

OLIN PARK BOAT LAUNCH CLOSURE AND USE AGREEMENT

Between the City of Madison and Madison Home Brewers and Tasters Guild, Ltd.
For the Great Taste of the Midwest Event (2018-2022)

THIS AGREEMENT, entered into by and between the City of Madison, a municipal corporation (hereinafter referred to as “City”), and Madison Home Brewers and Tasters Guild, Ltd., a Wisconsin Non-Stock Corporation, is effective as of the date on which all parties have signed hereunder.

WITNESSETH:

WHEREAS, the Great Taste of the Midwest (“Event”) is an annual event, occurring on the second Saturday in August, organized by the Madison Home Brewers and Tasters Guild, Ltd. (“MHTG”), and is the second longest running craft beer festival in North America, bringing over 190 breweries and brewpubs, over 1400 different beers and local food vendors to Olin-Turville Park in Madison; and,

WHEREAS, the Event is a premier festival in the United States and a signature Madison festival that is enjoyed by the local community, and that attracts tourism and economic development to Madison, with portions of the proceeds going to local charities; and,

WHEREAS, in 2016, MHTG entered into a boat launch closure and use agreement with the City that allowed MHTG to close and use the Olin Park boat launch area (the “Boat Launch Area”) for the Event to allow for improved Event operations, accommodate increased attendance at the Event to satisfy Event demand, and significantly improve traffic management and pedestrian safety in the Olin-Turville Park area on the day of the Event; and,

WHEREAS, MHTG’s use and closure of the Boat Launch Area in 2016 and 2017 achieved the stated objectives and both MHTG and the City are interested in entering into a new agreement to allow the use and closure of the Boat Launch Area for the next five annual Events; and,

WHEREAS, MHTG has expressed an interest in allowing watercrafts to use the piers and boat launch portion of the Boat Launch Area as part of the Event. Under Madison General Ordinances Section 8.188, in order to allow any watercrafts to use the boat launch during the Event the City and MHTG are required to enter into a boat launch use agreement.

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 Olin Park Boat Launch Closure and Use Agreement Between the City of Madison and Madison Home Brewers and Tasters Guild, Ltd. for the Great Taste of the Midwest Event (2018-2022) (“Agreement”) is to set forth the agreement between the City and MHTG (collectively the “Parties”) regarding MHTG’s closure and use of the Boat Launch Area for the Event in 2018 through 2022. The Boat Launch Area is generally depicted on Exhibit A. MHTG’s responsibilities relating to the use of Olin-

Turville Park for the Event itself are covered by MHTG's other park use permits and City approvals and are not addressed by this Agreement.

2. Term and Renewal. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until September 30, 2020. The Agreement may be renewed for the 2021 and 2022 Events if the renewal is mutually agreed to annually by both Parties by April 1, 2021 and April 1, 2022 respectfully. If renewed for these successive years, the Agreement will run from April 1 through September 30 of the Event year.
3. Boat Launch Closure and Use. City agrees that MHTG, and MHTG's contractors, subcontractors, invitees, vendors and agents, shall be able to close and use the Boat Launch Area to facilitate the Event 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. MHTG shall have the exclusive use of the Boat Launch Area for the Event during the time period set forth in Subsection 3.B of this Agreement.
 - B. Boat Launch Closure. MHTG will be authorized to close public access to and use of the Boat Launch Area, including access to and use by both land and water, at 10:00 pm on Friday the night before the Event, which, unless otherwise agreed to by the Parties, shall occur the second Saturday of August each year of this Agreement. The Boat Launch Area will remain closed to the public the entire day of the Event and will reopen to the public no later than 4:00 am on the Sunday immediately following the Event. In planning the Event and the closure, efforts shall be made to minimize impact on lake and park users.
 - C. Use of the Boat Launch Area. MHTG is hereby granted the authority to use the Boat Launch Area during the approved boat launch closure period, to perform all work necessary to facilitate the Event, including using it as a streamlined load-in/load-out area before, during and after the Event. No alcohol may be consumed in the parking lot of the Boat Launch Area, although alcohol for the Event may be temporarily stored in this location. If MHTG needs the continued exclusive use of any of the Boat Launch Area beyond those specified herein, such use may be granted by the Superintendent, subject to any additional terms or conditions that may be agreed upon by MHTG and the Superintendent. Use of the Boat Launch Area under this Agreement is subject to the approval of a park event permit for the Event itself.
 - D. Use of the Piers and Boat Launch. MHTG may elect to use the piers and boat launch in the Boat Launch Area during the Event to allow for watercraft access and use during and as part of the Event. If MHTG elects to allow the use of the Boat Launch Area in this manner, it shall provide notice to the City no later than June 1 of the year of the Event. This notice shall include a use plan describing the manner in which the piers and boat launch will be used. No later than July 1, the City may unilaterally reject the proposal. If the use plan is approved, MHTG must meet the additional insurance provisions set forth in Sec. 4.B(2). If sufficient proof of

insurance is not provided to the City by August 1 prior to the Event and approved by the City Risk Manager, MHTG may not use the piers or boat launch during the Event.

- E. Cancelled Event. If the Event is cancelled, the MHTG shall notify the Parks Division, remove all equipment from the Boat Launch Area, and promptly open the Boat Launch.

