

BREESE STEVENS STADIUM USE AGREEMENT

Between the City of Madison and Big Top Events LLC
For the 2019 - 2028 Calendar Years.

THIS AGREEMENT, made and entered into by and between the City of Madison, a Wisconsin municipal corporation (“City”), and Big Top Events LLC, a Wisconsin limited liability company (“Big Top”), is effective as of January 1, 2019 or the date by which all parties have signed hereunder, whichever is later.

WITNESSETH:

WHEREAS, the City believes it is in the public’s interest to afford the citizens of the City an opportunity to attend, participate, and view athletic, sporting, and special events at historic Breese Stevens Stadium, located at 917 E. Mifflin St. (the “Stadium”) in the rapidly developing East Washington corridor; and,

WHEREAS, the City recognizes the considerable knowledge and specialized skills required to successfully operate a multi-use Stadium facility; and,

WHEREAS, the City issued RFP# 8424-0-2015/DA to request proposals for the facility, catering and event management operations for the Stadium; and,

WHEREAS, Big Top Events LLC was selected to manage the concessions, alcohol, event management and facility operations of Breese Stevens Stadium; and

WHEREAS, Big Top Events LLC has successfully operated the facility since 2015 and desires to extend their contractual commitment to the use of the Stadium and bring Wisconsin’s first professional minor league soccer team to Breese Stevens; and

WHEREAS, City and Big Top Events LLC recognize the value of existing user groups, especially Madison East High School, and the importance of accommodating these users to ensure a positive and active facility; and

WHEREAS, the Parties wish to formalize the terms and conditions under which the Big Top Events LLC is authorized to use the Stadium; and

WHEREAS, the City and Big Top (the “Parties”) wish to formalize the terms and conditions under which Big Top is authorized to use the Stadium; and,

NOW, THEREFORE, in consideration of the promises and mutual covenants of the parties hereto, the Parties agree as follows:

1. Stadium Use. Big Top shall have use of Stadium for the operation of an athletic, special event, catering and concession operation, subject to the terms and conditions set forth in this Agreement. The entirety of the Stadium is as set forth in Attachment A.
 - a. Initial Term. This Agreement shall terminate on December 31, 2028.
 - b. Renewal. This Agreement may be renewed for one five-year term upon mutual agreement between Big Top and the City. Except as set forth in this paragraph, the renewal shall be on the same terms and conditions of this Agreement. If Big Top desires to renew this Agreement, Big Top must give notice in writing to the City no later than December 31, 2027 by the mailing of a notice by certified mail, return receipt requested, or by personal delivery to the Superintendent of Parks at the address specified in Section 14. The City shall agree to the renewal, terminate the agreement, or propose modifications to the terms of the agreement within 45 days of receiving the notice from Big Top.
 - c. Changes in Terms of Agreement. If Big Top desires any changes in the terms and conditions of this Agreement for the renewal period, the changes shall be proposed at the time of providing the City with the notice of renewal. Substantive changes, including an increase in the number of concerts, a change in maximum allowable dB, an alteration of alcohol restrictions, modifications to the Facility Rental Fee or Capital Improvement obligations, must be approved by the Common Council. Other changes regarding the use of the Stadium must be approved by the Board of Parks Commissioners.
2. Scheduling and Use of the Stadium.
 - a. Scheduling of Events at the Stadium. The Parties agree that Big Top will be responsible for the scheduling of the Stadium by all users. However, scheduling of the following events shall be as follows:
 - (1) Madison Metropolitan School District. Big Top shall honor the Breese Stevens Stadium reservation commitments included in the terms of the Agreement between the City and the Madison Metropolitan School District (“MMSD”), a copy of which is attached and incorporated as Attachment B (“MMSD Agreement”). MMSD is a preferred tenant in the Stadium. Therefore, Big Top shall make good faith efforts to negotiate a commercially reasonable and fair extension of the MMSD Lease or a new agreement with MMSD regarding MMSD’s use of the Stadium with a term substantially the same as the Term of this Agreement. MMSD events held at the Stadium under the terms of the MMSD Lease are “MMSD Events.” Concerts shall not be permitted as a part of such MMSD Events.
 - (2) City Events. The City may use the Stadium for up to two dates during the year for City sponsored events. These events will be without charge for usage, rental, or lighting. The City shall provide notice to Big Top of event

dates before January 1 of the year in which the City events are to occur. Concerts shall not be permitted as part of such City events.

