

**Beverage Service Contract**  
**City of Waukesha – The Park Foundation of Waukesha, Inc.**  
2019 Carl Zach Classic and Tribute Tuesday Concerts

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and The Park Foundation of Waukesha, Inc., referred to herein as the Foundation. Together, the City and Foundation 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 a bicycling event called the Carl Zach Classic. Together, these are referred to herein as the Events. Food and beverages may be served at the Events, and the Foundation wishes to serve beverages, including alcoholic beverages, as a fund-raiser. The City is willing to allow the Foundation to do so, subject to certain terms and conditions.

Now, therefore, the City and the Foundation agree and contract as follows:

1. **Right to Serve Beverages.** The Foundation shall have the exclusive right to serve beverages at the Events, at Cutler Park, during the Term of this Contract, and the Foundation shall do so at each Event. The Foundation may serve beer, wine, wine coolers, hard lemonade, soda and water. The Foundation may not serve intoxicating liquors, except for wine.
2. **City Obligations.** The City shall organize the Events, including marketing and promotion, booking of acts, provision of food, tables, tents, chairs, signage, electricity, recyclable and trash receptacles, security and clean-up, as the City deems necessary in its sole discretion. The City shall attempt in good faith to organize and conduct the Events, but if the City is unable to organize one or more Events for lack of sponsorships, lack of funds, unavailability of performers, or other similar reasons, then the Parties are excused from performance of their obligations under this Contract for the Events that will not occur. The City shall provide Foundation with access to electrical receptacles for any equipment reasonably required by Foundation in performing its services under this Contract. The City shall determine the dates and times of all Events.
3. **Foundation Obligations.** Foundation shall obtain and provide, at its sole expense, all items that are required for its provision of beverage service at the Events that are not provided by the City under section 2, including but not limited to all required licenses; beer, wine, wine cooler, soda and water inventory; cups; coolers; tappers; age-verification wristbands; and ice. The Foundation shall provide adequate personnel to provide efficient service to patrons, and shall obtain the services of at least one licensed bartender, who will be on-site at all times to supervise all beverage sales. The Foundation will provide sufficient petty cash for cash purchases.
4. **Beverage Selection and Price.** The Foundation 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.** The Foundation 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 Event for which it applies.
6. **Profits.** All profits generated by beverage sales shall belong to the Foundation.
7. **Compliance with Alcohol Beverage Laws.** The Foundation 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.** The Foundation 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, Foundation's provision of beverages at the 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 the Foundation's provision of beverages at the Events, and for a period of at least 90 days afterward, the Foundation 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. The Foundation 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 until terminated by the mutual, written agreement of the Parties, or until unilateral termination by either Party, accomplished as follows: If either Party wishes to terminate this Contract unilaterally, it must do so by written notice to the other Party given no sooner than October 31 and no later than the next January 31, and termination shall be as of the date of the notice. If neither Party gives notice of termination by January 31, then this Contract shall remain in force for that year's Events, and neither Party may terminate before the conclusion of that year's Events.
13. **Condition to Performance.** The obligation of the Parties to perform their respective obligations is conditioned on the Tribute Tuesday Events actually taking place, and in the case of the Carl Zach Classic Event, there being a band performing at the Les Paul Performance Center during the Event. If any Tribute Tuesday event is cancelled or not scheduled, or if no band is to perform during the Carl Zach Classic at the Les Paul Performance Center, then the Parties shall have no obligation to perform their obligations for those specific Events.

**City of Waukesha**

\_\_\_\_\_  
 By Shawn N. Reilly, Mayor  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Attested by Gina L. Kozlik, City Clerk  
 Date: \_\_\_\_\_

**The Park Foundation of Waukesha, Inc.**

\_\_\_\_\_  
 By (print name) \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 By (print name) \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_