

MANAGEMENT AGREEMENT BETWEEN
THE CITY OF SAINT PAUL AND
SAINT PAUL YACHT CLUB

This Agreement, entered into this _____ day of June 2024, by and between the City of Saint Paul, Minnesota, a municipal corporation organized and existing under the laws of the State of Minnesota, ("City"), and Saint Paul Yacht Club ("SPYC").

WHEREAS, the CITY is the owner of certain real estate adjoining the Mississippi River commonly known as Harriet Island which contains a "Lower Harbor" outlined by a black dashed line on attached Exhibit A and "Upper Harbor" outlined by a black dashed line on attached Exhibit B; and

WHEREAS, SPYC has occupied Harriet Island since 1912, during which time the SPYC has continually satisfied the public recreational use criteria by providing public access for recreational boating, docking and boat storage for the citizens of Saint Paul; and

WHEREAS, the CITY as Lessor, and the SPYC entered into a certain Lease Agreement dated June 3, 2004 whereby the SPYC was granted the right to operate a marina facility on said Lower and Upper Harbors of Harriet Island ("Marina Premises"); and

WHEREAS, to properly reflect current operations and practices the Parties believe it is in their mutual best interest to enter the within Management Agreement for Marina Premises which will replace and supersede the Lease Agreement dated June 3, 2004; and

Now, therefore, parties agree as follows:

1) Term and Renewal.

- a) **Initial Term.** The term of this Agreement begins June 1, 2024, and continues for a period of six (6) years thereafter, unless earlier terminated pursuant to paragraph 10 of this Agreement.

2) Use of Site.

- a) The SPYC shall have the exclusive privilege of operating a marina facility on Marina Premises; and to generally carry on and engage in normal activities which are incidental to the operation of the marina.
- b) The SPYC may engage in activities including but not limited to slip rental, launching, hauling and winter storage of boats, sale of fuel and marine supplies. All other use of the Marina Premises and surrounding parkland will be subject to written permission of the City.
- c) The Marina Premises remain public spaces, however, the public's access to certain areas may be prohibited for reasons of public safety and basic security concerns.

3) Payment.

- a) SPYC will pay the CITY a 6.5% commission of the gross revenues (excluding sales tax, metered utilities, fuel sales, and Refundable Safety Fees) earned by SPYC for boat dockage, rentals, winterization, launching, boat/trailer storage fees, and any other related income derived from management of Marina Premises.
- b) Payments shall be made quarterly to the City by April 1, July 1, October 1, and January 1; based on revenue collected from the previous quarter. Along with payment each quarter, SPYC shall

provide to the City a financial statement in Microsoft Excel or convertible to Excel showing gross receipts and expenses. SPYC will retain in an orderly fashion; all cash register receipts and invoices to be made available to the City upon request.

- c) SPYC will guarantee the City an Annual Minimum Payment of \$45,000 each year, regardless of total gross revenues. If aggregate payments have not totaled at least \$45,000 annually, SPYC must add the full amount of the shortfall to its fourth quarter payment obligation, (due January 31 of the following year).
- d) Commission credits may be earned and applied for preapproved capital projects underwritten by SPYC on a 1:1 basis. No credit shall be allowed for a project solely or substantially for the benefit of SPYC or of users of the Marina Premises, or if the benefit to the public at large is purely incidental.
- e) The CITY has a right to inspect all books and records pertaining to the operation of SPYC. The CITY will be granted inspection of said books and records by providing SPYC with written notice, upon which SPYC will have fifteen (15) days to provide access to those books and records to the CITY or its agents.
- f) SPYC shall maintain all books, documents, and accounting records for inspection or audit by the City, State Auditor, or other duly authorized representative for a period of six years following termination of the Agreement.
- g) SPYC is responsible for the payment of all utility bills during the term of the Agreement. SPYC must ensure direct billing by the utilities throughout the term of this Agreement.

4) Maintenance and Repair.

- a) SPYC is responsible for all maintenance, repair, and replacement of marina related facilities, equipment, and infrastructure within Marina Premises.
- b) Any damages caused by the action of SPYC, its employees, agents, or invitees will be the sole responsibility of SPYC to pay for.

