

Presented by: The Manager

Presented: 07/31/2023

Drafted by: S. Layne

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 2023-34

An Ordinance Authorizing the Eaglecrest Ski Area to Enter into a Franchise Agreement with Evan and Kaitlin Morgan, Doing Business as Pittman's Pub for Beer and Wine Sales.

WHEREAS, in 1975 and 1983, federal Land and Water Conservation Funds were used to develop Eaglecrest Ski Area, which imposed permanent restrictions prohibiting conversion of any property interest including a lease to private use, *see* 54 U.S.C.A. § 200305(f)(3); 36 C.F.R. § 59.3; LWCF Financial Assistance Manual at page 103 (3/11/2021); and

WHEREAS, the City and Borough of Juneau Charter allows the Assembly to authorize franchises by ordinance, CBJ Charter 5.2(c); and

WHEREAS, Black's Law Dictionary defines Franchise as, "To grant (to another) the sole right of engaging in a certain business or in a business using a particular trademark in a certain area"; and

WHEREAS, the Eaglecrest Ski Area solicited statements of interest for the Eaglecrest Beer and Wine Sales in (RFI 23-174), and received no responses during the initial solicitation; and

WHEREAS, City and Borough of Juneau ("CBJ") staff contacted other Beer and Wine vendors who did not express an interest in the Beer and Wine Concessionaire opportunity and found Pittman's Pub to be the only interested party; and

WHEREAS, the following franchise authorization is in the best interest of the public.

THEREFORE BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Franchise terms. The franchise is subject to the following essential terms:

(a) **Application of 11 CBJAC 07 Commercial Use of Eaglecrest Ski Area.** The provisions of 11 CBJAC 07.010-100 apply to this franchise authorization in addition to the following provisions except when in conflict with a provision of this ordinance.

(b) **Authorized location.** Eaglecrest has two locations which Concessionaire may use to provide concessions ("Concession Premises"). The first location is a designated bar concession space with a handwashing sink behind a permanently positioned bar located in the Fish Creek

Lodge adjacent to the cafeteria. The second is a twenty-five-foot (25') wide by thirty-five-foot (35') deep outdoor commercial tent with overhead propane heat and a permanently mounted bar adjacent to the base of the Hooter Chairlift, which includes a small storage shed. All utilities necessary shall be provided by Eaglecrest or Concessionaire under the terms of this Contract. CBJ reserves the exclusive right to provide all food service at Eaglecrest including during all open bar concession hours.

(c) **Kitchen and restrooms.** Vendor may use restrooms and water from the kitchen. The vendor may also use the kitchen on "off hours" if agreed to by the Ski Area Manager and vendor. "Off hours" being defined as hours when the kitchen is not being used by Eaglecrest staff for washing any glassware or serving equipment.

(d) **Communication system.** Vendor may use of the Eaglecrest Secure WIFI network for credit card transactions.

(e) **Term.** Each franchise term is one winter operating season, generally running December 1st until April 15th terminating on the last day of the winter operating season. Vendor may request to renew this franchise authorization annually by sending written notice to the Ski Area Manager by September 15th, which shall be granted so long as the vendor is in good standing and a renewal is in the best interest of Eaglecrest Ski Area as determined by the Board of Directors. This franchise authorization is effective for a maximum of five winter seasons expiring October 1, 2028, with an annual renewal option.

(f) **Revocation.** This franchise authorization is revocable upon violation of any of terms of this ordinance or upon failure to comply with other applicable permits, laws, and regulations.

(g) **Compliance with other laws and regulations.** Vendor shall comply with all applicable City and Borough of Juneau, State of Alaska, and federal permits, laws, and regulations, including CBJ Conditional Use Permit USE2005-00060. Vendor shall ensure compliance and is responsible with this franchise authorization for Vendor's agents, employees, customers, and guests.

(h) **Insurance.**

Commercial General Liability Insurance. Concessionaire must maintain Commercial General Liability Insurance in an amount it deems reasonably sufficient to cover any suit that may be brought against Concessionaire. This amount must be at least one million dollars (\$1,000,000.00) per occurrence, and two million dollars (\$2,000,000.00) aggregate. **This insurance policy is to contain, or be endorsed to contain, additional insured status for CBJ, its officers, officials, employees, and volunteers.** If additional insured status is provided in the form of an endorsement to Concessionaire's insurance, the endorsement shall be at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used.

