

**VENDOR AGREEMENT
OLD TOWN SQUARE**

THIS VENDOR AGREEMENT (“Agreement”) is made an entered into on the date set forth below by and between the Fort Collins, Colorado, Downtown Development Authority (the “DDA”) and _____ (“Vendor”).

1. Term. This agreement shall commence upon execution by the parties and shall continue through _____.

2. Contract Documents. The contract documents consist of this Agreement together with the Old Town Square Map, Policies and Procedures for Events and Vending in Old Town Square, and Old Town Square Vendor Information and Application form (“Vendor’s Application”). The foregoing documents are attached hereto and incorporated herein by this reference.

3. Vending Site. This Agreement pertains to that portion of Old Town Square, Fort Collins, Colorado, which is depicted in the Map of Old Town Square (the “Vending Site”) and consists of the following (**check one**):

___ 5’ x 9’ Cart Vending Site

___ 10’ x 10’ Tent Vending Site. If this selection is checked, Section 12 below (“Vendor Cart”) shall not apply to this Agreement. However, the terms and conditions contained in the document entitled “Tent Vending Rules and Regulations”, attached hereto as Exhibit A and incorporated herein by this reference, shall apply.

4. Permitted Uses. The uses permitted under the License granted to Vendor in Section 5 below shall be limited to the vending activities described in the Vendor Information and Application form (the “Vending Activities”). No other use of the Vending Site shall be permitted.

5. Vending License. The DDA hereby grants to Vendor a license to exclusively use the Vending Site for Vending Activities during the term of this Agreement in accordance with the following operational schedule (**check one**):

___ Daytime vending, between 10:00 a.m. and 5:00 p.m. on the following days:

Daytime vendors may not begin set up earlier than 7:00 a.m. and must promptly conclude all activities at the Vending Site (including clean up) by 5:00 p.m.

___ Evening vending, between 6:00 p.m. and 2:00 a.m. on the following days:

Evening vendors may not begin set up until 5:00 p.m. and must conclude all

activities at the Vending Site (including clean up) promptly by 2:00 a.m. Please be aware that pursuant to Fort Collins Municipal Code, Old Town Square is closed to the general public, including Vendor, at 2:00 a.m.

___ Other times, as follows (identify times and days of the week):

6. Vending Fees. Vendor agrees to pay to the DDA the following fees for engaging in the Vending Activities at the Vending Site (**check applicable**):

___ Vending Fee in the amount of \$ _____ per month.

___ Electricity Fee (\$25.00 per month)

___ Monthly Power Washing Fee for Food Vendors (\$30.00 per month)

The initial monthly vending fees shall be due upon execution of this Agreement. Subsequent monthly payments shall be due on the first (1) day of each month. Payment made past the fifth (5) day of the month shall be deemed to be late. On the sixth (6) day, a \$30.00 late fee shall be assessed against Vendor. The DDA will accept quarterly or annual payments for Vending fees if desired by Vendor.

7. Damage/Cleaning Deposit. Vendor shall deposit with the DDA at the time of execution of this Agreement the amount of \$ _____ (**insert amount**) to secure Vendor's faithful performance of its obligations under this Agreement. The DDA shall be entitled to withhold the deposit, or portion thereof, to cover any costs it incurs, or will incur, for cleaning or repairs to the Vending Site (or Old Town Square as a whole, as applicable), for outstanding fees or any other amounts owed by Vendor under this Agreement, or for any other reason related to Vendor's failure to perform hereunder. To the extent such deposit, or portion thereof, is not withheld, the DDA will return such amount to Vendor within fourteen (14) days of expiration or termination of this Agreement.

8. Electrical Power. Electrical power _____ [**shall/ shall not**] be available for the Vending Activities. If permitted by the DDA, electrical power shall be available only from those approved locations depicted on the Old Town Square Map. Vendor shall not attempt to obtain electrical power at any other outlets. Generators shall not be permitted under any circumstance. Electrical cords or strings of lights may not be strung over or placed within the pedestrian zone (See Old Town Square map). The fee for electrical power usage is set forth in Section 6 above. The DDA makes no guarantees regarding the availability or suitability of electrical power.

9. Insurance. Vendor shall, at its own expense, maintain in full force and effect during the term of this Agreement public liability and property damage insurance, which will insure the DDA against liability for bodily injury or death of persons, or for loss or damage to

property, occurring to, in or about the Vending Site and Old Town Square as a whole. Such policy shall contain not less than One Million Dollars (\$1,000,000) combined single limit coverage for bodily injury, death and property damage. Such policy shall name the DDA as an additionally insured party and shall contain the following statement:

“This policy shall not be modified or cancelled without ten (10) days’ prior written notice to the Fort Collins, Colorado, Downtown Development Authority.”

At least three (3) business days prior to commencing any Vending Activities under this Agreement, Vendor shall deliver to the DDA a certificate of insurance indicating that the insurance requirements contained herein have been satisfied. The DDA shall have the right to periodically request from Vendor a current certificate of insurance.