5) Floods and Dredging

- a) In cases of emergency or disaster such as flood or other natural act, SPYC will vacate Marina Premises if required and otherwise cooperate with directives from the City's Superintendent of Parks and Recreation, Fire Chief, Police Chief or other City official delegated such power due to the emergency. Related costs shall be borne by SPYC unless otherwise negotiated. Further, SPYC will make no claim against the City for lost revenues or added expenses due to this temporary relocation.
- b) SPYC is authorized to establish and maintain dewatering and accompanying dredging infrastructure, within the Marina Premises for the short-term storage of dredge spoils, as illustrated in Exhibit C, pending final approval through the Site Plan Review process.
- c) All dredge materials from Marina Premises must be permanently disposed of off-site, within twelve months from when they are collected, unless prior written approval from the CITY.
- d) SPYC will coordinate with all pertinent parties to obtain necessary permits as well as

establish and implement Best Management Practices (BMPs) to ensure discharged material from the sediment basin is not sediment laden and will not cause erosion or nuisance conditions.

- e) CITY may require SPYC to return premises to their original condition, as a graded storage yard, if the dewatering infrastructure falls into disrepair or is mutually deemed unnecessary.

6) SPYC Responsibilities.

- a) Provide to CITY an annual operating plan by January 31, which outlines operations and includes:
 - i) Calendar of operations
 - ii) Dredging and dewatering plan
 - iii) Rentals
 - iv) Hours
 - v) Board and bylaws
 - vi) Dryland storage
 - vii) Fees
 - viii) Staffing
 - ix) Gas sales
 - x) Maintenance and upkeep
 - xi) Slip assignment procedure that prioritizes Saint Paul residents
 - xii) Liveboards
 - xiii) Transient boating
 - xiv) Boat rentals
- b) SPYC may enter into agreements with non-profit entities, businesses or individuals to provide recreation programming, or other programs which serve a public purpose (example: daily boat rentals). City must approve such agreements in advance.
- c) SPYC shall complete electronic participant accident and incident report forms in any instance where accidents or incidents on or near the facility are reported to or witnessed by SPYC representatives. Completed reports must be provided to the City within two working (2) days following an accident or incident on or near the facility property, by U.S. mail, fax or a PDF scan attached to an email.
- d) SPYC shall develop and maintain up-to-date, facility specific, Emergency Action Plans (EAP) and Safety Data Sheets (SDS), which must be updated annually, and be consistent with the City plans. SPYC must train facility staff and volunteers on use of the EAP and SDS at least once a year.
- e) To maintain Marina Premises in a safe, clean and orderly condition.
- f) To inspect all docks on a regular basis and repair any conditions that cause the docks to be unsafe as soon as possible.
- g) To keep the Marina Premises free of litter and accumulated trash.

- h) To cut the grass and maintain the immediate banks of Mississippi River to the waterline adjacent to Marina Premises, marina parking areas and boat storage areas as defined in Exhibit A and B.
- i) To cooperate with and provide such facilities that are necessary and appropriate for CITY's Fire Department Harbor Patrol, U.S. Coast Guard, Coast Guard Auxiliary and Ramsey County Sheriff Water Patrol.
- j) To not rent space to any individual or entity whose primary purpose is to conduct business, specifically including charter and excursion boat operations, or allow any of its membership to temporarily or permanently conduct retail or commercial transactions within the marina harbors. This does not preclude slip holders from entertaining guests, nor does it prohibit slip holders from conducting personal business or work related to their employment while on their boat.
- k) The SPYC and its members must adhere to their bylaws and all Department of Natural Resources boating and water recreation regulations ([exhibit D](#)), including but not limited to:
 - i) No fishing or swimming within the marinas.
 - ii) Proper disposal of all waste, including waste water and human waste.
 - iii) All watercraft must have the ability to move under its own power.
 - iv) No occupation of drydocked boats is allowed.
 - v) Members may not rent their boats as part of a rental program (airBNB, Viaggio)
- l) The SPYC shall act as the primary rental agent for transient boaters on marina premises as well as the City Dock. The City Dock owned and maintained by the City. All transient fees collected by the SPYC will be retained by the SPYC.