- (3) Madison Parks Foundation Events. The City shall submit, on behalf of the Madison Parks Foundation, Inc. (“Parks Foundation”), for up to eight (8) hours on each of two (2) days to be reserved for Parks Foundation events in the subsequent year, (each, a “Madison Park Event”). The City shall notify Big Top of its proposed Madison Park Event dates before January 1 of the year in which the Madison Park Events are to occur. Big Top will not charge the Parks Foundation any usage or rental, or lighting fees for Madison Park Events. Concerts shall not be permitted as part of such Madison Parks Foundation events.
 - (4) Community Uses. Big Top will open the Stadium without admission charge to the public (each, a “Community Event”) for up to eight (8) hours on each of eight (8) days per calendar year. Community Use Events shall be designated annually and included in the Impact Plan in section 2(c)13 approved by the Board of Park Commissioners. Concerts shall not be permitted as part of such Community Use events.
- b. Conditions of Use. Big Top’s use of the Stadium under this Agreement shall be limited as follows:
- (1) Hours of Operation. Except as provided for in this paragraph, the Stadium shall not be open past 10 PM on weeknights and 10:30 PM on weekends. Big Top must submit a written request to the Superintendent of Parks, at the address listed in Section 14, with a copy to the Alder and the Neighborhood Association, at least twenty-one (21) days prior to the date of any event or promotion that requires the hours of operation at Stadium to be extended beyond these hours. In the event a game extends beyond these times, the game may continue until 10:30 PM on weeknights or 11:00 PM on weekends, at which time the game must be suspended. The Parks Superintendent may approve an extension beyond these times based upon extenuating circumstances such as weather.
 - (2) Spectator and Vending Hours. Big Top may not allow spectators to enter Stadium more than one hundred twenty (120) minutes prior to posted game time and shall clear Stadium of all spectators within thirty (30) minutes of the completion of any game. Big Top agrees to cease all vending of alcoholic beverages at the conclusion of each day’s last scheduled event.
 - (3) Capacity. Big Top shall not permit any user to exceed the approved patron capacities for the Stadium. Big Top is responsible for preparing capacity proposals for future Big Top Events at the Stadium. Capacity limits may only be amended by approval of the Parks Superintendent and approval of the Madison Fire Department.

- (4) Crowd Management Plan. A crowd management plan, approved by the Madison Fire Department, and the Madison Police Department for Concerts or other Big Top Events where the field area will be utilized for festival seating or general admission is required under this Agreement. Big Top shall be responsible for implementing the conditions of the Crowd Plan for all Stadium Events. If Big Top wishes to change any Crowd Plan, then Big Top shall seek prior approvals from the Madison Fire Department, and the Madison Police Department.
- (5) Fireworks Events. Big Top may hold a fireworks event at the Stadium only as provided for in this paragraph. If Big Top intends on holding a fireworks event at the Stadium, Big Top shall submit a written request for such event to the Superintendent of Parks, with a copy to the Alder and the Neighborhood Association, at the address listed in Section 14. Board of Park Commissioners approval is required before fireworks can be discharged at the Stadium. Big Top shall submit all fireworks event requests in a timely fashion allowing time for the request to be included on the Agenda of the Madison Board of Park Commissioners at a regularly scheduled meeting. Big Top shall be responsible for determining the Board's meeting dates and times as that information is readily available on City's web site at www.cityofmadison.com. All approved fireworks events require the payment of the Parks fireworks fee applicable at the time of the permit. In addition to obtaining the Board of Parks Commissioners approval, Big Top is responsible for complying with other City permitting requirements regarding fireworks events.
- (6) Concerts. "A Concert" is the use by Big Top of the entire Stadium exclusively for a musical performance, or series of performances promoted and held as a single event not to exceed five and one-half (5.5) hours. Concerts do not include any MMSD Event, Madison Park Event, Community Event, City-Sponsored Event or any non-"Concert" Big Top Event that includes a musical performance with a lower level of sound allowed. Big Top may hold seven (7) Concerts in in each year of the Term, as may be extended or renewed, subject to any reductions as provided in this Agreement. Big Top may have one additional Concert at the Stadium in any calendar year with the prior approval of the Parks Superintendent in consultation with the Alder. If the Alder and Parks Superintendent do not agree, the request will be referred to the Board of Park Commissioners. Big Top shall limit the number of Concerts on Sunday through Thursday nights during the MMSD school year to a maximum of three (3) concerts in any one year and no more than twenty (20) concerts over the ten-year agreement. Any additional concert authorized under this section will increase the Facility Rental Fee by \$10,000.
- (7) Noise Limitations. Big Top agrees to maintain an amplified sound level of no greater than a sustained 100dB (across all octave bandwidths) at the sound production stage for each concert event. For these concerts, speakers shall not be oriented to face toward Mifflin St. All amplified sound for Concerts will end by 10 PM. All other events will be operated at a dB level

