

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**FOOD TRUCK LEASE AGREEMENT
PURSUANT TO RFP 15-091
MAD12BRAD DBA COUSINS MAINE LOBSTER-HOUSTON**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), a body corporate and politic under the laws of the State of Texas, and Mad12Brad dba Cousins Maine Lobster-Houston (hereinafter "Lessee"), a company authorized to conduct business in the State of Texas.

WITNESSETH

WHEREAS, County seeks to allow Lessee to lease property located near the County Justice Center for the purpose of operating a mobile food truck pursuant to RFP 15-091;

WHEREAS, entering into this Agreement will promote economic growth and improve access to dining options for individuals utilizing the County Justice Center; both of which are public purposes, and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

Section 1. Lease Terms

- A. This Lease Agreement shall commence on upon execution of the final party, and end on September 30, 2016, renewable annually, if mutually agreeable by both parties.
- B. This Lease Agreement authorizes Lessee to operate a food truck for the sale of food products in an area designated by County, located at the County Justice Center complex.
- C. It is understood and agreed by the Parties that this Lease Agreement is not an exclusive use Agreement and that other food truck operators may enter into similar or same Lease Agreements with County at the same location. Food trucks sales are only allowed on Tuesdays and Lessee shall be guaranteed a minimum of one scheduled Tuesday per month for use of the designated location. Specific dates shall be assigned by the Fort Bend County Facilities Management Department.
- D. Lessee must obtain and maintain required permits issued by the City of Richmond, Texas. Any such permits must be made available and provided to Lessor upon demand. Failure to maintain such permits may result in termination of this Lease Agreement.

- E. Lessee understands and agrees that no utilities will be made available to Lessee at the designated location. Any needed electricity, propane, water, sewer, garbage removal, charcoal, telephone, internet or other services are Lessee's sole responsibility.
- F. Lessee is responsible for removal of all trash, food waste and debris. No grease or food stains shall result from the Lessee's activity; a clean site is the responsibility of the lessee; any Fort Bend County expense incurred to maintain the site will be the lessee's responsibility.
- G. Any proposed signage must be reviewed and approved by Fort Bend County prior to placement and be utilized only while Lessee is on-site.
- H. Lessee's activity in no way shall impede the free movement and circulation of traffic and pedestrians.
- I. It is the intent of Fort Bend County to lease this property through September 30, 2016, renewable annually upon mutual agreement of both parties.
- J. Lease in the amount of \$25.00 for each Tuesday Lessee used by Lessee. Payment shall be pre-paid prior to the scheduled Tuesday in the form of a check or money order made payable to Fort Bend County and delivered to Fort Bend County Facilities Management at 301 Jackson, Richmond, Texas.

Section 2. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

Section 3. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default: County may terminate the whole or any part of this Agreement for cause if Lessee materially breaches any of the covenants or terms and conditions set

forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.

Section 4. Insurance

- A. Prior to commencement of the Services, Lessee shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Lessee shall provide certified copies of insurance endorsements and/or policies if requested by County. Lessee shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Lessee shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
1. Workers Compensation in accordance with the laws of the State of Texas. Substitute policies other than Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$500,000 per injury by accident, \$500,000 per injury by disease, and \$500,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
 5. Lessee is responsible to maintain insurance on all personal property belonging to Lessee.

- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies written on behalf of Lessee shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, Lessee warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Lessee shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Lessee.

Section 5. Indemnity

- A. **LESSEE SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF LESSEE, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF LESSEE OR ANY OF LESSEE'S AGENTS, SERVANTS OR EMPLOYEES.**
- B. Lessee shall cause all trade contractors and any other contractor who may have a contract to perform construction or installation work in the area where work will be performed under this Contract, to agree to indemnify County and to hold it harmless from all claims for bodily injury and property damage that arise may from Lessee 's operations.
- C. County shall be exempt from, and in no way liable, for, any sums of money, which may represent a deductible in any insurance policy. The payment of deductibles shall be the sole responsibility of Lessee and/or Trade Contractor providing such insurance.

Section 6. Independent Contractor

- A. In the performance of work or services hereunder, Lessee shall be deemed an independent Contractor and any of its agents, employees, officers, or volunteers

performing work required hereunder shall be deemed solely as employees of Lessee or, where permitted, of its subcontractor.

- B. Lessee and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

Section 7. Notices

A. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County:	Fort Bend County Attn: Fort Bend County Facilities Management 301 Jackson, Ste. 301 Richmond, TX 77469
With a copy to:	Fort Bend County Attn: County Judge 401 Jackson Street Richmond, Texas 77469
Lessee:	Mad12Brad dba Cousins Maine Lobster-Houston 9720 Harlem Road, Ste. B2 Richmond, TX 77407

C. Notice is effective only if the party giving or making the Notice has complied with subsections 7(A) and 7(B) and if the addressee has received the Notice. A Notice is deemed received as follows:

1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

Section 8. Compliance with Laws

Lessee shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Lessee shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

Section 9. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

Section 10. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

Section 11. Successors and Assigns

County and Lessee bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

Section 12. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

Section 13. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

Section 14. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

Section 15. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

Remainder left blank

Execution page follows

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the 10th day of OCTOBER, 2015.

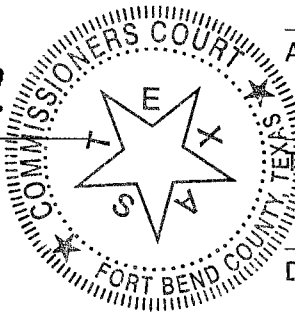
FORT BEND COUNTY

MAD12BRAD
DBA COUSINS MAINE LOBSTER-HOUSTON

Robert E. Hebert 10-27-15
Robert E. Hebert, County Judge

[Signature]
Authorized Agent- Signature

Attest:
Laura Richard
Laura Richard, County Clerk



Neal Werner
Authorized Agent- Printed Name

President
Title

10/10/15
Date

APPROVED:

[Signature]
James D. Knight
FBC Facilities Management Director

MTR I/Agreements/2016/Purchasing/Food trucks 2016 10.05.15

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ _____ to accomplish and pay the obligation of Fort Bend County under this contract.

Robert Edward Sturdivant
Robert Edward Sturdivant, County Auditor