

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY

LICENSE AGREEMENT

MOBILE FOOD (WITHOUT FACILITY) LICENSE

THIS AGREEMENT, made this 13th day of September, in the year of Two Thousand and Nineteen (2019),

**BETWEEN THE STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY
STATE PARK SERVICE
MAIL CODE: 501-04C, P.O. BOX 420
TRENTON, NEW JERSEY 08625-0420**

, hereinafter referred to as Licensor or Department,

**AND Name
Title and/or Entity Designation
Street Address
Town, NJ Zip Code**

, hereinafter referred to as Licensee.

NOW, THEREFORE, Department, in consideration of the payments and covenants hereinafter made, does hereby grant to Licensee and Licensee hereby agrees to operate a license at:

Monmouth Battlefield State Park

THAT, IN ACCORDANCE with the provisions of N.J.S.A. 13:1L-6, Licensor does hereby grant to Licensee and Licensee does hereby accept a non-exclusive revocable license to enter upon, for the purposes herein provided: ALL that certain land and improvements thereon comprising part of the Monmouth Battlefield State Park designated as the Area ("Area"). The Licensed Premises are delineated and identified more particularly on the License Map attached to and made a part of this License as Exhibit A. Licensor reserves the right to revise the description of the Licensed Premises based on Licensor's sole determination.

This License shall be personal to Licensee and shall not be assignable. This License shall extend only to those activities undertaken by authorized employees, volunteers, and agents of Licensee (collectively and severally included in "Licensee").

Licensee hereby covenants and agrees to and with Department as follows:

1. SCOPE OF LICENSE

A. Licensee shall, under this License Agreement ("License Agreement" or "Agreement"), be granted the right to dispense food, non-alcoholic beverages, and novelties from a fully-equipped, completely self-contained mobile retail food unit, truck, or tent during the Spirit of the Jerseys History Fair ("History Fair") at Monmouth Battlefield State Park (hereinafter referred to as the "License Operation"). Licensee's operation shall be limited to the area(s) provided by Department for purposes of the License and specifically designated in Exhibit A (hereinafter referred to as the "Licensed Premises").

B. Department reserves the right to limit the issuance of Mobile Food Licenses at the Area to a maximum of eight (8).

- C. Licensee shall, at its sole cost and expense, provide a fully equipped, completely self-contained mobile retail food unit, truck or tent (“mobile unit”), sufficient to satisfy the requirements of this Agreement. Licensee shall be authorized to store the mobile unit overnight on the Licensed Premises, as designated in Exhibit A. Department shall assign Licensee a designated spot to set-up the mobile unit. Preference of location shall be given to the highest bidder. In the event multiple bidders submit the same monetary proposal, preference shall be given based on chronological order of the date and time of each bid submission.
- D. Licensee shall be authorized, as part of the License Operation, to sell food and non-alcoholic beverages. Licensee shall be solely responsible for obtaining all necessary State licenses, inspections and approvals before selling food and non-alcoholic beverages. Licensee shall comply with all rules and regulations promulgated by the New Jersey State Department of Health and any other agency of government with oversight over food preparation and service.
- E. Prices to be charged for the sale of food, non-alcoholic beverages, and novelty items shall be submitted to Department in writing.
- F. Licensee’s operation and this Agreement shall not be construed so as to affect the privileges accorded to the public’s use of the Area, or to restrain or prevent individual persons or groups of persons from bringing their own food and beverages into the Area.

2. **TERM**

- A. The “Initial Term” of this Agreement shall be from September 13, 2019 through September 16, 2019. Upon expiration of the Initial Term, Licensee may request, in writing, and Department may, in its sole discretion, for cause or convenience, revoke or grant a Renewal of the Agreement. The dates and location of the History Fair for the Renewal Term shall be determined at the time of such Renewal (“Renewal Term”). Department may grant no more than one (1) subsequent Renewal Term following the Initial Term of this Agreement. Department reserves the right to revoke this Agreement for any material breach in accordance with the terms and conditions set forth in Paragraph 7.
- B. If Licensee wishes to renew this Agreement, it must submit a request, in writing, to the address set forth in Subparagraph 4(B). Any such request must be received on or before February 1, 2020. Should Licensee fail to submit a written renewal request by February 1, 2020, this License shall automatically be revoked in accordance with the terms and conditions set forth in Paragraph 7. Department shall issue its decision regarding the grant or denial of a renewal request received in accordance with this Paragraph no later than May 1, 2020.

