

**AGREEMENT BETWEEN THE CITY OF MADISON AND MADISON FIREWORKS
FUND, INC. FOR THE 2013 RHYTHM & BOOMS EVENT**

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

WITNESSETH:

WHEREAS, since 1996 the City has worked with the Madison Fireworks Fund to put on an Independence Day celebration at Warner Park in the City of Madison known as Rhythm & Booms (the “Event”); and,

WHEREAS, both the City and MFF wish to continue the long standing successful public-private partnership that has made Rhythm & Booms a signature event for the City, and one that furnishes a safe and enjoyable celebration of our nation’s Independence Day; and,

WHEREAS, MFF wishes to hold the Event in Warner Park in 2013, and the City wishes to allow this use, subject to the terms and conditions set 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. The purpose of this Agreement Between the City of Madison and Madison Fireworks Fund, Inc. for the 2013 Rhythm & Booms Event (“Agreement”) is to set forth the agreement between the City and MFF (collectively the “Parties”) regarding MFF’s use of Warner Park for the Event in 2013, and the planning, financing and coordination of City, community and MFF resources for the Event.
2. Term. This Agreement is effective as of the date by which both parties have signed hereunder, and is in effect until December 31, 2013. There is no right to renewal of this Agreement; however the Parties agree to commence discussions on a successor agreement by September 15, 2013, or at another earlier date mutually agreed upon by the Parties.
3. Event Date. The date of the Event will be Wednesday, July 3, 2013. There will be no “rain date”. MFF understands and agrees that the City sponsored or supported firework display at Elver Park, shall be scheduled on Tuesday, July 2, 2013, although the City reserves the right to reschedule the Elver Park firework display on any night other than July 3.
4. Warner Park Usage. City agrees that MFF shall be able to use Warner Park on the day of the Event, and the days surrounding the Event, as set forth in this Section. The Superintendent of Parks shall have the authority to act for the City within the parameters

of this Agreement, and any use not covered by this Agreement must be authorized by the Board of Park Commissioners or the Common Council as the case may be.

- a. General Event Parameters. No later than two weeks prior to the Event, MFF shall submit to the Parks Division a general site plan showing and listing the general location of the Event's components. The Parks Superintendent shall review the site plan and, after consultation with MFF, shall make any changes necessary to the site plan. Any significant alteration or expansion of Event activities beyond those contained within the approved site plan without the written approval of the Superintendent of Parks shall be a breach of this Agreement.
- b. Set-up and Teardown Times. MFF shall adhere to the set-up and teardown times set forth in this subsection or otherwise established by the Parks Division and shall be responsible for assuring that all subcontractors and vendors adhere to the established set-up and tear down times. Failure to adhere to set-up and tear down times will be a default of the terms of this Agreement, subject to the provisions set forth in Section 13, below. Except as otherwise established by the Parks Division, the set-up and tear-down dates and hours for Rhythm & Booms shall be as follows:
 - 1) The fireworks contractor shall not begin set-up in Warner Park prior to seven (7) days before the Event. Clean up from the fireworks contractor shall be completed within two (2) days following the Event.
 - 2) The mobile cell phone trailer and equipment shall not arrive in Warner Park until three (3) days preceding the Event. The mobile cell phone trailer and equipment shall be removed from Warner Park within two (2) days following the event.
 - 3) Sponsors may hang promotional event banners on Warner Park fences no sooner than three (3) days preceding the Event.
- c. Cleanup Responsibilities. MFF shall be responsible for the cleanup and disposal of all debris from the Event in Warner Park and the lagoon water areas within the Park. All debris from the Event, on land and floating or visible in the water, shall be removed within two (2) days immediately following the Event. Particular attention should be made to trash and recycling can removal and paper debris throughout the park that may blow into the lagoon water, along with all firework debris on land or in the water. Failure to adhere to these cleanup responsibilities will be a default of the terms of this Agreement, subject to the provisions set forth in Section 13, below.
- d. MFF's Licensing, Contracting, Subcontracting and Vendor Rights. City agrees that MFF may contractually designate certain radio and/or television stations to hold exclusive rights to broadcast the event from Warner Park. Except for the use of the Warner Park baseball field by the Madison Mallards, the Northside Community Council's bingo tent and Warner Park Community Recreational

Center (WPCRC) activities, MFF shall hold the exclusive rights to designate vendors for the Event. City shall hold rights of approval regarding the vendors. City recognizes MFF's need to generate revenue through these limited exclusive vendor contracts and shall make reasonable efforts to enforce vending regulations in the park. City shall assist MFF by enforcing these regulations as may be necessary.

