

**AGREEMENT BETWEEN THE CITY OF MADISON AND MADISON FIREWORKS
FUND, INC. FOR THE 2012 RHYTHM & BOOMS EVENT**

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and the Madison Fireworks Fund, Inc., a Wisconsin non-stock corporation (hereinafter referred to as “MFF”), is effective as of the date by which both parties have signed hereunder.

WITNESSETH:

WHEREAS, on June 18, 1996, the Common Council of the City of Madison adopted Resolution No. 53,322 that authorized a partnership between the City and MFF (collectively the “Parties”) to furnish a safe and enjoyable celebration of our nation’s Independence Day at Warner Park in the City of Madison; and,

WHEREAS, for each year since the adoption of Resolution No. 53,322, the Parties have partnered to provide to Madison area residents and visitors an Independence Day celebration known commonly as Rhythm & Booms at Warner Park in Madison (the “Event”); and

WHEREAS, on November 9, 2006 the Parties entered into the “Agreement Between the City of Madison and Madison Fireworks Fund, Inc. (Rhythm & Booms)”, a five-year agreement between the Parties relating to the Event that expired on July 31, 2011; and,

WHEREAS, both the City and MFF wish to continue their long standing successful partnership that has made Rhythm & Booms a signature event for the City and the Madison area, and one that furnishes a safe and enjoyable celebration of our nation’s Independence Day.

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 Agreement Between the City of Madison and Madison Fireworks Fund, Inc. for the 2012 Rhythm & Booms Event (“Agreement”) is to set forth the agreement between the City and MFF regarding the planning, financing and coordination of City, community and MFF resources for the Event in 2012.
2. Term. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until December 31, 2012. There is no right to renewal of this Agreement, however the Parties agree to commence discussions on a successor agreement by September 15, 2012, or at another earlier date mutually agreed upon by the Parties.
3. Warner Park and Warner Park Community Recreation Center Usage. City agrees that MFF shall be able to use Warner Park (and, if so elected by MFF, the Warner Park Community Recreation Center (WPCRC)) on the day of the Event, and the days surrounding the Event, as set forth in this Section.

- a. Warner Park Usage. Warner Park usage shall be at all times subject to the approval of the City. The Superintendent of Parks shall have the authority to act for the City within the parameters of this Agreement, and any use not covered by this Agreement must be authorized by the Board of Park Commissioners or the Common Council as the case may be.
- b. General Event Parameters. Attached hereto and incorporated herein as Exhibit A is a diagram of Warner Park showing and listing the maximum size and general location of the Event's components. Any significant alteration or expansion of Event activities beyond those contained herein without the written approval of the Superintendent of Parks shall be a breach of this Agreement.
- c. Set-up and Teardown Times. MFF shall adhere to the set-up and teardown times set forth in this subsection or otherwise established by the Parks Division and shall be responsible for assuring that all subcontractors and vendors adhere to the established set-up and tear down times. Failure to adhere to set-up and tear down times will be a default of the terms of this Agreement, subject to the provisions set forth in Section 11, below. Except as otherwise established by the Parks Division, the set-up and tear-down dates and hours for Rhythm & Booms shall be as follows:
 - 1) The fireworks shooter shall not begin set-up in Warner Park prior to the Sunday before the Event. Clean up from the fireworks shooter shall be completed by the Tuesday following the Event.
 - 2) The mobile cell phone trailer and equipment shall not arrive in Warner Park until the Wednesday preceding the Event. The mobile cell phone trailer and equipment shall be removed from Warner Park by the Tuesday following the event.
 - 3) Beer trucks and/or trailers shall not arrive in Warner Park until the Thursday preceding the Event. Beer trucks and/or trailers shall not be parked on the grass next to the WPCRC electronic marquis until the day immediately preceding the Event. Sponsors may hang promotional event banners on Warner Park fences no sooner than the Monday preceding the Event.
- d. Cleanup Responsibilities. MFF shall be responsible for the cleanup and disposal of all debris from the Event in Warner Park, WPCRC and the lagoon water areas within the Park. All debris from the event, on land and floating or visible in the water, shall be removed by the Monday immediately following the Event, or the Tuesday immediately following the Event if the rain date is used. Particular attention should be made to trash and recycling can removal and paper debris throughout the park that may blow into the lagoon water, along with all firework debris on land or in the water. Failure to adhere to these cleanup responsibilities will be a default of the terms of this Agreement, subject to the provisions set forth in Section 11, below.

