

GOODMAN POOL USE AND GOODMAN WAVES MANAGEMENT AGREEMENT
Between the City of Madison and Friends of Goodman Waves, Inc.
For the 2024-2029 Seasons

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

WITNESSETH:

WHEREAS, the City of Madison owns and operates the Goodman Pool (the “Pool”), a public pool providing recreation swimming opportunities to all members of the public; and,

WHEREAS, in 2011, the City, working with private foundations, created the Goodman Waves Swim & Dive Team (the “Waves”), in order to provide a more equitable competitive swim and dive team opportunity for the Madison area community. The Waves are one of 13 teams that competes in the All City Swim and Dive League (the “League”), a recreational summer swim league for 5-18 year olds that has been in Madison for over 60 years; and,

WHEREAS, during the summer, the Waves hold practice at the Pool five times a week under the direction of volunteer and paid coaches, and compete in meets, at the Pool and other local pools, against other members of the League. During meets at the Pool, the City closes the entire Pool or portions of the Pool as outlined below to other members of the public; and,

WHEREAS, the friends and parents of the Waves have informally supported the Waves since 2012, and the Friends was officially formed in 2018 as a way to support the Waves and is made up of parents, volunteers and other community stakeholders committed to the success of the Waves; and,

WHEREAS, the Friends has expressed an interest in taking over the management and responsibility for the Waves, which the City is agreeable to, on the terms and conditions sets forth in this 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 of Agreement. The purpose of this Goodman Pool Use and Goodman Waves Management Agreement (the “Agreement”) is to set forth the conditions upon which the Friends will take over the management and responsibility of the Waves, and allow for specialized uses of the Pool.
2. Pool. The facility covered by this Agreement is the Irwin A. and Robert D. Goodman Swimming Pool facility located at 325 W. Olin Ave. in Madison (the “Pool”), and includes the pool and pool related facilities located on the site, as specified in this Agreement. This

Agreement does not extend any other rights or responsibilities to the Friends at Goodman Park.

3. Term. The initial term of this Agreement shall be for a period of one (1) years, for the 2024 calendar year, and shall run from January 1, 2024 through December 31, 2024. This Agreement may be renewed for five (5) additional one-year terms, for the 2025 through 2029 calendar years, upon written notice by Friends to the City no later than October 31 of the final year of then existing Agreement.
4. Fees. The City will not impose any fees on the Friends for the use of the Pool under this Agreement, although all Waves members will separately need passes or memberships for the Pool for any use of the pool outside of attendance at Waves practices, meets, or events. No Pool fees will be charged for League competitions held at the Pool.
5. Waves Funding.
 - a. Friends will take over the financial management of the Waves, including establishing and collecting membership fees.
 - b. City agrees to pay Friends up to \$8,000 per contract year to subsidize membership fees of qualified scholarship recipients. Friends will provide a 20% match to the scholarship grant. Friends must include information about the scholarships provided in the End-of-Year report, as described in Section 6.b(13).
 - c. City agrees to pay Friends up to \$2,000 per contract year to support the purchase of swim caps, team swimsuits, team t-shirts, sweatshirts, or other supplies for the Waves.
 - d. Friends are required to submit invoices to receive reimbursement for scholarships and supplies under this Section. Invoices must include line item details in order to be eligible for reimbursement, and, upon request of the City, must be supported by receipts or other back-up information.
6. Responsibilities of the Parties. The City agrees to make the Pool available to the Friends for the Waves, and the Friends agrees to take over management and operation of the Waves, subject to the conditions set forth in this Section.
 - a. Use of the Pool. Friends shall be allowed use of the Pool as follows:
 - (1) To operate and host four (4) home swim meets, during which time the Pool will be closed to the public.
 - (2) Operate and host four (4) home dive meets, during which time the diving well will be closed to the public, and the remainder of the Pool will remain open to the public.

