



REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: March 17, 2009

SUBJECT: Approve Lease Agreement between City of Woodland and Food Innovations, Inc. a California Corporation, dba Elizabeth Restaurant, for Woodland Sports Park Concessions

Report in Brief

In December 2008, the City issued a Request for Proposals (RFP) from qualified individuals, partnerships, or companies to provide food and beverage services at the new Sports Park, using the new Concession Trailer. The City received no Proposals on the due date of January 21, 2009. Subsequent to that, staff was contacted by two interested parties, who came to the facility and met with staff to discuss opportunities for the services desired.

On January 29, 2009, managing partner Don Lambert submitted a Proposal from Elizabeth Restaurant, for food and beverage concession services at the Woodland Sports Park. Subsequently, the group established Food Innovations, Inc., a CA Corporation, dba Elizabeth Restaurant.

Staff recommends that the City Council approve the Lease Agreement between the City of Woodland and Elizabeth Restaurant for Woodland Sports Park Concessions.

Background

The voters approved Measure E in June 2006 and the top vote-getter was Parks Projects. The Community/Senior Center, Phase 2, and Sports Park, Phase 1 projects were deemed a top priority in the Parks Capital Program, and design contracts were executed in April 2007.

The Sports Park, Phase 1, Project No. 08-03 include three synthetic multi-use baseball/soccer fields, one synthetic soccer field, field lighting, bleachers, a pre-fabricated restroom, a concession trailer, walkways, landscaping, and parking.

On September 4, 2007, the City Council approved plans and specifications for the project, and the documents were put out to bid. In a related action also scheduled for the March 17 agenda, the City Council will consider acceptance of the Sports Park, Phase 1 project as complete.

As stated previously, the Sports Park, Phase 1 included funds and authorization for the purchase of a portable commercial grade concession trailer. In September 2008, the City issued a Request for Proposals, sending notification to six known trailer vendors and placing a Public Notice in the newspaper. The City received two Proposals – West Coast Trailers and Armenco. In November 2008 the City issued a PO to West Coast Trailers who provided the lowest-cost, responsible, and responsive Proposal. The trailer was fabricated and delivered in January 2009.

In December 2008, the City issued an RFP for food and beverage services using the new concession trailer. The City received no Proposals on the due date of January 21, 2009. Subsequent to that, staff was contacted by two interested parties, who came to the facility and met with staff to discuss opportunities for the services desired.

On January 29, 2009, managing partner Don Lambert submitted a Proposal from Elizabeth Restaurant, for food and beverage concession services at the Woodland Sports Park.

Discussion

The Sports Park Master Plan includes a full-service restaurant. The restaurant won't be constructed until Phase 3 so in the interim the concession trailer will provide food and beverage service for the active Sports Park.

Staff issued an RFP to solicit qualified parties interested in providing the food and beverage service using the concession trailer. A mandatory pre-proposal meeting was held and only Paul from Ludy's attended. He shared with staff the challenges associated with this type of concession service and said that it would probably take a family-run business with local ties to be successful. He was unfortunately not able to propose and the City received no other Proposals by the January 21 due date. Subsequently, staff was contacted by two interested parties, who came to the facility to discuss the opportunities. Elizabeth Restaurant submitted a proposal, which was reviewed and deemed acceptable in accordance with the needs of the City.

Elizabeth Restaurant has been operating successful concession operations locally for the past five years, winning numerous awards and recognition from event participants and sponsors. These events include the Yolo County Fair (2003-present), Yuba Sutter Fair (2004- Present), Colusa County Fair (2007- Present) and Yuba City Multi-Cultural Event (2005-2007). Elizabeth Restaurant provides authentic high-quality food, coupled with over 70 years of family restaurant experience both here and in their native El Salvador. The family currently operates the Salvadorian Restaurant at 437 First Street.

The Lease Agreement for Sports Park Concessions will commence on April 1, 2009 and terminate on March 30, 2012; the Agreement may be extended at any time by mutual written consent.

The concession menu will be determined by Elizabeth Restaurant and should include the types of items typically found at a similar facility, such as hamburgers, hot dogs, chips, candy, ice cream, etc.

SUBJECT: Approve Lease Agreement between City of Woodland and Food Innovations, Inc., a California Corporation, dba as Elizabeth Restaurant for Woodland Sports Park Concessions

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Elizabeth Restaurant will also incorporate some of their authentic high-quality food into the menu for variety. Beverages will be non-alcoholic except for draft beer. The City will set up a “beer garden” area for people to drink beer. Elizabeth Restaurant will provide a Security Guard during the hours that beer is available to the public.

Fiscal Impact

The Lease Agreement establishes a rental rate for the term of the Agreement, which the City will collect monthly. In addition, the City will collect 25% of the gross revenue generated from the sale of beer. The estimated City-income from the proposed agreement is \$22,000 annually, from trailer rental, a portion of the beer sales, and special events.

