



## THIRD PARTY FOOD VENDOR SERVICE AGREEMENT

1 Civic Center Plaza, El Paso, 79901

This is a legal and binding contract between El Paso Live ("SMG") and \_\_\_\_\_ ("Vendor"), for food and/or beverage services during the Event stated below. This agreement is effective upon acceptance by SMG, and is effective only for the event date as stated in **Exhibit A**.

**THEREFORE**, in consideration of the foregoing and the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Description of Services. Vendor shall perform the services described on Exhibit A attached hereto, during the dates and times as specified for each approved event (the "Services").
2. Payment. All payments shall be in cash, credit card, or check made out to "SMG El Paso", unless otherwise agreed to by SMG. Vendor agrees that sales transactions may be monitored by SMG throughout the event at random intervals and sales readings may be collected twice daily.
  - Vendor shall pay to SMG the commissions due as set forth in Exhibit B OR
  - Vendor shall pay to SMG a flat fee as agreed upon set forth in Exhibit B
3. Term of Agreement. This Agreement will be effective as of the date hereof and will terminate upon thirty days' notice by either party.
4. Default and Termination. The occurrence of any of the following shall constitute default under this Agreement:
  - (a) The sale by Vendor of any product not approved by SMG;
  - (b) The failure by Vendor to make a required payment under this Agreement by the due date;
  - (c) The violation by Vendor of any other provision or requirement under this Agreement that is not corrected within one (1) hour after verbal or written notice of the violation is given to Vendor;
  - (d) The insolvency or bankruptcy of Vendor; or
  - (e) The subjection of any of Vendor's property to any levy, seizure, assignment, application or sale for or by any creditor or government agency.
  - (f) If SMG terminates this Agreement due to force majeure, such as an act of God, weather, government, sanctioning body, riot, war, strike, labor disturbance, civil disorder, terrorism, vandalism, or other cause beyond its reasonable control, which prevents the Event from being held or requires it to be canceled or terminated earlier than planned, SMG shall receive the commissions on the sales completed.If Vendor is in default under this Agreement, SMG may terminate this Agreement, without notice to or demand on Vendor, except as set forth in subsection (C) above.
5. Audit Rights. Vendor agrees to allow SMG representatives to audit receipts, inventories and working conditions at any time when applicable.
6. Marketing Rights. This agreement carries no rights to marketing or signage outside of your approved sales location(s).
7. Compliance with Law/Permits and Licenses. Vendor shall have or acquire the appropriate City Certificates, Permits and Licenses and pay all fees required by City or other authorities to perform its functions during the Event and comply with all Federal, State, County, City and Local laws, orders, rules, regulations or ordinances. Vendor warrants that it has a current seller's permit in good standing. All licenses and permits must be displayed and available for inspection. Vendor's failure to comply with any laws, orders, rules, regulations or ordinances shall constitute grounds for immediate termination of this Agreement by SMG in their sole discretion.
8. Taxes. Vendor is responsible for all tax collection and remittance, including but not limited to sales and use tax, to the appropriate State authorities, as required by law. Vendor agrees to pay any and all penalties or interest imposed by the applicable State authority relating to taxes resulting from sale of Vendor's product at the event.
9. Insurance. Vendor, at its sole cost and expense, shall obtain and keep in force during the term of this Agreement the following minimum amounts of insurance coverage that shall be primary and non-contributory with any coverage of SMG:
  - The City of El Paso & Savor El Paso: (a) \$1,000,000 Commercial General Liability insurance with coverage for products and completed operations liability, contractual liability, and property damage; (b) \$1,000,000 Automobile Liability insurance (including hired and non-owned vehicles); (c) statutory Workers' Compensation insurance; and (d) Employer's Liability insurance in an amount not less than \$500,000. All such insurance shall insure performance by Vendor of the indemnity provisions of this Agreement but does not limit Vendor's obligation to indemnify. Each Vendor and/or its subcontractor will be responsible for providing insurance for their equipment and materials located at the Facility.
  - Vendor must provide SMG a certificate of insurance naming the parties set forth below as Additional Insured and waiving all rights of subrogation. All insurance shall be in a form and from an insurer reasonably acceptable to counsel for Company and shall require at least thirty (30) days prior written notice of any modification, cancellation, or exhaustion of limits. Vendor will provide SMG with a certified copy of the above policies if so requested.
    - **Vendor must add additional entities below as additionally insured:**
      - City of El Paso TX, its officials, employees and agents; All event sponsors and sanctioning bodies; SMG, its officials, employees and agents;
    - **Party to be listed as Certificate Holder:** SMG 1 Civic Center Plaza El Paso TX, 79901

