

LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made and entered into as of _____, 2015, (“**Effective Date**”) by and between the Napa County Fair Association, a _____ (“**Landlord**”) and the City of Calistoga, a municipal corporation (“**Tenant**”).

1. PREMISES.

1.1 Premises. Landlord is in possession of certain property located at 1435 North Oak Street, Calistoga, California, legally described on **Exhibit A** attached hereto and incorporated herein by reference (“**Property**”). The defined term "Property" includes the Building, the Common Area, the Premises, and the Improvements. The building itself is referred to herein as the "**Building.**" Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of the Building, the general location and layout of which is shown on **Exhibit B**, attached hereto and incorporated herein by reference (“**Premises**”). The Common Area defined in Section 1.2 below is not part of the Premises.

1.2 Common Area. Tenant may, on a non-exclusive basis, use those areas exterior and interior to the Building designated by Landlord from time to time for the common use of Landlord and Tenant, including but not limited to common corridors, hallways, restrooms, lobbies, telephone areas, utility or telephone rooms, parking, sidewalks and other public areas (“**Common Area**”). The Common Area does not include space within Tenant's Premises.

1.3 Landlord's Reserved Rights. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to respond to an emergency at the Premises; (iii) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; and (iv) to perform any other right or duty of Landlord under this Lease.

2. TERM.

The "**Term**" of this Lease shall be for one year beginning on _____ (the "**Commencement Date**") and shall continue for a period of one year, with two options to extend for six months each. Tenant may terminate the tenancy by giving written notice on any date to the Landlord at least 30 days prior to the intended termination date. This Lease shall be deemed terminated on the date set forth in the written notice.

3. RENT.

3.1 Rent. Payments of Rent under this Lease shall commence as of the Commencement Date. Tenant shall pay to Landlord, at the following address: _____, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, a monthly rent in the amount of \$800.00, in advance, on the first day of each calendar month. Upon execution of this Lease, Tenant shall pay to Landlord the total sum of (a) the first month's Rent due, and (b) any prorated rent for a partial month if the Commencement Date falls on a date other than the first calendar day of a month. Notwithstanding the foregoing, late charges under Section 3.2 shall be due and payable

immediately upon incurrence. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a 30-day month. Tenant's obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during the Term.

3.2 Late Charge and Interest. If Landlord has not received any installment of Rent within 15 days after such amount is due, Tenant shall pay a late charge of ten percent (10%) of the delinquent amount immediately. The ten percent (10%) late charge represents a reasonable estimate of the costs incurred by Landlord due to the late payment. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant's failure to pay such amounts is difficult to ascertain and said late charge is the best estimate of the damage which Landlord shall suffer in the event of late payment.

4. UTILITIES.

Landlord shall be responsible for providing water, gas, sewer, electricity, refuse, sewage, garbage, pest control services, and such other utilities consumed or provided in, furnished to or attributable to the Premises and the Common Areas, except for telephone and internet services. Tenant shall be responsible for contracting for and paying for all charges for telephone and internet services furnished to the Premises.

5. INSURANCE.

5.1 Tenant. Tenant shall, at Tenant's expense, maintain commercial general liability and property insurance or an insurance equivalent (including but not limited to that offered to a municipality through and by a joint powers authority, a self insurance pool of liability coverage authorized pursuant to California Government Code Section 6500 or similar collective) insuring against liability and personal property damage. Tenant may also carry such other insurance as Tenant may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine.

5.2 Landlord. Landlord shall, at Landlord's expense, obtain and keep in force at all times insurance insuring the Building and Property, excluding the Improvements, on an occurrence against fire and extended coverage (including, if Landlord elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine.

6. INDEMNITY.

Except to the extent claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected officials, officers, employees, volunteers, lenders, agents, contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in

connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; or (ii) Tenant's use of the Premises, the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Building, the Premises, the Improvements, the Common Area, or other portions of the Property.

