

## **MARSHALL PARK USE AGREEMENT (2017-2024)**

Between the City of Madison and Marshall Boats LLC

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THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Marshall Boats LLC, a Wisconsin limited liability company (hereinafter referred to as “Permittee”), is effective as of the date by which all parties have signed hereunder.

### **WITNESSETH:**

WHEREAS, for many years, vendors have entered into agreements with the City allowing vendors to provide recreational and concession services to City residents and visitors at City shelters and facilities located at numerous City parks, which agreements are in the public’s interests as they facilitate greater access and enjoyment of the City’s lakes and recreational opportunities; and,

WHEREAS, the vendors provide services to City residents and visitors, such as canoeing, kayaking, and boating lessons, watercraft rentals, kids camps, and food 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’s 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 a vendor who can best provide these recreational and concession services at City parks consistent with City standards and interests, the City issued a Request for Proposals for the Right to Conduct Rental, Instructional Service and Concession Activities at Select City Parks, including Marshall Park; and,

WHEREAS, Permittee’s proposal to operate recreational and concession services at Marshall Park was accepted by the City and approved by the Board of Park Commissioners; and,

WHEREAS, there are numerous capital investments in equipment, piers, grounds, and rental and concession facilities that need to be made to provide the best and safest services possible at Marshall Park, and these improvements can only be made by the Permittee if there is a contract clarifying the relationship between the City and the Permittee (the “Parties”).

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 Marshall Park to conduct boat rental, instructional, concession and other recreational activities.

The Premises is described generally as follows, and further depicted on Exhibit 1:

That area of Marshall Park beginning at the eastern edge of the north-south boat launch access road at the entrance from Allen Blvd., running north to the southern edge of the east-west boat launch driveway, then running east to the boat launch, then southeast to the shore of Lake Monona, then south and east along the shore of Lake Monona to the southeastern corner of Marshall Park, then east along the southern border of Marshall Park, then north along the western border of Marshall Park to the southern edge of the entrance from Allen Blvd., then east to the starting point. This area shall exclude the large grassy area to the southwest of the southern parking lot and the residential parcels identified as 1 and 2 Thorstrand Rd. that lie within Marshall Park.

2. Term; Renewal. This Agreement shall be effective for up to eight (8) years, from January 1, 2017 through no later than December 31, 2024 which shall consist of four (4) Agreement Periods of two (2) years each. The Permittee may renew this Agreement for the second Agreement Period (2019-2020) by submitting written notice of its intent to renew this Agreement to the Parks Division by November 1, 2018. For the third and fourth Agreement Periods (2021-2022 and 2023-2024), the Permittee must submit notice of its intent to renew by November 1st of the second year of the expiring Agreement Period (Nov. 1, 2020 and Nov. 1 2022 respectfully). The City may then decide to renew or not renew the Agreement at that time based upon the Permittee's performance under this Agreement during the preceding Agreement Periods. The decision to renew or not renew the Agreement solely that of the Parks Superintendent, or his/her designee, and is not reviewable. The City will notify Permittee in writing of its decision to renew or not renew this Agreement for successive Agreement Periods by December 1 of the second year of the expiring Agreement Period. If the Agreement is renewed, the terms and conditions of this Agreement will remain in place until the Agreement is modified, terminated, or expires.
3. Grant. City does hereby grant to Permittee permission to conduct water sport equipment rental and instructional programs, events, operate camps and sell concession products and water sport related products and equipment at the Premises, as set forth in this Agreement. No alcohol can be sold at the Premises. The City will retain all riparian rights at the Premises and in no way does the Agreement transfer any riparian rights at Marshall Park to the Permittee. As part of this grant, the Permittee shall have sole use of, and responsibility for, the Marshall Beach House, the Marshall Camp House and any docks or piers the Permittee builds, stores or installs. Unless approved for other uses by the Parks Division, the Marshall Camp House shall only be used for storage. The Permittee shall have shared access to the Marshall Shelter, the mooring field, the boat launch piers, the boat storage racks, the beach and other amenities at Marshall Park as set out in this Agreement. Permittee, and Permittee's employees, contractors and invitees,

shall not be permitted to use Thorstrand Road to access Marshall Park from the south, nor use the private driveway leading to 1 and 2 Thorstrand Rd., except to cross the driveway.