10. Indemnification. Vendor agrees to indemnify, defend, and hold harmless SMG, its parent, subsidiary and affiliated companies, and their respective officers, directors, agents; as well as the City of El Paso and all Event sponsors and sanctioning bodies (the "Indemnified Parties") from and against any and all losses, liabilities, claims, damages, and expenses (including reasonable costs of investigation and attorneys' fees) (collectively, the "**Losses**") arising from (i) Vendor's failure to comply with any and all federal and state statutes, laws, and constitutional provisions (collectively, the "**Laws**") applicable to Vendor's performance of this Agreement, (ii) personal or bodily injury to or death of persons or damage to the property of SMG to the extent caused by the grossly negligent acts, errors, and/or omissions or the willful misconduct of Vendor or its officers, directors, agents, employees, or subcontractors, or (iii) a material breach or default by Vendor or its officers, directors, agents, employees, or subcontractors of any provisions of this Agreement which remains uncured after the expiration of all applicable cure periods as set forth in Section 4 above
11. No Representations or Warranties. SMG specifically makes no representations or warranties, express or implied, to Vendor, including any representations and warranties as to the size of the crowd anticipated to attend the Event, nor the traffic anticipated for, nor the visibility of the location, nor the ability of the Event's patrons to purchase Vendor's product. Vendor accepts the display area "as is, where is".
12. Confidentiality. In connection with the performance of the Services hereunder, any communications, oral or written, that Vendor may need to have with any other party shall be made through SMG and its designated officers and employees, unless Vendor receives the prior written consent from SMG's General Manager.
13. Independent Contractor; No Partnership. SMG and Vendor shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, SMG or Vendor a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the parties hereto or referred to herein.
14. Force Majeure. If any casualty or unforeseeable cause beyond the control of either of the parties to this Agreement, including, without limitation, acts of God, fires, floods, epidemics, quarantine restrictions, war, terrorist acts, strikes, failure of public utilities, or unusually severe weather, prevents the performance of this Agreement by either party, such party is hereby released by the other party from any damage so caused thereby.
15. Operation Schedule for Event. Vendor agrees to have its location fully operational and staffed at all times during the Event.
16. Condition of Location. The location shall be kept neat and orderly at all times and supplies, and other such items shall be kept under cover. On the termination date, the locations shall be returned to the condition in which it was received.
17. Risk of Loss or Damage. Vendor assumes all risk of loss or damage to vendor's product, equipment, fixtures and property from any cause whatsoever. Vendor is responsible for securing its location.
18. Consequential Damages. SMG shall not be responsible for any incidental or consequential damages, lost profits or punitive damages.
19. Safety. Vendor hereby certifies to SMG that Vendor is in compliance with all applicable occupational, safety and health and right-to-know rules and regulations and that Vendor's employees and agents are properly trained as required by applicable law. The above shall include, without limitation, rules, regulations, procedures and training relating to confined space entry procedures. Vendor is solely responsible for determining the extent of any hazard involved in performing its obligations and for providing its employees and agents with a safe place to work and pertinent safety information and equipment.
20. Invalidity. The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, all of said provisions being inserted conditionally on their being considered legally valid, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provision was omitted.
21. Notices. All notices required or permitted to be made under this Agreement shall be in writing and deemed to have been duly given when delivered if sent by prepaid certified or registered mail, nationally recognized overnight courier, or verified receipt of a facsimile transmission to the address set forth herein. Notices by SMG under subsection (C) of the Default Section may be verbal.
22. Governing Law and Consent to Jurisdiction. This Agreement is subject to and shall be construed in accordance with the laws of the State of Texas. The party's consent to the exclusive jurisdiction of state and federal courts with respect to any disputes hereunder.
23. No Assignment. This Agreement may not be assigned by Vendor nor shall Vendor allow others to utilize all or a portion of its Location.
24. Attorneys' Fees/Interest. If SMG brings any legal action or other proceeding to interpret or enforce the terms of this Agreement, it shall be entitled to recover attorneys' fees and any other costs incurred, in addition to any other relief to which it is entitled. Any amounts delinquent more than thirty (30) days shall accrue interest at the rate of eighteen (18%) percent per annum compounded monthly or such lesser rate as is permitted by law.
25. Waiver. The failure by SMG to enforce any provision of this Agreement shall not be construed as a waiver or limitation of SMG's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
26. Entire Agreement and Modification. This Agreement and the Exhibits hereto constitute the entire agreement between the parties and there are no other promises or conditions in any other agreement whether verbal or written. No modification or amendment of this Agreement shall be effective unless made in writing and signed by both parties. This Agreement shall be binding upon the parties, their successors and assigns.
27. Booth Space. A Food Vendor Booth Space is defined as a food truck or trailer, cart, or tent unless otherwise agreed upon SMG and Vendor.
  - Tent space to be approved by SMG
    - Must be three-sided tent with proper flooring required by the Health Dept.
  - A total of 40 lbs. of weight MUST be used for securing tent
    - Weights, sandbags, or water barrels are recommended
    - NO STAKING OR DRILLING IS ALLOWED TO SECURE TENT
  - Tent is not provided unless otherwise stated by SMG

