

OPERATING AGREEMENT FOR BRITTINGHAM BEACH HOUSE
Between the City of Madison and Brittingham Boats, LLC.

THIS AGREEMENT is entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Brittingham 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, 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 (“Permit Year”), to allow the person to sell foods, beverages, goods, services and lessons in a City park; and,

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, for the last seven years, Permittee has successfully provided recreational and concession services at Brittingham Park, meeting or exceeding the requirements set forth by the City during this time; and,

WHEREAS, in 2013, following a Request for Proposals Process, Permittee was selected to continue providing such recreational and concession services at Brittingham Park and entered into an operating agreement with the City through the 2020 Permit Year; and,

WHEREAS, there are numerous capital investments to the piers, grounds, and rental and concession facilities that need to be made to provide the best and safest services possible, and these improvements can only be made by the Permittee if there is a contract extending the relationship between the City and the Permittee.

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 Brittingham Beach House and the surrounding area in Brittingham Park (hereinafter, the “Premises”) to conduct rental, instructional, concession and other recreational activities. The “Premises” includes the Brittingham Beach House and surrounding area described as follows:

The area of Brittingham Park enclosed by the Monona Bay shoreline, West Brittingham Place extended to Monona Bay, Proudfit St. and North Shore Drive, and the Wisconsin and Southern Railroad tracks. The location includes the existing concession facilities, boat storage facilities, and storage area at 701 West Brittingham Place, Madison, WI 53715.

2. Term and Effective Date. This Agreement shall be effective for up to fifteen (15) years, from January 1, 2021 through no later than December 31, 2035, which shall consist of seven (7) Agreement Periods of two (2) consecutive Permit Years, followed by a partial Permit Year in 2035 as set forth in this Section. During the last year of the Agreement (the 2035 Permit Year), the Agreement shall expire on December 31, 2035, after which Permittee will no longer be permitted to conduct the activities set forth in this Agreement, unless a successor Agreement is entered into by the Parties. Except for in the fifth and eighth Agreement Periods, upon written notification by Permittee to the Parks Division of its intent to renew the Agreement, received no later than November 1st of the second Permit Year of the Agreement Period, the Agreement shall renew automatically for an additional Agreement Period.

To renew the Agreement at the end of the fifth Agreement Period (the 2029-2030 Permit Years), Permittee must, by November 1, 2030, submit written notice to the Parks Division of Permittee’s desire to renew this Agreement for the sixth Agreement Period (2031-2032). The City’s decision to renew or not renew the Agreement for the sixth Agreement Period will be based upon the Permittee’s performance under this Agreement during the preceding Agreement Periods, and the decision to renew or not renew the Agreement is not reviewable, and solely that of the Parks Superintendent, or his/her designee. The City will notify the Permittee in writing of its decision to renew or not renew this Agreement for the sixth Agreement Period by December 1, 2030. If the Agreement is renewed, the terms and conditions of this Agreement will remain in place through December 31, 2030, after which the next Agreement Period will commence.

The terms and renewal dates as set forth above are as follows:

Agreement Period	Permit Years	Renewal
First	2021-2022	Automatic
Second	2023-2024	Automatic
Third	2025-2026	Automatic
Forth	2027-2028	Automatic

<i>Fifth*</i>	<i>2029-2030</i>	<i>City Review</i>
Sixth	2031-2032	Automatic
Seventh	2033-2034	Automatic
Eighth	2035	End of Agreement

* *Agreement will expire on December 31, 2030 if the Agreement is not renewed by the Parties as set forth above.*

3. Grant. City does hereby grant to Permittee permission to conduct water sport equipment rental and instructional programs, operate a motorized watercraft rental program, establish a watercraft storage program, hold up to eight special events, and sell concession and related boating products and equipment at the Premises, made a part hereof, as set forth in this Agreement. The City will retain all riparian rights at the Premises and in no way does the Agreement transfer any riparian rights to the Permittee.

4. Capital Improvements. During the life of this Agreement, including any renewals hereunder, the Parties agree that improvements, repairs and upgrades to the Premises' beach house facilities and grounds will be necessary to make the Premises suitable for Permittee's operations ("Improvements"). Regarding these Improvements, the Parties agree as follows:
 - a. Capital Investment. The Permittee agrees to make at least \$25,000 in improvements to either the grounds or the facility over the life of the agreement without rent credit. 50% of improvements above \$25,000 during the life of this Agreement will be applied as a rent credit to the following year.

 - b. Capital Investment over \$100,000. If the City or Permittee invest over \$100,000 into the Brittingham Beach House facilities the use and use fees will be renegotiated.

 - c. Improvement Planning. Permittee may submit requests for City assistance for future Improvements by May 15th of each year. This request shall include a proposed budget for the Improvement project including funding sources. The City will respond to all such requests of the Permittee within 30 days. The City and Permittee will schedule an annual year end inspection of the facility to identify planned work and establish schedules for such work.

 - d. Plans and approval. Prior to making any Improvement, Permittee must notify the Parks Superintendent, or representative, in writing of the anticipated Improvement. Except for Improvements or repairs under \$5,000, Permittee shall then present the plans for Improvements 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.

