



## NON-EXCLUSIVE MOBILE FOOD SERVICE FACILITY AGREEMENT

This **Non-Exclusive Mobile Food Service Facility Agreement** is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between the County Commissioners of Calvert County, Maryland, a body corporate and politic (the “County”), and \_\_\_\_\_ (the “Vendor”), and shall remain in effect for one year unless terminated pursuant to the terms and conditions set forth herein.

### RECITALS

**WHEREAS**, the County owns and operates certain park properties throughout Calvert County (the “Facility”); and

**WHEREAS**, the County wishes to engage the services of Vendor as a mobile food service facility in Calvert County to provide services to County park patrons at the aforementioned park properties.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

#### 1. SERVICE SCHEDULE

Vendor shall provide preliminary desired schedule in application. Availability will be provided to Vendor by designated County staff. Vendor may request additional dates or alter their schedule with at least one (1) business day notice within the term and provisions of this Agreement. A requested date or schedule does not indicate approval until a receipt is provided by County staff.

#### 2. HOURS OF OPERATION

Vendor shall arrive no earlier than two (2) hours before scheduled service time and must vacate no later than two (2) hours after the scheduled end of service. Vendor will not be granted access prior to Facility regular operating hours and must vacate Facility prior to regular closing hours. Vendor, including employees and equipment must vacate to premises by the posted Facility closing Vendor equipment is not permitted to be stored at Facility overnight.

#### 3. RENTAL FEES

Rental shall be paid commensurate with the County’s approved Parks & Recreation fee schedule at the time business operations commence. Rental fees are subject to change at the discretion of the County and are as published at the time of scheduling. Once paid, the rental fee is non-refundable regardless of whether Vendor remains on County property during the term of this Agreement or not. Fees must be paid in full at least one (1) business day before occupying the mobile food service site. The Department accepts cash, checks, credit cards or money orders made payable to: Calvert County Treasurer.

#### 4. LOCATION

Vendor shall park mobile food service facility in the area assigned to vendor at the location designated. Any other

Vendor vehicles will need to be parked in designated public parking spots. The County has, in its sole discretion, final say on how the space is used and how the Vendor presents to the general public. Vendors are required to provide their own connections, including adapters, for any permanent power provided. Vendor must be self-sufficient for Vendor's water supply. The County reserves the right to change Vendor's parking space without notice or consent at any time. Vendors shall be positioned so that Vendor's equipment will not extend into parking lots, driveways, sidewalks, or roads. The Vendor must not impede the ingress or egress of vehicles and Facility operations. Any damage caused to grounds or any other County owned property caused by unauthorized site access or mobilization outside of designated areas will be repaired at the sole expense of the Vendor.

## **5. SAFE OPERATION**

Vendor shall take all steps necessary to ensure sanitation of their equipment, neat appearance of their service unit and equipment, and the safety of food offered by Vendor per Calvert County Health Department guidelines. Vendor shall not leave the mobile food service facility unattended. When the mobile food service facility is in motion, Vendor shall be mindful of vehicular traffic at the location.

Vendor shall accept all liability for food and beverages served and certify that they are operating separately from the County.

Vendor is required to provide proof of background check clearance for all employees who will work at locations indicated on application. Department may provide background checks to the Vendor through its contractor at the Vendor's sole cost.

## **6. PUBLIC INFORMATION**

Vendor shall have prominently posted for viewing for all customers and visitors all inspection grades for the mobile food service unit, Calvert County Health Department requirements, permit associated with this Agreement, as well as name, address and telephone number of the Vendor owner, operator, permit holder or operating business. Vendor shall post a written menu of all available items for purchase with the price of said item. Vendors shall be considerate of other vendors, the County, and all patrons of the Facility. The Vendor shall not put for sale or display products or advertising that displays and/or promotes any of the following: gang colors/symbols, drugs, drug paraphernalia, alcohol, tobacco or vaping products, and illegal activities.