7) City Responsibilities.

- a) The City will maintain the appropriate permits for the location and operation of a marina at the premises that may be required by law and to transfer the appropriate rights to said permits to the SPYC for the duration of this lease. The City shall provide copies of all such permits to the SPYC. Parks and Recreation 's Safety Office will conduct annual Safety and Security inspections of the facility and will notify SPYC of any deficiencies, which SPYC shall remedy in a timely manner.
- b) The CITY shall periodically inspect the marina facility, at least once annually, and inform the SPYC in writing of any conditions requiring attention as may be required to comply with the obligations under Lease Agreement, and of any conditions necessary to retain eligibility for lease renewal under Section 1.B of this Agreement.
- c) The CITY will manage and maintain the Public Dock.
- d) Tree maintenance and removal will remain the responsibility of the CITY.

- 8) Alterations.** SPYC will not make any alterations to the premises without the written consent of the City. If SPYC desires to make any such alterations, an accurate description of the project shall first be submitted to the City in writing and such alterations shall be done at the expense of SPYC. All such work shall be done under the City's supervision and any improvements will become the property of the City at the end of the agreement term. SPYC agrees that any alterations must be done in a workmanlike manner and in conformance with all applicable law,

regulations and building codes; that the structural integrity of any and all building systems will not be impaired and that no liens will be attached to the premises by reason thereof.

All assets present and future paid for and owned by the SPYC, unless furnished as an improvement or immovable fixture on the premises, shall always remain property of the SPYC unless otherwise agreed to in writing by the Parties. (i.e docks, lifts, trailers, temporary buildings, stands, spuds, above ground gas tanks and piping, and tools and equipment.)

- 9) **Notices.** The City's representative for this agreement will be the Special Services Manager or their designee. The SPYC representative for the purposes of this agreement will be the Commodore or their designee. Any notices or correspondence on this agreement shall be sent to:

Saint Paul Parks and Recreation
400 City Hall Annex
25 W 4th Street
Saint Paul, MN 55102
Attn: Parks and Recreation Program Supervisor
E-Mail: tyler.mckean@stpaul.gov

Saint Paul Yacht Club
375 W. Water St
Saint Paul, Minnesota 55107
Attn: Commodore
E-Mail: Commodore@stpaulyachtclub.org

All notices shall be deemed to have been given when served personally on City or JOTP or by mail upon deposit in a United States mailbox, postage pre-paid, addressed to Saint Paul Parks and Recreation or to JOTP at the above address. An electronic notification (“E-Mail Notice”) shall be deemed written notice for purposes of this Section if sent to the E-Mail address specified for the receiving party. E-Mail notice shall be deemed received at the time the party sending E-Mail notice receives verification of receipt by the receiving party.

- 10) **Indemnification.** SPYC agrees to defend and indemnify the City and all its agents, officers and employees thereof from all claims, demands, actions, judgments, suits or causes of action of any nature or character, arising out of SPYC use of the premises, except to the extent such claims may be caused by the negligence of the City. SPYC shall provide the City with notice of any injuries, claims, or suits submitted to them, within thirty (30) days of receipt of such notice, claim, or suit.

11) **Insurance.**

- a) The City will insure the marina premises for fire and comprehensive property damage coverage. SPYC will provide the following insurance during the term of the agreement:
- i. SPYC shall be responsible for the self-insurance of, or for the acquisition of Commercial Property insurance on its own personal property and the property of anyone using the facility.
 - ii. Comprehensive general liability insurance including blanket contractual liability coverage and personal injury liability coverage with a combined single limit of not less than \$1,500,000 per occurrence, or \$2,000,000 per occurrence shall be purchased by SPYC. Such insurance must: i) name the City of Saint Paul as "additional insured"; ii) be primary with respect to the City's liability insurance or self-insurance; and iii) not exclude

explosion, collapse, or underground property damage. Such insurance limits shall remain equal to or greater than the Municipal Maximum Tort Liability Limits as provided under Minnesota Statutes Chapter 466.04, which may be amended from time to time, and upon amendment may require JOTP to purchase and provide evidence of additional insurance.

