

**NON-EXCLUSIVE SITE LICENSE AGREEMENT BETWEEN THE CITY OF  
PETALUMA AND THE FOURTH DISTRICT AGRICULTURAL ASSOCIATION  
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 16<sup>th</sup> day of January, 2024, 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 the Fourth District Agricultural Association (“**Licensee**”), a District Agricultural Association and state agency formed pursuant to Division 3 of the Food and Agriculture Code, with its principal place of business located at 175 Fairgrounds Drive, Petaluma, CA 94952.

**Background**

- A.** The City owns the real property known as the Petaluma Fairgrounds located at 175 Fairgrounds Drive, and 866 East Washington Street, Petaluma, California 94952, A.P.N.s 007-031-004 and 007-031-005 (“**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 maintained exclusive control of the Fairgrounds property. 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. The Licensed Premises are subject to annual adjustment pursuant to the City-approved Fair Use and Implementation Plan in accordance with Exhibit B. If necessary and appropriate, such adjustments to the Licensed Premises will be reflected to amendments to this Agreement in accordance with Section 24.

**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

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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 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.** Except as otherwise expressly provided in Exhibit B, Licensee may not construct or install any structures, signs or improvements on the Licensed Premises, or alter any existing structures, signs or improvements on 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.

d. **Accommodations of Other Uses.** While maintaining the current uses on the City’s Fairgrounds property, including the fair use, and master planning the property for maximum future public benefit, the City intends to coordinate with the Licensee and current users of the Fairgrounds to minimize conflicts among Fairgrounds uses. Despite the City’s efforts to avoid conflicts, it may be necessary for the Licensee to accommodate other Fairgrounds users to minimize conflicts. The City and Licensee will explore the potential for avoiding the need for the Licensee’s operations to accommodate the other Fairgrounds uses, and to the extent Licensee’s accommodation of the other Fairgrounds uses may be necessary, the required accommodations will be as described in Exhibit B.

**8. License Fee.** The License Fee that the Licensee shall pay the City in consideration of the License granted under this Agreement shall be \$1, 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 in as good condition as existed on the Commencement Date of 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.

**c. Termination Regarding Measure to Restrict the City's Use of its Fairgrounds Property.** The City reserves the right to terminate this Agreement upon notice to the Licensee if a notice of intent to circulate an initiative petition on a measure to restrict the future use of the City's Fairgrounds property to fair and/or ancillary uses is filed with the City. In the event of such termination, the City will cooperate with the Licensee regarding a reasonable timetable for the orderly winding-down of Licensee's operations on the Fairgrounds and removal of Licensee's staff and moveable property from the Fairgrounds.

**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. Except as otherwise expressly provided in Exhibit B, 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 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 if such counsel is provided by Licensee's insurer pursuant to insurer's policy and duty to defend Licensee, such counsel shall be deemed acceptable by City, subject, however, to all rules of professional conduct applicable to the representation), 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.

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, except to the extent such losses result from improvements made or maintenance performed by the City. 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: Fourth District Agricultural Association  
175 Fairgrounds Drive  
Petaluma, CA 94952

**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.

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.

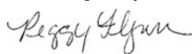
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[Signatures on next page]

## CITY OF PETALUMA

DocuSigned by:



09D99C78B34748C

Peggy Flynn, City Manager

1/16/2024

Date

ATTEST:

DocuSigned by:



184689A429E4492

Kami Noriega, Deputy City Clerk

APPROVED AS TO FORM:

DocuSigned by:



25B8C556ED25412

Eric Danly, City Attorney

List of Exhibits

Exhibit A – Licensed Premises

Exhibit B – Licensed Uses

Exhibit C – Insurance Requirements

## LICENSEE

DocuSigned by:



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Tawny Tesconi, CEO 4th District Agricultural Assoc

1/12/2024

Date

APPROVED AS TO FORM:

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## Exhibit A Licensed Premises



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Exhibit A-1  
Licensed Premises – Fair



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

As noted in the recitals of this Agreement, the City's Fairgrounds property has been leased exclusively and entirely to the Licensee for at least the past 50 years, and the lease will expire December 31, 2023. The City will assume management and control of the Fairgrounds on January 1, 2024. While the City prepares to master plan the Fairgrounds property to preserve the fair use and maximize public uses on and access to the property for the benefit of the entire community, the City intends to maintain the current uses on the property, including the fair and other uses on the property. This Agreement will provide for continued use of part of the Fairgrounds property for hosting the annual fair, and more limited use of the Fairgrounds for Licensee administrative functions during non-Fair time. Separate agreements will provide for continued use of the Fairgrounds property by tenants.

