

**CATERING AGREEMENT
for NICOLLET ISLAND PAVILION
BETWEEN MINNEAPOLIS PARK AND RECREATION BOARD
AND MINTAHOE HOSPITALITY GROUP**

FIRST AMENDED AGREEMENT

THIS AGREEMENT is made as of the 20th day of October, 2004 (the "Effective Date"), by and between the City of Minneapolis, acting by and through its Park and Recreation Board (the "MPRB"), and Mintahoe, Inc., a Minnesota corporation, d/b/a Mintahoe Hospitality Group (the "Vendor").

WHEREAS, in an effort to better serve the public, the MPRB desires to have a catering agreement for its Nicollet Island Pavilion; and

WHEREAS, Vendor provides catering and all related services; and

WHEREAS, Vendor has submitted a proposal to provide catering services for the MPRB for its Nicollet Island Pavilion; and

WHEREAS, the MPRB desires to engage the services of Vendor to provide catering services for its Nicollet Island Pavilion hereinafter collectively "the Facility", subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Definitions.

a. Event: "Event," as used in this Agreement, shall include, but not be limited to, all weddings, retirement parties, birthday parties, anniversary parties, individual and corporate events and other events as requested by customers which are booked after the effective date of this Agreement; except that an "Event" shall not include any event which was booked prior to the effective date of this Agreement, regardless of when such event is to take place, or to events sponsored by or through the MPRB as described in Section 2, below.

b. Facility: "Facility," as used in this Agreement, shall mean the Nicollet Island Pavilion, and may also include any area on the grounds of the Nicollet Island Pavilion where the MPRB has approved an Event to be held.

2.
Facility.

Reservation of Right of MPRB to Schedule and Use the

Notwithstanding any provision in this Agreement to the contrary, the MPRB reserves the right to book the Facility for any use, use or allow the use of the Facility for any purpose, and retain the services of a caterer other than the Vendor for events sponsored by or through the MPRB. Until further notice, the MPRB hereby perpetually reserves December 30, December 31, January 1, July 4, the last Saturday of Aquatennial in July, and three additional date to be determined by the MPRB each year for events sponsored by MPRB. With respect to other dates, the MPRB agrees to notify Vendor within twenty-four (24) business hours of booking the facility. The MPRB also agrees that if the Vendor has previously booked the Facility on a date that the MPRB would like to use, that the Vendor's booking will be given priority.

3. Obligations of Vendor.

a. Facility Improvements.

The Vendor agrees to invest the following percentages of gross sales in return for contract extensions of 5 years for each investment period:

3% of gross revenues, as defined in the contract, for the period 2004 to 2011 to be divided into 70% permanent improvements at the facility and 30% equipment and furnishings. If the investment is made by December 31, 2011, an extension of 5 years will be provided. Investments made beyond 3% of gross revenues will be applied to the investments for the next extension.

3.5% of gross revenues, as defined in the contract, for the period 2012 to 2016 to be divided into 70% permanent improvements at the facility and 30% equipment and furnishings. If the investment is made by December 31, 2016, an extension of 5 years will be provided. Investments made beyond 3.5% of gross revenues will be applied to the investments for the next extension.

4% of gross revenues, as defined in the contract, for the period 2017 to 2021 to be divided into 70% permanent improvements at the facility and 30% equipment and furnishings. If the investment is made by December 31, 2021, an extension of 5 years will be provided.

A bond will be posted by the vendor in the amount of the facility improvement bids prior to work proceeding. In addition, the Vendor shall provide the MPRB with written mechanic's liens waivers from each and every contractor and/or subcontractor that acknowledges that the facility is not subject to a mechanic's lien and the MPRB is not a party to or responsible for the payment for the work of any contractor and/or subcontractor.

All improvements will be made in agreement with the MPRB and overseen by a designated MPRB representative.

