



# CITY OF TOMBALL

## CONTRACT RENEWAL

This amendment by and between the Every- Bellies Catering, LLC and the City of Tomball defined below shall be effective as of the date this Amendment is fully executed. To the extent the contract requires the City to issue a Notice of Award Amendment for purposes of exercising the renewal option; this written document shall serve as such Notice of Award Amendment.

CITY OF TOMBALL RENEWAL CONTRACT	
<b>Company Name:</b>	Every-Bellies Catering, LLC
<b>Contract No.:</b>	N/A
<b>Bid Number:</b>	2022-02
<b>Solicitation Title/Event Name:</b>	Vendor to Sell Beer and Wine at City Festivals
<b>Contract Award Date:</b>	April 18,2022
<b>Current Contract Term:</b>	Calendar Year- End Date December 31

WHEREAS, the Contract is in effect through the Current Contract Term as defined above; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **CONTRACT RENEWAL/EXTENSION.** The parties hereby agree that the contract will be renewed/extended for an additional period of time as follows:

NEW CONTRACT TERM	
<b>Beginning Date of New Contract Term:</b>	January 1, 2024
<b>End Date of New Contract Term:</b>	December 31,2024

The parties agree the contract will expire at midnight on the date defined as the "End Date of the New Contract Term" unless the parties agree to renew/extend the contract for an additional period of time.

2. **SUCCESSORS AND ASSIGNS.** This Amendment shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
3. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.
4. **PRICING.** It is agreed between both parties that the pricing will be held for one year, at the prices as reflected in EXHIBIT B to provide the services described in EXHIBIT A.
5. **STORM WATER MANAGEMENT PLAN.** When conducting activities for the City of Tomball, contractor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality, if applicable.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their authorized representatives.

**VENDOR**

<b>Company Name:</b>	Every-Bellies Catering, LLC
<b>Authorized Signature:</b>	<i>Nicole Rich</i>
<b>Printed Name and Title of Person Signing:</b>	Nicole Rich, Owner
<b>Date:</b>	2/13/24
<b>Company Address:</b>	106 Market Street, Tomball, Texas 77375

**CITY OF TOMBALL**

<b>Authorized Signature:</b>	
<b>Printed Name and Title of Person Signing:</b>	David Esquivel, PE City Manager
<b>Date:</b>	
<b>Company Address:</b>	501 James Street Tomball, Texas 77375

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<b>Printed Name and Title of Person Signing:</b>	Nicole Rich, Owner
<b>Date:</b>	
<b>Company Address:</b>	106 Market Street, Tomball, Texas 77375

**CITY OF TOMBALL**

<b>Authorized Signature:</b>	
<b>Printed Name and Title of Person Signing:</b>	David Esquivel, PE City Manager
<b>Date:</b>	
<b>Company Address:</b>	501 James Street Tomball, Texas 77375



**COPY**

**STANDARD FORM OF AGREEMENT  
BETWEEN THE CITY OF TOMBALL AND  
THE VENDOR**

This agreement is dated as of the 18 day of April in the year of 2022 by and between the City of Tomball, Texas (OWNER) and Every-Bellies Catering, LLC. from the City of Tomball, County of **Harris**, and State of **Texas**, hereinafter called VENDOR.

**1. DEFINITIONS**

- 1.1 City – shall be understood as referring to the City of Tomball or its designated representative.
- 1.2 Working Day – Shall refer to a calendar day, not including Saturday, Sunday, City Holidays, or days in which weather conditions prohibit work as determined by the City.
- 1.3 Vendor – shall refer to a person quoting for or awarded a project by the City.
- 1.4 Man, men, he – Shall refer to members of the human race and is not a reference to members of a specific gender
- 1.5 Certificate of Coverage (“Certificate”) – A copy of a certificate of insurance, a certificate of authority to self – insure issued by the commission, of a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers’ compensation insurance coverage for the persons’ or entity’s employees (including those subject to a coverage agreement) providing services on a project, for the duration of the project.
- 1.6 Coverage – Workers’ compensation insurance meeting the statutory requirements of the Texas Labor Code, 401.011 (44).
- 1.7 Duration of the Project – Includes the time from the beginning of work on the project until the work on the project has been completed and accepted by the City of Tomball.

