

**COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN**

Resolution No. 4195

Authorizing the execution of a Space Use Agreement with Second Harvest Foodbank of Southern Wisconsin, Inc. for the continued operation of a monthly food pantry at The Brittingham Apartments located at 755 Braxton Place.

Presented August 11, 2016  
Referred \_\_\_\_\_  
Reported Back \_\_\_\_\_  
Adopted August 11, 2016  
Placed on File \_\_\_\_\_  
Moved By Sariah Daine  
Seconded By Claude Gilmore  
Yeas 4 Nays 0 Absent 3  
Rules Suspended \_\_\_\_\_

WHEREAS, the Community Development Authority of the City of Madison (“CDA”) is the owner of The Brittingham Apartments (“Building”) located at 755 Braxton Place, Madison, Wisconsin (“Property”); and

WHEREAS, Second Harvest Foodbank of Southern Wisconsin, Inc., with the assistance of SSM Healthcare of Wisconsin, Inc. (“SSM”), currently occupies and uses space within the Building to operate a monthly food pantry pursuant to a verbal agreement with CDA staff; and

WHEREAS, Second Harvest desires to continue such occupancy and use, and the CDA agrees to allow such occupancy and use; and

WHEREAS, the parties have agreed to enter into a Space Use Agreement to set forth the terms and conditions of Second Harvest’s use of such space.

NOW THEREFORE BE IT RESOLVED that the CDA hereby authorizes the execution of a Space Use Agreement (“Agreement”) between the CDA and Second Harvest Foodbank of Southern Wisconsin, Inc. (“User”) for the continued operation of a monthly food pantry on the following general terms and conditions:

- Premises:** The residential apartment building located at 755 Braxton Place, Madison, Wisconsin, commonly known as The Brittingham Apartments.
- Property Owner:** Community Development Authority of the City of Madison.
- User:** Second Harvest Foodbank of Southern Wisconsin, Inc.
- User’s Space:** The dining area located on the first floor of the Building along with “Common Areas” (as defined in the Agreement) located within the Building and on the Property. The User’s Space is depicted on Exhibit A.
- Use:** Lessee’s use of the User’s Space shall be limited to the operation of a monthly food pantry.
- Initial Term and Renewal:** One (1) year, commencing on the “Effective Date,” which shall be the date of last signing of the Agreement. Upon agreement of the parties, the Agreement may be renewed for two (2) subsequent terms of one (1)-year each. All provisions of the Agreement shall apply during the renewal terms, if any.
- Rental Rate:** No fee shall be payable by the User under the Agreement.
- Assignment and Subletting** The User shall not assign, pledge, sell or in any manner transfer the Agreement or any interest hereunder and shall not sublet the User’s Space, or any portion thereof, without the prior written consent of the CDA, which consent the CDA may withhold in its sole discretion. The CDA’s right to assign the Agreement is and shall remain absolute and unqualified.

