

CONCESSION AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2023 (the 'Effective Date'), by and between the City of Minneapolis, acting by and through its Park and Recreation Board (the "MPRB") and Minneapolis Water Taxi, LLC (the "Concessionaire").

- A. MPRB has determined that the public interest in maximizing the revenue to the MPRB from the Grounds, as defined below, would be best achieved by retaining a private concessionaire to operate river cruises on the Mississippi.
- B. The Concessionaire had submitted to the MPRB a Proposal on January 30, 2023, to operate river cruises on the Mississippi.
- C. The Concessionaire wishes to use MPRB property, specifically Boom Island, for the docking and operation of its river cruises.
- D. The Concessionaire's business is a leader in clean energy using only electric propulsion for its river cruises.
- E. The MPRB desires to engage the services of the Concessionaire to operate the river cruises on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions.

- a. *Concessionaire* The private business entity contracted by the Park Board to operate river cruises on the Mississippi River.
- b. *Dock* means the docking facility at Boom Island to the extent allowed by any and all federal and state regulations or requirements relating to or restricting the use of the Mississippi River.
- c. *Grounds* means exterior park spaces deemed appropriate by the MPRB at Boom Island.
- d. *Gross Revenue* means the total revenue derived from the river cruises (including, but not limited to, revenue derived from rental fees, the sale of food, beverages, merchandise, or advertising; and product placement or promotional fees), less any sales tax thereon.
- e. *Operating Season* means the period from April 15th to October 31st of each year the Mississippi River is considered navigable.

2. Term of Agreement. The term of the Agreement shall be for five (5) full Operating Seasons expiring December 31, 2027 with one, five (5) year renewal option mutually agreed upon and with MPRB Board approval.

3. Use of Grounds. Unless specifically agreed to in writing by MPRB, Concessionaire shall use the Grounds only for the purpose of operating river cruises on the Mississippi River. Concessionaire shall not use or occupy the Grounds or knowingly permit the Grounds to be used or occupied: contrary to any statute, rule, order, ordinance, requirement or regulation applicable thereto; which would adversely affect MPRB's activities on property owned by MPRB adjacent to the Grounds; or which would constitute a public or private nuisance or waste. Concessionaire shall promptly upon discovery of any such prohibited use take all necessary steps to compel the discontinuance of such use. Concessionaire shall not erect or install any portable building, portable storage unit or portable kiosk on MPRB grounds without prior written approval from the MPRB of the design and location of such portable building, storage unit or kiosk. Concessionaire shall be solely responsible for all costs involved with the installation as well as the removal of any such portable building, storage unit or kiosk from any MPRB grounds.
4. Services to be Performed by Concessionaire.
 - a. General Description of Services. Concessionaire shall provide river cruises on the Mississippi during the Operating Season.
 - b. Hours of Operation. Concessionaire may only operate the river cruise business from 8:00 am to 10:00 pm during the Operating Season.
 - c. Upon the prior approval of the MPRB, Concessionaire may extend the hours of operation during the Operating Season.
 - d. Staffing. Concessionaire shall, at its sole cost, be responsible for providing adequate staffing for river cruise business.
 - e. Inventory. Provide up to three (3) 6 passenger boats and one (1) small houseboat to serve as an office and storage that meet all requirements of the United States Coast Guard and provide yearly documentation to the MPRB of certification. The houseboat shall not be used as a residence and/or for persons to stay overnight.
 - f. Provide a minimum of seven (7) public cruises per week during the operating season.
 - g. Provide for the MPRB at no cost two river cruises to be used by the MPRB solely for educational purposes.
 - h. Other Obligations Under This Agreement. Concessionaire shall perform such other duties and obligations as specifically set forth herein.
5. Pricing. Concessionaire shall submit pricing schedule at least one month prior to the start of each Operating Season.
6. Dock. Concessionaire shall, its sole cost, furnish a removable Dock, security gate,

and power for maintaining three (3) 6 passenger boats and one (1) small houseboat to serve as an office and storage.

