

OLIN PARK BOAT LAUNCH USE AGREEMENT

Between the City of Madison and Shake the Lake Madison, LLC
For the 2016-2020 Shake the Lake Events

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”) and Shake the Lake Madison, LLC, a Wisconsin limited liability company (“User”), is effective as of the date on which all parties have signed hereunder.

WITNESSETH:

WHEREAS, from 1993 to 2014, Madison hosted a large community celebration called Rhythm & Booms, the centerpiece being an evening firework show; and,

WHEREAS, in 2014, Rhythm & Booms was moved from Warner Park to John Nolen Drive and an assemblage of barges on Lake Monona in downtown Madison, which location necessitated the use of the Olin Park Boat Launch and some of the surrounding parkland (the “Boat Launch”) as a base of operations in order to launch and assemble the barges, to unload and prepare the fireworks, and to remove the barges from the lake following the event; and,

WHEREAS, in 2015, User created Shake the Lake (the “Event”) to replace Rhythm & Booms, which Event was a successful community celebration that included an evening firework show launching from barges in Lake Monona and public events in Law Park; and,

WHEREAS, User wishes to continue the Event annually, and the City wishes to continue its support of the Event by allowing the temporary closure and use of the Boat Launch; and,

WHEREAS, the Board of Parks Commissioners has approved the annual limited closure of the Boat Launch to facilitate the Event; and,

WHEREAS, under Madison General Ordinances Section 8.188, the City and the User are required to enter into a boat launch use agreement in order to allow User to temporarily close the Boat Launch to facilitate 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 Boat Launch Use Agreement Between the City of Madison and Shake the Lake Madison, LLC for the 2016-2020 Shake the Lake Events (“Agreement”) is to set forth the agreement between the City and User (collectively the “Parties”) regarding User’s use of the Olin Park Boat Launch and surrounding area for the Event in 2016-2020, including detailing User’s post-event responsibilities. This Agreement will also exempt User, and its contractors, from the anchoring and mooring restrictions of Madison General Ordinances Section 8.188.

2. Term. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until August 1, 2020. However, either party may terminate the agreement by providing the other party with written notice thereof no later than January 31 of the calendar year in which the termination is to occur.
3. Boat Launch Use. City agrees that User, and User's contractors, subcontractors, vendors and agents, shall be able to use the Boat Launch to facilitate the Event as provided for in this Section. The Superintendent shall have the authority to act for the City within the parameters of this Agreement.
 - A. Boat Launch Closure Plan. No later than March 31 of each calendar year of this Agreement, User shall submit a request to the Madison Parks Division detailing the Event date and the boat launch closure plan, including any "rain date" that will be utilized in the event of hazardous weather or other conditions. The boat launch closure plan may provide for up to fourteen (14) days of full or partial Boat Launch closures, and is subject to any closure related conditions as required by the Board of Parks Commissioners or the Parks Division. Once approved by the Parks Superintendent, User shall abide by the annual boat launch closure plan.
 - B. Boat Launch Closure. User shall have the exclusive use of the Olin Park Boat Launch, and surrounding area, during the approved closure dates, as shown on Exhibit A, which is attached and incorporated herein (the "Boat Launch Area"). In planning the Event and the closure, efforts shall be made to minimize impact on lake and park access.
 - C. Use of Boat Launch Area. User is hereby granted the authority to use the Boat Launch Area, during the approved boat launch closure period, to perform all work necessary to facilitate the Event, including loading the barges, assembling the firing platform in Lake Monona, unloading and storing materials and fireworks, loading and preparing the firework show, discharging the fireworks, cleaning up after the Event, and removing the barges. If User needs the continued exclusive use of any of the Boat Launch Area beyond those in the approved boat launch closure plan, such use may be granted by the Superintendent, subject to any additional terms or conditions that may be agreed upon by User and the Superintendent.
 - D. Cancelled Event. If the fireworks are unable to be safely discharged by the later of the originally scheduled date or any approved rain dates, the fireworks contractor shall remove the shells as rapidly as possible consistent with personnel safety, the International Fire Code, and federal, state and local laws, or shoot some shells, without advance public promotion, within the 24 hours following the Event if safety concerns prohibit removal of the shells from the mortars. Best efforts shall be undertaken to remove all explosives from the site as rapidly as possible after any such weather cancellation and additional time may be granted with the permission of the Superintendent and the Madison Fire Department. If shells are shot following a cancellation of the Event, prior to shooting the

fireworks contractor shall notify the Madison Parks Division and the Madison Fire Department.

