

PI
11-20-17

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FACILITY USE AGREEMENT

THIS AGREEMENT made this 1st day of November, 2017 by and between Manitowoc County, a body corporate pursuant to Wis. Stat. § 59.01, with its principal office at 1010 South Eighth Street, Manitowoc, Wisconsin 54220 ("Manitowoc County") and the City of Manitowoc ("Provider"), with its principal office at 900 Quay Street, Manitowoc, WI 54220.

1. **PURPOSE.** The purpose of this Agreement is to permit Manitowoc County to use the premises of Provider located at 3300 Custer Street, Manitowoc, WI 54220 and more particularly described as the Manitowoc Senior Center ("Premises") for the purpose of providing a site location for the Senior Nutrition Program provided by Manitowoc County.

2. **TERM.** This Agreement shall commence on January 1, 2018 at 12:00 a.m. and end on December 31, 2018 at 11:59 p.m.

3. **TERMINATION.** This Agreement may be terminated by either party by providing sixty (60) days written notice to the other party. Upon termination of this Agreement, Manitowoc County's liability will be limited to the pro rata cost of using the Premises as of the date of termination.

4. **TIMES.** The Premises shall be available Monday through Friday from 8:00 a.m. to 2:00 p.m. ("Closing Time"). The Premises may close earlier than Closing Time. Either the Manitowoc County appointed site manager or designated volunteer shall be responsible for ensuring that all clients have exited the building before Closing Time.

5. **NONEXCLUSIVE USE.** The rights granted herein shall in no way prohibit Provider from access to, or the use of, any portion of the Premises that are not being used by Manitowoc County.

6. **CLIENT CONFIDENTIALITY.** Provider shall not use or disclose any information concerning any Manitowoc County client for any purpose not directly connected with the administration of Provider's responsibilities under the Agreement, except with the informed, written consent of the client.

7. **MANITOWOC COUNTY OBLIGATIONS.** Except as otherwise provided in this Agreement, Manitowoc County shall:

- a. keep the Premises in the same condition as pre-use ;
- b. ensure all participants have exited the building before 2:00 p.m. on days when Manitowoc County uses the Premises;
- c. make sure the Premises is locked at the end of each use;
- d. dispose of trash and garbage produced as a result of Manitowoc County's use of the Premises in compliance with the policy of the Provider;
- e. clean-up the dining area after each day Manitowoc County uses the Premises;
- f. provide serving equipment and utensils not otherwise available at the Premises. The Provider will provide Manitowoc County a designated storage area to store any serving equipment and/or utensils.

8. **PARKING.** Provider shall provide adequate parking for Manitowoc County clients, guests, volunteers, employees and food providers.

9. **SPECIAL PROGRAMING.** Special programing may result in the need to use the Premises during times other than those provided in Paragraph 5 of this Agreement. In such a case, Manitowoc County shall seek approval of such special programing from Provider, which shall not unreasonably withhold approval.

10. **INDEMNIFICATION.**

a. Manitowoc County agrees to hold harmless and defend Provider from and against any and all causes of action, claims, costs, demands, expenses, judgments, legal fees, liabilities, or losses (including, without limitation, reasonable attorney fees), for damage to property or injury to or the death of any person that arises out of or is in any way related to any negligent act or omission of Manitowoc County, its officials, agents, and employees in connection with this Agreement. Manitowoc County will have the right to control the defense and to select counsel to be used in fulfilling its defense obligations.

b. Provider agrees to hold harmless and defend Manitowoc County, its elected and appointed officials, officers, employees, departments, boards, commissions, committees, agents, and volunteers from and against any and all causes of action, claims, costs, demands, expenses, judgments, legal fees, liabilities, or losses (including, without limitation, reasonable attorney fees), for damage to property or injury to or the death of any person that arises out of or is in any way related to any negligent act or omission of Provider, its officials, agents, and employees in connection with this Agreement. Provider will have the right to control the defense and to select counsel to be used in fulfilling its defense obligations.

c. The covenants contained in this Paragraph will survive the termination of this Agreement.

11. **IMMUNITY.** Manitowoc County is a governmental entity entitled to governmental immunity under law, including Wis. Stat. § 893.80. Nothing contained in this Agreement shall waive the rights and defenses to which Manitowoc County may be entitled under law, including all immunities, limitations, and defenses under Wis. Stat. § 893.80 or any subsequent amendment thereof. The rights and obligations set forth in this Paragraph shall survive the termination or expiration of this Agreement.

12. **PARAGRAPH HEADINGS.** All paragraph and subparagraph headings contained in this Agreement are for convenience in reference only, and are not intended to define or limit the scope of any provision.

13. **SEVERABILITY.** The provisions of this Agreement are severable and if any condition, covenant, or term is found to be invalid, unenforceable, or void by a court of competent jurisdiction, then the remainder of the Agreement shall remain in full force and effect and shall not in any way be affected, impaired, or invalidated.

14. **SIGNATURE AUTHORITY.** The persons signing this Agreement warrant that they have been authorized to enter into this Agreement by and on behalf of their respective parties and that they have full and complete authority to bind their respective parties by executing this Agreement.

15. **NOTICE.** All notices, requests, or demands given by either party to the other under the provisions of this Agreement shall be in writing and delivered in person or by certified mail, delivery service, email addressed as follows:

If to Manitowoc County:

Director, ADRC of the Lakeshore
P.O. Box 935
4319 Expo Drive
Manitowoc, WI 54221
E mail: cathylay@co.manitowoc.wi.us

If to Provider:

City of Manitowoc
900 Quay Street
Manitowoc, WI 54220
E mail: _____

16. **COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be taken to be an original, and all collectively but one instrument.

17. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and supersedes any and all other agreements, oral or written, between the parties with respect to its subject matter. Each party acknowledges that no agreement, inducement, promise, or representation has been made by or on behalf of any party except as specifically set forth herein. Each party agrees that no agreement, promise, or statement that is not contained in this Agreement shall be binding on any party. Each party acknowledges and agrees it has relied on its own judgment in entering into this Agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement in duplicate, effective on the date that it is signed by all parties.

MANITOWOC COUNTY

PROVIDER

By: Cathy Ley
Cathy Ley
ADRC Director

By: _____
Justin M. Nickels, Mayor

Date: 11/1/17

By: _____
Deborah Neuser, City Clerk

By: Lois Kiel
Lois Kiel
County Clerk

Date: _____

Date: 10/31/17