

**CITY OF MADISON
AND
DL ANDERSON COMPANY
LEASE AGREEMENT**

RE: Docking at City Parks

This is a Lease Agreement between the **CITY OF MADISON**, a Dane County, Wisconsin municipal corporation, hereinafter called "the City"; and, **DL ANDERSON COMPANY** hereinafter referred to as "Lessee" WITNESSETH:

WHEREAS, the City is the owner of certain park lands in the City of Madison, Dane County, Wisconsin, known as Olbrich Park, Olin Park, Marshall Park and Warner Park; and

WHEREAS, Lessee is a marine contracting company and wishes to dock its boats at Olbrich Park, Olin Park, Marshall Park and Warner Park; and

WHEREAS, City wishes to allow Lessee to dock its boats at Olbrich Park, Olin Park, Marshall Park and Warner Park;

NOW, THEREFORE LET IT BE RESOLVED that in consideration of the mutual covenants expressed herein, the parties mutually agree as follows:

I. PREMISES

The City, for and in consideration of the terms, conditions and covenants contained in this Lease Agreement to be performed by Lessee, hereby grants to the Lessee the non-exclusive right to dock at the locations indicated on Attachment A, incorporated herein.

II. ENTIRE AGREEMENT

The entire agreement of the parties is contained herein and this Lease Agreement supersedes any and all oral Leases and negotiations between the parties.

III. ASSIGNABILITY/SUBCONTRACTING

Lessee shall not assign nor subcontract any interest or obligation under this Lease Agreement without the City's prior written approval. All of the services required hereunder will be performed by Lessee, employees of Lessee, or sublessees of Lessee which have previously been approved by the City.

IV. TERM

The initial term of this Lease Agreement shall begin upon execution by the Mayor and ending October 31, 2009. During the period of this lease and any subsequent renewals, Lessee shall have access to Leased Premises between April 15 through October 31.

V. CONDITIONS

All of the following conditions shall apply to Lessee, as determined by the City in its reasonable judgment:

- A. Lake conditions remain generally stable so that it is safe and reasonable for Lessee to use Olbrich Park, Olin Park, Marshall Park and Warner Park at launch as a dock for Lessee's boat. City reserves the right to cause the interruption of Lessee's use of the leased premises in the event that lake conditions result in unstable circumstances. Unstable circumstances would include, but not be limited to, very high or very low water or extremely wet or dry weather.
- B. Local, state, federal law remains unchanged so that City is not required to incur substantial costs of adding or remodeling public accommodations of Leased Premises, in large part related to Lessee's specific use of Leased Premises.

VI. RIGHTS AND PRIVILEGES OF THE CITY

The City, in addition to any rights herein retained by it, reserves the following rights and privileges:

- A. The City's Superintendent of Parks is hereby designated as its official representative for the enforcement of all provisions in this Lease Agreement with full power to represent the City in dealing with Lessee in connection with the rights herein leased.
- B. The City reserves the right to enter upon the premises leased by Lessee from the City, at any time for any reason.
- C. The City reserves the right to make Leased Premises unavailable to Lessee. City shall provide Lessee with written notice of such unavailability seven (7) days in advance of such unavailability, unless unstable conditions exist pursuant to section V.A. or in the interest of public safety under Section XIX, in which case no advance notice shall be necessary.

VII. LESSEE'S RESPONSIBILITIES

- A. Provide verification as necessary to the Parks Superintendent that City zoning has approved Lessee's business use of Leased Premises.

VIII. USE AND MODIFICATION OF PREMISES

Lessee shall utilize a launch pier at Olbrich Park, Olin Park, Marshall Park and Warner Park at a location designated by the Superintendent of Parks or his or her designee. City takes no responsibility for the depth of water at the docking locations. No modification of any pier shall be done except with prior written City approval.

IX. OBLIGATIONS OF LESSEE

- A. Indemnification. The Lessee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its 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 the Lessee's and sublessees' acts or omissions in the performance of this Agreement.
- B. Insurance. The Lessee will provide insurance, as indicated, against the following risks to the extent stated:
 - 1. Commercial General Liability
Covering as insured the Lessee and naming the City as an additional insured, with no less than the following limits of liability: Bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. Any sublessee shall maintain a similar policy covering as insured each sublessee.
 - 2. Worker's Compensation
Securing compensation for the benefit of the employees of the Lessee and the employees of any sublessee, as required by Wisconsin Worker's Compensation Law.