The Vendor will be responsible for purchasing all items and hiring all employees, agents, and any subcontractors necessary to complete the facility improvements. The improvements will be made in agreement with the MPRB. The MPRB shall retain sole interest in the property including improvements to the Facility. The MPRB shall indemnify Vendor from any liability for environmental matters arising out of Vendor undertaking leasehold improvements in the Nicollet Island Pavilion if such liability arises out of a pre-existing condition at the Nicollet Island Pavilion. All facility improvements made to the Facility will be the property of the MPRB. Mintahoe will be responsible for the maintenance and repair of any equipment that Mintahoe has installed at the Facility. The cost of any repairs or maintenance paid for by Mintahoe will be applicable towards the investment requirements in section 3, subsection a. The MPRB will be responsible for maintenance of the building's existing conditions, the grounds and any equipment that has been installed before Mintahoe's contract began. This is to include the fire system, the out door lighting, the existing water pipes, plumbing and sewage system, basement heating system, Building Structure to include: walls, floors, foundation, structural support beams, cupola, structural roofing, windows and exterior doors. The MPRB agrees to maintain the grounds of facility and supply snow shoveling for the two parking lots and the path to the patio. Mintahoe will provide snow removal for the patio area. . The Vendor may make use of the Facility improvements and agrees to use reasonable care when using MPRB's property.

b. Storage.

Vendor shall be solely responsible for the storage of its property. Vendor may store its property in the lower level storage area of the Facility in a location and in a manner approved by the MPRB. Vendor shall assume all liability for theft and loss of its property while stored at the Facility.

c. MPRB Policies.

Vendor acknowledges that the MPRB has established ordinances, regulations and policies which govern the use of the Facility. Vendor agrees to comply with all current and future MPRB ordinances, regulations and policies that apply to the Facility.

d. Reservations.

Vendor shall be responsible for taking reservations for all Events at the Facility in a manner consistent with applicable MPRB ordinances, regulations and policies. Vendor shall enter into a separate contract with each customer, which complies with the terms of this Agreement and with all MPRB policies. Such contract shall include:

- o The name, address and telephone number of the individual or other entity reserving the Facility;
- o The date on which the Facility will be used;
- o The type of event being held at the Facility;
- o The hours for which the Facility has been reserved; and
- o The rate charged for the Facility.

Vendor shall notify the MPRB within twenty-four business hours of reserving the Facility and provide the MPRB with a copy of the contract between the Vendor and the Customer.

The contract between the Vendor and the Customer must be approved by the MPRB in advance of the Event. Such approval decision shall be made within forty-eight business hours of receipt of the contract except in exigent circumstances. The MPRB reserves the right to exercise its sole discretion in making the decision whether to approve or deny a contract between a Customer and the Vendor for an event at the Facility.

If a reservation is cancelled, Vendor shall notify the MPRB of the cancellation within twenty-four business hours of receiving notice. Vendor agrees to abide by the MPRB's cancellation policy.

To ensure prompt reservation service, Vendor agrees to maintain a voice mail system accessible twenty-four (24) hours per day. Vendor further agrees to return all calls within twenty-four (24) business hours except in extraordinary situations.

e. Security.

If the MPRB or the Vendor determines security is warranted, the Vendor shall employ such security personnel and be solely responsible for the cost of providing security. If the MPRB or the Vendor determines that a police officer is necessary or appropriate for any Event, the Vendor shall employ a police officer whose primary employer is either the City of Minneapolis or the MPRB. The Vendor shall be solely responsible for the cost of paying for the police officer.

a. Catering Services.

Vendor shall supply food, beverage and banquet services at the Facility.

a. Exercise of Reasonable Care.

The Vendor agrees to use reasonable care with regard to the Facility and all MPRB Property located thereon.

4. Obligations of the MPRB.

a. Right of Access and Use of Equipment.

For all Events catered by the Vendor pursuant to this Agreement, the Vendor is granted the right to enter onto MPRB property and use the Facility and all the additional equipment located therein to the extent as is reasonable and necessary for the Vendor to carry out its responsibilities for Events.

a.

On-Call Staff.