3. **EFFECTIVE DATE**

- A. For the purposes of this Agreement, the Effective Date of the Agreement’s Initial Term shall be September 13, 2019.
- B. For the purposes of this Agreement, the Effective Date for the commencement of the Renewal Term shall be the date on which the last of the following has occurred:
 - (i) The Renewal Agreement is signed on behalf of Licensee and Department;
 - (ii) Department dates the Renewal Agreement and forwards a copy to Licensee;
 - (iii) The required Certificate(s) of Insurance under the Agreement is or are received by Department;

4. **LICENSE PAYMENT**

- A. For the Initial Term of this Agreement, Licensee shall pay Department a minimum License Payment of Three Hundred (\$300.00) Dollars upon return of the Licensee-signed

Agreement as consideration for the license and privilege granted. Failure on the part of Licensee to submit the required License Payment upon return of the Licensee-signed Agreement will result in the non-execution of the Agreement and this Agreement shall be considered null and void. For the Renewal Term, if any, Licensee shall pay Department in accordance with the License Payment Schedule set forth in Exhibit B.

- B. The License Payment(s) shall be submitted by check made payable to “**Treasurer - State of New Jersey**” and be received on or before the scheduled payment date to:

Department of Environmental Protection
Natural and Historic Resources
Office of Leases & Concessions
PO Box 420, Mail Code: 501-04C
Trenton, New Jersey 08625-0420

5. **HOURS OF OPERATION AND LIMITATIONS**

- A. During the Initial Term of this Agreement, Licensee shall open and operate the mobile unit on September 14, 2019 and September 15, 2019 (“Period of Operation”). The one (1) calendar day prior to September 14, 2019 and the one (1) calendar day after September 15, 2019, which comprise the remainder of the Initial Term, are solely to allow for set-up and take-down, respectively.
- B. The mobile unit shall be open for business during the Period of Operation between the “Core Business Hours” of 11:00 a.m. through 5:00 p.m. The mobile unit must be prepped, fully operational, and capable of serving patrons not later than 11:00 a.m. each day of the Period of Operation. Licensee shall be responsible for adequate staffing and operating the mobile unit during the Period of Operation and during the Core Business Hours.
- C. The Period of Operation and Core Business Hours for the Renewal Term, if any, shall be determined by Department at the time of such Renewal.
- D. Department shall be the sole authority to determine whether an area of Monmouth Battlefield State Park affecting the License Operation will be closed due to inclement weather or otherwise. Department is not responsible to Licensee for any loss or damage caused by such determination.

6. **SUSPENSION OF OPERATIONS**

Licensee shall, at the direction of Department, immediately suspend, delay or interrupt Licensee’s operation of all or any part of the Licensed Premises for such period of time as Department may determine to be appropriate to protect the Licensed Premises and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Licensee's failure to perform any of the covenants, agreements, and conditions contained in this Agreement on its part to be performed. Licensee hereby waives any claim, and Department shall not be liable to any party claiming through Licensee, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph or this Agreement. Department's suspension of Licensee's operations shall be in addition to any other right or remedy available by law or in equity.

7. **REVOCAION**

- A. Department expressly reserves the right to revoke the License Agreement without notice in cases of emergency or where there exists or may exist risk to public health, safety, or welfare, as determined by Department in its sole discretion. Department is not responsible to Licensee for any loss or damage caused by such determination.
- B. If Licensee fails to remove any personal property lawfully belonging to and removable by Licensee upon the expiration or revocation of this Agreement, all personal property shall become the property of Department without compensation to Licensee.

- C. Notwithstanding any provision or language to the contrary, Department may revoke the Agreement, in whole or in part, solely for the convenience of the State, by ninety (90) calendar days written notice to Licensee sent by regular and certified mail return receipt requested.

8. ELECTRONIC SUBMISSIONS

Licensee must have the capacity to send and receive electronic submissions and communications as a pre-condition and continuing requirement of this Agreement.

9. RECORDS AND AUDIT

All sales shall be recorded by means of cash registers or Point of Service (“POS”) devices that publicly display the amount of each sale. Each cash register or POS device must have the ability to records individual sales, total sales, and can generate a paper or electronic receipt upon request by any customer.