## **7. TAX REMITTANCE**

Vendor shall be responsible for the collection, reporting and payment of all state, local and federal taxes related to product sold.

## **8. RESTRICTIONS**

Vendor will not be allowed to do the following:

1. Sell, distribute or consume / use alcohol and tobacco products.
2. Operate an electric generator on any mobile food vehicle site where sufficient electric service is available.
3. Operate any type of amplifier or speaker system or play music of any kind.
4. Operate during any special event unless separate permission is obtained.
5. Canvassing. Vendors may conduct business only from inside their booth space. Canvassing from outside of the booth space is not permissible and may cause for immediate closure and removal of Vendor from Facility.

## **9. SET-UP AND CLEAN-UP**

Vendor is responsible for Vendor's own set-up and complete clean-up after each service. Vendor shall not affix any personal property to the premises without the County's prior, written consent. It is the responsibility of the Vendor to return the site to the condition in which it was found. Waste, ice, and beverages may not be dumped

anywhere in Facility and must be removed by Vendor. All food waste such as fryer oil must be disposed of in accordance with Calvert County Health Department Guidelines. No disposal services will be provided by the County. Trash receptacles are provided for park patrons but are not to be used by Vendor for Vendor's clean-up. County may charge, and Vendor shall pay, a reasonable fee for costs incurred by County as a result of Vendor's failure to clean up as specified herein.

#### **10. SPECIAL EVENTS**

Agreement per this program will not be valid during Special Events approved by the County or the Department in downtown areas, on County property, on streets and sidewalks adjacent to County property, parks and playgrounds. The Department will notify applicants of scheduled Special Events and of procedures for the Vendor to participate in those Special Events. Special Event permits require an application and additional fees to the sponsor of the Special Event separate from this Agreement.

#### **11. VIDEO AND PHOTOGRAPHY RELEASE**

Vendor hereby grants to the County the irrevocable and unlimited right and permission to use photographs and/or video recordings of Vendor, Vendor's intellectual property and Vendor's property on each of the County's social media and other Internet properties, publications, promotional flyers, marketing materials, derivative works, or for any other similar purpose without compensation or permission from Vendor. Vendor hereby releases, acquits and forever discharges the County from any and all claims, demands, rights, promises, damages, and/or liabilities arising out of or in connection with the use or distribution of said photographs and/or video recordings, including but not limited to any claims for invasion of privacy, appropriation, likeness, or defamation. Vendor hereby warrants that Vendor and each of its employees and subcontractors is eighteen (18) years of age or older.

#### **12. LICENSE REQUIREMENTS**

Vendor must possess and hold a current and valid Mobile Unit Food Service Facility license from the Calvert County Health Department. If license expires prior to the expiration of this Agreement, Vendor must provide the updated license at least fifteen (15) days prior to license expiration. Vendor is responsible for obtaining any required approvals from other agencies, such as zoning/planning, business license, building, city or county authorities, and the Motor Vehicle Administration registration/license as applicable.

#### **13. INSURANCE**

The Vendor shall not commence work under this Agreement until it has obtained the insurance required under this section. All coverage shall be with insurance carriers licensed and authorized to do business in Maryland.

1. Certificate Holder, Additional Insured, and Agreement Information
  - a. The Board of County Commissioners of Calvert County, Maryland shall be named as certificate holder and as an additional insured for the duration of the Agreement as follows:

Board of County Commissioners of Calvert County, Maryland  
Attention: Parks & Recreation  
Courthouse, 175 Main Street  
Prince Frederick, Maryland 20678
  - b. The certificate shall also indicate the Agreement name as Mobile Food Service Facility Agreement.
  - c. Additional insured shall be as pertains to general liability and automobile liability.
2. Commercial General Liability Insurance
  - a. During the life of this Agreement, the Vendor shall procure and maintain Commercial General

Liability Insurance in an amount not less than \$1,000,000 (combined personal injury and/or property damage) per occurrence subject to \$2,000,000 aggregate.

