

RESOLUTION NO. 2179-07

**A RESOLUTION OF THE WINDSOR TOWN COUNCIL APPROVING
A LICENSE AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE WINDSOR
LIONS CLUB FOR BEVERAGE CONCESSION AT THE WINDSOR COMMUNITY CENTER
AND THE WINDSOR TOWN GREEN AND AUTHORIZING TOWN MANAGER TO
EXECUTE ON BEHALF OF THE TOWN**

WHEREAS, the Town of Windsor ("Town") is party to an agreement with the Windsor Lions Club ("Lions Club") entitled "License Agreement for Liquor Concession - Community Center," dated November 4, 1998 for a term of three years, from July 19, 1998 to July 18, 2001; and,

WHEREAS, the Town Council extended the agreement on October 3, 2001 for the period of July 19, 2001 to July 19, 2004.; and,

WHEREAS, the Town desires to continue to issue a license to the Lions Club to operate a beverage concession to facility renters at the Windsor Community Center and a beer and wine concession at the Windsor Town Green during pre-arranged Town events to parallel the same term as the Ground Lease and Development Agreement between the Town and Lions Club; and,

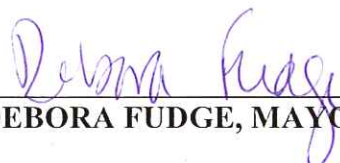
WHEREAS, the Town and Lions Club wish to amend the Agreement to reflect this ongoing relationship; and,

WHEREAS, the Lions Club Board of Directors has reviewed and approved the License Agreement for Beverage Concession at the Windsor Community Center and Windsor Town Green;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Windsor hereby approves License Agreement for Beverage Concession at the Windsor Community Center and Windsor Town Green between the Town and Lions Club and authorizes the Town Manager to execute said Amendment No 3 attached hereto and incorporated herein as Exhibit A.

PASSED, APPROVED, AND ADOPTED this 14th day of November, 2007 by the following vote:

AYES: COUNCILMEMBERS ALLEN, FUDGE, GOBLE, SALMON
NOES: NONE
ABSTAIN: NONE
ABSENT: MAYOR PARKER



DEBORA FUDGE, MAYOR PRO TEM

ATTEST:



MARIA DE LA O, TOWN CLERK

Attachment: Exhibit A

LICENSE AGREEMENT BETWEEN THE TOWN OF WINDSOR AND THE WINDSOR LIONS CLUB FOR BEVERAGE CONCESSION AT THE WINDSOR COMMUNITY CENTER AND THE WINDSOR TOWN GREEN

The following is an agreement made and entered into on _____, 2007 by and between the TOWN OF WINDSOR (hereinafter "Town") and the WINDSOR LIONS CLUB (hereinafter "Licensee").

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Beverage Concession. Pursuant to Paragraph 18 of the Ground Lease and Development Agreement between the Town's predecessor, the County of Sonoma, and Licensee dated December 3, 1991, the Town hereby gives Licensee authorization, subject to the terms and provisions of this agreement, to maintain a Beverage concession at the Windsor Community Center (previously known as the Lakewood Meadows Park Community Center) and the Windsor Town Green (hereinafter "Premises"), as further described herein, for the period of time from November _____, 2007 to December 1, 2016.
2. Definitions.
 - a. Beverage. Liquor, soft drinks, and/or water.
 - b. Liquor. Beer, wine, and/or distilled spirits as defined in the State Alcoholic Beverage Control Act.
3. Records. Licensee shall maintain adequate accounting records of all beverage concessions conducted on the Premises. Such records shall be kept in conformance with beverage accounting practices and as required by the Town. Such records shall be maintained separately from any other operations Licensee may have. All records shall be retained for at least four years and shall be made available at all reasonable times for inspection and audit by the Town.
4. Terms and Conditions of Beverage Concession. This agreement shall be conditioned upon the following:
 - a. Premises
 - i. Licensee shall have the exclusive right to sell Beverages at the Windsor Community Center at such events, including, but not limited to, trade shows, conventions, musical and theatrical events, stage productions, sporting events, films, concerts, fashion shows, exhibits, banquets, benefits and dances, business conferences, private parties, and other pre-approved activities.
 - ii. Upon invitation by the Town, Licensee may sell beer and wine only on the Windsor Town Green for the *Summer Nights on the Green* concert series, Cinco de Mayo celebration and other events at the discretion of the Town.

The Town shall determine the location of the concession on the Town Green.