10. DAILY RECEIPTS

Under this License Agreement, Licensee shall maintain a daily record of all gross receipts derived from the License Operation. This record shall be made available upon request by Department.

11. PRICES

Prices to be charged for the sale of food, non-alcoholic beverages, and novelty items shall be submitted to Department in writing. All prices shall be properly displayed in prominent places at all times. Price signage must be professional in appearance and neat.

12. STAFF

Licensee shall engage a sufficient number of reliable, competent, and qualified staff of legal age to operate the mobile unit within the terms and conditions of this Agreement.

13. EQUIPMENT

- A. Licensee shall, at its sole cost and expense, provide a fully equipped, completely self-contained mobile unit, truck, or tent, sufficient to satisfy the requirements of this Agreement and shall maintain and operate said unit and all equipment in good condition, in compliance with N.J.A.C. 8:24, of the New Jersey State Sanitary Code. Department shall not be responsible for the damage, loss, or maintenance of the mobile unit or equipment.
- B. Department shall not be responsible for any damages or loss of goods or services resulting from equipment failure. Licensee shall obtain insurance coverage for possible losses including, but not limited to, equipment failure, vandalism or weather event.

14. REPAIR

Licensee shall, at its sole cost and expense, be responsible for repairs and/or replacement of the mobile unit and all equipment.

15. MAINTENANCE OF LICENSED PREMISES

- A. Licensee shall preserve and maintain the Licensed Premises in good and clean condition, reasonable wear and tear excepted. Licensee is solely responsible for the maintenance and cleanliness of the Licensed Premises.
- B. Upon the expiration of this Agreement, Licensee shall deliver up peaceable possession of the Licensed Premises to Department in as good and clean condition as the Licensed Premises was made available at the commencement of the Term, reasonable wear and tear excepted. In the event that Licensee does not deliver up possession as herein provided, Department may restore the Licensed Premises to such condition, and the cost thereof shall

be paid by Licensee to Department within ten (10) calendar days of Department's written demand for payment.

16. INSPECTION

Licensee shall make the mobile unit available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of this Agreement.

17. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS

- A. Licensee shall be responsible for maintaining the cleanliness of the Licensed Premises. Licensee shall, at its sole cost and expense, provide a sufficient number of trash container(s) as may be required to keep the immediate Licensed Premises clean at all times. Licensee shall ensure placement of all garbage and trash generated by the License Operation in designated containers and that said containers are emptied daily, or as more frequently required by Department, at a location within the Area designated by Department. Disposal costs from this latter location shall be borne by Department. The type of trash containers provided by Licensee shall be approved by Department prior to use.
- B. Licensee shall comply with any and all county and local recycling requirements.
- C. Any wrappings, containers, bowls, plates, cartons, or cups that are not intended for reuse must be composed of biodegradable material. Biodegradable material is defined as follows: MATERIAL CAPABLE OF BEING BROKEN DOWN FROM A COMPLEX MOLECULAR STRUCTURE INTO SIMPLER GASSES AND ORGANIC COMPOUNDS BY LIVING MICROORGANISMS.
- D. No glass containers of any kind shall be used to dispense any food and/or beverages.

18. UTILITIES

There is no electricity available on or about the Licensed Premises. Licensee may, at its sole cost and expense, utilize a portable generator or alternative power source at the Licensed Premises during the Period of Operation. Department shall not be responsible for the damage, loss, or maintenance of the portable generator or alternative power source.

19. TAXES

- A. All taxes, including sales tax, if any, arising out of the operation of the License and the use and occupancy of the Licensed Premises shall be the sole responsibility of Licensee and shall be promptly paid by Licensee when due, regardless of whether such tax or assessment is assessed within or outside any Term of this Agreement.
- B. Licensee, and each of their affiliates shall, for any Term of this Agreement, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L.1966, c. 30 (N.J.S.A. 54:32B-1 et. seq.) on all of their sales of tangible personal property delivered into this State. Any questions in this regard can be directed to the Division of Revenue at <https://www.state.nj.us/treasury/revenue/revgencode.shtml>.

20. REPORT OF INJURY

Any injury that shall occur to Licensee, its officers, servants, agents, employees, contractors, or invitees requiring medical intervention of which Licensee is notified, shall be reported to Department immediately by calling 1-877-WARN DEP (1-877-927-6337) and also reported in writing to the addresses set forth in Paragraph 39 within one (1) calendar day of the incident.

