

SNOW EQUIPMENT AND CITY PROPERTY USE AGREEMENT

Between the City of Madison and Madison Nordic Ski Club, Inc.
For the 2025-2032 Calendar Years

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and the Madison Nordic Ski Club, Inc., a Wisconsin corporation (hereinafter referred to as “Club”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, the City is the owner of certain park lands in the City of Madison, Dane County, Wisconsin, including Elver Park, located at 1250 McKenna Blvd. in Madison, Odana Hills Golf Course, located at 4635 Odana Rd., and Door Creek Park, located at 7035 Littlemore Dr. (“the Properties”), and certain equipment used for winter activities, including snow groomers (“Snow Equipment”); and,

WHEREAS, Club consists of City and area residents who together organize cross-country skiing races, maintain cross-country ski trails, provide ski lessons, support high school and junior skiers, and raise funds for ski related projects to promote the continuous growth and development of cross-country skiing in the region; and,

WHEREAS, in 2016 and 2018, the City and the Club entered into Snow Equipment and City Property Use Agreements which allowed the Club to use the City’s Snow Equipment to make snow for the Winter Festival and at Elver Park, and to groom the human-made and existing cross-country ski trails at Elver Park and other approved locations. These agreements benefitted the City by providing a greater level of service than the Parks Division was able to provide; and,

WHEREAS, in 2020, at Club’s request, Central Cross Country Skiing Inc. (“CXC”) took over the agreement and operated under its own use agreement through 2024, which agreement has not been renewed; and,

WHEREAS, the Club now desires to reenter into an agreement with the City pertaining to snow equipment and use of the City’s Properties, which, given the Club’s history, the City finds agreeable and in its best interest.

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 Snow Equipment and City Property Use Agreement (“Agreement”) is to set forth the terms and conditions upon which the City will allow the Club to use the City’s Snow Equipment, including, specifically, the City’s groomers, and Club’s own equipment to groom the City’s cross-country skiing trails on the Properties, or other approved locations, and to store Club equipment at Elver Park. The Agreement also

sets forth the terms and conditions upon which the City will allow the Club to hold practices, lessons and competitions at Elver Park.

2. Term. This Agreement shall be effective upon execution by the parties hereto, and extend through Sept. 30, 2029. Unless this Agreement is terminated under Section 8, this Agreement may be renewed for an additional 3-year term, running from October 1, 2029 through September 30, 2032, upon written notice by the Club to the City no later than August 31, 2029. The City's decision to renew or not renew the Agreement for the following three-year term will be based upon the Club's performance under this Agreement and will solely be that of the Parks Superintendent, or their designee. The decision to renew or not renew the Agreement is not reviewable. The City shall inform Club within ten (10) days of receipt of Club's notice of its intent to renew the Agreement.
3. Grant of Authority. By entering into this Agreement, the City grants Club the authority to use the City's Snow Equipment, for its designated purpose only, at the Properties and other City owned lands that the City may, from time-to-time, make available for cross-country skiing ("City Property"), to groom the City's cross-country skiing trails, and to store Club equipment at Elver Park, pursuant to the terms and conditions as set forth in this Agreement. Club may also offer individual and group lessons for a fee during the Winter Festival under conditions specified in the special event permit.
4. Special Conditions of Use. By entering into this Agreement, Club agrees to the following special terms and conditions regarding the Club's use of the Snow Equipment and City Property:

A. Permissible Users.

- (1) Any person operating or using the City's Snow Equipment on behalf of, in association with or at the direction of the Club, or using Club equipment on City Property (the "User"), must be approved by the Parks Division and also meet the following requirements:
 - (a) The User must be familiar with the equipment and have received appropriate training on the equipment's operation, use and maintenance;
 - (b) The User must be competent and qualified to operate and maintain the equipment in a safe manner and in strict accordance with the manufacturer's manual; and,
 - (c) The User shall comply with all applicable laws, regulations, ordinances, rules and orders, and exercise due regard for persons and property in the operation of the equipment.
 - (d) The User shall be registered as a volunteer on the City's Madison Parks Volunteer Website: <https://cityofmadison.galaxydigital.com/>.