4. Improvements. During the life of this Agreement, including any renewals hereunder, the Parties agree that improvements, repairs and upgrades to the Premises (“Improvements”) will be necessary. Improvements do not include any piers, docks, storage racks, or other moveable personal property the Permittee provides to conduct its business. These items will be paid for solely by the Permittee and will remain the personal property of the Permittee, unless otherwise agreed to by the Parties. Regarding the Improvements, the Parties agree as follows:
  - a. Capital Investment. It is understood that significant capital improvements in the Premises may be necessary and desirable. Accordingly, the Permittee agrees to invest a minimum of \$24,000 in Improvements to the Premises during the first three Agreement Periods (from 2017-2022). Permittee shall invest at least \$4,000 annually for each of the first 6 years, unless Permittee’s cumulative investment during the preceding years has already exceed the \$24,000 level, in which case no additional investment is required, although Permittee may continue to make such Improvements under this Section. Any annual investment in Improvements of less than \$4,000 where Permittee has not already exceeded the \$24,000 level must be authorized by the Parks Division.
  - b. Electrical Improvements. In the first year of this Agreement, the Parks Division will cause the Beach House’s electrical system to be upgraded to current standards. Once this work is complete, Permittee agrees to reimburse the City for the costs of this work, which amount shall be used to fully or partially satisfy Permittee’s 2017 minimum capital investment as required under subsection a above.
  - c. Investment Protection. If the City does not renew this Agreement under Section 2 for the third or fourth Agreement Periods, and the Permittee has invested at least \$50,000 in Improvements to the Premises during the lifetime of the Agreement up to the point of nonrenewal, the City will refund a portion of Permittee’s investment as set forth in this Subsection. The refund shall be based upon a percentage of the difference between Permittee’s required capital investments under Subsection a above and the Improvements actually made up to that point (the “Excess Improvements”). In the event of a nonrenewal under Section 2, at the end of the second Agreement Period the City shall refund 80% of the cost of the Excess Improvements and at the end of the third Agreement Period the City shall refund 60% of the cost of the Excess Improvements. Any refund made under this Subsection shall not exceed \$77,850. If the Permittee continues to operate through the end of the 2024 season (the fourth Agreement Period), or the Permittee chooses not to renew the Agreement, or if this Agreement is terminated under Section 27 as a result of Permittee’s default, no refund will be required regardless of when the Improvement was made.

- d. Improvement Planning. All Improvements will be approved by the Parks Division and will be paid for by the Permittee, except as set forth below in Subsection f.
- e. Plans and Approval. Prior to making any Improvement, Permittee must notify the Parks Superintendent, or representative, in writing of the anticipated Improvement. For any Improvements of \$5,000 or more (except for electrical, plumbing, or other utility service to the Premises), Permittee shall present the plans for the Improvement to the Board of Parks Commissioners, who shall either approve the Improvement, or reject the Improvement. If rejected, Permittee has no appeal rights, but may present a modified plan to the Board for reconsideration at a later date. Depending on the nature of the proposed Improvement, the Board of Parks Commissioners may require, before approving or rejecting the Improvement, an advisory opinion from the Board of Public Works.
- f. Joint Participation. Upon notification of a proposed Improvement, the City may elect to participate in the project. If the City does elect to participate in an Improvement project, the Parties shall agree on each Parties' respective share and responsibility for the project. If the City determines that public bidding requirements are applicable, the City shall manage and oversee the project and Permittee shall make whatever financial contribution is agreed upon by the Parties prior to the start of construction. However, the Parks Division may choose to participate in any or all Improvement projects by sharing the cost or undertaking the Improvements with its own staff on a case by case basis.
- g. Construction. Except as provided in Subsection f, the funding and construction of any Improvement under this Section is entirely the responsibility of the Permittee, who shall be responsible for obtaining any required permits, licenses, and approvals for the improvement.
- h. Donation and Acceptance of Improvements. Once the Improvements are complete, Permittee shall notify the Parks Superintendent, or designee, who shall then have the Improvement inspected. If the Parks Superintendent, or designee, is satisfied that the Improvement is consistent with the approved plans, and there appear to be no obvious defects or deficient workmanship, the City will accept the Improvement, which will be considered a donation by Permittee to the City for the use and enjoyment of City residents who use the Premises.
- i. Warranties and Representations. Permittee agrees that when making Improvements, it will ensure that any and all warranties and representations made to Permittee by the builder, contractor, manufacturer, etc., regarding the Improvement, shall also extend to the City, who shall assume ownership of the Improvement once completed.
- j. Accounting. Upon the acceptance of the Improvement by the City, Permittee shall supply City with a final accounting of the costs of the Improvement, which amount will be applied towards Permittee's requirements under Subsection a.

