

BEVERAGE SERVICES VENDOR AGREEMENT

between

City of Dripping Springs

and

Peak Beverage Texas LLC

Contract No. PEA20241105

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Beverage Services Vendor Agreement

THIS BEVERAGE SERVICES VENDOR AGREEMENT IS ENTERED BY AND BETWEEN THE CITY OF DRIPPING SPRINGS AND PEAK BEVERAGE TEXAS LLC.

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE CITY AND PEAK BEVERAGE TEXAS LLC AGREE AS FOLLOWS:

ARTICLE 1. GENERAL

1.1 Scope

The Contractor is hereby engaged by the City to provide Beverage Services at the Events, which shall be conducted as more particularly described in Attachment "A".

1.2 Location

This Agreement is fully performable in Dripping Springs, Texas.

1.3 Exclusive Grant

Subject to the terms and conditions set forth in this Agreement and at all times during the Term of this Agreement, the City hereby grants to the Contractor the exclusive franchise to provide and perform Beverage Services at Events.

1.4 Consideration

- (a) In consideration of Contractor's participation in the Events, the Contractor agrees to pay the City a commission equal to fifteen percent (15%) of the gross receipts for all Catering Services provided at the Venue. "Gross Receipts" is defined herein as the total amount of income or revenue received by the Contractor for the sale or service of alcoholic beverages related to events at the Venue, less any Texas Mixed Beverage Sales Taxes or Texas Mixed Beverage Gross Receipts tax paid by the Contractor to the Texas Comptroller as required by law, credit card fees, discounts, and comps.
- (b) Contractor agrees to deliver payment and a copy of gross receipts to the City within thirty (30) days after any such Event at which the Contractor has provided Beverage Services.
- (c) Contractor may enter into additional commissions with vendors or events but will not exceed a total of thirty-five percent (35%) including the City commission.

1.5 Duration

This Agreement shall be in effect for no more than one year and may be renewed for two additional years if not terminated by either party.

1.6 Termination

- (a) This Agreement may be terminated by mutual consent of the parties.
- (b) This Agreement may be terminated by either party without prejudice upon written notice to the other party via certified mail, return receipt requested, thirty (30) days prior to commencement of the Event.
- (c) Termination shall release each party from all obligations of this Agreement, except as specified below.
- (d) Termination of this Agreement, as provided above, shall not prohibit, or impair any claim by either party based upon any breach of this Agreement.
- (e) The City shall determine if Contractor shall be relieved of Contractor's obligations to participate in the Event due to inclement weather.

ARTICLE 2. DEFINITIONS

In this Agreement:

- (a) **“Beverage Services”** means the provision of alcoholic beverages, including all related setup, service, and breakdown activities, compliance with safety and licensing requirements, and any associated tasks to manage and operate bar services at Events, as further specified in this Agreement and Attachment "A".
- (b) **“City”** means the City of Dripping Springs, a General Law, Type-A municipality located in Hays County, Texas.
- (c) **“Contractor”** means Peak Beverage Texas LLC, a Texas limited liability company.
- (d) **“Events”** means the following events held at the Venue:
 - (i) all events at which alcohol is sold;
 - (ii) all private events, other than those hosted by a non-profit organization or governmental entity, at which alcohol is served but not sold; and
 - (iii) all events at which a non-profit organization or governmental entity elects to engage the Contractor to provide Beverage Servicesbut does not include any event at which the Contractor elects not to participate in providing Beverage Services.
- (e) **“Venue”** means the Dripping Springs Ranch Park and Event Center located at 1042 Event Center Drive in Dripping Springs, Texas.

ARTICLE 3. CONTRACTOR'S DUTIES

3.1 Contract Negotiation with the Client

Contractor shall negotiate all pricing, bar menus and services directly with City's Client. City is not responsible for any disputes between the Contractor and City's Clients regarding Beverage Services and/or any pricing or billing of Beverage Services.