under 85 at sound board or a dB level under 83 at the perimeter of the Stadium, as determined by the Parks Superintendent. Any non-athletic event occurring prior to 10:00 AM will be at a dB level under 75 at the perimeter of the Stadium. In the event that a sustained violation of these conditions occurs, Big Top will be responsible for citations under Madison General Ordinances. If the violation is deemed significant by the Parks Superintendent, the matter will be referred to the Board of Parks Commissioners, which will have the option to reduce the subsequent year's authorized concert event count by 1 per concert event violation.

- (8) Security Plan. Big Top shall prepare a security plan for all uses of the Stadium. The plan shall be approved by the Parks Superintendent and the Madison Police Central District Captain.
- (9) Advertising. Big Top shall be allowed to advertise within the Stadium and advertise for events at the Stadium using the Stadium's name. However, the City retains the right to review and approve all advertising displayed in the Stadium. Any advertising copy that is inconsistent with the mission of the City's parks system or the City of Madison shall not be permitted. Any advertising or signage must comply with City of Madison Ordinances and Zoning requirements.
- (10) Tobacco. Big Top shall not sell, give away or advertise any cigarettes, electronic cigarettes, or tobacco products on City premises. Big Top shall not allow any smoking or use of electronic cigarettes within the walls of the Stadium.
- (11) Alcohol. Big Top may serve fermented malt beverage products (beer and wine coolers) or wine to the public at events taking place at the Stadium. Private parties not open to the general public (e.g. weddings, corporate outings) that include renting of the entire facility may be served liquor assuming proper licensing is in place. Liquor may also be served in private hospitality areas that are separately ticketed, with tickets sold in advance as a group, and have additional security incorporated into the Security Plan in Section 3(b)9 of this Agreement. Big Top is responsible for obtaining the appropriate license for the sale of liquor, wine and beer from the City Clerk each year and agrees to comply with all applicable liquor laws, including conditions placed on the alcohol license.
- (12) Weapons Prohibition. Big Top shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, while using the Stadium under this Agreement.

c. Operational Responsibilities.

- (1) Staffing. Big Top shall provide all staff for the Stadium, including, but not limited to, players, coaches, managers, ushers, ticket sellers, scorekeepers,

public address announcers, concession staff, security staff, and field maintenance crew, parking attendants and cleaning crew. Big Top agrees to employ staff adequate to provide outstanding customer service to event attendees, neighborhood residents, and facility users.

