

**AGREEMENT BETWEEN  
THE CITY OF MADISON  
AND  
MADISON FIREWORKS FUND, INC.**

**(RHYTHM & BOOMS)**

This is an Agreement between the City of Madison, Wisconsin and Madison Fireworks Fund, Inc., a non-profit organization.

WHEREAS, on June 18, 1996, the Common Council of the City of Madison adopted Resolution No. 53,322 that authorized a partnership with Madison Firework Fund, Inc., to furnish a safe and enjoyable celebration of our nation's Independence Day, approved an allocation of costs for the 1996 Independence Day celebration; and

WHEREAS, for each year since the adoption of Resolution No. 53,322, the City of Madison ("City") and the Madison Fireworks Fund, Inc. ("MFF"), have partnered to provide to Madison area residents and visitors an Independence Day celebration known commonly as Rhythm & Booms; and

WHEREAS, the agreement between the City and the MFF expires on July 31, 2006, and City and MFF wish to reaffirm their partnership in furnishing a safe and enjoyable celebration of our nation's Independence Day.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

**I. TERM**

The term of this agreement commences on the day the Mayor signs it. The agreement will be in effect until July 31, 2011. Either party may terminate the agreement earlier by furnishing the other party with one (1) year's written notice of termination. Further, this agreement may be terminated upon six (6) months notice should there be a breach and such breach is not cured within such six (6) month notice period.

**II. OBLIGATIONS OF THE PARTIES**

1. 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, the MFF and the Rhythm & Booms Staff Team<sup>1</sup> shall file reports with City's Board of Estimates no later than October 15 of each year on the operational and financial aspects of the recently concluded event. Each report shall address ways of reducing costs for the next event and

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<sup>1</sup> City departments include: Parks, Police, Fire, Health, Metro, and Traffic Engineering. Other participants include: Comptroller's Office, Attorney's Office, Mayor's Office, Dane County 911, Emergency Management and Sheriff, Waste Management, MFF, Per-Mar Security, Madison Mallards, media vendors and district alderpersons.

reducing the City's financial contribution to Rhythm & Booms at the conclusion of this Agreement.

2. Warner Park usage shall be at all times subject to the approval of the Board of Park Commissioners and City. The Rhythm & Booms Planning Team shall be a resource to the Board and the Superintendent of Parks. MFF agrees that the Rhythm & Booms event, including any rescheduled dates or rain dates, shall not, in any year, occur on July 4<sup>th</sup>.

3. Except as hereafter provided, MFF shall arrange, manage and operate all aspects of the Independence Day celebration, 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. MFF 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.

4. Each year the City Comptroller shall determine the amount of expense incurred by City because of Rhythm & Booms, including expenses incurred because of any postponement of the celebration required by rain or other inclement weather. The Comptroller shall furnish the MFF and City Board of Estimates with a report detailing such expenses. As part of City's contribution to Rhythm & Booms, City shall continue to donate, not charge for, base/initial municipal services costs of seventy three thousand dollars (\$73,000) in 2007 and increased each subsequent year by the lesser of three (3) percent or the Consumer Price Index-All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics.

5. On or before October 31 of each year, the MFF shall reimburse City for costs related to police, fire, parks and traffic services in excess of the base municipal service contribution provided for in paragraph 4, above, up to fifty thousand dollars (\$50,000) in 2007 and increased each subsequent year by the lesser of three (3) percent or the Consumer Price Index-All Urban Consumers published by the U.S. Department of Labor, Bureau of Labor Statistics. The parties agree that containing costs is very important to each. Therefore, it is agreed that the MFF and City will work diligently to minimize and contain the cost of this event. MFF shall pay to the Warner Park Community Recreation Center (WPCRC) four thousand dollars (\$4,000) in 2007 and each subsequent year. In return for this payment, MFF shall be provided no cost access and use of the day care room and meeting room only, for "day of the event" activities and may connect to building water utilities. City's partnership in Rhythm & Booms is conditioned upon there being no increase or enlargement in existing activities (e.g., two music stages with beer gardens, plus one additional beer garden, a carnival of no greater than 60 amusement items and fireworks). Further, Rhythm & Booms shall not be marketed to increase the attendance at the park without City's written approval. Attached hereto and incorporated herein as Exhibit A is a diagram of Warner Park showing and listing the maximum size of the events' components. Any significant alteration or expansion of event activities beyond those contained herein without the written approval of the Board of Park Commissioners shall be a breach of this Agreement.

6. In order to assure the future of Rhythm & Booms, 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 further 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 five (5) year agreement.

7. City agrees, for the term of this Agreement, to provide MFF with a yearly contribution to Rhythm & Booms of seventeen thousand seven hundred seventy five dollars (\$17,775) or an amount equal to Dane County's yearly contribution up to a maximum yearly amount of twenty thousand dollars (\$20,000).

