

**MARSHALL PARK BOAT LAUNCH USE AGREEMENT  
FOR SHORELINE RESTORATION (2021-2022)**  
Between the City of Madison and Joe Daniels Construction Co., Inc.

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THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”) and Joe Daniels Construction Co., Inc. (“User”), is effective as of the date on which all parties have signed hereunder.

WITNESSETH:

WHEREAS, in 2018, the Madison area sustained periods of heavy rains, which, when combined with already high lake levels on Lake Mendota, caused areas of shoreline erosion and destabilization; and,

WHEREAS, shoreline erosion and destabilization can lead to further property damage, as well as degradation in the water quality of the Lakes; and,

WHEREAS, over the last couple of years, User has been hired by several shoreline property owners to perform shoreline restoration services, which work necessitates the use of barges, heavy equipment and the storage, loading and unloading of materials from land to the water; and,

WHEREAS, there are limited areas where sufficient access to Lake Mendota is available to enable User to perform the necessary shoreline restoration work; and,

WHEREAS, User entered into an agreement with the City to use the Marshall Park boat launch as a loading and unloading area to enable User to perform shoreline restoration work from Lake Mendota in 2019 (RES-19-00457, Legistar #56162) and 2020 (RES-20-00188, Legistar #59730); and,

WHEREAS, User has expressed an interest in continuing to use the Marshall Park boat launch as a loading and unloading area to enable User to continue to perform shoreline restoration work from Lake Mendota in 2021 and 2022; and,

WHEREAS, the Parks Division is agreeable to the use of the Marshall Park boat launch for this purpose, provided that the impact of the User’s operations on other boat launch users is minimized, and the City’s property is protected.

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 Use Agreement for Shoreline Restoration (2021-2022) Between the City of Madison and Joe Daniels Construction Co., Inc. (“Agreement”) is to set forth the agreement between the City and User (collectively

the “Parties”) regarding User’s use of a portion of the Marshall Park boat launch to perform shoreline restoration services from Lake Mendota in 2021 and 2022.

2. Term and Renewal. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until December 31, 2021. This Agreement may be renewed for an additional term, to run from January 1, 2022 through December 1, 2022, upon the mutual agreement of the parties hereto. User shall inform the City, in writing, no later than November 15, 2021 of its intent to renew the Agreement for 2022. The Parks Superintendent’s determination whether to grant the renewal shall be based upon User’s performance under this Agreement in 2021 and any plans for the boat launch in 2022. The City shall inform User of its determination to renew or not renew the Agreement no later than December 1, 2021, and the City’s determination is not reviewable. If User is unable to complete the shoreline restoration work prior to the expiration of the Agreement, User may request to extend this agreement on a month-to-month basis through no later than May 1 of the year following expiration, by providing a written request to the City no later than December 15 of the expiring year. The City shall inform User of its determination to extent the Agreement on a month-to-month basis no later than December 25 of the expiring year, and the City’s determination is not reviewable.
3. Boat Launch Closure and Use. City agrees that User, and User’s contractors, subcontractors, invitees, vendors and agents, shall be able to partially close and use the Marshall Park boat launch to facilitate shoreline restoration work 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. From 7 am to 3:30 pm, on Monday, Tuesday, Wednesday and Thursday, and from 7 am to 11:30 am on Fridays, except on Holidays (the Friday-Monday of Memorial and Labor Day weekends, and July 3-5) or during authorized special events, User shall be permitted to use or close a portion of the Marshall Park boat launch as provided herein. As part of this grant of authority, User is entitled to the use of the boat launch, pursuant to Madison General Ordinances Section 8.188(2). User may be authorized to exceed these time limits or operate on different days only with the prior written approval of the City. User is not permitted to store any materials in Marshall Park. That portion of the Marshall Park boat launch covered by this Agreement, and depicted on Exhibit A, is hereinafter referred to as the “Boat Launch Use Area.”
  - B. Boat Launch Closure for Launching and Removal of the Barge. User will be authorized to close public access to and use the western half of the Marshall Park boat launch to temporarily erect a crane to launch and remove its barge from the Lake. User is also permitted to occupy specified parking stalls in the Marshall Park parking lot for a staging area for semis waiting for the launching or removal of the barge. When launching or removing the barge, User shall ensure that, subject to Subsection F, the eastern portion of the boat launch remains open to the public. A traffic and operation plan showing the areas covered and uses permitted by this Subsection is attached hereto as Exhibit B. One week prior to the closure, the Parks Division shall approve the partial closure date and time. Closure shall be kept to

the minimum time frame necessary. The closure shall require notice as provided for in Subsection F below.