10. Required Minimum Hours of Vending, Inclement Weather. Vendor must conduct Vending Activities at the Vending Site a minimum of eight (8) days per month for a minimum of four (4) hours per day. The DDA may, but shall not be required to, consider inclement weather in determining whether Vendor has met its obligations under this Section 10. The DDA shall not be required to refund any vending fees paid by Vendor in the event that inclement weather prevents Vendor from engaging in the Vending Activities.

11. Blackout Dates. Vendor shall not be allowed to use the Vending Site during the following special events in the Downtown area: Bohemian Nights at NewWestFest. The DDA reserves the right to temporarily reassign a Vendor to another approved area if displaced by an event or performance not previously identified. The DDA further reserves the right to modify or increase the number of blackout dates and Vendor shall not be able to use the Vending Site on such dates upon written notice from the DDA.

12. Vendor Cart. Vendor shall be required to utilize a mobile cart for the Vending Activities. Vendor shall use only the cart approved by the DDA in connection with Vendor’s Application. Vendor shall maintain its cart in a state of good condition and repair throughout the term of this Agreement. Vendor’s cart must be set-up only within the Vending Site and shall not impede pedestrian flow in Old Town Square. Vendor’s cart and all items (including merchandise, trailer hitch, coolers, etc.) used by Vendor must be wholly contained within the Vending Site. Vendor cart height may not exceed 8 feet (including any umbrellas, signage or other items attached to the cart). All signage required by Section 13 below, or any other signage that Vendor wishes to display, must be located on Vendor’s cart.

13. Vendor Signage, Amplified Sound. Vendor’s signage must include all of the following (as applicable): hours of operation; sales tax license; food and beverage license; menus/services with a current price list. All signage must be attractive and clearly visible. All signage must be approved by the DDA prior to display by Vendor, including any changes the Vendor desires to make to signage subsequent to initial approval by the DDA. Amplified sound and noise-making devices are prohibited. This includes portable radios.

14. Changes to Cart/Tent, Products or Signage. Vendor shall not make any changes to Vendor’s cart (or tent, as applicable), signage or product offerings which were approved by

the DDA as part of Vendor's Application, without the prior written consent of the DDA. The DDA shall not permit Vendor to offer for sale any merchandise or product which the DDA determines, in its sole direction, directly competes with merchandise or products offered by any business operating in Old Town Square.

15. Removal of Property. Vendor shall remove all of its personal property from the Vending Site upon conclusion of each day's Vending Activities. Any personal property that remains at the Vending Site or in Old Town Square upon conclusion of a given day's Vending Activities is subject to disposal at the sole discretion of the DDA, and the DDA shall not be held liable in the event that any such property is disposed of.

16. Trash Receptacles and Removal. Vendor shall supply a trash receptacle of appropriate size for use by Vendor and its customers, which is in a state of good condition and repair. Vendors shall keep the Vending Site clean at all times. Vendor shall be responsible for removing all trash generated by the Vending Activities within a one hundred (100) foot radius of the Vending Site. Trash receptacles must be emptied regularly and all trash generated by Vendor or the Vending Activities must be removed from Old Town Square on a daily basis. Vendor-generated trash may not be deposited in public trash receptacles or in private dumpsters located in adjacent alleys or elsewhere.

17. Food Vending Mats. If the Vending Activities include food vending, Vendor shall be required to have clean mats in front of each food vending area to capture spilled food and waste. These mats must cover all food preparation areas and extend into the customer area a minimum of three (3) feet. No exceptions. Additional mats may be required if DDA staff determines, in its sole discretion, that such additional mats are necessary or advisable for the protection of Old Town Square or for the safety of the general public. Recommended mats include 90 lb. barrier mats or barrier spill mats. Tarpaulins will not be accepted.

18. Cleaning and Repairs. Vendor shall be responsible for reimbursing the DDA for any damages caused to the Vending Site or Old Town Square as a whole, which result from any action of Vendor, its officers, members, employees, agents, representatives, or any other person acting under the authority or the control of Vendor. Vendor shall further be responsible for paying a \$50.00 per man-hour fee for trash removal or for any pressure washing which the DDA determines, in its sole discretion, is necessary to remove any spills, stains or other similar damage to the Vending Site or Old Town Square as a whole which results from the Vending Activities. This fee shall be in addition to the \$30.00 monthly fee paid by food vendors which is intended to cover routine cleaning and not the cleaning of stains which are large or difficult to remove. Vendor agrees that it shall reimburse the DDA for costs it incurs repairing or cleaning the Vending Site (or Old Town Square as a whole, as applicable) within thirty (30) days of receiving an invoice for the same from the DDA.

19. Notice. Any notice required or desired to be given by any party to this Agreement shall be in writing and may be: (i) personally delivered; (ii) sent by certified mail; or (iii) sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service or Federal Express, for earliest delivery the next day. Any such notice shall be deemed to have been received as follows: (i) when personally delivered to the

party to whom it is addressed; (ii) when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; and (iii) when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for the mailing or delivering of notices shall be as follows:

IF to DDA: Fort Collins, Colorado,
Downtown Development Authority
19 Old Town Square, Suite 230
Fort Collins, CO 80524

If to Vendor: To address identified in Vendor's Application

Notice of a change of address of a party shall be given in the same manner as all other notices, as hereinabove provided.