- iii. The Town reserves the right to prevent internal access by Licensee to portions of the Windsor Community Center when the facility is reserved for use by any other person and/or organization.

b. Events

- i. Licensee's exclusive right to sell Beverages shall not extend to events where Beverages are given away without any admission charge or donation and/or events where Beverages are served during the banquet or meal provided by a caterer possessing a current authorized caterer's permit.
- ii. The Town retains the sole discretion to determine whether Beverage concessions will be permitted at events held at the Windsor Community Center and the Windsor Town Green.

c. Licenses and Permits

- i. Licensee shall timely obtain and maintain in full force and effect at all times during the term of this Agreement, any and all appropriate state and local licenses and permits as are required by law for the operation of a Beverage concession, including, but not limited to, permits and licenses to sell Liquor. Copies of such permits and licenses shall be provided to the Town upon request by the Town.
- ii. Licensee shall comply with all regulations of the County of Sonoma, Department of Health Services, Environmental Health Division.
- iii. Licensee, Licensee's agents, representatives, employees and volunteers who work at the Beverage concession shall comply with all provisions of Licensee's liquor license and shall not consume alcohol while staffing the Beverage concession.
- iv. Licensee, Licensee's agents, representatives, employees and volunteers who are responsible for serving alcohol shall receive training from the California Department of Alcoholic Beverage Control on pouring alcohol.

d. Operations and Maintenance

- i. Licensee shall maintain the Beverage concession at its own cost.
- ii. Licensee is not required to pay a percentage of the gross receipts from any Beverage concession operated at the Community Center to the Town.
- iii. Licensee shall maintain and store the Beverage concession described in this Agreement and shall secure all supplies of Beverage, cash, and other equipment and material used in conjunction with the Beverage concession

so that the Windsor Community Center and/or Windsor Town Green shall be secured at such times that Licensee is not occupying the Windsor Community Center and/or Windsor Town Green for the purpose of Beverage concession.

- iv. Licensee shall be solely responsible for the set up and the dismantling all Beverage concession stands, the clean up of the Beverage concession area, and the dumping and recycling of Beverage concession waste in appropriate containers.
 - v. Licensee shall not operate the Beverage concession in a manner which constitutes a nuisance or affects fire insurance or other liability insurance on the Premises, or which shall in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy, use, or safety of the Premises which is or may hereafter be enacted or promulgated by any public authority including the Town. Nor shall Licensee conduct the Beverage concession in a manner which constitutes waste on the Premises.
 - vi. Licensee shall make no structural changes to the Premises, except upon pre-approval by the Town of Windsor Council.
 - vii. Licensee is not permitted to use or remove any Town equipment from the Windsor Community Center. Upon a written request by Licensee made at least seven days in advance of subject event, Town agrees to make available up to five (5), six-foot tables at the Windsor Town Green events, at no cost to the Licensee.
 - viii. The operation and maintenance of the Beverage concessions at the Windsor Town Green shall also be governed by the requirements established in Exhibit "A", hereto attached and incorporated herein to this Agreement.
- e. Beverage Sale Price
- i. Licensee may negotiate price ranges it charges for Beverage with sponsoring organization and that said price ranges are subject to pre-approval by the Town. Prices are to be displayed at locations where Beverage is sold, with signs which are pre-approved by the Town.
- f. Schedule
- i. The Town shall provide to Licensee with a monthly schedule of events at the Windsor Community Center. Upon a request for Beverage services by a person and/or organization renting the Windsor Community Center, the Town shall provide contact information to the Licensee.
 - ii. A liquor license must be secured by the Licensee for each individual event where Beverage concession services are provided at the Windsor Community Center and/or those events held on the Windsor Town Green.

5. Indemnification. Licensee shall indemnify, defend with counsel acceptable to Town, and hold harmless Town and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Licensee's performance of this agreement or its failure to comply with any of its obligations contained in this agreement, except such Liability caused by the sole negligence or willful misconduct of the Town.

The Licensee's obligation to defend and indemnify shall not be excused because of the Licensee's inability to evaluate Liability or because the Licensee evaluates Liability and determines that the Licensee is not liable to the claimant. The Licensee must respond within 30 days to tender of any claim for defense and indemnity by the Town, unless this time has been extended by the Town.

Licensee's obligation hereunder is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Licensee or its agent under workers' compensation acts, disability benefits acts, or other employee benefits acts.

6. Insurance. Licensee shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this agreement hereunder by the Licensee, Licensee's agents, representatives, employees and volunteers. The Town of Windsor shall review the insurance requirements and coverage on an as needed basis, and, if deemed appropriate, shall request that Licensee obtain additional coverage as identified by the Town of Windsor.

Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 (any auto), or code 8, 9 if no owned auto.
3. Workers' Compensation Insurance as required by the State of California and Employers' Liability Insurance. If no employees are utilized, the Licensee shall sign a declaration as described in California Health and Safety Code Section 19825.
4. Host Liquor Excess Liability as required by the State of California whenever alcohol is being served or sold.

Minimum Limits of Insurance. Licensee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Worker's Compensation and Employer's Liability: \$1,000,000 per accident for bodily injury or disease, if applicable.
4. Host Liquor Liability: \$1,000,000 (occurrence form CG 0033).

Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions must be declared to and approved by the Town. At the option of the Town, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Town, its officers, officials, employees and volunteers, or the Licensee shall provide a financial guarantee satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions: The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions:

1. The Town, its officers, officials, employees and volunteers are to be covered as Insureds as respects: liability arising out of work or operations as performed by or on behalf of the Licensee; or automobiles owned, leased, hired or borrowed by the Licensee.
2. For any claims related to this agreement, the Licensee's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees or volunteers shall be in excess of the Licensee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, unless thirty (30) days prior written notice by certified mail, return receipt, requested, has been given to the Town.
4. The Worker's Compensation endorsement shall contain a Waiver of Subrogation against the Town. The Licensee shall provide to the Town an endorsement from the Worker's Compensation insurer, if any, agreeing to waive all rights of subrogation against the Town for injuries to employees for the Insured resulting from work for the Town or use of the Town's premises or facilities.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Town.

Verification of Coverage. Licensee shall furnish the Town with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Town or on other than the Town's forms provided those endorsements conform to the Town's requirements. All certificates and endorsements are to be received and approved by the Town after work commences. The Town reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

7. Assignment. This agreement or the rights hereunder shall not be assigned or otherwise transferred, in whole or in part, without the prior written consent of the Town, and any attempt to assign or transfer shall be of no force or effect whatsoever unless and until the Town gives its written consent thereto.
8. Termination. Town may terminate this agreement without cause upon ten (10) days' written notice. City may immediately terminate or suspend this agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this agreement by Licensee or Licensee's bankruptcy or insolvency.
9. Amendment. This agreement may be amended only by a written instrument executed by Licensee and the Town.
10. Independent Contractor. The Licensee, its officers, agents, and employees shall act in an independent capacity and shall not represent themselves to be officers, agents, or employees of the Town.
11. Governmental Rules. Licensee shall comply with all governmental ordinances, statutes, rules, and regulations applicable to the activities of Licensee as herein above permitted. The Licensee agrees to use such premises in such a manner as not to unreasonably interfere with the use of such premises by any other person or group granted permission to use said premises by the Town.
12. License. This agreement does not constitute a lease but a mere license to the Licensee and is limited to those premises as are expressly and specifically described herein. This agreement shall be construed in harmony with the existing Ground Lease and Development Agreement, dated December 3, 1991, to which the Town and Licensee are parties.
13. No Alterations. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreements not incorporated herein shall be binding on any of the parties hereto.
14. Risk of Loss. All risks of loss, damage, injury, or liability of any nature whatsoever to the Licensee or its property arising in any respect, directly or indirectly, out of the use of occupation of any part of the premises pursuant to this agreement shall be borne by Licensee.

WITNESS WHEREOF, the parties hereto have executed this document the day, month and year first above written.

For Town of Windsor:

For Windsor Lions Club:

J. Matthew Mullan
Town Manager

Jim Boyer
President

Taxpayer I.D. No.: _____

Recommended for Approval:

James McAdler
Administrative Services Director
Recommended for Approval:

Department Director

Approved As to Form:

Richard Rudnansky
Town Attorney

Attachment:
Exhibit A

EXHIBIT "A"

The Windsor Lions Club ("Licensee") may use the Windsor Town Green under the Beverage Concession Agreement, subject to the following conditions and terms:

1. Licensee shall serve beer and wine only on the Town Green, unless otherwise approved by the Town.
2. Licensee shall adequately staff the Beverage concession so that the wait time for service is not greater than ten (10) minutes.
3. Licensee shall serve locally produced wines and high quality beer.
4. Wine and beer shall be served in clear plastic cups. No glass serving cups are permitted.
5. A banner no more than 6 feet wide and 3 feet high may be displayed on the Town Green at a location determined by the Town, during the subject event.

EXHIBIT "A"

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