5. Event Related Activities, Operations and Restrictions.

a. Event Components. On the day of the Event, MFF shall be limited to operating and coordinating the following activities in Warner Park:

- 1) A fireworks show not to exceed 30 minutes in length, lasting no later than 11:00 pm, with a budget not to exceed \$100,000.
- 2) Light stick/novelty and beverage vendors in the Park.
- 3) A Firing Command Tent (located near the fireworks island), to be used by the Fireworks Contractor and Radio station for the protection of equipment used for the broadcast and firing of the fireworks show.
- 4) A fenced area for reserved sponsor tables. Wine and beer may be served by the City approved caterer at the sponsor tables but nowhere else within Warner Park.
- 5) Military and other demonstrations and exhibits are limited as follows:
 - a) A Wisconsin Air National Guard F-16 flyover is permitted shortly before the start of the Event. No Army helicopters will be permitted.
 - b) There will be no Army or other such Military recruitment at the Event.
 - c) There will be no Army howitzers at the event.
- 6) The AmericCorps and Peace Corps organizations may set up recruiting and information booths at the Event if they so wish.

b. No Rain Date. MFF agrees that there shall be no "rain date", or postponement or rescheduling of the Event due to hazardous weather or other conditions, for the 2013 Event. Rather, every effort will be made to safely shoot the event on the evening of July 3, prior to 11 pm. If hazardous weather or other conditions do not make that possible, the fireworks contractor shall remove the shells as rapidly as possible consistent with personnel safety, the International Fire Code, and federal, state and local laws, or shoot some shells, without advance public promotion, within the 24 hours following the Event if safety concerns prohibit removal of the shells from the mortars. Best efforts shall be undertaken to remove all explosives

from the site as rapidly as possible after any such weather cancellation and additional time may be granted with the permission of the Superintendent of Parks and the Madison Fire Department. If shells are shot following a cancellation of the Event, prior to shooting the fireworks contractor shall notify the Madison Parks Division and the Madison Fire Department.

- c. Event Related Responsibilities. Except as hereafter provided, MFF shall arrange, manage and operate all aspects of the Event, including contracting with a vendor for the fireworks display. Notwithstanding the foregoing, City, rather than MFF, shall arrange, manage and operate all aspects of the Event relating to police, fire, fireworks code compliance (including, without limitation, compliance with NFPA Codes by any fireworks display firm retained by MFF), EMS coverage, traffic control, parks issues, and the like, and MFF shall have no responsibility for these matters. MFF, and their contractors, subcontractors and vendors, shall obtain all necessary permits and licenses as required by City ordinances, resolutions, and rules of the Board of Park Commissioners, and shall comply with all ordinances, rules, and permit requirements in the planning and operation of the Event.
 - d. General Noise Restrictions. Loud noise generating activity, including firework “salutes” and other noisy activities may only occur at the Event after 5 pm, and all such activities shall cease by 11:00 pm.
 - e. Marketing Restrictions. MFF agrees that it shall publicize the changes and reduction of activities in 2013 to focus on a “fireworks only” Event, and will market the Event in a manner that will reasonably lead to a decrease in the attendance at Warner Park on the day of the Event. The Event shall be locally, and not regionally, promoted, and the promotional activities will be reduced at least one-third from those prior to the 2012 Event. Additionally, MFF may no longer refer to the Event as “the largest firework display in the Midwest” or in similar terms.
6. Planning and Coordination of the Event.
- a. Rhythm & Booms Planning Team. There shall be created a Rhythm & Booms Planning Team which shall include representatives from the City’s Parks Division, Police Department, Fire Department, Traffic Engineering Division, and Metro Transit, as well as representatives from Public Health Madison & Dane County. Other participants may include representatives from the City’s Finance Department, Attorney’s Office, Mayor’s Office and Common Council, as well as representatives from Dane County’s Public Safety Communication Center, Department of Emergency Management and Sheriff’s Department, along with representatives from MFF, Waste Management, Per-Mar Security, Kobussen Buses, the Madison Mallards, and media vendors.
 - b. The Parties shall furnish each other all planning information and financial records as requested, including contracts, bills, an audited financial statement and the like. In addition, MFF and the Rhythm & Booms Planning Team shall file reports with

