

LAW PARK USE AGREEMENT FOR 2020-2022
Between the City of Madison and Mad-City Ski Team, Inc.

THIS AGREEMENT, is made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and Mad-City Ski Team, Inc., a Wisconsin non-profit corporation (“Ski Team”).

WITNESSETH:

WHEREAS, the Mad-City Ski Team was formed in 1995 following a merger of two ski teams, the Capital City Ski Team and the Madison Water Ski Show Team, and since around 1986, through itself and its predecessors, the Ski Team has been putting on weekly free summer water ski shows for the public at Law Park in Madison; and,

WHEREAS, the Ski Team is made up of a group of dedicated volunteers that perform free water ski shows for the Madison community throughout the summer and compete in regional and national water ski show tournaments. The Ski Team is nationally recognized for its innovative shows and thrilling water skiing and has won National Championships in 1975, 1976, 1977, 1978, 1979, 2004, 2006, 2007, 2008, 2009 and 2019; and,

WHEREAS, it is in the City’s interest to allow the Ski Team to continue to use a portion of Law Park and the nearby lakebed for its weekly water ski shows, practices, lessons and special events.

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions upon which the City will allow the Ski Team to use portions of Law Park and the adjacent Lake Monona lake bed (hereinafter, the “Premises”) for water ski shows, practices, lessons and other special events. The Premises is depicted on Attachment A, which is incorporated herein by reference.
2. Term and Effective Date. This Agreement shall become effective on May 1, 2020 and shall expire on December 31, 2021. It may be renewed for one additional one-year period, upon the mutual agreement of the Parties as set forth herein, running from January 1, 2022 through December 31, 2022.
3. Special Conditions of Use. In entering into this Agreement, Ski Team agrees to the following special terms and conditions regarding the Ski Team’s use of the Premises:
 - a. Use of Premises. Ski Team may use the Premises to conduct water ski shows, practices, lessons and other special events, subject to the terms and conditions set forth in this Agreement. Special events must submit a park event application at least 30 days in advance of the event and receive an approved park event permit. Depending on the size and scope of the special event, Ski Team may be required to obtain Park Commission approval prior to the event. Ski Team practices occur Monday through

Thursday, with up to six (6) practices occurring on Saturdays. Ski Team shows occur on Sunday evenings from Memorial Day to Labor Day. City further grants Ski Team permission to conduct water skiing workshops for people with disabilities and their families using expert staff from Ski Team. Ski Team may place one water ski jump, regulatory buoys, a landing pier, starting docks, bleachers and temporary toilets within the Premises as set forth below. Ski Team will provide schedule of anticipated practices, lessons and shows to the Parks Division by April 15 each year.

b. Permitted Improvements.

- (1) Pier and Starting Dock. Ski Team may place one landing pier and starting dock in the Premises. A square sign not to exceed twenty-four (24) inches will be allowed on the pier. The sign must be approved by the Parks Superintendent and the Park Commission and may contain information about the Ski Team and the water ski shows. No advertising shall be allowed on the sign, although Ski Team sponsors may be listed.
- (2) Water Ski Jump. Ski Team may place one water ski jump in the northern side of Lake Monona adjacent to Law Park. No advertising signs or billboards shall be permitted upon the ski jump except two identification signs relating to Ski Team.
- (3) Regulatory Buoys. Ski Team may place regulatory buoys required by Dane County or the Wisconsin Department of Natural Resources (WDNR) in the lake adjacent to Law Park.
- (4) Bleachers. Ski Team may place and store up to four bleachers in the Premises during the ski season. Additional bleachers may be permitted with the permission of the Park Superintendent or designee.
- (5) Temporary Toilet. Ski Team shall provide at least one temporary toilet in the Premises for use by Ski Team members and the public when the Premises is being used by Ski Team. Ski Team shall be responsible for the costs of operating and maintaining the toilet.
- (6) Other Improvements. Ski Team may place other improvements in the Premises with the prior written approval of the Park Superintendent or designee.
- (7) Picnic Tables. The City Park Division will provide four (4) picnic tables in the vicinity of Ski Team ski shows at Law Park, which Ski Team may use.

c. Placement of Improvements. Permitted improvements may be placed no earlier than April 1 and removed no later than October 1 each year of the Agreement. Ski Team shall obtain any necessary Dane County or WDNR permits or approvals prior to placing any piers, buoys or the ski jump. Ski Team may store floating dock sections at Law Park between October 1 and May 1. The placement of permitted improvements shall be at mutually agreed upon locations.