Public Contact

Posting of the City Council agenda.

Recommendation for Action

Staff recommends that the City Council approve the Lease Agreement between the City of Woodland and Elizabeth Restaurant for Woodland Sports Park Concessions.

Prepared by: Daniel W. Gentry, Director
Parks and Recreation

Alan Mitchell, Project Manager
Ponticello Enterprises

Mark G. Deven
City Manager

Attachment: Request for Proposals
Lease Agreement

City of Woodland
Parks and Recreation Department

Woodland Sports Park

Request for Proposal for Concession Food and Beverage Services

**On-Site Mandatory Pre-Proposal Meeting is scheduled for
Wednesday, January 7, 2009, 10:30 a.m. Community & Senior Center,
2001 East Street, Woodland, CA**

**Request for Proposal
City of Woodland Sports Park
Food and Beverage Services**

The City of Woodland (City) is inviting proposals from qualified individuals, partnerships, or companies (contractor) to provide food and beverage services at the new Sports Park. Desired services as detailed below include food and beverage operations and management of said concession trailer for a period of three years. The contract can be extended upon mutual agreement of the City and contractor. Responsive proposals shall conform to the following schedule and contain the information outlined herein.

A mandatory pre-proposal meeting will be held on-site on Wednesday, January 7, 2009, 10:30 a.m. Contractor must have attended the mandatory pre-proposal meeting to be considered responsive.

WOODLAND SPORTS PARK FACILITIES

The City recently completed the Sports Park, Phase 1 project, which includes a 15-acre park site located behind the Community and Senior Center at 2001 East Street in Woodland, CA. The sports park facility amenities are oriented to women's and men's softball, youth and adult baseball, and youth and adult soccer, and include:

1. Three lighted synthetic multi-use softball/baseball/soccer fields
2. One lighted synthetic multi-use softball/soccer field
3. One lighted synthetic soccer-only field
4. One concession trailer (layout attached)
5. Outside tables for eating
5. One restroom (men's & women's)
6. On-site parking

The facility is part of a larger campus that contains the Community/and Senior Center, Fitness Center, and Dog Park.

SCOPE OF WORK

Responsive proposals will define the contractor's ability to provide services outlined below.

Food and Beverages

The menu shall be determined by the contractor but should include the types of items typically found at a similar facility, such as hamburgers, hot dogs, chips, candy, ice cream, etc. Beverages shall be non-alcoholic except for draft beer. The City will set up a "beer garden" area for people to drink beer. The contractor shall provide a Security Guard during the hours that beer is available to the public.

Revenue and Expenses

A \$2,500 refundable cash deposit shall be paid by the contractor to the City upon execution of a contract and prior to commencement of services. The City will charge the contractor the following monthly rental fees for the concession trailer, electrical, and water.

1 st Calendar Year	\$850
2 nd Calendar Year	\$950
3 rd Calendar Year	\$1,050

All expenses for food and beverages, security guard for beer sales, and all things necessary to prepare, cook, and serve the food and beverages shall be the responsibility of the contractor. The contractor will receive all revenue generated from the sale of food and non-alcoholic beverages. The City will receive a monthly check from the contractor for 25% of the gross revenue generated from the sale of beer.

The contractor shall receive 90% of gross revenue generated at special events (4th of July, etc.) and a check will be sent to the City for the remainder, within 10 days of event.

Trailer Maintenance

The contractor will provide annual maintenance and repair of the concession trailer, which results from normal use. Daily clean-up and weekly deep-cleaning of the trailer shall be the responsibility of the contractor as well. Any damage to the trailer as a result of negligent operation by the contractor shall be repaired by the City at the expense of the contractor.

Service Hours

The contractor shall provide staffing for the concession trailer, at a minimum, between 4:00 p.m. and 10:00 p.m. on weeknights, and weekends as scheduled events dictate. All other events outside these parameters will be staffed as well, upon request by the City with 30-days advance notice. If inclement weather results in the cancellation of play then the service requirements are relieved.

The City desires to use the concession service at other locations and events throughout the year. For example the City sponsors the annual 4th of July event at the High School and the contractor shall be available to service that, and any other special events, with food and non-alcoholic beverages.

Instructions, Conditions and Requirements

The City of Woodland has outlined the requirements herein in as much detail as is currently known. Please provide any exceptions, additional information, or suggestions that will aid in the City's selection process.

The City reserves the right to negotiate terms and specifications/scope of work with the highest ranked contractor. If an agreement cannot be negotiated the City reserves the right to negotiate with any other contractor.

Selected contractor is required to comply with all existing County Health, and State and Federal

labor laws. Selected contractor is also responsible for complying with all OSHA standards and requirements. If contractor out-sources any work or job to a sub-contractor, it will be the prime Contractor's responsibility to ensure that all sub-contractors meet the requirements as stated in this RFP.