8. If MFF is not successful in raising the necessary dollars to fund any year's event, including such reimbursement to City as described above, MFF shall not be obligated to present Rhythm & Booms in that year or years. MFF shall notify City no later than January 31 of its intent not to present Rhythm & Booms that year. 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 baseball field, Northside Community Council's bingo tent and Warner Park Community and Recreation Center activities, MFF shall hold the exclusive rights to provide or contract for live music at Warner Park during Rhythm & Booms and to designate vendors for the event. City shall hold rights of approval regarding the live music 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. In particular, but without limitation, and subject to City's contract obligations as set out in its contract with the Northwoods League or any other contract for use of the baseball field, City shall act as a facilitator in providing for the coordination of MFF Independence Day activities and those of the baseball field user. Any use of the baseball field on the day of Rhythm & Booms shall be scheduled so as not to unduly interfere with or disrupt MFF Independence Day celebration activities or unduly or unreasonably increase police costs associated with the Independence Day celebration.

9. 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. MFF shall include the City's Mayor's Office in determining recipients for these charitable contributions. Any contributions to charity by MFF with proceeds related to the annual Rhythm & Booms celebration shall be made only to agencies that do not discriminate based on gender identity, sexual orientation or any other City of Madison protected class.

10. For any year in which Rhythm & Booms is postponed or cancelled due to rain or other inclement weather, MFF shall reimburse City on or before October 31 of that year for City expenses incurred because of such postponement or cancellation, in an amount not to exceed \$40,000, provided MFF receives insurance proceeds for a weather-related claim.

- (a) The rain date for Rhythm & Booms shall always be the Sunday immediately following the originally scheduled event date. In the event that Sunday is the 4<sup>th</sup> of July, the rain date shall be Monday, July 5<sup>th</sup>.
- (b) If a decision to postpone or cancel Rhythm & Booms 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 music stages, carnival, 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.

11. MFF shall adhere to set-up and teardown times established by the Parks Department and shall be responsible for assuring that all subcontractors and vendors adhere to the set-up and tear down times. Failure to adhere to set-up and tear down times may result in City imposing a financial penalty on MFF. The set-up and tear-down dates and hours shall be as follows:

- a. The fireworks shooter shall not begin set-up in Warner Park prior to the Sunday before the Saturday fireworks. Clean up from the fireworks shooter shall be completed by Tuesday following the event.
- b. Carnival trailers, equipment and the like shall not arrive in Warner Park until the Wednesday preceding the event date and shall entirely vacate the Park on the day following the Event.
- c. The mobile cell phone trailer and equipment shall not arrive in Warner Park until Wednesday preceding the Event. The mobile cell phone trailer and equipment shall be removed from Warner Park by Tuesday following the event.
- d. Beer trailers and/or promotions in the enclosed soccer field shall not arrive in Warner Park until Thursday preceding the Event. Beer trucks and/or trailers shall not be parked on the grass next to the Warner Park Community Recreation Center electronic marquis until the day immediately preceding the Event.

12. City reserves the right to allocate a specific number of surface parking spots for disabled parking.

### **III. AMENDMENT**

This contract shall be binding on the parties hereto and cannot be varied or waived by any oral representations or promises of any agent of the parties. Any change in any provision of this contract may only be made by a written amendment, signed by the parties or their authorized agent.

### **IV. NON-DISCRIMINATION**

In the performance of work under this contract, MFF agrees not to unlawfully 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.

## **V. THIRD PARTY RIGHTS**

This contract is intended to be solely between the parties hereto. No part of this contract 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.

## **VI. LAW APPLIED**

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

## **VII. 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.

## **VIII. INDEMNIFICATION**

The City shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its public officers or employees acting within the scope of their employment, in accordance with sec. 895.46(1), Wis. Stats. MFF shall be responsible for any injuries, claims or losses arising from or caused by the acts or omissions of its officers, agents or employees. The obligations of the parties under this paragraph shall survive the expiration or termination of this contract.

## **IX. INSURANCE**

1. MFF shall insure, and will require each fireworks and carnival subcontractor to insure, as indicated, against the following risks to the extent stated:

Commercial General Liability: Covering as insured MFF and naming the City as an additional insured, with no less than the following limits of liability: bodily injury, death and property damage of \$5,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. Subcontractor shall maintain a similar policy covering as insured each subcontractor.

Liquor Liability: Covering as insured MFF 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.

Rain and Wind: MFF shall maintain its current insurance level for the event.

1. Except for fireworks and carnival subcontractors, the limits of liability for other subcontractors shall be at least \$1,000,000 for bodily injury, death and property damage in the aggregate.

As evidence of the above listed coverages, Certificates 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: City Risk Management Office, 210 Martin Luther King Jr. Blvd., Room 406, Madison, WI 53703, no later than seven (7) days prior to the event.

2. The City has the following insurance: Commercial General Liability covering bodily injury, death and property damage of \$5,000,000.00 in the aggregate.

### **X. EXECUTION OF AGREEMENT**

This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement.

**IN WITNESS WHEREOF**, the parties hereto have set their hands at Madison, Wisconsin this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

#### **MADISON FIREWORKS FUND, INC.**

By: \_\_\_\_\_  
Terry Kelly, President

#### **CITY OF MADISON, WISCONSIN, a Wisconsin municipal corporation**

By: \_\_\_\_\_  
David J. Cieslewicz, Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

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Approved as to Form:

\_\_\_\_\_  
Michael P. May, City Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Dean Brassler, Comptroller

Date: \_\_\_\_\_

\_\_\_\_\_  
Kevin Houlihan, Risk Manager

Date: \_\_\_\_\_