- e. WPCRC Usage. MFF may elect, under this subsection, to use WPCRC for the Event, in which case MFF shall be provided access and use of the day care room and meeting room at WPCRC for “day of the event” activities, and may connect to WPCRC’s water services for these purposes. MFF may make this election by providing written notice to the Park Division before June 1st, 2012. If MFF makes this election, MFF shall pay to the WPCRC four thousand dollars (\$4,000) by June 30, 2012. If MFF does not make this election, City makes no guarantee about the availability of the WPCRC and any requests for usage of the facility by MFF will be given no preference over similar requests made by other users.
 - f. MFF’s Licensing, Contracting, Subcontracting and Vendor Rights. City agrees that MFF may contractually designate certain radio and/or television stations to hold exclusive rights to broadcast the event from Warner Park. Except for the use of the Warner Park baseball field by the Madison Mallards, the Northside Community Council’s bingo tent and WPCRC activities, MFF shall hold the exclusive rights to provide or contract for live or recorded music at Warner Park during the Event and to designate vendors for the Event. City shall hold rights of approval regarding the live or recorded music (including DJs) and vendors. City recognizes MFF’s need to generate revenue through exclusive vendor contracts and shall make reasonable efforts to enforce vending regulations in the park. City shall assist MFF in enforcing these regulations as may be necessary.
4. Planning and Coordination of the Event.
- a. Rhythm & Booms Planning Team. There shall be created a Rhythm & Booms Planning Team which shall include representatives from the City’s Parks Division, Police Department, Fire Department, Traffic Engineering Division, and Metro Transit, as well as representatives from Public Health Madison & Dane County. Other participants may include representatives from the City’s Finance Department, Attorney’s Office, Mayor’s Office and Common Council, as well as representatives from Dane County’s Public Safety Communication Center, Department of Emergency Management and Sheriff’s Department, along with representatives from MFF, Waste Management, Per-Mar Security, the Madison Mallards, and media vendors.
 - b. The Parties shall furnish each other all planning information and financial records as requested, including contracts, bills, an audited financial statement and the like. In addition, MFF and the Rhythm & Booms Planning Team shall file reports with City’s Board of Estimates no later than October 15, 2012 on the operational and financial aspects of the recently concluded Event. Each report shall address ways of reducing MFF and City costs for any future Events and reducing the City’s financial contribution to future Events.
 - c. The City shall act as a facilitator in providing for the coordination of Event activities and those of the Madison Mallards, or other baseball field users on the day of the event. Any use of the baseball field on the day of the Event shall be

scheduled so as not to unduly interfere with or disrupt Event activities, or unduly or unreasonably increase police costs associated with the Event.

- d. MFF will offer to meet with the Warner Park area neighborhood associations (Berkley Oaks Neighborhood Association, Brentwood Village Association, East Bluff Homeowner Association, Lake View Hill Neighborhood Association, Mendota Hills Neighborhood Association, and the Sherman Neighborhood Association), the Madison Northside Business Association and the Northside Planning Council no later than one (1) month prior to the Event to review and discuss methods for improving the Event for Warner Park's immediate neighbors.
- e. MFF agrees that it shall actively market to and encourage the participation of north side food vendors to service the Event. City agrees to assist MFF in obtaining north side vendor contact information for this purpose.
- f. City and MFF will work, during the term of this Agreement, to create a sustainability plan for the Event, and any future Events.
- g. City of Madison staff will be testing, or will arrange for the testing, of the Lake's water quality before and after the Event to determine if there is any impact upon the affected waters. The City and MFF agree to cooperate with any activities or requests related to this testing.

5. Event Related Activities, Operations and Restrictions.

a. Date Restrictions.

- 1) The City agrees that any other City sponsored or supported firework display, including the display at Elver Park, shall be scheduled on a date which is after the date of the regularly scheduled Event.
- 2) MFF agrees that the Event, including any rescheduled dates or rain dates, shall not occur on July 4th.

b. Weather Related Cancellations. If the Event is postponed or cancelled due to rain or other inclement weather, the following shall apply:

- 1) The rain date for the Event shall be the Sunday immediately following the originally scheduled Event date.
- 2) If a decision to postpone or cancel the Event is made, MFF shall make every effort to announce the postponement or cancellation no later than 4:00 p.m. on the original event date. MFF shall be authorized to operate a full Event, including the music stages, food and beverage vending operations, military demonstrations and fireworks, on the rain date. MFF must notify City immediately upon a decision to hold the Event on the rain date. MFF shall, at the time of cancellation, inform City as to what time the Event will commence on the rain date.