City's Board of Estimates no later than October 1, 2013 on the operational and financial aspects of the recently concluded Event. Each report shall address ways of reducing MFF and City costs for any future Events and reducing the City's financial contribution to future Events.

- c. The City shall act as a facilitator in providing for the coordination of Event activities and those of the Madison Mallards, or other baseball field users on the day of the event. Any use of the baseball field on the day of the Event shall be scheduled so as not to unduly interfere with or disrupt Event activities, or unduly or unreasonably increase police costs associated with the Event.
- d. MFF agrees that it shall actively market to and encourage the participation of north side food vendors to service the Event only as and if the City so wishes. City agrees to assist MFF in obtaining north side vendor contact information for this purpose.

7. Finances.

a. Payment for Municipal Services Provided by the City.

- 1) City Contribution. As the City's contribution to the Event, the City shall donate (i.e. not charge for) the first fifty-five thousand dollars (\$55,000) of base/initial municipal services costs in 2013. Municipal service costs, for the purposes of this Agreement, shall include those costs incurred by the City to support the Event, including Parks Division, Police Department, Fire Department, Streets Division, and Traffic Engineering Division staff time and equipment costs ("Municipal Services"). If Municipal Services are determined to be less than this base amount, then the City will be determined to have satisfied this contribution amount. The City will make every reasonable effort to limit municipal service costs associated with the Event.
- 2) Municipal Services Cost Determination. Following the Event, the City's Finance Director shall determine the amount of Municipal Services actually incurred by the City because of the Event (the "Municipal Services Cost Determination"). The Finance Director shall furnish MFF and the City's Board of Estimates with a report detailing the Municipal Services Cost Determination by Sept. 1, 2013.
- 3) Dispute of the Municipal Services Cost Determination. Any disputes to the Municipal Services Cost Determination shall be raised in writing by MFF to the City's Finance Director within thirty (30) days of the mailing of this report, or forever be waived. If a dispute as to the Municipal Services Cost Determination is made by MFF, the Parties shall attempt to reach a mutually agreeable resolution of this dispute within thirty (30) days of the City's Finance Director's receipt of MFF's written objection.

- 4) Invoice. If no dispute of the Municipal Services Cost Determination is raised by MFF, or if the Parties reach a mutually agreeable resolution to the dispute within the time period provided for under paragraph 3, the City's Finance Director shall invoice MFF for the amount of Municipal Services costs which are in excess of the base municipal service contribution provided for in paragraph 1. If the Parties are unable to reach a mutually agreeable resolution to the dispute within the time period provided for under paragraph 3, MFF shall be invoiced based upon the Municipal Services Cost Determination, including any disputed amount.
- 5) Payment. On or before December 31st, 2013, MFF shall pay the City for the Municipal Services costs, as determined and invoiced under paragraphs 2-4, which are in excess of the base municipal service contribution provided for in paragraph 1.
- 6) Recovery of Overpayment. If MFF and the City were unable to reach a mutually agreeable resolution to a dispute as to the Municipal Services as provided for under paragraph 3, and MFF timely paid the invoice amount as required under paragraph 5, MFF may pursue a claim in civil court against the City to recover that portion of the Municipal Services costs to which it properly raised an objection under paragraph 2. Judgment in such a case may include statutory interest and court costs, but may not include attorney's fees.

b. Cost Containment and Fundraising.

