

SEASIDE CIVIC & CONVENTION CENTER
FOOD AND BEVERAGE AGREEMENT

THIS AGREEMENT is made and executed by and between the City of Seaside (the “City” herein) and Oregon Fine Foods (the “Contractor” herein) in consideration of the mutual covenants contained herein as follows:

1. **PURPOSE:** The City manages the Seaside Civic and Convention Center (hereinafter “the Center”), a public facility of approximately 48,000 sq. ft. located at 415 First Avenue, in the city of Seaside, Clatsop County, Oregon. The complex consists of:
 - a. A Main Hall of 10,500 sq. ft. which seats 950 occupants and can provide banquet seating for 900 people.
 - b. An Exhibit Hall of 4,800 sq. ft. which seats 450 occupants and can provide banquet seating for 400 people (a moveable wall can be opened to make the two rooms into one).
 - c. 14 breakout rooms totaling 6,170 sq. ft.
 - d. A lobby and foyer area of 4,000 sq. ft.
 - e. A parking area for 308 cars (street parking also available).
 - f. Kitchen/catering area of 2,000 sq. ft.

The building and land are owned and operated by the City of Seaside. The City desires to contract with the Contractor to provide food and beverage service and concessions, including the sale of alcoholic beverages at the Center in the most efficient and convenient manner possible with the exception of a high level of quality and service. This contract is executed following notice of call for bids and awarding of bids.

2. **TERMS:** The City hereby contracts with the Contractor to provide food and beverage services at the Center for a period of three (3) years from the date of execution of this contract. However, the City retains the right to terminate or renegotiate this contract (without penalty) at the end of the three years from its inception. In addition, the Contractor and/or the City retain the right to terminate this agreement (without penalty) upon 180 day written notice. City may also renew this contract for two additional three-year periods at the end of each three year period, not to exceed a total of nine (9) consecutive years.

3. **RENTAL:** The Contractor agrees to pay a rental deposit to the City of Seaside of (\$43,750.00) per year. Such payments shall be made in four (4) quarterly payments due by the 15th of following month. Payment of rent to the City of Seaside shall be based on the following gross sales:

- a. Catering of food-annual guarantee of 12.5% of the first \$350,000 of gross sales and 15% thereafter.
- b. Concessions – annual guarantee of 15% of gross sales.
- c. All Liquor Service – annual guarantee of 20% of gross sales.
- d. Outside Catering of Food – annual guarantee of 5% of gross sales.

Adjustment to the rental deposit shall be made quarterly and due by the tenth (10th) of the month following that quarter. Contractor to provide a copy of all outside catering contracts and billings when and at the time that the Center equipment and/or facilities are used.

4. ACCOUNTS RECEIVABLE: The Center will act as the collection agency for the Contractor for all food and beverage functions that the Contractor caters except outside catering. Users of food and beverage from the Contractor will be billed directly by the Center. The Contractor will furnish the Center within forty-eight (48) hours following the end of the catered event the number of meals served or items used, for billing purposes by the Center. All monies received by the Center for food and beverage are deposited with the City. The City shall assume all risk of non-payment on catered functions, except outside catering, and Contractor shall be entitled to its share of the gross revenue from the City, even if the City is not paid for any event.

In the event Contractor provides a cash bar or concession stand service, the full amount collected by Contractor is to be given to the Center General Manager or his/her representative at the end of the event along with appropriate receipts as defined by building policy. City will pay Contractor any monies due Contractor from the previous month by the tenth (10th) day of the next month.

5. DEFINITIONS AND ACCOUNTING: As used in this agreement the term “gross revenue” means the total of all revenue received by the Contractor, from whatever source, for services rendered under this agreement, less any future sales tax, whether for cash or otherwise of every kind, name and description, regardless of when or whether paid.

As used in this agreement, the Contractor’s “Cost” for providing services shall include all actual, direct and out of pocket expenses associated with such services including, without limitation, all labor costs such as wages, payroll taxes, and all costs of food and beverage products.

