



City of Storm Lake
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REQUEST FOR PROPOSAL
STORM LAKE MARINA CONCESSIONAIRE SERVICES
CITY OF STORM LAKE, IOWA

The City of Storm Lake is soliciting proposals in order to identify individuals and/or businesses interested and qualified to operate and manage the concessionaire services at the Storm Lake Marina, 207 West Marina Road, Storm Lake, IA 50588.

The full Request for Proposal and anticipated short term agreement can be viewed on the City's website at this link:

It is anticipated that the concessionaire space will operate for the 2021 Marina Season through an agreement to October 31, 2021 with the City of Storm Lake and the Iowa Department of Natural Resources. The response to the Request for Proposals must include information regarding the type of operations planned for the season. The successful proposer must provide a certificate of insurance and the City of Storm Lake must be named as an additional insured.

Proposal submissions in response to this Request for Proposal must be received on or before April 5, 2021 at 12:00 pm, Central Time. Proposals shall be submitted electronically in PDF format to the City of Storm Lake, Storm Lake, Iowa at cityclerk@stormlake.org. It is desired to have a contract with the successful applicant signed before May 15, 2021.

The City of Storm Lake reserves the right to reject any and all proposals and to award a contract deemed to be in the best interests of the City.

**REQUEST FOR PROPOSALS
MARINA CONCESSIONAIRE OPERATOR
CITY OF STORM LAKE, IOWA**

Submission Deadline: April 5, 2021

Background: The City of Storm Lake, Iowa (the "City") seeks to engage a contractor to operate, under the general management of the City, the Storm Lake Marina Concessionaire Services (the "Marina"), located on the southwest shore of Storm Lake (the "Lake"), that will be open to the general public. The Marina is owned by the State of Iowa. The State of Iowa, acting through the Iowa Department of Natural Resources ("DNR"), and City have entered into a long-term management agreement giving the City full authority and responsibility for the management of operations at the Marina. The Iowa Department of Natural Resources does have final approval over certain capital improvements and other aspects of the contract. The contracted operator sought by the City will be responsible for providing the services described below and the day-to-day operations of the Marina, subject to the oversight and general management of the City.

City's Expectations of Contractor: The City expects the Operator to provide high quality marina concessionaire services and strong customer service, all in compliance with federal, Iowa, and local laws, regulations, rules, and ordinances. The City expects the Operator to be respectful during interactions with State of Iowa and City of Storm Lake officials.

The Marina services to be provided by the Operator or Operators include the following:

1. The sale of convenience store items such as soft drinks, snacks, and ice;
2. Food and beverage service which may include the sale of alcoholic beverages that could be consumed on site or carried out;

Marina Facilities: The operator or operators will have full access to, and use of, the following existing Marina facilities in the Marina operation:

1. The Marina concession building;

Financial Arrangements: The Operator will be providing the Marina concessionaire services as an independent contractor and operating the Marina as the Operator's own business. Revenues generated in the operation of the Marina shall be the Operator's, subject to the Operator's payment to the City of certain periodic concessionaire fees.

The Operator, by the 15th day of each calendar month, will be required to submit financial reports to the City. The reports shall include all revenue and expenditures related to the Marina operations.

Operator must provide appropriate liability insurance coverage, including a minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate. Any subcontractors must provide appropriate insurance with the same limits. All policies must include the City of Storm Lake as an additional insured.

Term of agreement: The City proposes a contract term of from May 15, 2021 to October 31, 2021, subject to early termination for default or for the Operator's failure to satisfy performance standards.

Applicant's Response: In addition to the Applicant's contact information, which will include an e-mail address, postal address, and telephone number, an applicant shall include in the applicant's response:

- A business plan detailing how the Marina concessionaire services will be provided and setting forth a proposed marketing plan
- Business references
- Evidence concerning successful experience in the operation of a business or businesses providing the services listed above or similar services
- Proposed changes to the contract terms included in the attached sample agreement
- Any other information which the applicant desires the City to consider in determining the extent to which the applicant satisfies the Operator Selection Criteria specified below.