- d. Construction. Ski Team agrees that the improvements shall be constructed in a workmanlike manner in conformity with all applicable codes and regulations and in accordance with specifications indicated on plans submitted to the Department of Natural Resources, if necessary.
- e. Maintenance. Ski Team agrees to maintain the improvements, other than the picnic tables, in a safe condition and in conformity with all rules and regulations of City, Department of National Resources and State of Wisconsin. Ski Team will be responsible for mowing under and around bleachers stored at the Premises and are allowed to use walk behind mowers and/or string trimmers for this purpose. City shall have no obligation whatsoever regarding any structural repairs or maintenance of the bleachers, water ski jump or starting docks.
- f. Improvement Restrictions. City shall have no responsibility to enforce any restrictions which Ski Team places on the use of the Ski Team's improvements, including the ski jump or the pier. Ski Team shall be solely responsible for any such enforcement.
- g. Trash Removal. Ski Team shall clean up refuse at the Premises following each practice, show and special event. City shall provide five (5) trash barrels in the vicinity of the ski shows and shall remove all trash from the Premises.
- h. Electrical Services. Ski Team shall provide and pay 100% of charges for electrical services. City shall not be responsible for any improvements to services nor any changes for said services. Any changes to electrical use, including addition of electrical service, must have prior approval and written notification from the Superintendent of Parks or designee. If Ski Team wishes to add electrical services in the future, Ski Team would pay for the expense.
- i. Parking and Equipment. Ski Team may park two (2) equipment vehicles within Law Park from 8:00 am until one (1) hour after sunset from May 1 through September 15 for authorized practices and shows, within an approved area that is designated by sign and roped off. Ski Team will meet with Parks Division to review parking plan.
- j. Powerboats. Ski Team shall confine operations of their powerboat(s) and Jet Ski to practice and performance times.
- k. Shake the Lake. Ski Team may not operate in the water or in Law Park during the Shake the Lake event unless approval and written notification is granted by the Parks Superintendent or designee. Shake the Lake schedule varies per year, Ski Team is responsible for obtaining date from City each year prior to submitting Ski Team schedule for the year.
- l. Additional City Sponsored or Permitted Events. Ski Team will allow other City-sponsored or permitted events access to the park, shoreline and launch. Examples of such events include Ride the Drive, Half Iron Man, etc. In granting any other park event permits for Law Park, City shall avoid any conflicts with Ski Team events or coordinate such uses to avoid conflicts.

- m. Weapons Prohibition. Ski Team shall prohibit, and shall require its contractors and subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Premises under this Agreement, except with the prior consent of the Parks Division.
- n. Restoration of Premises. At the conclusion of each season of use, Ski Team shall ensure that the shoreline is returned to its pre-season condition as determined by the City Engineer and the Park Division. At the City's option, Ski Team shall restore the shoreline at the Premises to its original condition or pay the City the cash equivalent of the actual cost of such restoration at the end of each season during the course of this Agreement, or at any time during the course of this Agreement if the City Engineer or the Parks Division deem it necessary. In addition, within thirty (30) days of the termination of this Agreement, Ski Team agrees to remove all of its equipment and property from the Premises and restore Premises to its pre-existing condition, unless written permission is granted by the Parks Superintendent to store the improvements at the Premises while a successor to this Agreement is negotiated. Ski Team acknowledges City shall be the sole judge of whether the Premises has been completely vacated and satisfactorily restored. At its option, the City may complete any removal of property and restoration of property it deems necessary and bill Ski Team for actual costs, or it may exercise any other lawful option.
- o. Park Construction. Ski Team understands that, during the term of this Agreement, City may undertake construction or re-construction of all or portions of the Premises, which activities may make use of the Premises by Ski Team, or its invitees, impossible or unsafe. In the event of any park construction work that will involve the Premises, the City shall inform Ski Team and either party may exercise the termination clause in Section 9.c below.

4. Use Fee and Damage Deposit.

- a. Use Fee. Ski Team shall pay to the City an annual use fee for the use of the Premises under this Agreement. The annual use fee shall be as follows:

2020	\$800
2021	\$825
2022	\$850

Payment shall be due no later than May 31. Failure to pay the fee on time is a default under Section 8.

