

**CITY OF MADISON
AND
MADISON OPERA INC.**

3rd RENEWAL AGREEMENT

RE: 2007 Opera in the Park

This is an Agreement between the **CITY OF MADISON**, a Dane County, Wisconsin municipal corporation, hereinafter called "the City"; and **MADISON OPERA INC.**, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the City is the owner of certain park lands in the City of Madison, Dane County, Wisconsin, known as Garner Park; and

WHEREAS, the Common Council finds that it is in the public interest to provide the use of Garner Park, City services and equipment at cost to Madison Opera in support of Opera in the Park, a community event free to the public; and

WHEREAS, it is in the mutual interest of the parties to record the specific terms and conditions of Madison Opera's use of Garner Park as the site of the Opera in the Park in the form of an Agreement.

NOW, THEREFORE, LET IT BE RESOLVED that in consideration of the mutual covenants expressed herein, the parties mutually agree as follows:

I. PREMISES

The City, for and in consideration of the terms, conditions and covenants contained in this Agreement to be performed by Contractor, hereby grants to Contractor the use of Garner Park, "Premises", as indicated on Attachment A, incorporated herein. Any adjustments to the placement of Contractor's equipment on Premises as indicated in Attachment A shall be subject to the approval of the Superintendent of Parks or his designee.

II. TERM AND RENEWAL

The term of this Agreement shall be one (1) year, beginning in 2004, with the option of four (4) one-year renewal terms upon mutual written agreement of the parties as to terms and conditions of renewal.

III. ASSIGNABILITY/SUBCONTRACTING

Contractor shall not assign nor subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required hereunder will be performed by Contractor, employees or agents of Contractor, or subcontractors of Contractor that have previously been approved by the City.

IV. EFFECTIVE DATE

This Agreement shall become effective upon execution by the Mayor, on behalf of the City of Madison.

V. USE OF PREMISES

Contractor's event in 2007 shall be July 21, 2007 with a rain date of July 22, 2007. The event shall commence at 8:00 p.m. and end no later than 10:30 p.m. The parties anticipate that some event attendees will enter the park several hours before the event for picnic suppers. Contractor shall ensure that all attendees shall leave the park immediately upon the conclusion of the event, but in no case later than 11:00 p.m. Contractor will occupy the full area of Garner Park as indicated on Attachment A. Arrival and unloading of Contractor's trailer(s) on or adjacent to Premises and installation of stages, seating areas, fencing, light and sound equipment, vending stalls, tents, portable toilets, and miscellaneous equipment shall begin no sooner than 6:00 a.m. on the day before the event date. Complete load-out of all equipment shall be completed by noon the day following the event with the exception of generators, trash bins, certain lighting equipment, and portable toilets which shall be removed by noon of the Monday following the event.

VI. RIGHTS AND PRIVILEGES OF THE CITY

The City, in addition to any rights herein retained by it, reserves the following rights and privileges:

- A. The City's Superintendent of Parks is hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent the City in dealing with Contractor in connection with the rights herein leased.
- B. The City reserves the right to enter upon Premises at any time for any reason.
- C. City reserves the right to review Contractor's requests for services and equipment in addition to those enumerated in this Agreement in the context of the site plan, the availability of City services, Contractor's security staffing, and the over-riding concern for the health and safety of those attending the event.

VII. CITY SERVICES PROVIDED

The City shall provide: police personnel for crowd management and traffic enforcement; park personnel for assistance if requested and approved in advance; trash barrels for pick-up and return at Franklin Field; fire department personnel to provide emergency medical assistance and transportation as necessary; parking monitors to handle parking problems; traffic engineering to provide traffic control planning and equipment as necessary; and other miscellaneous City services as necessary.

VIII. FEES AND SCHEDULES OF PAYMENTS

A. Guaranteed Payment. In consideration for the use of City property and City services and equipment, Contractor agrees to pay City all actual costs of property use and restoration, services, and equipment provided.

B. Miscellaneous Park Fees For 2007.

1. Temporary Structures Fee. Contractor agrees to pay \$782.00 for a temporary structures fee, which includes permission to erect a performance stage, an RV for artists, three (3) tents and two (2) tower(s) for light and sound and a twenty-five foot (25') trailer.
2. Vending Permit Fees. Contractor agrees to pay \$75.00 for one (1) vending permit or \$150.00 for two (2) permits, depending on need.
3. PA Permit Fee. Contractor agrees to pay \$75.00 for the PA permit fee.
4. Scheduling and Shelter Fee. Contractor agrees to pay \$825.00 as a scheduling fee for the use of Premises, including shelter bathrooms.
5. Attendant Duty Hours. Contractor agrees to pay the hourly rate as set by the Parks Department to compensate Parks employee on duty during the event. Such rate shall be \$42.65 with reasonable adjustments in subsequent renewal terms.

