

**OPERATING AGREEMENT FOR WARNER PARK SAILBOAT STORAGE AND
INSTRUCTION FOR THE 2022-2026 PERMIT YEARS**

Between the City of Madison and Robert Krebs d/b/a The Madison Sailing Center

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Robert Krebs d/b/a The Madison Sailing Center, a sole proprietorship (hereinafter referred to as “Permittee”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, Madison General Ordinances Sec. 8.17 allows for a person to obtain an annual parks vending permit, valid from April 15 of each year through April 14 of the following year (the “Permit Year”), to allow the person to sell foods, beverages, goods, services and lessons in a City park; and,

WHEREAS, for the past several years, vendors have entered into Agreements with the City allowing the vendors to provide recreational and concession services to City residents and visitors at City shelters and facilities located at Warner Park; and,

WHEREAS, the vendors provide services to City residents and visitors, such as canoeing, kayaking, windsurfing and sailboat lessons and rental, and general concessions, that the City does not, and cannot, otherwise provide at these, or other, locations, but which are in the public’s interest; and,

WHEREAS, it is in the City’s interest to have only one vendor of these recreational and concession services at each Park to ensure that general public use of the Park is not interfered with, and that the vendor complies with general standards of safety and care in its dealings with the public; and,

WHEREAS, in order to find the vendor who can best provide these recreational and concession services at Warner Park, consistent with City standards and interests, in 2010 the City issued a Request for Proposals for the Right to Conduct Rental, Instructional Service and Concession Activities at Select City Parks, including Warner Park; and,

WHEREAS, in 2010 Permittee’s proposal, and permit application under MGO 8.17, was accepted by the City, and confirmed by the Board of Park Commissioners, and Permittee successfully provided recreational services at Warner Park from 2010-2021 pursuant to Operating Agreements with the City; and,

WHEREAS, the City and Permittee wish to reenter into an operating agreement that would allow Permittee to continue to provide recreational services at Warner Park.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow Permittee to use the sailboat storage area at Warner Park (hereinafter, the “Premises”) to conduct rental, instructional and concession activities through 2026.
2. Grant and Description of Premises. City does hereby grant to Permittee permission to conduct water sport equipment rental and instructional programs, and sell concession products at the Premises, as indicated on Attachment A, made a part hereof, as set forth in this Agreement.
3. Term and Effective Date; Renewal. This Agreement shall become effective upon execution by the parties and shall expire on December 31, 2024, during the 2024 Permit Year. Following expiration, the Permittee will no longer be permitted to conduct the vending activities set forth in this Agreement at the Premises during the 2024 Permit Year.

This Agreement may be renewed for two (2) successive one-year terms (for the 2025 and 2026 Permit Years) upon the mutual agreement of both parties. To renew the Agreement, Permittee must, by November 1 of the expiring Permit Year, submit written notice to the Parks Division of Permittee’s desire to renew this Agreement for the upcoming Permit Year, along with a completed application for an annual park vending permit and the permit fee. The City’s decision to renew or not renew the Agreement for the upcoming Permit Year will be based upon the Permittee’s performance under this Agreement, and the decision to review or not renew the Agreement is not reviewable, and solely that of the Parks Superintendent, or his/her designee. The City will notify Permittee in writing of its decision to renew or not renew this Agreement by December 1. If the Agreement is renewed for the following Permit Year, the vending permit will be issued, and the terms and conditions of this Agreement will remain in place through December 31 of the following year, or until the Agreement is renewed, terminated, or expires.

4. Scope of Services. In entering into this Agreement, Permittee agrees to the following terms and conditions regarding the services being offered by Permittee at the Premises:
 - a. Services to be Provided. Permittee shall provide sailboat storage for a fee, and sailing clinics and classes at the Premises. No alcoholic beverages may be sold at the Premises.

Permittee shall provide these services at a minimum from the Monday prior to Memorial Day through the Monday following Labor Day, but in any event no earlier than April 1 and no later than the Closing Date set forth in Subsection 1 below, except that sailboat storage may be offered year round.

Permittee shall not engage in any other service or activity at the Premises without the prior written Agreement of the Parks Superintendent, or designee, (including, i.e., leasing out the Premises to third parties), and any such unauthorized service or activity will be considered a breach of the terms of this Agreement subject to the Default provisions of Section 26 of this Agreement.

