


COUNCIL COMMUNICATION

 <p>CITY OF DES MOINES OFFICE OF THE CITY MANAGER</p>	Number:	24-157	Meeting:	April 15, 2024
	Agenda Item:	27	Roll Call:	24-0582
	Submitted by:	Benjamin R. Page, Park and Recreation Director		

AGENDA HEADING:

Setting date of hearing on Fifth Amendment to Concession Agreement for the Birdland Marina Concessions with Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR).

SYNOPSIS:

Setting the date of hearing to amend the current Concession Agreement for the Birdland Marina Concessions with LTT/CR. Construction projects close to or adjacent to LTT/CR have impacted patron access currently and will impact access next year. The amendment will change the percent of sales revenue paid to the City from a fixed annual rate to an annual progressive rate in recognition of the impacts to business due to construction.

FISCAL IMPACT:

Amount: Estimated \$250,000, or approximately \$20,800 per year, revenue loss over the life of the agreement (ending December 2034)

Funding Source: 2024 Operating Budget, Parks and Recreation Department, Management Services, G001 PK001200, Page 136

ADDITIONAL INFORMATION:

- On November 7, 2016, City Council approved a Concession Agreement between the City of Des Moines and LTT/CR with the initial term being 10 years, with two (2) five (5)-year renewal options dependent on mutual agreement. This included LTT/CR completing construction improvements to the concession building and adjacent area in the approximate amount of \$180,000.
- On January 23, 2017, City Council approved the First Amendment to the concession agreement for the Birdland Marina concessions between LTT/CR and the City of Des Moines for the construction of the utility services to connect to the concession building in the concession area.
- On December 21, 2020, City Council approved the Second Amendment to the current agreement due to the implications of the COVID-19 pandemic, including required closures and limited operations and events in 2020.

- On June 14, 2021, City Council approved the Third Amendment to the current agreement for LTT/CR to offer expanded services such as outfitter services, tour and shuttle services, sales of water recreation supplies, repair services and sales of merchandise displaying the Birdland Marina logo.
- On October 24, 2022, City Council approved the Fourth Amendment to the current agreement due to construction projects close to or adjacent to LTT/CR 's that have impacted access currently and will impact access in 2023 and 2024, having a negative impact on LTT/CR's business.
- LTT/CR is requesting the Fifth Amendment to the current agreement due to continued construction projects adjacent to LTT/CR that have impacted access currently and will impact access in 2024 having a negative effect on LTT/CR's business. Project include:
 - WRA Pump Station at Birdland Project which shut down the Neal Smith Trail and portions of LTT/CR's parking lot
 - Pennsylvania Avenue Resurfacing Project
- The negotiated revenue sharing for the Fifth Amendment provides that the concession payments on gross annual revenue and payments for fuel revenue and dumpster costs are as follows:
 - 0.5% of gross revenue for January 1, 2022 - December 31, 2023
 - 1% of gross revenue for January 1, 2024 - December 31, 2024
 - For January 1, 2025 - December 31, 2034:
 - 1% of gross revenue from \$1 to \$75,000
 - 2% of gross revenue from \$75,000.01 to \$150,000
 - 3% of gross revenue from \$150,000.01 to \$200,000
 - 4% of gross revenue from \$200,000.01 to \$250,000
 - 5% of gross revenue at or above \$250,000.01
 - For the first five (5)-year renewal term(s), if any (January 1, 2035 - December 31, 2039; January 1, 2040 - December 31, 2044): Same progressive scale as years from January 1, 2025 - December 31, 2034.
 - For the period July 1, 2022 - December 31, 2024, the \$0.25 markup per gallon of fuel sold by LTT/CR will be waived. Beginning January 1, 2025, for the remaining duration of the Agreement, including any renewal(s), LTT/CR shall pay the City for the City's actual cost for gallons of fuel sold plus the \$0.25 per gallon of such fuel. LTT/CR may sell fuel for cost plus \$1.25 per gallon.
 - \$250 per quarter dumpster pick-up fee for the period January 1, 2025 - December 2034 and for each five (5)-year renewal, if any.
- All other terms and conditions of the Agreement and previous amendments shall remain in effect.

PREVIOUS COUNCIL ACTION(S):

Date: October 24, 2022

Roll Call Number: [22-1684](#)

Action: [On](#) Fourth Amendment to Concession Agreement for the Birdland Marina Concession with LLC/CR and approving exception to procurement ordinance competitive process for good cause. ([Council Communication No. 22-483](#)) Moved by Westergaard to adopt. Second by Voss. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S): NONE

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Anticipated related future actions include hearing for the Fifth Amendment to Concession Agreement for the Birdland Marina Concessions with LLC/CR.

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