

VENDOR PERMIT AGREEMENT

BETWEEN

CITY OF SHEBOYGAN

AND

TRIBUTARY BEER GARDEN, LLC

This Agreement is made and entered into effective the date of final party execution by and between the City of Sheboygan (“City”), a municipal corporation, and Tributary Beer Garden LLC (“Vendor”), a Wisconsin limited liability corporation.

WITNESSETH:

WHEREAS, The City owns Kiwanis Park, located at 726 Kiwanis Park Road, Sheboygan, Wisconsin; and

WHEREAS, The City issued Request for Proposals 2076-25 to provide beer garden concession services in Kiwanis Park, and Vendor submitted a written proposal response meeting all terms and conditions; and

WHEREAS, The Parties wish to enter into an agreement governing the operation of a beer garden concession in Kiwanis Park and the construction/installation of certain renovations, additions, and improvements to the area within Kiwanis Park from which the concession will operate.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the receipt and adequacy of which are acknowledged, the City and Vendor agree as follows.

1. Permitted Use.

- a) **Premises.** Vendor shall have available for beer garden concession operations the areas and amenities within Kiwanis Park as depicted on the attached and incorporated Exhibit A.
- b) **License Granted.** Vendor understands that this Agreement does not constitute a lease or conveyance of real estate and is instead a license to conduct certain activities and provide certain services on City property for the public’s benefit.
- c) **Beverage and Food Sales.** Vendor may sell beverages, food, and ancillary merchandise, and alcoholic beverages served under a Class B tavern license. All concessions shall be submitted for City approval prior to sale. City reserves the right to disapprove any concessions. Vendor shall operate concessions from at least June 1st to October 1st, but may extend operations into other times of the year upon

City's written consent. Vendor's concessions shall be open at least three days a week unless weather does not support such availability in a given week. Hours of operation shall be clearly posted and fall between 10:00 a.m. and 10:00 p.m. shall not dispense or distribute alcohol after 10:00 p.m. or beyond the hours noted in this Agreement except upon written approval of the Director of Public Works or their designee. Vendor is solely responsible for ensuring compliance with all laws and regulations applicable to Vendor's operations, for obtaining all applicable permits and licenses, and for paying all applicable fees necessary for Vendor's operations. All alcoholic beverages sold for consumption outside of the Jaycee Pavilion area shall be served in aluminum or plastic containers.

- d) **Special Events.** The Parties agree that cooperation with other businesses and groups serves the community's best interests. Whenever Vendor desires to host a special event independently or in partnership with a third party, Vendor agrees to follow the City's regulations and procedures for special events, including obtaining applicable permits from all governmental authorities having jurisdiction over the Premises.
- e) **Improvements.** City grants Vendor permission to improve the Premises, subject to all terms and conditions herein, throughout the Term of this Agreement, and for the sole purpose of operating a beer garden concession at the Premises. Vendor bears sole responsibility for the costs for such improvements unless the City has agreed by separate written document to share costs. Vendor shall be solely responsible for obtaining any permits necessary for such improvements. Vendor understands that improvements that cannot reasonably be removed upon termination of this Agreement will become City property and that Vendor will not be entitled to any compensation for these improvements. Vendor shall obtain the City's written consent prior to making any permanent improvements or modifications to City property and that City reserves the right to refuse consent. Vendor may install movable personal property such as planters, tables, chairs, benches, games, and the like, without the City's advance written consent. Vendor shall remove all such personal property within thirty days of Agreement termination. Any property remaining onsite thereafter shall be deemed abandoned and subject to City disposal as appropriate.
- f) **Equipment and Personnel.** Vendor is responsible for all necessary personnel and equipment to create and operate the beer garden. Vendor is responsible for ensuring that all personnel are appropriately trained and licensed, and displaying identification as Vendor's employee at all times while working. Vendor will supply adequate tables, chairs, benches, service counters, refrigeration, food preparation

and storage equipment, beverage dispensing equipment, cleaning equipment, tools, and fixtures. Vendor will maintain its equipment in a clean and safe condition. City equipment may be available to Vendor upon request but the City does not guarantee the availability of all requested equipment.