- a. All watercraft moored at the dock must be approved by the MPRB prior to the beginning of the operating season.
 - b. Additional watercraft must have written approval by the MPRB prior to them being moored at the dock. Concessionaire shall be given a 24-hour notice to remove any unapproved watercraft moored at the dock. After 24 hours, a penalty of \$500.00 will be paid by the Concessionaire for each day or occurrence an unapproved watercraft is moored at the dock.
 - c. All watercrafts moored at the dock must be for river cruise business use only.
 - d. All watercrafts must be removed from the dock at the end of each Operating Season.
 - e. Concessionaire may store the dock at Boom Island during the non-operating season.
 - f. MPRB will furnish a dock for public use at the public boat launch during navigable river conditions. MPRB dock will be installed in the Spring and removed in the Fall of each year. MPRB will notify Concessionaire one week prior to installation and removal of the dock
 - g. MPRB will notify Concessionaire if access to the Boom Island parking lot is closed during the Operating Season and will work with the Concessionaire on other means of access to the Dock.
7. No Discounts to MPRB Employees. Concessionaire shall not provide service to MPRB employees at a discount or without charge.
8. Condition of MPRB Grounds.
- a. Prior to the Effective Date of this Agreement, MPRB and Concessionaire shall jointly inspect the Grounds to determine their condition at commencement of the term of this Agreement. MPRB makes no warranties or representations regarding the condition of the Grounds. Contractor hereby agrees to accept the Grounds "as is," in their current condition, without any representation from MPRB as to the condition, state of repair, existence of latent or apparent defects, or safety of the Grounds, and MPRB shall not be obligated to make any improvements to the Grounds prior to the commencement of this Agreement.
 - b. Repair and Maintenance – Obligations of MPRB. MPRB agrees that it will undertake the following responsibilities with regard to the Grounds during the term of this Agreement:

- (1) Mow grass and trim vegetation on the Grounds in a manner consistent with the MPRB's practices for a similar Grounds within its system.

MPRB does not warrant that any of the services referred to in this section will be free from temporary interruption for reasons beyond MPRB's control. Such temporary interruption of service shall never be deemed an eviction or disturbance of Concessionaire's use and possession of the Grounds or render MPRB liable to Concessionaire for damages or relieve Concessionaire from performance of Concessionaire's obligations under this Agreement. The parties acknowledge that the MPRB obligations under this section shall be performed in accordance with its practices consistent with its maintenance of similar Grounds within the MPRB park system.

- c. Repair and Maintenance – Obligations of Concessionaire. Concessionaire agrees that it will undertake the following responsibilities with regard to the MPRB Grounds during the term of this Agreement:

- (1) Keep the Grounds reasonably free from trash and rubbish.
- (2) Concessionaire shall promptly pay MPRB, upon request, an amount equal to any cost incurred by MPRB in repairing any part of the Grounds where such repairs were made necessary by the negligence of or misuse by the Concessionaire, its agents, customers, employees or invites, except to the extent the damage or loss resulting from such negligence is covered under any policy of insurance and the full amount of such loss is paid to or on behalf of MPRB pursuant to such insurance coverage.
- (3) Give MPRB access to the Grounds at all reasonable times to enable MPRB to examine the same and to make such repairs, additions and alternations as MPRB reasonably may deem advisable.
- (4) Concessionaire shall not store, keep, dispose of, transport or generate on the Grounds any hazardous substances or wastes or dangerous materials.
- (5) Personal Property Taxes. The Concessionaire shall be responsible for payment of personal property taxes in the event that they are assessed against Concessionaire by reason of Concessionaire's operations conducted on public property under this Agreement. Concessionaire shall give written notice of such assessment to the MPRB.

- d. No Alterations Without Prior Approval. Concessionaire shall not make any alternations to the Grounds without the prior written approval of the MPRB. All of Concessionaire's alterations or improvements to the Grounds paid for by Concessionaire, except movable furnishings, shall, upon termination of this Agreement, become the property of the MPRB, and shall at the option

of MPRB, either remain upon and be surrendered with the Grounds, at the termination of this Agreement, or be removed, at Concessionaire's expense, in which case, Concessionaire shall also repair all damage done to the Grounds resulting from such alterations or improvements, and the removal thereof, by Concessionaire.

9. Ownership, Maintenance and Risk of Loss of Equipment. All watercraft, Dock, and equipment owned by the Concessionaire shall remain the property of the Concessionaire. Concessionaire shall be solely responsible for maintaining and cleaning all of its property and for MPRB property used by it. Concessionaire shall maintain insurance covering its property maintained by and customarily used by Concessionaire and its customers at the Dock and on the Grounds. Concessionaire shall name the MPRB as an additional insured on all insurance policies relating to its use and its customers use and possession of the Grounds.
10. Signs. Concessionaire shall not erect, install or maintain any signs, advertising media, product logo displays or other signs on the Grounds without the prior written approval of the MPRB.
11. Taxes. Concessionaire is responsible for and shall pay any sales taxes, personal property taxes, real estate taxes or special assessments in the event the Grounds ever becomes subject thereto.
12. Assumption of Risks. Concessionaire assumes all risk of loss or damage of Concessionaire's river cruise business or property on the Grounds, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism or other cause. MPRB shall not be liable to Concessionaire, or those claiming through Concessionaire, for injury, death or property damage occurring on, in, or about the Grounds or the Dock, except as may be caused by the willful misconduct or negligence of MPRB. Nothing herein shall be deemed to be a waiver of any limits of liability granted MPRB under statutory or common laws.
13. Consideration for Use of Grounds. As for consideration to the MPRB for the right of the Concessionaire to operate the river cruise business from the Grounds, Concessionaire shall compensate the MPRB pursuant to the terms of this Section.
 - a. Concessionaire shall pay the MPRB a graduated rate for the following first five (5) years as follows:
 - Year 1: 4% of Gross Revenues up to \$50,000
 - 6% of Gross Revenues up to \$100,000
 - 8% of Gross Revenues over \$150,000
 - Year 2: 6% of Gross Revenues up to \$50,000
 - 8% of Gross Revenues up to \$100,000
 - 10% of Gross Revenues over \$150,000
 - Year 3: 8% of Gross Revenues up to \$50,000
 - 10% of Gross Revenues up to \$100,000
 - 12% of Gross Revenues over \$150,000
 - Year 4: 12% of Gross Revenues
 - Year 5: 12% of Gross Revenues

Concessionaire shall pay the MPRB 12% of Gross Revenues collected upon MPRB Board approved five (5) year renewal option.

- b. Monthly Payments. On or before the fifth day after every month during the Operating Season, Concessionaire shall submit payment to the MPRB of the amounts due under subparagraph a. for the prior month. Each payment shall be accompanied by a statement showing the Gross Revenues during the payment period itemized by total daily receipts.
 - c. Monthly Audit. Concessionaire shall maintain complete and accurate financial books and records of its operations on the Grounds in accordance with generally accepted accounting principles. The MPRB or its representatives shall be entitled to inspect the books and records of Concessionaire's operations on MPRB property during regular business hours at least once per month. In the event that such audit by the MPRB or its representatives determines that the MPRB has been underpaid or overpaid: the amount of any such underpayment shall be remitted to the MPRB within ten (10) days of written notice to Concessionaire; and any such overpayment may be subtracted from future payments by Concessionaire.
14. Indemnification. Concessionaire shall defend and indemnify MPRB, its employees, agents, Concessionaires and invitees against all claims, demands and actions, and all related costs and expenses (including reasonable attorneys' fees) for injury, death, disability or illness of any person, or damage to property, occurring on or about the Grounds or arising from Concessionaire's operations on MPRB property. Notwithstanding the foregoing, Concessionaire shall not be obligated to indemnify MPRB for claims, demands and actions arising out of or caused by the negligence or willful misconduct of MPRB's employees or agents.
15. Payment of Others. The Concessionaire shall pay all of the Concessionaire's employees, agents, and subcontractors furnishing service, labor, equipment, or materials incidental to the performance of the Concessionaire's obligations under this Agreement and the Concessionaire will furnish the MPRB with satisfactory evidence that all of its subcontractor have been fully paid in accordance with the Concessionaire's payment terms.
16. Assignability. The rights and obligations of the Concessionaire under this Agreement shall not be assignable or transferable without the prior written approval of the MPRB except those claims for money due or to become due to the Concessionaire from the MPRB under this Agreement may be assigned to a bank, trust company, or other financial institution without the prior approval of the MPRB. Notice of any such assignment or transfer shall be furnished promptly to the MPRB
17. Compliance of all Laws; Ability to Perform. The Concessionaire shall comply with all applicable federal, state, regional, and local laws, ordinances and regulations

applicable to the Concessionaire. The Concessionaire represents and warrants to MPRB that if a license is required, the Concessionaire is duly licensed and qualified to conduct business in the State of Minnesota, and that the Concessionaire is not aware of fact or circumstance which would prevent the Concessionaire from performance in accordance with this Agreement.

18. Affirmative Action Compliance. The Concessionaire agrees to comply, in writing, with all applicable equal opportunity and affirmative action laws, directives, and regulations of the federal, state, and local governing bodies or agencies thereof, including specifically Chapter 139 of the Minneapolis Code of Ordinances. The MPRB may, at its discretion, require the Concessionaire to undergo a pre-compliance review upon the MPRB's request.
19. Nondiscrimination. The Concessionaire will not discriminate against any employee, applicant for employment, or party seeking to retain the Concessionaire's services based on race, color, creed, religion, ancestry, gender, national origin, affectional preference, disability, age, marital status, status with regard to public assistance, or status as a disabled veteran or veteran of the Vietnam era. The Concessionaire will include a similar nondiscrimination provision in all subcontracts into which it enters for performance of its obligations hereunder.
20. Entire Agreement; Amendments. This Agreement, and any documents incorporated herein, represent the entire integrated agreement between the Concessionaire and the MPRB and supersedes all prior negotiations, representations, or agreements, either written or oral. No amendment or modification of the terms of this Agreement, except as may be expressly authorized herein, may be made and will not be effective unless agreed upon in writing by the MPRB and the Concessionaire.
21. Interest of Members of MPRB and Park & Recreation Staff. No member of the governing body, officer, employee, or agent of the MPRB who exercises any functions or responsibilities in the carrying out of this project to which this Agreement pertains shall have any interest, financial or otherwise direct or indirect, in this Agreement. The MPRB may terminate this Agreement if the MPRB has reasons to believe that gratuities in any form were offered or given by the Concessionaire or any representative of the Concessionaire to any officer or employee of the MPRB for receiving favorable treatment with respect to the award of, or the making with respect to the performance of, this Agreement.
22. Insurance. This Agreement shall be effective only upon approval by the MPRB of acceptable evidence of the insurance coverage in amounts not less than that referenced in Minnesota Statutes Section 466.04 issued by reputable insurers authorized to conduct insurance in the State of Minnesota. Such insurance shall be in force on the date of execution of this Agreement and shall remain continuously in force until the termination of this Agreement. The Concessionaire shall provide evidence of workers' compensation insurance covering its employees in accordance with statutory requirements, and evidence of general liability insurance naming the MPRB its officers and employees as additional insureds under the policy. The Concessionaire shall submit to the MPRB, prior to the beginning of each operating

season, certificates of insurance verifying the insurance coverage required under this Section.

23. Equal Opportunity Statement. The Concessionaire shall comply with the provisions of all applicable federal, state, and local statutes, ordinances, and regulations pertaining to human rights and non-discrimination including, without limitation, Minnesota Statutes Section 181.53 and Chapter 363A and the Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.
24. Default. If the Concessionaire shall vacate or abandon the Grounds; shall allow the Grounds to be appropriated to or used for any other purpose or use than those set forth in this Agreement; or if any term, condition or covenant of this Agreement shall be violated by Concessionaire; then and in any of said cases Concessionaire shall be in default. If such default is not cured by Concessionaire within thirty (30) days, or ten (10) days in the event of any monetary default, after mailing of written notice of the conditions of default, Concessionaire does hereby authorize and fully empower MPRB to cancel and terminate this Agreement, and to remove all of Concessionaire's property therefrom. MPRB's failure to give immediate notice of default or agreement to allow more than thirty (30) days to cure a default, shall in no way constitute a waiver of any remedy available to MPRB upon default by Concessionaire.
25. Automatic Termination. Notwithstanding any other provision contained herein, this agreement shall automatically terminate upon the occurrence of any of the events described below:
 - a. A petition by or against Concessionaire under the bankruptcy laws of the United States, which petition is not dismissed within ninety (90) days from the date of such filing;
 - b. The assignment by Concessionaire of its assets for the benefit of creditors under any state insolvency laws;
 - c. Conduct by Concessionaire of its business under any trustee or other person appointed pursuant to judicial proceedings; or
 - d. The taking by a court of jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;
 - e. The appointment of a receiver of Concessionaire's assets;
 - f. A lapse in the insurance coverage Concessionaire is required to maintain pursuant to Section 22 above which continues for ten (10) days after notice by MPRB to Concessionaire specifying such lapse in such insurance coverage;
 - g. The parties shall voluntarily terminate this Agreement if necessary to comply with any and all federal or state regulations or requirements relating

to or restricting the use of the Mississippi River. Termination of this Agreement pursuant to this Paragraph 27 section g shall relieve both parties of any and all further obligations under this agreement except for any fees and reimbursement that may be due and owing the MPRB under this Agreement;

h. In the event the river or river area becomes unnavigable, due to river changes (man- made or natural), shallow areas, shoals, unforeseen construction or debris, official changes to channel, or the like, the Concessionaire has the right to terminate the agreement due to lack of ability to operate;

26. Concessionaire's Obligations Upon Termination. Upon the expiration or termination of this Agreement, Concessionaire shall remove, at its expense, all of its goods and effects and other items of personal property and equipment, repairing any damage caused, and leave the Grounds in as good order, condition and repair as the same were in at the commencement of this Agreement, reasonable wear and tear, fire and casualty excepted. Goods and effects not removed by Concessionaire at the expiration or termination of this Agreement shall be considered abandoned and MPRB may retain or dispose of the same as it deems expedient.

MPRB's Right to Perform Obligations. If Concessionaire fails to make any payment or perform any act required to be made or performed hereunder, MPRB, without waiving or releasing any obligation or default, may make such payment or perform such act for the account and at the expense of Concessionaire, and may enter upon the Grounds or any part thereof for such purposes and take such action thereon as, in MPRB's opinion, may be necessary or appropriate, therefore. All sums so paid by MPRB and all costs, fees and expenses so incurred shall, upon written request for payment by MPRB, be immediately due and payable by Concessionaire. Nothing herein shall create any obligation of MPRB to make such payments.

27. Financial Statement. Upon request, and at a minimum annually, Concessionaire shall provide the MPRB access to review their Financial Statement prepared by Concessionaire's Certified Public Accountant.

28. Participatory Support of MPRB Programs. Concessionaire agrees to support and participate in fund raising programs for the benefit of the MPRB or park foundations at no additional cost to Concessionaire.

29. Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

30. Notices. All notices or communications relating to this Agreement shall be in writing and shall be deemed given upon hand delivery or deposit in the United States mail, return receipt requested, and addressed as follows:

To the MPRB:
Minneapolis Park and Recreation Board
2117 West River Road
Minneapolis MN 55411-2227

To Concessionaire:

31. Independent Concessionaire. The MPRB and the Concessionaire agree that the relationship created by this Agreement is that of independent Concessionaire, and not of employer and employee, a joint venture or a partnership. The Concessionaire retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Agreement. The Concessionaire shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the concession and Agreement. The Concessionaire shall be responsible for the compensation and benefits of the Concessionaire's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to the Concessionaire under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the Concessionaire, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax.
32. General Construction Requirements. Concessionaire shall obtain, and provide to the Park Board, copies of all necessary governmental approvals and permits prior to commencing construction of any work and shall additionally provide the Park Board with three (3) days' notice prior to the start of such construction work to permit the Park Board to post notices of non-responsibility. All Concessionaire's contractors and subcontractors shall be duly licensed in Minnesota. All contracts and subcontracts shall be subject to Minnesota State Prevailing Wage Rates for Commercial Construction and the work of the contractors and subcontractors shall be in accordance with Minnesota Statutes sections 177.41 through 177.44. contractors and subcontractors shall pay the prevailing wage rate of the trade in question.
33. Bonds. As a condition of MPRB's approval of any construction on its property and to its structures, Concessionaire is required to provide payment and performance bonds to the MPRB for any and all construction work performed on MPRB property or to its structures by Concessionaire, its contractors, subcontractors, agents, and/or employees. The payment and performance bonds are to provide the MPRB reasonable assurances of Concessionaire's intent and ability to pay for all of Concessionaire's improvements to the MPRB property contemplated under this Agreement.
34. Governing Law. This Agreement shall be construed in accordance with governed by the laws of the State of Minnesota.
35. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one

and the same document.

36. Annual Performance Review. At the end of each Operating Season, both parties agree to meet and review the Operating Season performance. The MPRB shall use the Annual Performance Metrics for Concession, attached hereto as Attachment One. Annual Performance Review findings will contribute to considerations of opportunities for improvements, identification of vendor and MPRB business needs, and agreement renewal or extension negotiation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first written above.

FOR THE MPRB

FOR THE CONCESSIONAIRE

The City of Minneapolis, acting by
and through its Park and Recreation Board

Minneapolis Water Taxi

By: _____
President

By: _____
Its:

By: _____
Secretary

ATTACHMENT ONE

ANNUAL PERFORMANCE METRICS FOR CONCESSION AGREEMENT

1. Grounds Site Assessment
 - a. Has Concessionaire maintained the Grounds, normal wear and tear excluded, in the same or better condition than when Concessionaire first occupied the Grounds?
 - b. Has the Concessionaire operated its business in a way that maximizes the use and enjoyment of the park by the general public?
 - c. Has the Concessionaire complied with the responsibilities under its Concession Agreement relating to the Grounds?

2. Business Operation
 - a. Has the Concessionaire conducted the business in compliance with the terms and conditions of the Concession Agreement?
 - i. Maintained schedule
 - ii. Made required payments
 - iii. Provided required notices
 - iv. Maintained quality of service
 - v. Complied with all laws and regulations
 - b. Has the MPRB received verifiable complaints on the operation of the business?
 - c. Is the business growing?
 - d. Is the business undercapitalized?

3. Business Fit
 - a. Is the Concessionaire's business the best fit for the location, and market?
 - i. Is the venue better suited for a different kind of concession business?
 - ii. Is the Concessionaire's business better suited in a different venue?
 - iii. Is the Concessionaire's business and the park a good match?
 - iv. Is the market of the potential customers for the Concessionaire's business in line with the demographics for the location?
 - b. Is the Concessionaire's business in line with the strategic plan of the MPRB?

4. Relationship
 - a. Has the MPRB and Concessionaire maintained a good working relationship?
 - b. Has the Concessionaire maintained a good working relationship with its vendors?
 - c. Does the Concessionaire foster good will with customers and potential customers?
 - d. Does the Concessionaire foster good will with the general public?
 - e. Is the reputation of the business in the community positive?