3.2 Compliance with City's Rules and Regulations

Contractor shall follow City's established rules and regulations for set-up, service and breakdown for any Event for which Contractor provides Beverage Services.

3.3 Safe Alcohol Service Certification

All individuals serving alcohol on Contractor's behalf shall be trained in Safe Alcohol Service by a TABC-approved Seller Training course. Contractor's Beverage Services shall comply with all relevant state and local laws in all material aspects.

3.4 Representations and Warranties of Contractor

Contractor represents and warrants that:

- (a) it has the authority to enter into this Agreement and to fully perform the obligations hereunder,
- (b) it is duly organized and validly existing under applicable laws,
- (c) this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms,
- (d) neither the execution, delivery and/or performance of this Agreement, will, directly or indirectly (with or without notice or lapse of time) breach any provision of its governing documents, or cause a default under any contract, instrument, or order to which it is a party or by which it is bound,
- (e) it will materially comply with applicable federal, state and local laws and regulations in performing its obligations under this Agreement, and
- (f) Beverage Services shall be performed in a workmanlike manner and with professional diligence and skill.

3.5 Supplies

Contractor agrees to provide all supplies, tools, and equipment necessary for performance under this Agreement.

3.6 Site Maintenance

- (a) Contractor shall not perform waste or damage the site.
- (b) Contractor shall exercise reasonable care and due diligence to avoid harming City premises upon which the Event occurs.
- (c) Contractor shall restore or rehabilitate the site and the access to it at the termination of this Agreement. This requirement shall not apply to normal wear and compression on the grass.

3.7 Licenses

Contractor shall, at its own expense, obtain all necessary licenses and permits required in connection with performing Beverage Services, materially comply with all state statutes and local ordinances in connection with the preparation, storage and service of alcoholic beverages, and hold the City harmless for any material violation thereof unless such violation is as a result of or in connection with the City's negligence or willful misconduct, in which case the City shall hold Contractor harmless and shall cooperate with Contractor to remedy the violation. Contractor shall upon request provide to the City a copy of such necessary licenses, including, without limitation, Texas Sales Tax License. Special Event Temporary Permits may be obtained by the Contractor for a fee, or the City may obtain the Permit themselves.

3.8 Safety

Contractor shall abide by all state, federal and local rules, and regulations. Contractor shall take all reasonable steps to ensure public safety and protection from fire damage.

3.9 Insurance

Contractor, at its expense, shall obtain and maintain during the Term of this Agreement, the following insurance coverage:

- (a) Worker's Compensation Insurance equal to or greater than the current statutory limit; and
- (b) Comprehensive General Liability Insurance with coverage no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
- (c) Liquor Liability Insurance in an amount not less than \$1,000,000 per occurrence.

Within five (5) business days after the signing of this agreement, but no earlier than thirty (30) days prior to the first event at the Venue of this Agreement, Contractor shall deliver a Certificate of Insurance listing the City as an additional named insured in connection with the policies set forth in this Section. The policies further shall provide for ten (10) days' written notice to the City from the insurer by registered or certified mail, return receipt requested, in the event of any modification, cancellation, or termination thereof. All of the foregoing limits may be met with an umbrella or excess policy with the same monetary limited written on an occurrence basis, providing it is written by the same insurance carrier.

3.10 Indemnification

CONTRACTOR, CONTRACTOR'S AGENT'S AND/OR EMPLOYEES SHALL INDEMNIFY AND HOLD THE CITY, CITY'S AGENTS, EMPLOYEES, AND/OR VOLUNTEERS HARMLESS FOR ANY CLAIMS OR CAUSES OF ACTION STEMMING FROM THE CONTRACTOR'S PARTICIPATION AT THE EVENT, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY AND LOST OR DAMAGE TO PROPERTY.

3.11 Rules

The Contractor shall follow the City's established rules and regulations for set-up, service, and breakdown for any event for which the Contractor provides Beverage Services.