6. SERVICE PROVIDED: All food and beverage services and concession sales performed under this agreement shall be conducted under the general supervision of the Center General Manager, or his/her authorized representative, and shall be performed in such a way as to not interfere with the orderly operation of events booked into the Center. Concessions sales and bar service shall be conducted at locations designated by the Center General Manager. No vendors or hustlers will be permitted to circulate about the building or its parking lots promoting the sale of any type of merchandise except when specifically authorized by the Center General Manager, and said vendors or hustlers shall be required to have a valid City business license. Portable concession stands and bars may be provided by the Contractor in locations and of designs approved by the Center General Manager. The Contractor agrees that a part of its responsibilities under this contract is to provide food service during all times that the Center is open to the general public when reasonable sales are anticipated, and particularly during events booked into the Center, as specifically required by the City, or its Manager. It is further understood and agreed that from time to time certain distribution or beverage companies sponsor events in the Convention Center. During these occasions and at their request only the sponsor’s products will be exclusively served.

The Center is responsible for set-up and tear-down of all banquet tables and chairs used for events using food and beverage services, including janitorial services for floors, lobbies and restrooms. Contractor is responsible for set-up, tear-down and clean-up of buffet lines, serving areas, concession areas, and bar areas. Contractor is also responsible for cleaning all banquet tables including linen or paper table covers.

7. EQUIPMENT ACCESS: It is understood and agreed that the Contractor shall have the sole and exclusive right to use the kitchen and kitchen storage space, and sales stand in the Center for concession purposes during the terms of this contract including reasonable right to necessary ingress and egress to these areas. It is further agreed that from time to time the General Manager may require a small temporary storage space in the kitchen area.

The Contractor agrees to provide one thousand two hundred (1200) place settings to include china, glassware and flatware at a capital investment of not less than \$70,000 and to have the complete inventory on site and in usable condition not later than 30 days after the execution of this contract.

A list of City equipment and smallware on the premises at the commencement of this agreement is attached hereto, marked Exhibit # 1, and by this reference incorporated herein. The City makes no warranty as to the condition of this equipment; it shall be the Contractor's responsibility to inspect all equipment prior to the signing of this contract. The Contractor shall be responsible for maintaining the premises and equipment in good repair and further agrees to repair or replace any equipment, china, glassware and flatware damaged or missing through its operation hereunder. Not later than July 20th of each year, the General Manager and Contractor or his/her representatives will inspect and inventory all equipment, china, glassware and flatware as to its cleanliness, repair, and overall condition. An inspection and inventory report will be prepared by the Contractor and signed by both parties. At the termination of this agreement, the Contractor may remove its own equipment; but will be responsible for leaving the premises in the same condition as it existed at the inception of this agreement, reasonable wear and tear excepted, and will reimburse the City for damage to the premises and will replace, or reimburse the City at the fair market value, any City owned equipment missing at the end of this agreement. Performance of this paragraph shall be conducted to the satisfaction of the City as a condition precedent to releasing the Contractor.

8. MARKETING AND PROMOTION: It will be expected that the Contractor participate in marketing plan preparation as requested, and that Contractor will supply a separate "high end" menu for creating special menus and/or staff to provide special food and beverage functions as necessary.

9. EXCLUSIVE RIGHTS OF CONTRACTOR: It is understood and agreed by these parties that the rights herein granted to Contractor are exclusive and that no other person, firm, corporation, or entity shall have the right to provide to the Center or to any tenant or user of the Center, any food, beverage or other product covered by this agreement for sale to the public or to any other of said premises during the term of this agreement. The exclusive right to provide food, beverage and other services covered hereby shall rest only in Contractor and no tenant or user of the Center may either employ another to provide such products and/or services itself, and no one shall be permitted by the

City to allow any other than Contractor to provide any of the products or services covered by this agreement. The City agrees that it will make provision in any agreement for rental or other uses of the Center prohibiting any renter or user of any part of the Center from providing food, beverage or other products covered hereby and/or any services covered hereby, except by Contractor under the terms and provisions of this agreement, except that the City has allowed certain civic groups and non-profit organizations to use the Center facilities with or without services an assistance of the Contractor in the matter of certain food and beverage functions. Such functions shall include, but are not limited to the following:

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|----|---------------------------|----|-------------------------------|
| 1. | Kiwanis Pancake Feed | 4. | Service Club Christmas Dinner |
| 2. | Miss Oregon Pageant | 5. | Rotary Auction |
| 3. | Seaside Kids Pancake Feed | 6. | Christmas Gift Fair |

It is understood and agreed that should the service of the Contractor be required for these functions, such services shall be provided by the Contractor at its "cost" (as defined above) and with no charge by Contractor for profit. Contractor will not be required (without its consent) to provide services at cost for any group except those listed above. Contractor shall have the right to be present when the kitchen is being used (including clean-up) by any and all groups and shall be reimbursed for the cost of such supervision. Contractor shall have the right, unless it consents otherwise, to provide normal products and services to all other groups and organizations that use the Center's facilities. It is further agreed that trade show and similar events using the Center may provide free samples of food, beverage and other products limited to one-ounce servings, in connection with such events, but no sales of any product covered by this agreement shall be made even in trade shows or similar events. Neither shall any catering services be provided at any such events unless done so by the Contractor.

Trade shows relating to food and beverage wholesale dealers and their products, such as Food Services of America, Rykoff-Sexton and other similar type wholesale food and beverage vending shows, will be permitted to market, sell and provide samples of their products during their marketing trade shows which are close to the general public.

Outside catering: The Contractor is authorized the use of the equipment and/or the Center kitchen in the Seaside Civic and Convention Center for outside catering purposes subject to approval by the Convention Center General Manager.

10. ADMINISTRATIVE RESPONSIBILITIES: The Contractor agrees to provide the following services to the Center:

- a. Make follow-up contact with Convention Coordinator within seventy-two (72) hours of notice of booking.
- b. Be available on a daily basis, if necessary, to arrange and attend meetings with Convention Coordinator and Center Coordinator when food or beverage is required.
- c. Determine menu selections, pricing, table decorations, beverage and concession stand requirements with Convention Coordinator and communicate these details to Center Coordinator.

- d. Prepare and secure contract for food, beverage and concession needs with a copy to the Center Coordinator.
- e. Secure meal guarantees seventy-two (72) hours prior to food and beverage needs.
- f. Provide Center food and beverage billing information within forty-eight (48) hours of event.

11. CONDITION OF PREMISES: The Contractor shall be responsible for maintaining the kitchen, kitchen storage areas, liquor bars, liquor storage areas, concession stand and concession service areas in a clean and sanitary condition at all times. The Contractor shall be responsible for the washing of all smallware and dinner service equipment. Further, the Contractor shall maintain the premises in accordance with all City regulations, public health and satiation standards, applicable fire code and safety standards, and any and all other applicable ordinances, laws, codes or regulations. The City shall have the right at all reasonable times, to inspect the premise to insure compliance with this paragraph.

12. CLOTHING/WAGES: The Contractor is required to comply with all State and Federal laws regarding labor laws and personnel ordinances. Further, all employees of the Contractor are expected to be neatly attired, approved by the City, identifying them as employees of the Contractor. The Contractor is required to pay all employees at or above the prevailing wage for his/her category of work, and not at a lower wage than the Federal and State minimum wage for that position.

13. PRICING OF GOODS AND SERVICES: The Center General Manager shall approve, in advance, banquet prices and the prices, size and contents of all items sold by the Contractor, and the size and price of alcoholic beverages, by bottle or drink.

Chewing gum and tobacco products shall not be sold. All drinks must be served in recyclable paper or plastic cups except at banquets where no paper products (including table covers and napkins) shall be used, except when agreed by renter of Center. The Contractor may add other items for sale, provided advance approval is obtained by the Center General Manager. The City reserves the right to exclude from sale any item not deemed an appropriate food or beverage item.