- (3) To set up for meets held on Saturdays, Friends will have access to the Pool and one cabana section from 4:30 PM the day before the swim meet until 9:00 PM, and at least 2 hours prior to the scheduled start of the meet.
 - (4) To set up for meets held on a weekday, Friends will have access to the Pool and one cabana section at least 3 hours prior to the scheduled start of the meet.
 - (5) Conduct regular practices for the swim and dive teams.
 - (6) Conduct pre-meet organization events.
 - (7) Use one cabana section on five (5) occasions for team socials, subject to availability and approval of the Aquatics Supervisor. In the event of inclement weather during the scheduled use of the cabana area, Friends and City will work together to schedule an alternate date.
 - (8) Sell concessions during home swim meets, subject to obtaining necessary permitting to vend food in a public park, per Madison General Ordinance Sec 8.17. The Board of Parks Commissioners will consider waiving vending permit fees associated with this use.
 - (9) Access the concessions area and amenities during home swim and dive meets, including but not exclusive to the sinks, refrigerator, freezer, counters, and electrical outlets.
- b. Friends Responsibilities. As a condition of the use of the Pool pursuant to this Agreement, Friends agrees as follows:
- (1) Communication. Friends will participate in an annual kick-off meeting with the Aquatics Supervisor to review the contractual responsibilities of each organization.
 - (2) Scheduling. Friends will provide a schedule of practices, home meets, pre-meet organization events, social events, or other team events for approval by the Superintendent or their designee by March 1 of each year of the Agreement.
 - (3) Maintenance. While using the Pool, the Friends shall keep the Pool clean and properly store all equipment after use.
 - (4) Refuse. Friends agrees to walk the Pool after meets and practices to ensure that it remains free of debris or other obstructions. The Parks Division shall provide trash barrels or dumpsters and will assume responsibility for emptying the barrels or dumpsters as needed.

- (5) Vending. Friends shall not conduct nor invite any sales or concessions unless Friends has gained prior approval from the Parks Division and complied with Sec. 8.17, Madison General Ordinances.
- (6) Signage. Friends may have temporary signage on Pool only with prior written or email approval by the Superintendent of Parks, or designee. Waves may maintain the records board as currently posted on the building during the term of this Agreement.
- (7) Damages to Pool. Friends shall be responsible for repair of damages to Pool, excepting normal wear and tear, within ten (10) days written notice by City. If such repair is not completed to the satisfaction of City, Friends shall pay actual cost of restoration, such cost determined solely by the Parks Division. In addition, the Parks Division reserves the right to request a \$500 damage deposit for Friends' special use of Pool. The deposit, if requested, shall be submitted ten (10) days prior to the special event, and may not be released until thirty (30) days after the event
- (8) Storage. Friends will have access to the storage closet located behind the women's restrooms for supplies and equipment.
- (9) Improvements. Friends agrees that it shall not make, construct, or install any improvements, additions, betterments, or structures of any kind anywhere in Pool or on adjacent City property without first obtaining the City's written permission. All permitted improvements, additions, and betterments made by Friends to the Pool during the term of this Agreement shall be City property and thereafter a part of the Pool. All improvements, additions, or betterments made by Friends shall be made at Friends' own expense unless otherwise agreed upon by both Parties. Any improvements made by Friends without the City's permission shall be removed at no cost to the City.
- (10) Weapons Prohibition. Friends shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at Friends' or subcontractor's own business Pool. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).
- (11) Fundraising.
 - (a) Friends will appoint a Fundraising Chair to its Board of Directors to further the development of the Friends fundraising capacity, with the long term goal of replacing the City's subsidies set forth in Sec. 5.