21. NEW JERSEY CONFLICT OF INTEREST LAW

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- A. No Licensee shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Licensee transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer has an interest within the meaning of N.J.S.A. 52:13D-13g.
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Licensee shall be reported, in writing forthwith by Licensee to the Attorney General and the Executive Commission on Ethical Standards.
- C. No Licensee may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Licensee to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- D. No Licensee shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- E. No Licensee shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for Licensee or any other person.
- F. The provisions cited above in Subparagraphs 21(A) through 21(E) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Licensee under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

22. SOLICITATION

Licensee shall warrant that no person has been employed directly or indirectly to solicit or secure this Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of this Agreement have not been violated and shall not be violated by any conduct of Licensee, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

23. INDEPENDENT PRINCIPAL

Licensee's status shall be that of an independent principal and not as an agent or employee of Department.

24. NOT A LEASE

It is expressly understood and agreed by both Department and Licensee that no building, land or equipment included within the description of the Licensed Premises or any other property comprising part of the Area is hereby leased to Licensee. Department's control, management and direction over the Licensed Premises or any other property comprising part of the Area are not hereby assigned in any way to Licensee.

25. INDEMNIFICATION

- A. Licensee shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the License and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, servants, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, servants, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from the following:
- (i) any injury to, or the death of, any person caused in whole or in part by any negligent act or omission of Licensee, or anyone directly or indirectly employed by [it], *regardless of whether it is caused in part by the Department*, or its officers, agents, servants, employees, successors, and assignees;
 - (ii) any injury to, or the death of, any person in, on, or about, or any damage to property which occurs in, on, or about the Licensed Premises or upon any sidewalk, walkway, or patio within the Licensed Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Licensed Premises, or the construction or repair of any improvements of the Licensed Premises;
 - (iii) any act, error, or omission of Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement;
 - (iv) violation of any term or condition of this Agreement by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement; and
 - (v) violation by Licensee, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Licensee in the performance of this Agreement of any contracts and agreements of record concerning the Licensed Premises and restrictions of record or any law, ordinance, or regulation affecting the Licensed Premises or any part thereof or the ownership, occupancy, or use thereof.
- B. Department shall, as soon as practicable after a claim has been made against it, give written notice thereof to Licensee, along with full and complete particulars of the claim. If suit is brought against Department or any of its officers, agents, servants, and/or employees, Department shall expeditiously forward or have forwarded to Licensee every demand, complaint, notice, summons, pleading, or other document received by or then in the possession of Department or its representatives.
- C. It is expressly agreed and understood that any approval by Department of Licensee's operation of the Licensed Premises shall not operate to limit the obligations of Licensee assumed pursuant to this Agreement.
- D. Licensee's liability pursuant to this Paragraph shall continue after the expiration of this Agreement with respect to any liability, loss, cost, expense (including all attorneys' fees and

expenses), damage, cause of action, suit, claim, demand, or judgment resulting from actions or inactions occurring prior to such termination or expiration.

- E. Licensee's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement.

26. INSURANCE

- A. Licensee shall, at its sole cost and expense, obtain and maintain at all times during each Term of this Agreement, insurance of the types and in the amounts hereinafter provided:

- (i) Commercial General Liability Insurance as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. Limits of liability shall be maintained at the level of One Million (\$1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million (\$2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and
- (ii) Worker's Compensation Insurance applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Million (\$1,000,000) Dollars Bodily Injury By Accident (Each Accident) and One Million (\$1,000,000) Dollars Bodily Injury By Disease (Each Employee) with an aggregate limit of One Million (\$1,000,000) Dollars Bodily Injury By Disease (Policy Limit); and
- (iii) Comprehensive Automobile Liability Insurance, which shall be written to cover any automobile or trailer used by Licensee. Limits of liability to cover bodily injury and property damage shall not be less than One Million (\$1,000,000) Dollars per person or per accident. Coverage must include hired and non-owned vehicles. A MCS-90 certificate shall be filed with the State of New Jersey if hazardous materials or waste will be transported during operation of the License; and
- (iv) Such other insurance and in such amounts as may from time to time be reasonably required by Department.