- k. Ownership of Improvements. Any fixtures or Improvements made to the Premises pursuant to this Section shall be the property of the City upon completion and acceptance, where required, regardless of the source(s) of financial contributions for the improvement. While Permittee may use the Improvements pursuant to the terms and conditions of this Agreement, Permittee has no ownership right in any of said Improvements.
5. Conditions of Use. In entering into this Agreement, the Parties agree to the following terms and conditions regarding the Permittee's use of the Premises:
- a. Services to be Provided at Premises. Permittee shall provide equipment and services to facilitate water sports rentals and activities and may use the Beach House, its surrounding area, and up to a third of the beach area itself for these services. This may include instructional and/or educational programs, lessons or workshops, camps, selling related merchandise or equipment, special events, races, concessions and café services of food and beverages, along with after school programs, and winter activities and events. The cottage may be used for storage to assist the services. Outside of the Beach House area and the cottage, the whole Premises may be used for camps and other programming purposes. A list of services and products will be provided to the City upon request by the Parks Division. No alcoholic beverages may be sold at the Premises. Permittee shall provide the services under this Subsection, or as otherwise agreed to by the Parties, at a minimum from Memorial Day weekend through Labor Day.
  - 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 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 required inspections by the Health Department, Fire Department or any other governmental agency that are necessary 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 space for a lockable storage area and a concession counter at the Marshall Park Beach House. The City shall also provide access to water and electrical service, as well as functioning bathrooms between Memorial Day and Labor Day. Permittee shall provide all other equipment necessary to operate the facility, including, but not limited to, docks and piers, all water sports equipment, safety equipment (including a motorized rescue boat), concessions, refrigerators, freezers, microwaves, and cash registers. Permittee may place piers, boat storage racks and other equipment related to the operation of the Permittee's business in locations approved by the Parks Superintendent, or his/her designee. Permittee may, solely at Permittee's expense, install a security system in or around the Boathouse on the Premises. Permittee may install or use other security equipment with the written permission

of the Parks Superintendent, or his/her designee, which equipment shall remain the property of the Permittee or the Permittee's contractor. Upon request, Permittee shall provide the Parks Superintendent, or designee, with a current list of all the Permittee's equipment at the Premises.

- d. Moorings. The City shall manage and operate all private boat storage at the Premises, including the on shore racks for watercraft and the mooring field. In an effort to expand public services at the Premises, the Permittee shall have the option of leasing at least four mooring spots from the City in 2017, with the option to lease additional mooring spots as they become available. Permittee shall pay the public rate for the mooring spots and shall make payment at the same time and in the same way as other mooring lessees.
- e. Special Events. Permittee may hold up to eight special events and activities at the Premises each year with attendance of between 250 and 1,000 people. Any such special event or activity will not be charged a parks event permit fee, but other permit fees may apply depending upon the nature of the event or activity. All such special events or activities must be approved in advance by the Parks Division.
- f. Shelter Use. Permittee shall have shared use of the Marshall Park Shelter with priority use for camps Mondays through Fridays before 4 pm. The Shelter will be left in a clean and orderly manner that is presentable for another group to hold a reservation starting at 4 pm. Permittee will remove any storage materials from the Shelter if there is another reservation (such as a wedding) that has made a reservation after 4 pm.
- g. Utilities. Permittee is responsible for all utility costs (e.g. electrical, water, sewer, stormwater) related to Permittee's operations at the Premises. The City shall remain responsible for the utility costs incurred to operate the public restrooms, the park shelter and other areas open for general public use on the Premises. The City shall provide separate metering for the utilities used exclusively by the Permittee at the Beach House or the Parties may agree to a fixed monthly utility cost for the Permittee for each calendar year of this Agreement if separate meters are not installed. If Permittee is not billed separately for utility service, payment of Permittee's utility costs to the City shall be made no later than 10 days of the end of the operating season. Failure to pay this amount in full, plus any accrued penalties, within 14 days of the due date, will result in a late penalty of \$50 and repeated delinquency may be considered a default under Section 27 of this Agreement.
- h. Instructor's Certification. At least one employee or agent of the Permittee, whose duties involve the rental, instruction, or supervision of water sports activities, must be certified in first aid and CPR. Permittee's employees or agents may participate in the City sponsored certification program at Permittee's or Permittee's agent's cost. In addition, if Permittee is engaging in any instructional activity at the Premises, one employee or agent must be certified in the respective

