

**NON-EXCLUSIVE SITE LICENSE AGREEMENT BETWEEN THE CITY OF  
PETALUMA AND \_\_\_\_\_  
CONCERNING A PORTION  
OF THE CITY OF PETALUMA FAIRGROUNDS PROPERTY LOCATED AT 175  
FAIRGROUNDS DRIVE IN PETALUMA**

This non-exclusive site license agreement (“**Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Petaluma, a California municipal corporation and charter city (“**City**”), with its principal place of business located at 11 English Street, Petaluma, California, 94952, and \_\_\_\_\_ (“**Licensee**”), a California corporation, corporation number \_\_\_\_\_, with its principal place of business located at \_\_\_\_\_.

**Background**

- A.** The City owns the real property known as the Petaluma Fairgrounds located at 175 Fairgrounds Drive, Petaluma, California 94952, A.P.N.s \_\_\_\_\_ (“**Fairgrounds**”).
- B.** The City’s Fairgrounds property has been under exclusive lease to the Fourth District Agricultural Association for the previous 50 years, and the current lease term will expire December 31, 2023. The City is preparing to master plan the Fairgrounds property to preserve the fair use and maximize the public uses on and access to the Fairgrounds for the benefit of the entire Petaluma community once the City assumes the management of the Fairgrounds on January 1, 2024. During the term of the 4<sup>th</sup> District Agricultural Association lease, Licensee has been a tenant on the Fairgrounds property, and the City intends to maintain the current uses on the Fairgrounds while a master plan is prepared to provide stability for the current Fairgrounds tenants during the master plan process.
- C.** Accordingly, the City desires to grant, and Licensee desires to obtain, the non-exclusive right to use a portion of the Fairgrounds property for specified permitted uses for the duration and subject to the terms and conditions specified in this Agreement.

In consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

**1. Licensed Premises.** The portions of the Fairgrounds that are licensed to the Licensee pursuant to this Agreement are referred to as the **Licensed Premises**, and are depicted and described in **Exhibit A**, which is hereby made a part of this Agreement.

**2. Grant of License.** City grants to Licensee a non-exclusive, revocable license (“**License**”) to enter upon and use the portions of the City’s Fairgrounds property depicted and described in Exhibit A (“**Licensed Premises**”), for the uses described in Section 6, below, and Exhibit B. The City expressly reserves to the City for itself and other potential licensees all uses of the Licensed Premises that do not unreasonably conflict with the uses licensed pursuant to this Agreement.

**3. License Amendments.** The City’s primary objective in assuming management and control of its Fairgrounds property is maximizing the benefits to the Petaluma Community and the public uses on and access to the City’s Fairgrounds property. To achieve this objective, and while the City maintains current uses on its Fairgrounds property and master plans future fair and other Fairgrounds

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uses, adjustments may be necessary to the licenses granted to Fairgrounds users. During the Term, it may be necessary to make reasonable amendments to this Agreement, including the Licensed Premises, the Licensed Uses and/or other terms and conditions of this Agreement while maintaining Licensee's operations. The City will endeavor to ensure that City-proposed amendments to this Agreement result in Licensee's rights remaining reasonably equivalent to those granted on the Commencement Date of this Agreement, and are implemented so as to minimize cost or operational impacts on the Licensee, and/or include appropriate adjustments to the License Fee or other terms and conditions in view of cost or operational impacts on the Licensee, or are otherwise reasonably acceptable to the Licensee. The Licensee agrees to enter into amendments of this Agreement with the City reasonably acceptable to the City and Licensee to effect such City-proposed amendments. During the Term, the Licensee may also propose reasonable amendments to the terms and conditions of this Agreement, and the City may in its discretion enter into amendments proposed by Licensee to this Agreement that are consistent with the City's objectives for the Fairgrounds property uses.

4. **Term.** The term of this Agreement shall commence on January 1, 2024 ("**Commencement Date**") and continue through December 31, 2026 ("**Expiration Date**"), unless earlier terminated in accordance with Section 11. The City and the Licensee may by mutual agreement amend this Agreement in accordance with Section 24 to extend the Term by no more than two, additional one-year extensions, extending the Expiration Date up to but not exceeding December 31, 2028.