The City reserves the right to select the appropriate contractor based on the most qualified Proposal, in accordance with the criteria specified below.

At time of execution of the contract, the selected contractor is obligated to provide evidence of insurance to include: Worker's Compensation, General Liability, Automobile Liability, Professional Liability in the amount of \$1,000,000 per occurrence, and abide by the City's insurance requirements.

The successful contractor shall be an independent contractor, and nothing shall be construed to cause the contractor to be deemed or represent itself as an agent or employee of the City. The Contractor shall defend, indemnify, and hold the City of Woodland, its officers, agents, volunteers and employees harmless from any and all causes of action or claims of damages arising out or related to the Contractor's performance under this contract and shall execute the City's standard form of indemnity.

The contractor shall be excused from performance hereunder during the time and the extent that he/she is prevented from obtaining, delivering, repairing, or performing in the customary manner, by acts of God, fire, war, strike, and loss or shortage of transportation facilities. Contractor shall provide the City satisfactory evidence that non-performance is due to other than fault or negligence on the contractor's part.

The selected contractor agrees to maintain a City of Woodland Business License for the duration of the contract.

All work shall be done by qualified personnel. Contractor will provide copies of all Federal, State, County, and City licenses or certificates, as may be applicable.

The Contractor shall provide references and demonstrate that they have the ability to provide this type of services for the City of Woodland.

The term of the contract shall commence upon execution by the City Council or authorized City representative. The City of Woodland will execute a 3-year contract with an option to renew upon mutual agreement by both parties.

Contractor is required to carefully and fully investigate all of the requirements of this RFP, as well as the site where the work will take place and all work or arrangements needed to fulfill the terms of the Proposal. By submitting a Proposal, contractor represents and certifies to the City that such investigation has been completed and that it fully understands the Scope of Work. A mandatory pre-proposal meeting will be held on Wednesday, January 7, 2008, 10:30 a.m. to allow interested parties to tour the site and discuss the work with the City.

The City reserves the right to reject any and all proposals where deemed necessary in City's sole discretion.

The City will not reimburse contractors for any costs involved in the preparation and submission of proposals. Furthermore, the RFP does not obligate the City to accept or contract for any expressed or implied services. Nothing herein shall be construed as an offer.

The City reserves the right to request any contractor submitting a proposal to clarify its proposal or to supply additional material deemed necessary to assist in the selection process.

All submitted proposals and information included therein or attached thereto shall become public records upon contract award.

Special Conditions

A City-approved Security Guard shall be provided by the contractor during beer-sales, to monitor the beer garden and sports park area and maintain order in accordance with City's policies.

The contractor must carry a valid Liquor License from the CA Department of Alcoholic Beverage Control, for the sale of beer on the premises.

Contractor's employees will often be working near or around children. In the interests of ensuring the protection of children who use the sports park, the City requires that Contractor's employees pass a criminal history background check as a condition of working under the contract. No person who has a conviction for any offense listed in California Public Resources Code section 5164(a)(2) shall perform any part of the scope of work, except as permitted by the City. The Contractor shall be responsible for screening its employees and shall, prior to performing work under the contract, provide to the City a certification stating under penalty of perjury that its employees who are performing work under the contract have passed the requisite background check."

The Contractor shall not use any employee or worker to perform any work under the contract who has a conviction for any offense listed in California Public Resources Code section 5164(a)(2). The Contractor shall be responsible for conducting background checks of its employees and workers and shall do so in accordance with California Penal Code section 11105.3. Contractor may apply to the City for a waiver to permit an employee or worker who has not passed the background check to perform work under the contract. Granting of waivers shall be in the City's sole discretion and on a case-by-case basis. Contractor shall not perform any work under the contract until it has provided to the City a certification stating under penalty of perjury that none of Contractor's employees and workers who are performing the contract scope of work, with the exception of those for whom the City has granted a waiver, has any convictions for the offenses listed in California Public Resources Code section 5164(a)(2).

Solicitation Schedule

The following is the City's schedule for the selection of a contractor:

Request for Proposals Made Available:	December 15, 2008
Mandatory Pre-Proposal Meeting	January 7, 2009
Deadline for Proposal:	January 21, 2009
Staff Review of Proposals Completed:	January 27, 2009
Negotiations with Contractor Completed:	January 30, 2009
Award of Contract by City Council:	February 17, 2009
Commencement of Services	March 1, 2009

Proposal Content

Three (3) hard-copies of the Proposals should be submitted by 3:00 p.m. on January 21, 2009 to the following address:

City of Woodland, Parks and Recreation Department
Attention Dan Gentry, Director
2001 East Street
Woodland, CA 95776
(530) 661-5880

The envelopes containing the Proposals should be clearly marked with “**Sports Park — Food and Beverage Services Proposal**”.