Operator Selection Criteria: The City will select the contractor/applicant that, in the City's judgment, is the strongest candidate applying the following criteria:

1. Experience in providing the desired or similar services;
2. Knowledge of the business and good business practices;
3. Prior success in enterprises similar to the operation of the Marina;
4. A reputation and record of honesty, integrity, compliance with the law, and excellent customer service;
5. Financial condition, responsibility, reliability and insurability (the successful applicant will be required to have and maintain a liability insurance policy of \$2,000,000.00);

Applicant Questions: Applicants having questions regarding the application process, the Marina facilities, or otherwise, shall direct the questions, before March 30, 2021, to the City Manager, Keri Navratil, whose telephone number is (712) 732-8000 and whose e-mail address is navratil@stormlake.org. Responses to questions will be released no later than 4:00pm on March 30, 2021. Responses shall be provided to all potential applicants that have provided notice of their intent to apply.

Timetable, Place and Method of Response Submission: Applicants wishing to respond to this RFP or receive addendums must notify the City of their intent to apply by no later than 10:00 am, March 30, 2021, by email sent to the City Clerk of the City of Storm Lake, Iowa at cityclerk@stormlake.org.

Submissions in response to this Request for Proposals must be received on or before April 5, 2021, by 12:00 PM, Central Time. Responses must be submitted electronically in PDF format to the City Clerk of the City of Storm Lake, Iowa at cityclerk@stormlake.org. The time of submission will be determined by the time and date stamp indicated on the email received by the City Clerk. Untimely or incomplete responses may be subject to rejection. The City desires to have a contract or contracts with the successful applicant signed on or before May 15, 2021.

Applicant Selection and Contract: The City reserves the right to schedule interviews at its discretion in order to fully evaluate competing proposals. The terms of the final contract between the City and the Operator shall be negotiated following the selection of the applicant by the City and shall be embodied in a written contract, which, if approved by the City and successful applicant, shall be signed by the parties. The State of Iowa must also approve the contract. The City reserves the right to not award a contract to any applicant, if no applicant is deemed suitable by the City, and reserves the right to reject any proposed Operator contract during negotiations if the City finds its terms unacceptable. The City is not obligated to award a contract to any applicant. The City reserves the right to not award a contract and to not enter into a contract

with the successful applicant unless and until the State of Iowa and the City have entered into the long-term management agreement referred to in the Background section of this Request for Qualifications. Any award of a contract and any contract that may be entered into by the City and the successful applicant or applicants shall be subject to and conditioned upon the State of Iowa and the City entering into such long-term management agreement.

**AGREEMENT FOR CONCESSIONAIRE SERVICES
STORM LAKE MARINA**

This agreement for operation services is made this ____ day of ____, 2021, between the City of Storm Lake, Iowa (the "City") and _____ (the "Operator"), an Iowa company.

Recitals

The State of Iowa, acting through the Iowa Department of Natural Resources ("DNR"), has previously entered into a twenty-five year management agreement with the City (the "City's Management Agreement") under which the City has full authority and responsibility for the management of operations at the Storm Lake Marina (the "Marina"), a marina owned by the State of Iowa that is located on the southwest shore of Storm Lake (the "Lake").

The City is willing to permit a qualified manager to operate the Concessionaire Services at the Marina.

The City advertised for concessionaire services through a Request for Proposals process.

In response to the City's Request for Proposals, Operator submitted a proposal dated April 5, 2021 (the "Proposal"). The Proposal is made part of this Agreement by this reference.

The City selected Operator, as an independent private contractor, to operate the concessionaire services at the Marina as a commercial concession during the term of, and under the provisions of, this Agreement, under the general management of the City.

The Marina will be open to the general public. The Operator will be responsible for providing the concessionaire services described in this Agreement and will manage the day-to-day operations of the concessionaire services at the Marina, subject to the oversight and general management of the City. This Agreement is intended to embody and govern the relative rights and responsibilities of the City and the Operator with respect to the concessionaire services at the Marina.

In consideration of the mutual covenants, promises, and agreements herein contained, the City and Operator agree as follows:

**ARTICLE 1
DUTIES OF OPERATOR**

1.1 Duties and Responsibilities. The Operator agrees to maintain and manage the Marina Facilities as a public access area for the citizens thereof and for the people of the State of Iowa in substantially the same manner and according to the same standards as other state-owned marina areas are maintained and managed by the Iowa Department of Natural Resources.

Subject to the provisions of this Agreement, Operator shall have decision-making authority in the day-to-day operation, direction, management, and supervision of the Marina concession building at the Marina ("Marina Facilities"). The Marina Facilities are situated on the Marina complex,

shown on attached Exhibit A. However, the Marina complex does not include the Fisheries Building or Fisheries Docks.

1.2. Services. The Marina services to be provided by the Operator, at Operator's expense, shall include the following:

1. The sale of convenience store items such as soft drinks, snacks, and ice;
2. Food and beverage service which shall include the sale of alcoholic beverages that may be consumed on site or carried out.