5. **No Grant of Property Interest or Creation of Irrevocable License.** The rights granted under this Agreement are solely license rights. The License granted under this Agreement is personal to Licensee, non-transferable and non-assignable (except as otherwise specified in Section 12, below), and terminable by agreement of the City and Licensee and terminable and revocable by the City in accordance Section 11 of this Agreement. This Agreement conveys no real property interest or estate in the Licensed Premises, and nothing in this Agreement creates or may be construed to create property interests or estates, such as lease or easement rights, nor may any conduct of the City or the Licensee create or be construed to create such property interests or estates, or to create a license coupled with an interest or an irrevocable license, and the Licensee hereby waives, releases and disclaims on behalf of the Licensee and any successors and assigns of the Licensee any such interest in the Licensed Premises.

6. **Licensed Uses.** While this Agreement is in effect, Licensee shall have the non-exclusive right to use Licensed Premises, solely and exclusively for the purposes described in **Exhibit B**, ("**Licensed Uses**"). Exhibit B is hereby made a part of this Agreement. Upon a proposal from the City in accordance with Section 3 or on request from the Licensee, the City and Licensee may agree to amend the Licensed Uses in accordance with Section 24 of this Agreement. Amendments to the Licensed Uses in accordance with this section may require and include other amendments to this Agreement, including, but not limited to, amendments to the Licensed Premises pursuant to Exhibit A, the License Fee pursuant to Section 8, the Insurance Requirements in accordance with Section 20 and Exhibit C and/or other amendments.

7. **Limitations on Licensed Uses.** Licensee may not use, and shall prohibit any of its agents or representatives from using, the Licensed Premises for uses other than the Licensed Uses as specified in Section 6 and Exhibit B. In addition, the following limitations apply to the Licensed Uses:

a. **Installation, Alteration.** Licensee may not construct or install any structures, signs or improvements on the Licensed Premises, or alter any existing structures, signs or improvements on

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the Licensed Premises, or modify the Licensed Premises in any manner, including but not limited to, grading, excavating or paving, without the prior written consent of an authorized representative of the City, and if necessary, execution of an amendment to this Agreement by authorized representatives of the City and the Licensee in accordance with Section 24.

b. **Damage, Waste, Nuisance.** Licensee may not damage the Licensed Premises or commit or permit waste or creation of nuisance conditions on the Licensed Premises.

c. **Hazardous Material.** Except as otherwise expressly provided in Exhibit B, Licensed Uses, and subject to all applicable requirements and safeguards in Exhibit B and applicable law, Licensee may not permit any hazardous material including, but not limited to, any material defined as a “hazardous substance, pollutant or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.); or pursuant to Section 25316 of the California Health and Safety Code; “hazardous waste” pursuant to Section 25140 of the California Health and Safety Code; asbestos and asbestos containing materials; and petroleum, including, without limitation, crude oil or any fraction thereof, natural gas, or natural gas liquids, to be brought upon, kept, used, stored, released, generated or disposed of in, or about the Licensed Premises or transported to or from the Licensed Premises. Licensee shall immediately notify the City of any release or suspected release of hazardous material on or from the Licensed Premises, comply with all laws requiring notice of such release or threatened releases to governmental agencies, and take all action necessary to mitigate the release or minimize the spread of contamination. Licensee shall, at Licensee’s sole cost and expense and without cost to the City, and in accordance with all laws and regulations, return the Licensed Premises to the condition immediately prior to the release of any hazardous material in violation of this provision.

8. **License Fee.** The License Fee that the Licensee shall pay the City in consideration of the License granted under this Agreement shall be \$\_\_\_\_\_, payable beginning on the Effective Date and monthly on the first of each month thereafter during the Term. Payments must be made payable to the City of Petaluma and be delivered to the City at the address specified in Section 21 of this Agreement.

9. **No Warranties.** The Licensee understands that as the City assumes management and control of its Fairgrounds property following the expiration of the 4<sup>th</sup> District Agricultural Association Lease, there are needed improvements and deferred maintenance conditions on the Fairgrounds, including the Licensed Premises. Accordingly, the City expressly disclaims any warranty of fitness of the Licensed Premises for the Licensee’s intended use, and expressly disclaims any warranty of merchantability. Licensee acknowledges that Licensee has had ample opportunity to view, inspect and use the Licensed Premises, and has performed such inspection as Licensee deems necessary, such that Licensee accepts the Licensed Premises in an as-is condition, with all faults including security, and without any warranty whatsoever, express or implied. The Licensee is also hereby given notice that the lease between the City and the 4<sup>th</sup> District Agricultural Association that is expiring December 31, 2023 provides that any improvements that the Association constructed on the Fairgrounds during the term of the lease are the property of the Association, and may be removed by the Association during lease term and the six months immediately following expiration of the lease. As of the Commencement Date, the City is aware of no plans of the Association to remove any improvements on the Fairgrounds.