- C. Boat Launch Use for Loading and Unloading Materials. User will be authorized to partially close and use the western launch bay of the Marshall Park boat launch to load and unload supplies, materials and equipment on and off of User's barge. This activity may include the use of semi-trailers and a boom truck. Other heavy equipment may be used with the prior written permission of the Parks Superintendent. When loading and unloading materials on and off the barge, User shall ensure that, subject to Subsection F, the rest of the boat launch remains open to the public. A daily operations plan showing the areas covered and uses permitted by this Subsection is attached hereto as Exhibit C.
- D. Barge Parking. Except when engaging in the activities specified in Subsections B and C, or with the prior written consent of the Parks Superintendent, User's barge may not be stored at the boat launch, or parked or moored off of Marshall Park or any other City owned lands.
- E. Parking Lot. User is permitted to store one light-duty vehicle in the Marshall Park parking lot while performing shoreline restoration services. No vehicles or equipment may be stored in Marshall Park overnight.
- F. Coordination with Other Contractor. User understands that the City may make the eastern side of the Marshall Park boat launch available to another shoreline restoration contractor (the "Other Contractor") for similar purposes during the term of this Agreement. User agrees to coordinate its activities at Marshall Park with the Other Contractor to the extent possible and practical, and to keep any portions of the boat launch area set aside for the Other Contractor free and clear of obstructions and to keep the middle portion of the boat launch area open to the public. Any intentional or negligent interference with the Other Contractor's activities shall be considered a default subject to Section 0.
- G. Duty to the Public. When engaging in permissible activities under this Agreement under Subsections B and C, User shall ensure that, subject to Subsection F, it will minimize the length of any closures and that those portions of the boat launch not authorized for use by the User or the Other Contractor shall remain open to the public. User has a duty to ensure the safety of any other persons using the boat launch during its operations. If necessary, User, or User and the Other Contractor, shall deploy flaggers or other safety personnel in the Boat Launch Use Area to comply with this requirement.
- H. Public Communication. One week prior to commencing work at the boat launch, User shall erect signage at the boat launch and at the entrances to the boat launch notifying the public of User's periods of partial closure and limited access. The signage should also include information about the environmental benefit of the project. Draft signage language shall be approved by the Parks Superintendent. User may, and is encouraged to, coordinate these notices with the Other Contractor.

The User shall include and maintain, while loading and unloading materials, signage that states the User's purpose, company name and contact information.

- I. Daily Maintenance. When not actively using the Boat Launch Use Area for loading/unloading purposes, User shall keep the boat launch free and clear of any sediment, debris, materials or hazards of any kind that are attributable to its activities, and shall restore the Boat Launch Use Area to a usable condition each day.
- J. Damage. User shall not damage any portion of the Boat Launch Use Area, or any improvements therein, during its operations, including, but not limited to, the driveway, the parking lot, the boat launch ramps and the boat launch piers. If any damage does occur as a result of User's actions, whether intentional, negligent, or otherwise, User shall be responsible for repairing said damages to the satisfaction of the City.
- K. Restoration. Upon completion of all work at the boat launch, User shall restore the Boat Launch Use Area to the condition it was in prior to the use thereof under this Agreement, which work shall be done to the satisfaction of the City.
- L. Erosion and Runoff. The City will not tolerate soil and other debris entering the lake at Marshall Park from the User's operations where such a discharge can be reasonably prevented. In addition to being subject to the City's ordinances regarding erosion, including the possible issuance of citations, User may be required by the City Engineer to prepare an erosion control plan should it not be able to adequately control its operations to prevent erosion and daily runoff. If such a plan is required and approved by the City Engineer, User shall comply with such a plan.
- M. Reporting. User shall report its usage and closure of the boat launch to the Parks Division on a weekly basis. The failure to accurately report its usage of the boat launch shall be a default of this Agreement and be subject to immediate termination under Section 0. User will maintain a weekly log which includes dates and time periods the User is using the Boat Launch Use Area. This information shall be provided to the designated representative of the City at the end of each week during the term of the Agreement.
- N. Equipment Safety. User shall maintain its equipment in a safe working order at all times and, when not in use, shall store said equipment in a safe manner to prevent any unauthorized use or operation thereof.
- O. Weapons Prohibition. User shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Boat Launch Use Area under this Agreement.
- P. Risk Assumption. City makes no representation on the depth or safety of the water at the Premises, and User accepts all risks associated with the activity under this Agreement.

Q. Other Restrictions on Use of Premises. User's use of the Boat Launch Use Area is subject to the following additional restrictions:

- (1) Lake Conditions. User may only use the boat launch if lake conditions remain generally stable so that it is safe and reasonable for User to use the boat launch for its operations. Moreover, City reserves the right to cause the interruption of User's use of the boat launch in the event that lake conditions result in unstable circumstances. Unstable circumstances would include, but not be limited to, very high or very low water, severe weather conditions including high wind and lightening, and strong waves. No advance notice of such determination by the City is necessary.
- (2) Public Safety Considerations. City retains the right to cause the interruption of User's use of the boat launch in the interest of public safety. The circumstances which would cause such interruption of operation include but are not limited to: a natural disaster or Act of God, a life-threatening fire, damage to the pier or launching facility, or a serious health and safety calamity. User waives any and all claims for damages or compensation from City in the event of said interruption. No advance notice of such determination by the City is necessary.
- (3) Other Unavailability. The City reserves the right to make the Boat Launch Use Area unavailable to User upon seven (7) days written notice of such unavailability. The City shall minimize any such unavailability.