During the hours of Events for which Vendor is providing catering services, the MPRB shall cause at least one MPRB employee to be available by pager or cell phone to address issues or facilitate communication with appropriate MPRB personnel that may arise during Events.

f. Exclusive Right to Provide Event Catering Services.

Except as provided in Section 3 of this Agreement and for events booked prior to the completion of this Agreement, MPRB agrees that during the term of this Agreement it will not contract with or permit another caterer to provide catering services for Events conducted at the Facility.

5. Ownership and Maintenance of Equipment.

Vendor acknowledges and agrees that all equipment currently in the Facility, including, but not limited to, all kitchen appliances, utensils and furniture, is and shall remain the property of the Vendor. The Vendor shall be responsible for maintaining and cleaning its property after all Events. All equipment owned by the Vendor and used by it during Events shall remain the property of the Vendor. The Vendor shall be solely responsible for maintaining and securing its property and for cleaning its property after all Events. The Vendor is responsible for insuring its property.

6. Utilities and Other Services.

The Vendor shall pay for all utilities for the Facility. Utilities include electric, natural gas, water, sewer, telephone and security alarm. Mintahoe shall retain 15% of the Facility rental fee in return for assuming responsibility for all utilities at the Facility.

7. Term of Agreement; Termination.

The term of the Agreement shall be for a period of up to approximately 22 years, commencing upon execution by the parties and continuing through December 31, 2026, unless termination prior thereto in the manner provided herein. This Agreement shall automatically terminate upon the expiration of the Term of this Agreement. This Agreement may be terminated by written agreement of both parties. This Agreement may also be terminated for cause. Failure to act in accordance with the terms of this Agreement shall constitute a default. In the event a condition of default occurs, the injured party may give written notice of default and intent to terminate this Agreement to the party in default. Such notice shall specify the condition of default and identify the measures necessary to cure the default. If a default is not cured or substantial progress toward a cure is not made within thirty (30) days of such notice, the party giving notice of default may terminate this Agreement effective immediately.

8. Compensation for MPRB During Term of Agreement.

a. Definitions

“Facility Rental Fee” shall mean the fee collected for use of the Facility for an Event.

“Gross Revenue” shall mean the total revenue collected by the Vendor for an Event; excluding sales tax, fees for security or staff charges passed on to the Customer, Facility Rental Fee and Accountment Revenue.

“Accountment Revenue” shall mean the total revenue collected by the Vendor for an Event derived from fees charged for the rental of special supplies and equipment excluding the Facility Rental Fee.

b. Event Revenue.

The MPRB shall receive eighty five percent (85%) of the Facility Rental Fee charged for each Event held at the Facility, as well as, one hundred percent (100%) of the permit fees for the MPRB outside picnic areas and shelters. Vendor shall pay the MPRB this Facility Rental Fee and the outside picnic area and shelter permit fees in accordance with paragraph 9. The MPRB shall also receive a percentage of all Gross Revenue. Such percentage due and owing the MPRB shall be as follows:

For Events occurring in 2002:	10.0%
For Events occurring in 2003:	12.5%
For Events occurring in 2004 and thereafter	15.0%

With respect to all Accountment Revenue, the MPRB shall receive five percent (5%) of such Accountment Revenue received by the Vendor.

9. Payment.

a. Event Revenue.

Vendor shall remit to the MPRB on a monthly basis all revenue due and owing to the MPRB pursuant to this Agreement which has been collected during the preceding month along with a statement itemizing referenced in Section 10, below. Such payment and statement shall be received on or before the twenty-first (21) day of each month. A late fee of 1.5% will be imposed each month that the payment is not received by the due date.

10. Accounting.

a. Event Revenue.

Along with the monthly payment pursuant to Section 9.a. of this Agreement, the Vendor shall provide to MPRB an itemized monthly accounting of the following items for each Event: 1) the Facility Rental Fees charged and collected; 2) the Gross Revenue from the sale of food; 3) the Gross Revenue from the sale of non-alcoholic beverages; 4) the Gross Revenue from the sale of alcoholic beverages; and 5) the Accoutrement Revenue. The Vendor also agrees that, upon request, the MPRB or its representatives may review its account ledgers, customer receipts, including customer name and contact information, bank statements and any other records relating to the operation at the Nicollet Island Pavilion for the previous year.

