

CATERER'S AGREEMENT

THIS CATERER'S AGREEMENT (this "Agreement") is made and entered into this 25th day of June, 2019, by and between the La Crosse Center of the City of La Crosse, Wisconsin (the "La Crosse Center") and Blue Moon Catering (the "Caterer").

WHEREAS, the La Crosse Center operates a convention and arena facility for the City of La Crosse, Wisconsin, which is located at 300 Harborview Plaza, La Crosse, Wisconsin (the "Facility");

WHEREAS, the Caterer desires to provide catering services within the Facility; and

WHEREAS, the La Crosse Center desires to grant permission for the Caterer to provide catering services within the Facility, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the parties hereby enter into this Agreement as of the date first set forth above.

1. USE OF PREMISES.

- a. The La Crosse Center hereby grants the Caterer permission to use the Facility and provide catering services within the Facility subject to the terms and conditions contained herein.
- b. The term of this agreement shall be for up to one calendar year, commencing on the later of July 1, 2019 or the date first set forth above, and ending on June 30, 2020.
- c. Caterer shall leave free for passage all public entrances and exits of the Facility.
- d. Caterer shall adequately clean, as determined by the La Crosse Center in its sole discretion, all areas used by Caterer immediately following the conclusion of the event in which Caterer provided catering services (each of which is an "Event"). Caterer's failure to adequately clean all such areas will result in the assessment of actual cleaning costs, with a minimum fee of \$275.00, which shall cover cleaning costs and all other necessary or incidental costs incurred by the La Crosse Center in connection with Caterer's use of the space. Caterer hereby agrees to pay any such fees upon demand, and Caterer further acknowledges that any such failure to adequately clean the space used by Caterer may result in the termination of this Agreement and/or Caterer's ability to use the Facility in the future.
- e. All equipment, supplies, and other items used in connection with providing Caterer's catering services shall promptly be removed from the Facility following the conclusion of the Event. In no circumstances shall the La Crosse Center be responsible for any loss, damage, destruction, or theft of any catering supplies, equipment, or any other property that is under the care and control of the Caterer.
- f. All costs, fees, or expenses incurred by the La Crosse Center in connection with Caterer's use of the Facility, as determined by the La Crosse Center in its sole discretion, shall be charged to the Caterer, and Caterer hereby agrees to pay any such amounts upon demand.
- g. Caterer shall pay the La Crosse Center any and all costs incurred by the La Crosse Center due to property damage or defacement caused by the acts or misuses of its employees and agents.

2. COMPLIANCE.

- a. Caterer shall procure all permits and abide by all applicable Federal, State and local laws, rules, and regulations. A current copy of Caterer's health license(s) must be located at the Facility and available to be presented upon demand. Caterer authorizes the La Crosse Center and the County Health Department to periodically inspect Caterer's practices and equipment to ensure that Caterer is in compliance with all applicable rules and regulations. Caterer agrees that a breach of this condition may result in suspension and/or termination of this Agreement.
- b. Caterer shall obtain and, at all times during the term of this Agreement, maintain, at a minimum, insurance in accordance with the terms of Section 3 of this Agreement.
- c. Caterer's violation of any rules, regulations, or provisions addressed or identified in this Agreement, or any laws or regulations applicable to Caterer, may result in a written warning being issued to Caterer, suspension or termination of this Agreement, and/or Caterer's ability to provide catering services at the Facility in the future, as determined in the sole discretion of the La Crosse Center.

3. INSURANCE.

- a. Caterer shall obtain at its own cost and expense and, at all times during the term of this Agreement, maintain general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) which shall include premises liability coverage, personal and advertising injury coverage and products liability coverage. The policy shall also include medical payments coverage in an amount not less than Ten Thousand Dollars (\$10,000.00). The policy shall have an aggregate amount not less than Two Million Dollars (\$2,000,000.00). Coverage shall apply to the risks associated with or arising out of the services provided under this Agreement.
- b. Caterer shall also obtain at its own cost and expense, an automobile liability policy in an amount not less than One Million Dollars (\$1,000,000.00) which shall provide coverage for any vehicle.
- c. Caterer shall obtain at its own cost and expense, a workers compensation and employers liability policy providing statutory coverage for workers compensation and coverage for employers liability with minimum limits of \$100,000 bodily injury by accident (each accident), \$100,000 bodily injury by disease (each employee) and \$500,000 bodily injury by disease (policy limit).
- d. All such insurance policies (other than workers compensation and employers liability) shall name the City of La Crosse and the La Crosse Center and each of their respective officers, employees and agents, as additional insured parties.
- e. All such insurance policies shall provide a waiver of subrogation in favor of the City of La Crosse and the La Crosse Center and each of their respective officers, employees and agents.
- f. All policies shall state that the City of La Crosse shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by the City of La Crosse and La Crosse Center for the duration of this Agreement.
- g. All policies shall be written by an insurance company with an A.M. Best rating of at least A- VIII.
- h. Caterer shall provide the La Crosse Center with certificates of insurance and written endorsements evidencing all of the above at least thirty (30) days prior to commencement of this Agreement and at least ten (10) days after the renewal of each such policy.