- 3) If MFF receives insurance proceeds for a weather-related claim made due to the postponement or cancellation of the Event, MFF shall reimburse City on or before October 31, 2012 for actual City expenses incurred because of such postponement or cancellation, in an amount not to exceed \$40,000.
- c. Event Related Responsibilities. Except as hereafter provided, MFF shall arrange, manage and operate all aspects of the Event, including contracting with a vendor for the fireworks display. Notwithstanding the foregoing, City, rather than MFF, shall arrange, manage and operate all aspects of the Event relating to police, fire, fireworks safety (including, without limitation, compliance with NFPA Codes by any fireworks display firm retained by MFF), EMS coverage, traffic control, parks issues, and the like, and MFF shall have no responsibility for these matters. MFF, and its contractors, subcontractors and vendors, shall obtain all necessary permits and licenses as required by City ordinances, resolutions, and rules of the Board of Park Commissioners, and shall comply with all ordinances, rules, and permit requirements in the planning and operation of the Event.
- d. Event Components. On the day of the Event, and the day prior, MFF shall be limited to operating and coordinating the following activities:
- 1) A noiseless preview demonstration for a live television broadcast of a few of the fireworks that will be part of the show on the evening before the Event between 10:00 pm and 10:15 pm.
 - 2) A “Run to the Rhythm” Run/Walk on the morning of the event.
 - 3) One music stage in the “main viewing area” along with an accompanying beer garden and food vending area, open from 5 pm to 11:30 pm.
 - 4) One recorded music stage (a “DJ” stage) along with an accompanying beer garden and food vending area, open from 5 pm to 11:30 pm,
 - 5) A food and concession tent operated by MFF.
 - 6) Food and beverage vendors elsewhere in the Park.
 - 7) Military demonstrations, which may include the following:
 - a) The Golden Knights United States Army parachute team demonstration may have two demonstrations on the day of the Event, one to commence the Event around 5 pm, and the second shortly before the start of the firework show.
 - b) A Wisconsin Air National Guard F-16 flyover shortly before the start of the Event.

- c) The Wisconsin Army National Guard may place and remove howitzers in the “safety zone” near the fireworks display island in Warner Park for use during the Event to fire howitzer blanks during the firework finale as part of the “1812 Overture”.
 - 8) A firework show.
 - e. General Noise Restrictions. Loud noise generating activity, including firework “salutes” and other noisy activities may only occur at the Event after 5 pm, and all such activities shall cease by 11:30 pm.
 - f. Marketing Restrictions. MFF agrees that it shall not, without the City’s written approval, market the Event in a manner that would reasonably lead to an increase in the attendance at Warner Park on the day of the Event.
6. Finances.
- a. Payment for Municipal Services Provided by the City.
 - 1) As part of the City’s contribution to the Event, the City shall continue to donate (i.e. not charge for) seventy seven thousand dollars (\$77,000) of base/initial municipal services costs in 2012. If municipal service costs are determined to be less than this base amount, then the City will be determined to have donated the full amount of services provided.
 - 2) Following the Event, the City’s Finance Director shall determine the amount of municipal services actually incurred by the City because of the Event. The Finance Director shall furnish the MFF and City’s Board of Estimates with a report detailing such expenses.
 - 3) On or before December 31st, 2012, the MFF shall reimburse City for municipal services, as determined under paragraph 2, which are in excess of the base municipal service contribution provided for in paragraph 1.
 - 4) If there are additional City expenses incurred because of any postponement or cancellation of the celebration required by rain or other inclement weather, the City shall separately determine such expenses and furnish MFF and the City’s Board of Estimates with a report detailing such expenses. If such expenses occur, Section 5(b)(3) above shall govern the payment of such extra expenses if insurance proceeds are paid to MFF.
 - b. City Financial Contribution. In addition to the donation of municipal services set forth in subsection a. above, City agrees to provide MFF with a financial contribution to support the Event of sixteen thousand eight hundred and eighty six dollars (\$16,886), payable to MFF by June 1, 2012. In return, The City of Madison will be listed as a principal sponsor of Rhythm & Booms wherever sponsors are listed and shall be promoted as a “Major Sponsor” of the Event in television and radio announcements advertising the Event.

c. Cost Containment and Fundraising.

- 1) The Parties agree that containing costs is very important to each. It is agreed that the MFF and City will work diligently to minimize and contain the cost of this Event so that the Event can eventually exist on a sustainable basis, at reduced cost to each.
- 2) In order to assure the future of the Event, MFF agrees to continue raising funds for the Event, including the fireworks display. MFF further agrees to seek and encourage greater participation from Dane County and area residents for this truly regional event. City and MFF will also encourage community-wide efforts that result in generating additional funding support for the Event to cover future MFF costs, with the intent that such additional funding, if obtained, will further reduce City costs after this Agreement's expiration.
- 3) If MFF is not successful in raising the necessary dollars to fund the Event, including such reimbursement to City as described above, MFF shall not be obligated to present the Event. MFF shall notify City no later than June 1, 2012 of its intent not to present the Event under this provision.

d. Charitable Contributions. As a 501(c)(3) non-profit charitable organization, MFF shall continue to make charitable contributions from its after-expenses income, if any, to organizations in the Dane County area that provide volunteers for the Event and to other local nonprofit organizations whose missions are to assist area children. MFF shall include the City's Mayor's Office in determining possible recipients for these charitable contributions. Any contributions to a charity by MFF with proceeds related to the annual Event shall be made only to agencies that do not discriminate based on gender identity, sexual orientation or any other City of Madison protected class.