The Operator shall offer no services other than the Marina Services provided in this Agreement without first obtaining written authorization from the City Manager or the City Manager's designee. Any future business growth opportunities for the Operator concerning the Marina Facilities are subject to prior approval by the City.

No use may be made of the Marina Facilities that excludes the general public from using the Marina. However, nondiscriminatory access restrictions are allowed where necessary for safety considerations. Smoking shall be prohibited in all buildings.

1.3 Limitations on Operator's Authority. In addition to any other limitations on Operator's authority set forth in this Agreement, Operator shall not take any of the following actions with respect to the Marina Facilities, without the prior written approval of the City:

- A. Enter into any contract or other agreement for subcontractor services or so modify or amend any such contract or agreement; or
- B. Enter into any sublease, sublicense, sub-concession, or other agreement with respect to the Marina Facilities; or
- C. Enter into any arrangement for the employment of any professional firm in the regular course of operating the Marina Facilities; or
- D. Enter into, renew, modify, amend, or terminate any union contract or collective bargaining agreement affecting the Marina Facilities; or
- E. Settle any litigation or claims for more than \$5,000 unless the settlement solely involves the payment of an amount in cash which is covered by insurance proceeds for which the deductible amount does not exceed \$500; or
- F. Extend more than \$5,000 of credit to a single customer or group of related customers, except for the City; or
- G. Borrow money, issue any guarantees, or incur any interest or contingent obligation in the operation of the Marina Facilities by using the Marina Facilities as collateral; or

- H. Sell, transfer, grant a security interest in, or otherwise dispose of any property used in the operation of the Marina Facilities, except for the sale of inventory in the ordinary course of business of the Marina Facilities; or
- I. Take any other action that is prohibited under the terms of this Agreement or requires the prior written approval of the City.

1.4. Hours of Operation. Operator shall dictate the hours of operation for the Marina Facilities, provided that all events, concerts, or organized gatherings must end no later than 12:00 a.m. and follow all applicable State and local guidelines and procedures.

ARTICLE 2 TERM OF AGREEMENT

2.1 Term. Except as otherwise provided herein, this Agreement will commence May 15, 2021, and terminate October 31, 2021.

ARTICLE 3 OPERATOR COMPENSATION

3.1 Revenues generated in the operation of the Marina shall be the Operator's, subject to the Operator's payment to the City of certain periodic concessionaire fees.

ARTICLE 4 OPERATIONS

4.1 Independent Contractor. Operator agrees that no authority has been conferred upon it by the City to hire any person or persons on behalf of the City, and the City undertakes no obligation of any sort to Operator's employees. It is understood that Operator shall select, engage, and discharge its employees, agents or servants and otherwise direct and control their services. It is further understood that for all purposes of this Agreement, Operator is an independent contractor and, as such, Operator agrees to comply with and shall be responsible for all requirements of Federal, State and Local laws and regulations, including Workers' Compensation.

Nothing in this Agreement shall be construed as creating or constituting a partnership, joint venture, or other association of any kind or agent and principal relationship. Neither party, unless specifically provided for in this Agreement, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon the other party to this Agreement.

ARTICLE 5 CLEANING, MAINTENANCE, AND REPAIR

- 5.1 **General Maintenance and Cleaning.** Operator is responsible for the cleaning and maintenance of the concessionaire space of the Marina Facilities, including but not limited to, trash removal and restrooms. The cost of trash removal and cleaning, including the cost of personnel, equipment, and supplies, are considered operating expenses. Operator will provide sufficient and qualified staff to perform the assigned maintenance and cleaning of the concessionaire space of the Marina Facilities as required and recommended by Federal, State and local guidelines.
- 5.2 **Inspection and Repairs.** The City has the right to inspect the Marina Facilities at any time without prior notice to determine whether Operator has complied and is complying with the terms of this Agreement.

ARTICLE 6 INSURANCE AND INDEMNIFICATION

6.1 **General.** Operator shall, at its own expense, purchase and maintain insurance to protect Operator and the City throughout the duration of this Agreement. All policies shall be written on a per occurrence basis, not a claims-made basis, and in form and amounts and with companies satisfactory to the City. All proofs of compliance with the insurance requirements under this Agreement are required as a condition of the Storm Lake City Council's approval of this Agreement.