- 1) The Parties agree that containing costs is very important to each. It is agreed that MFF and the City will work diligently to minimize and contain the cost of this Event so that the Event can continue on a sustainable basis, at reduced cost to each party in the future.
- 2) MFF and MFF agree to continue raising funds for the Event, in amounts sufficient to fund the fireworks display and the set-up and clean-up activities. If MFF is not successful in raising the necessary dollars to fund the Event, including such reimbursement to City as described above, MFF shall not be obligated to present the Event. MFF shall notify City no later than June 1, 2013 of its intent not to present the Event under this provision.
- 3) Charitable Contributions. As a 501(c)(3) non-profit charitable organization, MFF, subject to the direction of MFF, may continue to make charitable contributions from its after-expenses income, if any, to organizations in the Dane County area that provide the volunteers to staff the Event and to other local nonprofit organizations whose missions are to assist area children. MFF shall include the City's Mayor's Office in determining possible recipients for these charitable contributions from MFF. Any contributions to a charity by MFF with proceeds related to the

annual Event shall be made only to agencies that do not discriminate based on gender identity, sexual orientation or any other City of Madison protected class.

- 4) Financial Records. MFF shall provide to the City its, and MFF's if applicable, financial reports related to the 2013 Event as soon as they are prepared, for review by the City.

8. Indemnification and Insurance.

a. Indemnification. MFF 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 MFF or MFF's acts or omissions in the performance of this agreement. MFF's aforesaid indemnity and hold harmless obligation shall not be applicable to any liability caused by the sole negligence or willful misconduct of the City, its officers, officials, or employees. The City shall promptly notify MFF of any claim for which it intends to seek indemnification hereunder. MFF agrees that this indemnity obligation shall survive the termination or expiration of this Agreement.

b. Insurance.

1) Required Coverage. MFF will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated. MFF shall not commence work under this Agreement, nor shall MFF 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. MFF 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 \$3,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. MFF's coverage shall be primary and noncontributory and list the City of Madison, their officers, officials, agents and employees as additional insureds. MFF 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, except that the limits of liability for subcontractors, other than the firework subcontractors, shall be at least \$1,000,000 per occurrence.

- b) Automobile Liability. MFF shall require all subcontractors under this Agreement to procure and maintain during the life of this Agreement 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.
 - c) Worker's Compensation. MFF shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin, including Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. MFF shall require all other subcontractors under this Agreement (if any) to procure and maintain such insurance, covering each subcontractor.
 - d) Liquor Liability Insurance. MFF shall procure and maintain during the life of this Agreement Liquor Liability insurance in the amount of coverage of at least \$1,000,000 per occurrence. MFF shall require all subcontractors dispensing liquor under this Agreement (if any) to procure and maintain insurance meeting the above criteria.
- 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. MFF 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. MFF shall provide the certificate(s) to the City's representative at the time of signing the contract, or sooner. MFF 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. MFF 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.
- c) Firework Contractor. MFF shall require its firework contractor to agree to the following terms in the firework contract for the Event:

INDEMNIFICATION. The Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, Madison Festivals, Inc., Purple Door Productions, Inc. and Madison Fireworks Fund, Inc. and their 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 of Madison, Madison Festivals, Inc., Purple Door Productions, Inc. and Madison Fireworks Fund, Inc. or their 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 Contractor's 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 Madison, Madison Festivals, Inc., Purple Door Productions, Inc. and Madison Fireworks Fund, Inc. or their officers, officials, agents, or its employees.

INSURANCE

Commercial General Liability. The Contractor shall procure and maintain during the life of this contract, 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 \$5,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Contractor's coverage shall be primary and noncontributory, and list the City of Madison, Madison Festivals, Inc., Purple Door Productions, Inc. and Madison Fireworks Fund, Inc. and their officers, officials, agents and employees as additional insureds. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, Madison Festivals, Inc., Purple Door Productions, Inc. and Madison Fireworks Fund, Inc. and their officers, officials, agents and employees as additional insureds.

Worker's Compensation. The Contractor shall procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Contractor shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit. Contractor shall require all subcontractors under this Contract (if any) to procure and maintain such insurance, covering each subcontractor.

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.