7. Indemnification and Insurance.

a. Indemnification. MFF shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, 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 MFF's acts or omissions in the performance of this agreement. MFF's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability caused by the sole negligence or willful misconduct of the City, its officers, officials, or employees. The City shall promptly notify MFF of any claim for which it intends to seek indemnification hereunder. MFF agrees that this indemnity obligation shall survive the termination or expiration of this Agreement.

b. Insurance.

- 1) Required Coverage. MFF will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. MFF shall not commence work under this Agreement, nor shall MFF 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. MFF shall procure and maintain during the life of this contract, 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 \$5,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. MFF's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. MFF shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds, except that the limits of liability for subcontractors, other than the firework subcontractors, shall be at least \$1,000,000 per occurrence.
 - b) Automobile Liability. MFF shall require all subcontractors under this Agreement to procure and maintain during the life of this Agreement 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.
 - c) Worker's Compensation. MFF shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin, including Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. MFF shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - d) Liquor Liability Insurance. MFF shall procure and maintain during the life of this Agreement Liquor Liability insurance in the amount of coverage of at least \$1,000,000 per occurrence listing the City of Madison, its officers, officials, agents and employees as additional insureds. MFF shall require all subcontractors dispensing liquor 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.

- e) Rain and Wind: MFF shall maintain its current insurance level for the event.
 - 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. MFF 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. MFF shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. MFF 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. MFF 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.
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
PO Box 2987
Madison, WI 53701
- MFF: Terry Kelly, President
Madison Fireworks Fund, Inc.
401 Charmany Drive, Suite 320
Madison, WI 53719
9. Non-Discrimination.
- a. Non-Discrimination. In the performance services under this Agreement, MFF 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, political beliefs or student status. MFF 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, or national origin.

- b. Nondiscrimination Based on Disability. MFF 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 contract or other arrangement by which the City provides or otherwise makes available assistance in the form of funds, services of City personnel, and the permission to use City property.

10. Affirmative Action.

- a. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c).):

The Contractor (MFF) agrees that, within thirty (30) days after the effective date of this contract, Contractor will provide to the City of Madison Department of Civil Rights (the “Department”), certain workforce utilization statistics, using a form provided by the City.

If the contract is still in effect, or if the City enters into a new agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The Contractor agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by the Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from this Subsection at the time the Request for Exemption in Subsection b. is made.

- b. Articles of Agreement, Request for Exemption, and Release of Payment.

These “ARTICLES OF AGREEMENT” apply to all contractors, unless

determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

* As determined by the City Comptroller

** As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 39.02(9)(a)2.) Contractors who believe they are Exempt from the Articles of Agreement according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights (“Department”), within thirty (30) days of the effective date of this Contract. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the Articles of Agreement shall apply. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) Within thirty (30) days from the effective date of this contract, and prior to release of payment by the city, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below. Additionally, contractors that are exempt from the Articles of Agreement under the Table shown above must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

ARTICLES OF AGREEMENT

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and

selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council _____.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council _____.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

The Contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

11. Default/Termination. In the event MFF shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof to MFF, 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 MFF, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of MFF under this Agreement. In addition to the consequences of a default as set forth in this Section, in the event of a default in the terms of Section 3.c regarding set-up and teardown times or Section 3.d regarding cleanup responsibilities, MFF shall also be fully responsible for all municipal services provided by the City directly attributable to the violations of Section 3.c or 3.d. This payment shall be in addition to the payment due under Section 6.a.

12. 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.
13. 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.
14. 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.
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 MFF 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 MFF 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. 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.
18. Compliance with Applicable Laws. The Parties 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 Parties and their agents and employees in the performance of this Agreement.

19. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of MFF represents and warrants that he has been duly authorized to bind MFF and sign this Agreement on MFF's behalf.
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

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

MADISON FIREWORKS FUND, INC.

Terry Kelly, President

Date

CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES 12-_____, ID No. 25223, adopted by the Common Council of the City of Madison on _____, 2012.

Attachments:

Exhibit A - Rhythm & Booms Event Parameters

EXHIBIT A