- (2) Concessions. Big Top may provide concessions to users of the Stadium. Big Top, or Big Top's contractors or vendors, shall be responsible for securing any necessary permits or licenses needed to sell food or beverage concessions at the Stadium. Big Top shall establish policies that prohibit the carryout of any food or beverage containers from the Stadium.
- (3) Usher Uniforms. Big Top ushers shall wear a uniform, at a minimum a clearly identifiable shirt, identifiable by color, logo or some other measure, as agreed to by the Parks Superintendent.
- (4) Field Covering. Big Top acknowledges that if it requires additional field covering beyond the amount covered under Section 2.d(4)(a) of this Agreement, it will supply said covering. Big Top shall have the right to rent the city owned field cover to other entities that provide proper and approved insurance to the City from time to time with any net financial profit being donated to the Madison Parks Foundation into a fund for future improvements to Breese Stevens Field.
- (5) Field Preparation. Big Top agrees to prepare and mark the field for all games scheduled by Big Top, including games scheduled under Section 2.a of this Agreement, no later than two (2) hours prior to game time, weather permitting.
- (6) Locker Room Access. Big Top shall provide access to existing locker room space for all MMSD sponsored athletic events at the Stadium. Big Top may reserve one locker room area for exclusive use by a professional soccer team.
- (7) Maintenance and Operations. Big Top shall be responsible for all maintenance and all daily operation expenses at the Stadium, to specifically include, but not be limited to, the costs of grooming, landscaping, irrigation, and lining the field during scheduled dates, electricity and water use, other utilities, telephone service, and other similar costs. All building and field maintenance operations will adhere to the Parks Division's Integrated Pest Management (IPM) standards. Utility costs are subject to payment under 4.a.5 of this Agreement. Moreover, all equipment and supplies necessary to perform these responsibilities, and the costs to run and maintain said equipment, shall be the responsibility of Big Top. Big Top will collaborate with the City to review the condition of the playing surface at least two times per year. City staff will oversee all significant field turf maintenance and manage any major field turf repairs. Big Top shall be responsible for routine maintenance costs associated with the operation of the facility and

for repairs up to \$5,000. The valuation of repairs will be determined by the Parks Superintendent in consultation with Big Top.

- (8) Cleaning Responsibilities. Big Top shall provide all necessary cleaning supplies and labor to maintain in a clean and sanitary condition seating areas, space beneath bleachers, the concourse, concession stand and adjacent area, public restrooms, locker rooms, adjoining parking lots, press box, office area, and any other area within the Stadium used for Big Top activities. Any custodial services, and any chemicals, trash-liners, soap and paper used by Big Top pursuant to its obligations under this provision, are required to be in accordance with the City's Green Cleaning Program and comply with the green product standards, specifications and practices of this Program. Big Top is required to be familiar with the applicable standards of the City's Policy for a Sustainable Green Cleaning Program. These standards are set forth in the City of Madison's Administrative Procedure Memorandum No. 4-6, available at <http://www.cityofmadison.com/mayor/apm/4-6.pdf>, and are subject to change. The failure to abide by the requirements of this Program shall be a default subject to Section 8.a of this Agreement.
- (9) Refuse. Big Top shall deposit all trash and recycling from Stadium use in dumpsters provided by Big Top, and provide for all trash removal services. Big Top agrees to not begin clean up operations prior to 7:00 a.m.
- (10) Carryout Policy. Big Top agrees to enact and enforce policies that prohibit the carryout of food and beverage containers from the Stadium
- (11) Public Safety. Big Top shall be responsible for public safety and shall coordinate with the City of Madison Central Police District to ensure public safety requirements are adequately met.
- (12) Alcohol Beverage Policy. Big Top shall annually submit its alcohol beverage policy to the Alcohol License Review Committee for approval by the ALRC. The alcohol beverage policy shall address how Big Top will prevent underage drinking and over consumption at Big Top games and Stadium events. A failure to have the alcohol beverage policy approved by the Alcohol License Review Committee will not be a default under this Agreement, but the matter shall be resolved in the alcohol licensing process.
- (13) Impact Plan. Big Top shall submit by March 1st of each year, an annual community and neighborhood impact plan to the Board of Park Commissioners, with a copy to the Alder and Neighborhood Association, addressing how Big Top will address its impacts on the neighborhood surrounding the Stadium, including pedestrian safety, noise, litter and other neighborhood impacts, in that calendar year. Prior to submitting the plan, Big Top will work with the Neighborhood Association to hold a neighborhood meeting if deemed necessary by the Neighborhood

Association. The neighborhood impact plan must be approved by the Board of Park Commissioners annually. Failure to secure approval will be a default subject to Section 8.a of this Agreement.