10. **Maintenance of Licensed Premises.** Licensee will keep the Licensed Premises the Licensee uses for the Licensed Uses in as good condition as existed on the Commencement Date of

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the License Term, normal wear and tear and use by others excepted, and keep the Licensed Premises safe for use by Licensee, its invitees, the City, and its officials, officers, employees, agents, invitees, and by members of the public using the Licensed Premises. Licensee will repair to the reasonable satisfaction of the City any damage to the Licensed Premises resulting from Licensee's use of the Licensed Premises. Upon expiration or termination of this Agreement, Licensee will surrender the Licensed Premises in as good a condition as existed on the Commencement Date of the License Term, normal wear and tear use by other licensees and others excepted.

**11. Termination.** This Agreement may be terminated as follows:

a. **Termination by Agreement.** The City and Licensee may terminate this Agreement by mutual agreement.

b. **Termination for Cause.** Either party may give written notice to the other party of termination of this Agreement for cause specifying the other party's failure(s) to comply with this Agreement giving rise to the notice of termination and the effective date of termination. The party giving notice of termination will allow the other party a reasonable period of at least 30 days or more, specified in the notice, in which to cure that party's failure to comply with this Agreement. However, if the City reasonably determines that Licensee's failure to comply with this Agreement is resulting in or will result in a serious threat to public safety or property, the City may give Licensee notice to suspend licensee's operations on the Licensed Premises, and/or to correct the Licensee's noncompliance immediately, without allowing a period to cure, and if Licensee's operations are not suspended or Licensee's noncompliance is not corrected in accordance with and by the time specified in the City's notice, then the City may terminate this Agreement in accordance with its notice.

**12. No Unauthorized Assignment, Sublicensing or Delegation.** The Licensee may not assign or sublicense Licensee's rights under this Agreement or delegate any of Licensee's obligations under this Agreement without the prior written consent of an authorized representative of the City, and if necessary, execution of an amendment to this Agreement by authorized representatives of the City and the Licensee in accordance with Section 24. Any purported assignment, sublicense, or delegation of Licensee's rights or obligations under this Agreement without the prior written consent of the City will be void, and the City may treat such purported assignment, sublicense or delegation as cause for terminating this Agreement in accordance with Section 11(b).

**13. Renovation or Alteration of Licensed Premises.** Licensee may seek and City may grant approval to alter or renovate the Licensed Premises. Any approved alteration or renovation of the Licensed Premises will be subject to all applicable laws and regulations, and will be made at Licensee's sole expense, unless the parties agree otherwise in writing. Licensee may not make any alterations, install any fixtures, or make any additions, renovations or improvements to the Licensed Premises except for temporary fencing or other similar temporary security measures or other uses in or around the Licensed Premises in accordance with the Licensed Uses specified in Exhibit B, without the prior written consent of the City.

**14. Surrender and Repair of Damage.** Within 14 days of termination or expiration of this Agreement, or a later time on which authorized representatives of the City and the Licensee have agreed, Licensee shall surrender the Licensed Premises in as good condition as existed on the Commencement Date, normal wear and tear and use by others excepted, free from hazards and clear of all debris and of all personal property of Licensee. Licensee shall promptly, at its sole cost, repair any and all damage to the Licensed Premises and any personal property located thereon resulting from

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the Licensed Uses. Licensee shall obtain the City's prior approval for any such repair work. If the Licensed Premises or any personal property are damaged as a result of the Licensed Uses, and the Licensee fails to repair the damage in accordance with this section, the final repair costs owed by Licensee shall be determined by the City, and shall be paid by Licensee within 30 days of City's demand. Licensee's obligations under this section shall survive the expiration or termination of this Agreement.

**15. Right of Entry.** City and its authorized representatives will have the right to enter the Licensed Premises at all reasonable times, on reasonable notice to the Licensee, to inspect the Licensed Premises and Licensee's operations to ensure compliance with this Agreement and provide for public safety on the City's Fairgrounds property.

**16. Nondiscrimination.** Licensee agrees for itself and all persons claiming under or through Licensee that this License is granted and accepted subject to the requirement that there may be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual preference, orientation, or identity, marital status, disability, national origin or ancestry in the use of the Licensed Premises, nor shall Licensee or any person claiming under or through Licensee, establish or permit any such practice or practices of discrimination or segregation regarding the Licensed Uses on the Licensed Premises.

**17. Government Regulations.** The License must comply with all statutes, ordinances and regulations applicable to the Licensee's use of the Licensed Premises pursuant to this Agreement.

