

## **Marina Lease Agreement**

This Marina Lease Agreement is entered into by and between the City of Manitowoc, Wisconsin, a municipal corporation (“City”) headquartered at 900 Quay Street, Manitowoc, WI 54220 and Manitowoc Marina, LLC (“Marina”), a Wisconsin corporation located at 425 Maritime Drive, PO Box 993, Manitowoc, WI 54221.

**WHEREAS**, City and Marina are currently parties to a Marina Lease Agreement which is set to expire March 31, 2020; and

**WHEREAS**, that Agreement allows Marina to request a 10 year extension of the lease between April 1, 2017 and March 31, 2018 and Marina has requested such an extension; and

**WHEREAS**, the Parties wish to extend the lease and renegotiate the terms.

**NOW, THEREFORE**, the parties agree as follows:

**I. Premises Leased.**

A. Description. The City leases to Marina the property which is described on Exhibit A, the map, which is attached and incorporated by reference. The rights granted in the property include all riparian rights to those portions of the above-described real property which are submerged, and include all piers, slips, buildings, and other fixtures and improvements made to the property.

B. Facilities. The facilities which have been constructed on the above-described property include the following:

1. A six lane launch ramp and boarding piers;
2. Five piers containing 234 slips ranging in size from 24 feet to 60 feet in length;
3. Buildings to be used for administration and vessel repair;
4. A building or buildings to be used for indoor heated storage and vessel repair.

C. City Access. During any new construction or work performed on the facilities by City, City and any contractors and subcontractors shall have whatever access to the leased premises as necessary to complete construction or repairs. In addition, City shall have access to leased premises during the lease term as necessary to meet its obligations under the lease and to oversee the general condition of the premises.

D. Facilities Furnished by Operator. Marina shall be responsible for furnishing the facilities provided by City, which shall include furnishing of tools, furniture, fixtures, and operating equipment, and a travel lift.

**II. Duration**

A. Lease Term. The lease shall commence September 1, 2017 and continue to March 31, 2030, unless otherwise terminated or extended as provided below. Upon termination of the lease, all docks, piers, fixtures, buildings, or other permanent improvements made by Marina to the leased premises shall become the property of City. The travel lift, tools, and furniture purchased by Marina shall not be considered a fixture and may be removed by Marina. All

replacement parts or permanent improvements made by Marina to the leased premises shall also become the property of City.

B. Premature Termination.

1. Premises Unusable. In the event the leased premises and facilities described above are rendered substantially unusable due to storm, flood, fire, ice, low lake levels, or other causes either party may terminate this agreement by giving 30 days written notice to the other. Nothing in this agreement shall require City to rebuild damaged property. If, however, within two years of such severe damage City elects to rebuild the damaged, property, the remaining period of the lease shall apply from the time such rebuilding is completed. In the event that low lake water levels (defined as any one monthly report by the Army Corps of Engineers of the elevation dropping below the 1964 low water reading) were to impact Marina's ability to market indoor winter storage business between the dates of December 1 and April 1 immediately following the report, demonstrated by a 20% loss of indoor heated storage revenue, City agrees to adopt a substitute payment plan of the normal lease amount times the percentage of occupancy on January 1.

2. Default. In the event Marina fails to operate a marina business on the above property, discontinues its marina business, or goes bankrupt, this lease shall, at City's option, be immediately terminated. In the event that Marina shall violate any material term or condition of this lease, this lease may be terminated by City unless Marina corrects the violation within 30 days upon written notice of breach from City. If a second similar violation occurs within one year of this written notice, City may terminate the agreement immediately upon giving written notice to Marina. This provision is intended to be an additional remedy and not an exclusive remedy.

3. Option to Renew. Marina shall have the Option to Renew the Marina Lease Agreement for an additional five (5) year term on the same terms and conditions of this Marina Lease Agreement. In order to exercise the Option to Renew, Marina shall provide written notice to City no less than eighteen (18) months prior to the expiration date of this Marina Lease Agreement.