- (b) Friends will develop a fundraising plan and strategy, which will be shared with the City by December 15, 2024.
 - (12) Scholarships. Friends will provide Waves scholarships to eligible participants. Eligibility will be determined by Friends, and eligibility requirements will be shared with the City.
 - (13) Reporting. Friends will provide an End-of-Year Report that includes the number of scholarships provided each season, the amount of scholarships awarded, and the ages and zip codes of Waves participants. Any data shared with the City will be de-identified. Friends will include photos of swim and dive meets as part of the End-of-Year Report. Any participants in photos must have signed a photo release waiver. The End-of-Year Report will be sent to the City by September 30 of each year of the agreement.
 - (14) Evaluation. Friends will develop an evaluation plan that identifies and measures participant outcomes for the 2025 season. The evaluation plan will be sent to the City no later than December 15, 2024.
- c. City Responsibilities. In addition to those responsibilities set forth above, the City agrees as follows:
- (1) Communication. City will participate in an annual kick-off meeting with the Friends to review the contractual responsibilities of each organization.
 - (2) Scheduling.
 - (a) During the off-season, but no later than March 1 of each contract year, City and Friends will meet to determine the best practice and meet schedule to accommodate as many Pool users as possible.
 - (b) City will set aside a minimum of six (6) lanes of the Pool for Waves practices.
 - (c) The Waves coach and Aquatics Supervisor will maintain regular communication regarding lane use. In the event that additional lane space is available for Waves practices during the season, use of additional lanes by the Friends is subject to approval of the Aquatics Supervisor.
 - (d) City will provide meeting space for planning meetings, Friends Board of Directors meetings at locations and times that are mutually agreed upon.
 - (3) Maintenance Responsibilities. City's responsibility for maintenance of the Pool shall be limited to the following items:

- (a) Provision and emptying of trash barrels and dumpsters in the parking lot.
 - (b) Clean, stock, and maintain the Pool consistent with its normal operations, including chemical and heating protocols for safe use of the Pool as required by Wis. Stat. Chapter ATPC 76.
 - (4) Repairs. Except as set forth in Subsection 5.a(8) and Subsection 5.b(9), Friends shall give the City prompt written notice of the necessity of repairs and replacements and the City shall have a reasonable time to undertake and complete such repairs and replacements.
 - (5) Inclement Weather. City has sole authority to close the Pool due to inclement weather. City will work with Friends to reasonably reschedule any meets, events, or activities that are canceled due to inclement weather.
 - (6) Staffing. City will provide lifeguards during Friends practices and meets as required by Wis. Stat. Chapter ATPC 76.
 - d. Vacating the Pool. Within thirty (30) days after the end of the swim season, Friends agrees to vacate the Pool, remove all personal property, and leave the Pool in a state of cleanliness and repair to City's satisfaction. Friends' personal property includes any equipment used in the conduct of Friends and Waves programs. By agreement between Friends and the Parks Superintendent, the Parties may amend the terms of the removal of Friends' personal property.
 - e. Advertising. It is understood that in the operation and conduct of this Agreement, City does not grant Friends the right to sell or distribute any goods or services provided by City, nor does City grant Friends the right to use a City trade name, trademark, logo type, advertising, or other commercial symbol.
 - f. Subcontracting. Either party may contract with a third party to perform any duties set forth in this Agreement, with the understanding that any of Friends' third party contracts are subject to the prior written approval of the City.
7. Indemnification and Insurance.
- a. Indemnification. Friends 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 Friends' and/or Subcontractor'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. Hazardous Substances; Indemnification. Friends represents and warrants that its use of the Pool will not generate any hazardous substance, and it will not store or dispose on the Pool nor transport to or over the Pool any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Friends further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.
- c. Insurance.
- (1) Required Coverage. Friends will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. Friends shall not commence work under this Agreement, nor shall Friends 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. Friends 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. Friends' coverage shall be primary and list the City of Madison, their officers, officials, agents and employees as additional insureds. Friends 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) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. Friends shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Friends shall require all subcontractors under this Agreement

(if any) to procure and maintain such insurance, covering each subcontractor.