ARTICLE 4. CITY'S DUTIES

4.1 City's Client Contracts

City covenants that all City event contracts with City Clients shall include a provision to the effect that (i) Contractor is the City's exclusive provider for Beverage Services at the Venue as described in this Agreement and (ii) all alcohol must be consumed within the City's designated event area at the Venue and may not be removed from the Venue.

4.2 Point of Contact

City shall provide information (name, phone number, mobile phone number and email address) to Contractor of the individual(s) who will serve as City's (1) main manager-level point of contact with Contractor and ensure that such individual(s) shall be accessible to Contractor on-site at the Venue or remotely via telephone and email and (2) on-site point of contact with Contractor and ensure that such individual(s) shall be accessible to Contractor on-site at the Venue at all times during any applicable event.

4.3 Access to Venue

City shall provide Contractor access to the Venue in order to provide Beverage Services pursuant to Contractor's contract with City's Clients.

4.4 Venue

City shall ensure that Venue is in clean and orderly condition and fully functional for Contractor to provide Beverage Services to City's clients.

4.5 Venue Rules and Regulations

City shall provide Contractor with the rules and regulations applicable to Contractor's Beverage Services and any changes thereto no fewer than ten (10) business days prior to any event at which such Venue rules and regulations shall apply.

4.6 IP License

City grants to Contractor a non-exclusive, non-transferrable license during the Term to use City's name and logo solely in connection with the Beverage Services and website and marketing materials with respect to such Beverage Services.

4.7 Insurance

City shall carry property insurance/liability coverage for its own property for all causes of loss.

4.8 Representations and Warranties of City

The City represents and warrants that:

- (a) it has the authority to enter into this Agreement and to fully perform the obligations hereunder,
- (b) it is duly organized and validly existing under applicable laws,
- (c) this Agreement constitutes a legal, valid and binding obligation, enforceable in accordance with its terms,
- (d) neither the execution, delivery and/or performance of this Agreement, will, directly or indirectly (with or without notice or lapse of time) breach any provision of its governing documents, or violate, breach, or cause a default under any contract, instrument, or order to which it is a party or by which it is bound, and
- (e) it will materially comply with applicable federal, state and local laws and regulations in performing its obligations under this Agreement.

ARTICLE 5. MISCELLANEOUS

5.1 Force Majeure

In situations in which Contractor's participation in an Event is delayed, cancelled, or suspended due to acts of God, severe weather, natural disaster, state of public emergency, or strike, the terms of this Agreement are waived.

5.2 Independent Contractor

The Parties agree that Contractor is an independent contractor and is neither an agent nor an employee of the City. Contractor is solely responsible for directing and controlling Contractor's resources and staff in order to achieve the goals of this Agreement.

5.3 Controlling Law & Venue

Any and all disputes that may arise in relation to this Agreement shall be subject to the laws of the State of Texas. Venue for any disputes arising under this Agreement shall be in Hays County, Texas. In the event that any suit or other action, at law or in equity, is instituted by either Party to enforce any of the provisions of this Agreement or resolve any disputes between the Parties with respect to this Agreement, the non-prevailing Party shall be obligated to pay all costs and expenses incurred by the prevailing Party in connection with the preparation and prosecution and any settlement of any such suit or action, at all appellate levels, including the reasonable fees and disbursements of the attorneys, accountants and experts of the prevailing Party.

5.4 Notices

Any notice provided for by this Agreement and any other notice, demand, or communication which either party may wish to send to the other, shall be in writing and given by (a) hand delivery, (b) express overnight delivery service, or (c) registered or certified United States mail, return receipt requested. Notices shall be addressed to the party for whom such notice, demand or communication is intended at such party's address as set forth below:

To the City:

City of Dripping Springs
Attn: Event Center Manager
PO Box 384
Dripping Springs, TX 78620
enelson@cityofdrippingsprings.com

To the Contractor:

Peak Beverage Texas, LLC
Attn: Tannea Musselman
252 Frog Pond Lane, Building A
Dripping Springs, TX 78620
tannea@meakbev.com

5.5 Assignment

Neither party shall assign, sublet, or transfer any interest in this Agreement without written consent of the other Party. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the City and Contractor.

