agreement"); and

WHEREAS, the initial term of the Agreement is November 1, 2027, and with two options to renew for additional 5-year periods upon mutual agreement of the parties; and

WHEREAS, under the Agreement, Captain Roy's is required to pay the City concession payments of 3% on annual gross revenues during the period from November 1, 2019-October 31, 2021; and

WHEREAS, due to the COVID-19 pandemic, reduced concession sales at the Birdland Marina facility have occurred in 2020 and substantially decreased concession sales are anticipated in 2021, as the COVID -19 pandemic is anticipated to continue throughout at least the first half of 2021, which has and will result in substantially reduced income from the sale of food, beverages, and alcoholic beverages; and

WHEREAS, due to the COVID-19 pandemic, reduced concession sales at the Birdland Marina facility have occurred in 2020 and substantially decreased concession sales are anticipated in 2021, as the COVID -19 pandemic is anticipated to continue throughout at least the first half of 2021, which has and will result in substantially reduced income from the sale of food, beverages, and alcoholic beverages; and

WHEREAS, Captain Roy's has requested that the Agreement be amended to allow the concession payments on gross revenues be waived for the period from April 1, 2020, through December 31, 2021, based upon the impact of the COVID -19 pandemic and its impact on the local economy and on concession sales at the Birdland Marina; and

WHEREAS, Captain Roy's further requests that 62 months be added to the initial term of the Agreement and that Captain Roy's have exclusive rights to offer food and beverages within Birdland Park; and



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WHEREAS, Parks and Recreation Department staff and Captain Roy's have negotiated a Second Amendment to the Agreement to provide that the concession payments of 3% and 4% on gross revenues for the period from April 1, 2020 through December 31, 2021, be waived, the initial term of the Agreement will be increased to December 31, 2032, and necessary adjustments will be made to the periods of concession payments resulting from the extension of the initial term.

WHEREAS, on December 21, 2020, by Roll Call 20-2123, it was duly resolved by the City Council that the proposed Second Amendment to Agreement, be set down for hearing on January 11, 2021 at 5:00 pm in the MSC Board Room; and

WHEREAS, due notice of said proposal to approve a Second 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.

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

1. Upon due consideration of the facts and statements of interested persons, the objections to said proposed Second Amendment to Concession Agreement for Food, Beverage, and Fuel 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 Second 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 as follows: The initial term to be extended for 62 months until December 31, 2032 and to grant Captain Roy's the exclusive right to offer food and beverages within Birdland Park. The concession payments on gross annual revenue will be amended as follows: No payments from April 1, 2020 – December 31, 2021; 4% for January 1, 2022 – December 31, 2023; 5% for January 1, 2024 – December 31, 2032; 6% during the first 5-year renewal term, if any (January 1, 2033 – December 31, 2037); and 7% during the second 5-year renewal terms, if any (January 1, 2038 – December 1, 2042). Further changes include waiver of the 25% of the use fees for rental of the Concession Areas and the \$0.25 per gallon of fuel sold fee, and the \$150 per month dumpster pick-up fee for the period of April 1, 2020 – December 31, 2020.



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3. That the Mayor is hereby authorized and directed to sign said Second Amendment on behalf of the City and the City Clerk is hereby directed to attest to his signature.

(Council Communication No. 21-006)

Moved by Westergaard to adopt.

APPROVED AS TO FORM:

/s/Ann DiDonato
Ann DiDonato
Assistant City Attorney

Table with columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, GATTO, GRAY, MANDELBAUM, VOSS, WESTERGAARD, and TOTAL. Includes signature of J. M. Franklin Cowme, 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.
Signature of P. Kay Cmelik, City Clerk