- (2) All Users under this Agreement shall wear the proper personal protective equipment when operating any equipment. The Club agrees to provide all of its employees and volunteers with any necessary equipment.

B. Grooming of Cross County Trails by Club.

- (1) The Club will be allowed to use their own snowmobile groomer(s) to groom the cross-country ski trails at the Properties or any other location the City expressly grants permission for cross-country skiing in the future. The Club is also permitted to use their own heavy equipment to groom trails with prior approval by the Parks Division, including using the City's snow groomer sleds with the Club's own ATV equipment.
- (2) The Club must keep a log of all grooming (what trails, what date, time and who performed grooming), and make it available to the City upon request.
- (3) Prior to any trail grooming, contact must be made with the Parks Division informing the City of when and where grooming will occur.
- (4) The City's PistenBully will be allowed to be used by the Club for grooming at Elver Park consistent with the requirements of this subsection. Other locations may be approved with the written permission of the Parks Division.

C. Storage of Club Groomers at Elver Park.

- (1) The Club is allowed to store an ATV, Tidd Tech and other equipment as approved by the Parks Division, at the old concession building at Elver Park, other approved snow locations, and at specified City tennis courts during the cross-country ski season. If the City's tennis courts experience damage as a result of such storage, the equipment will be removed, and an alternative location will be identified at Elver Park. Damage caused by Madnorski, beyond normal wear and tear, will be Madnorski's responsibility to repair or pay Madison Parks the labor and material costs to repair.
- (2) Storage of the above noted equipment is approved between December 1 and March 15. Storage prior to December 1 may be approved by the Parks Superintendent due to weather.

D. Trail Marking. Club is authorized to use one day in the fall to install their markers, and one day in the spring to remove them. While performing this work, Club vehicles must have a sign on the vehicle indicating who they are with, and any such work must be coordinated with the West Parks Supervisor before commencing marking work. If necessary, Club is responsible for calling the one-call system (aka Diggers Hotline) prior to performing any excavation work, as defined at Wis. Stat. Sec. 182.0175(1)(b), at City Properties.

E. Use of City Property.

- (1) Activities. The Club will provide to the City a list of proposed Club activities, dates, times and estimated attendance at least two weeks prior to the start of the first activity, which may include dry running practice. The City will review and approve the activities that are permitted. All cross-country ski trails, including the human made trails, will remain open to the public. If the Club would like to close trail(s), the Club will submit a Parks Special Event application for review in the standard process and fees. All participants of activities are required to have a City cross-country ski permit and pay the standard price for ski rental, if renting equipment from the City.
- (2) Reporting. Annually, the Club will provide the City with a list of the number of participants in the activities, residence location, demographics, gender (if provided), and age. If the City requests, the Club will supply to the City an accounting of the funds they are generating from activities in park(s) within one month of the request.
- (3) Map of Annual Plan. By September 1 of each year, the Club will provide a detailed map of the route of proposed human-made trails, location of fencing, equipment placement, storage, port-a-potty and any other uses the Club is proposing for the City Property.
- (4) Modifications and Improvements to Premises. The Club shall not make any modifications or changes to City Property except with the prior written approval of the Parks Superintendent, or designee.
- (5) Parking and Access. This Agreement does not convey any special right to the Club, or to Club's employees, volunteers, contractors, agents, customers, invitees, or any other third party, to use the City parking spaces, driveways, delivery areas, bike paths, pedestrian walkways or other locations to park vehicles and/or access the City's Property. Any such use must be pursuant to the rules and regulations otherwise in place at the respective location, or as provided for in a separate agreement.
- (6) Weapons Prohibition. The Club shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the City's Property under this Agreement.
- (7) Shelter and Bathroom Access. The Club may use the City's shelters and bathrooms during established public hours. It is the Club's responsibility to know these hours. Club may place a privately maintained port-a-potty upon the City Property for bathroom needs. Location of the port-a-potty shall be approved by the Parks Division prior to placement.
- (8) Additional Shelter Use. Club must provide Parks at least two weeks advance notice for winter and dry season uses of the City's shelter facilities at City

Property. Parks will provide two keys to designated Club representatives from November 1 to the end of the winter recreation season. Keys must be returned to the Parks Office at 330 E Lakeside St in Madison no later than the first Monday of March. Fees for shelter usage will be in line with the current fee structure for reserving shelters as approved by the Board of Park Commissioners.