sport (e.g., canoeing, kayaking, boater safety, water skiing, knee boarding, and wilderness first aid) or the activity must be clearly identified in writing to participants as being uncertified. If additional licenses or permits are required from the State of Wisconsin in order to perform such instructional services, the Permittee shall obtain those licenses or permits.

- i. Product. Upon request by the Parks Superintendent or designee, the Permittee will provide a list of items and services offered for sale or rental at the Premises by Permittee, including, but not limited to, food, beverages, confections, boats, merchandise and other equipment.
- j. Equipment Safety. Permittee shall maintain all of Permittee's 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.
- k. Storage. Permittee may store equipment at the Premises necessary to provide the services set forth in Subsection a. The Permittee may store equipment inside and outside of the Beach House and the Camp House during the 'off season' in a neat, orderly, and attractive manner as long as it does not interfere with utility or fire access or is otherwise a public nuisance.
- l. Maintenance. When in operation at the Premises, Permittee shall be responsible for maintaining the portions of the Premises used by Permittee or Permittee's invitees in a clean, safe and attractive condition. This includes keeping the grounds immediately adjacent to the boathouse, docks, piers, and storage areas picked up and free of all paper and debris. This also includes being responsible for cleaning the restrooms at the Premises, including 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 after written notification and reasonable time to rectify, the Parks Division may perform or have performed additional cleaning or maintenance work, and charge the actual costs of such work to Permittee, payable within thirty (30) days of the issuance of the invoice, or as a charge against the Permittee's security deposit.

Any paper products, chemicals, trash-liners, or soap used by the Permittee in the restrooms under this Subsection will be provided by the City and 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. 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 27 of this Agreement.

- m. 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. Any requested modifications shall be submitted in writing to the Parks Superintendent, or his/her designee, outlining the need, plan, cost, desire for financial or physical assistance and whether the alteration should be considered an Improvement as set forth in Section 4 above.
- n. Signage. All signs and banners, including menu boards, shall be approved by the Parks Superintendent or designee and the Zoning Administrator. Additionally, 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 22.
- o. Weapons Prohibition. Permittee shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at the Permittee's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).
- p. 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, unless arrangements for winterizing of the buildings being used by the Permittee at the Premises have been made by Permittee.
- q. Surrender of Premises. Upon the termination of this Agreement under Section 27, or, in the event that this Agreement is not renewed or expires under Section 2, Permittee shall vacate and remove all personal property from the Premises no later than December 31 of the final year of the Agreement or fifteen (15) days of termination, whichever occurs first. However, with the Superintendent's written consent, the Permittee may have up to ninety (90) days following termination to remove all equipment and property from the Premises. The Permittee will deliver the facility to City in as good condition as the Premises was in at the commencement of the Agreement, with the exception of normal wear and tear and with the exception of damage by fire or other casualty beyond the control of Permittee. 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 charge the cost thereof against the security deposit as set forth in Subsection r below. Any balance still owing by Permittee in excess of the security deposit shall be due within thirty (30) calendar 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 from the Premises 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) calendar days after surrender of the building will become the property of the City. Notwithstanding the preceding, Permittee must immediately surrender the Premises and remove all property therefrom in the event Permittee no longer meets the insurance requirements of Section 17.

