

21-0916

68

Date June 14, 2021

HOLD HEARING ON THIRD AMENDMENT TO CONCESSION AGREEMENT FOR THE BIRDLAND MARINA CONCESSION WITH LESS THAN TRINITY, LLC, D/B/A CAPTAIN ROY'S AND APPROVING AN EXCEPTION TO THE 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, 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.

WHEREAS, on May 24, 2021, by Roll Call 21-0779, it was duly resolved by the City Council that the proposed Third Amendment to Agreement, be set down for hearing on June 14, 2021 at 5:30 pm in the MSC Board Room; and

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

**Date** June 14, 2021

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.

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 Third 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 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, is hereby approved as follows:

Captain Roy's is granted 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 repair services, 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, for the period from May 25, 2021 until November 1, 2023. The concession payments for such rentals, sales and 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. 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%.

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 Third Amendment on behalf of the City and the City Clerk is hereby directed to attest to his signature.



Roll Call Number

21-0916

Agenda Item Number

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(Council Communication No. 21- 245 )

Moved by Datto to adopt.

APPROVED AS TO FORM:

Ann DiDonato  
Ann DiDonato  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie  
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.

P. Kay Cmelik

City Clerk