- (14) Fan Access Plan. Big Top shall submit, by March 1st of each year, an annual Multi-Modal Fan Access Plan to the Board of Park Commissioners, with a copy to the Alder and Neighborhood Association. This Plan will detail Big Top's plan to provide sufficient parking at or near the Stadium, and address customer access to the Stadium by bus, bicycle and foot. Big Top must provide a total of 200 parking spaces per 1,000 tickets sold to an event with a maximum requirement of 1,600 spaces under this agreement. As a part of the multi-modal transportation plan, Big Top will provide at least 175 permanent bike parking spaces, and ensure at least 35 bike parking spaces per 1,000 tickets sold to the event on or adjacent to the facility for events with attendance of more than 5,000. Failure to have the spaces secured and the plan in place allows the Superintendent or the Board of Park Commissioners to reduce the capacity of the event on a proportional basis. The fan access plan must be approved by the Board of Park Commissioners annually. Failure to secure approval will be a default subject to Section 8.a of this Agreement.
- (15) Special Maintenance Needs. Prior to the start of each calendar year, representatives of Big Top and the City will meet to discuss any special maintenance needs related to the Stadium. Big Top and the City will endeavor to identify appropriate times to undertake such maintenance so as to not disrupt use of the Stadium by Big Top or others.
- (16) Licenses and Permits. Big Top agrees to obtain and keep in good standing all licenses and permits related to its operation at the Stadium.

d. City Responsibilities.

- (1) Maintenance and Repair. Except as to duties specifically delegated to Big Top under this Agreement, the City agrees to be responsible for the repair of the Stadium, including, specifically, repair of all structures and fixtures at the Stadium other than in the field area, such as general building, stadium lighting, and fixture repair, if the cost is greater than \$5,000 as determined by the Parks Superintendent.
- (2) Field Turf. The City agrees to be responsible for conducting semi-annual review meetings on the condition of the field turf and to ensure repairs are made to the playing surface as expeditiously as possible.
- (3) Lighting Access. The City agrees to provide access to Big Top for the lighting control system for the Stadium.

(4) Specific Equipment. Except as to duties specifically delegated to Big Top under this Agreement, the City agrees to be responsible for providing the following equipment at the Stadium:

- (a) Appropriate field cover for a heavy duty access road to midfield and cover for up to 20% of the field turf.
- (b) Football Goalposts and 2 Soccer Goals.
- (c) Initial supplies in 2015 to accommodate soccer and football games at the Stadium, including first down markers, corner flags, etc.
- (d) One Scoreboard.
- (e) Press box facilities including high speed internet connectivity.
- (f) Field turf maintenance equipment.
- (g) Any other equipment as agreed to in writing by Big Top and the Parks Superintendent.

3. Fees, Improvements, Revenues and Related Financial Matters.

a. Facility Rental Fee.

(1) Fee Determination. Subject to any adjustments provided for by this Agreement, Big Top agrees to pay an annual fee for the use of the Stadium (Facility Rental Fee). This Fee includes all direct facility and parks fees for the use of the facility by Big Top for all athletic, sporting, community, concerts and special events. The Facility Rental Fee for each calendar year of this Agreement, including the renewal period, shall be:

2019:	\$68,000
2020:	\$70,000
2021:	\$72,000
2022:	\$74,000
2023:	\$76,000
2024:	\$79,000
2025:	\$82,000
2026:	\$85,000
2027:	\$88,000
2028:	\$91,000
2029:	\$100,000
2030:	\$103,000
2031:	\$106,000
2032:	\$109,000
2033:	\$112,000

- (2) Extra City Services. Big Top shall be responsible for the cost of any additional event-related personnel required by the City (e.g., police, parks or fire staffing) for Big Top Events.
- (3) Usage Reduction. In the event that the total number of Concert Events held in a year is less than seven (7), a credit of \$10,000 each for up to four Concert Events not held will be applied to the Facility Usage Fee for the current and future years of the agreement.
- (4) Reynolds Park Usage. The Facility Rental Fee includes the use of Reynolds Park for up to two days per year, subject to availability. If Big Top wishes to use this park facility, Big Top must schedule the Park through the Parks Superintendent at least 60 days in advance of the event.

b. Capital Improvements.