Comprehensive Automobile Liability Insurance. Concessionaire must maintain Comprehensive Automobile Liability Insurance, which coverage shall apply to all owned, hired, and non-owned vehicles, with one million dollars (\$1,000,000.00) combined single limit coverage. **This insurance policy is to contain, or be endorsed to contain, additional insured status for CBJ, its officers, officials, employees, and volunteers.**

Workers Compensation Insurance. If required by Alaska Statute (*see* Alaska Statute 23.30), Concessionaire must maintain Workers Compensation Insurance to protect Concessionaire from any claims or damages for any bodily or personal injury or death which may arise from services performed under this Contract. This requirement applies to Concessionaire's firm, Concessionaire's subcontractors and assignees, and anyone directly or indirectly employed to perform work under this Contract. Concessionaire must notify CBJ as well as the State Division of Workers Compensation immediately when changes in Concessionaire's business operation affect Concessionaire's insurance status. Statutory limits apply to Workers Compensation Insurance. The policy must include employer's liability coverage of one million dollars (\$1,000,000) per injury and illness, and one million dollars (\$1,000,000.00) aggregate. **If Concessionaire is exempt from Alaska Statutory Requirements, Concessionaire must provide written confirmation of this status in order for CBJ to waive this requirement.**

Liquor Liability. Liquor Liability: Insurance Services Office Form CG 00 33 04 13 covering Liquor Liability on an "occurrence" basis, with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The Liquor Liability will cover the furnishing of alcoholic beverages.

(i) **Indemnity.** Vendor agrees to indemnify, defend, and hold harmless the City and Borough of Juneau from any and all claims for injury and damage to persons or property related to or arising out of the Vendor's activities unless such injury or damage is caused by the gross negligence of the City and Borough of Juneau, its agents, employees, officers, or anyone acting on its behalf.

(j) **Hours of operation.** Vendor must operate the business at a minimum every weekend day and holiday that Eaglecrest is open during the winter. The business will be available from 11:00am until one hour after the chairlifts close. Vendor may operate other hours as approved by the Ski Area Manager.

(k) **General permit fees.**

a. The Concession Fee payable by Concessionaire to CBJ for this Contract year shall be five *percent* (5%) of Concessionaire's gross sales or six hundred dollars (\$600), whichever is the larger sum, for the months of January, February, and March. For each partial month, (December and April), the Concession Fee shall be 5% of Concessionaire's gross sales or three hundred dollars (\$300) whichever is the larger sum. The Concession Fee shall be calculated monthly and remitted to CBJ within fifteen (15) days after the end of each month this Contract is in effect. Late payments not made by the 20th of the month due shall bear interest at a rate established by ordinance for late payments or at the rate of twelve *percent* (12%) *per annum* if no rate has been set by ordinance.

b. Concessionaire will pay as follows for utilities: heating fuel (paid directly to propane vendor or to CBJ based on actual billing from propane vendor), internet and electricity at a monthly fee of \$150 paid directly to CBJ.

(l) **Fees charged by vendor.** Pursuant to 11 CBJAC 07.040(b)(3)(A), Vendor must submit to the Ski Area Manager a schedule of fees and charges to customers prior to the beginning of each ski season.

(m) **Monthly revenue reports.** Vendor must submit to the Ski Area Manager a complete revenue report detailing the gross revenues for each month of operation. Reports are due on or before the last day of the following month. (For example, the February 2024 report will be due on or before March 31, 2024). Reports shall contain a breakdown of the gross receipts by the activity which produced such receipts.

(n) **Audit and inspection of records.** The CBJ may once per annual term cause an audit of Vendor's gross revenues to be made by a Certified Public Accountant of the CBJ Finance Director's selection or a CBJ auditor. If the audit reports that less gross revenues were reported by the Vendor in a given year period than were actually received, Vendor shall bear the cost of the audit and remit the amount of the underpayment to the Eaglecrest Ski Area. Otherwise, the Eaglecrest Ski Area shall bear the cost of the audit. The Eaglecrest Ski Area shall have the right at all reasonable times during the term of this franchise authorization, upon ten days written notice, to inspect, review, and copy, records of Vendor that are necessary to verify Vendor's compliance with its fee obligations.