**Licensed Use and Licensed Premises Location Table During Fair time and non-Fair time\***

	<b>Fair Time (June 1 – July 15)</b>	<b>Non-fair Time (July 16 – May 31)</b>
<b>Administration Bldg &amp; Parking Lot</b>	<b>Permitted</b>	<b>Permitted</b>
<b>Maintenance Bldg and Yard</b>	<b>Permitted</b>	<b>Permitted</b>
<b>Parking Lot B</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Carnival Lot</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>BCW Rental Space</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Community Bldg</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Playland lot and horse arena</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Play Dog Play RV Lot</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Animal Barns &amp; Rental Spaces</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Live Oak Classrooms</b>	<b>Permitted</b>	<b>Not Permitted</b>
<b>Main Parking Lot</b>	<b>Permitted</b>	<b>Not Permitted</b>

Licensed uses of the Licensed Premises during the annual Fair time are described further in Exhibit B-1, and in the City-approved Fair Map and Implementation Plan.

### **Administrative Uses**

Licensee may occupy the administration building for the purposes of housing Licensee staff and administrative functions for the Fair and for Licensee generally during non-Fair time. Licensee may also utilize the administration building for Licensee administrative functions such as meeting with members of the public and others and hosting Licensee board meetings. The Licensee will also have access to and the non-exclusive right to use the parking lot in front of the administration building for these administrative uses.

## **Exhibit B-1**

### **Licensed Fair Uses**

The City of Petaluma has a long history of celebrating its agricultural heritage and the community looks forward to celebrating its agricultural past and present while looking towards its agricultural future. To continue this tradition, the Petaluma community has supported and the City Council has directed that City continue to offer an annual fair on the City's Fairgrounds. This Agreement provides for the Licensee's right to use the City Fairgrounds property to prepare and set up for, host, and restore and clean up the affected parts of the Fairgrounds property for a 5-day Fair event that reflects the community's agricultural past, present, and future. The Fair has traditionally been hosted during the 3<sup>rd</sup> week of June for five days (from Wednesday through Sunday.) However, the dates and duration of the fair are subject to amendment in accordance with the approved Fair Map and Implementation Plan. The duration of the Licensee's access to the Licensed Premises in accordance with this Agreement for preparing for, offering, and restoring the site after the Fair will generally extend from June 1 to July 15. The Fair event generally comprises:

- A carnival with rides
- Concessions that include food and beverages
- Dedicated spaces for alcohol service to be specified in the Implementation Plan that is reviewed and approved by the City
- Live music entertainment each evening
- Non-music entertainment such as animal tricks and contests, a hypnotist, and other entertainment shows such as shows about cooking or milking, etc.
- Agriculture and animal shows, events, and attractions.
- VIP and sponsor gatherings
- Exhibits of community arts and crafts including food, quilts, flowers, metal crafts, photography and other art that has been judged and ranked
- Vendors and concessions such as specialty products, art, appliances, and other items that are sold at the fair
- Nonprofit and educational exhibits

The portions of the Fairgrounds property where the Fair events will occur and that make up the Licensed Premises as described in Exhibit A and include the Carnival Lot, the Milk Barn, the Concourse, the Main Exhibit Hall, the Junior Exhibit Hall, the Stage and Behren's Park, Beverly C. Wilson Hall, the Wine Garden, and all the useable (not red-tagged) Animal Barns. Although one of the animal barns is used by the year-round tenant Playland as a laser tag facility under a separate agreement with the City, that barn will be vacated by that tenant and available to the Licensee for the Fair as part of the Licensed Premises.

Offering the Fair also includes non-public facing activities occurring on the Licensed Premises. These activities include administration, security, and first aid, and may occur on the Licensed

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Premises either in the administration space or in temporary buildings to be brought onto the Licensed Premises in accordance with the current, City-approved Fair Map and Implementation Plan.

Play Dog Play (partial area with RV hookups), the Paintball Field, Livestock Restrooms, the Horse Area, the Community Building (part of Live Oak Middle School), the Main Parking Lot, the Ticket Booths/Apron Area, the Grove Parking lot, and some of Live Oak classroom buildings, will be made available upon approval of the 2024 Fair Map and Implementation Plan, but may not be available for the 2025 fair or future fair events. The City may provide reasonably comparable alternative locations or facilities to using the Live Oak classroom buildings or other portions of the Fairgrounds used in the past for the Fair in the effort to increase public use of the property. The City will partner with the Licensee to identify alternative locations and/or facilities for administration, parking (both cars, and rvs), ticket booths, exhibit space and potentially other uses to support future Fair events. Such alternative locations and/or facilities will be reflected in the City-approved Fair Map and Implementation Plan.