- (1) Definition. Capital Improvements are permanent improvements made to the Stadium facilities, and includes fixtures and other movable equipment intended to have permanence at the Stadium (e.g. goal post) and valued at more than \$10,000.
- (2) Capital Improvement Approval Procedure. Any Capital Improvements desired by Big Top during the course of this Agreement that include City funding shall be submitted to the Parks Superintendent in writing prior to April 1 of each year for potential inclusion in the Capital Budget. Any Capital Improvements funded exclusively by Big Top and valued at less than \$25,000 are subject to the approval of the Parks Superintendent. Any Capital Improvements funded exclusively by Big Top and valued at more than \$25,000 are subject to approval by the Board of Park Commissioners. All improvements completed at the Stadium must be approved by the City prior to work commencing and the Improvements are subject to all City codes, permits and regulations. City shall retain ownership of any Capital Improvement to the Stadium funded in whole or in part by any source, and Big Top is not entitled to any reimbursement from the City in the event of the termination of this Agreement under Section 8.
- (3) Soccer Improvements. The City agrees to manage a capital project and provide a capital contribution of \$1,300,000 towards, the soccer-related improvements described in Attachment D ("Soccer Improvements").
- (4) Capital Improvement Rental Credit. Big Top shall receive a credit against the Facility Rental Fee for the full amount of any City-approved Capital Improvements up to \$300,000 during the term of this agreement. The credit may be carried forward and applied against future annual amounts of the Facility Rental Fee. However, the credit shall not be applied to reduce an annual Facility Rental Fee to less than \$25,000.

- c. Payment. Big Top agrees to make all necessary fee payments to the City no later than thirty (30) days after the date of invoice. The first \$25,000 towards the Facility Rental Fee is due on March 30th each year. The remaining annual Facility Rental Fee is due on November 30th each year, with any excess credits carried over to the subsequent year. Big Top agrees that any payments overdue thirty-one (31) days or more after the date of invoice incur a late payment interest charge of eighteen percent (18%) per annum calculated on a daily basis. The City shall provide all invoices to Big Top for the regular operating season on or before November 1 each year, or the next business day after November 1 if it should fall on a weekend or holiday.
- d. Revenues:
 - (1) General Operations Revenue. Big Top shall set facility fees and concession prices for the Stadium and, except as noted herein, shall retain all revenues from sales related to admissions, advertising, programs, novelties, television and radio rights, and food and beverage concessions for any event scheduled by Big Top other than those covered under Section 2.a of this Agreement. Big Top further retains the rights to the food and beverage and advertising for events covered under 2.a of this Agreement if it chooses to provide these services for those events. City will allow Big Top the exclusive vending rights for all events scheduled by Big Top and held in Stadium.
- 4. Assignment and Subcontracting. Big Top shall not assign this Agreement or any interest therein. Big Top may not subcontract the use of Stadium without prior written approval of the Parks Superintendent. Big Top may schedule and execute service contracts for the use of the Stadium by other entities. Big Top may subcontract portions of the Stadium to any business (e.g., restaurants or retail businesses) permitted under applicable City zoning (each, a “Business Subcontract”). Each Business Subcontract shall be subject to the terms and conditions of this Agreement and have a term no longer than the Term of this Agreement. Big Top and any subcontractor under a business subcontract shall have the right to renovate, remodel, build out and construct improvements in the Stadium, subject to obtaining all licenses and permits required under applicable City ordinances and section 3.b(2) of this Agreement. Each business subcontract shall, among other things, prohibit any use that is in conflict with City ordinances or that would constitute a nuisance under applicable law. No subcontractor to this agreement is authorized to have outdoor amplified music.
- 5. Disclosures and Acknowledgement. With full and complete knowledge, Big Top accepts Stadium, and any improvements made thereto during the course of this Agreement, in an “as is” condition.
- 6. Home Games. Big Top covenants that if Big Top owns and/or operates a sports team that uses the Stadium on a routine basis, the team will play all its home games in Madison, Wisconsin, and that Big Top shall not relocate or agree to relocate or permit the relocation of the Big Top owned or operated team outside the boundaries of Madison, Wisconsin, during the term of this Use Agreement. The City will waive this requirement one time per

year, if requested. This provision does not apply until the City has substantially completed the Improvements in Section 3.b.3 of this Agreement.

