

9-17-18

**AGREEMENT FOR VENDOR MANAGEMENT SERVICES**  
**2019 Fourth on the Shore Event**

This Agreement ("Agreement") is entered into by the City of Manitowoc, Wisconsin, a municipal corporation ("City"), 900 Quay Street, Manitowoc Wisconsin 54220-4543, and Amanda Brusky, for Vendor Management Services for the 2019 Fourth on the Shore Event ("Event").

In consideration of the covenants and agreements set forth, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Contractor hereby agree as follows:

**I. Scope and Intent of Agreement.** This Agreement establishes responsibilities for vendor management of the 2019 Fourth on the Shore Event. Vendor Management of the Event is defined as:

1. Operating the Event with on-site presence, preparation and follow-up.
2. Addressing all vendor issues and concerns that arise relative to the operation of the Event.
3. Establishing, participating in, and facilitating any necessary meetings of the Fourth on the Shore vendors.
4. Collecting and managing the funds generated by the Event, and utilizing those funds for any expenditures for the Event.
5. Overseeing and actively working to improve the vendor part of the Event.

**II. City Responsibilities.** The City will define areas where vendors can be located during Event, provide general liability insurance that covers the Event location, any necessary mapping, and assist Contractor with resolving issues and needs of the Event. The City will also obtain the raffle license. The Mayor's Assistant is authorized to act as the City's agent ("Agent") and will be the main contact for Contractor.

**III. Contractor Responsibilities.** Contractor shall be responsible for all vendor services before, during, and after Event, including operations, fund management, and communication with the City. Specifically, the Contractor shall:

**A. Operate the Event.**

1. Obtain any necessary licenses.
2. Create and maintain PayPal account to receive vendor payments.
3. Collect vendor fees and establish the stall layout by June 15<sup>th</sup>.
4. Provide on-site supervision of the Event. Ensure that vendors locate in the correct stalls.
5. Arrange for adequate parking and signage.

6. **Oversee vendor activities and enforce the provisions of the Vendor Agreement.**
  7. **Coordinate with the City on special events that involve or impact the Event.**
- B. **Address Issues and Concerns.** The Contractor shall respond to issues and concerns that arise from vendors and the City. The Contractor shall establish and maintain open communication with the Agent.
- C. **Manage Event Funds.** The Contractor has budgetary authority to expend monies for the purposes of the Event. The Contractor is authorized to set, revise, collect, hold, and disburse rents or other fees, charges, deposits, and other payments with respect to the Event. The Contractor shall:
1. **Create an annual budget, and within reason, follow the line items of the annual budget with all expenditures.**
  2. **Utilize fees collected from vendor stall rentals to pay for the operating requirements of the Event.**
  3. **Limit total annual spending to no more than the amount of revenues available.**
  4. **Account for the use of all Event funds and, where practical in the use and accounting of Event funds.**
  5. **Provide a financial statement to the City by August 1, 2019.**
- D. **Monthly Report.** Each month, between April and June, provide a report and update to the Agent.
- E. **Improve the Vendor Event.** The Contractor shall work toward the continuous improvement of the Event to support its long term growth and success. The Contractor shall develop and implement strategies related to:
1. **Actively recruiting new vendors and attracting customers.**
  2. **Actively maintaining and updating, in collaboration with Event vendors, Event policies and regulations.**
  3. **Enhancing the Event's role as a civic resource, especially in relation to the surrounding downtown environment.**

#### **IV. Compensation and Independent Contractor Status.**

- A. **Compensation.** Contractor's compensation shall be based on profits. If the Event profits are \$5,000 or less, the Contractor and City shall split the funds 50/50. If the profits exceed \$5,000, the City shall be paid the first \$3,000 for entertainment purposes for the Event in the future and the remainder of the profits shall be retained by Contractor.

- B. **Independent Contractor.** The Contractor is an independent contractor under this Agreement, and is expressly and solely responsible for compliance with all federal and state wage and income tax laws and regulations, as well any other applicable federal, state and local employment laws.
  
- C. **Contractor's Decision Making Authority.** The Contractor shall have the authority to set policy and make decisions on the following matters. These decisions do not need to be ratified by the City:
  - 1. Add the layout of the vendors and placement.
  - 2. Annual vendor stall rental fees.
  - 3. The times of operation.
  - 4. All procedures and rules related to vendor arrival, setup, re-supply, and departure.
  - 5. Any policies that may impact vendor eligibility to participate in the Event such as insurance requirements, eligible products and wholesalers.