- B. All insurance coverage required to be maintained by Licensee in accordance with this Agreement shall be issued by an insurance company with an A- VIII or better rating by A.M. Best & Company authorized and approved to do business in New Jersey. All policies except for Worker's Compensation shall name the State of New Jersey Department of Environmental Protection as an additional insured and include the blanket additional insured endorsement or its equivalent. The certificate(s) of insurance shall identify the License Number assigned to this Agreement and the location(s) of the Licensed Premises in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection, Natural and Historic Resources, Office of Leases & Concessions, P.O. Box 420, Mail Code: 501-04C, Trenton, New Jersey 08625-0420 in the Certificate Holder box.

- C. When Licensee returns this Agreement signed by Licensee, to Department for signature, Licensee shall provide Department with all current and valid certificate(s) of insurance evidencing that Licensee has obtained all insurance coverage in accordance with this Agreement. Failure to provide a certificate(s) of insurance at the time of Licensee's return of this Agreement shall result in the non-execution of this Agreement by Department. Licensee also shall, upon request, provide Department with copies of each policy required under this Agreement, certified by the agency or underwriter to be true copies of the policies provided by Licensee.

- D. Licensee expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit Licensee's indemnification obligations assumed in this

Agreement and shall not be construed to relieve Licensee from liability in excess of such insurance coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Agreement and as otherwise provided for at law or in equity.

27. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

- A. For each Term of this Agreement, Licensee shall obtain, pay for, maintain, and comply with all licenses, permits, certifications, authorizations, approvals, or any other documents required by all applicable government agency having jurisdiction over the Licensed Premises or the conduct of Licensee's operations thereon. Licensee shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation. No operation shall begin until Licensee has provided such written evidence to Department.
- B. Licensee shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State statutes, laws, rules, ordinances, regulations, and orders affecting the conduct of the License Operation described in this Agreement; specifically, but not limited to, **an Act concerning smoking at public beaches and parks and amending and supplementing PL 2005 c. 383 (P.L. 2018 c. 64)**; and N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, of which an unofficial courtesy copy is attached as Exhibit C, and all rules and regulations of the New Jersey Department of Health now or hereafter in effect, as well as those rules and regulations of any other agency with jurisdiction over the preparation and sale of food and beverages.
- C. Licensee shall comply with the requirements of all insurance policies required by this Agreement.
- D. Licensee shall indemnify Department against all liabilities, claims, losses, damages, costs, expenses (including all attorneys' fees and expenses), causes of action, suits, demands, judgments, or payments of any kind arising from Licensee's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State statute, law, rule, ordinance, regulation, or order.

28. SERVICE PERFORMANCE WITHIN U.S.

Licensee agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L. 2005, c. 92), that all services performed under this Agreement shall be performed within the United States. In the event that all services performed under this Agreement shall not be performed within the United States, Licensee shall send Department a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Agreement or the delivery of the services which will not be performed within the United States.

29. PUBLIC USE

Licensee's operation and this Agreement shall not be construed so as to affect the privileges accorded to the public's use of the Area, or to restrain or prevent individual persons or groups of persons from bringing their own food and beverages into the Area.

30. NO DISCRIMINATION

- A. Licensee shall comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.
- B. Licensee shall not discriminate, and shall abide by all anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-2000d-4; the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through N.J.S.A.

10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and all rules and regulations promulgated pursuant thereto.

- C. Specifically, Licensee shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Licensed Premises.

31. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS

A. Pursuant to N.J.A.C. 17:27-3.5, Licensee agrees that:

- (i) Licensee or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Licensee will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Licensee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
- (ii) Licensee or its subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of Licensee, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- (iii) Licensee or its subcontractor, where applicable, shall send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Licensee's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
- (iv) Licensee or its subcontractor, where applicable, agrees to comply with all regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

B. Further, pursuant to N.J.A.C. 17:27-3.7, Licensee agrees that:

- (i) Licensee and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (ii) Licensee and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

- (iii) Licensee and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (iv) In conforming with the targeted employment goals, Licensee and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

32. PAYMENT ABATEMENT

Licensee acknowledges that payment abatements will not be given if Licensee is unable to operate the Licensed Premises for any reason. A refund shall only be issued if Department cancels the History Fair during the entire Period of Operation and during the Core Business Hours of 11:00 a.m. through 5:00 p.m. No refund will be given for any partial closure.

33. FINAL DECISION

Licensee covenants that the decision of the Commissioner of Department, relative to the performance of the terms and conditions of this Agreement, shall be final and conclusive.