Proof of Insurance, Approval. The Contractor shall provide the City of Madison and Madison Fireworks Fund, Inc. 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 Contract. Contractor shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. The Contractor shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Contractor and/or Insurer shall give the City of Madison and Madison Fireworks Fund, Inc. 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 Contract.

MFJ shall provide the City Attorney and the City Risk Manager a copy of its contract with the firework contractor upon execution demonstrating compliance with these requirements. Failure to either provide this contract to the City or to include these terms in the firework contract shall be a default of the terms of this Agreement, subject to the provisions set forth in Section 13, below.

9. 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
PO Box 2987
Madison, WI 53701

MFJ: Ms. Rita Kelliher, President
Madison Fireworks Fund, Inc.
2981 Cahill Main, Suite 2
Madison, WI 53711

10. Non-Discrimination.

- a. Non-Discrimination. In the performance services under this Agreement, MFJ agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political

beliefs or student status. MFF further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

- b. Nondiscrimination Based on Disability. MFF 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 contract or other arrangement by which the City provides or otherwise makes available assistance in the form of funds, services of City personnel, and the permission to use City property.

11. Affirmative Action.

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

The Contractor (MFF) agrees that, within thirty (30) days after the effective date of this contract, 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. The Contractor agrees to interview and consider candidates referred 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 this Subsection at the time the Request for Exemption in Subsection b. is made.

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

These “ARTICLES OF AGREEMENT” apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

* As determined by the City Comptroller

** As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 39.02(9)(a)2.) Contractors who believe they are Exempt from the Articles of Agreement according to the table above, shall submit a Request for Exemption on a form provided by the Department of Civil Rights (“Department”), within thirty (30) days of the effective date of this Contract. The Department makes the final determination as to whether a contractor is exempt from the Articles of Agreement. In the event the Contractor is not exempt, the Articles of Agreement shall apply. **CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) Within thirty (30) days from the effective date of this contract, and prior to release of payment by the city, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below. Additionally, contractors that are exempt from the Articles of Agreement under the Table shown above must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

ARTICLES OF AGREEMENT

ARTICLE I

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

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It 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, it 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 _____.

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 five thousand dollars (\$5,000), 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. Equal Benefits Requirement. For the duration of this Agreement, MFF agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits

offered and provided to married employees with spouses, and to comply with all provisions of Sec. 39.07, Madison General Ordinances (MGO). If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, MFF is unable to provide the benefit, MFF shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. MFF may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

Notice Posting, Compliance. MFF shall post a notice informing all employees of the equal benefit requirements of this Agreement, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

Subcontractors. This requirement also applies to employees of contractors hired by MFF who expend at least twenty (20) hours a week at the project site funded by City financial assistance.

Subcontractors. MFF shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Sec. 39.07, MGO.

13. Default/Termination. In the event MFF shall default in any of the covenants, agreements, commitments, or conditions herein contained, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof to MFF, 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 MFF, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of MFF under this Agreement. In addition to the consequences of a default as set forth in this Section, in the event of a default in the terms of Section 4.b regarding set-up and teardown times or Section 4.c regarding cleanup responsibilities, MFF shall also be fully responsible for all municipal services provided by the City directly attributable to the violations of Section 4.b or 4.c. This payment shall be in addition to any payment due under Section 7.a.
14. Binding on Parties; Amendments. This Agreement shall be binding on the Parties hereto, and cannot be varied or waived by any oral representations or promise of any agent or

other person of the Parties hereto unless the same is in writing and is signed by both the Parties or their authorized agents.

15. 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.
16. 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.
17. No Waiver. No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or MFF 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 MFF 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.
18. 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.
19. 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.
20. 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.
21. Authority. The Parties represent that they have the authority to enter into this Agreement. The person signing on behalf of MFF represents and warrants that he has been duly authorized to bind MFF and sign this Agreement on MFF's behalf.
22. 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

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.
MADISON FIREWORKS FUND, INC.

Rita Kelliher, President

Date

CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this Agreement by City is authorized by Resolution Enactment No. RES 13-_____, ID No. 29474, adopted by the Common Council of the City of Madison on _____, 2013.