III. Rent

A. Rental Amounts. The amount of rent due shall be computed annually for the period from April 1 through March 31 of each lease year and shall include the following:

1. The annual rent shall be equal to 27.5% of the gross revenues collected during the lease year for seasonal dockage, transient dockage, outdoor winter storage fees, and launch ramp fees, computed on the first \$350,000 beginning in 2020, \$375,000 in 2025, \$400,000 in 2030 plus 40% of such revenues for each lease year in excess of the above-listed amount in revenue.

2. Indoor storage facility. Commencing on the date of this Marina Lease Agreement and continuing until February 29, 2020, Marina shall pay City an annual fee of \$55,036.00 for the use of the indoor storage facility and the fee shall be paid in equal quarterly installments. Said annual fee is based upon a 20 year amortization of the capital expenditure of the construction costs for the indoor storage facility. The final

payment shall be prorated for the period through February 29, 2020. Beginning on March 1, 2020, Marina shall pay 27.5% of the revenues generated at the indoor storage facility.

3. Retail Service Labor. Marina shall pay 5% of the gross Retail Service Labor revenues generated by the marina service department for all retail service provided on the first \$1,000,000 of retail service labor and 2.5% of the gross Retail Service Labor which exceeds \$1,000,000.

B. Payment of Rent. Marina shall make rental payments to City on a quarterly basis Rent consists of the items in the section immediately preceding this one. In addition to the principal and interest payment of the storage facility, the first three quarters of each lease year the amount of the rental payment shall be equal to 25% of the total rental payment of the previous lease year. A financial statement prepared by Marina showing how the rent payment was computed shall accompany each payment and be due on July 15, October 15, January 15, or April 15. Marina shall furnish a financial statement with the final lease year payment due on April 15 showing the total lease payment due for the lease year, with the final quarterly payment being the amount that, when added to the first three quarterly payments, equals the total lease payment due for the particular lease year.

C. Accounting. In addition to the quarterly financial statements furnished with rent payments, Marina shall furnish to City an annual report by a certified public accountant not later than 90 days after the end of Marina's fiscal year. The report shall include and detail the revenues collected by Marina to allow City to verify the required payments to City for seasonal dockage, transient dockage, winter storage, launch ramp fees, and service labor. The report shall be detailed in such a manner as to disclose gross revenues received for seasonal dockage, transient dockage, winter storage fees, launch ramp fees, and service labor.

D. Rental Adjustments. The parties agree that in the event City installs any additional slips to the leased premises, or expands the current buildings, during the term of the lease, the parties will meet for the purposes of determining whether any adjustment in either of the above rental methods is warranted.

#### **IV. Business Operations**

A. Marina Operations. Marina agrees generally to operate the leased premises as a marina in a responsible and professional manner. Services of this operation include slip rental, winter boat storage, boat haul outs, boat put ins, ship's store, fuel sales, sanitary pump outs, boat maintenance, full maintenance of all leased facilities as required by this agreement, and any other services incidental to the normal operations of a marina. Marina may also operate charter services, bait sales, boat sales, and boat rentals, and other marina-related business. Non-marina business may be conducted by the Marina on the leased premises only with the prior approval of the City.

B. Hours of Operation. Marina shall set hours and levels of operation provided and give annual notice of hours of operation, or notice of any permanent change in hours to the City's Director of Public Infrastructure and Harbor Master.

