



CITY COUNCIL AGENDA ITEM

Date: June 10, 2013

To: Brian Kischnick, City Manager

From: Mark F. Miller, Economic Development Director
 Susan Leirstein, Purchasing Director
 Carol Anderson, Recreation Director
 Scott Mercer, Recreation Supervisor

Subject: Rescind and Re-award Catering Contract for Community Center Events

History

In May of 2011, Encore Catering was awarded the Community Center Catering contract for three years with an option to renew for three additional years (Resolution #2011-05-093). Since that time, Encore Catering has not secured the number of reservations or revenues as anticipated by their staff. As a result, in March of 2013, Encore Catering contacted the City requesting to be relieved of the catering contract that expires in August of 2014.

Kosch's Hospitality, LLC responded to the original request for proposal (RFP) in February 2011 and has agreed to assume the current contract on August 1, 2013. Kosch is requesting a renewal for five (5) additional years through July 2019, so long as the caterer is in good standing. The inclusion of the renewal allows time to properly advertise services, promote the facility and secure long range events. Other changes to the agreement include: exclusive food service rights on Saturdays, ten percent return to the City on both food and liquor sales and exclusive use of the kitchen on Saturday.

Purchasing

On February 24, 2011, requests for proposals (RFP) were received from companies interested in providing three-year requirements of catering services for the Troy Community Center with an option to renew for three additional years. Sixty-six (66) companies were notified via the Michigan Intergovernmental Trade Network (MITN) website with three (3) proposals received. All three firms met the pass/fail criteria; however, Crank's Services LLC withdrew from the process.

Kosch Hospitality, LLC received the highest score in the original (2011) catering RFP evaluation process when considering the proposal documents, menus, experience, alcohol service, financial ability to perform and professional competence. However, Encore Catering scored highest overall when the pricing model was added to the final score.

Financial

Through the length of this agreement, the City will receive a minimum of \$12,000 annually with a potential for an additional ten percent of gross receipts, if the caterer exceeds \$120,000/year.

Recommendation



CITY COUNCIL AGENDA ITEM

City staff recommends:

- (A) To rescind with prejudice the existing contract with Encore Catering that expires in August of 2014;
- (B) To re-award and assign the catering contract that expires in August of 2014 to Kosch Hospitality, LLC with a renewal for five (5) additional years, so long as the caterer is in good standing. The award is contingent upon contractor submission of properly executed Agreement and contract documents, including insurance certificates and all other specified requirements;
- (C) To request authorization pursuant to MCL 436.1509 for Kosch to apply for and acquire a municipal civic center liquor license from the MLCC valid only for banquet operations at the Troy Community Center.

City Attorney's Review as to Form and Legality

Lori Grigg Bluhm, City Attorney

Date

**ASSIGNMENT OF EXISTING AGREEMENT BETWEEN THE CITY AND
ALPHA-DONI, INC. d/b/a ENCORE CATERING FOR CATERING SERVICES AT THE
TROY COMMUNITY CENTER TO KOSCH HOSPITALITY, LLC WITH RENEWAL**

THIS ASSIGNMENT OF EXISTING AGREEMENT entered into on the _____ day of June, 2013, between the CITY OF TROY, 500 W. Big Beaver, Troy, Michigan, hereinafter referred to as the "City", and KOSCH HOSPITALITY, LLC, 324 East St., Rochester, Michigan 48307, hereinafter referred to as "Caterer".

WITNESSETH:

In consideration for the City agreeing to the Assignment of Existing Agreement and renewal regarding the existing Troy Community Center Catering Agreement between the City and Alpha-Doni, Inc., d/b/a Encore Catering, dated August 20, 2011 to KOSCH HOSPITALITY, LLC., "Caterer", and as provided in that existing Agreement, the City grants Caterer the exclusive privilege and right of conducting the sale of food, beverages, including alcoholic beverages and catering rights, except as otherwise set out in that Existing Agreement, at specifically designated areas in the Troy Community Center, located at 3179 Livernois, Troy, Michigan 48083. The Caterer agrees to comply with all terms and conditions set out in the existing Agreement dated August 20, 2011, which is attached hereto as Exhibit A and incorporated as though fully set forth herein except for the following revisions to that Agreement:

The existing Paragraph 2 entitled "REVENUE PLAN, COMMENCEMENT DATE, REPORTING AND PAYMENT REQUIREMENTS AND INSPECTION OF RECORDS AND BOOKS" is hereby deleted in its entirety and a new Paragraph 2 is incorporated to read as follows:

2. REVENUE PLAN, COMMENCEMENT DATE, REPORTING AND PAYMENT REQUIREMENTS AND INSPECTION OF RECORDS AND BOOKS

Caterer agrees to pay to the City ten (10%) of the gross receipts from all funds derived from catering services at the Troy Community Center, less Michigan sales tax, with the exception of groups represented by a City resident that are designated as 501 (c) (3) under the Internal Revenue Code, which do not have to be included in the gross receipts (the "Percentage Fee"). Caterer, as holder of a liquor license under which it will be serving liquor at the Troy Community Center, may not pay in excess of ten (10%) of gross sales to another entity. Caterer also guarantees a minimum payment of \$12,000.00 per year (the "Guaranteed Payment"). The first monthly payment shall be due on or before September 20, 2013. Thereafter, Caterer shall pay a minimum of ten (10%) percent of gross receipts per month. Caterer shall have the option of paying more than the ten (10%) of gross receipts per month on a month-by-month basis which will be credited toward the yearly Guaranteed Payment of \$12,000.00. Each payment shall be due on the twentieth day of the month.

This Agreement shall commence on August 1, 2013 or on a date certain as soon thereafter as approved by Troy City Council with Alpha-Doni, Inc., d/b/a Encore Catering's signed agreement as set out on the last page of this Assignment of Existing Agreement and renewal.

On the 5th day of each month, the Caterer shall provide to the City a report that lists the events catered and revenue earned from Troy Community Center events from the prior month. The revenue amount that is reported to the City on the 5th day of each month will reflect the final count and fee charges established between the group and the Caterer, which shall be agreed to in writing at least seven (7) days prior to the event. To encourage discounted pricing, any service provided for a 501(c) (3) non-profit

organization, which is represented by a Troy resident, shall not be included as gross revenue in this report. A copy of the contract between the group and the Caterer with the final number of attendees and a copy of the event invoice/receipt listing food and alcohol disbursement with the number of attendees shall be submitted with the report. All Percentage Fee payments due to the City shall be received by the City by the 14th day of the month following the month in which the services were rendered. The Caterer shall submit a copy of its monthly Michigan Department of Treasury sales tax return by the 5th day of each month following the month for which the return was filed.

Within thirty (30) days of the anniversary date of this Assignment of Existing Agreement, Caterer shall reconcile the amount of the monthly installments with the amount of the gross receipts for the agreement year and present to the City an accounting ("Reconciliation Accounting") of all payments due to the City, if any. Payment due to the City shall be made within ten (10) days after the Reconciliation Accounting is presented to the City as set out above.

The City shall have the right to inspect the books, records and inventories of the Caterer at any reasonable time and a reasonable location.

The existing Paragraph 3 "USE OF COMMUNITY CENTER , AND LIMITATIONS AND LEASE OF OFFICE SPACE" is deleted in its entirety and a new Paragraph 3 is incorporated to read as follows:

3. USE OF COMMUNITY CENTER , AND LIMITATIONS AND LEASE OF OFFICE SPACE.

Caterer shall be restricted for banquets to the areas designated on the Community Center site map attached hereto as Exhibit 1. Caterer may provide food and

beverage services to all other areas of the Troy Community Center upon approval of the Recreation Department Director or his/her designee.

At Caterer's option, the City shall allow Caterer to use approximately 120 square feet of office space as designated on Exhibit 1 for a rental payment per square foot equal to the annual prevailing rate as calculated by the City each fiscal year. For fiscal year 2013/2014 the office rental rate would be \$16.75 per square foot or \$ 2,010.00. Once the amount of square footage of the rental office space is determined, the annual rental rate shall be determined. If Caterer sends written notification at least 30 days in advance to City that it intends to use the allocated office space, then the annual office rental rate shall be paid on a monthly basis in an amount which shall constitute the annual office rental rate divided by 12. The office rent shall be due on the first (1st) day of each month. Caterer may use the space for the purpose of transacting business with potential customers for Community Center events. Once Caterer has used the designated office space for rent, it may cancel the use of the office space with thirty (30) days written notice to the City of Troy.

The City acknowledges that nothing in this Agreement is intended to prohibit Caterer from providing food or beverage services for individuals, businesses and third parties at other venues under other liquor licenses in which Caterer has an interest. However, Caterer shall not encourage a different venue for patrons for the sole purpose of establishing a client base at the expense of the City.

The existing Paragraph 4 "USE OF KITCHEN AND LIMITATIONS" is deleted in its entirety and a new Paragraph 4 is incorporated to read as follows:

4. **USE OF KITCHEN AND LIMITATIONS**. Caterer may use the kitchen area as a food preparation area. The kitchen will be available at the following times:

Monday – Thursday	2:00 p.m. to 10:30 p.m.
Friday	2:00 p.m. to 10:00 p.m.
Saturday	Caterer shall have exclusive use from 12:00 p.m. to 9:00 p.m. (except October 26, 2013)
Sunday	9:00 a.m. to 6:00 p.m.