3. Automobile Liability Insurance

- a. During the life of this Agreement, the Vendor shall procure and maintain Automobile Liability Insurance, including applicable No-Fault coverage, with limits of liability not less than \$1,000,000.00 per accident combined single limit Bodily Injury and Property Damage. Coverage shall include all vehicles whether owned, hired, or non-owned operated by/or on behalf of the Vendor in the performance of this Agreement.

4. Workers Compensation

- a. During the life of this Agreement, the Vendor shall procure and maintain Workers Compensation insurance, including Employers Liability Coverage in accordance with the statutes of the State of Maryland, covering all employees engaged in performance of the contract. If a Vendor is a sole proprietor or is a company that is not required to maintain workers compensation insurance coverage under the laws of the state of Maryland, that Vendor shall show some alternative injury insurance coverage, either through health insurance or employer' s liability coverage.

5. Notice of Cancellation

- a. Prior to starting performance of the Agreement, a certificate of insurance shall be furnished to the County. Insurance companies providing insurance shall be acceptable to the County. The Vendor agrees to provide the County a Certificate of Insurance evidencing that all coverage, limits and endorsements required herein are maintained and in full force and effect. If the Vendor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, the Vendor agrees to notify the County within two (2) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. It shall be the Vendor's responsibility to make immediate notification to the County if any changes are made to the policy.

**14. ADA GUIDELINES**

Vendors shall comply with the Americans with Disabilities Act (ADA). All ADA routes and ramps must remain clear and cannot be blocked by the mobile food service facility or associated business.

**15. NON-DISCRIMINATION**

Vendor and their employees shall not discriminate against any employee, patron, visitor, attendee or customer because of race, color, religion, sex, gender identity or expression, national origin, age, disability, familial status, marital status, sexual orientation, or other protected status.

**16. VIOLATIONS**

Operating without the proper permits, in violation of County regulations, or in violation of these guidelines may result in fines and/or additional penalties. Calvert County may revoke this Agreement for any activity, which is found to be in violation of any ordinance, law or conditions of approval. In the event the Vendor is not ready to vend at the designated time, or if vital vending individuals is/are not present, or if the Vendor arrives in such a condition as to appear to a reasonable person to be incapable of vending in a reasonably acceptable manner, then the Vendor shall be deemed to have violated these terms and the County has the absolute right, at its sole discretion, to revoke any permissions granted and to withhold any fees paid.

**17. DEFAULT**

In the event of a failure to comply with any provisions of this Agreement, the Agreement shall be considered in default and the County may exercise any and all remedies herein enumerated or permitted by law, including the termination of the Agreement without notice or opportunity to cure. Default shall include failure to pay fees when due; abandonment of the vending area or any part thereof; failure to carry the required insurance; or the return of any checks given by Vendor due to insufficient funds. Default may result in the denial of future vending applications.

#### **18. CANCELLATION OF REQUESTS AND REFUNDS**

Notice of cancellation by Vendor must be submitted in writing by the authorized representative a minimum of five (5) business days prior to the start of vending in order to be eligible for a refund or date transfer. The County may cancel this Agreement if the Vendor fails to meet mandatory criteria including, but not limited to, obtaining necessary permits and licenses, non-compliance to rules and regulations and lack of payment. Refunds will not be issued for inclement weather unless the County closes the Facility or faulty Vendor equipment.

#### **19. FORCE MAJEURE**

Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts, pandemics, natural disasters, or acts of God.

#### **20. SEVERABILITY**

In the event any portion of this Agreement is found to be unconstitutional, illegal, null or void, by a court of competent jurisdiction, it is the intent of the Board of County Commissioners to sever only the invalid portion or provision, and that the remainder of the Agreement shall be enforceable and valid, unless deletion of the invalid portion would defeat the clear purpose of the Agreement, or unless deletion of the valid portion would produce a result inconsistent with the purpose and intent of the County in entering into this Agreement.

#### **21. CHOICE OF LAW**

This Agreement shall be governed by the internal laws of Maryland, without giving effect to its choice of law provisions, and any action brought by or between the parties shall vest jurisdiction and venue exclusively in the courts located in Calvert County, Maryland.