20. Licensing, Legal Compliance. Vendor shall be responsible for obtaining and maintaining all licenses and permits necessary for the Vending Activities. In using the Vending Site, Vendor shall at all times comply with all federal, state and local laws, rules and regulations.

21. Materials and Support for Vending. Vendor shall be responsible for providing any and all equipment, materials, services, supplies, technical support and staffing necessary for the Vending Activities.

22. Alterations and Signage. Vendor shall not make any alterations or improvements to the Vending Site. No signage, regardless of form, may be posted within the Vending Site (or Old Town Square as a whole) without the prior written approval of the DDA.

23. Termination of License. The DDA may terminate this Agreement in accordance with the following:

- A. The DDA shall have the right to terminate this Agreement without cause upon 10 days' written notice to Vendor.
- B. The DDA shall have the right to suspend or terminate this Agreement at any time, including while the Vendor is conducting Vending Activities, upon the happening of any of the following:
 - i. Vendor uses, or attempts to use, the Vending Site in a manner inconsistent with what was approved in this Agreement (or any of the Contract Documents);
 - ii. The Vending Site has been destroyed or damaged in a manner which the DDA has determined, in its sole discretion, renders use of the Vending Site for the Vending Activities unsafe or otherwise inadvisable;

- iii. Any unforeseen occurrence beyond the control of the DDA which the DDA has determined, in its sole discretion, prevents Vendor from using or continuing to use the Vending Site, or renders use of such area unsafe or otherwise inadvisable;
- iv. The Vending Site is required for public necessity or emergency use; or
- v. Upon any default by Vendor under the terms and conditions of this Agreement.

C. The DDA shall not be liable to Vendor for any damages whatsoever resulting from the DDA's termination of this Agreement pursuant to this Section 23. In the event the DDA terminates this Agreement pursuant to Section 23(A) above, the DDA agrees to provide a pro-rated refund of vending fees paid by Vendor. The DDA shall not be required to refund any fees paid by Vendor for suspension or termination of this Agreement pursuant to Section 20(B) above.

24. Termination of Agreement by Vendor. Vendor may terminate this Agreement at any time by giving written notice of termination to the DDA. Vendor fees paid for the month in which Vendor terminates this Agreement shall not be refunded. If the Vendor has made a quarterly or annual fee payment, Vendor will be given a pro-rated refund of fees paid for months beyond the month in which termination occurs.

25. Additional Conditions of Use. The DDA reserves the right to impose upon Vendor any other conditions for use of the Vending Site which it determines, in its sole discretion, are necessary or advisable for reasons of legal compliance, for preventing damage to Old Town Square, or for the health, safety and welfare of the general public, and such conditions shall be effective upon verbal or written notice to Vendor.

26. Waiver of Liability. Vendor understands and agrees that the DDA shall not be liable to Vendor for any form of property loss or damage (including lost or stolen property), or for bodily injury or death, which results from, arises out or is connected to the Vending Activities or Vendor's use of the Vending Site or Old Town Square as a whole. Vendor hereby waives any and all claims against the DDA, its officers, employees and agents, related to any such loss, damage, injury or death.

27. Indemnification. Vendor hereby agrees to indemnify, hold harmless and defend, to the maximum extent permitted by law, the DDA, its officers, employees and agents, from and against any loss, cost, expense or damage, including, but not limited to, attorneys' fees, court costs, other legal expenses and judgments, and against all liability whatsoever claimed, resulting from, arising out of or in any way connected with the Vending Activities or Vendor's use of the Vending Site or Old Town Square as a whole.

28. Modification of Agreement. No additions, amendments or any other form of modification of or to this Agreement, or the terms and provision contained herein, shall be valid and binding unless agreed to in writing and executed by the parties hereto.

29. Assignment. Vendor shall not have any right or power to assign any part of this Agreement without the prior written consent of the DDA, which consent may be withheld in the sole discretion of the DDA.

30. Complete Agreement, Materiality of Terms and Default. The Contract Documents, together with any exhibits incorporated herein by reference, represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, whether written or oral. All terms and conditions contained in this Agreement are hereby deemed to be material. Vendor's failure to perform fully all of its obligations hereunder, or to adhere to the terms and conditions of this Agreement, shall constitute a default. In the event of a default by Vendor, the DDA may seek any available legal or equitable remedy, including, but not limited, termination of this Agreement.

31. Attorneys' Fees. In the event that litigation is commenced by one party hereto against the party hereto, which litigation results from, arises out of or is in any way connected to this Agreement, the court shall award to the substantially prevailing party all reasonable costs and expenses, including attorneys' fees, court costs and other legal expenses.

32. Severability, Sections and Headings. If any term or condition of this Agreement is held to be illegal, invalid or unenforceable, such term or provision shall be fully severable. Sections and headings contained herein are for organizational purposes only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date of the last signature written below.

THE FORT COLLINS, COLORADO,
DOWNTOWN DEVELOPMENT AUTHORITY

By: _____
Matt Robenalt, Executive Director

Date: _____

VENDOR:

By: _____

Name: _____

Title: _____

Date: _____