

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

Resolution No. 4343

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 8, 2019

Referred \_\_\_\_\_

Reported Back \_\_\_\_\_

Adopted August 8, 2019

Placed on File \_\_\_\_\_

Moved By Sheri Carter

Seconded By Gregory Reed

Yeas 7 Nays 0 Absent 0

Rules Suspended \_\_\_\_\_

Legistar File # 56925

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. currently occupies and uses space within the Building, together with SSM Healthcare of Wisconsin, Inc. ("SSM"), to operate a monthly food pantry pursuant to that certain Space Use Agreement dated August 30, 2016; and

WHEREAS, the User exercised both of the renewal terms available in said Space Use Agreement, and the use of the space expires on August 29, 2019; and

WHEREAS, the User and SSM desire to continue occupancy and use of the space within the Building and the CDA agrees to allow such continued occupancy and use under a new Agreement, subject to terms and conditions agreed upon by both parties.

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:

1. User's Space. The CDA hereby grants the User the right to occupy and use, on a non-exclusive basis, the dining area located on the first floor of the Building ("User's Space") during the "Hours of Operation," as described in Paragraph 7.b. The CDA reserves the right to assign specific space within the User's Space to the User and to any other service provider(s) permitted by the CDA to share the use of the User's Space. The User's Space is depicted on attached Exhibit A.
2. Term. This Agreement will commence on the Effective Date and continue for a term of one (1) year ("Initial Term").
3. Renewal. Upon agreement of the parties, this Agreement may be renewed for two (2) subsequent terms of one (1)-year each (in the singular, "Renewal Term"; collectively, "Renewal Terms"). All provisions of this Agreement shall apply during the Renewal Terms, if any. The User must provide to the CDA written notice of the User's desire to renew this Agreement a minimum of ninety (90) days prior to the expiration of the Initial Term or then exercised Renewal Term.
4. User Fee. No fee shall be payable by the User under this Agreement.
5. Use. The User's Space will be used by the employees and volunteers of the User, including SSM volunteers and representatives, for the purpose of operating a monthly food pantry for the benefit of the Building residents and other neighborhood residents, and for no other purposes whatsoever without the CDA's prior written consent, which consent the CDA may withhold in its sole discretion. Said use shall be subject to the provisions of Paragraph 7 below.
6. Common Areas. The CDA grants to the User, its staff and volunteers, the right to use, in common with all others to whom the City has or may hereafter grant rights to use the same, the "Common Areas" located within the Building and on the Property. The term "Common Areas" is defined as the parking area, sidewalks, driveway, interior

hallways, lobby, stairwell, and all other areas or improvements which may be provided by the CDA for the common use or benefit of occupants of the Building. The CDA reserves the right to control and manage the Common Areas in its sole discretion and to establish rules and regulations for the use thereof. The CDA shall be responsible for cleaning, maintaining and repairing the Common Areas.

7. 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 this 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 space 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. The User shall clean the User's Space and all Common Areas used, including, 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.

8. 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 Paragraph 7, 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.

9. Assignment and Subletting. The User shall not assign, pledge, sell or in any manner transfer this 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 this Agreement is and shall remain absolute and unqualified.

10. 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 this 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 this Agreement.

11. Insurance. The User shall procure and maintain during the term 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 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 this 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 this Agreement.

12. 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 this Agreement.

13. Termination. Either party shall have the right to terminate this Agreement, at its sole discretion, upon ninety (90) days prior written notice to the other party.
14. Default. In the event of the User's default hereunder and the User's failure to cure the same within thirty (30) days after the CDA gives the User written notice thereof (or such longer period not to exceed ninety (90) days if cure could reasonably be expected to take longer than thirty (30) days, provided cure is commenced within said thirty (30) day period), the CDA, in addition to all other rights and remedies accorded by law or in this Agreement, shall have the right to immediately terminate this Agreement and remove the User from the User's Space.
15. Hold Over. The User shall surrender the User's Space upon the expiration or termination of this Agreement. Any holdover not consented to by the CDA in writing shall not result in a new period of use or interest and, in such case, the CDA may treat the User as a trespasser.
16. Right of Entry. The CDA, the City of Madison, and their respective representatives shall have the right to enter upon the User's Space at any reasonable time for the following purposes:
  - a. To perform maintenance, repairs and janitorial work.
  - b. To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Agreement or in the exercise of its municipal powers.
17. Rights Upon Expiration or Termination. Upon the expiration or termination of this Agreement, the User's rights in the User's Space shall cease, and the User shall immediately surrender the User's Space, subject to the provisions of Paragraph 18.
18. Removal and Disposal of Personal Property. Upon the expiration or termination of this Agreement, the User shall remove all personal property from the User's Space. If the User leaves any personal property in the User's Space, the CDA shall have the right to dispose of said property, without liability, ten (10) days after the User vacates the User's Space.
19. Definition of CDA and User. The terms "CDA" and "User" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Agreement shall bind the parties mutually, their heirs, personal representatives, successors and assigns.
20. Non-Discrimination. In the performance of its obligations under this Agreement, the User agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, 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. The User further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
21. Notices. All notices to be given under the terms of this Agreement shall be in writing, dated, and signed by the person serving the notice and shall be sent by certified mail, return receipt requested, postage prepaid, or hand-delivered to the designated representatives listed below:

For the CDA: Department of Planning, Community and Economic Development  
For Community Development Authority  
Attn.: Executive or Deputy Director  
215 Martin Luther King Jr. Boulevard, Suite 130  
Madison, WI 53703

with a copy to: CDA Housing Operations Director  
Madison Municipal Building, Suite 161  
P. O. Box 1785  
Madison, WI 53701-1785

For the User: Second Harvest Foodbank of Southern Wisconsin, Inc.  
Attn.: Tiffany Klopp - Agency Relations Manager

2802 Dairy Drive  
Madison, WI 53718

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

22. Accessibility. The User's Space shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the CDA.
23. Severability. If any term or provision of this Agreement or the application thereof to the CDA or the User or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to the CDA or the User or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
24. Entire Agreement. All terms and conditions and all negotiations, representations and promises with respect to this Agreement are merged into this Agreement. No alteration, amendment, change, or addition to this Agreement shall be binding upon the parties unless in writing and signed by them.
25. Law Applied. 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 suite or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the 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.
26. No Waiver. No failure or delay on the part of either party to enforce any of the terms, covenants, conditions or agreements hereof shall operate as a waiver thereof nor affect the right of the party to enforce the same upon a subsequent default or breach.
27. Authority. The User represents that it has the authority to enter into this Agreement and that the person signing on behalf of the User represents and warrants that he or she has been duly authorized to bind the User and sign this Agreement on the User's behalf.

BE IT STILL FUTHER RESOLVED that the Chair, Executive Director, Secretary and/or Deputy of the CDA, or their designees, 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.