#### **22. FEDERAL, STATE, COUNTY, AND TOWN REGULATIONS**

Vendor shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and town ordinances and regulations.

#### **23. ATTORNEYS' FEES**

In the event the County is required to file legal action against Vendor to collect any amounts due under this Agreement, the County shall be entitled to its costs of collection, attorneys' fees and cost, and interest at the maximum rate allowable by law. In the event either party is required to file legal action to enforce the provisions of this agreement, other than the collection of amounts due to the County, each party is responsible for its own fees and costs, including attorneys' fees and costs.

#### **24. INDEMNIFICATION**

The Vendor shall agree to indemnify, defend and hold harmless the County from any loss, injury, liability, damage, claim, lien, cost or expense, including reasonable attorneys' fees arising from the execution of contracted services by the County, by any person acting on behalf of the County or by any participant in any activity the County

conducts on the vending site. The agreement to indemnify, defend and hold harmless extends to any incidents resulting from failure to use caution near architectural structures and equipment, such as, but not limited to, stairs, room dividers, playground equipment and grills. The Vendor need not indemnify, defend or hold harmless the County for any loss, cost, damage, claim or other expense arising out of the County's sole negligence or intentional misconduct. For the purposes of this section, the County includes its boards, agencies, agents, officials and employees.

#### **25. SOVEREIGN IMMUNITY**

By entering into this Agreement, the County and its "employees," as defined in the Local Government Tort Claims Act, §§5-301, *et seq.* of the *Courts and Judicial Proceedings Article*, do not waive sovereign immunity, do not waive: any defenses; any limitations of liability as may be provided for by law; or any provision of the Local Government Tort Claims Act.

#### **26. THIRD PARTY BENEFICIARY**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of this Agreement to create in the public or any member thereof, third party beneficiary status in connection with the performance of the obligations herein without the written consent of the County and notwithstanding its concurrence in or approval of the award of any agreement or sub-agreement or the solicitation thereof in fulfilling the obligations of the Agreement.

#### **27. NO INDIVIDUAL LIABILITY**

No elected official, appointed official, employee, servant, agent or law enforcement officer shall be held personally liable under this Agreement and any extension or renewals thereof because of its enforcement or attempted enforcement provided they are acting within the course and scope of their employment or governmental duties and responsibilities.

#### **28. INDEPENDENT CONTRACTOR**

Both the County and the Vendor agree that the Vendor will act as an independent contractor in the performance of their duties under this Agreement. Vendor hereby waives their right to assert that they are an employee of the County in any action pending in any court of law, administrative law court or administrative agency. Vendor shall be responsible for payment of all Federal, State and local taxes arising out of Vendor's activities in accordance with this Agreement, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Medicare tax, unemployment insurance taxes, and any other taxes or business taxes or license fees as required.

#### **29. ENTIRE AGREEMENT**

The parties hereto agree that the above writing constitutes the entire agreement between them concerning this matter and that there are no understanding, promises or arrangements binding either part hereto that have not been written herein. The parties further agree that this Agreement can be amended only by written agreement signed by the parties hereto.

In compliance with this Agreement, and all conditions imposed herein, the undersigned Vendor hereby offers and agrees to furnish all goods and services required by this Agreement, and the undersigned Vendor hereby certifies that all information provided is true, correct, and complete. Additionally, by signing this Agreement, the Vendor certifies that they are in compliance with all applicable licenses, laws, and requirements to operate as a food truck vendor in the State of Maryland and in Calvert County.

**IN WITNESS WHEREOF**, the parties hereto have caused this **Non-Exclusive Mobile Food Service Facility Agreement** to be executed by a duly authorized representative by their hands and seals, intending to be so bound, as of the day and year first above written.

Vendor Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Calvert County Parks & Recreation**

\_\_\_\_\_ Date: \_\_\_\_\_  
Shannon Q. Nazzal, Director