11. Payment of Others.

Vendor shall pay all of Vendor's employees, agents, and any subcontractors furnishing service, labor, equipment, or materials incidental to the performance of Vendor's obligations under this Agreement. Upon request of the MPRB Vendor will furnish the MPRB with satisfactory evidence that all of its subcontractors have been fully paid in accordance with Vendor's payment terms.

12. Marketing, Promotions and Advertising.

The MPRB shall have prior approval of and final authority over any and all advertisements of the Facility to be used by Vendor on its website and other marketing activities undertaken by Vendor that relate to the Facility.

13. General Indemnification.

Vendor will take all reasonable precautions necessary to protect the public against bodily injury or property damage. Vendor will defend, release, indemnify, and hold the MPRB harmless from all claims, damages and losses, including MPRB's attorney fees, that may result from any bodily injury or property damage arising by reason of any willful or negligent act or omission on the part of the Vendor or any of its subcontractors, agents or employees, while engaged in the performance of this Agreement; any and all claims, liens, and the claims of liens for labor services by or on behalf of Vendor performed or equipment or materials furnished by or on behalf of Vendor under this Agreement.

MPRB will defend, release, indemnify, and hold the Vendor harmless from all claims, damages and losses, including attorney fees, that may result in bodily injury or property damage arising by reason of any willful or negligent act or omission on the part of the MPRB or any of its subcontractors, agents or employees, while engaged in the performance of this Agreement; any and all claims, liens, and the claims of liens for labor services by or on behalf of MPRB performed or equipment or materials furnished by or on behalf of MPRB under this Agreement.

14. Insurance

Vendor shall purchase and maintain insurance policies as set forth below. The MPRB shall be a named additional insured on all such insurance policies. The Vendor shall hold the MPRB harmless from all claims, demands, and suits arising from the acts or omissions of the Vendor.

Commercial General Liability

Vendor shall purchase and maintain commercial general liability insurance as follows:

\$2,000,000.00 General Aggregate
\$2,000,000.00 Products/Completed Aggregate
\$1,000,000.00 Each Occurrence
\$1,000,000.00 Fire Damage
\$ 10,000.00 Medical Expense

Umbrella Policy

\$1,000,000.00 Each Occurrence
\$1,000,000.00 Aggregate
\$ 10,000.00 Self Insured Retention

Commercial Automobile Liability Insurance

\$1,000,000.00 CSL—bodily injury & property damage
\$1,000,000.00 Uninsured Motorists
\$1,000,000.00 Underinsured Motorists
Basic Personal Injury Protection

Workers Compensation Insurance

As Required Coverage A—Workers Compensation
\$500,000.00 Coverage B—Employers Liability—each accident
\$500,000.00 Coverage B—Employers Liability—disease limit
\$500,000.00 Coverage B—Employers Liability—disease employees

Liquor Liability Insurance

\$1,000,000.00 Each Occurrence

Vendor shall provide proof of coverage to the MPRB. Coverage levels will be reviewed with each contract extension to determine if the levels need to be increased.

15. Assignability

The rights and obligations of Vendor under this Agreement shall not be assignable or transferable without the prior written approval of the MPRB.

16. Compliance of all Laws; Ability to Perform.

Vendor shall comply with all applicable federal, state, regional and local laws, ordinances and regulations applicable to Vendor. Vendor represents and warrants to MPRB that Vendor is duly licensed and

qualified to conduct business in the State of Minnesota, and that Vendor is not aware of any fact or circumstance, which would prevent Vendor from performance in accordance with this Agreement.

17. Affirmative Action Compliance.

Vendor agrees to comply, in writing, with all applicable equal opportunity and affirmative action laws, directives, and regulations of the federal, state, and local governing bodies or agencies thereof, including specifically Chapter 139 of the Minneapolis Code of Ordinances. The MPRB may, at its discretion, require Vendor to undergo a pre-compliance review upon the MPRB's request.

