

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2023, between the City of Minneapolis, acting by and through its Park and Recreation Board (“MPRB”) and Minneapolis Sailing Center (“CONTRACTOR”).

RECITALS

WHEREAS, the CONTRACTOR desires to operate a sailing program for youth and adult recreational sailing instruction, racing, boat-sharing and social membership;

WHEREAS, the CONTRACTOR wishes to use MPRB property and facilities, specifically Bde Maka Ska sailing building and its adjacent grounds for the operation of its sailing program;

WHEREAS, the MPRB desires to provide sailing experiences for the youth and adults of both Minneapolis and it’s neighboring communities at the MPRB’s Bde Maka Ska sailing building and its adjacent grounds

AGREEMENT

NOW, THEREFORE, in consideration of the payments and agreements hereinafter mentioned, the MPRB and the CONTRACTOR agree as follows:

1. The MPRB gives the CONTRACTOR the exclusive right to operate a sailing program for youth and adult [hereinafter collectively the “Program”] for the years 2023-2032 at Bde Maka Ska.
 - a. The CONTRACTOR shall submit the required class information and fee structure to the MPRB for approval by June 1st.
 - b. The CONTRACTOR shall have the sole authority to determine the dates of each class and all related programming.
 - c. The CONTRACTOR agrees to offer three (3) sailing clinics with a class size of twelve (12) youth for a three (3) hour session at no charge to the MPRB for program use through the recreation centers. The Recreation Division will be responsible for filling the class sections on an annual basis, transporting the recreation center youth to the classes and providing three (3) supervisors to assist the instructors. CONTRACTOR and MPRB may review alternate means of integrating MPRB youth into existing sailing lessons and programming where appropriate.

2. The CONTRACTOR shall be solely responsible for:
 - a. Registering all participants in the Program;
 - b. Ensuring that all youth registration forms are signed by the participant’s parent and/or guardian;
 - c. Providing registration data to MPRB, if requested;
 - d. Collecting all fees from the Program’s participants;
 - e. CONTRACTOR shall conduct background checks for all instructors and provide MPRB with completed background checks if requested.
 - f. Furnishing and maintaining all materials, supplies, equipment, vessels, vehicles, superintendence, labor, insurance, and other accessories and services necessary to

- perform and complete the Program in accordance with the terms herein and conditions and prices stated in the Program Proposal;
- g. Recruiting and hiring Program instructors and any other persons connected with the program operation, either as Independent Contractors or employees of CONTRACTOR;
 - h. Paying Contractor's employees or Independent Contractors;
 - i. Paying any taxes, license or permit fees, or any other costs or expenses associated with the Program;
 - j. Obeying all parking regulations and MPRB ordinances;
 - k. Reimbursing the MPRB for maintenance and any and all assistance and/or work requested by CONTRACTOR that is not covered by the buoy rental contracts and building lease agreement;
 - l. Providing safety watercraft not to exceed 25 hp and operated at no wake speed unless responding to a water rescue;
 - m. Furnishing and maintaining any and all floating docking systems as approved by the MPRB.
3. At the beginning of the sailing season, the CONTRACTOR shall pay the MPRB the standard fee for each buoy used by the Program.
 4. The MPRB shall provide the CONTRACTOR with advertisement for the Program in the MPRB's spring and summer brochure or other appropriate location where similar MPRB programs are advertised.
 5. The CONTRACTOR shall pay the MPRB eight (8%) of the gross program fees collected. Gross Program Fees are defined as all fees collected by the CONTRACTOR from all Program participants, with the exception of the following: Youth Opti and 420 Racing Teams, the High School Racing Program, and the Membership Program.
 6. The CONTRACTOR agrees that during the term of this Agreement, it shall not discriminate against any employee, applicant for employment, student or class applicant because of race, color, creed, religion, national origin, sex, affectional preference, marital status or status with regard to public assistance, disability, or age, and will include a similar provision in all subcontracts entered into for the performance hereof. The CONTRACTOR further agrees to be an equal opportunity employer and to affirmatively seek to hire personal who are of gender, racial, or ethnic minorities. This agreement may be canceled or terminated by the MPRB, and the CONTRACTOR shall forfeit all money due or to become due hereunder for any violation of the terms and/or conditions of this paragraph. MPRB and CONTRACTOR agree that the relationship created by this Agreement is that of the independent contractor, and not of employer and employee, a joint venture or partnership.
 7. MPRB and the CONTRACTOR agree that the relationship created by this Agreement is that of independent contractor, and not of employer and employee, a joint venture or a partnership. The CONTRACTOR retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Agreement. The CONTRACTOR shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the performance of Agreement. The CONTRACTOR shall be solely responsible for the

compensation and benefits of the CONTRACTOR's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to the CONTRACTOR under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the CONTRACTOR, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax. Therefore, neither the CONTRACTOR nor its employees shall acquire rights to tenure, wages, workers' compensation benefits, unemployment compensation benefits or other rights or benefits offered to employees of the MPRB, its departments or agencies. The CONTRACTOR and its employees shall not act as or represent themselves as agents, representatives or employees of the MPRB.

8. CONTRACTOR agrees to pay all persons furnishing services, labor, equipment or material incidental to the performance of this contract and will furnish the MPRB with satisfactory evidence that all of said persons have been fully paid; and that upon default or delinquency of CONTRACTOR in making such payments, said person may, at the option of the MPRB, be first paid out of amounts claimed due to CONTRACTOR, and deducted from any remaining balance due CONTRACTOR.
9. CONTRACTOR shall take all precautions necessary to protect the public against injury, and will defend, indemnify and save the MPRB harmless from all claims, damages, losses, expenses, including attorney fees that may arise by Reason of any act, omission or negligence on the part of the CONTRACTOR or CONTRACTOR's subcontractors, agents or employees while engaged in the performance of this contract, and against any and all claims, liens and claims of liens for. labor or services performed or equipment of material furnished as aforesaid, including claims for the same furnished or subcontracted for by CONTRACTOR without authorization of the MPRB, and against all loss by reason of the failure of the CONTRACTOR in any respect to fully perform all obligations under this Agreement.
10. The CONTRACTOR shall comply with the insurance requirements set forth in this section. No later than June 1st of each year that this Agreement is in effect the CONTRACTOR shall submit to the MPRB a Certificate of Insurance of general liability in the 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. CONTRACTOR shall also keep in force all necessary public liability insurance and vehicle and vessel insurance with carriers which are satisfactory to the MPRB, and shall name the MPRB as co- insured in all in all insurance policies required for the Program by this Agreement. The CONTRACTOR shall provide the MPRB with proof of insurance, including workers' compensation insurance and shall hold the MPRB from all claims, demands and suits arising out of the performance of services and the sale of goods under this Agreement.
11. CONTRACTOR agrees to comply with all applicable federal, state, regional or local laws, ordinances or regulations applicable to the Program.
12. Notwithstanding anything herein or elsewhere to the contrary, including, but not limited to the provisions of the Program Proposal, a claim, dispute or other matter in question shall be subject to arbitration if, and only if, such claim, dispute or other matter in questions involves an amount in controversy of no more than Five Thousand Dollars

(\$5,000.00). Disputes between the MPRB and CONTRACTOR where the amount in controversy is more than Five Thousand Dollars (\$5,000.00) shall not be subject to arbitration. Claims, disputes or other matters not subject to this arbitration clause shall be resolved by legal proceedings when applicable.

13. CONTRACTOR agrees this agreement shall automatically terminate in the event the MPRB relocates the Bde Maka Ska sailing building to another location on Bde Maka Ska. In the event the Bde Maka Ska sailing building is relocated, MPRB agrees to establish a new operating agreement with the Contractor for program operations at the relocated Bde Maka Ska sailing building.

14. The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation which may arise under this Agreement will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence or incorporation of the CONTRACTOR.

If any clause or provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision and all other clauses or provisions shall remain in full force and effect.

Term of contract will be ten (10) years.

IN WITNESS WHEREOF, the parties have executed this Agreement in three (3) counterparts, each of which shall be deemed an original, in the year and the day first mentioned above.

MPRB

Minneapolis Sailing Center

ITS, President

Marshall Hall, Board Chair

ITS, Secretary

Ted Salzman, Executive Director