- b. Permits and Licenses. Permittee agrees, at its own expense, to obtain and keep current all licenses and permits necessary for the operation of Permittee's business, including an annual Parks Vending Permit if necessary under Madison General Ordinances Sec. 8.17, and to comply with all Federal, State and City statutes, ordinances, rules and regulations applicable to Permittee's business. Permittee agrees to obtain all inspections by the Health Department, Fire Department or any other governmental agency that are required to operate the services authorized under this Agreement. Permittee shall provide the Parks Division with proof of such compliance upon request. Failure to comply with this provision shall be a default under this Agreement.
- c. Equipment. City shall be responsible for providing a lockable storage area, a concession counter, and access to water and electrical service. Permittee shall provide all other equipment necessary to operate the facility, including, but not limited to, all water sports equipment, safety equipment, concessions, refrigerators, freezers, microwaves, cash registers, cleaning supplies, soap, and toilet paper. Permittee may place its equipment in Warner Park in a location approved by the Parks Superintendent, or his/her designee, and as depicted on Attachment A. Permittee may, solely at Permittee's expense, install a security system in the Shelter on the Premises. Permittee may install or use other equipment with the written permission of the Parks Superintendent, or his/her designee. Permittee shall provide the Parks Superintendent, or designee, with a current list of all the Permittee's equipment at the Premises.
- d. Instructor's Certification. Any water sport instructors employed by the Permittee must be certified in the respective sport (e.g., canoeing, kayaking, boater safety, water skiing, knee boarding, life guarding, and wilderness first aid) by the American Canoe Association, the American Red Cross, or by another comparable nationally recognized professional canoe and kayaking organization, or other water sport organization. If additional licenses or permits are required from the State or Wisconsin in order to perform such instructional services, the Permittee shall obtain those licenses or permits.
- e. Equipment Safety. Permittee shall maintain all equipment, including safety equipment, in a safe working order at all times and store said equipment in a safe manner to prevent any unauthorized use or operation thereof.

- f. Storage. Permittee may store equipment necessary to provide the services set forth in Subsection a above as indicated on Attachment A and consistent with Subsection c above.
- g. Maintenance. Permittee shall be responsible for maintaining the Premises in a clean, safe and attractive condition at all times, including keeping the grounds immediately adjacent to the Premises picked up of all paper and debris. Permittee shall keep the boat-launch/beach area free of weeds and debris. Every day, the Permittee shall also be responsible for opening, closing and cleaning the restrooms at the Premises, including installing and refilling paper products and soap, and maintaining the restrooms in a clean and sanitary condition. Permittee agrees that should the Parks Division determine that the maintenance requirements of this Subsection are not being met, the Parks Division may perform or have performed additional cleaning or maintenance, and charge the actual costs of such work to Permittee, payable within thirty (30) days of the issuance of the invoice, or as a deduction from the Permittee's security deposit.

Any custodial services, and any chemicals, trash-liners, soap and paper used by the Permittee pursuant to its obligations under this Subsection, are required to be in accordance with the City's Green Cleaning Program and comply with the green product standards, specifications and practices of this Program. Permittee is required to be familiar with the applicable standards of the City of Madison's Policy for a Sustainable Green Cleaning Program during the Permit Year. These standards are set forth in the City of Madison's Administrative Procedure Memorandum No. 4-6, available at <http://www.cityofmadison.com/mayor/apm/4-6.pdf>. The failure to abide by the requirements of this Program shall be a default subject to Section 26 of this Agreement.

- h. Alterations to Premises. No modifications of any kind, or fixtures, additions or removals shall be made to the Premises without the permission of the Parks Superintendent, or his/her designee. Signage. All signs and banners, including menu boards, shall be approved by the Parks Superintendent or designee and the Zoning Administrator. The Permittee shall post a readily observable sign at the Premises stating the Permittee's name, the Operating Agent and contact information as set forth below in Section 11, and a notice that Permittee and the Permittee's activities are not affiliated with, nor in any way endorsed by, the City.
- i. Closing Date. The closing date of the Permittee's activities at the Premises shall be determined by Permittee, but such date shall occur no later than the Park Division's building winterization schedule.
- j. Surrender of Premises. Upon the termination of this Agreement under Section 26, or, in the event that this Agreement is not renewed or expires under Section 3, by December 15 of the Permit Year, whichever is earlier,