- (c) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability and Employers Liability with minimum limits of \$2,000,000 per occurrence and in the aggregate.
 - (d) Property Insurance. Friends shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Pool. Such personal property includes, but is not limited to, Friends installations and equipment. The City shall not be liable for any damage to or loss of property of Friends or others located on the Pool except to the extent such damage or loss was caused by the City's sole negligence or willful act.
- (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. Friends 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. Friends shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. Friends 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. Friends 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) Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, Friends shall immediately cease use of the Pool and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
 - (6) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

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
330 E. Lakeside St.
Madison, WI 53715

Friends: David Zoeller, President
Friends of Goodman Waves, Inc.
c/o Hawkes Quindel
409 E. Main St.
Madison, WI 53703

Either party shall give thirty (30) days written notice to the other party regarding any changes to the name or address of the notice recipient.

9. Non-Discrimination. In the performance of the services under this Agreement the Friends agrees not to discriminate against any employee or applicant 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. Friends 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, sexual orientation, gender identity or national origin.
10. Nondiscrimination Based on Disability. Friends 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 assurance of compliance with Section 39.05 is provided by Friends prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, “City financial assistance” includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

Friends assures that, in providing any service at the Pool, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;

- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or,
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

Friends shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

11. Affirmative Action.

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

The Friends (the "Contractor" in this Section) agrees that, within thirty (30) days after the effective date of this Agreement (the "Contract" in this Section), 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, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Contractor agrees to interview and consider candidates referred by the Department, or an organization designated 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 the above requirements (Sec. 10.a) at the time the Request for Exemption in 10.b(2) is made.

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

The “ARTICLES OF AGREEMENT” beginning in para (5) apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000 Aggregate Annual Business with the City*	\$50,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the Finance Director
Rights

**As determined by the Department of Civil

- (1) Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in section 10.b(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights (“Department”) makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 10.b(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.
- (2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.
- (3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City for the calendar year in which the contract is in effect. CONTRACTORS WITH 15 OR MORE

EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 10.b(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.

- (4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.
- (5) Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to ensure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity 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, sexual orientation, gender identity 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

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true (**check one**):

- A. Contractor 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, Contractor 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.
- C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

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 ten thousand dollars (\$10,000), 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.)

12. Default/Termination.

- a. In the event Friends shall default in any of the covenants, agreements, commitments, or conditions herein contained, or fails to fully perform and carry out any term or condition of this Agreement to the satisfaction of the City, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Friends, 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 Friends, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Friends under this Agreement.
- b. Notwithstanding Subsection (a), either party may terminate this Agreement upon sixty (60) days written notice to the other party.

13. Disclosures and Acknowledgement. With full and complete knowledge, Friends accepts Pool, and any improvements made thereto during the course of this Agreement, in an "as is" condition.

14. Title to be Retained by City. City shall retain title and ownership of Pool together with all buildings, fixtures and improvements thereon without any payment whatsoever to Program.

15. Binding on Parties; Amendments. 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 who executed this Agreement.

16. Assignability/Subcontracting. Friends shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval.

17. 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.

18. 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.
19. Status of Parties. It is agreed that Friends is an independent contractor and not an employee or representative of the City, and that any persons who Friends utilizes and provides for services under this Agreement are employees or volunteers of Program and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Program the right to use the Pool for the purposes set forth herein, that the City is not granting Program the right to sell or distribute any City goods or services nor is there a community of interest, as that term is defined at Wis. Stat. Sec. 135.02(1), between the City and Program arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
20. 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 Program the right to use the City's Pool for the purposes set forth herein.
21. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Friends 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 Friends 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.
22. 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.
23. Choice of Law and Forum Selection. This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within Dane County, State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.
24. 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.

25. Counterparts; Electronic Delivery. This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement 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 Agreement, fully executed, shall be as valid as an original.
26. 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.
27. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of Friends represents and warrants that he has been duly authorized to bind Friends and sign this Agreement on Friends' behalf.

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

FRIENDS OF GOODMAN WAVES, INC.

Date

CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this Agreement by City was approved by the Board of Parks Commissioners on _____
and was authorized by Resolution Enactment No. RES - _____, ID No. _____, adopted by the Common
Council of the City of Madison on _____, 20____.