- g) **Marketing and Signs.** Vendor is responsible for all marketing and advertising to promote its activities. Vendor shall acknowledge the City of Sheboygan, by name and/or logo, in all promotional materials directly related to its activities covered under this Agreement. Vendor shall not place any signs, advertising, names, or logos on City property without prior written approval. City may cross-market Vendor's events upon Vendor's request.
- h) **Storage.** In off-seasons, Vendor may store equipment and materials under cover of the Jaycee Pavilion and within the concession stand. Vendor is solely responsible for securing Vendor's property and as such, may install security measures as appropriate to secure Vendor's property provided such measures do not alter or damage City property. Vendor may have access to additional storage opportunities upon request to the City, contingent upon space being available. The City cannot guarantee sufficient space beyond the Jaycee Pavilion area for Vendor's equipment and materials.
- i) **Premises Maintenance.** City will maintain Kiwanis Park and will be responsible for mowing and landscaping within the Park except that Vendor shall be responsible for basic landscape maintenance within the Premises in order to maintain the Premises in a clean, safe, and attractive condition. Vendor shall not trim or remove vegetation along the Sheboygan River and shall not use pesticides or herbicides for grounds maintenance without City's written consent. Vendor is responsible for maintaining Premises in a clean, and safe manner including the restroom and concession areas including stocking the restroom areas. Vendor is responsible for opening and closing restroom facilities during days of operation.
- j) **Damage.** Vendor will immediately report any damage caused to City's property and shall be responsible for such damage when caused by Vendor, their customers or permittees. Vendor is responsible for all areas under their control during each operating season during the Term of this Agreement. Such responsibility shall be 24 hours per day, 7 days per week. Vendor may install security cameras to support its facility oversight in such locations and via such mounting mechanisms as approved by the City in writing.

2. Cost Obligations.

- a) **Deposit.** Vendor shall submit a \$3,000 damage deposit upon Agreement execution. At the close of each season, and after City inspection, the City will refund the deposit less any assessed damage. If damage exceeds \$3,000, the City may keep the entire deposit and Vendor shall pay the City's actual costs beyond the deposit value within thirty days of written notice by the City.
- b) **Permit.** Vendor shall pay a fee to operate the beer garden concessions pursuant to this Agreement. Such fee may be payable in not more than four installments and may be renegotiated should this Agreement be renewed.

2026: \$6,000

2027: \$6,300

2028: \$6,615

- c) **Utilities.** City shall pay costs for all utilities supplied to the Premises except that if Vendor desires to supply internet services within the Premises, Vendor shall be responsible for all costs therefore. Vendor shall pay the City \$25 per day of operation as a utility fee, which shall be capped at \$300 per month.
 - d) **Taxes and Expenses.** Vendor shall pay all taxes, assessments, other public charges, and expenses whatsoever pertaining to their business except as provided herein.
 - e) **Trash Collection/Disposal.** Vendor is responsible for providing trash and recycling receptacles throughout the licensed premises and for managing the daily collection of materials therefrom. Vendor shall deposit trash and recycling in the supplied dumpster and if Vendor anticipates needing additional dumpster capacity or more frequent dumpster emptying beyond the typical schedule due to a planned event, Vendor shall provide the City with as much notice as possible to facilitate Vendor's needs. Vendor is responsible for appropriately disposing of food scraps, grease, fats, and oils. Vendor shall dispose of such materials down drains as this can cause backups. If Vendor supplies foods fried in oil, Vendor shall install and maintain all equipment necessary for safe handling and storage and shall install a grease control device meeting all applicable requirements.
3. **Term.** This Agreement shall be effective upon final party execution and shall expire December 31, 2029. This Agreement may be renewed for up to two successive one-year terms or as agreed upon in writing by the Parties. The City is not required to agree to any request for a one-year renewal.

