

MARSHALL PARK BOAT LAUNCH CLOSURE AND USE AGREEMENT

Between the City of Madison and National Class E-Scow Association, Inc.
For the E-Scow National Championships 2023

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”) and National Class E-Scow Association, a Wisconsin Non-Stock Corporation (“NCESA” or “User”), is effective as of the date on which all parties have signed hereunder.

WITNESSETH:

WHEREAS, the National E-Scow Association 100 Year Anniversary Competition (“Event”) is a national-level competition and celebration that attracts tourism and economic development to the City; and,

WHEREAS, the Event will be staged, in part, within Marshall Park, the use of which will be subject to various other City permits; and,

WHEREAS, the City wishes to extend its support of the Event by allowing the temporary closure and use of the Boat Launch Area on the terms and conditions set forth herein.

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 Marshall Park Boat Launch Closure and Use Agreement Between the City and User for the Event (“Agreement”) is to set forth the agreement between the City and User (collectively the “Parties”) regarding User’s closure and use of the Boat Launch Area for the Event. User’s responsibilities relating to the use of Marshall Park for the Event itself are covered by User’s other park use permits and City approvals and are not addressed by this Agreement.
2. Term. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until October 1, 2023.
3. Boat Launch Closure and Use. City agrees that User, and User’s contractors, subcontractors, invitees, vendors, and agents, shall be able to close and use the Boat Launch Area 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. Grant of Authority. User shall have the exclusive use of the Boat Launch Area for the Event during the time period set forth in Subsection C. The closure shall be consistent with the Boat Launch Closure Plan attached hereto as Exhibit A, which plan may be amended upon the mutual agreement of the User and the Superintendent.

- B. Boat Launch Closure. User intends to hold the Event September 6, 2023 through September 10, 2023. During this period of use, User will be authorized to close public access to and use of the Boat Launch Area, including access to and use by both land and water, from 4:00 AM to 3:00 PM each day from Tuesday, September 6, 2023 through Sunday, September 10, 2023.

The Boat Launch Area will remain closed to the public during the authorized times and will reopen to the public no later than one hour immediately following the end of the Event competition. Superintendent and User may mutually agree to adjust the hours of closure based on needs of the event within a 2 hour timeframe.

- C. Use of the Boat Launch. When User exercises its right to use the Boat Launch Area under Subsection B, 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 using it as a streamlined load-in/load-out area before, during and after the event. No alcohol may be consumed in the Boat Launch Area, although alcohol for the Event may be temporarily stored in the Boat Launch Area. User may place restrooms and other approved temporary structures in non-boat trailer parking spaces at the Boat Launch. These items may remain in the parking lot when the Boat Launch is reopened to the public each day. In planning the Event and the closure, efforts shall be made to minimize impact on lake and park users. If User needs the continued exclusive use of any part of the Boat Launch Area beyond those times 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 Event is cancelled, the User shall notify the Parks Division, remove all equipment from the Boat Launch Area, and promptly open the Boat Launch.
- E. Public Communication. By August 1 of 2023, User shall submit a public communication plan to the Superintendent that details how User will inform the public about the temporary closure of the Boat Launch Area. The plan shall include temporary closure notices at the Boat Launch and on parkland adjacent to Marshall Boat Launch, in place no later than two weeks before the Event. On the day of the Event, the public communication will include sign boards directed to traffic on University Avenue and Allen Boulevard, and volunteers or security personnel stationed at the boat launch entrance to Marshall Park. 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. 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 following the Event.
 - (2) Within 24 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 Marshall Park and the Boat Launch Area.
 - (3) User is responsible for the disposal of all debris collected under this provision.
4. Usage Fee. User shall pay the City \$6,000 for the closure and use of the Boat Launch Area for the Event as set forth in this Agreement. Payment shall be made no later than August 1, 2023. User shall also pay the City any other required special event fees or permit fees for the use of Marshall Park and other City locations for the Event.
5. 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 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; 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 on the Boat Launch Area 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, 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, except that the limits of liability for subcontractors, other than the firework subcontractors, shall be at least \$1,000,000 per occurrence.
- (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) Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, User shall immediately cease use of the Premises and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

6. 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.
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: Derek Packard
National Class E-Scow Association, Inc.
1027 Tarrant Drive
Fontana, WI 53125

8. 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.
9. 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 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.F regarding post-event responsibilities and 3.E 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.

10. 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.
11. 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.
12. 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.
13. Status of Parties. It is agreed that User is not an employee or representative of the City, and that any persons who User utilizes and provides for services under this Agreement are employees or volunteers of User and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting User the right to use the Boat Launch 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.
14. 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.

15. 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.
16. 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.
17. 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 Area, specifically to include obtaining a special event permit or other parks related permits.
18. 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.
19. 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.
20. Counterparts; Electronic Delivery. 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.

NATIONAL CLASS E-SCOW ASSOCIATION, INC.

DEREK PACKARD

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. _____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 202X.

EXHIBIT A
Boat Launch Closure Plan