14. UTILITIES: Payment of the following costs of doing business are the responsibility of the City.

- Utilities (except phone lines provided by Contractor as defined below)
- Garbage

Payment of the following costs of doing business are the responsibility of the Contractor:

- Linens, including skirting.
- Telephone charges, telephone lines and equipment in the kitchen and at least one line and phone instrument are required, to be provided by Contractor.

- Cleaning supplies.
- Uniforms.

15. DELIVERIES: Deliveries of all supplies, goods, wares, merchandise and equipment shall be made at the service entrance of the building Monday through Friday, 9:00am-4:00pm, except as otherwise needed.

16. RIGHT OF ENTRY: The City Manager, Center General Manager and Center Staff members shall have the unrestricted right to be upon the premises at any time.

17. INDEMNITY: Contractor agrees to indemnify and hold harmless the City Seaside, its officials, the Seaside Civic & Convention Center Commission, employees and agents against any and all liabilities for any and all acts caused by Contractor. Contractor shall, at its sole risk and expense, defend any and all suits, actions or other legal proceeding which may be brought or instituted against the City of Seaside, its officials, its agents of any such claim, demand, or cause of action, and the Contractor shall pay and satisfy any judgment or decree which may be rendered against the parties enumerated above, their officers, employees or agents; and the Contractor shall pay for any and all damages to the property of the Center for loss or theft of such property done or caused by the Contractor, its officers, officials, agents and employees.

The City agrees to indemnify and hold harmless the Contractor, its officials, shareholders, directors, employees and agents against any and all liabilities for any and all acts caused by the City. The City of Seaside shall, at its sole risk and expense, defend any and all suits, actions or other legal proceeding which may be brought or instituted against the Contractor, its officials, shareholders, directors, employees or its agents of any such claim, demand or cause of action, and the City of Seaside shall pay and satisfy any judgment or decree which may be rendered against the parties enumerated above, their officer, shareholders, directors, employees or agents; and the City of Seaside shall pay for any and all damages to the property of the Contractor for loss or theft of such property done or caused by the City of Seaside, its officers, officials, agents and employees.

18. INSURANCE:

A. Property Insurance (except earthquake and flood): Through the term of this contract, Contractor shall, at its sole cost and expense, maintain insurance against perils of fire and such perils as are included in the standard extended coverage endorsement, including vandalism and malicious mischief, on furniture, fixtures and other personal property owned by the Contractor.

B. Bodily Injury, Personal Liability, Liquor Liability and Property Damage Insurance: Contractor shall procure and shall maintain, during the life of this contract a policy of not less than \$5,000,000.00, single limit, covering bodily injury, personal injury, liquor liability, product liability and property damage (including legal liability for damage to property of Center) arising out of or in any way connected with the Contractor's activity. In addition to the Contractor, the City of Seaside, its officials, its employees, the Seaside Civic & Convention Center Commission and its agents shall be named as additional insured with primary coverage, whether or not such insureds shall have other insurance against any loss covered by said insurance.

C. Workman's Compensation Insurance: Contractor, by executing this contract, certifies that he is aware of the provisions of the law which requires industrial insurance coverage for employees, and certifies that he will comply with such provisions before commencing performance of this contract, and shall present adequate evidence thereof to the Center General Manager.

D. Certification of Insurance: Certification of insurance shall be furnished to the City and shall be kept current at all times. The Certification shall provide that if policy or policies should be cancelled by the insurance company of Contractor during the term of this contract, thirty (30) days written notice prior to the effective date of such cancellation will be given to the City.

19. PROPERTY TAXES: Contractor shall be required to pay all property taxes levied by Clatsop County in regard to doing business at the Seaside Civic & Convention Center.

20. LAWS AND ORDINANCES: The Contractor shall procure all permits licenses and pay all charges and fess necessary and incidental to the lawful conduct of its services hereunder. Furthermore, Contractor shall be at all times fully informed of all existing and applicable federal, state and local laws, ordinances and regulations which in any way affect the fulfillment of this agreement, and see to the compliance with same.