Permittee agrees to vacate and surrender the portions of the Premises allocated to it by this Agreement, remove all personal property therefrom, and deliver possession of the same to City, in as good condition as the Premises was in at the commencement of the Agreement, with the exception of unavoidable wear and tear through careful use and with the exception of damage by fire or other casualty beyond the control of Permittee. However, if Permittee has renewed this Agreement for the 2025 or 2026 Permit Years, Permittee may be granted additional time to surrender the Premises under this Subsection by written agreement with the Parks Superintendent, or his/her designee. Any damages to the Premises beyond normal and expected wear and tear shall be the responsibility of the Permittee. If these damages are not repaired by the Permittee before surrender of the Premises to the City, the City shall cause the repairs to be made and deduct the cost thereof from the security deposit. Any balance still owing by Permittee after deduction from the security deposit shall be due within thirty (30) days of the invoice. All equipment and other property of the City on the Premises shall remain the property of the City after the termination of this Agreement. No fixtures, whether or not purchased by Permittee, shall be removed without the permission of the City. An inventory of City property and equipment will be performed before release. Any property of Permittee remaining on the Premises thirty (30) days after surrender of the building will become the property of the City.

k. Security Deposit. The Permittee must pay to the Parks Division a security deposit in the amount of \$3,000 prior to occupying the Premises. Upon the surrender of the Premises, and after inspection by the City, the security deposit will be refunded to the Permittee, less any deductions for damage and other assessable costs under this Agreement. In cases where the damage and other assessable costs are greater than \$3,000, the City shall keep the entire security deposit and Permittee shall pay to the City the remaining balance within 30 days of the invoice from the City.

l. Payment. For the use of the Premises and the right to provide the services set forth above therein, and in addition to the permit fee required under Madison General Ordinance Sec. 8.17, as well as the security deposit under subsection m above, Permittee agrees to pay the City under the following payment schedule which will include the annual vending permit.

2022	\$ 5,475.00
2023	\$ 5,650.00
2024	\$ 5,825.00
2025	\$ 6,000.00
2026	\$ 6,175.00

Payments shall be made no later than October 1 of each Permit Year. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) days of the due date.

- m. Utilities. Permittee is responsible for all utility costs at the Premises attributable to Permittee's operations. Failure to timely pay any such costs shall be a default under Section 26. If utilities are paid by the City, then the full amount shall be determined by the Closing Date and be due no later than ten (10) days following this date.
5. Entire Agreement. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the parties.
6. Status of Permittee. It is agreed that Permittee is an independent contractor and not an employee or representative of the City, and that any persons who Permittee, either on its own or through Permittee, utilizes and provides for services under this Agreement are employees of Permittee and are not employees of the City of Madison. In addition, it is agreed that by granting Permittee the right to use the Premises for the purposes set forth herein, that the City is not granting Permittee the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Permittee arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
7. Assignability and Subcontracting. Permittee shall not assign or subcontract any interest or obligation under this Agreement without City's prior written approval. All of the services required hereunder shall be performed by Permittee and employees of Permittee. If Permittee is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of Permittee's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members or others who possess ownership interests in Permittee as of the date hereof.
8. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to Permittee the right to conduct certain activities and provide certain services on City property for the benefit and convenience of the public, pursuant to Madison General Ordinances, Section 8.17.
9. Access to Premises. City, by its representatives, shall have access to Premises at any reasonable time provided such entry shall not interfere with Permittee's conduct of business. In case of emergency, the circumstances of which to be solely determined by City, City shall enter the Premises with or without force, as necessary, without assuming any liability for such entry and without affecting Permittee's obligations under this Agreement. During the term of this Agreement,

City may perform exterior maintenance to the Premises, including painting the building. City and Permittee shall work together to coordinate this work.

10. Designated Representative. Permittee designates Robert Krebs as Contract Agent with primary responsibility for the performance of this Agreement. In case the Contract Agent is replaced for any reason, or in the event of the death, disability, removal or resignation of the Contract Agent, Permittee will designate another Contract Agent within seven (7) calendar days by notifying the City as set forth below in Section 21. The City may accept another person as the Contract Agent, or may terminate this agreement under Section 26, at its option.
11. Operating Agent. Permittee shall designate an Operating Agent of Permittee's activities at the Premises, who is the person primarily responsible for the day-to-day operation of the Permittee's activities at the Premises. Permittee shall provide the name and contact information of this person to the Parks Superintendent, or his/her designee, within forty-eight (48) hours of commencing activities at the Premises under this Agreement, or within twenty-four (24) hours of any changes to the Operating Agent or the Operating Agent's contact information.
12. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Permittee the right to sell or distribute any goods or services provided by City, nor does City grant Permittee the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol. In any commercial advertisement or announcement, Permittee may use the name of the City Park where the Premises is located, but any such advertisement or announcement must also indicate that Permittee's activities are not associated with or affiliated with the City.
13. Marketing. Permittee will agree to include and/or prominently display the City of Madison Parks Logo in the Premises and on any marketing materials. Marketing materials will be approved by the City and any City Logos provided by City Marketing Representative. The City of Madison will agree to display and promote marketing materials of Permittee on the Parks Website and other appropriate venues with the prior approval of the Parks Superintendent.
14. Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the Permittee and the Parks Superintendent, or his/her designee.
15. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Permittee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than

the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Permittee therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