**V. Duration and Renewal.** This Agreement shall be valid and enforceable from the date the Agreement is fully executed, through and including August 1, 2019. City and Contractor shall have the option to renew this Agreement for one additional Event season extending through August 1, 2020. Contractor shall notify City at least twenty days prior to the expiration of this Agreement in the event Contractor wishes to renew this Agreement on such terms as may be mutually agreeable to City and Contractor. Nothing in this Agreement, however, shall be construed to require renewal of this Agreement on any terms by either party.

**VI. Notice and Right to Cure.** In the event of any breach of this Agreement or any of its terms or conditions by either the City or the Contractor, such party shall, upon written notice from the other, proceed immediately to cure or remedy such breach, and in any event shall cure any such default or breach within 10 consecutive calendar days of the receipt of such notice, if such breach is of a nature that can be reasonably cured within such 10 day period. If such breach is of a nature that cannot be reasonably cured within such 10 day period, such party shall have commenced such cure and shall be diligently pursuing the same. In the case such action is not taken or is not diligently pursued, the aggrieved party may have available the remedies provided for herein, however, it is expressly agreed that a breach of this Agreement shall not entitle the parties to terminate this Agreement.

A notice, demand or other communication hereunder shall be deemed to have been sufficiently given by any party to another party under this Agreement when personally delivered, sent electronically, mailed by first class or registered or

certified mail, postage prepaid, addressed to the City or the Contractor, as the case may be, and:

In the case of the Contractor, address to or delivered personally to:

Amanda Brusky  
1801 Michigan Avenue  
Manitowoc Wisconsin 54220

In the case of the City, address to or delivered personally to:

City of Manitowoc  
Attn: Assistant to the Mayor  
900 Quay Street  
Manitowoc Wisconsin 54220-4543

The above addresses may be changed at any time by the parties by notice given in the manner provided above. The parties further agree that electronically reproduced signatures such as by email are valid for execution or amendment of this Agreement, and that electronic transmission is an authorized form of notice as that term is used in this Agreement.

**VII. No Liability to the City.** The City shall have no obligation or liability to any third party under contract or retained by the Contractor in the performance of the Contractor's obligations and responsibilities under this Agreement. The Contractor specifically agrees that no representations, statements, assurances, or guarantees will be made by the Contractor to any third party or by any third party which is contrary to this provision.

**VIII. Relationship of Parties.** Nothing in this Agreement nor any act of the Contractor or the City shall be deemed or construed to create any relationship of third party beneficiary, of employee or employer, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.

**IX. Inspection of Records.** The City shall have the right to inspect any and all records, contracts, financial statements, ledgers or written documents which relate to and are generated by the responsibilities and obligations of the Contractor hereunder, and which are expressly related to this Agreement. The Contractor shall provide all records to the City at the termination of this Agreement. All work done under this agreement shall be the property of the City.

**X. Amendments.** This Agreement can only be modified or changed in writing if executed by the City and the Contractor.

**XI. Applicable Law.** This Agreement shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with the laws of the State of Wisconsin. All actions or proceedings relating directly or indirectly to this Agreement, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin.

**XII. Date.** This Agreement shall be dated, effective and binding as of the date of the last execution.

[the remainder of this page intentionally left blank]

CONTRACTOR

CITY OF MANITOWOC, WISCONSIN

Amanda Brusky  
Amanda Brusky

\_\_\_\_\_  
Justin M. Nickels, Mayor

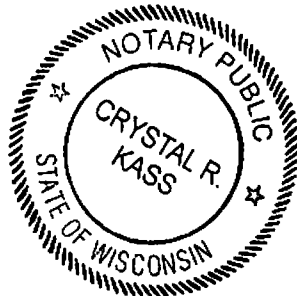
\_\_\_\_\_  
Deborah Neuser, City Clerk

9-13-18  
Date

\_\_\_\_\_  
Date

STATE OF WISCONSIN )  
  )ss.  
MANITOWOC COUNTY)

Personally came before me this 13<sup>th</sup> day of September 2018, the above signed Amanda Brusky, to me known who executed the foregoing instrument in her individual capacity.



Crystal R. Kass  
Crystal R. Kass  
Notary Public  
Manitowoc County, Wisconsin  
My Commission (expires)(is) 06/12/2021

STATE OF WISCONSIN )  
  )ss.  
MANITOWOC COUNTY)

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, the above signed Justin M. Nickels and Deborah Neuser, to me known who executed the foregoing instrument and to me known to be such Mayor and City Clerk of the City of Manitowoc, Wisconsin, a Wisconsin Municipal Corporation, and acknowledged that they executed the foregoing instrument as such Officers of said City, by its authority.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public  
Manitowoc County, Wisconsin  
My Commission (expires)(is) \_\_\_\_\_

This Agreement was drafted by Kathleen M. McDaniel, City Attorney