21. ASSIGNMENT: This agreement is personal to the Contractor and in lieu thereof, Contractor is expressly prohibited from assigning, transferring or in any way encumbering its interest in this contract without prior approval of the City.

22. OPERATION OF FACILITY: The Contractor agrees to render services to the public in a dignified manner to all persons regardless of race, color, creed, sex or national origin. Furthermore, no undue pressure, or hawking shall be done in any attempt to influence the public to use the concessions and food service of the Contractor.

23. VENDING MACHINES: All vending machines on the premises shall be of acceptable modular front design. Placement of these machines shall be approved by the Center General Manager, as shall contents of all vending machines. It is understood and agreed that no gum, gum type candy, or tobacco products will be sold on the premises.

24. PREMISES SECURITY: The parties understand and agree that Contractor, or his vendors, sometimes have need to be on the premises at times when the Center staff is not present in the building. It is understood and agreed that Contractor, during all such times, shall be responsible for securing the premises against vandalism, theft and/or intrusion upon the premises by persons trespassing thereupon, which responsibility shall include, but not limited to, the locking of all outside doors, and all other other steps as it may be necessary and reasonable to protect the building when its being used by the Contractor or with the Contractor's authority or permission outside of normal business hours.

25. AUTHORITY OF CENTER GENERAL MANAGER: The Center General Manager will administer the contract with the food and beverage Contractor, acting for and on behalf of the City. All food and beverage services and concession sales performed at the facility are conducted under the general supervision of the Center General Manager, or his /her authorized representative, and are required to perform in such a way as to not interfere with the orderly operation of events booked into the Center. Concession sales are undertaken with the Center General Manager's approval regarding items sold and location of sales. The Contractor's responsibility also includes providing food service during all times that the Center is open to the general public when reasonable sales are anticipated, as well as during times when events are booked into the Center as specifically required by the City or its Manager.

The Center General Manager has authority to decide any and all questions arising as to the quality of performance and acceptability of services rendered by the Contractor. The Center General Manager approves in advance all food and beverage prices, size and contents of all items. No mark-ups shall be permitted; i.e. gratuity, or service charges. The sale of chewing gum and tobacco products are prohibited.

Within the framework of policy established by the City, the Center General Manager shall decide any and all questions which may arise as to the acceptability of services rendered by Contractor, and as to the manner of performance of Contractor's responsibility hereunder.

26. ENFORCEMENT OF CONTRACT: In the event any action or suit or proceeding is brought to collect the due or to become due hereunder, or any portion hereof, or to take possession of said premises, or to enforce compliance with this contract, or for failure to observe any of the covenants of this contract, the prevailing party shall be entitled to reasonable attorney's fees and costs incurred.

27. BREACH OF CONTRACT: If at any time the opinion of the Center Commission, within the policy established by the Center, Contractor has failed to perform, keep and observe any of the terms, covenants or conditions herein contained on the part of the Contractor to be performed, kept and observed, Center may give Contractor written notice to correct such condition of default and if such condition of default shall continue for ten (10) days after said written notice, then and in that event, this agreement shall cease and expire. Thereupon the Center or its fully authorized representative may employ other parties to carry the contract to completion in such a manner as the Center may deem proper. If, in the opinion of the Contractor, the decision of the Center Commission is deemed improper, then the Contractor may take its dispute to the Seaside City Council. If the decision of the Seaside City Council is deemed improper by Contractor the matter may be subject to de novo review by appropriate courts.

28. TERMINATION: Upon termination of this contract, through passage of time or otherwise, contractor shall assist Center in an orderly transfer of the operations.

29. SEVERABILITY: It is understood and agreed that if any part of this contract is held to be illegal, the validity of the remaining provisions shall not be affected.

30. MODIFICATION: No charge or addition to this agreement shall be valid

or binding upon either party unless in writing executed by both parties.

IN WITNESS THEREOF, the parties hereto have caused this contract to be executed this, the _____ day of _____ 2003.

APPROVED AND AGREED TO:

(Contractor)

City of Seaside

(Owner)

BY:

(Title)

BY:

(Title)