

MARSHALL PARK USE AGREEMENT (2025-2039)
Between the City of Madison and Marshall Boats LLC

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, following a Request for Proposals process in 2016, Permittee was selected to operate recreational and concession services at Marshall Park. Permittee and the City entered into use agreement for these purposes for the 2017-2024 calendar years, and during that time, Permittee has successfully provided recreational and concession services at Marshall Park, meeting or exceeding the requirements set forth by the City, and providing a valuable amenity to the public; and,

WHEREAS, it is in both the City and the Permittee’s interests to enter into a new Use Agreement to allow Permittee to operate recreational and concession services at Marshall Park for the 2025-2039 calendar years.

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 fifteen (15) years, from January 1, 2025 through no later than December 31, 2039 which shall consist of seven (7) Agreement Periods of two (2) calendar years each, followed by a one (1) Agreement Period of one (1) calendar year as set forth in this Section.

During the last year of the Agreement (2039), the Agreement shall expire on December 31, 2039, 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 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 (2033-2034), Permittee must, by November 1, 2034, submit written notice to the Parks Division of Permittee's desire to renew this Agreement for the sixth Agreement Period (2035-2036). 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 their 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, 2034. If the Agreement is renewed, the terms and conditions of this Agreement will remain in place through December 31, 2034, after which the next Agreement Period will commence.

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

Agreement Period	Years	Renewal
First	2025-2026	Automatic
Second	2027-2028	Automatic
Third	2029-2030	Automatic
Forth	2031-2032	Automatic

<i>Fifth*</i>	<i>2033-2034</i>	<i>City Review</i>
Sixth	2035-2036	Automatic
Seventh	2037-2038	Automatic
Eighth	2039	End of Agreement

* *Agreement will expire on December 31, 2034 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, hold up to eight special 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 and any docks or piers the Permittee builds, stores or installs. 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. The Permittee agrees to invest a minimum of \$30,000 in Improvements to the grounds and/or the facilities at the Premises over the life of the Agreement. Fifty percent of Improvements made above \$30,000, up to \$100,000 during the life of this Agreement, will be applied as a rent credit to the following year. However, rent credit shall never be more than the rent due in any year. Any excess credit may be carried to future years.

 - b. Improvement Planning. Permittee may submit requests to the City for assistance for future Improvements by March 15th of each year. This request will be considered by the Parks Division as part of the Capital Improvement Plan and work plan development of the following calendar year. The request will include a proposed budget for the Improvement project, including potential 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.

- c. 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 \$10,000 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.
- d. 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, accepting Permittee's financial contribution to the Improvement prior to the start of construction.
- e. Construction. Except as provided in Subsection d, 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 and when necessary as owner.
- f. 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.
- g. 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.
- h. 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.

- i. 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. 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 at the Premises. 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 at the Premises. This may also include after school programs, and winter activities and events. 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. Training. The Permittee will establish a training program in conjunction with the Parks Division to ensure that Permittee's staff are aware of the current Parks Behavior Policy and its implementation.
 - c. 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.
 - d. 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.

- e. 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. The Permittee shall have the option of leasing mooring spots from the City 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.
- f. 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 writing and in advance by the Parks Division.
- g. 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 user that has made a reservation after 4 pm.
- h. Utilities. Permittee is responsible for all utility costs (e.g. electrical, water, sewer) 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.
 - (1) Electricity. One electric meter currently serves the restroom, shelter, and beach house. Permittee shall be responsible for 20 percent of the electric bill during the months of May and September. Permittee shall be responsible for 80 percent of the electric bill during the months of June, July, and August. Unless off-season activities are planned, Permittee shall not be responsible for the electric bill during January-April, or October-December.
 - (2) Municipal Services Bill. Permittee shall be responsible for the difference between the water utility charges incurred at the Premises in 2016 and in the current year. Permittee shall be responsible for \$50, annually, for stormwater utility charges. Permittee shall not be responsible for sanitary sewer utility charges. If Permittee uses the City's recycling services, Permittee shall be responsible for the Resource Recovery Special Charge. Otherwise, Permittee will not be responsible for other special charges collected on the municipal services bill, unless tied to a specific service used by the Permittee.

- (3) Separate Metering. In the event that the City provides separate metering for the utilities used exclusively by the Permittee at the Beach House, Permittee shall be entirely responsible for the utilities billed at the Beach House.
- (4) Billing. 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 28 of this Agreement.
 - i. 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.
 - j. 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.
 - k. 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.
 - l. 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.
 - m. 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, from Memorial Day Weekend through Labor Day. 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 28 of this Agreement.

- n. 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.
- o. 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 23.
- p. 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).
- q. 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 and approved by the Parks Division.
- r. Surrender of Premises. Upon the termination of this Agreement under Section 28, 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 s 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 18.

- s. Security Deposit. Due to the fact the Permittee has previously invested over \$40,000 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.
- t. 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 30th 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 annual Use Fee for each Agreement Period is as follows:

First Agreement Period (2025 and 2026):	\$5,000
Second Agreement Period (2027 and 2028):	\$5,500
Third Agreement Period (2029 and 2030):	\$6,000
Fourth Agreement Period (2031 and 2032):	\$6,500
Fifth Agreement Period (2033 and 2034):	\$7,000
Sixth Agreement Period (2035 and 2036):	\$7,500
Seventh Agreement Period (2037 and 2038):	\$8,000
Eighth Agreement Period (2039):	\$8,500

- u. 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 30th. 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.

Agreement Year	Use Fee	Permit Fees*	Amount Due	Min. Capital Improvements	Benefit to City
2025	\$5,000	\$900	\$5,900		
2026	\$5,000	\$900	\$5,900		
2027	\$5,500	\$900	\$6,400		
2028	\$5,500	\$900	\$6,400		
2029	\$6,000	\$900	\$6,900		
2030	\$6,000	\$900	\$6,900		
2031	\$6,500	\$900	\$7,400		
2032	\$6,500	\$900	\$7,400		
2033	\$7,000	\$900	\$7,900		
2034	\$7,000	\$900	\$7,900		
2035	\$7,500	\$900	\$8,400		
2036	\$7,500	\$900	\$8,400		
2037	\$8,000	\$900	\$8,900		
2038	\$8,000	\$900	\$8,900		
2039	\$8,500	\$900	\$9,400		
Total	\$99,500	\$13,500	\$113,000	\$30,000	\$143,000

*Permit Fee may change over time.

- 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 23. 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 28, 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 contract information to the Parks Superintendent, or their designee, within forty-eight (48) hours 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. 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 , 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 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 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. 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 USCA 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
330 E. Lakeside St.
Madison, WI 53715

Permittee: Tyler Leeper, President
Marshall Boats LLC
822 West 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 under this Agreement. 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. Tax returns shall be retained by the Permittee 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 the 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 specific enforcement hereof, have the cumulative right to immediately terminate this Agreement and all rights of Permittee under this Agreement.
29. 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.
30. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement 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 Agreement, 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

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-____ - _____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20____ and approved by the Board of Parks Commissioners at its meeting on _____, 20____.

EXHIBIT 1
Map of Premises