## Exhibit A - Product/ Menu Schedule

Company: \_\_\_\_\_

**THE ITEMS LISTED BELOW, ONLY AFTER APPROVED IN WRITING BY SMG, MAY BE PLACED AND SOLD AT VENDOR'S LOCATION DURING THE EVENT.**

Vendor must:

- List the complete name, description, portion size and price for all items to be sold at your vending area location.
- All Signage and graphics must be approved prior to placement
- SMG will check for conflicts with sponsorship and pricing

	Menu Item	Portion Size	Selling Price	SMG Approval
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

## Exhibit B - Required Items & Investment

**Items Required to Vend at SMG Event** (finalized prior to set up at event):

*Check Items Already Obtained*

Signed and dated copy of this Agreement (submitted to SMG representative no later than 30 days from event)	
Certificate of Insurance (submitted to SMG representative no later than 30 days from event)	
Worker' Compensation Coverage	
Seller's Permit Certification	
City License	
Health Permit: <i>El Paso Health Department: 5115 El Paso Dr. (915) 212-0200</i>	

***\*It is the vendors responsibility to obtain all necessary licensures, permits, insurances, etc. to vend on SMG property***

**Food Vendor Investment:**

**A. OPTION 1:** Down Payment VS. Percent of Gross Sales

- a. \_\_\_\_\_% of gross sales after 8.25 % sales tax on all food and/or beverage sold
- b. \$\_\_\_\_\_down payment due minimum of 1 week prior to event.
- c. Vendor must report to designated office to complete settlement after event, within 30 minutes after Vendor's location closes.

**B. OPTION 2:**

- a. Agreed upon Flat Fee – \$\_\_\_\_\_

## Food Vendor Information

Company: \_\_\_\_\_ Event: \_\_\_\_\_

Contact: \_\_\_\_\_ Event Date(s): \_\_\_\_\_

Phone #: \_\_\_\_\_ Event Location: \_\_\_\_\_

Email: \_\_\_\_\_ Texas Tax ID Number: \_\_\_\_\_

**IN WITNESS WHEREOF, the parties hereto have signed this agreement by their duly authorized representatives on the dates set forth below. THE AGREEMENT IS ENFORCEABLE ONLY ONCE ACCEPTED BY SMG.**

Food Vendor Representative:      X \_\_\_\_\_                      Date: \_\_\_\_\_

SMG Representative:              X \_\_\_\_\_                      Date: \_\_\_\_\_