The kitchen hours may be extended for after hour catered events. During times when the kitchen is unavailable, Caterer will have access to the loading dock and the area designated on Exhibit 1 as “staging area”. Caterer shall not have access to the kitchen on Monday through Friday from the opening of the Troy City Community Center until 2:00 p.m.

The caterer shall have exclusive catering privileges on Saturday evenings except for those events reserved as of the date of the agreement.

Existing Paragraph 12 entitled “LIQUOR LICENSE, SERVING OF ALCOHOL AND FAILURE TO TRANSFER PENALTY” is deleted in its entirety and a new Paragraph 12 is incorporated to read as follows:

12. LIQUOR LICENSE, SERVING OF ALCOHOL AND FAILURE TO TRANSFER PENALTY

(A) As an integral part of this Assignment of Existing Agreement with renewal, the City shall require the Caterer to 1) apply for and acquire a municipal civic center liquor license under MCL 436.1509, which the CITY agrees to support with a contemporaneous resolution requesting the issuance of the municipal civic center liquor license, or a Class C or other appropriate liquor license for the premises known as the Troy Community Center and/or (2) designate and use an already existing liquor license held in the Caterer’s name and/or which can be used for catering services at the Troy Community Center. It shall be the responsibility of the Caterer to apply to or obtain any required permission or licenses for

whatever liquor license it will use for catering at the Troy Community Center. The Caterer shall keep the license in good standing under Caterer's name during the term of the Agreement. The City shall cooperate in supplying the Caterer with information regarding the City that may be required by the Michigan Liquor Control Commission ("MLCC"). The Caterer shall pay all up-front costs for the application and/or liquor license required by the MLCC. Violations of the State of Michigan liquor laws will be considered as a violation of the Agreement and may result in termination of the Agreement at the City's discretion. Employees serving alcoholic beverages shall do so in compliance with the State of Michigan liquor laws and guidelines as set forth by the MLCC. Serving violations by an employee will be just cause for termination of the Agreement at the City's discretion, and the Caterer shall be deemed responsible if such conduct occurs. The Caterer shall in no way jeopardize the liquor license obtained for use at the Troy Community Center.

(B) The ability of Caterer to qualify as the holder of a liquor license is an essential term of this Agreement. Caterer understands and acknowledges that if for any reason it does not qualify for either a new license or is unable to use an existing license held in Caterer's name under State statute, MLCC rules and regulations or City Ordinance, that this Assignment of Existing Agreement and renewal shall be null and void. This Agreement shall become null and void if Caterer does not qualify for a license or is unable to use an existing license held in Caterer's name, or if Caterer is dispossessed of such a liquor license for whatever reasons or no reason and Caterer waives all rights to proceed against the City, by lawsuit or otherwise, for non-performance or for any other legal theory.

(C) Caterer agrees to assume the responsibilities of a liquor licensee as set out herein at Troy Community Center, and agrees to be responsible for all sanctions and/or penalties assessed for violations of the Michigan Liquor Control Commission's Administrative Rules and Regulations and/or federal, state, or local laws concerning the sale/serving of alcohol at Troy Community Center. This includes the assumption of a licensee's responsibility for the actions of the Caterer's employees, agents and/or representatives who sell/serve alcohol.

(D) Caterer shall not serve alcoholic liquor at times prohibited by State statute.

(E) Caterer agrees to indemnify and hold the City harmless from any and all claims arising out of the sale of alcoholic beverages by the Caterer, its employees, its agents and/or its representatives which occurred on City property.

(F) Caterer or its agents or employees shall not sell or permit intoxicating liquors to be consumed by minors and shall be required to be in compliance with all State and local liquor laws and requirements. Caterer shall possess a Servsafe certification and keep it current.

(G) Caterer understands that the City is not in the restaurant industry but desires to enhance the services available to the public at the Troy Community Center, by having food and beverage service on the premises. Caterer acknowledges that it is Caterer's responsibility to ensure a smooth transition of any food or beverage service at the Troy Community Center if the Caterer's Agreement is rebid, not renewed or if it is terminated.

Existing Paragraph 22 entitled "TERM OF AGREEMENT" is deleted in its entirety and a new Paragraph 22 is incorporated to read as follows:

22. TERM OF AGREEMENT. This Assignment of Existing Agreement shall remain in effect for a twelve (12) month period beginning on August 1, 2013, or on a date certain as soon thereafter as approved by Troy City Council with Alpha-Doni, Inc., d/b/a Encore Catering's signed agreement as set out on the last page of this Assignment of Existing Agreement with renewal, the period shall be from that specific date to July 31, 2014. However, in consideration for Caterer's willingness to enter into this Assignment of Existing Agreement if Caterer continues in good standing, and acknowledges in writing within sixty (60) days from the expiration of the Assignment of Existing Agreement that it desires to continue to perform the services described in the existing Agreement dated August 20, 2011 and this Assignment of Existing Agreement with renewal, the Troy City Council shall grant a renewal under the same terms and conditions for an additional five (5) year term or until July 31, 2019.