At a minimum, each Proposal shall contain the following information:

1. Proposal date.
2. Company name and address, and name, phone number and email address of the contact person.
3. Overview of the contractor’s qualifications for similar food and beverage services, with at least 2 references that can confirm contractor’s qualifications.
4. Indicate certifications or licenses held by company or individuals.
5. Certificate of Insurance.
6. Proposal must be signed by an authorized company representative.
7. Proposals must clearly identify, by name, who will receive offers and counter-offers. The person named will be an authorized agent of the contractor, able to conduct negotiations or written offers in good faith.
8. Business Plan indicating how services will be managed, proposed menu items and pricing, hours of operation, marketing plan, and examples of income statements and balance sheets.

The responsive contractor should outline any other (City or contractor) responsibilities, or contractor qualifications not identified above, that will assist the City in the final selection.

Any questions regarding the services requested should be submitted via email to Dan Rice, Recreation Superintendent, City of Woodland, at dan.rice@cityofwoodland.com.

Questions regarding the content of the RFP or any of the requirements should be sent via email to Alan Mitchell, Project Manager, Ponticello Enterprises, at alan.mitchell@ponticelloinc.com and Kari Loth, Assistant Project Manager, Ponticello Enterprises, at kari.loth@ponticelloinc.com. The deadline for questions is January 14, 2009.

Selection Criteria

A final contract will be awarded to the responsible/responsive contractor who can best provide the contract services outlined, based on the evaluation by the City of Woodland Parks and Recreation Department. A recommendation will be made to the City Council based on the following selection criteria, which is listed with no implication of priority:

1. Evidence of the contractor's experience and qualifications to successfully provide food and beverage services;
2. The ability and willingness of the contractor to meet all requirements as outlined in the RFP;
3. The contractor's ability to supply copies of all current licenses, insurances and/or permits required by State and local government, as applicable;
4. A list of client references relevant to the experience sought herein;
5. Financial ability to contract or to provide the services outlined;
6. Quality of Business Plan.

END

**LEASE AGREEMENT
BETWEEN CITY OF WOODLAND
AND ELIZABETH RESTAURANT
FOR WOODLAND SPORTS PARK CONCESSIONS**

THIS AGREEMENT is entered into as of this ____ day of March, 2009 (“**Effective Date**”) by and between THE CITY OF WOODLAND (“**City**”) and ELIZABETH RESTAURANT (“**Lessee**”). City and Lessee are sometimes hereinafter referred to collectively as the “**Parties**” and individually as “**Party.**”

RECITALS

A. City is the owner and/or operator of an approximately fifteen (15) acre park site located behind the Woodland Community and Senior Center at 2001 East Street in the City of Woodland, California, which is more commonly known as the “**Woodland Sports Park.**”

B. Lessee desires to be the exclusive operator of a concession trailer owned by the City and located at Woodland Sports Park (“**Premises**”) for the purpose of providing food and beverage services to patrons of Woodland Sports Park.

NOW, THEREFORE, in consideration of the above facts and for the covenants and agreements contained herein, the Parties hereto agree as follows:

TERMS

1. **Agreement.** City hereby grants to Lessee an exclusive leasehold interest in the Premises and the concession rights for the sale of food, such as hamburgers and hot dogs, snack food, such as candies, ice cream, popcorn, peanuts, and confections of all kinds (with the exception of chewing gum), and beverages, such as coffee and soda, all known hereinafter collectively as “**Concessions.**” The Concessions shall be subject to the following restrictions:

1.1 No Concessions shall be dispensed in glass or metal containers.

1.2 No tobacco products, wine or other alcoholic beverage sale or disbursal, with the exception of beer pursuant to Section 1.3, shall be conducted on the Premises.

1.3 Draft beer may be sold by Lessee during hours of operation only as follows:

1.3.1 The City shall set up a clearly designated “beer garden” area adjacent to or in the vicinity of the Premises for the consumption of draft beer.

1.3.2 Lessee shall, at its sole cost, provide sufficient security including, but not limited to, a security guard for the purpose of ensuring that persons who have purchased beer from Lessee are adhering to the rules and regulations of the beer garden. Security shall be present during all hours in which beer sold or disbursed by Lessee is available to and is being consumed by the public. Lessee shall be solely responsible for ensuring that there is sufficient

security at all times and that such security is adequately enforcing any and all rules and regulations applicable to the beer garden.

1.3.3 Lessee shall, prior to the sale or disbursal of beer, obtain a valid permit from the City Parks and Recreation Department pursuant to Section 15-28 of the Woodland Municipal Code, as amended or renumbered from time to time. Lessee shall retain possession of the permit during all hours in which beer sold or disbursed by Lessee is available to and is being consumed by the public. Lessee shall post signage in and around the beer garden and the Premises notifying all persons in possession of alcoholic beverages that the beer garden is restricted to the consumption of beer obtained from Lessee and that no persons shall possess or consume beer outside the boundaries of the beer garden.