7. Indemnification and Insurance.

- a. Indemnification. Big Top 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 Big Top' 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. Big Top represents and warrants that its use of the Premises will not generate any hazardous substance, and it will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Big Top 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 Insurance. Big Top will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. Big Top shall not commence work under this Agreement, nor shall big Top 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) General Liability. Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations in an amount not less than \$1,000,000 per

occurrence. This policy shall also provide contractual liability in the same amount. The Big Top' coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. Big Top shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds. This insurance shall be required for the full term of the lease and any renewal periods.

- (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 (unless Big Top employs an independent concessionaire, in which case Big Top shall cause the concessionaire to secure such liquor liability insurance coverage).
 - (c) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Big Top shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the lease and the renewal period.
 - (d) Workers' Compensation. Statutory Workers' Compensation insurance as required by the State of Wisconsin. Big Top shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Big Top shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - (e) Umbrella Liability. Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Liquor Liability, Business Automobile Liability and Employers Liability with minimum limits of \$4,000,000 per occurrence and in the aggregate.
- (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. Big Top shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. Big Top shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Big Top shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- (4) Notice of Change in Policy. Big Top and/or 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, Big Top shall immediately cease use of the Premises 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. Default and Termination.

- a. In the event Big Top 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 thirty (30) days after written notice thereof to Big Top, 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 Big Top, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Big Top under this Agreement.

9. Restoration of Stadium. Within thirty (30) days of the termination of this Agreement, Big Top agrees to remove all of its equipment and property and to vacate Stadium. Items to be removed include all items in Attachment C to this Agreement. Big Top agrees to maintain and restore any capital improvements made in conjunction with Section 3.b and to restore Stadium to its condition prior to the commencement of Agreement, excepting normal wear and tear and any improvements made thereto. Big Top acknowledges City shall be the sole judge of whether Stadium, including capital improvements, has been completely vacated and satisfactorily restored. At its option, the City may complete any removal of property

and restoration of property it deems necessary and bill Big Top for actual costs, or it may exercise any other lawful option.

10. Impossibility of Performance. Neither the City nor Big Top shall be obligated to or liable for the performance of any term or condition of this Agreement on its part to be performed if such performance is prevented by fire, earthquake, flood, act of God, riots or civil commotions, or by reason of any other matter or condition beyond the control of either party.
11. Damage and Destruction at the Facility. In the case of the destruction or any substantial damage of the Stadium resulting from fire or other casualty which reasonably interferes with Big Top's use of the Stadium, either City or Big Top may terminate this Agreement upon written notice to the other if the facility cannot be repaired or rebuilt by the City in a reasonable period of time. The City retains the sole authority to determine if the Stadium is to be repaired or rebuilt. No improvements, buildings or fixtures shall be removed from the Stadium during the term of this Agreement or renewal period of this Agreement without the written consent of City, except any equipment or trade fixtures of Big Top which Big Top lawfully removes prior to the termination of this Agreement.
12. 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 unless the same be in writing signed by the duly authorized agent or agents who executed Agreement, except that for terms only affecting City and Big Top, or where specifically set forth in this Agreement, only those Parties need enter into a written amendment of the terms of this Agreement for it to be effective.
13. Status of Parties. It is agreed that Big Top is an independent contractor and not an employee or representative of the City, and that any persons who Big Top utilizes and provides for services under this Agreement are employees or volunteers of Big Top and are not employees or volunteers of the City of Madison. In addition, it is agreed that by granting Big Top the right to use the Stadium for the purposes set forth herein, that the City is not granting Big Top 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 Big Top arising from this Agreement. The Parties both acknowledge that this Agreement does not create a dealership under Wis. Stat. Ch. 135.
14. 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

Big Top: Vern Stenman
2920 N Sherman Ave

Madison, WI 53704

15. 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.
16. Title to be Retained by City. City shall retain title and ownership of Stadium together with all buildings, fixtures and improvements thereon without any payment whatsoever to Big Top.
17. Non-Discrimination. In the performance of the services under this Agreement Big Top 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. Big Top 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.
18. Nondiscrimination Based on Disability. Big Top shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any 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.

