

COOPERATIVE AGREEMENT

Between Monona Terrace Community Programs, Inc. and Monona Terrace Community and Convention Center Board

THIS AGREEMENT, entered into by and between Monona Terrace Community Programs, Inc., a Wisconsin nonstock corporation (“Friends”), and the Monona Terrace Community and Convention Center Board (“Board”), is effective as of the date by which all parties have signed hereunder.

WITNESSETH:

WHEREAS; Sec. 33.21, Madison General Ordinances, grants Board broad authority and latitude to make decisions to operate a successful convention center; and,

WHEREAS, Board is empowered to enter into contracts to provide goods and services consistent with the mission of Monona Terrace, the approved City of Madison budget and ordinances; and,

WHEREAS, since 2004, Friends has existed as a non-profit entity independent of Board; and,

WHEREAS, The purpose of Friends is to improve the quality of life at and sustain the economic vitality of Monona Terrace Community & Convention Center (“Monona Terrace”) which is a public building owned and operated by the City of Madison, Wisconsin through the establishment of a fund to support educational and community programming at Monona Terrace and to financially support studies on the economic and social impact of Monona Terrace ; and,

WHEREAS, Friends wishes to take on a more active role in fund raising, promoting philanthropic opportunities, and providing volunteers, friends and ambassadors for Monona Terrace ; and,

WHEREAS, Board will support Monona Terrace staff in assisting Friends with information, technical assistance, training, mentorship, help with organizing and hosting meetings, providing space for meetings and other activities, fundraising planning consistent with the mission and goals of Board and strategic planning for the Parties to help identify joint projects; and,

WHEREAS, Board and Friends wish to describe and formalize the relationship between the Parties, and provide guidance for future joint projects by entering into 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 Cooperative Agreement (“Agreement”) is to formally declare and establish Friends as Board’s official non-profit fund raising collaborator, to set forth procedures to establish the roles and responsibilities of Board and Friends relating to the recruitment of volunteers, friends and ambassadors and their ultimate use by Board, and to

outline the Parties' roles and responsibilities regarding fundraising planning consistent with mission and goals of Board.

2. Relationship of Parties. Friends shall be Board's official non-profit fund raising collaborator and volunteer organization as it relates to Monona Terrace. Under the oversight of Board, Friends will work with Monona Terrace staff to support community outreach initiatives through the development of fundraising projects, engagement of potential donors, service as ambassadors for community programs, and support of internships and economic impact studies for Monona Terrace. It is expected that the Officers and Directors, as well as any employees of Friends will work closely with Board, the Monona Terrace Director and Monona Terrace staff, in creating and overseeing targeted fundraising efforts and setting its goals and priorities so that the interests of the Parties do not differ greatly.

Friends is a legal entity separate from Board, and no partnership, agency, or other legal relationship other than the contractual relationship as set forth herein is created by this Agreement. Nothing in this Agreement shall be deemed to have established a dealership as that relationship is described in Wisconsin Statutes, Chapter 135.

Friends shall retain sole authority over its own operations, and may make its own decisions about whether it wishes to participate in a designated Project, either by raising or donating funds in support thereof.

Board shall retain sole authority over Project approval for projects that propose fundraising over \$100,000, and may make its own decisions about whether to support a Friends initiative by approving a Project.

3. Coordination

- a. Creation of the Coordinator Position. It is anticipated by the Parties that the hiring of employees will assist Friends with expanding its fundraising efforts to promote additional philanthropic and volunteer opportunities benefiting Monona Terrace. Board agrees that Monona Terrace staff will help support Friends staff with assistance including meeting room scheduling, guidance and recommendations on fundraising initiatives and efforts, and facilitation of communication between Friends members. Friends anticipates hiring an hourly employee and/or an intern to serve as Coordinator in order to support initiatives in the 2017-18 fiscal year.
- b. Duties of the Coordinator The Coordinator shall provide administrative coordination of fundraising activities, including but not limited to : mail and email solicitations, membership drives, writing of grant requests and corporate sponsorship applications. Coordinator shall report to Friends. At no time shall the Coordinator be a director or officer of Friends.

4. Employees of Friends. Once hired, employees of Friends shall report directly to Friends' Board of Directors. The Friends' Board of Directors shall designate an employee or officer to serve as a liaison between Friends and Board, and shall work closely with the Monona

Terrace Director or designee in coordinating the efforts of the Parties pursuant to this Agreement.

5. Communication and Reporting. Friends will report on an annual work plan, created in coordination with Monona Terrace staff and annual Monona Terrace objectives for Community Relations that will outline the group's plans and goals for the coming year to the Board no later than Dec 31 of each year. This report will also include a financial report that fully discloses Friends' holdings and investments, revenues and expenses for the given year. Any concerns by the Board will be addressed at this meeting and both groups will work to construct a mutually agreeable alternative for any issues of concern. In addition, a designated member of the Friends group will attend and report on current activities at meetings of the Monona Terrace Board no less that twice per year.

