



City of Waukesha
201 Delafield St. Waukesha, WI 53188
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Committee: Parks, Recreation & Forestry Board	Date: 4/18/2022
Common Council Item Number: ID#22-4033	Date: 5/3/2022
Submitted By: Ron Grall, Director of Parks, Recreation & Forestry Joanna Adamicki, Special Event Coordinator	City Administrator Approval: Kevin Lahner KL
Finance Department Review: Denise Vandebush-Kohlmann DVL	City Attorney's Office Review: Brian Running BR
Subject: Approval and authorization of contract between City of Waukesha and Raised Grain Brewing Co. for beverage services at Cutler Park for the 2022 Tribute Tuesday concert series and for beverage services at Lowell Park for the July 4 th Neighborhood Beer Garden at the fireworks display.	

Details:
Waukesha Parks, Recreation & Forestry is planning the Tribute Tuesday concert series at the Les Paul Performance Center in Cutler Park and the July 4th Fireworks display at Lowell Park. Tribute Tuesday concerts feature a tribute band and take place on the second Tuesday of June, July, August, and September. The July 4th Fireworks will be hosted in conjunction with a Neighborhood Beer Garden. For enhancement of the events, staff is requesting approval of the contract to allow Raised Grain Brewing Co. to sell beverages, including fermented malt beverages, during the concerts in Cutler Park, and the Neighborhood Beer Garden at Lowell.

Options & Alternatives:
Alternatives include not allowing beverage sales during the concerts and fireworks, which could adversely affect attendance and success of the concerts and beer garden.

Financial Remarks:
The revenue from this agreement will help support expenses for the events. Tribute Tuesday revenue account 5971.48501, expense account 5971.53959. July 4th revenue account 5940.48490, expense account 5940.53940.

Executive Recommendation:
Recommend approval of contract between City of Waukesha and Raised Grain Brewing Co. and authorize the Mayor to enter into this contract.

Beverage Service Contract
City of Waukesha – Raised Grain Brewing Co.
2022 Tribute Tuesday Concerts and Fourth of July Event

This Contract is by and between the City of Waukesha, 201 Delafield Street, Waukesha, WI 53188, a Wisconsin municipal corporation, referred to herein as the City; and Raised Grain Brewing Company, LLC, 1725 Dolphin Drive, Ste. B, Waukesha, WI 53186, a Wisconsin limited-liability company, referred to herein as Raised Grain. Together, the City and Raised Grain are referred to as the Parties.

Recitals

The City, by its Department of Parks, Recreation and Forestry, conducts a series of live music programs called "Tribute Tuesdays" and sponsors Fourth of July events. Food and beverages are served at the programs, and the City wishes to provide beverages, including alcoholic beverages. The City is willing to allow Raised Grain to do so, subject to certain terms and conditions.

Now, therefore, the City and Raised Grain agree, and contract as follows:

1. **Right to Serve Beverages.** Raised Grain shall have the exclusive right to serve beverages at Tribute Tuesday programs in Cutler Park, 321 Wisconsin Avenue, Waukesha, Wisconsin, and shall do so at each Tribute Tuesday program. Tribute Tuesday is scheduled on the following dates in 2022: June 14, July 12, August 9, and September 13. On July 4, 2022, Raised Grain shall have the right to manage a beer garden at Lowell Park, 2201 Michigan Avenue, Waukesha, Wisconsin. Raised Grain may serve beer, hard seltzer, hard lemonade, soda, and water. Raised Grain may not serve intoxicating liquors or wine.
2. **City Obligations.** The City shall organize the Tribute Tuesday events and the Fourth of July event, including marketing and promotion, booking of acts, provision of recyclable and trash receptacles and security. City shall provide Raised Grain with access to electrical receptacles for any equipment reasonably required to perform its services under this Contract.
3. **Raised Grain Obligations.** Raised Grain shall obtain and provide, at its sole expense, all items that are required for its provision of beverage service at Tribute Tuesday programs and at the Fourth of July event which are not provided by the City under section 2, including but not limited to all required licenses, beer, hard seltzer, soda and water inventory; cups, trays and straws; coolers; tappers; and ice. Raised Grain shall provide adequate servings stations and personnel to provide efficient service to patrons. All electrical cords used to provide service shall be covered to provide patron staff and volunteer safety.

All service will be conducted in compliance with state liquor laws. Raised Grain will provide sufficient petty cash for cash purchases and shall accept credit card payment. Beverage service at Tuesday Tribute events shall be provided by Raised Grain from 5:30 p.m. to 9:00 p.m. and for the Fourth of July event, from 4:00 p.m. to 10 p.m. on July 4, 2022. Raised Grain shall clean up the bar service area at the conclusion of the event.

Raised Grain shall arrive no later than 4:30 p.m. on each date of a Tribute Tuesday program and no later than 3:30 p.m. for the Fourth of July event. City staff directions for park entry and exit shall be followed. All COVID-19 safety precaution, as required by the City.

Raised Grain agrees to provide between twelve (12) and twenty-two (22) beverage tokens at no charge at each scheduled event. The tokens will be distributed to event performers (2 per performer) and event sponsors (up to six).

4. **Beverage Selection and Price.** Raised Grain shall determine the beverages it will serve and prices for them, but it shall include non-alcoholic options as well as bottled water.
5. **Promotion Information.** Raised Grain shall provide all information that it wishes for inclusion in marketing and promotion materials, including product and pricing information, to the City at least two weeks prior to the program for which it applies.
6. **Compensation.** Raised Grain shall pay the sum of One Thousand (\$1000.00) Dollars per Tribute Tuesday event. Payment is due for each date within one week of the event and no later than June 15, 2021; July 20, 2021; August 17, 2021; and September 21, 2021. Raised Grain shall pay the City \$1000.00 for the right to manage the beer garden and serve beverages at the Fourth of July event.
7. **Compliance with Alcohol Beverage Laws.** Raised Grain shall be solely responsible for compliance with all alcohol-beverage statutes and regulations, including but not limited to age verification and not serving to intoxicated persons.
8. **Indemnification.** Raised Grain shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind arising out of, or connected in any way with, Raised Grain's provision of beverages at Tribute Tuesday programs and Fourth of July events, including but not limited to violations of alcohol-beverage laws, and including court costs and actual attorney fees.
9. **Insurance.** At all times during Raised Grain's provision of beverages at Tribute Tuesday programs and the Fourth of July event, and for a period of at least 90 days afterward, Raised Grain shall maintain, at its sole expense, a policy of commercial general-liability insurance, including an endorsement or separate policy providing liquor-liability coverage, naming the City as an additional insured, with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Policies shall be occurrence, and not claims-made, policies and shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Raised Grain shall deliver a certificate of insurance to City showing that all requirements of this section are met.
10. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
11. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
12. **Term.** This Contract supersedes all previous contracts between the Parties. It shall commence upon its execution by all Parties and shall continue in force until the final program event on September 13, 2022.

- 13. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the review and execution of this Contract or have voluntarily waived the opportunity to do so; that they have read and understand each of this Contract's terms, conditions and provisions, and their effects; and that they have executed this Contract freely, of their own volition, and not under conditions of duress.
- 14. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
- 15. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition, or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees, and personal representatives.
- 16. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.

City of Waukesha

 By Shawn N. Reilly, Mayor
 Date: _____

 Attested by Gina L. Kozlik, City Clerk
 Date: _____

Raised Grain Brewing Company, LLC

 By (print name) _____
 Title: _____
 Date: _____

 By (print name) _____
 Title: _____
 Date: _____