- (9) Lighting. Club must give at least two weeks notice requesting lights to have the lights turned on for any time of day during the spring and fall seasons.
- (10) Collaboration for Special Events. Club and Parks agree to collaborate on certain special events, including Learn to Series, Nordic Walking, Cross Country Skiing, and Snowshoe Events, in the City parks. All special events, including the aforementioned events, must have at least one month advance notice to effectively plan and promote to the community.
- (11) Donation Boxes and Signs. The Parks Division, with the approval of the Board of Park Commissioners, may authorize Club to place signage regarding donations on or near the cross-country ski paths being maintained by Club under this Agreement, or signs informing users how they may contribute to the costs to maintain the paths. The City shall not be responsible for any damage to these boxes or signs, nor any theft or loss that may occur resulting from the use thereof.
- (12) Storage. Storage inside of winter recreation areas at the City Properties is unavailable to Club, including specifically storage for ski equipment such as skis, boots, and poles.
- (13) Removal of Equipment. By March 20 of each year, Club is responsible for removing any fencing, equipment, storage, port-a-potties and other uses approved at City Properties. If Club cannot remove equipment by this date, Club must notify Parks Superintendent or designee to receive approval for an extension date.
- (14) Driving in Park. Club may operate motor vehicles in the City Properties if they are necessary for snow grooming activities. In so doing, Club 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. Additionally, Club will take the following additional safety precautions:
 - (a) Clearly marking personal vehicles as “contractor” vehicles. Upon request Parks may make available magnetic stickers to be placed on the side of personal vehicles for this purpose.
 - (b) Modify or limit access to areas where personal vehicles are on Parks land.

- (c) Signage will be placed letting users know that there are vehicles in use in the specified area(s)
- F. Equipment Safety. The Club shall maintain its own equipment, including safety equipment, in a safe working order at all times. In addition, all equipment subject to this Agreement that is located on City Property for grooming must be safely secured and not create hazards to park users. Equipment storage and use must not unreasonably interfere with other park activities, such as ice skating and sledding.
- G. Snow Equipment Maintenance. The City will perform annual service on the Snow Equipment and deliver the equipment in working order to Elver Park by December 1, unless grooming can begin prior to December 1 in which case an earlier delivery date will be established. During the winter season, the Club is responsible for maintaining the Snow Equipment. At the end of the winter season, or as otherwise agreed to by the Parties, the Club is responsible for returning the equipment to the City in working order.
- H. Additional Conditions.
 - (1) The City may, at any time, suspend the Club's use of the Snow Equipment or City Property if the City has a need for the Snow Equipment or other use of the City Property. The City will, if possible, provide 48 hours advance notice of such a suspension. In addition, if the City determines that the Snow Equipment is being misused, operated in an unsafe manner, or in violation of rules of use (however provided), it may terminate this Agreement with no advance notice.
 - (2) The Club assumes all risk and liability for damage to the Snow Equipment or City Property arising out of the Club's activities under this Agreement. The Club will promptly notify the City in the event of any incident involving the Snow Equipment or on City Property, whether or not the incident causes bodily injury or property damage. The Club will promptly pay any charges the City incurs in repairing damage to or replacing the Snow Equipment or City Property, including reimbursement of any property insurance deductibles.
 - (3) The Club agrees that the City shall not be held responsible for any damage or loss to any of the Club's property, or any of its employees' or volunteers' property, while engaging in activities covered by this Agreement, whether the damage is caused by the City, its employees, contractors or others.
- I. Fees and Charges.
 - (1) Trail Use Fee. No trail use fees will be charged by the City for weekly lessons, practices, and races due to the investment Club is making in support of grooming the trails.