During the Fair, the Licensee will staff each of the access gates to the Fairgrounds, will be responsible for providing Licensee's contractors and Fairgrounds users access to the Licensed Premises as needed and appropriate, and for inspecting and locking or otherwise securing Fairgrounds buildings and locations within the Licensed Premises after the conclusion of each night of the Fair and at the conclusion of the Fair, all subject to the terms of the City's security protocols. Beginning June 1<sup>st</sup> the Licensee and Licensee's invitees and contractors will have access to the Licensed Premises to set up for the carnival, concessions, entertainment, exhibits, and animal shows. The Contractor will take down all exhibits and return the site to its pre-fair condition no later than July 15. The Licensee's (and its invitees' and contractors') access to the Licensed Premises as described in this Exhibit will include access across other portions of the Fairgrounds as necessary and convenient to carry out the Licensed Uses pursuant to this Agreement. However, Licensee will carry out such access subject to and consistent with the use rights of other Fairgrounds users pursuant to separate agreements issued by the City, except as otherwise expressly approved by the City.

### **Performance Standards**

The Fair, and any and all other events Licensee is permitted to offer pursuant to this Agreement and all the Licensed Uses are subject to and must comply with all applicable requirements of the City's Performance Standards in Chapter 21 of the Petaluma Implementing Zoning Ordinance, Ordinance 2300 N.C.S., which may be accessed here: [Ch. 21 Performance Standards | Petaluma Implementing Zoning Ordinance \(municipal.codes\)](#).

### **Special Event Permit**

Licensee shall apply for and obtain a City Special Event Permit for the Fair and any other events Licensee is permitted to offer pursuant to this Agreement that are subject to the City's Special Event Permit requirements. Issuance of Special Event Permits requires 45 days for staff review. Special Event Permit applications will be reviewed in conjunction with the Fair Map and Implementation



Plan. Special Event Permits are essential for coordinating aspects of the Fair and other events the Licensee is authorized to offer such as access and security, safe ingress and egress for pedestrians and vehicles, adequate liability protection, scheduling, and needed coordination between Licensee and City staff and contractors.

### **Fair Map and Implementation Plan**

By April 1 each year, Licensee will submit to the City for review and approval a Fair Map and Implementation Plan depicting and describing how and where the Fair will be laid out on the Licensed Premises. Licensee is free and encouraged to submit the Fair Map and Implementation Plan prior to April 1, and the City will endeavor to review and respond within 30 days of submission. The Fair Map and Implementation Plan will address details of Fair operations and coordination between the Licensee and the City and others not otherwise addressed in this Agreement so as to ensure adequate coordination for a successful and safe Fair. The Licensee will be responsible for coordinating the activities comprising the Fair with other Fairgrounds users as appropriate consistent with the approved Fair Map and Implementation Plan, the Special Event Permit and this Agreement once the City has approved the Fair Map and Implementation Plan and issued the Special Event Permit. As part of the City's maximization of public use of the Fairgrounds, the City reserves the right to offer reasonably comparable alternative locations and or/facilities for offering the Fair and other events the Licensee is permitted to offer pursuant to this Agreement. Such alternative locations and/or facilities will be reflected in the City-approved Fair Map and Implementation Plan.

## **Exhibit C**

### **Insurance Requirements**

Contractor's performance of the Services under this Agreement shall not commence until Contractor shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the City Attorney as to form and the Risk Manager as to carrier and sufficiency. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Contractor shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Contractor, the Contractor's agents, representatives, employees and subcontractors. Contractor shall be responsible for all Subcontractors to obtain adequate insurance in the performance of this agreement.

#### **A. Required Minimum Scope of Insurance**

☒ Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage:

- a. Personal injury;
- b. Contractual liability.
- ☒ Insurance Services Office form covering Automobile Liability (any auto), if no company owned autos, non-owned and hired auto applies.
- ☒ Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☒ Professional Liability/Errors and Omissions
- ☐ Crime/Employee Blanket Fidelity Bond
- ☐ Property Insurance against all risks of loss to any tenant improvements or betterments.
- ☐ Pollution Liability Insurance
- ☐ Garage Liability
- ☐ Garagekeepers Insurance
- ☐ Technology Professional Liability Errors and Omissions Insurance (IT Consultant)/Cyber Liability
- ☒ Abuse or Molestation Liability Coverage (required if the event has close contact with minors)

#### **A.1 Required for All Contracts**

☒ Policy Endorsements or Excerpts from the Policy Pursuant to Section D

☒ Copy of the Declarations and Policy Endorsements Page for the CGL Policy

## **B. Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

- ☒ General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- ☐ Products/Completed Operations: \$1,000,000 per occurrence/aggregate.
- ☒ Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- ☒ Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.  
Bodily Injury by Disease - \$1,000,000 policy limit.  
Bodily Injury by Disease - \$1,000,000 each employee.
- ☒ Professional Liability/Errors and Omissions: \$1,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.
- ☐ Crime/Employee Blanket Fidelity Bond - \$1,000,000: Contractor, at its own cost and expense, must maintain a Crime/Employee Blanket Fidelity Bond in the amount of \$1,000,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).
- ☐ All Risk Property Insurance: Full replacement cost.
- ☐ Pollution legal liability with limits no less than \$1,000,000 per occurrence or claim and

\$2,000,000 policy aggregate. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.

