

## OLIN PARK USE AGREEMENT

Between the City of Madison and Electrical Workers Local 159 Labor Management Cooperative Committee Fund Trust, a/k/a The Electric Group  
For the Holiday Fantasy in Lights Event (2020 - 2024)

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THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Electrical Workers Local 159 Labor Management Cooperative Committee Fund Trust, a/k/a The Electric Group, a Wisconsin Trust (hereinafter referred to as “User”) is effective as of the date on which all parties have signed hereunder.

### WITNESSETH:

WHEREAS, in 1989, the International Brotherhood of Electrical Workers (IBEW) Local 159 and the National Electrical Contractors Association (NECA) began displaying holiday lights in Warner Park in the City, moving the display to Olin Park (the “Park”) in 1997, where it has operated annually since; and,

WHEREAS, the Event has become a holiday tradition in the City, and currently consists of over fifty free-standing light displays on and around the Park’s driveway loop that are set up and maintained by User’s staff, which remain on from dusk to dawn nightly, and that is staffed nightly, from 4:30 pm through as late as 11 pm, during mid-to-late November through the New Year, and kept open as a free community amenity, although donations to support the Event are accepted on-site; and,

WHEREAS, over time, the IBEW and NECA have installed permanent electrical infrastructure within the Park and invested in energy efficient displays for the Event, growing the display annually and increasing the number of attendees to the Event; and,

WHEREAS, the City’s Parks Division values the Event and believes that the annual use of the Park for this purpose is consistent with the City’s vision for the park and is a seasonally appropriate recreational amenity in the Park; and,

WHEREAS, the City now wishes to memorialize this long-term seasonal use of the Park by entering into this agreement with User, who represents the interests of the IBEW and NECA in the Event.

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

1. Purpose. The purpose of this Olin Park Use Agreement Between the City of Madison and Electrical Workers Local 159 Labor Management Cooperative Committee Fund Trust, a/k/a The Electric Group for the Holiday Fantasy in Lights Event (2020-2024) (“Agreement”) is to set forth the agreement between the City and User (collectively the “Parties”) regarding User’s annual use of Olin Park for the Event in 2020 through 2024.

The portion of the Park covered by this Agreement is generally depicted on Exhibit A and referred to as the “Premises”. A map of the Event is generally depicted on Exhibit B.

2. Term. This Agreement is effective as of October 1, 2020, and is in effect until January 31, 2025.
3. Park Use. City agrees that User, and User’s contractors, subcontractors, volunteers, agents, vendors and invitees, shall be able to use and, at times, control vehicular access to the Premises as set forth in this Agreement. The Parks Superintendent, or designee, shall have the authority to act for the City within the parameters of this Agreement.
  - A. Grant of Authority. From the first weekday following the last full weekend in October, but no earlier than October 28, through the first week in January of each calendar year of this Agreement, User shall have the non-exclusive use of the open spaces areas of the Premises for the Event as generally depicted on Exhibit B. During this time, the City shall not approve other events or uses in the Park that conflict with this use, although such areas will remain open to the public. User shall be permitted to park and store vehicles, consistent with the approved Event Plan, in the western parking lot off of Olin Turville Court. User shall, at all times, keep access to and from the boat launch parking lot open.
  - B. Event Plan. Annually, no later than September 15 each year, User shall submit an updated Event map and plan (the “Event Plan”) to the Parks Division detailing where its displays and equipment will be located on the Premises and when it will be using and vacating the Premises. If significant changes are expected, User shall notify Parks Division by August 15. The Parks Division reserves the right to reject any placement or park use, and may require any item placed in the Park to be relocated if necessary for park operations or other public purposes. Following receipt of the Event plan, the Parks Division shall approve the Event Plan, either as is or as amended. User agrees to update the Event Plan, if necessary, within five (5) days of any change.
  - C. Use of Park for Event.
    - (1) Set Up and Take Down. User may begin setting up the Park no earlier than the first weekday following the last full weekend in October, but no earlier than October 28, and shall commence take down, weather permitting, during the first week of January. During such activity, User, and its contractors, subcontractors, volunteers, agents, and vendors may utilize and park on the park driveways, provided continued access through the Park remains open. Heavy machinery or vehicles may not be driven on the grass without the consent of the Parks Division. During take down, User shall ensure that the electrical boxes are de-energized, pedestals removed and in a safe condition.
    - (2) Event. User may turn on light displays from dusk to dawn, from no earlier than the beginning of the second week of November through January 1.

User shall staff the entrances and/or exists to the Park's loop road/parking lot nightly, from at least 4:30 pm through 10:00 pm, to ensure that traffic moves smoothly through the Park. User may broadcast an Event related short range FM radio transmission within the Park. User is authorized to accept donations to support the Event within the Park, however no admission fee shall be required.