6.2 **Insurance Requirements.**

A. **Workers' Compensation Insurance.** Operator shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including *Employer's Liability Coverage*, in accordance with all applicable statutes of the state of Iowa. The coverage limits shall include \$1,000,000 each accident for Bodily Injury by Accident, \$1,000,000 each accident for Bodily Injury by Disease, and \$1,000,000 policy limit for Bodily Injury by Disease. This requirement does not apply if Operator is a sole proprietor or partnership with no part-time or full-time employees and has chosen not to carry Workers' Compensation Insurance as allowed under the provisions of the Code of Iowa.

Operator will add the City as an "alternate employer" by an endorsement to the Workers' Compensation policy.

B. **Commercial General Liability Insurance.** Operator shall procure and maintain during the life of this Agreement, Commercial General Liability coverage written on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage. Any exclusions shall be clearly identified on the Certificate of Insurance and shall be subject to the review and approval of the

City. The policy shall be endorsed to provide an Aggregate Per Location Endorsement.

- C. Property Insurance. Operator shall procure and maintain during the life of the Agreement, Property Insurance, providing fire and lightning, extended coverage, vandalism and malicious mischief and "all risk" insurance, excluding earthquake and flood but including debris removal, in a form at least as broad as the standard Insurance Services Office's Special Cause of Loss form covering all structural or other improvements installed by Operator in the premises, and all fixtures, furnishings, equipment and decoration kept, furnished or installed by Operator.
- E. Liquor Liability (Dramshop) Insurance. Operator shall procure, and maintain during the life of the Agreement, Liquor Liability (Dramshop) Insurance in the amount required by the State of Iowa for the operation of the Marina Facilities. The insurance shall include the same endorsements as required of the primary policies.
- F. Subcontractors. Operator shall require that any of its agents and subcontractors who perform any of Operator's management and oversight responsibilities pursuant to the provisions of this contract meet the same insurance requirements as is required of Operator.
- G. Additional Insured and Governmental Immunity. Except for Workers Compensation Insurance, the insurance policies providing the coverages specified this section shall include the City's Additional Insured and Governmental Immunities Endorsements as follows:
 - 1. Non-Waiver of Government Immunity. The insurance carrier expressly agrees and states that the purchase of this policy and the including of the City of Storm Lake, Iowa as an Additional Insured does not waive any of the defenses of governmental immunity available to the City of Storm Lake, Iowa under Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 - 2. Claims Coverage. The insurance carrier further agrees that this policy of insurance shall cover only those claims not subject to the defense of governmental immunity under the Code of Iowa Section 670.4 as it now exists and as it may be amended from time to time.
 - 3. Assertion of Government Immunity. City of Storm Lake, Iowa shall be responsible for asserting any defense of governmental immunity, and may do so at any time and shall do so upon the timely written request of the insurance carrier. Nothing contained in this endorsement shall prevent the carrier from asserting the defense of governmental immunity on behalf of the City of Storm Lake, Iowa.

4. Non-Denial of Coverage. The insurance carrier shall not deny coverage under this policy and the insurance carrier shall not deny any of the rights and benefits accruing to the City of Storm Lake, Iowa under this policy for reasons of governmental immunity unless and until a court of competent jurisdiction has ruled in favor of the defense(s) of governmental immunity asserted by the City of Storm Lake, Iowa.
5. No Other Change in Policy. The insurance carrier and the City of Storm Lake, Iowa agree that the above preservation of governmental immunities shall not otherwise change or alter the coverage available under the policy.

The City shall have no liability for any premiums charged for such coverage, and the inclusion of the City as an Additional Insured is not intended to, and shall not make, the City a partner or joint venture with Operator in its operations.

- H. Cancellation or Material Change Notice. If during the term of this Agreement the City determines that the limits of coverage have been cancelled or are insufficient through either change or erosion due to other losses, the City shall provide Operator with 60 days written notice of any required changes. Operator shall submit to the City, within 10 days, new Certificate(s) of Insurance indicating that the required changes have been affected.

6.3 Indemnification.

- A. To the fullest extent permitted by law, Operator agrees to defend, pay on behalf of, indemnify, and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the City against any and all claims, demands, suits, or loss, including any and all outlay and expense connected therewith, and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City, by reason of personal injury, including bodily injury or death, and property damages, including loss or use thereof, which arises out of or is in any way connected or associated with the work and/or services provided by Operator to the City pursuant to the provisions of this Agreement. It is the intention of the parties that the City, its elected and appointed officials, employees, volunteers or others working on behalf of the City shall not be liable or in any way responsible for injury, damage, liability, loss or expense incurred by Operator, its officers, employees, subcontractors, and others affiliated with Operator due to accidents, mishaps, misconduct, negligence or injuries either in person or property resulting from the work and/or services performed by Operator pursuant to the provisions of this Agreement, except for and to the extent caused by the negligence of the City.
- B. Operator expressly assumes full responsibility for any and all damage or injuries which may result to any person or property by reason of or in connection with the work and/or services provided by Operator to the City pursuant to this

Agreement, and agrees to pay the City for all damages caused to the premises resulting from the activities of Operator, its officers, employees, subcontractors, and others affiliated with Operator.