- E. Public Communication. By June 1 of each year of this Agreement, User shall submit a public communication plan to the Superintendent to detail how User will inform the public about the temporary closure of the Boat Launch. The plan shall include temporary closure notices at the Boat Launch and on parkland adjacent to Olin Turville Ct. no later than two weeks before the Event, along with event boards directed to inbound traffic on John Nolen Drive no later than ten (10) days before the Event. Upon approval by the Superintendent, the communication plan shall be implemented by User and the costs of implementing this communication plan shall be borne by User.
- F. Preliminary Meeting. On the Monday of the week prior to the Event, representatives of User shall meet with Park Operations staff and Fire Department staff at the Boat Launch Area to demonstrate how User, or User's contractors, will comply with the terms and conditions of this Agreement relating to the use of the Boat Launch Area, and shall make any changes necessary to address site specific concerns. Parks Operations staff and Fire Department staff shall review the proposed security perimeter plan at this time, including the method of installation and removal of the security fencing or barricades, and approve the plan if it is found to be in compliance with the terms and conditions of this Agreement.
- G. Security Perimeter. Prior to receiving any fireworks at the site, User shall establish a security perimeter around the Boat Launch Area as shown on Exhibit A. Access to the secured area shall be limited to User, User's contractors, subcontracts, vendors and agents, and Authorized Personnel, as defined below. User shall be responsible for posting signage on the security perimeter informing the public of the temporary closure of the Boat Launch Area and the period of time when access to the area will be restricted and when full or partial access to the Boat Launch Area will be restored.
- H. Authorized Personnel. Notwithstanding the above, access to and use of the Boat Launch Area by authorized government personnel shall be allowed. Authorized Personnel will include, but not be limited to, representatives from the City of Madison (including the Parks Division, the Madison Fire Department and the Madison Police Department), Dane County (the Sheriff's Department), the State of Wisconsin (the Department of Natural Resources) and the United States of America (the Coast Guard).
- I. City Piers. User is permitted to remove the center two of the City's four piers at the Boat Launch to facilitate the use of the Boat Launch by User. The piers that are removed shall be securely stored on site and shall be safely placed back and secured into their original positions by midnight, two days following the Event. If a rain date is used, this deadline shall be extended for an additional day. The Superintendent may approve additional pier removals at User's request.

- J. Post Event Responsibilities. User shall be responsible for the following post Event responsibilities, which responsibilities shall be done to the satisfaction of the City, as noted herein:
- (1) User shall be responsible for cleaning up and restoring the Boat Launch Area to its original condition so that it may be fully and safely used as a public boat launch beginning on three days following the Event, or four days following the Event if a rain date is used.
 - (2) Within 48 hours of the end of the Event, User shall be responsible for cleaning up and removing all visible debris associated with the Event from the shoreline of Olin Park and Law Park, and from the Boat Launch.
 - (3) No later than 8 pm on the day following the discharge of fireworks, User shall be responsible for removing all visible surface debris from the fireworks show and Event staging in Lake Monona within 2640 feet of the firing location and within 1000 feet of the Boat Launch Area.
 - (4) User is responsible for the disposal of all debris collected under this provision.
 - (5) The Superintendent shall be responsible for ensuring User's compliance with Subdivisions (1) and (2), while the City Engineer, or his designee ("City Engineer"), shall be responsible for ensuring User's compliance with Subdivision (3).
- K. Usage Fee. User shall pay the City \$150 per day for the use of the Boat Launch Area as set forth in this Agreement, which amount is meant to recover the lost revenue to the City attributable to the closure. This amount shall be adjusted upward, upon the agreement of the Parties, to account for any increases in boat launch fees charged by the City during the term of this Agreement. Payment shall be due no later than ten (10) days prior to the Event, and User may not use the Boat Launch Area under this Section until this rental fee is paid. If a rain date is used, User shall pay the City for the extra day of Boat Launch Area closure associated with the rain date. This payment shall be due no later than July 3.
- L. Damage Deposit. Along with the usage fee, by June 1 of each year of this Agreement, User shall provide the City a three-thousand dollar (\$3,000) damage deposit to cover any damages to City property at the Boat Launch arising from User's use of the Boat Launch Area for the Event under this Agreement. This amount shall be returned to User, less any deductions for damages to City property, following User's restoration of the Boat Launch under subdivision J(1) above.
- M. Weapons Prohibition. User shall prohibit, and shall require its contractors and subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performing of work under this Agreement, other than while at User's or its contractor'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). This requirement does not apply to User's security contractors.