R. Security Deposit and Payment and Performance Bond. User shall provide the City a security deposit in the amount of \$5,000 prior to using the Premises, which deposit may be used by the City should User not comply with the requirements of this Agreement, in particular User's responsibilities under Subsections I, J, and K above. In addition, User shall provide the City with a payment and performance bond in the amount of \$100,000 to secure the performance of its responsibilities under Subsections I, J, and K above. A copy of an acceptable bond form is attached hereto as Exhibit D. Final terms must be acceptable to the City Attorney and the User. At the end of the term, and the full restoration of the Boat Launch Use Area to the satisfaction of the City, the City shall refund any portion of the Security Deposit not used under this Subsection to the User.

4. Usage Fee. User shall pay the City an annual charge and a daily charge for the use of the Boat Launch Use Area. User will maintain a weekly log which includes dates and time periods the User is using the Boat Launch Use Area. This information will be provided to the City at the end of each week during the term of the Agreement. User shall be invoiced monthly, with payment due within ten (10) days thereof. The fee schedule is as follows:

2021:           \$1025 annually, plus \$51.50 per day

2022:           \$1051 annually, plus \$52.79 per day

If User extends the Agreement on a month-to-month basis under Sec. 2, User shall

continue to pay the daily rate for the use of the Boat Launch Use Area, but shall not owe any additional annual charge.

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 subcontractor'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 Use Area will not generate any hazardous substance, and it will not store or dispose on the Boat Launch Use Area nor transport to or over the Boat Launch Use 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.

- (b) Automobile Liability. During the life of this Agreement, the User 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. User shall require all subcontractors under this Contract (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
  - (c) Worker's Compensation. During the life of this Agreement, the User shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The User shall also carry 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 subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
  - (d) Umbrella Liability. During the life of this Agreement, the User shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability, and Employers Liability with minimum limits of \$5,000,000 per occurrence and aggregate.
- (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. Access to Premises. This Agreement gives the User the non-exclusive right to use the boat launch to load and unload its barge for shoreline restoration work. In no case shall this limited grant of rights be interpreted to preclude the City's or the public's access to the boat launch, other than as provided herein.
- 8. 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: Samuel J. Daniels, COO  
Joe Daniels Construction Co., Inc.  
919 Applegate Road  
Madison, WI 53713

- 9. Non-Discrimination. In the performance of services under this Agreement, User agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge,



physical appearance, sexual orientation, gender identity, political beliefs or student status. User further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

10. Default/Termination.

- A. In the event User 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 twenty-four (24) hours after written notice thereof to User, the City may, at its option and in addition to all other rights and remedies which it may have at law or in equity against User, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of User under this Agreement.
- B. Notwithstanding Subsection A., above, the City may in its sole discretion and without any reason terminate this agreement at any time by furnishing the User with ten (10) days written notice of termination.

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

12. 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.

13. 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.

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 employees, agents, contractors and subcontractors 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 or apply to the User's shoreline restoration activities and use of the Boat Launch Use Area under this Agreement. User, and User's employees, agents, contractors and subcontractors shall obtain, possess and comply with all necessary permits and licenses as required by City, County or State laws or policies, and shall provide copies of any such permits or licenses to the City upon request.
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. 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.

Joe Daniels Construction Co., Inc.

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Samuel J. Daniels, COO

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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 R. Haas, City Attorney

\_\_\_\_\_  
Date

Execution of this Agreement by City was approved by the Board of Parks Commissioners on \_\_\_\_\_ and authorized by Resolution Enactment No. RES-21-\_\_\_\_\_, ID No. \_\_\_\_\_, adopted by the Common Council of the City of Madison on \_\_\_\_\_, 2021.