**18. Indemnification.** To the maximum extent permitted by law, Licensee shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with Licensee's use of the Licensed Premises or Licensee's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees. Licensee's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of Licensee's inability to evaluate Liability, or because Licensee evaluates Liability and determines that Licensee is not or may not be liable. Licensee must respond within 30 calendar days to any tender of defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. In the event that the City must file responsive documents in a matter tendered to Licensee prior to Licensee's acceptance of tender, Licensee agrees to fully reimburse all costs, including but not limited to attorney's fees and costs and fees of litigation, incurred by the City in filing such responsive documents.

Licensee waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of Licensee arising out of or in connection with Licensee's use of the Licensed Premises or Licensee's failure to comply with any of the terms of this Agreement.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2783, as may be amended from time to time, Licensee's duty to indemnify under this provision shall not apply when prohibited by California Civil Code Section 2782, as may be amended from time to time.

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Notwithstanding the foregoing, to the extent that Licensee's use of the Licensed Premises includes design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Licensee's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

19. **Waiver of Claims.** In view of the needed improvements and deferred maintenance conditions on the Fairgrounds, including the Licensed Premises, following the expiration of the 4<sup>th</sup> District Agricultural Association Lease, the City and Licensee agree that neither City nor any of its Indemnitees shall be liable for any damage to the property of the Licensee, or any bodily injury to Licensee or its employees, agents, or invitees, or for any other loss, resulting from the condition or security of the Licensed Premises. To the maximum extent permitted by law, Licensee fully releases, waives, and discharges forever any claims, demands, rights, and causes of action against, and covenants not to sue, City or Indemnitees for any claim or event relating to the condition or security of the Licensed Premises or Licensee's use thereof, including in the event City exercises its right to suspend, revoke, or terminate this Agreement.

20. **Insurance.** Licensee shall procure and maintain in effect throughout the Term insurance in accordance with this provision, and Exhibit C which is attached to and made a part of this Agreement. Exhibit C sets forth the minimum kinds and amounts of insurance that Licensee must maintain pursuant to this Agreement, as well as required endorsements and other requirements.

21. **Notices.** Notice pursuant to this Agreement will be given as follows:

City:                   City Manager and Assistant City Manager  
                          City of Petaluma  
                          11 English Street  
                          Petaluma, CA 94952

Licensee:           \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_

22. **Statutory Notice Regarding Possessory Interest Tax.** Licensee is advised that under California Revenue and Taxation Code Section 107.6, execution of this Agreement may create a possessory interest in Licensee subject to property taxation. Licensee hereby agrees that if such possessory interest is created and such interest is subject to property taxation, Licensee will be solely responsible for the payment of said property taxes levied on any such interest.

23. **Attorneys Fees.** If either party brings legal action arising out of this Agreement, the prevailing party in that action will be entitled to recover in addition to that party's court costs reasonable attorneys fees to be fixed by the court.

24. **Amendment.** This Agreement may be amended only by a written instrument executed by authorized representatives of each party.

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25. **Construction.** This Agreement is the product of negotiation and compromise on the part of both parties and the parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.

26. **Governing Law and Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Petaluma. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.

27. **Non-Waiver.** The failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision, and the provision shall remain in full force and effect.

28. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29. **No Third-Party Beneficiaries.** The parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.

30. **No Joint Venture.** The relationship of the parties is solely that of licensor and licensee, and no joint venture or other partnership exists or is created between the parties. Neither party assumes any fiduciary relationship hereunder to the other.

31. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

32. **Survival.** All obligations arising prior to the expiration or termination of this Agreement and all provisions of this Agreement allocating liability between City and Licensee, including, without limitation, Licensee's obligations under Section 18, shall survive the expiration or termination of this Agreement.

33. **Entire Agreement.** This Agreement, including all exhibits, constitutes the entire agreement between the parties and supersedes all prior agreements or understandings, oral or written, between the parties concerning the subject matter of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the day and year first above written.

**CITY OF PETALUMA**

**LICENSEE**

\_\_\_\_\_  
Peggy Flynn, City Manager

\_\_\_\_\_, of \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

APPROVED AS TO FORM:

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Kami Noriega, Deputy City Clerk

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Eric Danly, City Attorney

List of Exhibits

Exhibit A – Licensed Premises

Exhibit B – Licensed Uses

Exhibit C - Insurance Requirements



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**Exhibit A**  
**Licensed Premises**

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**Exhibit B**  
**Licensed Uses**

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**Exhibit C**  
**Insurance Requirements**