C. Police Services. See Attachment B, incorporated herein.

D. Estimated Cost. Costs of City services are **estimated** at:

1.	Police - including parking enforcement officers	\$3,929.00
2.	Parks	\$2,000.00
3.	Miscellaneous City services and equipment	\$ 550.00
4.	Fire Department (2 paramedics/1 ambulance)	\$ 650.00
	TOTAL:	<u>\$7,129.00</u>

E. Payment. For any services and equipment directly billed by City to Contractor, Contractor agrees to render payment within thirty (30) days of invoice.

IX. **OBLIGATIONS OF CONTRACTOR**

A. Deposit and Site Restoration.

1. Deposit. Contractor shall post no later than 4:30 p.m., ten (10) days prior to the event, a damage deposit of one thousand dollars (\$1,000.00) to cover the expense of post-event cleanup and restoration of park lands to their pre-event condition, excepting normal wear and tear.

2. Site Assessment and Restoration. Contractor shall meet with Parks staff, including West Maintenance Supervisor, ten (10) days prior to the event, but no later than forty-eight (48) hours before the event, to conduct a pre-event site assessment. Contractor shall comply with all recommendations of such supervisor. Within 24 hours after the event, Parks staff will conduct a post-event site assessment to be used in determining necessary clean-up and restoration. Contractor may be present at the post-event site assessment. Contractor has the right to perform clean-up and restoration within two (2) days of the end of the event. On or after that date, City will reinspect and may deduct the actual costs of remaining clean-up and restoration from the damage deposit. If the damage deposit exceeds actual costs of clean-up and restoration, a refund will be provided to Contractor. If the costs exceed the deposit, Contractor will be billed for the difference. Contractor agrees to pay the difference within ten (10) days of date of billing.

B. Indemnification. The Contractor 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 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 Contractor's and subcontractors' acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, or its employees.

C. Insurance. The Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated.

1. Commercial General Liability. Covering as insured the Contractor and naming the City as an additional insured, with no less than the following limits of liability: Bodily injury, death and property damage of \$2,000,000 in the aggregate. This policy shall also be endorsed for

contractual liability in the same amount. The subcontractor shall maintain a similar policy covering as insured each subcontractor.

2. Automobile Liability. Covering as insured the Contractor and naming the City as an additional insured, with no less than the following limits of liability: \$1,000,000 combined single limits for bodily injury, and property damage. Subcontractors shall maintain a similar policy covering as insured each subcontractor.
3. Worker's Compensation. Securing compensation for the benefit of the employees of the Contractor and the employees of each subcontractor, as required by Wisconsin Worker's Compensation Law.

As evidence of the above listed coverages, a Certificate of Insurance, a copy of the policy showing the relevant endorsement(s) and a cover letter identifying this Agreement shall be forwarded to the City Comptroller, Attention: Risk Manager, 210 Martin Luther King Jr. Blvd., Room 406, Madison, Wisconsin 53703, on or before thirty (30) days prior to the event.

- D. Governmental Authority. The Contractor and subcontractors shall become familiar with, and shall comply with all federal, state, and local laws, and regulations (including City's Programmed Event Policies) which in any manner affect the services or conduct of the Contractor, its agents, employees, and subcontractors in relation to this Agreement. Contractor will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.
- E. Permits, Licenses, Approvals. Contractor and subcontractors will obtain in a timely way, but in no event later than seven (7) days prior to the event, all necessary permits, licenses, and approvals, including, but not limited to:
 1. All park-related permits as required by the Parks Division.
 2. Street Use Permit.
 3. Written agreement with portable toilet firm.
 4. Written agreement with firm to provide dumpsters and trash clean-up of site during event and post-event, if not using City services.
 5. Written agreement with security firm.
- F. Assurance. Contractor agrees to pay the total cost of the services and equipment set forth herein, including without limitation, the cost of site preparation, licenses, fees, taxes, City services, sound equipment, lighting, site restoration (subject to Contractor's right to restore the site as set forth in Sec. IX, A., 2.), sanitation and security services during event, pre-event, and post-event.
- G. Site and Parking Plan. Contractor agrees to provide to City a site plan of the location of all Contractor and Subcontractor equipment and service areas including, but not limited to all vending outlets, stage, tents or other temporary structures, portable toilets and hand wash units, motor vehicle and trailer

loading, unloading, and parking. Preliminary site plan shall be submitted for approval of Superintendent of Parks sixty (60) days prior to event. Parking plan shall be submitted no later than thirty (30) days prior to event. A final site plan shall be submitted for approval fifteen (15) days prior to event.