- C. Operator represents that its activities pursuant to the provisions of this Agreement will be performed and supervised by adequately trained and qualified personnel, and Operator will observe, and cause its officers, employees, subcontractors and others affiliated with Operator to observe all applicable state, federal, and local laws, rules, and regulations.

6.4 Waiver of Subrogation Provision. To the extent permitted by law, Operator hereby releases the City, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of the City from and against any and all liability or responsibility to Operator or anyone claiming through or under Operator by way of subrogation or otherwise, for any loss or damage to property caused by fire or any other casualty, unless such fire or casualty shall have been caused by the negligence or willful misconduct of the City, its elected and appointed officials, its agents, employees and volunteers and others working on behalf of the City. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Agreement. Operator's policies of insurance shall contain a clause or endorsement to the effect that such release shall not adversely affect or impair such policies or prejudice the right of Operator to recover thereunder.

ARTICLE 7 ACCOUNTING AND RECORDS

7.1 Accounting System.

- A. Operator agrees to install and maintain at its own expense a bookkeeping, accounting, and revenue control system covering the concessionaire space at the Marina Facilities, which books and accounts must, during standard business hours, be open to the inspection of the City and its representatives. Operator's bookkeeping, accounting, and control system shall provide detailed books, records, and accounts for all income, revenues, and receipts for each of the Marina Facilities. A record of all receipts and disbursements must be contained in such books and accounts, with copies being made available to the City upon 10 business days' written notice. This system must maintain records in accordance with Generally Accepted Accounting Principles (GAAP). In addition to any internal and third-party audits performed by Operator, the City may at any time perform audits of Operator's financial records and operations to determine compliance with the terms of this Agreement. The accounting system must be satisfactory to the City Finance Director and the City Manager.
- B. Operator shall make its books, records and supporting documentation available to the City for at least one year after the termination of this Agreement.
 - 1. Operator shall store accounting records in such manner so as to provide expeditious access for audit purposes.

2. Operator shall comply with all audit requests from City or its authorized representative within 10 business days. In the event that Operator fails to comply, Operator will be responsible for the City's cost of the audit, including, but not limited to, City's staff's time. The City shall have sole discretion to waive or extend this time frame as circumstances require.
3. Operator shall pay the City \$50.00 every calendar day for any report specified within this Agreement for which Operator is delinquent. The charge will continue until specific performance is accomplished.
4. Operator shall ensure that its financial or accounting subcontractors are required to comply with the requirements of this section.

7.2 **Financial Reports**

Operator agrees to perform for the concessionaire space at the Marina Facilities the following services, at its own expense:

- A. All accounts payable records and supplies inventory control.
- B. Completion of payroll, social security, withholding tax, workers compensation, and all other related required forms.
- C. Periodic audit of cash handling procedures for accuracy and proper control.
- D. Preparing and holding for review by City the following records and reports for the concessionaire space at the Marina Facilities.
 1. Monthly Profit and Loss Statements, containing all information on revenues and receipts and substantiating all expenses associated with Marina Facilities operations, to be submitted to the City quarterly on a year-round basis, within 30 days from the end of the quarter beginning on July 1, 2021. The revenues and expenses in the report shall be allocated to each service listed in section 1.3 of this agreement (Article 1, section 3) to the extent possible. A Balance Sheet, detailing all assets, equities and liabilities shall also be submitted quarterly.
 2. A Monthly operations report will be provided to the City 7 days from the end of the month.
 3. Written reports for each damage, theft, or injury claim arising from the operation of the Marina Facilities, to be submitted to the City within 24 hours of the Operator becoming aware of the damage, theft or injury.

- 7.2.1 Correctness of Reports. Operator is charged with the responsibility of exercising proper care and accuracy in the preparation of required reports and records.
- 7.2.2 Preservation of Reports. Operator will keep and preserve for a minimum of five years after the termination of this Agreement (or longer if required by law) all sales slips, cash register tapes, sales books, bank books, or duplicate deposit slips, credit card totals, and other evidence of gross receipts and business transacted. Operator shall furnish the City copies of any such records upon request.