- (2) Special Lighting Charge. Outside of the City's official opening and closing of the cross-country ski trails at the City Property for the season, the cost of trail lighting will be the responsibility of the Club. Lighting rates will be charged in accordance with fees approved by the Board of Park Commissioners. The Club must provide a schedule for lighting needs at least two weeks prior to the beginning of the season and must contact Parks at least 48 hours in advance of the need to deviate from the schedule. Additional lighting will be used for all lessons or events used by the Club, including for dry run practices. The Club will pay lighting invoices within 30 days of receipt.

5. Indemnification and Insurance.

- A. Indemnification. The Club 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 Club's acts or omissions in the performance of this Agreement and use of the City's Snow Equipment or City Property, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees.
- B. Hazardous Substances; Indemnification. Club represents and warrants that its use of the City's Snow Equipment and City Property 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. Club 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. The Club will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Club shall not commence work under this Agreement, nor shall the Club 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. During the life of this Agreement, the Club shall procure and maintain Commercial General Liability insurance including, but not limited to, bodily injury, property damage, personal injury, products and completed operations in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The Club's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. The Club 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) Automobile Liability. During the life of this Agreement, Club shall procure and maintain 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. Club shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - (c) Umbrella Liability. During the life of this Agreement, the Club shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability and Business Automobile Liability with minimum limits of \$2,000,000 per occurrence and in the aggregate.
 - (d) Property Insurance. Club shall be solely responsible for carrying personal property insurance sufficient to cover the loss of all of its personal property on City Property. Such personnel property includes, but is not limited to, Club's snow grooming equipment and other vehicles. The City shall not be liable for any damage to or loss of property of Club 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. The Club shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Club shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Club shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice of Change in Policy. The Club and/or 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, Club 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. Notices. All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

City: Superintendent of Parks
City Parks Division
330 E. Lakeside St.
Madison, WI 53715

Club: Madison Nordic Ski Club, Inc.
PO Box 44112
Madison, WI 53744

7. Non-Discrimination. In the performance of the services under this Agreement the Club agrees not to discriminate against any employee or applicant 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. Club further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
8. Default/Termination.
 - A. Except where otherwise noted in this Agreement, in the event Club shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Club, 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 Club, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Club under this Agreement.
 - B. Notwithstanding paragraph A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the Club with ten (10) days' written notice of termination.
9. Status of Parties. It is agreed that Club is not an employee or representative of the City, and that any persons who Club utilizes and provides for services under this Agreement are employees or volunteers of Club and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Club the right to use the Boat Launch for the purposes set forth herein, that the City is not granting Club 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 Club arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
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. Assignability and Subcontracting. The Club shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services provided for hereunder shall be performed by the Club and employees or volunteers of the Club.

12. 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 the Club of the right to use the City's Snow Equipment and use and maintain City Property for the purposes set forth herein.
13. Access to City Property. This Agreement gives the Club the non-exclusive right to use City Property and Snow Equipment for specific purposes. In no case shall this limited grant of rights be interpreted to preclude the City's or the public's access to the City's Property.
14. Amendments. This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the Club and the Parks Superintendent, or their designee.
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 the Club 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 Club 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. 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.
18. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
19. Compliance with Applicable Laws. The Club 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 the Club and its agents and employees. The Club's failure to comply with any such laws, ordinances or regulations shall be a default subject to Section 8 of this Agreement.

20. Authority. The Club represents that it has the authority to enter into this Agreement and the person signing on behalf of the Club represents and warrants that he or she has been duly authorized to bind the Club and sign this Agreement on the Club's behalf.
21. 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.
22. 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 caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE MADISON NORDIC SKI CLUB, INC.

Tamara Bryant, Executive Director

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Lydia A. McComas, City Clerk

Date

Approved:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES ____ - ____, ID No. _____,
adopted by the Common Council of the City of Madison on _____, 20____, and the approval of
the Board of Parks Commissioners on _____, 20____.