- (3) Pavilion Use. As part of the Event Plan, User may request the use of the Park pavilion on opening night or day of the Event. No additional fee shall apply to this use, but User shall comply with the standard reservation policies associated with the facility.
- (4) Olin Turville Court Gates. User shall be responsible for opening and closing the traffic gates on Olin Turville Court. User will obtain key from City and use only existing padlocks to secure gates. Gates will be open 6 am through 4 pm during set up and take down. During the Event, the gates shall be opened nightly by 4:30 pm, and left open until no later than 10:00 pm nightly and can remain open overnight, from Wednesday through Sunday of Thanksgiving week, from Thursday through Sunday during the last three weeks in December, and on December 24. If User is unable to lock gates by 10 PM due to traffic flow, User must notify Parks Division Rangers of extenuating circumstances.
- (5) Public Access to Park. During the Event, User may control and direct vehicular access through the Park's driveway loop and parking lot area.
- (6) Placement of Electrical Boxes. User has placed over 32 electrical boxes throughout the Park. Placement of additional boxes will require approval from Parks Superintendent or designee. User is responsible at all times for maintaining boxes in a safe and functional manner, removing pedestals and de-energizing them when not in use. Electrical boxes must be tamper resistant and inspected regularly.
- (7) Fun Run. As part of the Event Plan, User may organize or partner with authorized race management group and hold a "fun run" through the Park. User or race management group shall be responsible for separately obtaining the necessary approvals from the City for the Fun Run. Application should be received one month prior to run date.
- (8) Plowing of Roadway. User must make arrangements with the City Streets Division or obtain a private contractor to clear roadway during event.
- (9) Driving in Park. User will limit vehicles driving off the roadway in the Park. Only vehicles necessary for the installation and maintenance of User's equipment will be allowed on turf. In so doing, User will take all possible safety precautions and only do so outside of peak recreation times. In

addition, the ground must be in such a condition that such equipment and the use thereof will not damage the turf.

D. City Responsibilities.

- (1) Mowing. City shall mow the lawn area of the Premises just prior to the end of October each year of this Agreement.
- (2) Park Lights. The City shall turn off the Park's pole lights during the Event.
- (3) Bathroom. The City shall make reasonable efforts to keep the Park's public restrooms open through the day after opening day of the Event, but may need to close due to weather conditions and threat of freeze.. User will be required to provide portable toilets throughout the duration of the event.

E. Equipment Safety. User shall maintain all of User's equipment in a safe working order at all times and store said equipment in a safe manner to prevent any unauthorized use or operation thereof and to not create any hazards for Park users. Any display that is over the driveway must be at least 14 feet above driveway and properly secured. User is responsible for any damage caused by equipment, including visitor's vehicles.

F. Maintenance. During the Event, including set up and take down, User shall be responsible for maintaining the portions of the Premises used by User or User's invitees in a clean, safe and attractive condition. This includes keeping the loop road and parking lot, and the grounds immediately adjacent thereto, free of all paper and debris.

G. Storage. User shall be responsible for the off-site storage of all Event equipment and materials, including the lighting displays and electrical panels, when not being used at the Premises.

H. Improvements. User has already installed electrical upgrades to the Park for the Event, which improvements have been accepted by the City. Should the User desire to make additional electrical or other infrastructure upgrades to the Park, it shall first obtain the approval of the Parks Superintendent. Following this approval, User shall obtain any other necessary permits, licenses or approvals, and, once complete, shall inform the City. Upon confirmation that the improvements were made in accordance with the approved plans, and there do not appear to be any defects or deficient workmanship, the City will accept the improvements, which will be considered a donation by User to the City.

I. Signage. All new signs and banners shall be approved by the Parks Superintendent or designee and the Zoning Administrator.

J. Weapons Prohibition. User shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at the User's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement,

except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).

K. Fees, Charges and Damage Deposit.

(1) Use Fee. User shall pay to the City an annual use fee for the use of the Premises. Payment shall be made no later than December 1 of each year of this Agreement. A payment will be considered late, and a default of the terms of this Agreement, if not received within five (5) days of the due date. The annual use fee shall be as follows:

Year 1 (October 1, 2020-September 30, 2021):	\$1,200
Year 2 (October 1, 2021-September 30, 2022):	\$1,600
Year 3 (October 1, 2022-September 30, 2023):	\$2,000
Year 4 (October 1, 2023-September 30, 2024):	\$2,400
Year 5 (October 1, 2024-January 31, 2025):	\$2,800

(2) Utility Charges. Unless specifically agreed to by the City in writing, User shall be responsible for all expenses relating to the Event, including the electrical costs for the Premises during the Event. Payment of any such expenses shall be made within thirty (30) days of being invoiced by the City.