ARTICLE 8 **OPERATING EXPENSES**

- 8.1 Operating Expenses. Unless otherwise specified, all operating expenses for the operation of the concessionaire space at the Marina Facilities during the term of this Agreement shall be paid by Operator. Such operating expenses will include by example only, but not be limited to:
- All ground and facilities' maintenance and all improvements and repair expenses
 - Employee payroll and payroll taxes
 - Employee benefits
 - Food, ingredients, beverages, and liquor
 - Upgrades and maintenance for the point-of-sale system
 - Cleaning supplies
 - Telephone service
 - Internet and cable television service
 - Utilities
 - Licenses and permits
 - General operating expenses arising from Marina Facilities, such as, among other things, freight & postage, printing & reproduction, water & sewer, trash removal and pest control
 - Other costs and expenses incurred with respect to the Marina Facilities on behalf of or pursuant to the City's written request

Any operational work that is required to be carried out by the City either upon request of Operator or as deemed necessary by the City shall be reimbursed by the Operator. City employee time will be billed at the then-current hourly rate for the employee responsible for the work.

ARTICLE 9 **ASSIGNMENT**

- 9.1 City Consent. Operator shall not, at any time, assign this Agreement or any part hereof, without the prior written consent of the City. Failure to obtain approval will be cause for immediate termination of this Agreement.

- 9.2 Transfer of Stock. A transfer of more than 50% of Operator's corporate stock, or a transfer of more than 50% of the control of Operator to another individual or entity, is considered an assignment of this Agreement and the City's prior written approval of such transfer is required.
- 9.3 Change in Corporate Name. Operator shall notify the City in advance of any change in corporate name or adoption of any trade name.
- 9.4 Subcontracting. Operator shall not subcontract for the provision of any management or operation services under this Agreement, regardless of the amount of the subcontracted services, without the prior written consent of the City.
- 9.5 Change in Ownership. Operator shall notify the City in advance should there be any change in ownership occur for the Operator or new business owners be added to the Operator's business.

ARTICLE 10 TERMINATION

10.1 Termination.

- A. In the event that one of the following occurs, the City may at any time terminate this Agreement upon giving Operator 30 days' notice in writing:
1. The Marina Facilities are not operated in a professional manner and consistent with industry standards or applicable federal, state, or local laws, or in accordance with this Agreement, and Operator does not correct the unsatisfactory condition within ten (10) days of the receipt of written notice of the particulars of the default from the City; or
 2. Operator fails to perform any provision or covenant of this Agreement, and Operator does not remedy the default to the satisfaction of the City within thirty (30) days of the receipt of written notice of the particulars of the default from the City; or
 3. Any fees and fines occurring with the default will be paid by the Operator.

- 10.2 Bankruptcy. If: (i) Operator shall be declared to be bankrupt or insolvent according to law, or (ii) a petition in bankruptcy or a petition for a receiver is filed against Operator and such petition, assignment or attachment is not discharged within 30 days after its effective date, then the City may terminate this Agreement.

- 10.3 Termination by City or Operator if IDNR or City Elects Not to Repair or Rebuild. If the Marina concession building, the building for boat repairs and storage, or the dock system is destroyed or damaged, due to a natural disaster or any other cause, to the extent it is unusable for its purpose in the Marina operation without repair or rebuilding, and the Iowa Department of Natural Resources (IDNR) or the City elect not to repair or rebuild, either the Operator or the City may terminate this Agreement, if the damage or destruction was not due, in any part, to the actions or negligence of the party seeking to terminate the Agreement by giving written notice of the termination to the other party thirty (30) days in advance of the termination date specified in the notice, provided that the Agreement may be terminated earlier by agreement of the parties under such circumstances. The notice of termination given pursuant to this section shall state the reason for the termination. Nothing in this Agreement shall obligate either the City or IDNR to repair or rebuild any one or more of the Facilities if they are destroyed or damaged to the extent they are unusable for their purpose in the Marina operation without repair or rebuilding.
- 10.4 Operator's Termination Duties. The Operator, upon termination of the contract or upon request of the City, shall:
- a) Cease work under this Agreement;
 - b) Immediately cease using and return to the City any personal property or materials, whether tangible or intangible, provided by the City to the Operator;
 - c) Comply with the City's instructions for the timely transfer of property under the control of the Operator under this Agreement;
 - d) Cooperate in good faith with the City, its employees, agents, and contractors during the transition period between the notification of termination and the substitution of any replacement operator;
 - e) Immediately return to the City any payments made by the City for services that were not rendered by the Operator.
 - f) The Operator's obligations under this section shall survive the termination of this Contract.