7. REPAIRS AND MAINTENANCE.

7.1 Landlord's Obligations. Landlord, at Landlord's expense, shall maintain the Property, Building and Premises in good condition and repair. Landlord shall make any required repairs in an expeditious manner after receipt of written notice from Tenant of the need for such repairs. In the event Landlord fails, in the reasonable judgment of Tenant, to maintain the Premises in good order, condition and repair, Tenant may, upon five days' written notice to Landlord, perform such maintenance, repairs or refurbishing at Landlord's expense, provided Landlord fails to do so within that five-day period. If Tenant elects to undertake any such repairs or maintenance as provided above, then Tenant shall deduct Tenant's actual costs paid or incurred in connection therewith from Rent.

7.2 Tenant's Obligations. Tenant, at Tenant's expense, shall maintain all the Improvements, as defined below, in good condition and repair.

8. ALTERATIONS.

8.1 Condition of Premises. The Premises are being leased to Tenant in their current, existing, "as is" condition. Any improvements or alterations constructed by Landlord or Tenant or on Tenant's behalf therein are referred to in this Lease as "**Improvements.**" Tenant is familiar with the existing condition of the Property, Premises, and any Improvements, including its prior industrial use, and acknowledges that Landlord has made no representation or warranty regarding the condition of the Improvements, Premises, Property, or any portion thereof, except as specifically stated in this Lease.

8.2 Trade Fixtures; Alterations. Subject to the conditions and requirements of this Section 8, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises or the Improvements. For purposes of this lease agreement, the term "**trade fixture**" shall mean specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant's and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations or physical additions in, about or to the Premises without the prior written consent of Landlord. In no event shall Tenant undertake any structural, electrical or plumbing work in connection with the Property or the Premises without the prior written consent of Landlord.

8.3 Standard of Work. All work to be performed by or on behalf of Tenant pursuant hereto shall be performed diligently and in a good and workmanlike manner, and in compliance with all laws applicable to the Premises and insurance carriers. Landlord shall have the right, but not the obligation, to inspect periodically any work on the Premises. In no event shall such work materially obstruct access to the Property or any portion thereof.

8.4 Damage; Removal. Tenant shall repair all damage to the Property and all portions thereof caused by the installation or removal of Tenant's fixtures, equipment, furniture and alterations. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, Improvements, and partitions made or installed by Tenant, except as may be otherwise approved by Landlord, and restore the Premises to their condition existing prior to the construction of any such items. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Building, the Premises, the Improvements, the Common Area, or the Property whatsoever and in strict accordance with all applicable Laws.

9. USE.

9.1 Usage. The Premises shall be used only for office purposes. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, the Improvements, the Building, the Common Area, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all applicable Hazardous Materials Laws, statutes, laws, codes, rules, orders, zoning, ordinances, directions, regulations, regulations, permits, or other requirements of federal, state, county, municipal, or other governmental authorities having jurisdiction, now in force or which may hereafter be in force (individually and collectively, "**Law(s)**"), which shall impose any duty upon Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining any permit or business license required by any governmental agency permitting Tenant's use of the Premises. Landlord makes no representation concerning the availability of any permits or approvals required or permitted under this Lease.

9.2 Quiet Enjoyment. Tenant, upon paying Rent and performing all of its obligations under this Lease, shall be entitled to peaceably and quietly enjoy the Premises, subject to the terms of this Lease.

10. ENVIRONMENTAL MATTERS.

10.1 Environmental Compliance. Both Landlord and Tenant shall, at their sole cost and expense, comply with all Federal, State or local laws from time to time in effect ("**Hazardous Materials Laws**") concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes ("**Hazardous Materials**"). Except for materials normally and customarily used in offices, such as cleaning supplies, kept in small quantities and safely stored, neither Tenant nor Landlord nor their agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Property or any portion thereof. Tenant and Landlord shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in the Premises to be removed from the Premises and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard

Materials Laws. Tenant shall immediately notify Landlord in writing of any voluntary clean-up or removal action instituted or proposed by Tenant, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Tenant, the Premises, the Building, the Property, or any portion thereof, relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws.