1.4 The City reserves the right in its sole and absolute discretion to make or enter into exclusive product marketing agreements, which agreements shall be binding on Lessee, and/or to reasonably restrict the sale of specific products.

1.5 This Agreement shall not inhibit or prevent City from authorizing other organizations to sell novelties (non-food items) in Woodland Sports Park.

2. **Term.** The term of this Agreement shall begin on **April 1, 2009** and terminate on **March 31, 2012**, unless earlier terminated pursuant to the provisions contained herein. The Parties may extend this Agreement at any time by mutual written consent. During such extension, except as provided in Section 3, all terms and conditions of this Agreement shall remain in effect.

3. **Rental.**

3.1 Security Deposit. Prior to the Effective Date of this Agreement, Lessee shall deposit with City the sum of Two Thousand Five Hundred Dollars (\$2,500.00) ("**Security Deposit**") in cash or in-kind funds to secure Lessee's faithful performance of the terms, covenants and conditions of this Agreement. City's obligations with respect to the Security Deposit are solely that of creditor and not of trustee. City shall not be required to keep the Security Deposit separate from its general funds, and Lessee shall not be entitled to interest on the Security Deposit. City may use the Security Deposit, or any portion thereof, to cure a default or to compensate City for damages sustained by City resulting from Lessee's default or arising from Lessee's use of the Premises beyond normal wear and tear. If Lessee is not in default at the expiration or termination of this Agreement or if City has not used the Security Deposit for repairs, City shall return any unused portion of the Security Deposit to Lessee.

3.2 Rent. Lessee shall pay to City, on the first day of each calendar month during the term of this Agreement, the amounts set forth in this Section 3.2 as compensation for the concession rights, for the use of the Premises, and for associated reasonable electrical and water costs. Each payment shall be delivered to the City at the address listed in Section 19.1 or at such other place as designated by written notice from City. The payment amount for any partial calendar months during the term of this Agreement shall be prorated on a daily basis. The rental payments set forth herein shall be in addition to all other costs and expenses set forth in this Agreement.

3.2.1 For that period from April 1, 2009 to March 31, 2010, a monthly payment of Eight Hundred Fifty Dollars (\$850.00).

3.2.2 For that period from April 1, 2010 to March 31, 2011, a monthly payment of One Thousand Fifty Dollars (\$1,050.00).

3.2.3 For that period from April 1, 2011 to March 31, 2012, a monthly payment of One Thousand Fifty Dollars (\$1,050.00).

3.2.4 In addition to the foregoing, Lessee shall pay to City a monthly payment equal to twenty-five percent (25%) of the gross revenue generated from the sale of beer.

3.3 Special Events. Lessee shall pay to City an amount equal to ten percent (10%) of the gross revenue generated at special events, as described in Section 4.2.

3.4 Penalties. If Lessee fails to deliver any payment(s) set forth above on or before the date specified, Lessee shall add ten percent (10%) of the unpaid amount, plus simple interest at a rate of one and a half percent (1.5%) per month, to the balance of the amount due from the date the payment(s) were due until the date the payment(s) are delivered to the City.

3.5 Extension of Agreement. Prior to approval of any extension of this Agreement pursuant to Section 2, the Parties shall mutually reevaluate and agree on a readjustment of the payment amount(s) and schedule(s) set forth herein.

4. **Hours of Operation.**

4.1 Regular Hours of Operation. Lessee shall operate the Premises from 4:00 p.m. to 10:00 p.m. on weeknights, 8:00 a.m. to 10:00 p.m. on weekends, and during, as well as thirty (30) minutes prior to and following, all scheduled games, tournaments, and events at Woodland Sports Park. The City shall provide a schedule to Lessee of the events scheduled for Woodland Sports Park at least one (1) month prior to the first event at which Lessee shall offer Concessions. The City shall forward changes to the scheduled events (additions or deletions) to the Lessee as soon as available, but no less than twenty-four (24) hours in advance of the scheduled event.

4.2 Special Events. City may require Lessee to operate the Premises during certain special events and at other locations including, but not limited to, the annual 4th of July celebration at Woodland Senior High School. City shall notify Lessee at least thirty (30) days in advance of a special event of the required location and time(s) of operation of the Premises.

5. **Litter Pick-Up and Janitorial**. City, at its expense, shall provide garbage disposal facilities, including a metal dumpster with weekly scheduled pickups, for the Premises. Lessee will be responsible for litter pickup within a 100' radius of the Premises and the beer garden area. Lessee shall be solely responsible for any costs incurred by the City in the collection and/or disposal of refuse that exceeds the garbage services provided by City pursuant to this Section 5 and shall pay the amount, in full, within ten (10) days of delivery of a bill for costs.

