

## CONCESSION AGREEMENT

This Concession Agreement (hereinafter referred to as the "Agreement") is made and entered into as of this 15th day of April, 2024 by and between the **City of Watertown – Parks and Rec Department** (hereinafter referred to as the "Department") and **The Surf Shack LLC** (hereinafter referred to as the "Concessionaire"). Kristine Butteris shall be the primary representative of the Department in the management of this Agreement. The primary representative of the Concessionaire is Nathan Olson (Owner).

### RECITALS

**WHEREAS**, the Department owns and operates multiple parks, including the Riverside Park, located at 916 Labaree St. Watertown, WI 53098, hereinafter referred to as the Park; and

**WHEREAS**, Concessionaire desires to provide and operate a self-serve concession stand at the Park for the purpose of renting kayaks to the Park patrons; and

**WHEREAS**, the Department is willing to permit the Concessionaire to provide and operate a concession stand at the Park in accordance with and subject to the limitations set forth in this Agreement.

**NOW, THEREFORE**, in consideration of their mutual promises, the parties agree as follows:

1. **Term:** The term of this Agreement shall be from the date of execution of this Agreement to December 31st, 2028. During this term the Department grants the Concessionaire the right to operate the concession at the Park in exchange for the concession payment provided herein. Except as provided herein, the Agreement shall terminate on the date above and the Concessionaire shall relinquish all claims and rights regarding the concession at the Park at that time. The terms of this Agreement may be renegotiated at any time by mutual consent of both parties
2. **Location:** The concession will be located on those portions of the Park described in Exhibit "A" (hereinafter identified collectively as the "Premises") which is attached and made a part of this Agreement. Exact location to be determined by the Department.
3. **Concessionaire Service:** Concessionaire shall offer for rent the use of kayaks. Concessionaire to provide all operation services required including customer service phone line and maintenance.
4. **Hours of Operation:** The concession shall be in operation on a daily basis from at least Memorial Day weekend through Labor Day weekend each year. Concessionaire will, to the best of ~~their~~ its ability, extend season operation outside these dates as weather permits. Hours of operation will be no earlier than sunrise to no later than sunset each day.
5. **Non-Competitive:** The Concessionaire agrees that the Department has the right to license, or issue permits for external concessions. Except as provided above, the Department agrees that it shall not knowingly permit any new concessions, either for-profit or non-profit, to directly compete with the Concessionaire within the Park.

6. **Signage/Advertising:** The Department must authorize in writing any use of signs or advertising or display materials relating to the concession and displayed on the Premises. All signs or advertising issued or used by the Concessionaire shall be paid for by the Concessionaire, and shall clearly identify the Park as the property of "The City of Watertown."
7. **Compliance:** Concessionaire agrees to conduct its business and to operate the same in compliance with all health codes, safety standards and other applicable laws, ordinances, and regulations, and to obtain all necessary City, State, and Federal Licenses, permits and tax numbers, as required to conduct such operations. Concessionaire further agrees to pay any and all income taxes, sales taxes and other taxes which may be due or become due in connection with Concessionaire's business. Concessionaire shall train and closely supervise all concession employees, vendors, and salespersons so they are aware of and adhere to all terms and conditions of this Agreement and all applicable laws, rules and regulations of the State of Wisconsin, City of Watertown-city, and Jefferson County.
8. **Premises Upkeep:** The Concessionaire will maintain and keep up all structures and all surrounding ground areas of the Premises, and particularly the rental areas, in good repair, and in a clean, neat, and sanitary condition at all times. The high standards of maintenance and upkeep of the Premises for a clean, neat, and sanitary condition shall include but not limited to removal of weeds, trash, and obstructions; cleaning raking of landing areas as needed of all areas of the Premises, except when such activities may be performed by the Department, at its sole discretion. The Concessionaire will not cause or allow any waste or nuisance upon the Premises.
9. **Temporary Closure:** If the Department determines that an emergency exists, the Department may order the concession to be temporarily closed. Closures for severe emergencies such as flooding, or storm damage may require that the Department close the concession for an extended period. Any closure of the concession by the Department for a period of 15 days or longer for emergency purposes during a period between Memorial Day and Labor Day shall permit the Concessionaire to request re-negotiations with the Department on the percentage fee to be paid to the Department for that calendar year. The Department shall agree to negotiate in good faith in such circumstances.
10. **Concession Payments:** The Concessionaire agrees to pay a percentage of the gross annual revenues collected from this concession to the Department. These payments shall be made on or before April 1<sup>st</sup> of the following year. For the purposes of the Agreement "gross annual revenues" are all revenues collected by the Concessionaire for sales of goods and services, rental of equipment, and booking of activities at the Park, excluding sales taxes collected and credit card transaction fees. The Department acknowledges that the Concessionaire may have operations at other locations other than the Park detailed in this Agreement and the Department is not entitled to any portion of revenues collected from those operations. The Department may choose to be paid in rental vouchers in lieu of cash payment. During the term of this Agreement the percentage of the gross annual revenues paid to the Department by check or in the form of rental vouchers as follows:

Term: 10%

11. **Independent Contractors:** Concessionaire is an independent contractor and shall not be considered an employee, officer, or agent of the Department. Concessionaire shall hire and employ such persons as Concessionaire deems necessary to provide adequate concession services and shall retain the right to exercise full control and supervision of all such persons assisting Concessionaire in the performance of services hereunder. Concessionaire shall be solely responsible for all matters relating to payment of its employees including workers' compensation, social security and income withholding, and all other regulations governing such matters.
12. **Assignment:** Concessionaire shall not sub-contract or otherwise assign, delegate, or transfer the rights, duties, and services to be performed under this Agreement, or any part hereof, without the prior written consent of the Department.
13. **Seller's Permit:** The Concessionaire shall obtain and hold a seller's permit if necessary and comply with all sales tax requirements under current Wisconsin law.
14. **Termination:** Either party shall have the right to terminate this Agreement upon 30 days prior written notice provided to the other party. Upon termination of this Agreement for any reason, the Concessionaire shall promptly remove all of Concessionaire's personal property and leave the premises in a clean and orderly condition. Any property or improvements remaining at the end of the 30-day termination period shall be considered abandoned property and shall be disposed of by the Department as it sees fit. Upon termination, Concessionaire shall be required to pay any and all amounts then due and owing to the Department under the terms of this Agreement. If Concessionaire enacts right to terminate this Agreement before the end term date of this Agreement, then the Concessionaire agrees refund any startup payments made by the Watertown Leadership Group/City of Watertown or relinquish any claim to ownership of equipment, materials, etc. paid for with said payments.
15. **Insurance:** Concessionaire agrees to obtain and maintain, at Concessionaire's sole cost and expense, comprehensive general liability insurance coverage to insure against all claims which arise from the operation or performance of Concessionaire's activities pursuant to this Agreement with single limit coverage applying to bodily and personal injury liability and property damage of not less than \$1,000,000 per occurrence. This policy shall contain an endorsement listing the Department, its officers, employees, agents, and representatives as additional insured, shall be submitted to the Department upon execution of this Agreement. Concessionaire shall also obtain worker's compensation insurance, or a waiver of such insurance, in accordance with Wisconsin law. Concessionaire shall maintain any casualty or other insurance deemed desirable by Concessionaire to protect Concessionaire's personnel, property and equipment placed or utilized at the Park.
16. **Indemnity:** Concessionaire agrees to indemnify, hold harmless and defend the Department, its officers, agents, and employees from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorney's fees, however caused, arising out of, or resulting from the operations, acts or omissions of the Concessionaire, its employees, officers and agents, in performance of Concessionaire's services and obligations under this Agreement.

17. **Included in this Agreement:** In this Agreement, the Concessionaire includes its respective employees, officers, members, directors, agents, servants, contractors, representatives, partners, assignees, and successors. If the Concessionaire ceases to exist in fact or by law, the Department may immediately terminate this Agreement and, without waiving any remedy available to it, perform the duties under this Agreement.

18. **Other Agreements Superseded:** This Agreement shall constitute the entire Agreement and previous Agreement communications or Agreements pertaining to this Agreement are hereby superseded. Any contractual revisions including cost adjustments and time extensions must be made by an amendment to this Agreement or other written documentation, signed by both parties at least 30 days prior to the ending date of this Agreement. The Concessionaire shall notify its insurance company and its surety, if any, of any amendment.

**IN WITNESS WHEREOF**, the parties hereby cause this Agreement to be executed as of the day and year first above written.

**Department – City of Watertown – Parks and Recreation Department**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Concessionaire – The Surf Shack LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Exhibit A



Image 1: Map showing Riverside Park and approximate location of rental station.