(3) Damage Deposit. User will pay a \$3,000 damage deposit that will be held by the City on an annual basis. Any unused amount will be returned to User at the end of the season. After each year of the Agreement, City will inspect the Premises and determine whether any repair or replacement of City property is needed. The City Parks Division Maintenance Supervisor or designee shall notify User within a reasonable time of its determination, but in no case later than April 1<sup>st</sup> each year of the Agreement, regarding any necessary maintenance work. City shall undertake the repair or replacement of Premises as it deems necessary and User agrees to reimburse City for all costs associated with such repair or replacement. Payment is due within thirty (30) days of the billing.

4. Assignability and Subcontracting. Except for electrical work done by User's members or a snow removal contract under Section 3.C(8), User shall not assign or subcontract any interest or obligation of this agreement without City's prior written approval.

5. No Realty. It is expressly understood and agreed that this Agreement is not a lease or a conveyance of realty, but merely a granting to User the right to use the Premises for the purposes set forth herein.

6. Access to City Property. This Agreement gives User the non-exclusive right to use the Premises for the Event. In no case shall this limited grant of rights be interpreted to

preclude the City's or the public's access to the Premises. The City shall, at all times, maintain the right to access the Premises.

7. Notices. All notices required to be given under the terms of this Agreement shall be personally delivered or sent, postage prepaid, by depositing the same in United States mail addressed as follows:

City: Superintendent of Parks  
City of Madison Parks Division  
210 Martin Luther King, Jr. Blvd., Room 104  
Madison, WI 53703

User: The Electric Group  
2200 Kilgurst Rd.  
Madison, WI 53713

8. Non-Discrimination. In the performance of services under this Agreement, User agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. User further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

9. Indemnification and Insurance.

A. Indemnification. User shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the User's and/or User's officials, officers, employees, guests, invitees or subcontractors acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.

B. Hazardous Substances. User represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on City property nor transport to or over City property any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. User further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the

City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.

C. Insurance.

- (1) Required Coverage. User will insure, as indicated, against the following risks to the extent stated. User shall not commence work under this Agreement, nor shall User allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
  - (a) Commercial General Liability. User shall procure and maintain during the life of this Agreement, Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. User's coverage shall be primary and noncontributory and list the City of Madison, their officers, officials, agents and employees as additional insureds. User shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.
  - (b) Umbrella Liability. User shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
  - (c) Property Insurance. User shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Premises. Such personnel property includes, but is not limited to, equipment, trailers and lighting displays. The City shall not be liable for any damage to or loss of property of User or others located on the Premises except to the extent such damage or loss was caused by the City's sole negligence or willful act.

- (2) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- (3) Proof of Insurance, Approval. User shall provide to the City certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and dates of expiration of policies for approval by the City Risk Manager, prior to commencing work under this Agreement. User shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. User shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. If additional coverage under Subdivision (2) is required, proof of insurance shall be provided to the City Risk Manager no later than August 1 of the year of the Event.
- (4) Notice to City of Changes in Coverage. User and/or its Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

10. Default/Termination.

- A. In the event User shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of seven (7) days after verbal notice thereof to User, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against User, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of User under this Agreement.
- B. Notwithstanding Subsection A., above, either party to this Agreement may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the other Party with thirty (30) days written notice of termination, provided said notice is provided no later than September 1 of that calendar year.

11. Binding on Parties; Amendments. This Agreement shall be binding on the Parties hereto, and cannot be varied or waived by any oral representations or promise of any agent or other person of the Parties hereto unless the same is in writing and is signed by both the Parties or their authorized agents.

12. Status of User. It is agreed that User is an independent contractor and not an employee or representative of the City, and that any persons who User utilizes and provides for services under this Agreement are employees of User and are not employees of the City. In addition, it is agreed that by granting User the right to use the Premises for the purposes set forth herein, that the City is not granting User the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec.

135.02(1), between the City and User arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.

13. Third Party Rights. This Agreement is intended to be solely between the Parties hereto. No part of this Agreement shall be construed to add, supplement, amend, abridge or repeal existing rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the Parties.
14. Joint Preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.
15. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or User shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or User therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.
16. Severability. It is mutually agreed that in case any provision of this Agreement is determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the Parties that all other provisions of this Agreement remain in full force and effect.
17. Agreement Governed by Laws of Wisconsin. This Agreement shall be deemed executed in the City of Madison and in the State of Wisconsin and governed by the laws of the State of Wisconsin.
18. Compliance with Applicable Laws. User, and User's contractors, subcontractors, volunteers, and vendors shall become familiar with, and shall at all times comply with and observe, all federal, state and local laws, ordinances and regulations which in any manner affect the services or conduct of User and its agents, volunteers and employees in the performance of this Agreement and the conduct of the Event.
19. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of User represents and warrants that he has been duly authorized to bind User and sign this Agreement on User's behalf.
20. Entire Agreement. The entire agreement of the Parties is contained herein and this Agreement supersedes any and all oral contracts and negotiations between the Parties.

21. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

**IN WITNESS WHEREOF**, the parties hereto have set their hands at Madison, Wisconsin.

ELECTRICAL WORKERS LOCAL 159 LABOR MANAGEMENT COOPERATIVE  
COMMITTEE FUND TRUST

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

CITY OF MADISON

\_\_\_\_\_  
Satya Rhodes-Conway, Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

\_\_\_\_\_  
Date

Countersigned:

\_\_\_\_\_  
David P. Schmiedicke, Finance Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric Veum, Risk Manager

\_\_\_\_\_  
Date

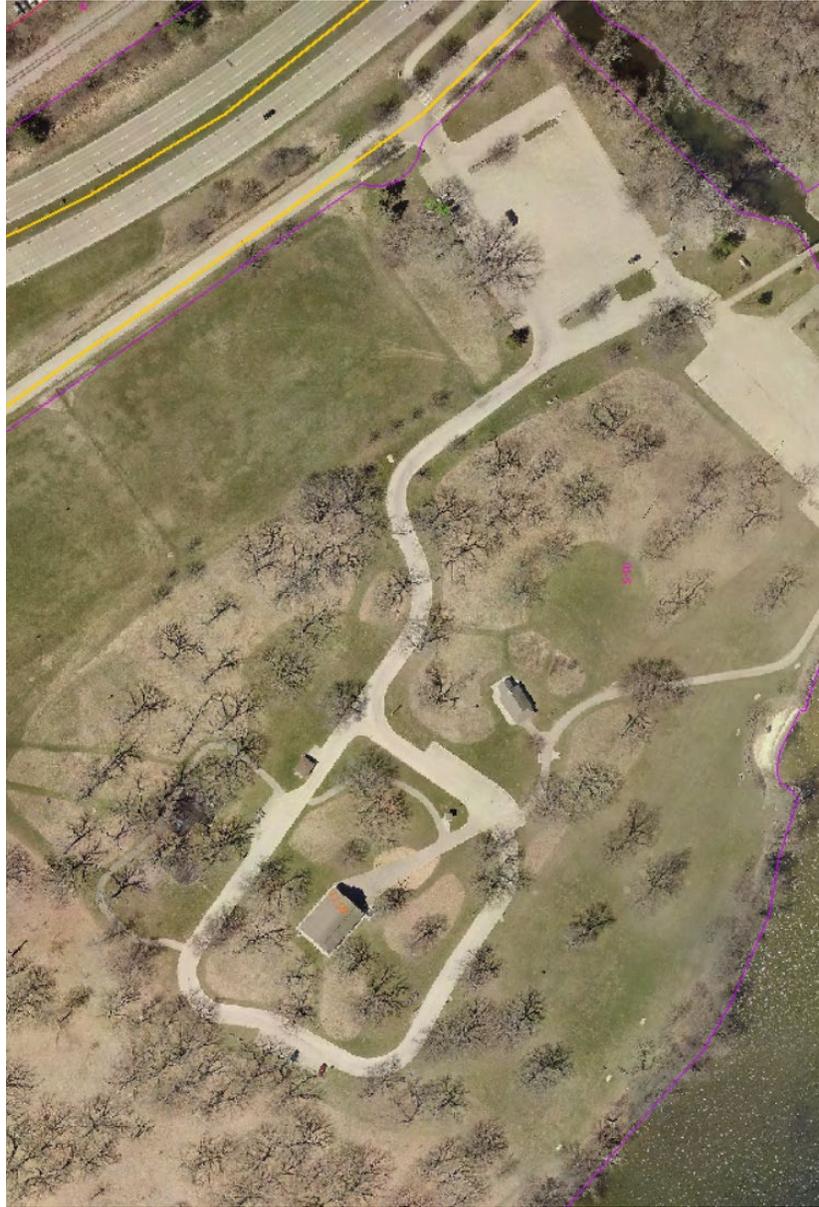
Approved as to form:

\_\_\_\_\_  
Michael Haas, City Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by City was approved by the Board of Parks Commissioners on \_\_\_\_\_ and authorized by Resolution Enactment No. RES \_\_\_ - \_\_\_, ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 20\_\_.

**EXHIBIT A**  
**Map of the Premises**



**EXHIBIT B**  
**Event Map**