6. Maintenance.

6.1 Ongoing Maintenance. Lessee shall be responsible for all repairs and upkeep on any and all equipment located within the Premises as well as the interior and exterior of the Premises. Lessee accepts the Premises in its current condition as of the Effective Date of this Agreement and shall maintain the Premises in the same or better condition during the term of this Agreement. Accordingly, Lessee shall, at its sole expense, be responsible for improvements (in accordance with Section 8), maintenance, repairs and daily cleaning of the Premises. Any damage to the Premises resulting or arising from the negligent operation by Lessee shall be repaired by the City at Lessee's expense.

6.2 Plumbing and Electrical Work. Lessee shall be solely responsible for any plumbing, electrical or mechanical repairs made to the Premises. The City shall in no way be obligated to pay for any plumbing, electrical or mechanical repairs made to the Premises without the prior written authorization of the City Parks and Recreation Director. Written authorization shall not be unreasonably withheld.

6.3 Storage. The City is not obligated to supply storage facilities or other facilities or equipment other than those available within the Premises.

6.4 Security. Lessee shall be solely responsible for the security of, and any costs associated with the repair or replacement of all equipment, supplies and materials located at and stored in the Premises.

7. Improvements.

7.1 Lessee shall not construct improvements to the Premises without the express written approval of the City Parks and Recreation Director. Such approval shall not be unreasonably withheld. A request to construct improvements to the Premises shall include a construction plan submitted to the City Parks and Recreation Department.

7.2 Construction of approved improvements shall both comply with City's construction standards and be subject to inspections by City staff. Approved improvements shall be constructed at Lessee's sole cost and expense. All such improvements shall become the property of City; provided, however, that Lessee may, upon termination of this Agreement, remove from the Premises all equipment belonging to and installed by Lessee so long as such removal does not cause damage to or around the Premises.

8. **Additional Facilities.** Subject to City's prior written approval, Lessee may operate additional facilities including, without limitation, an expanded beverage service station and an additional facility for the preparation and/or service of Concessions at no additional cost; provided, however, that Lessee may only hook up one (1) facility to the City's electrical and water services regardless of the number of facilities operated by Lessee at any time.

9. **Inspections.** The Premises shall be available at all times for safety inspections by authorized City representatives and other proper governmental authorities. Lessee expressly agrees to reasonably cooperate with any safety inspections and to comply with the findings of such inspections.

10. **Right to Repair and Maintain.** If City determines that a condition of vandalism, disrepair and/or improper maintenance exists on or in the Premises that is within Lessee's responsibilities as set forth in this Agreement, City shall notify Lessee of such condition. If such condition is not corrected as set forth below, City reserves the right to remedy the condition. In such instances, City shall contact Lessee prior to entry onto the Premises for repair and/or maintenance conducted pursuant to this Section 10.

10.1 Notification of Hazardous Conditions: If the City notifies Lessee of vandalism/disrepair which presents a hazardous condition, the condition shall be corrected within three (3) operating days, or five (5) business days, whichever is less. If the condition is not repaired within this time, City staff will cause the repairs to be made. In such instances, Lessee shall be billed for the City's labor and materials. It is expressly agreed by the parties that Lessee will pay for such repairs within ten (10) days of delivery.

10.2 Notification of Non-Hazardous Conditions: If City notifies Lessee of a vandalism/disrepair other than a hazardous condition, the condition shall be corrected within fifteen (15) business days. If the condition is not repaired within this time, City staff may cause the repairs to be made. In such instances, Lessee shall be billed for City's labor and materials. It is expressly agreed by the parties that Lessee will pay for such repairs within ten (10) days of delivery.

11. **Call Outs for City Staff Assistance.** When, in response to calls after normal work hours by either Lessee or the general public, City repairs or resolves a problem at the Premises, payment for this "call out" shall be as follows:

11.1 If, according to this Agreement, the item is within the maintenance responsibility of City, City will pay for the call out.

11.2 If, however, the service is within the maintenance responsibility of Lessee, City shall bill Lessee for the services rendered by City staff. Lessee shall pay such bills issued by City within ten (10) days of delivery.

12. **Premises Obligations.** In exchange for the use of the Premises, it is expressly agreed by the Parties that Lessee shall:

12.1 Keep the Premises open for business during all hours of operation as set forth in Section 4.

12.2 Provide a menu of foods which is both varied and economical for the public and follow safe food preparation practices to ensure the safety of the food products served to the public.

12.3 Keep the Premises free of all waste or refuse matter.

12.4 Maintain, at its own expense, regular pest control service for the Premises.

12.5 Conduct a criminal history background check in accordance with California Penal Code section 11105.3 on each employee prior to allowing that employee to work in or around the

Premises. No person who has been convicted for any offense listed in California Public Resources Code section 5164(a)(2) shall be employed by Lessee, except as permitted by City. Lessee may apply to City for a waiver to permit an employee who has not passed a background check to perform work in or around the Premises. Granting of waivers shall be in City's sole discretion and on a case-by-case basis. City shall in no way be liable for any actions or omissions by Lessee's employees, agents or volunteers, whether such actions are within or outside the scope of this Agreement, or whether such employee, agent or volunteer has passed a background check or received a waiver by City. Lessee shall not perform any work under this Agreement until it has provided to City a certification stating under penalty of perjury that all of Lessee's employees, with the exception of those for whom the City has granted a waiver, have passed the requisite background check set forth herein.