- e. 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 shares. If the City determines that public bidding requirements are applicable, the City shall manage and oversee the project, accepting Permittee's financial contribution to the Improvement prior to the start of construction.
 - f. Construction. Except as provided in Subsection e., the funding and construction of any Improvement under this Section is entirely the responsibility of the Permittee. The Permittee shall be responsible for obtaining any required permits, licenses, and approvals for the improvement. The City will assist in obtaining permits, licenses and approvals when possible.
 - g. 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.
 - h. 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.
 - i. 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.
 - j. Ownership of Improvements. Any 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. 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 equipment for water sports rental. Permittee may provide instructional programs for water sports, youth camps for water sports, motorized watercraft rentals, watercraft storage, lessons, excursions, private event services, beverage and snack concessions, sales of related equipment

and merchandise at the Premises. No alcoholic beverages may be sold at the Premises. The Permittee will establish a training program in conjunction with the Parks Division to ensure staff are aware of the current Parks Behavior Policy and its implementation.

- b. Motorized Watercraft Rental Program. Permittee shall be permitted, as part of this Agreement, to make available for rent at the Premises motorized watercraft, including pontoon boats, runabout, and fishing boats. Personal watercraft such as Jet-skis and large tour boats defined by a capacity of over 16 people are not included in this agreement.
 - (1) Rental Location. Motorized watercraft shall be rented and stored at the Premises.
 - (2) Safety Requirements. All motorized watercraft made available for rent must meet all federal, state and local laws, regulations and standards and be equipped with personal flotation devices on board for each passenger. All motorized watercraft must be equipped with communication devices to allow for tracking, weather alerts or shore contact in the event of any emergencies.
 - (3) No Alcohol. Alcohol shall not be permitted on the rental motorized boats
- c. Watercraft Storage Program. Permittee may provide storage facilities of up to 70 spaces for paddle craft for rent to public.
- d. Special Events. Permittee may hold up to eight special events and activities at the Premises each year with attendance of up to 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.
- e. Permittee shall provide the required boat rentals service Saturday prior to Memorial Day through the following Labor Day. Services shall not begin earlier than April 1st or extend longer than the Closing date set forth in Subsection m. These dates are to meet the seasonal winterization of the building and any operations outside of these dates must be approved by the Superintendent or their designee.
- f. 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 28 of this Agreement.
- g. 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 inspections by the Public Health Department, Fire Department or any other governmental agencies that oversee 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.

- h. Equipment. City shall be responsible for providing a lockable storage area, a concession counter, access to water and electrical service, and functioning bathrooms. Permittee shall provide all other equipment necessary to operate the facility, including, but not limited to, all water sports equipment, safety equipment (including a motorized boater assistance boat), concessions, refrigerators, freezers, microwaves, and cash registers. The Permittee shall be responsible for the entire cost of cleaning supplies, soap, and paper products for the bathrooms. Permittee may place boat storage racks and equipment related to the operation of the Premises by the Permittee consistent with this Agreement in locations approved by the Parks Superintendent, or his/her designee. Permittee may, solely at Permittee's expense, install a security system on the Premises. Permittee may install or use other equipment with the written permission of the Parks Superintendent, or his/her designee. Upon request, Permittee shall provide the Parks Superintendent, or designee, with a current list of all the Permittee's equipment at the Premises.
- i. Utilities. Permittee is responsible for all utilities (e.g. electrical, water, sewer) related to Permittee's operations at the Premises, but not including utility costs for the public use of the Premises not directly related to the Permittee's operation and Stormwater Utility charges. The City shall provide Permittee with the relevant meter data for the Premises, or a relative fixed monthly utility cost for the Premises for each permit year. Accrued utility costs shall be due to the City at the time of Permittee's payments to the City under Subsection p, and at the time of closing of the Premises as set forth under Subsection m. Failure to pay this amount by the due date will result in a late penalty of \$50. Failure to pay this amount in full, plus any accrued penalties, within 14 days of the due date, will constitute a default under Section 28 of this Agreement. Permittee shall only be responsible for utilities during the months that services are being offered at the Premises.
- j. Instructor 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. 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.
- k. Product. All items offered for sale by Permittee, including, but not limited to, food, non-alcoholic beverages, and confections, novelties, apparel and related supplies and equipment shall be approved by the Parks Superintendent, or his/her designee.

All items for sale shall be individually listed on an inventory, a copy of which shall be provided to the Parks Division upon request.

- l. 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.
- m. Storage. Permittee may store equipment necessary to provide the services set forth in Subsection a above and consistent with Subsection c above. Permittee may store equipment on the premises and will be allowed to store related piers and boat racks on the Premises, and in any event, may only do so consistent with Subsection c above. Permittee shall store said equipment and related items in a neat and orderly fashion as approved by the Parks Superintendent, or his/her designee.
- n. Maintenance. Permittee shall be responsible for maintaining the Premises in a clean, safe and attractive condition at all times, including keeping the grounds picked up of all paper 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 after written notification and reasonable time to rectify, 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 charge against the Permittee's security deposit.
- o. Green Cleaning Program. Any custodial services, and any chemicals, trash liners, soap and paper used by the Permittee pursuant to its obligations under Subsection i, 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 28 of this Agreement. Permittee will be responsible for all supplies.
- p. Alterations to Premises. No modifications of any kind, or fixtures, additions or removals not outlined in Section 4, shall be made to the Premises without the permission of the Parks Superintendent, or his/her designee.
- q. Signage. All signs and banners, including menu boards, shall be approved by the Parks Superintendent or designee and/or 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 12, and

a notice that Permittee and the Permittee's activities are not affiliated with, nor in any way endorsed by, the City.