34. CORPORATION

- A. For any Licensee that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation, including authorized agents for receipt of legal documents, shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Licensee as a legal corporation.
- B. Licensee shall adopt the required corporate or partnership resolution, as applicable, authorizing the execution of this Agreement by Licensee. Licensee shall submit a copy of said resolution to Department prior to execution of this Agreement by Department.
- C. Prior to the Effective Date of this Agreement, Licensee shall provide the Department with a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2.

35. SUBCONTRACTING

Licensee shall be prohibited from subcontracting any part or all of the License Agreement.

36. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

The License is personal to Licensee. Licensee shall not assign this Agreement or sell controlling interest in the License.

37. PAY TO PLAY RESTRICTIONS AND CONTRIBUTION DISCLOSURE

- A. In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature has enacted P.L. 2005, c. 51 (codified at N.J.S.A. 19:44A-20.13 to -20.25) (Chapter 51) on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134 (2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional

limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Chapter 51 and EO 117 restrict business entities which agree to certain contracts or agreements with the State from making or soliciting certain contributions. Compliance with Chapter 51 and EO 117 is a material term and condition of the Bid Specifications and Agreement, and binding upon the parties thereto upon the entry of all applicable contracts.

Thus, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of this Agreement for Licensee to do any of the following during any Term of this Agreement:

- (i) make or solicit a contribution in violation of Chapter 51 or EO 117;
- (ii) knowingly conceal or misrepresent a contribution given or received;
- (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county, or municipal party committee, or any legislative leadership committee;
- (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Licensee itself, would subject Licensee to the restrictions of Chapter 51 or EO 117;
- (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- (vii) engage in any exchange or contributions to circumvent the intent of Chapter 51 or EO 117; or
- (viii) directly or indirectly, through or by any other person or means, do any act which would subject Licensee to the restrictions of Chapter 51 or EO 117. It is Licensee's continuing obligation to report any contributions it makes during any and all Term(s) of this Agreement.

B. Licensee is required, on a continuing basis, to report any contributions and solicitations Licensee makes during any Term of this License Agreement at the time any such contribution or solicitation is made.

C. Licensee shall file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 2) if Licensee receives contracts in excess of Fifty Thousand (\$50,000.00) dollars from public entities in a calendar year. It is Licensee's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

38. ENTIRE AGREEMENT

A. This License Agreement represents the entire agreement between Department and Licensee, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of Department and Licensee, and an amendment, in writing, executed by either the Assistant Commissioner, Natural and Historic Resources or the Director of the Division of Parks and Forestry.

- B. This Agreement shall be construed as if it were drafted by both Parties hereto, and both Parties waive all statutory and common law presumptions which would serve to have the document construed in favor of, or against, any Party as the drafter hereof. This Agreement contains the entire understanding of the Parties hereto and represents full and final settlement of and resolution of the matter set forth herein. There are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

39. SUBMISSIONS, APPROVALS, AND NOTICES

Department and Licensee agree that all submissions, approvals, and notices which may be required under this Agreement shall be forwarded by email or fax, regular and certified mail return receipt requested and addressed as follows:

To Department: Department of Environmental Protection
Natural and Historic Resources
Office of Leases & Concessions
PO Box 420, Mail Code: 501-04C
Trenton, New Jersey 08625-0420
Fax: (609) 984-0836
Email: OfficeofLeases@dep.nj.gov

Copy to Monmouth Battlefield State Park:
Monmouth Battlefield State Park
20 State Route 33
Manalapan, New Jersey 07726
Fax: 732-577-8816
Email: Michael.Timpanaro@dep.nj.gov ; and
Clay.Craighead@dep.nj.gov

To Licensee: **Name**
Title and/or Entity Designation
Street Address
Town, NJ Zip Code
Email:

Either Department or Licensee may, at any time, change such address(es) by mailing, to the address(es) of the other, above, a notice of the change at least ten (10) calendar days prior to the effective date of such change.

40. RECEIPT OF WRITTEN NOTICE

Department and Licensee agree that the receipt of a written notice is considered five (5) calendar days after the date on the said written notice.

41. WAIVER OF TRIAL

It is mutually agreed between Department and Licensee that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either against the other on any matters whatsoever arising out of or in any way connected with this Agreement or the relationship of Department and Licensee, Licensee's use or occupancy of the Licensed Premises, and/or any claim of injury or damage thereto or arising therefrom.

