


## COUNCIL COMMUNICATION

	Number:	<b>21-006</b>	Meeting:	<b>January 11, 2021</b>
	Agenda Item:	<b>38</b>	Roll Call:	<b>21-49</b>
	Submitted by:	<b>Benjamin R. Page, Park and Recreation Director</b>		

### AGENDA HEADING:

Hold hearing on second amendment to Birdland Marina Food, Beverage, and Fuel Concession Agreement between the City of Des Moines and Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR).

### SYNOPSIS:

Hearing on second amendment to Birdland Marina Food, Beverage, and Fuel Concession Agreement between the City of Des Moines and Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR) for the waiver of payment from gross revenues received from April 1, 2020 through December 31, 2021, and extending the termination date of the initial term from November 27, 2027 to December 31, 2032.

### FISCAL IMPACT:

Amount: Decrease of \$86,000 revenue over the life of the agreement (ending in 2032).

Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR) has requested that the Agreement be amended to allow the concession payments of 3% (19 months) and 4% (two {2} months) on gross revenues received between April 1, 2020 through December 31, 2021 be waived, based upon the impact of the COVID-19 pandemic and its impact on the local economy and on concession sales at the Birdland Marina. Also, requested is a reduction of the percentage of gross revenues due for the contract years beginning November 1, 2027 through December 31, 2032.

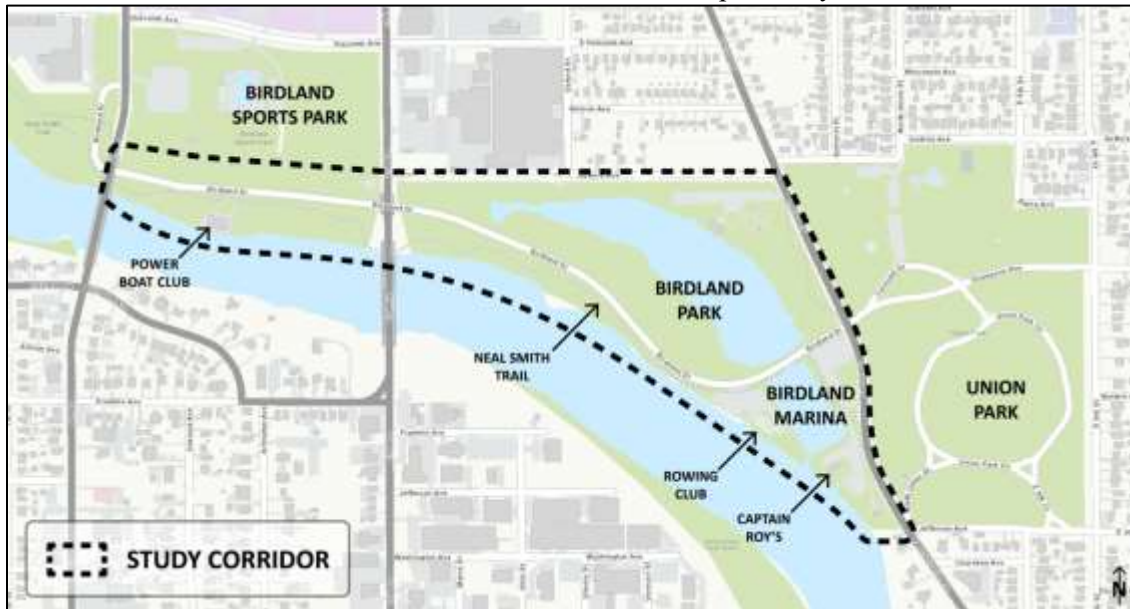
Funding Source: 2021 Operating Budget, Park and Recreation, Marina Operations, G001 PK201289, page 178.

### ADDITIONAL INFORMATION:

- On November 7, 2016, City Council approved a Concession Agreement between the City of Des Moines and Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR) with the initial term of 10 years, with two (2) 5-year renewal options at the mutual agreement. This included construction improvements to the concession building and adjacent area in the approximate amount of \$180,000.
- On January 23, 2017, City Council approved an amendment of the concession agreement for the Birdland Marina concessions between Captain Roy's, for the construction of the utility services to connect to the concession building in the concession area.

- LTT/CR has requested an additional amendment to the current agreement due to the implications of the COVID-19 pandemic, including required closures and limited operations and events in 2020. Proposed changes include:
  - Payments of 3% (19 months) and 4% (two {2} months) on gross revenues for years four (4) through six (6), (November 1, 2019-October 31, 2022) be waived for gross revenues received from April 1, 2020 through December 31, 2021, due to the substantially reduced income from the sale of food, beverages, and alcoholic beverages;
  - The percentage of all annual gross revenues for sales of food, beverages, alcohol beverages, excluding catering for third parties, and rental fees for use of the Concession Areas, including revenues from catered events, as follows:
    - Unchanged payments:
      - 1% for year one (1), November 1, 2016 – October 31, 2017
      - 2% for years two (2) through three (3), November 1, 2017 – October 31, 2019
      - 3% for years four (4) through five (5), November 1, 2019 – March 31, 2020
    - Changed payments:
      - No payments for the period of 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)
      - 7% during the second 5-year renewal terms, if any (January 1, 2038 – December 1, 2042)
  - 25% of the use fees for rentals of Concession Areas – change to waive these payments for the period of April 1, 2020 – December 31, 2021.
  - \$0.25 per gallon of fuel sold by Concessionaire plus the City’s actual cost for such fuel – change to waive the \$0.25 per gallon for the period of April 1, 2020 – December 31, 2021.
  - \$150 per month dumpster pick-up fee – change to waive for the period of April 1, 2020 – December 31, 2020.
- LTT/CR shall not have the right to offer for sale any items outside of the Concessionaire Area; however, the City agrees not to authorize any third party to offer for sale food, beverages, or alcoholic beverages in Birdland Park, as shown on Exhibit B in the amendment, during the term of this Agreement. LTT/CR is prohibited from authorizing a third party to install or use vending machines for food or beverage items within the Concession Area or Birdland Park during the term of this Agreement.
- The City shall still receive a discount of 10% on food and beverage prices for all City sponsored events. The City retains the right to use the Concession Area for no use/rental fee for events.
- Except as modified above, all other terms of the Agreement shall remain in effect.

Exhibit B: Birdland Park is the area specified in black outline that contains both the marina and the concession area of Captain Roy's.



**PREVIOUS COUNCIL ACTION(S):**

Date: December 21, 2020

Roll Call Number: [20-2112](#)

Action: [On](#) Second Amendment of the Concession Agreement for the Birdland Marina Concession with Less Than Trinity, LLC, d/b/a Captain Roy's, (1-11-21). ([Council Communication No. 20-558](#)) Moved by Boesen to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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