- iii. Worker' s Compensation insurance with not less than the statutory minimum limits, and employer' s liability insurance with minimum limits of at least \$100,000 per accident. Physical/sexual abuse coverage with limits no less than \$1,500,000 aggregate or \$500.000 per occurrence.
 - iv. SPYC shall supply to the City current insurance certificates for policies required in this agreement. The certificates shall certify whether or not SPYC has errors and omissions insurance cove rage.
- b) Nothing in this agreement shall constitute a waiver by the City of any statutory limits or immunities.
 - c) Waiver of Subrogation. The City waives its right of subrogation for damage to the premises, contents therein, loss of income, up to the amount of insurance proceeds collected. SPYC waives its right of subrogation for damage to the premises, contents there in, loss of income, up to the amount of respective insurance proceeds collected. The parties shall notify their respective insurance companies, in writing, of the provisions of this paragraph, and if either cannot waive its subrogation rights, shall immediately notify the other party, in writing.

12) Non-Discrimination. SPYC will not discriminate against any participant or employee wishing to participate in its programs or any person wishing to use the any part of the marina premises and it's infrastructure because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that participants are treated without the same during their participation in programs or use of the facility.

13) Right of Entry. At all times during the term of this agreement, the City retains ownership of the premises and shall have the right, by itself, its agents and employees, to enter into and upon the Premises during reasonable business hours or, in the event of an emergency, at any time for any legitimate purpose.

14) Termination.

- a) Parties may mutually agree to terminate this Agreement at any time.
- b) If a party is claiming a material breach by the other party it may elect to terminate this Agreement by providing notice of such intent to terminate to the other party, stating the basis for the breach, and the amount of time the party has to cure. Failure to cure within the stated time will result in termination the day following the final cure date.
- c) Any of the following listed events will be considered a material breach by SPYC for the purposes of termination:
 - i. Failure to pay utilities. In the event that SPYC fails to pay utility bills and such failure results in heat, electricity, water, or gas being shut off.
 - ii. Lapse in insurance. In the event SPYC fails to continuously maintain proper insurance as required by the Agreement and the lapse continues for a period of five days after receipt of written notice of such failure.
 - iii. Breach without cure. In the event SPYC breaches any obligation under this

Agreement and such breach continues for a period of 45 days or more after receipt of written notice of such breach.

- iv. Persistent or repeated breaches. In the event SPYC has a pattern of persistent and repeated breaches, whether or not such breaches have been cured. Breaches do not need to be of the same contract requirement in each case to establish a pattern of persistent and repeated breaches.
- v. Bankruptcy. In the event that SPYC files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of Manager' s property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.

- d) It will be considered a material breach for the purposes of termination if the City repeatedly fails to perform its obligations under the Agreement,
- e) At the termination of this agreement the premises shall be surrendered peacefully and returned to the City in the same condition as received, reasonable wear and tear notwithstanding.

15) Amendments. No amendments to this Agreement shall be effective without being reduced to writing and executed by both parties.

16) Compliance with Laws. The property described herein may be used for only the purposes stated herein. It is the sole and exclusive responsibility of LESSEE in the use of the property to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting the use to which the property is proposed to be put. Inability or failure by LESSEE to comply with any of said laws, rules, regulations or ordinances will not relieve LESSEE of the obligation to pay the rental provided herein.

17) Assignment. This Agreement may not be assigned without the written consent of the other party, and any attempt to assign without such approval will render the Agreement void.

18) Waiver. Any fault of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement's provisions.

19) Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

20) Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, "electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. Any party's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

21) Entire Agreement. It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

22) Jurisdiction. This agreement shall be construed under the laws of the State of Minnesota and any dispute regarding the interpretation or enforcement shall be venued in the Ramsey County District Court.

IN WITNESS WHEREOF, the parties have set their hands the date first written above.

CITY OF SAINT PAUL

SAINT PAUL YACHT CLUB

Director of Parks and Recreation

Commodore

Director of Financial Services

Board Chair

City Clerk

Mayor

Approved as to Form

Assistant City Attorney