As evidence of the above listed coverages, a Certificate of Insurance shall be forwarded to the City Risk Management Office, 406 City-County Bldg., Madison, WI 53703 on or before April 1, 2009.

- C. Governmental Authority. The Lessee shall become familiar with, and shall comply with and observe in all material respects all federal, state, and local laws, ordinances, and regulations

which in any manner affect the services or conduct of the Lessee, its agents, employees, and sublessees. Lessee will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

- D. Attorney's Fees. Lessee agrees to pay or reimburse the City for all reasonable costs, attorney's fees and expenses incurred or paid by the City in enforcing the terms and conditions of this Lease Agreement should Lessee be determined to have defaulted on its obligations hereunder.

X. NON-COMPLIANCE WITH LEASE AGREEMENT

A. Right to Cure. If the City determines that non-compliance with the requirements of this Agreement has occurred or is occurring, it shall demand immediate correction of such continuing non-compliance. If Lessee fails to cure such non-compliance within a reasonable time period following written notice thereof, the City may terminate the Agreement as provided in Section XB.

B. Termination. City has the right to terminate this Lease Agreement if Lessee:

1. Fails to satisfy any of the conditions set forth in Section V and Lessee fails to cure such default within a reasonable time period following written notice thereof from the City.
2. Fails to cure or is unable to cure any material act of non-compliance as set forth in Section IX.
3. Files for bankruptcy.

XI. AMENDMENT

This Lease 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 other change in any provision of this Lease Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the parties hereto.

XII. NO WAIVER

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Lessee 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 Lessee 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.

XIII. NON-DISCRIMINATION

Pursuant to Sec. 3.58(9)(b) MGO: In the performance of the services under this Lease Agreement, the Lessee agrees not to discriminate against any employee or applicant for employment 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, political beliefs or student status. Lessee further agrees not to discriminate against any sublessee or person who offers to subcontract on this Lease Agreement because of race, religion, color, age, disability, sex, or national origin.

XIV. SEVERABILITY

It is mutually agreed that in case any provision of this Lease 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 Lease Agreement remain in full force and effect.

XV. NOTICES

All notices to be given under the terms of this Lease 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:

FOR THE CITY: Kevin Briski, Superintendent of Parks
City Parks Division
City-County Building, Room 104
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703

FOR THE LESSEE: _____
D. L. Anderson

XVI. STATUS OF LESSEE

It is agreed that Lessee is an independent Contractor and not an employee of the City, and that any persons who the Lessee utilizes under this Lease are employees of the Lessee and are not employees of the City of Madison.

XVII. THIRD PARTY RIGHTS

This Lease Agreement is intended to be solely between the parties hereto. No part of this Lease 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.

XVIII. LAW APPLIED

This Lease Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts without regard to conflicts of law principles.

XIX. INTERRUPTION OR CANCELLATION

City, via its Chief of Police, retains the right to cause the interruption of Lessee's use of Leased Premises in the interest of public safety. The circumstances which would cause such interruption of operation include but are not limited to: a natural disaster or Act of God, a life-threatening fire, a serious health and safety calamity. Lessee waives any and all claims for damages or compensation from City in the event of said interruption.

XX. FEES AND PAYMENT

- A. Consideration. In consideration for the use of City property and City services, Lessee agrees to pay City a docking fee of \$8.00 per day for each day that the boat uses the leased premises.
- B. At any time during the contract, the City and Lessee may agree to additional capital improvements or repairs to existing improvements and the City may waive departure fees for a period of years equal to the Lessee's outlay for the improvements. Such improvements shall become the property of the City.

IN WITNESS WHEREOF, the parties have hereby affixed their authorized signatures on the dates indicated.

DL ANDERSON COMPANY
LESSEE

WITNESS: _____
By: _____
Print Witness Name: _____
Date: _____

Check the box which applies:

- _____ is a sole proprietor.
(Name)
- _____ is a partner duly authorized
to bind the partnership.
(Name)
- _____ is a corporate officer duly
authorized to bind the corporation.
(Name)
- _____ is duly authorized by the
limited liability company.
(Name)

CITY OF MADISON, WISCONSIN
a municipal corporation

By: _____
David J. Cieslewicz, Mayor
Date: _____

By: _____
Mari Beth Witzel-Behl, City Clerk
Date: _____

Approved: _____ Approved as to Form: _____
Dean Brassler, City Comptroller Michael May, City Attorney
Date: _____ Date: _____

Eric Veum, Risk Manager
Date: _____