ARTICLE 11 GENERAL PROVISIONS

- 11.1 Rules, Regulations, and Policies. Operator shall observe and obey all rules, regulations, and policies that the City may adopt, from time to time, with respect to the use of the Marina. Operator shall not violate and shall not knowingly permit its agents, contractors, invitees or employees acting on Operator's behalf to violate any such rules, regulations, or policies.
- 11.2 Compliance with Law. Operator shall comply, at all times, at its own cost and expense, with all applicable ordinances and laws of city, county and state government and of the

United States Government, and of any political division, subdivision, agency, authority or commission that has jurisdiction to pass laws or ordinances with respect to the Marina Facilities or to the uses permitted in this Agreement. Operator shall not allow any illegal activity to be conducted or operated on any Marina area.

- 11.3 Reservation of Rights. Any and all rights and privileges not expressly granted to Operator by this Agreement are hereby reserved for and to the City.
- 11.4 Successors and Assigns Bound by Covenant. All the terms, covenants, and agreements herein contained will be binding upon and shall inure to the benefit of successors, permitted assigns, and legal representatives of the respective parties hereto.
- 11.5 Governing Law, Forum and Disputes. This Agreement and all claims or disputes arising out of or relating to this Agreement or its subject matter are governed by the laws of the State of Iowa, without regard to its conflict of laws provisions, and any action, claim or proceeding arising out of or relating to this Agreement must be brought only in the Iowa District Court for Buena Vista County, Iowa. Each party hereby waives any objection, including any objection based upon improper venue or *forum non conveniens*, that it may have, now or in the future, to the bringing of any action, claim or proceeding in the Iowa District Court for Buena Vista County, Iowa.
- 11.6 Nonwaiver of Rights. No waiver of default by either party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party will be construed as, or operate as, a waiver of the terms, covenants, or conditions unless expressly agreed to by the party in writing, and any such waiver shall not operate as a waiver of any other terms, covenants, and conditions herein contained or any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.
- 11.7 Severability. If one or more clauses, sections, or provisions of this Agreement, or the application thereof, shall be held to be unlawful, invalid, or unenforceable, then such clauses, sections, and provisions shall be construed in a manner to best effectuate the intent of the parties and be lawful, valid, and enforceable, and the remainder of this Agreement and the application of its remaining provisions will not be affected thereby.
- 11.8 Force Majeure. Neither Operator nor the City will be liable for delays in performance caused by acts of God or government regulatory authority, war, riot, sabotage, storm, flood, inclement weather, strike or work stoppage, or other cause beyond the control of Operator or the City.
- 11.9 Entire Agreement. This Agreement, together with all exhibits and attachments, constitutes the entire agreement between the parties, and all prior representations, promises or statements, verbal or written, are merged in this Agreement. This Agreement supersedes and cancels any and all previous agreements and understandings on its subject matter between Operator and the City.

- 11.10 Amendments. Any and all changes or amendments to this Agreement must be in writing and duly executed by all parties.
- 11.11 Licenses and Permits. Operator shall obtain and/or maintain all applicable licenses and permits required by federal, state, or local law.
- 11.12 Taxes and Assessments. Prior to the effective date of this Agreement, the Marina Facilities are tax exempt. Operator shall be fully responsible for payment of any and all taxes, assessments, and charges levied against any taxable interest of Operator acquired in this Agreement from and after the date of this Agreement. Operator shall also be responsible for payment of any and all personal property taxes levied against any personal property placed upon the Marina Facilities by Operator. Operator shall pay all such taxes, assessments and charges as the same become due and payable. Such taxes, assessments and charges shall not be included in operating expenses. Upon request, Operator shall deliver to the City duplicate receipted tax statements showing such taxes, assessments and charges as having been paid prior to delinquency. Taxes for the fiscal year in which this Agreement is terminated shall be paid upon such termination in a prorated amount equal to one-twelfth of the taxes due and payable for the preceding fiscal year multiplied by the number of months in the fiscal year of such termination which elapsed prior to and including the month of such termination.
- 11.13 Right to Amend. In the event that the State of Iowa, Department of Natural Resources, or its successors requires modifications or changes in this Agreement, Operator agrees to consent to such amendments, modifications, revisions, supplements or deletions or any of the terms, conditions, or requirements of this Agreement as may be required.
- 11.14 Americans with Disabilities Act. Operator shall comply with the Americans with Disabilities Act and the Rehabilitation Act, and any administrative rules promulgated to implement the Acts, with regard to Operator's operations in the Marina Facilities. Operator shall be responsible for any expenses associated with bringing any Marina facilities or operations into compliance with the Americans with Disabilities Act and the Rehabilitation Act.
- 11.15 Agreement Construction. Words and phrases used in this Agreement are to be construed as in the singular or plural number, and as masculine, feminine, or neuter gender, and as disjunctive or conjunctive, according to the context. Any rule to the effect that ambiguities are to be resolved against the drafting party will not apply to the interpretation of this Agreement or any amendments or exhibits.
- 11.16 Representations of Parties. The City and Operator represent that each has the full power and proper authority to make and execute this Agreement, to exercise its rights, powers and privileges as described herein, and to perform the agreements and covenants set forth herein. Operator further warrants that it has the authority to enter into and be bound by the terms of this Agreement and no order of any bankruptcy or other court, and no agreement with others, prohibits or limits such authority.