Big Top assures that, in providing any service at the Premises, 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.

Big Top 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).

- 19. 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 Big Top the right to use the City's Stadium for the purposes set forth herein.
- 20. 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.
- 21. 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.
- 22. Compliance with the Law. Big Top agrees to comply with all laws and ordinances of the United States, the State of Wisconsin and City of Madison.
- 23. 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.
- 24. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Big Top 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 Big Top 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.

25. 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 contract remain in full force and effect.
26. Authority. Big Top represents that it has the authority to enter into this Agreement and that the person signing on behalf of Big Topo represents and warrants that he or she has been duly authorized to bind Big Top and sign this Agreement on Big Top's behalf.

DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

BIG TOP EVENTS LLC

Vern Stenman, President

Date

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved:

David P. Schmiedicke, Finance Director

Date

Eric Veum, Risk Manager

Date

Approved as to form:

Michael P. May, City Attorney

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES __-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 201__.

ATTACHMENT A

Description of the Stadium Contained at Breese Stevens Field Madison, Wisconsin:

INSERT LEGAL & DIAGRAM DESCRIPTION – Entire Premises from Right of Way Line inward.

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ATTACHMENT B

The following is the relevant excerpted portion of the Agreement between the City of Madison and the Madison Metropolitan School District in relationship to access to Breese Stevens Field. This agreement was authorized via RES-15-00179 by the Common Council on March 3, 2015.

Special Terms and Conditions of Use Breese Stevens Athletic Field

1. Purpose. The purpose of this Agreement as it relates to Breese Stevens Athletic Field (the “Stadium”) is to permit the MMSD to utilize the Stadium for high school athletic games. The primary MMSD group will be Madison East High School; however other high schools may also use the facility as part of this agreement.
2. Stadium Use. MMSD will be allowed to schedule up to 32 high school games at the Stadium each calendar year of this Agreement. MMSD will submit a game schedule request by September 30th for the following calendar year to allow for priority scheduling. Any reschedule requests due to weather are subject to availability of the facility due to other reservations. In the event that East High School is in a position in which they are the home team site for a state sanctioned playoff or tournament, priority scheduling will be provided and other reservations will be modified by the City to the extent practical. MMSD should provide these potential playoff dates as soon as practical to the City.
3. Fees. MMSD will pay the City \$10,000 in rental fees associated with the first 32 facility reservations for games. Any additional rentals will be paid at the rate established by the City for general MMSDs. This payment includes routine field preparation services. In addition, MMSD will pay for any direct staff and/or maintenance costs incurred by the City for extra services provided at the Stadium, upon a written agreement between the Parks Superintendent and the School District.
4. Concessions. MMSD may be allowed to have a concession operation at the Stadium if the City does not enter into a third party agreement for management of the facility and/or concessions. The City reserves the right to operate and/or contract these services.
5. City Responsibilities. City shall be responsible for the overall maintenance of the Stadium.

ATTACHMENT C

LIST OF EQUIPMENT AND PROPERTY TO BE REMOVED OR RESTORED.

Big Top agrees to remove or restore the following items:

TO BE FINALIZED PRIOR TO SIGNATURES

DRAFT

ATTACHMENT D

The following improvements are listed as the priority items for completion as expeditiously as possible under the City's management of improvement contracts. The priorities are based on the long term facility plan for Breese Stevens.

- A. Additional Seating Capacity – The goal of this project is to extend seating for Breese as an athletic venue to approximately 5,000. The current capacity of actual seats is approximately 2,800. This additional capacity will be designed in a manner that focuses on additional stadium seats and hospitality areas to provide a quality viewing experience for the targeted capacity. This will include a detailed plan to improve the fan experience in the original (covered) area of the Stadium.
- B. Public Address System Improvements – This improvement will modernize and improve the PA system to provide a better fan experience as well as reduce noise spillage into the neighborhood.
- C. Field / Locker Improvements – These improvements will focus on improving the field amenities for athletic competition, such as team shelters. The improvements will also consider some additional locker room improvements if funding is available.