4. **Termination for Cause.** City may terminate this Agreement at anytime if, in City's opinion, Vendor is not performing in a satisfactory manner, and Vendor fails to cure the same upon City providing Vendor thirty days' written notice of such non-performance. In the event of any such termination, vendor waives any right or remedy against the City other than Vendor's right to cure within the thirty-day period. For purposes of this provision, business sales performance shall not constitute cause, on its own, to terminate. This Agreement may be terminated for cause upon fifteen days' written notice to the other party if the other party files a voluntary petition for bankruptcy, makes a general assignment for the benefit of creditors, or takes advantage of any insolvency law, or if Vendor transfers substantially all of its assets or business to any third party.
5. **Termination for Convenience.** Vendor may terminate this Agreement for any reason by providing ninety days' written notice to the City.
6. **Effect of Termination or Expiration.** Expiration or termination of this Agreement for any reason shall not release any Party from its obligations hereunder that have accrued prior to the termination date. After any termination of this Agreement, Vendor shall promptly deliver to City all of City's property and facilities in Vendor's possession.
7. **Auditing/Records.** To the extent that public records laws apply, Vendor shall retain business records and make them available to the City, upon request. The obligations and rights under this section shall survive the Agreement for a period of six years.
8. **Non-Discrimination.** Vendor shall not discriminate against any employee, applicant for employment, or customer because of race, color, national origin, age, sex, disability.
9. **Entire Agreement.** This Agreement constitutes the entire Agreement between Parties and supersedes any and all prior agreements, whether oral or reduced to writing, between the Parties.
10. **Amendments.** This Agreement shall be binding on the Parties, their respective heirs, and successors, and cannot be amended except in writing, approved by the Common Council and signed by each party's duly authorized agent(s).
11. **Severability.** The invalidity or unenforceability of any particular provisions of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12. **Waiver.** No failure or delay of any party in exercising any right or power given to it under this Agreement shall operate as a waiver thereof. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach. No waiver of any breach or modification of this Agreement shall be effective unless contained in writing executed by both parties.
13. **Subcontracting & Assignment.** Vendor shall not assign or subcontract any interest or obligation under this Agreement without the City's prior written approval. All of the services required by this Agreement shall be performed by Vendor and Vendor's employees. If Vendor is a corporation, partnership, limited partnership, limited liability company, limited liability partnership, or other entity that is not an individual person, then an assignment prohibited within the meaning of this provision shall be deemed to include one or more sales or transfers, by operation of law or otherwise, or creation of new stock or ownership interests, by which an aggregate of 50% or more of Vendor's stock or ownership interests shall be vested in a party or parties who are not stockholders, partners, members, or others who possess ownership interests in vendor as of the date hereof.
14. **Force Majeure.** Neither party shall be deemed to be in violation of this Agreement if such party is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control, including, without limitation, acts of God or of any public enemy, elements, flood, strikes, or statutory or other law, regulation or rule of the federal or any state or local government or any agency thereof.
15. **Indemnification.** To the fullest extent authorized by law, vendor agrees to indemnify, defend, and hold harmless the City of Sheboygan, its elected and appointed officials, officers, employees, agents, representatives, and authorized volunteers from and against any and all liability, claims, and demands on account of personal injuries, property damage, and loss of whatsoever kind, including worker's compensation claims, arising out of or connected with use of the Premises, whether such liability, claim, or demand is caused by any wrongful, intentional, or negligent acts of Vendor, its employees, agents, representatives, or authorized volunteers. Nothing in this Agreement shall be construed as the City waiving its statutory limitations and/or immunities as set forth in the applicable Wisconsin statutes or other applicable law. This indemnity provision shall survive termination or expiration of the Agreement.

16. **Insurance.** Vendor shall maintain insurance consistent with this section at all times during this Agreement.

Commercial General Liability (Incl. Personal Injury, Fire, Legal, Contractual, & Products/Completed Operations)	\$1,000,000 per occurrence \$2,000,000 general aggregate
Worker's Compensation	Statutory limits, if applicable
Liquor Liability	\$1,000,000 per occurrence

“City of Sheboygan” shall be listed as additional insured for general liability. A waiver of subrogation for Worker's Compensation by endorsement favoring the City of Sheboygan shall be provided. A certificate indicating the above coverages shall be submitted for review and approval by the City for the duration of this Agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated “A” per best's Key Rating Guide. Vendor's insurance shall be primary, non-contributory to any insurance or self-insurance carried by the City. City shall be provided 30 days written notice prior to any cancellation or non-renewal.

17. **No Assumption of Liabilities.** Neither party shall, by entering into and performing this Agreement, assume or become liable for any of the existing or future obligations, liabilities, or debts of the other party.

18. **Notice.** Any notices required or permitted hereunder shall be given in writing and shall be delivered (a) in person, with proof of service, (b) by U.S. mail, or (c) by electronic mail, and such notices shall be addressed as follows:

Tributary Beer Garden
Jacob Bray
address
address
email

City of Sheboygan
Travis Peterson, Public Works Director
2026 New Jersey Ave.
Sheboygan, WI 53081
travis.peterson@sheboyganwi.gov

19. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

20. **Counterparts.** This Agreement may be executed in two or more counterparts, including by signature pages provided by facsimile or in PDF format. All such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates below.