- F. Public Communication. By June 1 of each year of this Agreement, MHTG shall submit a public communication plan to the Superintendent that details how MHTG will inform the public about the temporary closure of the Boat Launch Area. The plan shall include temporary closure notices at the Boat Launch and on parkland adjacent to Olin Turville Ct., in place no later than two weeks before the Event. On the day of the Event, the public communication will include electronic sign boards directed to inbound traffic on John Nolen Drive, and volunteers or security personnel stationed at the boat launch entrance to Olin-Turville Park. Upon approval by the Superintendent, the communication plan shall be implemented by MHTG and the costs of implementing this communication plan shall be borne by MHTG.

- G. Post Event Responsibilities. MHTG shall be responsible for the following post Event responsibilities, which responsibilities shall be done to the satisfaction of the City, as noted herein:
 - (1) MHTG shall be responsible for cleaning up and restoring the Boat Launch Area to its original condition so that it may be fully and safely used as a public boat launch beginning the day following the Event.
 - (2) Within 24 hours of the end of the Event, MHTG shall be responsible for cleaning up and removing all visible debris associated with the Event from the shoreline of Olin Park and the Boat Launch Area.
 - (3) MHTG is responsible for the disposal of all debris collected under this provision.

- H. Usage Fee. MHTG shall pay the City \$10,000 for the closure and use of the Boat Launch Area for the Event as set forth in this Agreement. Payment shall be due no later than thirty (30) days prior to the Event and MHTG may not use the Boat Launch Area under this Section until this fee is paid. MHTG shall also pay the City any other required Special Event fees or permit fees for the use of Olin-Turville Park for the Event.

4. Indemnification and Insurance.

- A. Indemnification. MHTG 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 MHTG's and/or MHTG'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. Insurance.

- (1) Required Coverage. MHTG will insure, as indicated, against the following risks to the extent stated. MHTG shall not commence work under this Agreement, nor shall MHTG 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. MHTG 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. MHTG's coverage shall be primary and noncontributory and list the City of Madison, their officers, officials, agents and employees as additional insureds. MHTG 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) Liquor Liability Insurance. 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.
- (2) Additional Coverage. If MHTG elects to use the piers and boat launch during the Event to allow watercraft access to the Event or to use watercraft as part of the Event under Section 3.C., MHTG must provide, during the period of MHTG's use of the Boat Launch Area under this Agreement, the following additional coverage.
 - (a) Commercial General Liability. Permittee shall procure and maintain as part of the Commercial General Liability insurance policy required above, coverage for watercraft liability (covering motorized and non-motorized watercraft whether owned, non-

owned or hired) in an amount not less than \$1,000,000 per occurrence.

- (b) Umbrella Liability. Permittee shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Watercraft Liability and Liquor Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
 - (3) 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.
 - (4) Proof of Insurance, Approval. MHTG 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. MHTG shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. MHTG shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager. If additional coverage under Subdivision (2) is required, proof of insurance shall be provided to the City Risk Manager no later than August 1 of the year of the Event.
 - (5) Notice to City of Changes in Coverage. MHTG 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. 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 MHTG the right to use the Boat Launch for the purposes set forth herein.
6. 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

MHTG: Mark Alfred, President
Madison Home Brewers and Tasters Guild, Ltd.
P.O. Box 1365
Madison, WI 53701-1365

7. Non-Discrimination. In the performance of services under this Agreement, MHTG 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. MHTG 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.

8. Default/Termination.
 - A. In the event MHTG shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of seven (7) days after verbal notice thereof to MHTG, 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 MHTG, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of MHTG 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.G regarding post-event responsibilities and 3.C regarding public communication, the City may perform this work, or cause this work to be performed, for MHTG and MHTG agrees to be responsible for the costs of any such work. Following the performance of such work, the City shall invoice MHTG for said work, which amount shall be paid to the City within thirty days of mailing of the invoice to MHTG.

 - B. Notwithstanding Subsection A., above, either party to this Agreement may in its sole discretion and without any reason terminate this Agreement at any time by furnishing the other Party with thirty (30) days written notice of termination, provided said notice is provided no later than June 1 of that calendar year.

9. 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.

10. 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.

11. 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.

12. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or MHTG 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 MHTG 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.
13. 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.
14. 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.
15. Compliance with Applicable Laws. MHTG, and MHTG's contractors, subcontractors and vendors 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 MHTG and its agents and employees in the performance of this Agreement and the conduct of the Event. MHTG, and their 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 operation of the Event and the use of the Boat Launch Area, specifically to include obtaining a special event permit or other parks related permits.
16. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of MHTG represents and warrants that he has been duly authorized to bind MHTG and sign this Agreement on MHTG's behalf.
17. 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.
18. Counterparts; Electronic Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Contract may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original. Executed copies or counterparts of this Contract may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Contract, fully executed, shall be as valid as an original.

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.
MADISON HOME BREWERS AND TASTERS GUILD, LTD.

Mark Alfred, 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 was approved by the Board of Parks Commissioners on _____ and authorized by Resolution Enactment No. RES 18-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 2018.

EXHIBIT A
Map of Boat Launch Area

