

Park Use Contract
City of Waukesha – Badgerland Water Ski Shows, Inc.
Fox River – Frame Park

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and Badgerland Water Ski Shows, Inc., 1029 South 57th Street, West Allis, Wisconsin 53214, referred to herein as Badgerland. Together, the City and Badgerland are referred to herein as the Parties.

Recitals

Badgerland has conducted water ski shows on the Fox River at Frame Park for many years, and has applied to the City's Department of Parks, Recreation and Forestry, referred to herein as the Department, for a permit to do so again in 2017.

The City has approved Badgerland's permit application, and enters into this Contract with Badgerland pursuant to the information presented by Badgerland in its application.

Now, therefore, the Parties agree and contract as follows:

1. **Permission to Enter and Use Park.** Badgerland and its members may enter and cross Frame Park to access the Fox River to launch boats and place equipment in the river; and may occupy portions of Frame Park adjacent to the Schuetze recreation building to conduct water ski shows, in areas designated by the Department, on the dates indicated on the attached Schedule. Badgerland and its members and invitees shall be subject to all City ordinances and Department rules and regulations, except as specifically modified by this Contract.
2. **Pier and Jump Placement.** The pier and jump shall be placed in the river no earlier than April 20, 2017 and removed no later than September 29, 2017. Failure to comply will result in a fee of \$25.00 per day the equipment is placed early or removed late, to be paid by Badgerland to the Department.
3. **Staging of Water Ski Shows and Practices.** Badgerland may conduct water ski shows and practices on the dates indicated on the attached Schedule. Staging shows or conducting practices on dates other than those indicated on the Schedule shall result in a fee of \$100.00 per such show.
4. **Cancellations by Badgerland.** If Badgerland cancels a practice or show, it shall notify the Department and the paddle-boat concessionaire as soon as possible of the cancellation.
5. **Responsibility for Safety of River, Release of Liability.** The Fox River is a navigable waterway, is in the public trust, and is not under the control or jurisdiction of the City of Waukesha. Badgerland acknowledges that river currents bring debris into the show area, including things that are dangerous to water skiers, such as logs. Badgerland further acknowledges that third parties may introduce substances into the river that may be hazardous to persons entering the river. Badgerland shall be solely responsible for inspecting the river before each show and practice and for determining whether the river is safe for its team members. If debris must be removed from the river to make the area safe, Badgerland shall be solely responsible for doing so. Badgerland releases the City and the Department from all responsibility, obligations, damages, costs, lawsuits, and all other liabilities arising from the condition of the Fox River, including those arising from the presence of debris or substances in the river.
6. **Food and Beverage Sales.** Badgerland may sell food and beverages during their shows, provided that all licenses and permits required to do so are obtained by Badgerland, and Badgerland notifies the Department in advance that it will do so.
7. **Special Event Permit Application and Fees.** Badgerland shall submit a Public Special Event Application to the Department, and pay the applicable fees, including those applicable to the sale of food or beverages. Fees

will include one \$50 application fee for the entire season, and will be charged for each of the shows shown on the attached schedule, in accordance to the Public Event fees and charges schedule. One-half of the fees shall be payable on or before May 2, 2016, and the balance shall be payable on or before July 1, 2016. A fee of \$25 per day will be assessed for late payments. No additional fees shall be charged for practices.

8. **Condition of Facilities.** Badgerland shall leave all City facilities in a clean and orderly condition after each show or practice, and shall dispose of any debris generated by Badgerland. If clean-up by the Department is required after Badgerland use, a fee may be charged to Badgerland for the expenses of clean-up.
9. **Vehicle and Trailer Parking.** All vehicles and trailers shall be legally parked. No vehicles or trailers may be parked in disabled spaces. No items may be left in the park overnight without prior approval.
10. **Audience Control.** To the extent reasonably possible, Badgerland shall request that its audience respect park rules, not litter, and not enter into planting beds in the park.
11. **Waterfowl and Wildlife.** Badgerland and its members shall not knowingly harass, threaten or injure waterfowl or wildlife in or on the Fox River. All Badgerland members shall adhere to the Precautionary Duck Control Safety Procedures on file with the Department.
12. **Cancellations or Schedule Changes by Department.** The Department may cancel shows or practices, or amend the schedule of shows and practices, at any time in its sole discretion due to unforeseen weather or hydrological conditions.
13. **Indemnification.** Badgerland shall indemnify and hold the Department and City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind, including court costs and actual attorney fees, arising out of, or connected in any way with:
 - a. Badgerland's conduct of water-skiing practices or shows in the Fox River, including, but not limited to, damages for personal injury, death, or casualty loss to personal property.
 - b. Badgerland's breach of any provision of this Contract.
 - c. Badgerland's violations of any laws.
14. **Insurance.** Badgerland shall maintain insurance of the following kinds and for not less than the following limits, at Badgerland's sole expense, at all times during the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Badgerland shall obtain an endorsement making the City an additional insured, and Badgerland's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Badgerland shall deliver a certificate of insurance to City showing that all requirements of this section are met.
 - a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.
 - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
15. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
16. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

17. Costs of Enforcement. The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.

18. Governing Law and Jurisdiction. This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

City of Waukesha

By Shawn N. Reilly, Mayor
Date: _____

Attested by Gina L. Kozlik, City Clerk
Date: _____

Badgerland Water Ski Shows, Inc.

By: _____
Title: _____
Date: _____

[attach schedule of practices and shows]