4. SURCHARGE.

- a. Caterer shall pay the La Crosse Center a fifteen percent (15%) fee (the "Fee") based on the gross sales amounts of all food and beverages, exclusive of taxes and gratuities, within fifteen (15) calendar days of each Event, with a copy of each customer's invoice provided to the La Crosse Center no later than one (1) business day following each Event. All menu prices must be inclusive of the Fee. Failure to submit a copy of the invoice or pay the Fee when due may result in the termination of this Agreement and/or suspension or loss of future catering privileges at the Facility. Any amounts due and owing under this Agreement shall bear interest at the rate of two percent (2%) per month from the date such amount becomes due.
- b. Current versions of Caterer's menus must be on file at the Facility, in the form of Exhibit A. Menu prices must include all fees and charges relating to china, linens, flatware, glassware, table decorations and all labor necessary to provide catering services at the Event, with the exception of items provided by the La Crosse Center for the Event. In the event a customer or third party supplies china, linens, flatware, glassware, etc., Caterer shall remain responsible for paying the full menu price, and the La Crosse Center will bill Caterer for the full menu price. **Menu prices MUST include the La Crosse Center's fifteen percent (15%) catering fee. This cannot be listed as an additional line item.** Furthermore, menu prices must be those provided to the general public upon request or fair market value and shall be in accordance with those provided on Exhibit A. La Crosse Center management reserves the right to determine whether prices submitted meet this requirement, in their sole discretion. If determined by La Crosse Center management that such prices do not meet the above mentioned requirement, the La Crosse Center may elect to bill Caterer for the fair market value of such provided goods and services, which may be in excess of the menu price.
- c. Caterer agrees to the rates provided on Exhibit B for all equipment rentals, with the understanding that prices are subject to change.
- d. Caterer **MUST** provide china, table lines, cloth napkins, glassware, and real silverware for serving any event to be held at the La Crosse Center.

5. PROMOTIONAL MATERIALS.

- a. Unless otherwise expressly agreed to in writing between the parties, the La Crosse Center makes no guarantees that Caterer will be listed on any advertisements, guides, or promotional material(s) distributed by the La Crosse Center. The La Crosse Center reserves all rights to conceive, design, draft, create, print or in any other way produce promotional materials for its use(s). Promotional materials include, but are not limited to, flyers, web sites, marquee displays, signage, and advertisements in printed and electronic media, and banners.
- b. Caterer shall not, in any form or fashion, display any advertising or promotional materials within the Facility without obtaining the prior express written consent of the La Crosse Center.

6. **ADDITIONAL PROVISIONS.**

- a. Caterer acknowledges and agrees that nothing in this Agreement allows for or permits Caterer to sell, provide, or distribute alcohol at any Event at the Facility.
- b. Caterer shall serve only Pepsi Products at any Event within the Facility at which Caterer provides beverages, including soda, bottled water, and energy drinks. Caterer further agrees that neither Caterer nor any of its employees or agents shall be permitted to sell, consume, possess, or distribute, any non-Pepsi products while at the Facility.
- c. **INDEMNIFICATION.** CATERER SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS EACH OF THE LA CROSSE CENTER AND CITY OF LA CROSSE, AND EACH OF THEIR OFFICERS, OFFICIALS, EMPLOYEES AND AGENTS, FROM ANY AND ALL CLAIMS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSES, INCLUDING ATTORNEYS' FEES, WHICH (I) ARISE FROM OR ARE IN CONNECTION WITH CATERER'S USE OR OCCUPANCY OF THE PREMISES, (II) ARISE FROM OR ARE IN CONNECTION WITH ANY ALLEGED ACT OR OMISSION OF CATERER OR ITS AGENTS, INVITEES OR CUSTOMERS, (III) RESULT FROM ANY DEFAULT, BREACH, VIOLATION OR NON-PERFORMANCE OF THIS AGREEMENT BY CATERER, (IV) RESULT IN PERSONAL INJURY OR PROPERTY DAMAGE SUSTAINED IN OR ABOUT THE FACILITY IN CONNECTION WITH THE EVENT, OR (V) ARISE FROM OR ARE IN CONNECTION WITH CATERER'S USE OF ANY PATENTED, TRADEMARKED, OR COPYRIGHTED MATERIALS, EQUIPMENT, DEVICES, OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY KIND WHATSOEVER DURING THE EVENT.
- d. **WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- e. In the event of any controversy or claim arising out of or relating to this Agreement, or a breach thereof, the parties hereto shall first attempt to settle the dispute by mediation, administered by the American Arbitration Association under its Mediation Rules. If settlement is not reached within sixty days after service of a written demand for mediation, any unresolved controversy or claim shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The number of arbitrators shall be one. The place of arbitration shall be La Crosse, Wisconsin. Wisconsin law shall apply. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
- f. In the event that catering privileges are terminated by the La Crosse Center, Caterer may reapply to provide services at the Facility no sooner than three (3) years from date of termination.
- g. A breach of any term or condition in this Agreement by Caterer may result, in addition to any other remedy available to the City of La Crosse or the La Crosse Center, in the immediate suspension or revocation of Caterer's approval to provide services in the Facility. Any decision affecting any matter not expressly provided for herein shall rest solely with the discretion of La Crosse Center Management.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto have caused this Caterer's Agreement to be executed by its duly authorized representatives as of the date first set forth above.

LA CROSSE CENTER

By: _____
Art Fahey, Director

For the CATERER:

Name of Caterer: Blue Moon Catering

By: _____

Name: _____

Its: _____