**2. PROJECT WORK**

2.1 VENDOR shall complete all Work as specified and indicated in the Contract Documents. The Work is generally described as follows:

Provide beer and wine sales at six (6) city-sponsored festivals (weather permitting)

- a) Honky Tonk Chili Challenge
- b) Rails and Tails Mudbug Festival
- c) Groovfest

- a) Disco at the Depot - March
  - b) Rails & Tails Mudbug Fest - April
  - c) July 4th street Fest - July
  - d) Groovfest - September
  - e) Depot Day Fall Fest - November
  - f) Tree Lighting - December
- ~~2023~~ 2024 events

Need your approval

signature & date  
↓

- d) Bluegrass Festival
- e) Light It Up! Christmas Tree Lighting
- f) Deck the Depot

2.2 VENDOR shall complete all work as specified or indicated below or in attached documents:  
As noted in the submitted Request for Proposals dated March 31, 2022

### 3. CONTRACT TIMES

3.1 CONTRACT must commence work on date agreement is fully executed. The contract will expire **on December 31, 2022**. At the City of Tomball's option and approval by the Vendor, the **contract may be renewed for two (2) additional one (1) year periods**.

### 4. CONTRACT PRICE

4.1 VENDOR shall pay CITY a percentage of gross festival revenue in accordance with the Contract Documents per the submitted Request for Proposals (EXHIBIT A), hereto attached and accepted by the CITY. The total revenue for this contract are as follows: **20% of gross festival revenue, after the first \$1,000 of revenue, will be paid to CITY.**

### 5. PAYMENT PROCEDURES

5.1 VENDOR shall submit Payment to the CITY within fourteen (14) days of the festival and shall be accompanied by reports detailing gross sales, as outlined in EXHIBIT B – Request for Proposals.

### 6. ASSIGNMENT

6.1 VENDOR'S right and duties awarded by this agreement may not be assigned to another without written consent of the CITY signed by the CITY's authorized agent. Such consent shall not relieve the assignee of the liability in the event of default by the assignee.

### 7. INDEMNITY

7.1 Vendor covenants and agrees to indemnify, hold harmless and defend the CITY, its officers, agents, servants and employees, from and against any and all claims or suits for property damage or loss and/or personal injury, including death, to and all persons, of whatsoever kind or character, whether real or asserted, (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants), arising out of or in connection with, directly or indirectly, the Vendor's performance of this agreement, and shall further be liable for injury or damage to city property, arising out of or in connection with and all acts or omissions of Vendor, its officers, agents, servants, employees, Vendors, sub-vendors, licensees, invitees or trespassers. Vendor's obligation under this section shall survive the termination of this agreement.

## 8. INSURANCE

- 8.1 VENDOR, performing as an independent VENDOR hereunder, shall be fully responsible for providing Workman's Compensation with Employer's Liability, Commercial General Liability, and Automobile Liability coverage as required by the State of Texas.
- 8.2 The insurance coverages or plan shall name the CITY, its officials, employees and volunteers (collectively, the "City") as an additional insured. VENDOR shall furnish a certificate of insurance or other evidence of the required coverage prior to commencement of work under the agreement.