12.6 Provide City-approved security guard(s) during all hours of operation at which beer is sold and/or consumed for the purpose of monitoring the beer garden and surrounding areas and maintaining order in accordance with this Agreement and City policies.

12.7 Maintain the following licenses and certifications:

12.7.1 A valid City of Woodland Business License.

12.7.2 A valid City of Woodland Health Inspection Certificate.

12.7.3 All necessary documentation required to comply with the Yolo County Food Protection Program including, without limitation, a valid Food Safety Certification.

12.7.4 A valid Liquor License issued by the California Department of Alcoholic Beverage Control for the sale of beer on the Premises.

12.7.5 A valid permit from the City Parks and Recreation Department pursuant to Section 15-28 of the Woodland Municipal Code, as amended or renumbered from time to time.

12.8 Comply with all local, State and Federal regulations including, without limitation, all existing County health requirements, Occupational and Safety Health Administration (OSHA) standards, and State and Federal labor laws. All work shall be done by qualified personnel and Lessee shall provide copies of all Federal, State, County and City licenses or certificates to City upon request.

13. **Indemnification.** Lessee shall defend, indemnify and hold harmless City, its officers, officials, employees, agents and volunteers from and against all claims, damages, demands, liability, costs, losses and expenses, including, without limitation, court costs and reasonable attorney's fees, arising out of or in connection with any act or omission of Lessee, its officers, employees, agents, volunteers, contractors and subcontractors with respect to the use, enjoyment or improvement of the Premises, except such loss or damage which was caused by the sole negligence or willful misconduct of City. City shall not be liable for any theft, vandalism, or any other damages to Premises. The provisions of this Section 13 shall survive the termination and/or expiration of this Agreement.

14. **Taxes and Assessments.** Lessee shall pay in a timely manner all lawful Federal, State and/or local taxes, assessments, fees, licenses or charges which may be levied based upon:

14.1 Lessee's interest in this Agreement.

14.2 Any possessory right which Lessee may have in or to the Premises or improvements thereon by reasons of its use or occupancy thereof.

14.3 Any goods, merchandise, fixtures, appliances and equipment owned, used or sold by Lessee on or about the Premises including, but not limited to, applicable sales taxes.

15. **Insurance.** Lessee and its contractor(s) and subcontractor(s) shall maintain in full force and effect during the term of this Agreement insurance policies for general liability, automobile liability and professional liability issued by a reputable insurance company acceptable to City. Each policy shall be in an amount of not less than \$1,000,000 combined single limit for all bodily injury and property damage claims. Each insurance policy shall name City as an additional insured, protecting the interests of City, Lessee, its subcontractors and agents from all loss, damage or liability of whatever nature (including Lessee indemnification of City hereunder) arising out of or in connection with Lessee's use, enjoyment or improvement of the Premises. Lessee's insurance shall be a primary policy and not contributory to or in excess of any policy of City. Said insurance policy shall provide that it shall not be cancelled or reduced in amount of coverage until thirty (30) days written notice of cancellation or reduction in coverage has been mailed to City.

15.1 Lessee shall furnish City with an annual insurance endorsement prior to the exercise of any of the rights and privileges granted by this Agreement and each subsequent year of this Agreement. Upon request by City, Lessee shall provide City with a copy of its insurance policy evidencing the issuance of the foregoing policy.

15.2 If Lessee employs any individual on the Premises or contracts for services to be rendered by a contractor's employee on the Premises, any such employee on the Premises shall be covered by applicable workers' compensation insurance as required by law. Lessee shall submit proof of current, effective workers' compensation insurance to City both annually and upon request by City.

16. **Return of Premises.** Upon expiration or termination of this Agreement, Lessee shall return the Premises to the same or better condition than existed prior to the execution of this Agreement, with the exception of reasonable wear and tear. Any improvements made to the Premises by Lessee shall become the property of City. In the event Lessee holds over past the term of this Agreement with the consent of the City, either express or implied, such holding over shall be from month to month only and the consideration to be paid shall be based on the rate then prevailing under this Agreement.

17. **Hazardous Substances.** Lessee shall not generate, use, store or dispose of any hazardous substance on the Premises except in accordance with all applicable Federal, State and local laws and regulations. Lessee shall hold City harmless from and indemnify City against and from any damage, loss, expenses or liability resulting from any generation, use, storage or disposal by Lessee of any hazardous substance on the Premises. "Hazardous substance" shall be

interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, or other similar term of any Federal, State or local environmental law, regulation or rule now in effect or promulgated in the future as such laws, regulation or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, gasoline and other fuel, oil, grease and battery acid, or any substance which after release into environment will or may reasonably be anticipated to cause sickness, death or disease.