- C. Equal Treatment. Marina shall establish operating parameters and train and supervise all employees so as to assure equal and unbiased treatment for all types and classes of boats whose owners desire to use the marina facilities.
- D. Security. Marina shall provide all reasonably necessary security for the leased premises, including maintenance of the cameras provided by City and installed by Marina.
- E. Staffing. Marina shall provide a minimum of a full time marina manager, service manager, office manager, three technicians, four seasonal dock personnel, and two seasonal store clerks.
- F. Food and Beverage. Marina shall be permitted to serve food and alcohol, whether carry-out or consumable on premises, so long as all appropriate permits and licenses are obtained.
- G. Fish Cleaning Stations. City provides a fish cleaning station and RV pump out on the leased premises. Marina shall be responsible for maintaining such facilities, excluding repairs, and assuring that all persons using the marina only clean fish at these stations.
- H. River Dock Spaces. City intends to have Marina be in charge of leasing dock space on the Manitowoc River as delineated in Exhibit A. Marina shall collect the fees and account for the fees as part of the normal dockage rental revenue under Section III A. 1.
- I. Slip Leases. Marina shall adopt written rules and regulations for the leased premises and provide a copy to the City's Director of Public Infrastructure and Harbor Master. Leases for slip rentals shall be in writing.
- J. Boat Storage. In addition to normal winter storage, Marina shall provide dry storage for light sailboats. Rates charged for this service shall be set by Marina in accordance with the market. During the boating season, winter storage cradles, boat stands, and bunking materials shall be stored in the Indoor Storage Facility, to the extent space premised. Any boat storage materials shall be stored outdoors in a neat and orderly fashion as close to the Indoor Storage Facility as practicable.
- K. Public Access. Marina may restrict public access to piers, private customer restrooms and lounges, storage areas, and the Indoor Storage Facility and maintenance facilities. All other areas of the leased premises shall be open to the public, except as limited by mutual agreement. Marina shall allow public tours of the leased premises, provided that these tours are conducted at reasonable times.

**V. Maintenance of Marina Facilities.**

- A. General Responsibilities. Marina shall maintain the leased premises, included all improvements and equipment, throughout the term of the lease and return same to the City upon the termination of the lease in as good of condition as when received, ordinary wear and tear excepted. City agrees to assign to Marina all warranties, causes of action, and other rights against any contractor, supplier, architect, or engineer concerning the leased premises upon acceptance of the improvement or piece of equipment by City. In the case of improvements to the leased premises constructed by City during the lease, City shall bear responsibility for such improvements during construction.
- B. Maintenance and Repairs. Marina shall be financially responsible for performing recurring maintenance, such as placement of the log boom, winterizing, recommissioning the docks, parking lot lighting bulb replacements, and purchasing fixtures which Marina desires to

add to the leased premises. In the event of repairs, Marina will use its own staff whenever practicable. When necessary to purchase outside materials or hire outside contractors, the Marina shall notify the Director of Public Infrastructure before performing any non-urgent repair in excess of \$1500.

C. City Responsibilities. City shall be financially responsible for all non-recurring maintenance or repairs and groundskeeping. In the event of snow, City shall plow one lane from the north and south entrances.

D. Winterization. Marina shall make all necessary preparations for winter, including installing the log boom, draining water lines, and disconnecting piers as required. In the event Marina fails to do so, Marina is responsible for any and all damage arising from such failure. City shall have the right to inspect for proper winter maintenance.

E. Parking Areas. City shall be responsible for seal coating, resurfacing, and striping the parking lot as it deems necessary. Snow plowing and other parking maintenance shall be the responsibility of Marina. Marina understands that the YMCA and Maritime Museum may utilize portions of the parking facilities at no charge.

F. Refuse. Marina shall be responsible for collection and disposal of refuse on the leased premises in accordance with state and local laws. Marina shall provide sufficient trash receptacles to keep the area neat and clean.

G. Safety. Marina shall provide appropriate safety equipment and shall maintain such equipment. Marina shall specifically establish procedures and schedules for firefighting and prevention, including classes and drills for all personnel. Marina shall properly service all fire extinguishers and hoses in accordance with the National Fire Prevention Association guidelines and shall be subject to the inspection by City's Fire Rescue Department.

H. Dredging. City shall be responsible for any dredging of the marina facilities necessary for the safe and effective operation of the marina premises. City shall bear costs and give notice to Marina when this is to occur.

I. Junked or Abandoned Vessels. Derelict, sunk, damaged, abandoned, and junked vessels on the leased premises shall be immediately removed by Marina. Marina shall take responsible measures to insure that all vessels renting slips or stored are kept in a good state of repair.