### **(THE CITY OF TOMBALL INSURANCE REQUIREMENT AFFIDAVIT MUST BE RETURNED WITH VENDOR PACKET.)**

- 8.3 VENDOR by signing this agreement or causing to be provided a certificate of coverage, the person signing this agreement is representing to the CITY that all employees of the person signing this agreement who will provide services on the project will be covered by Workers' Compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage amounts will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject VENDOR to administrative penalties, criminal penalties, civil penalties, or other civil compensation coverage to the City prior to beginning work on the project. VENDOR will also provide the City, prior to the end of the coverage, if the coverage period shown on the VENDORS' current certificate of coverage ends during the duration of the project.
- 8.4 VENDOR shall:
  - a) Obtain from each person providing services on a project, and provide to the CITY:
    - i. A certificate of coverage, prior to that person beginning work on the project, so the CITY will have on file certificate of coverage showing coverage for all persons providing services on the project; and
    - ii. No later than seven (7) days after receipt by the Vendor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project
    - iii. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
    - iv. Notify the CITY in writing by certified mail or personal delivery, within ten (10) days after VENDOR knew or should have known, of any change that materially affects the provisions of coverage of any person providing services on the project;

- b) Post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice must be printed with a **title** in a least thirty (30) point bold type and **text** in at least nineteen (19) point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notice shall be the following text in Figure 1 provided by the commission on the sample notice, without any additional words or changes:

(Figure 1)

#### **REQUIRED WORKERS' COMPENSATION COVERAGE**

**"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment of materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."**

**"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."**

- c) Contractually require each person with whom it contacts to provide services on a project, to:
  - i. Provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - ii. Provide a certificate of coverage to VENDOR prior to that person beginning work of the project;
  - iii. Include in all contracts to provide services on the project the language in subsection 8.4 -d of this rule;
  - iv. Provide VENDOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - v. Obtain from each other person with whom it contracts, and provides to VENDOR:
    - i. A certificate of coverage, prior to the other person beginning work on the project; and
    - ii. Prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown

- on the current certificate of coverage ends during the duration of the project;
- vi. Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
  - vii. Notify the City in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - viii. Contractually require each other person with whom it contracts, to perform as required by paragraphs (A)-(E) of section 8.4, with the certificate of coverage to be provided by the person for whom they are providing services.

8.5 VENDOR shall contractually require each person with whom it contracts to provide services on project, to:

- a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;
- b) provide to VENDOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
- c) provide VENDOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- d) obtain from each other person with whom it contracts, and provide to VENDOR:
  - i. a certificate of coverage, prior to the other person beginning work on the project; and
  - ii. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- e) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f) notify the City in writing by certified mail or personal delivery, within ten (10) days after the person know or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- g) contractually require each person with whom it contracts, to perform as required by paragraphs (A)-(F) of section 8.5, with the certificates of coverage to be provided to the person for whom they are providing services.

8.6 The VENDORS failure to comply with any of these provisions is a breach of agreement by the VENDOR which entitles the City of Tomball to declare the agreement void if the VENDOR does not remedy the breach within ten (10) days after receipt of notice of breach from the CITY.



Certifications should be submitted to:

City of Tomball  
Marketing Manager  
401 Market Street  
Tomball, Texas 77375

8.7 The VENDORS liability insurance policies shall contain provisions that specify that the policies are primary and will apply without consideration of other policies separately carried, and will state that each insured is provided coverage as though a separate policy has been issued to each, except that insurer's liability will not be increased beyond the amount of which the insurer would have been liable had only one insured been covered. Coverage shall be primary and non-contributory with any of the City's policies.

**9. Licensing**

9.1 VENDOR shall display TABC Certifications for each server working festivals.

**10. SPECIFICATIONS**

10.1 Please refer to EXHIBIT B – Request for Proposals for all requirements not specified in this Contract. The Request for Proposal will delegate responsibilities of the Vendor not addressed in the Contract.

**11. TERMINATION**

11.1 City may terminate this agreement, or any part hereof, at any time for the City's convenience and without cause, by giving written notice to the VENDOR of such termination which shall specifying the effective date thereof, which notice must be delivered to VENDOR at least three (3) days before the effective date of such termination.

**12. VENDOR'S DUTIES**

12.1 The VENDOR shall provide and pay for all supervision, labor, material, utilities and other equipment and services necessary for the proper execution and completion of the work.

12.2 Secure and pay for, as necessary, all fees, permits and licenses for proper execution and completion of the work, and as applicable to then time of receipt of bids.