Existing Paragraph 25 entitled "ENTIRE AGREEMENT; AMENDMENT; WAIVER" is deleted in its entirety and a new Paragraph 22 is incorporated to read as follows:

25. ENTIRE AGREEMENT; AMENDMENT; WAIVER. The original Agreement dated August 20, 2011, this Assignment of Existing Agreement and any renewal thereof is and shall be deemed to be the complete and final expression of the Agreement between the parties as to the matters contained in and related to this Assignment of Existing Agreement dated August 20, 2011, and any renewal Agreement and supersedes any previous understandings, dealing and communications, including negotiations, discussions, representations, warranties, information, documents and agreements, among the parties pertaining to such matters. All terms and conditions of the original Existing Agreement dated August 20, 2011, shall remain in full force and effect unless a specific paragraph is deleted and replaced under this Assignment of

Existing Agreement and Caterer is bound by those original terms and conditions from the August 20, 2011 Agreement will remain unchanged. This Assignment of Existing Agreement or any renewal thereof shall not be modified or amended except pursuant to a written agreement signed by both parties. Any waiver of any party's rights or obligations under this Assignment of Existing Agreement or any renewal thereof must be in writing and must be signed by the party against which such waiver is to be enforced. Neither party's failure to exercise a right or to invoke a remedy in any particular circumstance shall be construed as a waiver of such right or remedy, and no waiver by either party of any right or remedy in one situation shall constitute a waiver of such party's rights or remedies in any other subsequent situation, whether similar or not.

Existing Paragraph 28 entitled "AUTHORITY TO EXECUTE" is deleted in its entirety and a new Paragraph 28 is incorporated to read as follows:

28. AUTHORITY TO EXECUTE. By execution of this Assignment of Existing Agreement with renewal, the respective parties acknowledge that each has executed this Agreement with full and complete authority to do so.

WITNESSES:

CATERER,

KOSCH HOSPITALITY, LLC, a Michigan Corporation

Gordon Kosch

By: Gordon Kosch
Its: Chief Executive Officer

- 1. *Jayla Zuehl*
- 2. *Deip B...*

WITNESSES:

CITY OF THE CITY,

1. _____

By _____
Dane Slater, Mayor

2. _____

M. Aileen Bittner, City Clerk

I, Paul A Andoni, Treasurer of Alpha-Doni, Inc., a/b/a Encore Catering, at my request and with my approval, agree to assign any interest of Alpha-Doni, Inc. to KOSCH HOSPITALITY, LLC and I agree to the termination date and the effective date for KOSCH HOSPITALITY, LLC and approved the terms and conditions of the Assignment of Existing Agreement with renewal. I also acknowledge and understand that any amounts due and owing by Alpha-Doni, Inc., to the City of Troy as part of any remaining balance for the \$12,000.00 guaranteed payment shall be paid in full within 90 days or, pursuant to the City of Troy's bid policy, Alpha-Doni, Inc, d/a/b Encore Catering, will be listed as a bidder in default with the City of Troy and will not be able to do business with the City of Troy in any capacity for three (3) years from the date of default.

Dated: _____

ALPHA-DONI, INC., a Michigan Corporation, d/b/a Encore Catering

WITNESSES:

1. _____

By: Paul A. Andoni
Treasurer

2. _____

WITNESSES:

CITY OF THE CITY,

1. _____

By _____
Dane Slater, Mayor

2. _____

M. Aileen Bittner, City Clerk

I, Paul A Andoni, Treasurer of Alpha-Doni, Inc., a/b/a Encore Catering, at my request and with my approval, agree to assign any interest of Alpha-Doni, Inc. to KOSCH HOSPITALITY, LLC and I agree to the termination date and the effective date for KOSCH HOSPITALITY, LLC and approved the terms and conditions of the Assignment of Existing Agreement with renewal. I also acknowledge and understand that any amounts due and owing by Alpha-Doni, Inc., to the City of Troy as part of any remaining balance for the \$12,000.00 guaranteed payment shall be paid in full within 365 days or, pursuant to the City of Troy's bid policy, Alpha-Doni, Inc, d/a/b Encore Catering, will be listed as a bidder in default with the City of Troy and will not be able to do business with the City of Troy in any capacity for three (3) years from the date of default.

Dated: 6-26-13

ALPHA-DONI, INC., a Michigan Corporation, d/b/a Encore Catering

WITNESSES:

1. Bob Phaylic
2. SEE

Paul A Andoni
By: Paul A. Andoni
Treasurer