N. Event Reporting. Within thirty (30) days following the Event, User shall provide the City Engineer with a report detailing the following:

- (1) The number and kinds of fireworks which were fired as part of the Event.
- (2) The net weight of explosives in the fireworks display.
- (3) A list of all the chemicals in the fireworks that were used as part of the Event.

4. Indemnification and Insurance.

A. Indemnification. User shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, 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 User's and/or User's contractors, subcontractors, vendors or agents acts or omissions in the performance of this agreement. User's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability caused by the sole negligence or willful misconduct of the City, its officers, officials, or employees. The City shall promptly notify User of any claim for which it intends to seek indemnification hereunder. User agrees that this indemnity obligation shall survive the termination or expiration of this Agreement.

B. Hazardous Substances; Indemnification. User represents and warrants that its use of the Boat Launch area will not generate any hazardous substance, and it will not store or dispose at the Boat Launch nor transport to or over the Boat Launch area 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, and will require each subcontractor to 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 \$3,000,000 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, except that the limits of liability for subcontractors, other than the firework subcontractors, shall be at least \$1,000,000 per occurrence.
 - b) Automobile Liability. User shall require all subcontractors under this Agreement to procure and maintain during the life of this Agreement Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident.
 - c) Worker's Compensation. User shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin, including Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. User shall require all other subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

- (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.
 - (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.
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 Boat Launch for the purposes set forth herein.
6. 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
PO Box 2987
Madison, WI 53701

User: Steven Schmitt, President
Shake the Lake Madison, LLC
2920 N. Sherman Ave.
Madison, WI 53704
7. Non-Discrimination. In the performance 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.

8. Default/Termination. 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 twenty-four (24) hours 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. In addition to the consequences of a default as set forth in this Section, in the event of a default in the terms of Section 3.J regarding post-event responsibilities and 3.D regarding public communication, the City may perform this work, or cause this work to be performed, for User and User agrees to be responsible for the costs of any such work. Following the performance of such work, the City shall invoice User for said work, which amount shall be paid to the City within thirty days of mailing of the invoice to User.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. Compliance with Applicable Laws. User, and User's contractors, subcontractors 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 and employees in the performance of this Agreement and the conduct of the Event. User, and their contractors, subcontractors and vendors, shall obtain all necessary permits and licenses as required by City ordinances, resolutions, and rules of the Board of Park Commissioners, and shall comply with all ordinances, rules, and permit requirements in the operation of the Event and the use of the Boat Launch, specifically to include obtaining a fireworks event permit, a street use permit, and a parks event permit.
16. 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.
17. 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

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

SHAKE THE LAKE MADISON, LLC

Steve Schmitt, President

Date

CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this Agreement by City is was approved by the Board of Parks Commissioners on _____ and authorized by Resolution Enactment No. RES 16-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2016.

EXHIBIT A
Olin Park Boat Launch Site Plan



OLIN PARK BOAT LAUNCH AREA
1155 Olin-Turville Ct

City of Madison
Dept. of Public Works - Parks Div.
City-County Building, Suite 104
210 Martin Luther King Jr. Blvd.
PO Box 2987
Madison, WI 53701-2987

Graphical Scale
0 100ft

play
**MADISON
PARKS**