**EXHIBIT A**  
Boat Launch Use Area



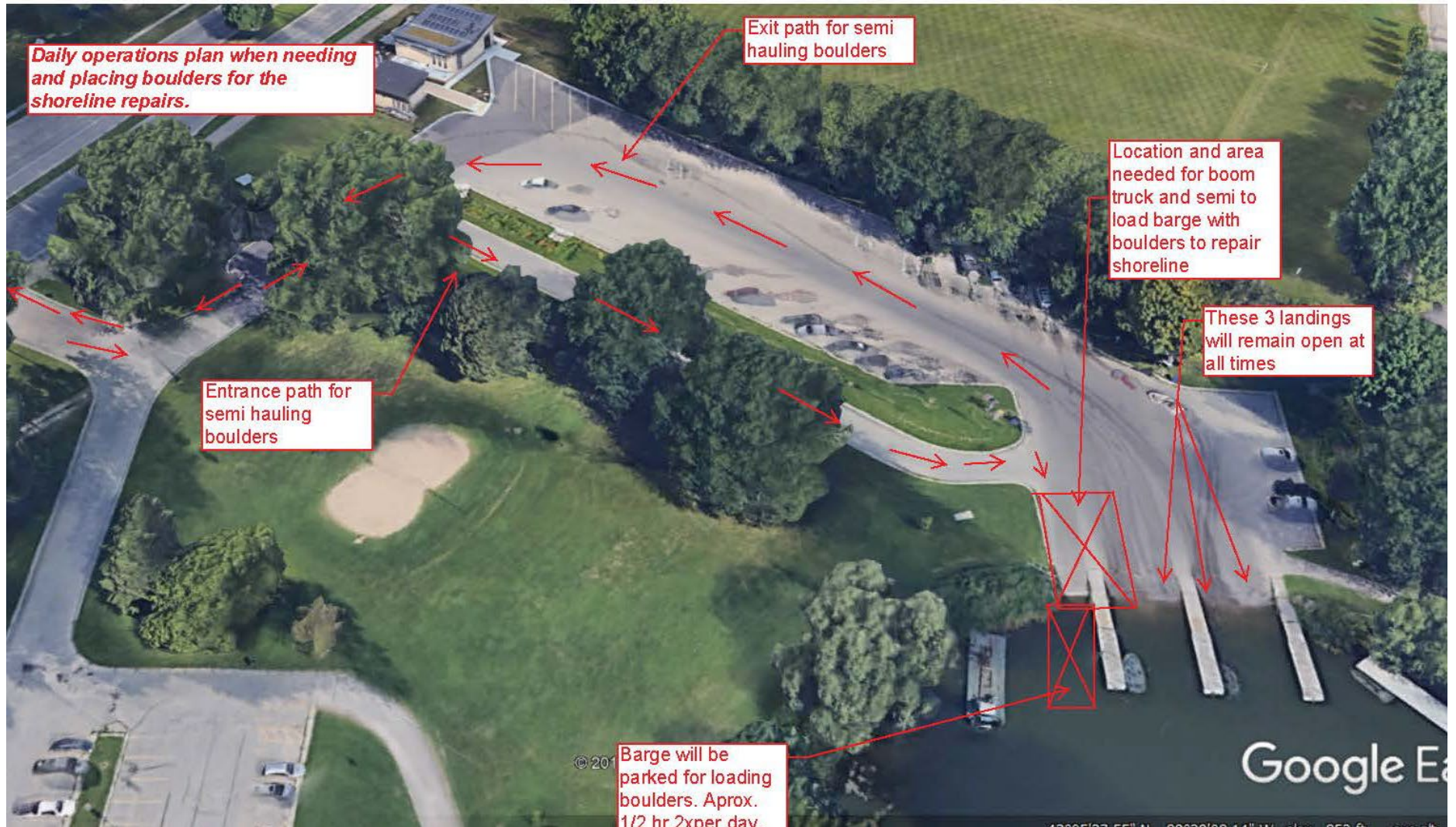


**EXHIBIT B**  
Barge Loading and Unloading Use Plan





**EXHIBIT C**  
Daily Operations Plan



**EXHIBIT D**

**PAYMENT AND PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
as principal, and \_\_\_\_\_  
Company of \_\_\_\_\_ as surety, are held and firmly bound unto the City of  
Madison, Wisconsin, in the sum of one-hundred thousand (\$100,000) Dollars, lawful money of  
the United States, for the payment of which sum to the City of Madison, we hereby bind ourselves  
and our respective executors and administrators firmly by these presents.

The condition of this Bond is such that if the above bounden shall on his/her part fully and  
faithfully perform all of its maintenance, damage repair and restoration responsibilities under  
Subsections 3.I, J and K of the Contract entered into between him/herself and the City of Madison  
entitled the "Marshall Park Boat Launch Use Agreement for Shoreline Restoration (2021-2022)",  
then this Bond is to be void, otherwise of full force, virtue and effect.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Company Name (Principal)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
President Seal

\_\_\_\_\_  
Secretary

Approved as to form:

\_\_\_\_\_  
Surety Seal  
 Salary Employee  Commission

\_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Attorney-in-Fact

This certifies that I have been duly licensed as an agent for the above company in Wisconsin  
under National Producer Number \_\_\_\_\_ for the year \_\_\_\_\_, and appointed as  
attorney-in-fact with authority to execute this payment and performance bond which power of  
attorney has not been revoked.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent Signature