- r. 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 as set by the Parks Facilities Maintenance Supervisor, unless Parks has provided written recognition that facilities and operations have been modified to allow provide the services set forth in Subsection a during the fall, winter or spring.
- s. Surrender of Premises. Upon the expiration of this Agreement, or the termination of this Agreement under Section 28, the 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, and accounting for the Improvements made under Section 4. However, 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 Permittee the cost of any damage as set forth in Subsection o. All costs 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 or expiration 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. 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 18.
- t. Security Deposit. Due to the fact the Permittee has previously invested over \$60,000 into improving the property and maintains the property, no security deposit will be held. If, at the time of surrender of the Premises, there are damages caused by the Permittee above normal use, wear and tear, the City will invoice the Permittee who shall pay to the City the remaining balance within 30 days of the invoice.
- u. Payment. For the use of the Premises and the right to provide the services set forth above therein, and in addition to the other obligations set forth in this Agreement, Permittee agrees to pay the City the following rent for each Permit Year of the Agreement, including any renewals hereunder. Payments shall be made no later than October 1st of each 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.

Year	Base Rental Payment	Permit Fees	Utilities, Supplies, Maintenance & Cleaning ***	Total Operating Cost to Permittee
2021	\$3,500	\$900	\$8,575	\$12,975
2022	\$3,500	\$900	\$8,575	\$13,975
2023	\$3,500	\$900	\$8,575	\$13,975
2024	\$4,000	\$900	\$8,575	\$14,475
2025	\$4,000	\$900	\$8,575	\$14,475
2026	\$4,000	\$900	\$8,575	\$14,475
2027	\$4,500	\$900	\$8,575	\$14,975
2028	\$4,500	\$900	\$8,575	\$14,975
2029	\$4,500	\$900	\$8,575	\$14,975
2030	\$5,000	\$900	\$8,575	\$15,475
2031	\$5,000	\$900	\$8,575	\$15,475
2032	\$5,000	\$900	\$8,575	\$15,475
2033	\$5,500	\$900	\$8,575	\$15,975
2034	\$5,500	\$900	\$8,575	\$15,975
2035	\$5,500	\$900	\$8,575	\$15,975
TOTAL	\$81,500	\$13,500	\$128,625	\$223,625

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 of Madison.
8. Assignability and Subcontracting. Permittee shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. The City will expeditiously approve or deny any requests under this Section related to necessary building and grounds improvements to prepare the Premises for operation. All of the services required under this Agreement 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, parties, members or others who possess ownership interests in Permittee as of the date of the contract.
9. 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.
10. Access to Premises. City, by its representatives, shall have access to the 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 are to be solely determined by the City, the 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 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, notices. The City may accept another person as Contact Agent or may terminate this agreement under Section 26, 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. 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.

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 in any commercial advertisement or announcement. However, the Permittee may use the name of the City Park where the Premises is located.
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. 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* Subcontractors 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. Hazardous Substances; Indemnification. The Permittee represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The 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.

18. 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. Such limits shall apply on a per location basis. 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 Worker's 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 \$1,000,000 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 personal 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) 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

19. 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.

20. 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 USC A Sec 2000e-10).

21. 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.
22. 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.
23. 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: Brittingham Boats, LLC
822 W Shore Drive
Madison, WI 53715 tyler@madisonboats.com

Contracting Agent:
Tyler Leeper, President
Brittingham Boats, LLC.
822 W Shore Drive
Madison, WI 53715 tyler@madisonboats.com

24. 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.
25. Audit and Retaining of Documents. The Permittee agrees to provide complete tax returns, and reports of services rendered. These reports and documents shall be provided within fifteen (15) working days after the Permittee receives the City's written requests, unless the Parties agree in writing on a longer period. Taxes shall be retained by the Permittee for a period of no less than three (3) years after completion of any seasonal work under this Agreement, in order to be available for audit by the City or its designee.

26. Choice of Law and Forum Selection. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin. The Parties agree that 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.
27. 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 28 of this Agreement
28. Default/Termination. 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 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, and have the cumulative right to immediately terminate this Agreement and all rights of Permittee under this Agreement.
29. 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).
30. 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.
31. 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 set their hands at Madison, Wisconsin.
BRITTINGHAM BOATS, LLC.

Tyler Leeper, President

Date

CITY OF MADISON

Satya Rhodes-Conway, 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 20-_____, ID No. _____,
adopted by the Common Council of the City of Madison on _____, 2020, and the Board of Parks
Commissioners approval granted on _____, 2020.