42. WAIVER

Failure by Department to complain of any act or omission on the part of the other, no matter how long same may continue, shall not be deemed a waiver by Department of any of its rights hereunder. No waiver by Department at any time, express or implied, of breach of any provision of this License Agreement shall be deemed a waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by Department shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies that Department may have under this License

Agreement or by operation of law, either at law or in equity, by reason of a breach by the other, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two (2) or more or all of such rights and remedies may be exercised at the same time. Acceptance by Department of any of the benefits of this Agreement with knowledge of any breach thereof by the other shall not be deemed a waiver by the entity receiving the benefit of any rights or remedies to which it is entitled hereunder or by law. Licensee expressly acknowledges that any waiver on the part of Department may only be effectuated in writing through the Office of the Assistant Commissioner for Natural and Historic Resources.

43. SUPERSEDES

This License Agreement supersedes and cancels all prior licenses and agreements covering the Licensed Premises; however, any and all continuing obligations arising under prior agreements shall survive.

44. SUCCESSION AND BINDING AGREEMENT

Except as otherwise set forth herein, all of the terms and provisions of this License Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of Department and Licensee and binding on a Trustee in bankruptcy.

45. HEADINGS

The article, paragraph, and subparagraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this License Agreement.

46. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

47. SEVERABILITY

In case any term or provision of this contract shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of any remaining part nor the validity of any other term or provision shall in any way be affected by such holding.

48. CLAIMS

All claims asserted against Department by Licensee shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1.1, et seq. and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

49. ASSIGNMENT OF ANTITRUST CLAIM(S)

- A. Licensee recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Agreement, Licensee, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Agreement.
- B. In connection with this assignment, the following are the express obligations of Licensee:
- (i) It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.

- (ii) It shall advise the Attorney General of New Jersey in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action, and immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- (iii) It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after Licensee has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.
- (iv) It is understood and agreed that in the event any payment under any such claim or cause of action is made to Licensee, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

50. PREFERENCE FOR WOOD, PAPER PRODUCTS DERIVED FROM SUSTAINABLY-MANAGED FORESTS OR PROCUREMENT SYSTEMS

Pursuant to N.J.S.A. 52:32-45, any bid that calls for the use of wood or paper products derived from sustainably managed forests or procurement systems shall receive preference, whenever possible, where relevant. Accordingly, Department shall give such preference when entering into this Agreement, whenever possible, where relevant.

51. MACBRIDE PRINCIPLES AND IRANIAN INVESTMENTS

- A. Licensee certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- B. In addition, Licensee certifies that neither the Licensee nor any of the Licensee's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to N.J.S.A. 52:32-55.

52. PREVAILING WAGE ACT

Without limiting the scope of any other provision of this Agreement, Licensee agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 as codified in N.J.S.A. 34:11-56.25, et seq. Licensee also agrees to comply with 42 U.S.C. § 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and § 9604 (g)(1), the Licensee must comply with the federal requirements.

53. HAZARDOUS SUBSTANCES

At no time during this Agreement shall Licensee store, upon the License Operation, hazardous substances as that term may be defined by the New Jersey Department of Environmental Protection (see N.J.S.A. 58:10-23.11(b)) or by the federal Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Act, amendments of 1972" (33 U.S.C. 1321; see also 40 C.F.R. 302.3) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that Act (33 U.S.C. 1317; see also 40 C.F.R. 401.15).

54. BANKRUPTCY

In the event Licensee enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Licensee agrees to furnish written notification of the bankruptcy to Department

with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. The obligation to report entering into any such proceedings remains in effect until final payment is made under this Agreement. The Department shall have the right to revoke this Agreement immediately upon receipt of a notice of bankruptcy by providing written notice to Licensee.

55. LIST OF EXHIBITS

Exhibit A: Licensed Premises
Exhibit B: License Payment Schedule
Exhibit C: N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines

56. AUTHORITY

By the signatures below, the parties hereto execute this License Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization by all provisions contained herein.

DRAFT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: _____

Ray Bukowski, Assistant Commissioner
Natural and Historic Resources

Date: _____

LICENSEE

By: _____

Witness

By: _____

_____, Licensee

Date: _____

Date: _____

**THIS LICENSE AGREEMENT HAS BEEN
REVIEWED AND APPROVED AS TO
FORM BY:**

**GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY**

By: _____

Deputy Attorney General

Date: _____