- ☐ Garage Liability: \$1,000,000 per occurrence.
- ☐ Garagekeepers Insurance: \$1,000,000 per occurrence.
- ☐ Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

Fairgrounds Site License Agreement  
City and Fourth District Agricultural Association  
December, 2023

1. The Policy shall include, or be endorsed to include, **property damage liability coverage** for damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the City in the care, custody, or control of the Consultant. If not covered under the Consultant’s liability policy, such “property” coverage of the City may be endorsed onto the Consultant’s Cyber Liability as covered property as follows:
2. **Cyber Liability coverage** in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information “property” of the City that will be in the care, custody, or control of the Consultant.
3. The Insurance obligations under this agreement shall be the greater of 1) all the Insurance coverage and limits carried by or available to the Consultant; or 2) the minimum Insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of the Consultant under this agreement.

☒ Abuse or Molestation Liability Coverage: \$1,000,000 per occurrence or claim;  
\$2,000,000 aggregate. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured (Contractor) or the City.

City reserves the right to review any and all of the required insurance policies, declaration pages, and/or endorsements, but has no obligation to do so. City’s failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or City’s failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

### C. Other Insurance Provisions

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. Additional Insured: The City, its officers, officials, employees, agents and volunteers are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed

operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

- a. Subcontractors shall also endorse the City of Petaluma, its officers, officials, employees, agents and volunteers as an Additional Insured.
2. Primary and Non-Contributory: For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. Waiver of Subrogation: Consultant agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the Services to do likewise.
7. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
8. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Petaluma before the City of Petaluma's own insurance or self-insurance shall be called upon to protect it as a named insured.

#### **D. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**E. Verification of Coverage**

**NOTE: The City of Petaluma is now using an online insurance program, PINS Advantage. Once you have been awarded a contract with the City of Petaluma, you will receive an e-mail from PINS Advantage/City of Petaluma requesting that you forward the e-mail to your insurance agent(s).** Consultant shall furnish the City with Certificate of Insurance along with Declarations and Endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before the Services commence.

# City of Petaluma, California

## Memorandum

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*City Manager's Office, 11 English Street, Petaluma, CA 94952*  
(707) 778-4345 Fax (707) 778-4419 E-mail: [citymgr@ci.petaluma.ca.us](mailto:citymgr@ci.petaluma.ca.us)

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DATE: 12/19/23  
TO: Signatories  
FROM: Tawny Tesconi  
SUBJECT: 4th DAA  
License  
Agreement

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**Agreement:** 4th DAA  
License  
Agreement  
**Title:** 4th DAA  
License  
Agreement  
**Consultant:** 4th DAA

**Project Account #:**

**Amount of contract:** \$0 \$

**Amount budgeted:** \$0 \$

**Source of Funding:**

**Scope of Services:**

**Term of contract:**

**Contract Manager:** Ingrid  
Alverde

**Council approval:** ☒ yes, on 12/18/23 ☐ no

**Pre-contract review?** ☐ yes, with ☐ no

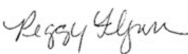
**Routing:** ☐ Normal ☐ Please Expedite – Need by ASAP

SIGNATURE ROUTING SHEET  
FOR

4<sup>th</sup> District Agricultural Association  
(Agreement/Project Title)

Please keep the original of this document with the City Clerk’s executed original of the contract.

CITY OF PETALUMA

<div>DocuSigned by:  03D99C70B34748C</div>	1/16/2024
City Manager	Dated


ATTEST:

<div>DocuSigned by:  184689A429E4492</div>	1/16/2024
City Clerk	Dated


APPROVED AS TO FORM:

_____ City Attorney	_____ Dated
------------------------	----------------

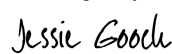
APPROVED:

<div>DocuSigned by:  1DE6DB976DE24AE</div>	1/12/2024
Department Director	Dated

APPROVED:

<div>DocuSigned by:  B4750BDB3CDF468</div>	1/16/2024
Risk Manager	Dated

APPROVED:

<div>DocuSigned by:  AE24BBF602A1484</div>	1/16/2024
Finance Director	Dated

file name: