

**LICENSE AGREEMENT FOR NON-EXCLUSIVE USE
OF CITY OF AURORA BOAT LANDING**

This License Agreement (“Agreement”) made this day __ day of June, 2015, by and between the City of Aurora and Michael Preston (“Licensee”). The City of Aurora and Licensee are hereinafter sometimes individually referred to as “Party” and collectively as the “Parties”.

RECITALS

- a. The City of Aurora owns property commonly known as Mastodon Lake located in Phillips Park.
- b. Licensee desires to use the Property within the City of Aurora to operate a boating rental concession from that location in Phillips Park.
- c. This License Agreement is not intended to create or imply a joint function, joint venture, or joint enterprise between Licensee and the City of Aurora.
- d. The City of Aurora is willing to grant to Licensee permission to use the Property on a non-exclusive basis from the date hereof through _____ 2015 to operate a boating rental concession from that location in Phillips Park subject to the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties as follows:

1. Subject to the terms and conditions contained in this Agreement, The City of Aurora grants to Licensee a license (the “License”) to use portions of the Property as designated by the City of Aurora to operate a boating rental concession from that location in Phillips Park on the dates and during the hours specified as follows:

Monday through Saturday from __ a.m. to __ p.m. and Sunday from __ a.m. to __ p.m. from the date hereof to _____ 2015, thereafter on Saturdays and Sundays and holidays through _____ 2015. Licensee shall also be permitted to have access one and one-half hour before and after the concession operating times for unloading, launching and removing the watercraft from Mastodon Lake.

2. Licensee shall pay to the City of Aurora fifteen percent (15%) of its gross revenues earned in connection with its operation of the boating rental concession from that location in Phillips Park as and for a license fee (the "License Fee") for such operation. The license fee shall be payable monthly within fifteen (15) days following each month end of operation under this License Agreement and Licensee shall accompany such payment with a certification of the revenues received for the month of operation for which payment is then being made. At the end of the initial year of operation and following any subsequent year to which this License Agreement may be extended, the City of Aurora shall have the right to review the books, records and tax returns filed in connection with the boating rental concession from that location in Phillips Park to verify proper payment of the License fee.

3. LICENSEE'S RESPONSIBILITIES

- a. Licensee is solely responsible for any and all supervision and security services associated with its use of the Property. Nothing hereunder shall be construed nor is it in any way intended to create a joint venture, partnership or other similar relationship between Licensee and the City of Aurora.
- b. Licensee is solely responsible for determining whether the grounds/water are safe, suitable, and appropriate for any of its intended activities and shall inspect the Property prior to and subsequent to each use to determine the suitability of the Property for any contemplated use and to identify any potential safety hazards or dangerous conditions. Licensee shall take all reasonable measures to protect volunteers, staff, participants, spectators, visitors, guests, officials, etc, from known safety hazards or potential risks. Licensee shall promptly advise the City of Aurora of any known safety hazards or potential dangerous condition.
- c. Licensee shall immediately advise the City of Aurora of any damage made to City of Aurora property.
- d. Licensee shall be responsible for any damage done to City property beyond normal wear and tear, and shall fully and promptly reimburse the City of Aurora for all costs and expenses incurred by the City of Aurora in repairing and/or remedying said damage.
- e. In use of said Property, Licensee shall comply fully and shall cause its employees, agents, contractors, volunteers and invitees to comply fully with all applicable federal, state, county and local laws, rules and regulations. Coast Guard approved life jackets shall be issued by Licensee and included in the rental of the watercraft for each person who rides on the Licensee's watercraft in Mastodon Lake.

- f. Licensee fully understands and agrees that the City of Aurora does not assume the care, custody, or control of any personal property or equipment brought upon the Property. Licensee is solely responsible for the care, custody, and control of any property or equipment brought onto the property. Licensee shall not store any equipment on the Property outside of business hours and shall not unreasonably block the boat landing or prevent its use by others, except during short periods of drop off and pick up at the boat landing by Licensee of its boats. Licensee acknowledges hereby that Licensee shall operate its boating rental concession from that location in Mastodon Lake so as to allow use of Mastodon Lake and the boat landing/dock located there by all other visitors and Phillips Park patrons, during use by Licensee and its customers and invitees.
- g. Licensee fully understands and agrees that the City of Aurora does not assume any liability for property lost, damaged, or stolen on City of Aurora property, or for personal injuries sustained on the premises during Licensee's use of any City of Aurora property.

4. INSURANCE AND INDEMNIFICATION

Licensee shall obtain insurance of the types and in the amounts listed below.

a. Commercial General and Umbrella Liability Insurance

Commercial General and Umbrella Liability Insurance

Licensee shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, athletic participation, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract)

The City of Aurora shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the City of Aurora.

b. Business Auto and Umbrella Liability Insurance

If applicable, Licensee shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

c. Workers Compensation Insurance

If applicable, Licensee shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the City of Aurora has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 26 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Licensee waives all rights against the City of Aurora and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Licensee's use of the premises.

d. General Insurance Provisions

i. Evidence of Insurance

Prior to using any City of Aurora facility, Licensee shall furnish the City of Aurora with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to the City of Aurora prior to the cancellation or material change of any insurance referred to therein. Written notice to the City of Aurora shall be by certified mail, return receipt requested.

Failure of the City of Aurora to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the City of Aurora to identify a deficiency from evidence that is provided shall not be construed as a waiver of Licensee's obligation to maintain such insurance.

The City of Aurora shall have the right, but not the obligation, of prohibiting from occupying the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the City of Aurora.

Failure to maintain the required insurance may result in termination of this use agreement at the City of Aurora's option.

Licensee shall provide certified copies of all insurance policies required above within 10 days of the City of Aurora's written request for said copies.

ii. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the City of Aurora has the right to reject insurance written by an insurer it deems unacceptable.

iii. Cross-Liability Coverage

If Licensee's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

iv. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the City of Aurora. At the option of the City of Aurora, the Licensee may be asked to eliminate such deductibles or self-insured retentions as respects the City of Aurora, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

e. Indemnification

Licensee shall indemnify and hold harmless the City of Aurora and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs) arising from or in any way connected with (i) the use of the premises or of any business or activity thereon, or any work or thing whatsoever done, or condition created in or about the premises

during the use, whether by Licensee or any customer or invitee of Licensee; (ii) any act, omission, wrongful act or negligence of Licensee or any Licensee's contractors or subcontractors, or the directors, officers, agents, employees, invitees of Licensee' or Licensee's contractors or subcontractors (iii) any accident, injury or damage whatsoever occurring in or at the premises, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Licensee shall similarly protect, indemnify and hold and save harmless the City of Aurora, its officers, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Licensee's breach of any of its obligations under or Licensee's default of any provision hereunder.

5. EARLY TERMINATION

The City of Aurora reserves the right to alter the terms and conditions of the License or to terminate this License Agreement at any time and for any reason, including, but not limited to: the misconduct of individuals or for misuse of property; for purposes deemed necessary for public safety or preservation of property; or because Licensee has breached any of its obligations under this Agreement.

6. NO THIRD PARTY BENEFICIARY

This License Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized officer thereof as of the date first above written.

The City of Aurora

Licensee

By: _____

Michael Preston