11.17 No Third Party Beneficiaries. This Agreement is for the benefit of Operator and the City only. This Agreement shall not create any rights in any person not a party to this Agreement.

11.18 Notices.

- A. Notices required herein must be given by registered or certified mail, return receipt requested, by depositing the same in the United States mail in the United States, postage prepaid, or by certified overnight delivery via a commercial carrier. Either party has the right, by giving written notice to the other in accordance with this section, to change the address at which its notices are to be received. Until any change is made, notices are to be delivered as follows:

City of Storm Lake:

City Manager
620 Erie St.
Storm Lake, IA 50588

Operator:

- B. Any notice given by registered or certified mail, return receipt requested, or by overnight delivery will be effective upon receipt by the addressee as shown on the mail or delivery receipt. If notice is given in any other manner or at any other place, it must also be given at the place and in the manner specified above.

11.19 City's Right to Make Good Default. If Operator should commit any default in the performance of, or compliance with, any of the terms or conditions of this Agreement, then, in addition to all other remedies now or hereafter provided by law, the City may, but need not, perform such term or condition, or make good such default and any amount advanced shall be repaid forthwith on demand, together with interest at the maximum rate permitted by law, from date of advance.

11.20 Rights and Remedies Cumulative. The various rights, powers, options, elections and remedies of either party provided in this Agreement shall be construed as cumulative and no one of them as exclusive of the others, or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

11.21 Survival. The representations, warranties, and indemnities contained in this Agreement shall survive the termination or expiration of this Agreement. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

11.22 Limited Right to Use Property. This Agreement does no more than to grant the Operator the right to operate a commercial concession on State-owned, City-managed property.

This Agreement does not create an interest, personal or real, in the real estate or facilities owned by the State of Iowa and managed by the City.

11.23 Non-Exclusive Rights. The City reserves the right to select other concessionaires to provide additional services at the Marina complex, including the Facilities, not similar to those provided by the Operator during the term of this Agreement, or if the Operator no longer operates or does not utilize some of the Facilities provided by this Contract, the City reserves the right to select other concessionaires to provide such services and Operator agrees not to interfere with contracts between the City and such other concessionaires.

11.24. IDNR'S Use of Marina Property. The Iowa Department of Natural Resources shall have the right to enter upon the Marina complex, including, without limitation, all of the Facilities, at any time for any purpose in connection with programs of the IDNR and temporarily use the area and facilities in such a manner as to not materially interfere with the use of the area and facilities by the Operator. In addition, the IDNR shall have access at all times to the Fisheries/Hatchery building.

11.25. Preservation of Natural Features. No trees or other vegetation shall be removed or other natural features of the area disturbed without advance written permission of the City, except that removal of vegetation reasonably deemed by Operator to be a public hazard is permitted without first obtaining written permission of the City and IDNR.

11.26. Nondiscrimination. The Operator, its officers, employees, agents and subcontractors, shall not exclude any person from participation in services, deny any person service, or otherwise subject any person to discrimination because of the person's race, color, religion, sex, gender identity, sexual preference, national origin, age, or disability.

11.27. Approval. This Agreement is not effective unless and until approved by the Storm Lake City Council and the IDNR.

CITY OF STORM LAKE, IOWA

By: _____

Date: _____

Mayor

ATTEST:

City Clerk

OPERATOR

By: _____

Date: _____

By: _____

Date: _____

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