X. EVENT INTERRUPTION OR CANCELLATION

City, via its Chief of Police or his designee, retains the right to cause the interruption or cancellation of the event when to do so is in the interest of public safety. The circumstances which would cause such interruption or cancellation of the event include, but are not limited to: a natural disaster or Act of God, a life-threatening fire, a serious health and safety calamity, a public riot. Contractor waives any and all claims for damages or compensation from City in the event of said interruption or cancellation.

If the event is cancelled for any reason, Contractor shall pay all reasonable expenses incurred by the City for its services or equipment through date and time of cancellation. If preparation for the event has commenced at the Premises at time of cancellation, Contractor shall also pay for the restoration of the Premises as necessary to bring the Premises back to the condition that existed prior to preparation for the event.

XI. NON-COMPLIANCE WITH AGREEMENT

- A. Right to Cure. If the City determines that material non-compliance with the requirements in this Agreement has occurred or is occurring, it shall demand correction within a reasonable amount of time after written notice of such continuing non-compliance.
- B. Sanctions, Termination. The City reserves the right to impose whatever sanction or remedial measure it deems necessary and reasonable to protect the interests of the City. Such sanction or measure may include termination of the Agreement, termination of that portion of the Contractor's operation directly related to the non-compliance, monitoring of compliance or any other measures deemed appropriate and necessary.

XII. AMENDMENT

This Agreement shall be binding on the parties hereto, their respective heirs, devisees, and successors, and cannot be varied or waived by any oral representations or promise of any agent or other person of the parties hereto. Any other change in any provision of this Agreement may only be made by a written amendment, signed by the duly authorized agent or agents of the parties who executed this Agreement.

XIII. NO WAIVER

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor 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 Contractor 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.

XIV. NON-DISCRIMINATION

In the performance of the services under this Agreement, the Contractor 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. Contractor 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, or national origin.

XV. 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.

XVI. NOTICES

All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: James Morgan, Superintendent of Parks
City of Madison Parks Division
Madison Municipal Building, Room 120
215 Martin Luther King, Jr. Blvd.
Madison WI 53703

FOR THE CONTRACTOR: Allan Naplan, General Director
Madison Opera, Inc.
3414 Monroe Street
Madison WI 53711

with copy to: Quarles & Brady LLP

1 S. Pinckney Street #600
Madison WI 53703

XVII. 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.

XVIII. LAW APPLIED

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin.

XIX. ENTIRE AGREEMENT

The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral negotiations and agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CONTRACTOR:

MADISON OPERA INC.

WITNESS

By: _____
Print Witness Name:

By: _____
Allan Naplan, General Director

Date: _____

Date: _____

Signature Page 2 of 2
Agreement between City of Madison and
Madison Opera, Inc.
RE: 2006 Opera in the Park

CITY OF MADISON, WISCONSIN
a municipal corporation

By: _____
David J. Cieslewicz, Mayor

Date: _____

By: _____
City Clerk

Date: _____

Approved:

Dean Brassler, City Comptroller

Date: _____

Eric Veum, Risk Manager

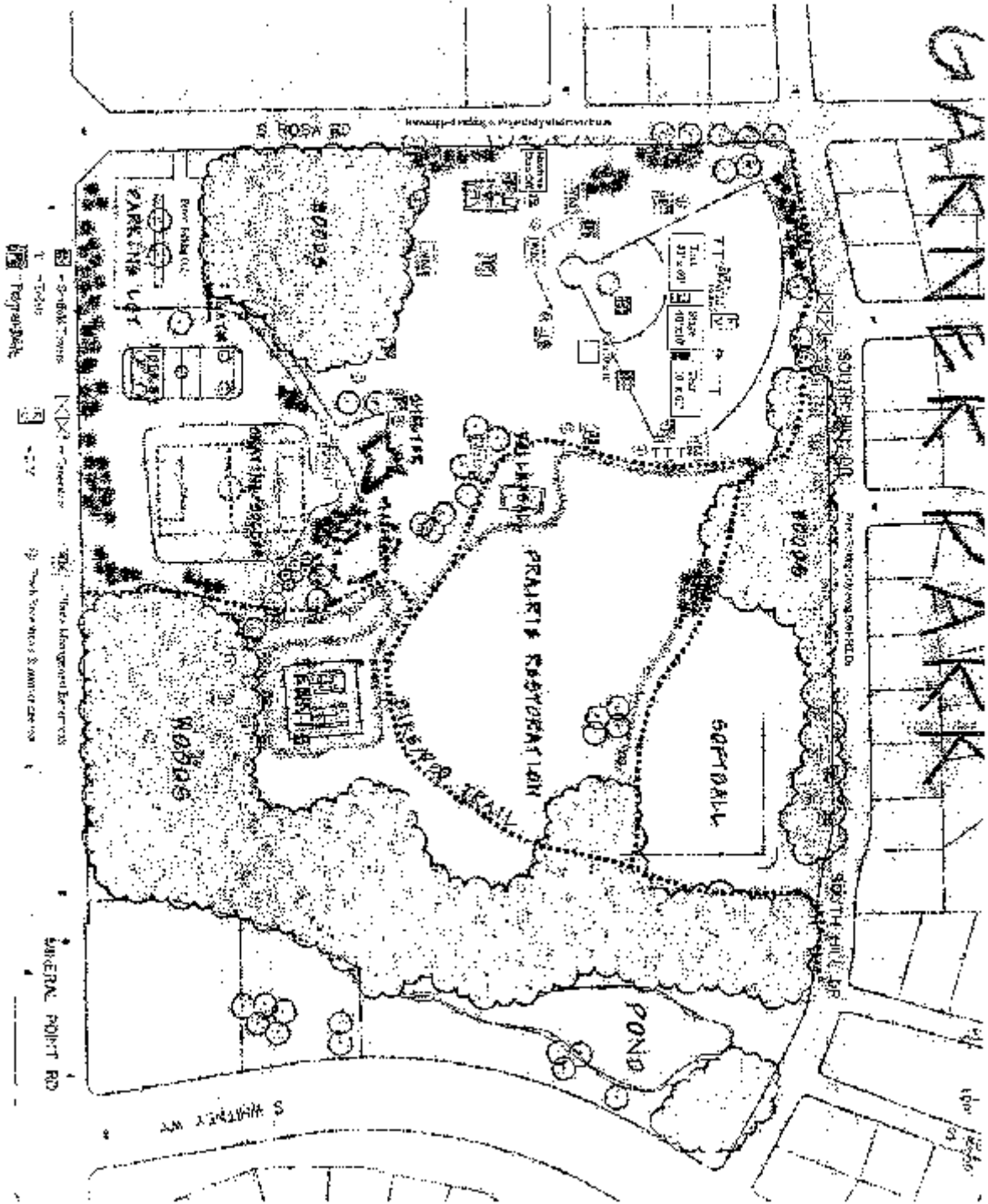
Date: _____

Approved as to Form:

Michael P. May, City Attorney

Date: _____

ATTACHMENT A



ATTACHMENT B

OPERA IN THE PARK 2007

Police Service Cost Estimate

MPD personnel will be used to staff this event. All personnel will be compensated at the rate of time and-one-half; MPD reserves the right to adjust staffing levels at the sole discretion of MPD. Cost estimates (salary + benefits):

Overall Event Commander: 1 (Captain or Lieutenant)
7 hours (4p-11p),
7 hours x approx. \$77=
\$539

MPD personnel assigned to event: 12
5 hours (6p-11p)
60 total officer hours x approx. \$55=
\$3,300
(note that actual cost will vary depending on
rank, seniority, etc. of those assigned to the
event)

Parking Enforcement: 1 PEO
5 hours (3p-8p)
5 hours x \$18=
\$90

Overall MPD Cost Estimate: \$3,929

ATTACHMENT B

Police Service Plan

The Madison Opera is sponsoring a free “Opera in the Park”; attendance is likely to be approximately 10,000. Police services will primarily focus on facilitating safe and orderly pedestrian and vehicle traffic to and from the park. During the event, police personnel will provide presence and security in the park.

Temporary “no parking” signs will be posted on South Rosa Road, South Hill Drive and Driftwood Avenue. Handicapped parking will be permitted on South Rosa Road in the “no parking” area. Madison Opera staff/guests will be permitted to park on South Hill Drive in the “no parking” area (vehicles must display a permit; Madison Opera will provide a sample to MPD prior to the event). Madison Opera is responsible for obtaining the temporary “no parking” signs; posting them at least forty-eight (48) hours prior to the morning of the event; and for removing the signs after the event.

The Garner Park lot on South Rosa Road will be closed and limited to Madison Opera and MPD parking. Madison Opera will provide staffing for the lot’s entrance.

Permanent “no parking” signs in the Research Park area (South Rosa Road, Research Park Boulevard and Charmany Drive) may be covered, e.g. “bagged” for the event by Madison Opera staff.

ATTACHMENT B