- r. Security Deposit. The Permittee shall provide the City a security deposit in the amount of \$3,000 prior to occupying the Premises. To satisfy this security deposit requirement, the City agrees to either hold a check issued during each calendar year from Permittee for \$3,000, or hold Permittee's credit card information and an authorization to charge up to \$3,000. If, at the time of surrender of the Premises there are any damages or other assessable costs under this Agreement, City is permitted to either cash the check, deduct for any charges and return the balance to Permittee, or charge Permittee's credit card the assessable amount, up to \$3,000. Permittee must provide the Parks Division with a new check or an updated credit card authorization at the time of applying for the Permittee's yearly parks vending permit as required by this Agreement, or within fifteen (15) business days of changing banks. In cases where the damage and other assessable costs are greater than \$3,000, Permittee shall pay to the City the remaining balance within 30 calendar days of the invoice from the City. If it is discovered that the Permittee's check and/or credit card authorization are unable to satisfy the \$3,000 security deposit amount, the City is authorized to take possession of any personal property of Permittee remaining on the Premises and sell this property to satisfy the security deposit requirement.
- s. Use Fee. For the use of the Premises, and the right to provide the services set forth above therein, Permittee agrees to pay the City a use fee for each calendar year of this Agreement (the "Use Fee"). Payment in full shall be due no later than September 30<sup>th</sup> each year. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) business days of the due date. The Use Fee is as follows:

First Agreement Period (2017 and 2018):	\$1,500
Second Agreement Period (2019 and 2020):	\$2,500
Third Agreement Period (2021 and 2022):	\$3,500
Fourth Agreement Period (2023 and 2024):	\$4,500

- t. Payment. Except where otherwise indicated in this Agreement or by City ordinance, Payment to the City of any fees or other amounts due the City under this Agreement shall be due no later than September 30<sup>th</sup>. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) business days of the due date.

The following is a projected schedule of annual payments based on the currently anticipated capital improvement plans and permit fees.

<b>Agreement Year</b>	<b>Min. Capital Improvements</b>	<b>Vending Permit*</b>	<b>Mooring Fee**</b>	<b>Use Fee</b>	<b>Amount Due</b>	<b>Benefit to City</b>
2017	\$4,000	\$900	\$3,300	\$1,500	\$5,700	\$18,200
2018	\$4,000	\$900	\$3,300	\$1,500	\$5,700	\$18,200
2019	\$4,000	\$900	\$3,300	\$2,500	\$6,700	\$19,200
2020	\$4,000	\$900	\$3,300	\$2,500	\$6,700	\$19,200
2021	\$4,000	\$900	\$3,300	\$3,500	\$7,700	\$7,700
2022	\$4,000	\$900	\$3,300	\$3,500	\$7,700	\$7,700
2023	\$0	\$900	\$3,300	\$4,500	\$8,700	\$8,700
2024	\$0	\$900	\$3,300	\$4,500	\$8,700	\$8,700
<b>Total</b>	<b>\$24,000</b>	<b>\$7,200</b>	<b>\$26,400</b>	<b>\$24,000</b>	<b>\$57,600</b>	<b>\$81,600</b>

\*Permit Fee may change over time.

\*\*Mooring fee is at the public rate, based upon four boats. Fee is subject to change.

6. 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.
7. 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 utilizes and provides for services under this Agreement are employees of Permittee and are not employees of the City. 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.
8. Assignability and Subcontracting. Permittee shall not assign or subcontract any interest or obligation under this Agreement without City's prior written approval, including any lease, other than space in a boat storage rack, or exclusive use of the Premises. 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 of this Agreement.

9. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a grant to Permittee of 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. There is, therefore, no conveyance of any riparian rights to Permittee, but only permission to make use of the riparian rights the City has as owner of the property.
10. 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.
11. Designated Representative. Permittee designates Tyler Leeper, and in his absence David Leeper, as Contract Agent with primary responsibility for the performance of this Agreement. In case the Contract Agents are replaced for any reason, or in the event of the death, disability, removal or resignation of the Contract Agents, Permittee will designate another Contract Agent within seven (7) calendar days by notifying the City as set forth below in Section 22. The City may accept another person as the Contract Agent or request the appointment of another Contract Agent. If Permittee does not designate a Contract Agent acceptable to the City within thirty (30) days, the City may terminate this Agreement under Section 27, at its option.
12. 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. Tyler Leeper is designated the initial Operating Agent, and in his absence David Leeper shall be the Operating Agent. In case the Operating Agents are replaced for any reason, or in the event of the death, disability, removal or resignation of the Operating Agents, Permittee will designate another Operating Agent within forty-eight (48) hours of any changes to the Operating Agent or the Operating Agent's contact information. The City may accept another person as the Operating Agent or request the appointment of another Operating Agent. If Permittee does not designate an Operating Agent acceptable to the City within thirty (30) days, the City may terminate this Agreement under Section 27, at its option.
13. 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 without permission of the Park Superintendent or their designee. In any commercial advertisement or announcement, Permittee may use the names of the City parks where the activity is located, but any such advertisement or announcement must also indicate that Permittee's activities are not associated with or affiliated with the City.
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 other than 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. The Permittee 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 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 the Permittee's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
17. Insurance.
  - a. Required Insurance. The Permittee will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Permittee shall not commence work under this Agreement, nor shall the 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.
    - (1) Commercial General Liability. During the life of this Agreement, the Permittee shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations, and watercraft liability (covering motorized and non-motorized watercraft whether owned, non-owned or hired) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Permittee's 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.