6. Board's In-Kind Contribution to Friends. In recognition of Friends' continued commitment to Monona Terrace, and the increasing role of Friends which will bring with it increased costs, Board agrees that, during the term of this Agreement, and as long as requested by Friends, Board shall provide Friends with meeting rooms, office space, telephone and internet service, information technology services, basic office supplies, and the use of office equipment. Board shall accommodate Friends to the extent possible in its request for office space and equipment (within the parameters of its budget), and Friends agrees to abide by any restrictions set forth by Board or the Monona Terrace Director upon the specific use of these supplies for purposes.

7. Project Determination and Responsibility. The Parties anticipate continuing their current collaborative efforts toward planning and funding improvement projects and volunteer programs at Monona Terrace. Regarding specific Projects, the following shall apply:
 - a. Either Party may approach the other Party to discuss a specified Project and gauge the other's interest. Neither Party is bound to participate in a specified Project.
 - b. If the Parties agree that a specified Project should proceed, they should create a Project plan that incorporates a general timeframe for the Project, sets forth general planning concepts, lays out specific fundraising goals, and any other relevant factors to the success of the Project.
 - c. Prior to implementing the Project plan, Friends' Board of Directors and Board should both approve the collaborative plan, formally recognizing the joint effort.
 - d. If Friends, through its Board of Directors, makes specific Project funding commitments, it shall abide by them, subject to any contingencies included therein. However, if specific Project fund raising goals are not met, Friends will not be responsible for any shortage that it specifically authorizes. Moreover, should there be a deficiency in fund raising, Board reserves the right to cancel a Project.

- e. Notwithstanding any provision hereof, any Project described in the annual work plan which has been prepared and approved in accordance with Section 5 shall be deemed approved pursuant to this Section.
8. Term. This Agreement shall remain effective until either party, with at least thirty (30) days advance written notice, declares its intention to terminate this Agreement, in which case this Agreement shall terminate on the stated date.
9. Default. Notwithstanding Section 8, in the event that Friends defaults in any of the terms of this Agreement, and any such default shall continue unremedied for a period of ten (10) days after written notice thereof to Friends, Board may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Friends, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Friends under this Agreement.
10. Assignment. The roles and responsibilities of Friends as set forth in this Agreement may not be assigned to any other party without the City's prior written approval.
11. Nondiscrimination. In the performance of this Agreement, Board and Friends agree 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, political beliefs, or student status. Board and Friends further agree not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin
12. Affirmative Action. It is understood by the Parties that Friends currently has no permanent employees and is a volunteer organization. However, it is anticipated that during the term of this Agreement, that Friends may hire employees. The Parties agree that in the event that Friends ever has fifteen (15) or more employees that the Parties will immediately execute an addendum to this Agreement to ensure that this Agreement complies with the City's affirmative action requirements set forth in Madison General Ordinances Section 39.02(9) as that section may be amended from time to time.
13. Indemnification. Friends shall be liable to and hereby agrees to indemnify, defend and hold harmless Board and 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 Board or the City of Madison or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Friends and/or Friends' contractor's or agent's acts or omissions in the performance of this agreement, whether caused by or contributed to by the negligence of Board, the City of Madison, its officers, officials, agents, or its employees.
14. Insurance. Friends will insure, as indicated, against the following risks to the extent stated below. Friends shall not commence work under this Agreement until the insurance

required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

Commercial General Liability. Friends shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Friends' coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker's Compensation. Prior to hiring any employees, Friends shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin. Friends shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.

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. Friends 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. Friends shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. Friends shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

Friends 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.

15. Maintaining 501(c) (3) tax exempt status. Friends shall maintain its IRS 501(c)(3) tax exempt organization status during the term of this Agreement. Failure to maintain 501(c)(3) tax exempt organization status with the Internal Revenue Service is a default under this Agreement.
16. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered or certified United States mail, return receipt requested, at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or three (3) days after notice is deposited in the mail. Any party may, at any time, change its notice address by giving the other party written notice of the new address.

Name

Address

Friends

Board

17. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.
18. Final Agreement. This Agreement constitutes the entire agreement of the Parties and may only be modified or supplemented by an additional writing between the Parties. This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.
19. Miscellaneous.
 - a. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
 - b. No third parties (including without limitation the Officers, Directors or employees of Friends) are intended to benefit from this Agreement, and no third party beneficiary rights shall be implied from anything contained in this Agreement.
 - c. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
 - d. All addendums and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addendums and exhibits shall be binding upon all parties.

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.

FOR MONONA TERRACE COMMUNITY PROGRAMS, INC.

Date

FOR MONONA TERRACE COMMUNITY AND CONVENTION CENTER BOARD

Date

Date

Countersigned:

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date