

SECOND AMENDMENT TO AGREEMENT FOR CATERING AND RETAIL SALES AT THE MONONA TERRACE CONVENTION CENTER

This Second Amendment to Agreement for Contract Catering and Retail Sales at the Monona Terrace Convention Center is made and entered into this _____ day of _____ 2017 by and between the Monona Terrace Community and Convention Center of the City of Madison, a Wisconsin municipal corporation (the "City"), and Monona Catering, LLC, a Minnesota limited liability company ("M.C.").

WHEREAS, the City and M.C. Entered into an Agreement for Contract Catering and Retail Sales (the Agreement) dated June 7th, 2006; and

WHEREAS, the City and M.C. previously amended the Agreement by adopting the First Amendment, which is dated August 12, 2013;

WHEREAS, M.C. is willing to contribute \$75,000 annually towards jointly agreed upon capital upgrades and/or catering equipment;

WHEREAS, the City and M.C. have negotiated to modify certain terms of the Agreement, and included them in this Second Amendment;

NOW, THEREFORE, in consideration of the mutual benefits herein described, the City and M.C. do mutually agree to amend the Agreement as follows:

1. Section 6.1 is deleted in its entirety and replaced with the following: The term of this Agreement shall be February 9, 2007 through February 8, 2023 and this Agreement includes a two-year extension option through February 8, 2025. The two-year extension shall be exercised no later than August 31, 2022. The execution of the two-year extension option is subject to performance requirements as specified in Article 16 herein, Events of Default and Termination, and the execution of the two-year extension shall not be unreasonably withheld by City or M.C.
2. Section 3.2.iiii is created to read: Commencing in January, 2018 and continuing monthly until through February 8, 2023 and the execution of the additional two-year extension option through February 8, 2025, M. C. Agrees to directly pay Monona Terrace \$42,000 annually, paid in 12 monthly installments of \$3,500. In addition, \$33,000 will be paid annually by M.C. directly to vendors for various mutually agreed upon capital improvements and/or equipment in the catering department, which includes all M.C. areas. The direct payments to Monona Terrace and the payments to vendors for various capital improvements and or equipment by M.C. will total \$75,000 per year. M.C. shall accelerate its payments, under this Section 3.2.iiii, by making payments in excess of \$75,000 per year in the event that the actual cost of capital improvements and/or equipment exceeds \$75,000 in a fiscal year; however, the total of all payments by M.C. shall not exceed a total of \$525,000 during the term of this Agreement.

M.C. shall provide reasonable substantiation of capital improvement investments upon request by City.

2.1 Independent Contractor

It is expressly understood and agreed by and between the City and M.C. that M.C. is an Independent Contractor; that the parties hereto are not engaged in a partnership or joint venture; that the City is expressly excluded from any liability for debts or any other obligations of M.C., including, but not limited to, any and all tax liabilities. The obligation of M.C. to pay fees or rent on a percentage basis of the Gross Revenues shall not be deemed as any sharing in profits. In addition, it is agreed that by entering into this contract for catering and retail sales that the City is not granting Contractor 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 Contractor. The parties acknowledge that this Contract does not create a dealership under Wis. Stat. Ch. 135. Contractor agrees that if it should ever claim that this contract has created a dealership under Wis. Stat. Ch. 135, Contractor shall be deemed to have engaged in fraud in the inducement of a contract and shall forfeit as a penalty all amounts paid by the City to Contractor under this Contract and all proceeds earned by the Contractor under the terms of this Contract and shall return the same to the City within ten (10) days of written notice thereof from the City.

These terms will commence in January of 2018 and continue monthly until January, 2023 or until the end of the two year extension option, if the City and M.C. mutually agree to the two year extension through February 8, 2025, conditional on the execution of the two year extension.

All other terms and provisions of the Agreement, as amended hereby, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed on the Day and year first above written:

MONONA CATERING, LLC

By: _____
Kim Nelson, Chief Executive Officer

Date: _____

**MONONA TERRACE COMMUNITY AND
CONVENTION CENTER MADISON, WI**

By: _____
Gregg McManners, Executive Director

Date: _____

By: _____
Patricia Lemke, Chief Operating Officer

Date: _____

Approved for Execution

By: _____
David Schmiedicke, City of Madison
Finance Director

Date: _____

By: _____
Glenn Krieg, Chair Monona Terrace Board

Date: _____

By: _____
Michael P. May, City of Madison
City Attorney

Date: _____