- (2) Automobile Liability. During the life of this Agreement, the Permittee shall procure and maintain 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 Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
  - (3) Worker's Compensation. During the life of this Agreement, the Permittee shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The 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.
  - (4) 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, Business Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
  - (5) 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.
- b. 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.
  - c. Proof of Insurance, Approval. The Permittee shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Permittee shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Permittee shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

- d. Notice of Change in Policy. The Permittee and/or Insurer shall give the City thirty (30) calendar days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- e. 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.
- f. Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison  
Attention: Risk Manager, Room 406  
210 Martin Luther King Jr. Blvd.  
Madison, WI 53703

- 18. Non-Discrimination. In the performance of the services under this Agreement the Permittee 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. Permittee further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
- 19. 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).

- 20. 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.
- 21. 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.
- 22. 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  
P.O. Box 2987  
210 Martin Luther King, Jr. Blvd. #104  
Madison, WI 53703

Permittee: Marshall Boats LLC  
822 West Shore Drive  
Madison, WI 53715

Contracting Agents: Tyler Leeper, President  
Marshall Boats LLC  
822 West Shore Drive  
Madison WI 53715  
tyler@outdoormadison.com  
608-695-8444

David Leeper,  
Marshall Boats LLC  
866 Terry Place  
Madison, WI 53711  
davidleeper@gmail.com  
608-228-3111

23. 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.
24. Audit and Retaining of Documents. The Permittee agrees to provide all tax returns and reports of services rendered under this Agreement. Tax records and service reports shall be provided within fifteen (15) business days after the Permittee receives the City's written requests, unless the Parties agree in writing on a longer period. Records 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.
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 8 of this Agreement.
27. Default/Termination. In the event either Party shall default on 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 other Party,



and any such default shall continue unremedied for a period of ten (10) business days after written notice thereof to the other Party, the non-defaulting Party may, at its option, have the right to immediately terminate this Agreement. Moreover, the City, and only the City, shall expressly retain all other rights and remedies which it may have at law or in equity, including the right to specific performance hereof.

If this Agreement is terminated by the City under this Section, Permittee shall be responsible for a prorated portion of the Use Fee for the calendar year. If Permittee has not paid these amounts in full prior to the termination, then payment shall be made within ten (10) days thereof. If Permittee has paid these amounts prior to the termination, the City shall return the surplus to Permittee within ten (10) days thereof. In calculating the prorated amount due upon the City's termination, the Permittee's use in any calendar year shall be considered to commence on April 15 and run through September 30 (168 days).

If this Agreement is terminated by Permittee under this Section, Permittee shall be responsible for the full Use Fee and utility payments for the calendar year, which amount shall be paid within ten (10) days of termination, if not already paid. However, if the City enters into an agreement with another party to conduct similar operations as provided for by this Agreement, any use fee or utility revenue the City receives from this party for that calendar year shall be credited against the amount due by Permittee.

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 Contract may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract 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 Contract, 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.

MARSHALL BOATS LLC

\_\_\_\_\_  
Tyler Leeper, President

\_\_\_\_\_  
Date

FOR THE CITY OF MADISON

\_\_\_\_\_  
Paul Soglin, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

\_\_\_\_\_  
Date

Countersigned:

\_\_\_\_\_  
David P. Schmiedicke, Finance Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Veum, Risk Manager

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Michael P. May, City Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-17-00\_\_\_\_, ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2017 and approved by the Board of Parks Commissioners at its meeting on \_\_\_\_\_, 2017.

**EXHIBIT 1**  
Map of Premises