CITY OF SHEBOYGAN

TRIBUTARY BEER GARDEN

By: _____

Ryan Sorenson, Mayor

By: _____

Jacob Bray, Agent

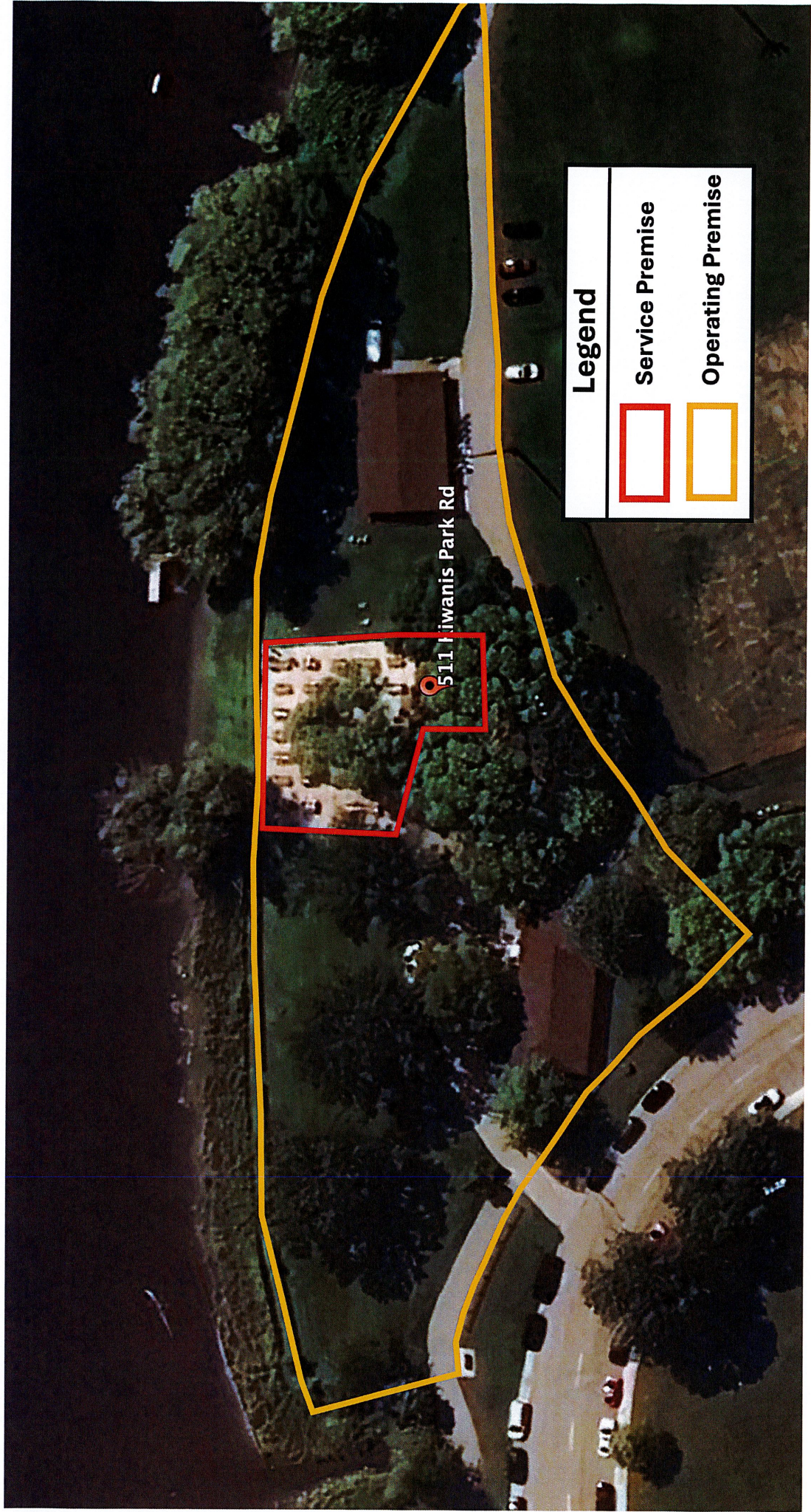
By: _____



Meredith DeBruin, City Clerk

By: _____

Date: _____

Date: _____



Legend	
	Service Premise
	Operating Premise