- b. Damage Deposit. Ski Team will pay a \$3000 damage deposit that will be held by the City for the duration of the Agreement. Any unused amount will be returned to Ski Team at the end of the Agreement. After each season, City will inspect the Premises and determine what repair or replacement, if any, is needed for the lawn cover and plantings. The City Parks Division Maintenance Supervisor or designee shall notify Ski Team within a reasonable time of its determination, but in no case later than November 1st after each season, regarding repair or replacement of lawn cover and plantings. City shall undertake the repair or replacement of the lawn cover and

plantings as it deems necessary and Ski Team agrees to reimburse City for all costs associated with such repair or replacement. Payment is due within thirty (30) days of the billing. Consistent with this subsection and in lieu of payment or partial payment to City, Ski Team may, with approval and under the supervision of the Parks Division Maintenance Supervisor, provide up to thirty (30) person hours of labor during and/or at the end of each season to repair any turf damage or to make other approved park improvements.

5. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Ski Team the right to sell or distribute any goods or services provided by City, nor does City grant Ski Team the right to use a City trade name, trademark, logotype, advertising, or other commercial symbol without permission of the Park Superintendent or his or her designee. However, in any commercial advertisement or announcement, Ski Team may use the name of the City Park where the Premises is located.
6. Assignment and Subcontracting. Ski Team shall not assign this Agreement or any interest therein. Ski Team may not subcontract the use of Premises without prior written approval of the City.
7. Disclosures and Acknowledgement. With full and complete knowledge, Ski Team accepts Premises, and any improvements made thereto during the course of this Agreement, in an “as is” condition.
8. Indemnification and Insurance.
 - a. Indemnification. Ski Team 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 Ski Team' 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 Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises 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 Insurance. Ski Team will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Ski Team shall not commence work under this Agreement, nor shall Ski Team 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 Permittee shall procure and maintain 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 City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability and watercraft liability for all of Ski Team's watercraft, whether motorized or not, in the same amount. Ski Team's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. Permittee shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

(b) Automobile Liability. 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. Ski Team shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the lease and the renewal period.

(c) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. Ski Team shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Ski Team shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.

- (d) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability, Business Automobile Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and in the aggregate.
 - (e) Property Insurance. Ski Team 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, Ski Team installations and equipment. The City shall not be liable for any damage to or loss of property of Ski Team 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

9. Default and Termination.

- a. In the event Ski Team 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 Ski Team, 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 Ski Team, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Ski Team under this Agreement.
- b. In the event that Ski Team shall violate any of the provisions of Section 3, the Superintendent of Parks may, in his/her sole discretion, and in addition to any other remedies which the City may have at law or in equity, including specific performance, suspend the use of Law Park and the adjacent water ski jumps by Ski Team for up to two weeks, and impose a security deposit requirement in an amount sufficient to pay the costs of City supervision and related costs necessary to enforce compliance with the provisions of Section 3.
- c. Notwithstanding the above, either Party may terminate this Agreement for any reason at any time by mailing written notice of termination to the other with at least ten (10) days advance notice.

10. Binding on Parties; 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 unless the same be in writing signed by the duly authorized agent or agents who executed Agreement, except that for terms only affecting City and Ski Team, or where specifically set forth in this Agreement, only those Parties need enter into a written amendment of the terms of this Agreement for it to be effective.

11. Status of Parties. It is agreed that Ski Team is an independent contractor and not an employee or representative of the City, and that any persons who Ski Team utilizes and provides for services under this Agreement are employees or volunteers of Ski Team and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Ski Team the right to use the Premises for the purposes set forth herein, that the City is not granting Ski Team 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 Ski Team arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.

12. 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

Ski Team: Kevin Metcalfe
6516 Monona Dr., #193
Monona, WI 53716

13. Title to be Retained by City. City shall retain title and ownership of Premises together with all buildings, fixtures and improvements thereon without any payment whatsoever to Ski Team.

14. 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.

15. Nondiscrimination Based on Disability. Ski Team shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

Ski Team assures that, in providing any service at the Premises, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;

- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Ski Team shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

- 16. 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 Ski Team the right to use the City's Premises for the purposes set forth herein. There is, therefore, no conveyance of any riparian rights to Ski Team, but only permission to make use of the riparian rights the City has as owner of the Premises.
- 17. 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.
- 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 the Law. Ski Team agrees to comply with all laws and ordinances of the United States, the State of Wisconsin, Dane County and the City of Madison, and shall obtain and keep in good standing all licenses and permits that may be necessary for its use of the Premises as set forth herein.