5.6 Binding On Successors

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

5.7 Mandatory Disclosures

Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176), and the Contractor shall file a Form 1295 Certificate of Interested Parties (Form 1295) approved by the Texas Ethics Commission (Texas Government Code Section 2252.908). The Contractor also confirms it is in compliance with all Texas requirements related to government contracts including: (1) no boycott of Israel; (2) not listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) Contractor does not have a policy or practice of discriminating against firearm entities or firearm trade associations; (4) Contractor does not boycott energy companies; and Contractor is compliant with all other Texas laws including any additional disclosure requirements.

5.8 Severability

Any provisions of the Agreement prohibited or unenforceable by law shall be ineffective without affecting any other provision of this Agreement or shall be deemed to be severed or modified to conform to such law, and the remaining provisions of this Agreement shall remain in force, provided that the purpose of this Agreement can be achieved. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement be deemed to be a valid and binding agreement enforceable in accordance with its terms.

5.9 Merger

This instrument, and all Attachments affixed hereto, constitutes the entire Agreement between the City and Contractor. To the extent there are any conflicts between this Agreement and the attachments, this Agreement shall govern. This Agreement supersedes all other agreements, oral or written, made with respect to the Event.

5.10 Modifications

All amendments or modifications to the Agreement must be in writing. No modification shall be effective until approved by both parties.

5.11 Counterparts

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

BE IT HEREBY AGREED & APPROVED, for good and valuable consideration, as described herein, the sufficiency of which is hereby acknowledged.

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

THE CITY:

City of Dripping Springs

THE CONTRACTOR:

Peak Beverage Texas, LLC

Michelle Fischer
City Administrator

Tannea Musselman
Director of Strategic Partnerships

Date

Date

Attachment “A”: Scope of Services

PEAK BEVERAGE

POS systems: Peak to provide adequate handheld POS terminals for bar location using concessions or cash bars.

Staff Uniforms/ Attire: Peak will provide attire for staff.

ICE, Bar Equipment: Peak team to provide Ice, cups, bins, etc.

Staffing: Peak to provide adequate bartenders, barbacks and managers based on projected guests and event type.

TiPs Certified Bartenders: Peak to provide all TABC certified bartenders.

ID/ Age Verification: Peak to ID any and all individuals at the bar locations; potentially utilize wristbands or stamp at client request to keep transaction times high.

POS Reporting & Data: Peak to provide all data from the event series and transparency into reporting by bar location, by item - square is the processing platform.

Compliance with local and state health regulations: Peak to provide hand washing stations and safe drink handling (when designated type of event its needed).

Insurance: Peak to provide a COI with venue listed as additional insured and umbrella policy.

Tables: Peak to provide tables for all bar locations.

Menu Design: Peak will provide design options or can work collectively with producer on menu Designs.

Product Purchasing: Peak to handle all product purchasing and receiving. Product may be brought with us via truck from our warehouse.

Menu Printing: Peak to print all menus for cash bar or concessions needs (if it's a high amount - may work with client).

Bar setup & Breakdown: Peak to set up and tear down all bar locations at the beginning and end of the event.

PRODUCER-VENUE

Security: venue or rental client to provide overall security for event each day and overnight (if needed).

WiFi: venue to Provide - Peak has the capability to run of hots posts for cash bar (credit only) events.

Generators/Power Source: venue to provide power if needed to bar location.

Access to Venue: venue will grant access to allow our team to successfully set up and break down for the event days.

Marketing: venue or client to market the event to drive attendance and ticket sales for all public events.

COLLABORATIVE/SHARED SERVICES {both Parties}

Event Layout Creation: Peak to work in partnership with venue on the best layout for the event series to maximize sales & minimize lines.

Menus: Peak to design in partnership with venue and determine all product offerings for menus along with pricing.