


## COUNCIL COMMUNICATION

	Number:	<b>24-173</b>	Meeting:	<b>May 6, 2024</b>
	Agenda Item:	<b>52</b>	Roll Call:	<b>24-0693</b>
	Submitted by:	<b>Benjamin R. Page, Park and Recreation Director</b>		

### AGENDA HEADING:

Holding hearing and approving fifth amendment to concession agreement for the Birdland Marina Concession with Less Than Trinity, LLC d/b/a Captain Roy's (LTT/CR), and approving exception to procurement ordinance competitive process for good cause.

### SYNOPSIS:

Approval of exemption to the procurement ordinance competitive process for good cause shown with existing concession agreement between the City of Des Moines and LTT/CR. Construction projects close to or adjacent to Captain Roy's 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 with 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 citing the impacts of the COVID-19 pandemic, such as mandated closures and restricted 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 Captain Roy's that impacted access in 2023 and will impact access in 2024, having a negative impact on Captain Roy's business.
- LTT/CR is requesting the fifth amendment to the current agreement due to the continued construction projects adjacent to Captain Roy's that have impacted access and will continue to impact access in 2024 having a negative impact on Captain Roy's business:
  - WRA Pump Station at Birdland Project which shut down the Neal Smith Trail and portions of Captain Roy'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 to December 31, 2034
  - For the period July 1, 2022, through 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 through December 2034 and for each five (5)-year renewal, if any.
- All other items and conditions of the Agreement and previous amendments shall remain in effect.

**PREVIOUS COUNCIL ACTION(S):**

Date: April 15, 2024

Roll Call Number: [24-0582](#)

Action: [On](#) Fifth Amendment to Concession Agreement for the Birdland Marina Concessions with LTT/CR, (5-6-24). ([Council Communication No. 24-157](#)) Moved by Gatto to adopt. Second by Voss. Motion Carried 7-0.

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

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE**

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