16. Indemnification and Insurance.

- a. Indemnification. Permittee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Permittee's and/or Permittee's contractors, subcontractors, vendors or agents acts or omissions in the performance of this agreement.
- b. Hazardous Substances; Indemnification. Permittee represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose at the Premises nor transport to or over the Premises area any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Permittee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.
- c. Insurance.
 - (1) Required Insurance. Permittee will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Permittee shall not commence work under this Agreement, nor shall Permittee allow any Subcontractor to commence work on its Subcontract, until the insurance required

below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

- (a) General Liability. Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Permittee' coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds. This insurance shall be required for the full term of the Agreement and any renewal periods.
- (b) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the Agreement and any renewal periods.
- (c) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. Permittee shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
- (d) Umbrella Liability. During the life of this Agreement, the Permittee shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability (if required), Business Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
- (e) Property Insurance. Permittee shall be solely responsible for carrying personal property insurance sufficient to cover loss

of all personal property on the Premises. Such personnel property includes, but is not limited to, equipment, concessions, watercraft, and watercraft storage racks. The City shall not be liable for any damage to or loss of property of Permittee or others located on the Premises except to the extent such damage or loss was caused by the City's sole negligence or willful act.

- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- (3) Proof of Insurance, Approval. Permittee shall provide to the City certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for approval by the City Risk Manager, prior to commencing work under this Agreement. Permittee shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. Permittee shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice to City of Changes in Coverage. Permittee and/or its Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- (5) Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Permittee shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City Finance Department
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

17. Non-Discrimination. In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity,

political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

18. Nondiscrimination Based on Disability. Permittee shall comply with Section 39.05, Madison General Ordinances, “Nondiscrimination Based on Disability in City-Assisted Programs and Activities.” Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless assurance of compliance with Section 39.05 is provided by Permittee prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, “City financial assistance” includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

Permittee assures that, in providing any service at the Premises, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient’s program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Permittee shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison

General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

19. Taxes and Assessments. Permittee agrees to timely pay all taxes, assessments, or other public charges levied or assessed by lawful authority (but reasonably preserving Permittee's right of appeal) against the personal property and services of Permittee on the Premises during the term of this Agreement.
20. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement remain in full force and effect.
21. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: Superintendent of Parks
City Parks Division
210 Martin Luther King, Jr. Blvd. #104
Madison, WI 53703

Permittee: Robert Krebs
Madison Sailing Center
1029 Spaight St 4B
Madison, WI 53703
22. Third Party Rights. This Agreement is intended to be solely between the parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
23. Audit and Retaining of Documents. The Permittee agrees to provide all reports requested by the City including, but not limited to, financial statements and reports, reports and accounting of services rendered, and any other reports or documents requested. Financial and service reports shall be provided according to a schedule (when applicable) to be included in this Agreement. Any other reports or documents shall be provided within five (5) working days after the Permittee receives the City's written requests, unless the parties agree in writing on a longer period. Payroll records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by the Permittee for a period of three (3) years after completion of all work under this Agreement, in order to be available for audit by the City or its designee. If the Parks Division requests, the Permittee will supply to the Parks Division an accounting of the funds they are generating from activities in park(s) within one month of the request.

24. Reporting. Annually, the Permittee will provide the Parks Division with a list of the number, residence location, demographics and gender, and age (if provided) of participants in the services provided by Permittee at the Premises.
25. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
26. Compliance with Applicable Laws. The Permittee shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of the Permittee and its agents and employees. The Permittee's failure to comply with any such laws, ordinances or regulations shall be a default subject to Section 26 of this Agreement.
27. Default/Termination.
 - a. In the event Permittee shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Permittee, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Permittee, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Permittee under this Agreement.
 - b. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Permittee with ten (10) days written notice of termination. In the event of termination under this subsection, the City will pay for all work completed by the Permittee and accepted by the City.
28. Authority. Permittee represents that it has the authority to enter into this Agreement. If the Permittee is not an individual, the person signing on behalf of the Permittee represents and warrants that he or she has been duly authorized to bind the Permittee and sign this Agreement on the Permittee's behalf.
29. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Amendment may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as

original; and this Amendment may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Amendment may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Amendment, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

ROBERT KREBS, d/b/a THE MADISON SAILING CENTER

Robert Krebs

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES 22-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2022 and approved by the Board of Parks Commissioners at its meeting on _____, 2022.

ATTACHMENT A
Map of Premises