12.3 Comply with codes, ordinances, rules, regulations, orders and other legal requirements of public authorities which bear any performance of other work. Reference to the standards of any technical society, organization, or association or to codes of local and state authorities shall mean the latest standard, code specification, or tentative specification adopted and published at the date of taking bids, unless specifically stated otherwise.

12.4 Employ only competent and certified individuals for the sale of beer and wine at festivals, and all work performed at events shall be performed under direct supervision of a supervisor or owner.

12.5 VENDOR shall arrange for a suitable storage of the materials necessary for events. The City will not be responsible for storing any items, and will not be responsible for lost or stolen items.

12.6 VENDOR shall remove any rubbish and debris at the end of each festival near or around the sell locations and dispose of legally.

12.7 The City has the authority to observe, inspect, approve, reject, and accept all work.

12.8 VENDOR must be thoroughly familiar with all aspects and requirements required in this Contract and EXHIBIT B – Request for Proposals. The City may make such investigations and inquires as it deems necessary to determine the qualifications of any vendor to perform the work outlined. VENDOR shall furnish to the City all information and data for this purpose as the City might request.

### 13. MISCELLANEOUS

13.1 VENDOR stipulates that the City is a political subdivision of the State of Texas, and, as such, may enjoy immunities from suit and liability under the Constitution and laws of the State of Texas. By entering into this Agreement, City does not waive any of its immunities from suit and/or liability, except as otherwise specifically provided herein and as specifically authorized by law.

13.2 It is distinctly understood that by virtue of this Contract, no mechanic, Vendor, materialmen, artisan, laborer, or subvendor, whether skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the project of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said improvements are so erected, built, or situated, such property being public property belonging to a political subdivision of the State of Texas.

13.3 This agreement shall be governed by the laws of the State of Texas, and mandatory and exclusive venue for any dispute shall be in State District Court in the county in which the City's main administrative office is located.

13.4 This agreement and the work are subject to all applicable Federal and State laws, rules, and regulations. Invalidity of any portion of their Agreement under the laws of the State of Texas or of the United State shall not affect the validity of the remainder of this Agreement.

13.5 In accordance with Chapter 2270, Texas Government Code, a government entity may not enter into a contract with a company for goods or services unless the company covenants and agrees that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. Furthermore, the Vendor is prohibited from engaging in business with Iran, Sudan or Foreign Terrorist Organizations.

13.6 When conducting activities for the City of Tomball, Vendor will adhere to the City's Storm Water Management Plan and permit issued by the Texas Commission on Environmental Quality.

14. AUTHORITY

THE CITY OF TOMBALL, TEXAS AND VENDOR have signed this agreement as:

This agreement will be effective on the 10 day of April, 2022

CITY OF TOMBALL, TEXAS  
501 JAMES STREET  
TOMBALL, TX 77375

VENDOR  
Every-Bellies Catering, LLC

David Esquivel  
Signature

Nicole Rich  
Signature

David Esquivel  
Printed Name & Title

Nicole Rich  
Printed Name & Title

04/20/22  
Date

4/26/22  
Date

706 Market St.  
Address

Tomball  
City

TX  
State

77315  
Zip Code

346-418-7001  
Telephone Number

x Nicole Cole 1/30/24  
346-418-7001



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/12/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Greenwood Insurance Group, Inc. 2700 Research Forest Dr. Suite 124 The Woodlands TX 77381	<b>CONTACT NAME:</b> Mike Jackson <b>PHONE (A/C, No. Ext):</b> 281-397-7844 x1117 <b>E-MAIL ADDRESS:</b> mike@greenwoodinsurance.net	<b>FAX (A/C, No):</b> 346-202-1949
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Every-Bellies, LLC 106 Market Street Tomball TX 77375	<b>INSURER A:</b> Travelers Casualty Insurance Company of America	19046
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	


**COVERAGES****CERTIFICATE NUMBER:** 1703185889**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6800K667485	7/10/2023	7/10/2024	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

City of Tomball 401 Market Street Tomball TX 77375	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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