18. Nondiscrimination.

Vendor will not discriminate against any employee, applicant for employment, or party seeking to retain the Vendor's services based on race, color, creed, religion, ancestry, gender, national origin, affectional preference, disability, age, marital status, status with regard to public assistance, or status as a disabled veteran or veteran of the Vietnam era. Vendor will include a similar nondiscrimination provision in all subcontracts into which it enters for performance of its obligations hereunder.

19. Entire Agreement; Amendments.

This Agreement, and the documents incorporated herein, represent the entire integrated agreement between Vendor and the MPRB and supersedes all prior negotiations, representations, or agreement, either written or oral. No amendment or modification of the terms of this Agreement, except as may be expressly authorized herein, may be made and will not be effective unless agreed upon in writing by the MPRB and Vendor.

20. Interest of Members of MPRB and Park & Recreation Staff.

No member of the governing body, officer, employee, or agent of the MPRB who exercises any functions or responsibilities in the carrying out of this project to which this Agreement pertains shall have any interest, financial or otherwise direct or indirect, in this Agreement.

The MPRB may terminate this Agreement if the MPRB has reasons to believe that gratuities in any form were offered or given by Vendor or any representative of Vendor to any officer or employee of the MPRB for receiving favorable treatment with respect to the award of, or the making with respect to the performance of, this Agreement.

21. Equal Opportunity Statement.

Vendor shall comply with the provisions of all applicable federal, state, and local statutes, ordinances, and regulations pertaining to human rights and non-discrimination including, without limitation, Minnesota Statutes Section 181.53 and Chapter 363 and the Minneapolis Code of Ordinances, Chapter 139, incorporated herein by reference.

22. Headings.

The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

1. Restoration of Premises.

Upon the termination of this Agreement, the Vendor shall promptly remove all of its property and equipment from the Facility and, at its sole cost, repair and restore the Facility for any damage or impairment caused by the removal of Vendor's property.

24. Notices.

All notices or communications relating to this Agreement shall be in writing and shall be deemed given upon hand delivery or deposit in the United States mail, return receipt requested, and addressed as follows:

To the MPRB:
Minneapolis Park and Recreation Board
2117 West River Road

Minneapolis MN 55411
Attention: Superintendent

To Vendor:
Mintahoe Hospitality Group
1021 Bandana Blvd. East
Suite 230
St. Paul, MN 55108
Attention: Kelvin Lee

25. Independent Contractor.

The MPRB and Vendor agree that the relationship created by this Agreement is that of independent contractor, and not of employer and employee, a joint venture or a partnership. Vendor retains the sole and exclusive right to control the manner, time, place and means by which the services are performed under this Agreement. Vendor shall be solely and entirely responsible for its acts and for the acts of its employees, agents, and subcontractors in connection with the Project. Vendor shall be responsible for the compensation and benefits of Vendor's employees and for payment of all federal, state and local taxes payable with respect to any amounts paid to Vendor under this Agreement. No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to Vendor, including but not limited to, FICA, FUTA, federal and state personal income tax, state disability insurance tax and state unemployment tax.

26. Governing Law.

This Agreement shall be construed in accordance with and governed by the laws of the State of Minnesota.

27. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

28. Arbitration.

Any dispute involving a sum of twenty-five thousand dollars (\$25,000.00) or less arising under this Agreement shall be settled in Hennepin County, Minnesota, by binding arbitration pursuant to the rules of the American Arbitration Association. The arbitrator may award fees and costs to the prevailing party. The arbitrator shall not have authority to award punitive damages or to alter in any way the provisions of this Agreement.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement as of the year and date first written above.

FOR THE MPRB

FOR THE VENDOR

The City of Minneapolis, acting by and through its Park and Recreation Board

Mintahoe Hospitality Group

By _____
President

By _____
Its _____

By _____
Secretary

Approved as to legality:

By _____
Attorney for Minneapolis Park and Recreation Board