(o) **Ownership, maintenance, and removal of improvements.** All improvements installed by Vendor are the property of Vendor. Vendor shall keep Vendor's improvements in neat, clean, sanitary, and safe condition. Vendor must remove improvements on or before the date of permit expiration, or within 30 days after permit termination. At any time during the term of this franchise authorization, upon Vendor's consent, Eaglecrest Ski Area may purchase the improvements or consent to allow improvements to remain on site after expiration or termination.

(p) **Taxes and impositions.** During the term of this franchise authorization, Vendor shall pay all CBJ taxes which may be imposed or assessed, including tax on sales and services and business personal property. Nothing in the preceding sentence shall affect Vendor's legal rights to appeal any tax imposed or assessed on it by CBJ.

(q) **Permit transfer.** Pursuant to 11 CBJAC 07.030(e), business may only be conducted under this franchise authorization by Pittman's Pub, LLC, and this franchise authorization may not be sold, assigned, leased, rented, mortgaged, or otherwise transferred unless Vendor's entire business interest in Pittman's Pub, LLC is transferred to another party. The Vendor or the transferee shall submit a written application which shall be approved if application satisfies all of the reasonable requirements applicable to an original application. No credit will be given to the transferee for any permit payments made to CBJ by the Vendor.

(r) **General operating requirements.** Pursuant to 11 CBJAC 07.080(b), Vendor is responsible to the CBJ for their actions and those of agents, employees, and customers while engaged in franchise authorization activities, and the following operating requirements apply to the permit unless otherwise addressed:

- (i) Vendor will keep the permitted area clean at all times and will employ persons who meet or exceed food and alcohol safety handler standards.
- (ii) Signs may be posted in accordance with CBJC 49.45 *et. seq.* and with the Ski Area Manager's written permission and Board of Director approval, which must not be unreasonably withheld.
- (iii) The Vendor must promptly notify the Ski Area Manager of any accident, injury, or claim relating to the franchise activity.
- (iv) Vendor shall promptly dispose of all litter found on and near the authorized location.
- (v) All vehicles under the control of the Vendor shall be lawfully operated and parked while the Vendor is engaging in franchise activities. The Vendor is responsible for following all parking restrictions and requirements.

(s) **Casualty.** Should the authorized location be destroyed or so badly damaged by fire or other casualty during the initial term or any renewal term of this franchise authorization making the premises unusable for the intended purposes, the franchise authorization is terminated.

(t) **Vendor's Confidential Information.** The parties acknowledge that as a result of Vendor's operations under this franchise authorization, CBJ may acquire information regarding Vendor's business that may be protected as confidential under state or CBJ law. Vendor acknowledges and understands that the CBJ is subject to the Alaska Public Records Act (AS 40.25.120) and that all documents received, owned, or controlled by the CBJ in relation to this franchise authorization must be made available for the public to inspect upon request, unless an exception applies. It is Vendor's sole responsibility to clearly identify any documents Vendor believes are exempt from disclosure under the Public Records Act by clearly marking such documents "Confidential." Should the CBJ receive a request for records under the Public Records Act applicable to any document marked "Confidential" by Vendor, the CBJ will notify Vendor as soon as practicable prior to making any disclosure. Vendor acknowledges it has five (5) calendar days after receipt of notice to notify the CBJ of its objection to any disclosure, and to file any action with any competent court Vendor deems necessary in order to protect its interests. Should Vendor fail to notify the CBJ of its objection or to file suit, Vendor shall hold the CBJ harmless of any damages incurred by Vendor as a result of the CBJ disclosing any of Vendor's documents in the CBJ's possession. Additionally, Vendor may not promise confidentiality to any third party on behalf of the CBJ, without first obtaining express written approval by the CBJ.

(u) **Choice of law, jurisdiction.** The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska shall be the exclusive jurisdiction for any action of any kind and any nature arising out of or related to a franchise agreement. Venue for trial in any action shall be in Juneau, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties. Vendor specifically waives any right or opportunity to request a change of venue for trial pursuant to A.S. 22.10.040.

(v) **Other terms.** The Eaglecrest Ski Area may add additional terms that are in the best interest of the City and Borough of Juneau.


Section 3. Effective Date. This ordinance shall be effective 30 days after its adoption.

Adopted this 21st day of August 2023.



Beth A. Weldon, Mayor

Attest:



Elizabeth J. McEwen, Municipal Clerk