



Date October 3, 2022

**SETTING DATE OF HEARING ON FOURTH 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, on December 21, 2020 by Roll Call No. 20-2112, and on June 14, 2021 by Roll Call No. 21-0916 ("the Agreement"); and

WHEREAS, Captain Roy's has requested to renegotiate the terms of the Agreement due to construction projects close to or adjacent to the concession premises that currently are impacting, and in the next year will impact, access to the concession premises negatively, including the City's Second Avenue Bridge reconstruction, Penn Avenue reconstruction, and Birdland Pumping Station projects; and

WHEREAS, to address the concessionaire's concerns, the City's Parks and Recreation Department staff and Captain Roy's have negotiated a Fourth Amendment to the Agreement, in form on file in the office of the City Clerk, to extend the termination date of the initial term of the Agreement by two additional years from December 31, 2032 to December 31, 2034, to defer the scheduled increase in payment by Captain Roy's to the City of annual gross revenues until 2026, and to extend the consideration to be paid by Captain Roy's to the City of annual gross revenues for concession payments, rentals, sales, services, and merchandise to mirror the extended initial and renewal terms of the Agreement.

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

1. That the City Council of the City of Des Moines shall consider a Fourth 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, to extend the initial term of the Agreement from December 31, 2032 to December 31, 2034, to defer the planned increase to the percentage of concession revenue to be paid to the City until 2026, and to extend payment of percentages of annual gross revenues from concession sales, rentals, sales,



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- services, and merchandise to align with the extended dates of the initial and renewal terms of the Agreement.
2. A public hearing shall be held on October 24, 2022, at 5:00 pm in the Council Chambers, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.
  3. The City Clerk is authorized and directed to publish notice of the proposal and hearing in the form hereto attached not less than four or more than twenty days from the date of the hearing.

(Council Communication No. 22- 440 )

Moved by \_\_\_\_\_ to adopt.

Second by \_\_\_\_\_.

APPROVED AS TO FORM:

/s/ Glenna K. Frank  
 Glenna K. Frank  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
BOESEN				
GATTO				
SHEUMAKER				
MANDELBAUM				
VOSS				
WESTERGAARD				
TOTAL				

**CERTIFICATE**

I, Laura Baumgartner, 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.

MOTION CARRIED APPROVED

\_\_\_\_\_ Mayor

\_\_\_\_\_ City Clerk