J. Restrooms. Marina shall maintain restroom facilities for slip rentals and the general public. Marina shall provide that at all times restrooms are clean, warm, brightly lit, and properly stocked with towels, toilet paper, etc. Personnel from City shall make frequent and unannounced inspections to insure compliance with this provision.

K. Oil Spills. Marina shall install and maintain available oil spill containment means to surround the fuel pier and close off the mouth of the docking area. Upon detection of a fuel or oil spill, Marina shall activate appropriate containment means, attempt to find the source of the spill, and notify the Manitowoc Fire Rescue Department, the Wisconsin DNR, and the US Coast Guard. Marina shall, if necessary, stop all boat movement in the area.

L. Stormwater Prevention Plan. Marina shall file a stormwater prevention plan with City and follow all requirements of plan.

**VI. Fees and Charges**

- A. Initial Rate Schedule and Fuel Prices. Marina shall provide the City with an annual notice of rates and Fuel Prices, with copies to the Director of Public Infrastructure and Harbor Master. A current rate schedule is attached as Exhibit B.
  - B. Changes in Rates and Fuel Prices. Marina may adopt such rate increases as the market will bear, and shall provide annual notice of the City's Director of Public Infrastructure and Harbor Master of the rates. Marina agrees to review the rates for other Lake Michigan marinas when establishing rates. Marina shall charge competitive rates for fuel based upon the rates charged by similar sized marinas in the area.
- VII.** User Complaints. All complaints by users of the Marina shall be directed to the Marina Operator with copies to the City's Director of Public Infrastructure and Harbor Master.
- VIII.** Insurance.
- A. Liability insurance. Marina will provide liability insurance to protect against claims for bodily injury or property damage arising out of its operations in an amount of not less than \$1,000,000.00 per occurrence. City shall be named as an additional insured in such policy. The policy shall contain broad form contractual coverage, and be subject to approval by the City.
  - B. Property Insurance. City shall provide fire and extended coverage property insurance on its improvements to the lease premises. Marina shall be responsible for insuring its own personal property and provide the City with a certificate of insurance.
  - C. Indemnification. Marina shall indemnify and hold the City harmless for personal injury or property damage, including claims for environmental damage or remediation, filed against City by any persons occurring on any portion of the leased premises unless said injuries are determined by a court jurisdiction to have actually been caused by City's negligence. Marina shall either require the owner of stored property to provide proof of insurance on the stored property or provide their own insurance on the stored property (whichever Marina prefers) and shall provide the City with documentation establishing such coverages.
- IX.** Utilities and Taxes
- A. Utilities. Marina shall pay all utility costs, including but not limited to, sewer, water, and electrical costs for all improvements to the leased premises, and shall bear the repair or replacement costs of any such utilities.
  - B. Taxes. Marina shall pay any and all taxes arising out of its use of the leased premises, including, but not necessarily limited to, personal property taxes and sales tax. The parties understand that no real estate taxes will be levied on the leased premises for any improvements on the leased premises.
- X.** Non-discrimination. Marina agrees that it will comply with Title VI of the Civil Rights of 1964 as amended as well as all other applicable civil rights laws, and specifically agrees that no person shall be denied employment or use of the facilities on the grounds of race, color or national origin.
- XI.** Administration. The Director of Public Infrastructure and Harbor Master shall act on behalf of City to oversee compliance with the requirements of this agreement by Marina. Marina will make representatives available to discuss any problems which may arise, and agrees to make available any required books or records necessary to assure compliance with the terms of this agreement.

**XII.** Parties. This agreement shall be binding upon and inure to the benefit of the parties, as well as their respective successors and assigns. This agreement may not be assigned by Marina without prior consent of City, with the exception of normal items of Marina's operations such as slip leases.

Dated this \_\_\_\_ day of August, 2017.

**City of Manitowoc**

**Manitowoc Marina, LLC**

\_\_\_\_\_

\_\_\_\_\_

Justin M. Nickels, Mayor

Rich Larsen, Manager

\_\_\_\_\_

\_\_\_\_\_

Deborah Neuser, City Clerk

Steve Wanek, Member

This instrument was drafted by Kathleen M. McDaniel, City Attorney