18. **Early Termination.** Either party may terminate this Agreement upon sixty (60) days written notice. Additionally, City may terminate this Agreement prior to the expiration of the term by providing Lessee with thirty (30) days written notice specifying the manner in which Lessee is in default of this Agreement. In the event such default is not remedied within the 30 day period, the Agreement shall terminate and be of no further force and effect except as expressly provided herein. City, upon the effective date of such termination, may take possession of the Premises, without further notice or demand to Lessee, unless Lessee has cured the default and notified City in writing prior to or by the effective date of the termination. The following matters shall constitute an event of default:

18.1 Lessee remains in arrears in any payment of rent required by Section 3 for a period of at least five (5) days following receipt of written notice of such arrearage from City.

18.2 Lessee fails or refuses to:

18.2.1 pay any fees required to be paid by it within fifteen (15) days following receipt of written notice of such arrearage from City.

18.2.2 obtain or maintain the insurance required by this Agreement.

18.2.3 maintain the Premises as set forth in this Agreement.

18.3 Lessee files a voluntary petition in any proceedings in Bankruptcy Court.

18.4 Abandonment of the Premises by Lessee.

19. **General Provisions.**

19.1 Notices. Any notices required under this Agreement shall be sent as follows:

If to the Lessee:

Elizabeth Restaurant
ATTN: Donald Lambert, Managing Partner
437 First Street
Woodland, CA 95695
Fax: (530) 668-1822

If to the City:

City of Woodland
Attn: Parks and Recreation Director
2001 East Street
Woodland, CA 95776
Fax: (530) 666-7257

Notices given pursuant to this Agreement shall be deemed received as follows:

(a) If sent by United States Mail – three (3) days after deposit into the United States Mail, first class postage paid.

(b) If by facsimile, electronic mail or by hand delivery – on the date of receipt by the receiving party.

The addresses set forth in this Section may be changed upon written notice of such change to either the Lessee or the City, as appropriate.

19.2 Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

19.3 Construction; References; Headings. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Unless otherwise provided, any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Lessee include all officers, employees, agents, volunteers and contractors of Lessee, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The headings of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

19.4 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns.

19.5 Assignment. Lessee shall not transfer or sublet the operation of the Premises without the prior written consent of the City Parks and Recreation Director.

19.6 Relationship of the Parties. The parties expressly intend and agree that Lessee, in performing this Agreement, shall act as an independent contractor and shall have control over its work and the manner in which it is performed by Lessee and its employees. Lessee acknowledges that it is not an agent or employee of City and is not entitled to participate in any pension plans, bonus, stock or similar benefits that City provides for its employees.

19.7 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

19.8 Force Majeure. Neither City nor Lessee shall be deemed to be in breach of this Agreement if either is prevented from performing any of its obligations hereunder by reason of strike, boycott, labor dispute, embargo, shortage of energy or material, act of God, act of a public

enemy, act of a superior governmental authority, weather conditions, rebellion, riot, sabotage, or any other circumstance for which it is not responsible, or which is not within its control.

19.9 Irreparable Damage. Unless as the result of a negligent or intentional act of Lessee, if during the term of this Agreement any portion of the Premises is damaged by fire or other catastrophic cause so as to render such portion of the Premises untenable, the obligations under this Agreement (including the obligation to pay rent) may be suspended while such portion of the Premises remains untenable. In the event of such damage, Lessee shall give City notice of such untenable conditions and the City shall elect, in its sole discretion and within thirty (30) days, whether to repair the Premises or to cancel this Agreement. In the event City elects not to repair the Premises, this Agreement shall be deemed terminated as of the date the damage occurred.

19.10 Choice of Law/Venue. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. Should any judicial proceeding be brought relating to this Agreement, venue shall lie exclusively in a court of competent jurisdiction located in Yolo County, or if no such court can be found in Yolo County, a court of competent jurisdiction closest to Yolo County.

19.11 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

19.12 Attorneys' Fees. If an action is brought to recover damages, obtain equitable relief, or both, to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees as part of its costs from the other party.

19.13 Counterparts. This Agreement may be executed in counterpart originals, which taken together, shall constitute one and the same instrument.

19.14 Amendments. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior oral or written agreements. No modification of, or addition to, this Agreement shall be effective unless set forth in writing and signed by authorized both the City and Lessee.

IN WITNESS THEREOF, each Party has executed this Agreement as of the date first set forth above.

ELIZABETH RESTAURANT

CITY OF WOODLAND

Donald Lambert, Managing Partner

Mark Deven, City Manager