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. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Ski Team 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 Ski Team 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.
22. 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 contract remain in full force and effect.
23. Authority. Ski Team represents that it has the authority to enter into this Agreement and that the person signing on behalf of Ski Team represents and warrants that he or she has been duly authorized to bind Ski Team and sign this Agreement on Ski Team's behalf.
24. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract 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 Contract, 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.

MAD-CITY SKI TEAM, INC.

Russ Tieman, President

Date

FOR THE CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

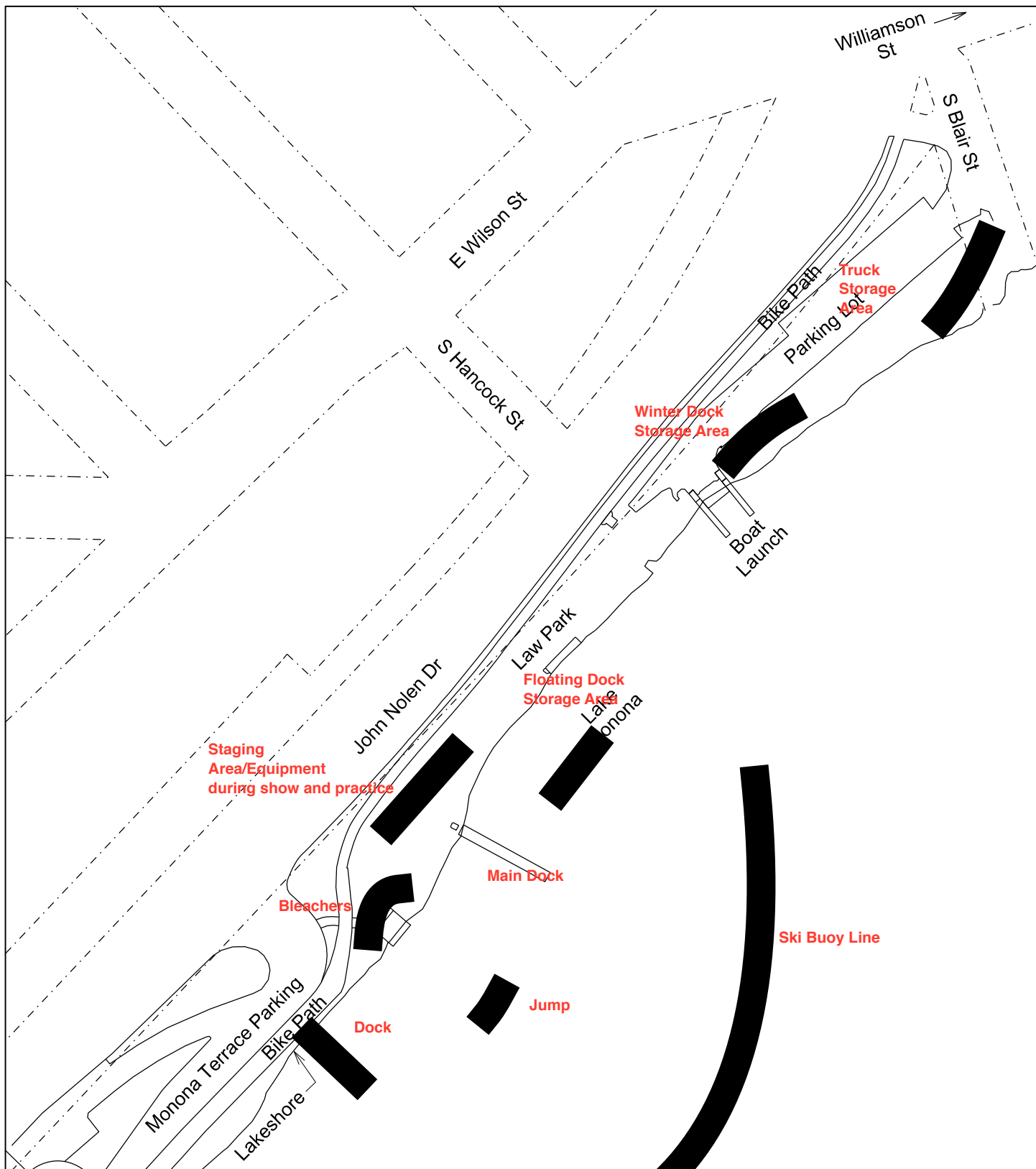
Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES-20-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2020 and approved by the Board of Parks Commissioners at its meeting on _____, 2020.

Attachment A: Map of Premises



Law Park - 410 S Blair St, Madison WI

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
 0 150 ft

play
MADISON
PARKS

Ski
 Buoy
 Line