## User's Responsibilities

- a. The User accepts the User's Space in "as-is" condition. Any modifications to the User's Space by the User shall be subject to the prior written approval of the CDA and shall be at the User's sole cost and expense.
- b. The permitted hours of operation for the User's Space shall be 1:00 p.m. – 4:30 p.m. on the first Wednesday ("Pantry Day") of every calendar month ("Hours of Operation").
- c. During the Hours of Operation, the User shall be permitted to use the CDA-owned tables provided by the CDA in the User's Space ("Tables"). The User shall not remove the Tables from the User's Space or relocate any other CDA property to the User's Space. The Tables, and any other CDA property provided by the CDA for use by the User, shall remain the property of the CDA. Upon expiration or termination of the Agreement, the User shall ensure that the Tables, and any other CDA property, are in a condition equivalent to that which existed at the time the property was first provided to the User.
- d. The User shall ensure that a minimum of fifteen (15) volunteers (in the singular, "Volunteer"; collectively, "Volunteers") are present on the Property at all times during the Hours of Operation. Volunteers shall be at least eighteen (18) years of age or older and may be comprised of the User's volunteers, including volunteers and representatives of SSM. The User shall be solely responsible for the safety and actions of the Volunteers. The User shall not permit or allow any of its staff, agents, invitees, volunteers or contractors to engage in any criminal activity on or about the Property.
- e. The User shall use the rear door to the Building, as depicted on Exhibit A ("Rear Entrance/Exit") for all food deliveries to the User's Space.
- f. The User shall be permitted to use the Building's lobby ("Lobby") as a waiting area for food pantry guests ("Guests") during the Hours of Operation. Guests shall enter the Lobby using the front entrance to the Building, as depicted on Exhibit A ("Front Entrance"). The User shall designate staggered arrival times for Guests and ensure that all hallways between the elevators, stairs, and doors remain easily accessible at all times and provide appropriate means of ingress and egress to all interior and exterior doors. Guests shall exit the User's Space using the Rear Entrance/Exit.
- g. Neither the User nor Guests shall prop, tape, or otherwise cause any exterior door to the Building to remain in an open position. The User shall ensure that a minimum of one (1) Volunteer is present at both the Front Entrance and Rear Entrance/Exit to open and close doors for Guests at all times Guests are present on the Property. The User and its Volunteers shall ensure no damage is done to the Building or its doors. The User, at its expense, shall be responsible for any damage to the Building or doors and, in the event of damage, shall repair the damaged property to a condition equivalent to that which existed on the Effective Date.
- h. The User shall remove all leftover food from the User's Space prior to the end of the Hours of Operation on each Pantry Day. Additionally, the User shall clean the User's Space and all Common Areas used. Cleaning activities shall include, but not be limited to: sweeping; mopping; cleaning and sanitizing tables; and removal of all food, trash, and debris. All trash shall be placed in the Building's dumpster.
- i. The User shall be responsible for keeping the User's Space secure. All property belonging to the User, its staff and volunteers shall be there at the risk of the User, and the CDA shall not be liable for damage thereto nor theft or misappropriation thereof. The User shall remove its personal property from the User's Space at the end of the Hours of Operation on each Pantry Day.

- j. The User shall be responsible for insuring all User-owned personal property placed in the User's Space and agrees that the CDA shall not be held responsible for any damage or loss to the User's personal property while it is in the User's Space, whether the damage is caused by the CDA, its employees, contractors or others.

#### **CDA's Responsibilities**

- a. The CDA shall pay all utility costs associated with the User's Space and Common Areas, including electricity, heat, water, and air conditioning.
- b. Except as otherwise provided in the User's Responsibilities, the CDA shall be responsible for maintenance and repair of the User's Space. Notwithstanding the foregoing, the User shall be solely responsible for the cost and expense of repairs/replacements required by reason of acts of omissions of the User, its staff, volunteers, invitees, vendors, licensees or contractors. The User shall give the CDA written notice of the necessity for repairs/replacements coming to the attention of the User, following which, the CDA shall have a reasonable time to undertake and complete such repairs.

#### **Termination**

Either party shall have the right to terminate the Agreement, at its sole discretion, upon ninety (90) days prior written notice to the other party.

#### **Indemnification**

The User shall be liable to and agrees to indemnify, defend and hold harmless the CDA, the City of Madison, and their respective 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 CDA, the City of Madison, their respective 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 acts or omissions of the User or its officers, officials, agents, employees, volunteers, assigns, sublessees or subcontractors, in the performance of the Agreement, whether caused by or contributed to by the negligence of the CDA, the City of Madison, or their respective officers, officials, agents or employees. This paragraph shall survive termination and assignment or transfer of the Agreement.

#### **Insurance**

The User shall procure and maintain during the term of the 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 City of Madison's Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. The User's coverage shall be primary and list the CDA, the City of Madison, and their respective officers, officials, agents and employees as additional insureds. The foregoing 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. As evidence of this coverage, the User shall furnish to the CDA certificates of insurance on a form provided by the CDA showing the type, amount, class of operations covered, effective dates, and expiration dates of the required policy. The User shall provide the certificates to the CDA upon execution of the Agreement, or sooner, for approval by the City of Madison's Risk Manager. The User shall provide copies of additional insured endorsements or insurance policies, if requested by the City of Madison's Risk Manager. The User and/or its insurer(s) shall give the CDA thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the foregoing policies during the term of the Agreement.

**Hazardous Substances  
Indemnification**

The User represents and warrants that its use of the User's Space will not generate any hazardous substance, and it will not store or dispose on the User's Space or transport to or over the User's Space any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The User further agrees to hold the CDA and the City of Madison, Wisconsin harmless from and indemnify the CDA and the City of Madison, Wisconsin 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 CDA, the City of Madison, Wisconsin or their respective 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. This paragraph shall survive termination and assignment or transfer of the Agreement.

BE IT STILL FUTHER RESOLVED that the Chair and Executive Director and Secretary of the CDA are hereby authorized to execute and deliver the Agreement, and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.