10.2 Mutual Indemnification. Each party shall indemnify, defend and hold the other harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in or about the Premises, including, without limitation, any bodily injury, death, property damage, decrease in value of the Premises or Building, caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of each party's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against the other party with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials.

11. DAMAGE AND DESTRUCTION.

If, during the Term, the Building and other improvements that are part of the Premises are totally or partially destroyed from any cause rendering the Premises totally or partially inaccessible or unusable ("**Casualty**"), then Landlord shall have the right at Landlord's option to give written notice to Tenant within 30 days after the date of the occurrence of such damage of Landlord's intention to either (i) repair such damage as soon as reasonably possible at Landlord's expense, or (ii) terminate this Lease as of the date of the occurrence of such damage. If Landlord elects to repair the damage, and if the restoration can be made under then existing laws and can be completed within 30 working days after obtaining all necessary permits therefor, then Landlord shall restore the Building and improvements to substantially the same condition as they were in immediately before destruction. If the restoration cannot be so made, then within 15 days after the parties determine that the restoration cannot be made, Tenant can terminate this Lease immediately by giving written notice to Landlord. If the existing laws do not permit the restoration, either party can terminate this Lease by giving 30 days prior written notice to the other party. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, or the date of termination if the Lease is terminated, based on the extent to which the destruction actually interferes with Tenant's use of the Premises.

12. DEFAULT.

12.1 Events of Default. Where "**default**" is used in this Lease, default refers to any breach under this Lease, however brief. Where a default continues for the period specified below, it shall, at the other party's option, constitute an Event of Default giving rise to the

remedies set below. The occurrence of any of the following events may constitute an “**Event of Default:**”

12.1.1 Tenant’s failure to comply with Assignment and Subletting provisions herein;

12.1.2 Tenant’s abandonment of or vacating the Premises for a period of thirty (30) consecutive days;

12.1.3 Tenant’s failure to pay Rent on the date when due and the failure continuing for a period of 15 days after such payment is due; or

12.1.4 Either party’s failure to perform its covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of 30 days.

12.2 Remedies.

12.2.1 Termination. In the event of the occurrence of any Event of Default, the party claiming default shall have the right to give a written termination notice to the other party and, on the date specified in such notice (which date shall be at least two business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and/or all other Events of Default at the time existing shall have been fully remedied to the satisfaction of the non-defaulting party.

A. Repossession. Following termination by Landlord, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or re-let the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord’s sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

B. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable Law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant’s default.

12.3 Cumulative. Each right and remedy provided for herein or now or hereafter

existing at Law, in equity, by statute or otherwise shall be cumulative and shall not preclude the exercise of any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

13. ASSIGNMENT AND SUBLETTING.

Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of Law, this Lease, the Premises or any part thereof, without Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval, which may be granted in Landlord's reasonable discretion. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublets. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

14. OPTION

14.1 Subject to the terms of this Section, Tenant shall have two options to extend the Term of this Lease for a period of six months each (each, an "**Extended Term**"). The first extension shall commence, if at all, upon the expiration of the initial 12-month Term (the "**Initial Term**") and end six months later (the "**First Extended Term**"). The second extension shall commence, if at all, upon the expiration of the first extended Term and end six months later (the "**Second Extended Term**"). If the first extension does not commence, the second option to extend shall automatically terminate. Any reference to "**Term**" in this Lease shall include the First and Second Extended Terms if Tenant properly exercises its options to extend pursuant to this Section 14.1.

14.2 So long as Tenant is not then in default under this Lease, Tenant shall exercise an option to extend, if at all, by giving written notice to Landlord. Notice of exercise shall be given, if at all, no more than 6 months, and no fewer than 1 month, prior to the expiration of the then Term.

14.3 Each Extended Term shall be upon all of the terms and conditions of this Lease.

14.4 The Rent during the applicable Extended Term shall be the Rent set forth herein for the Term.

14.5 If Tenant properly exercises its options to extend pursuant to this Section, this Lease shall be amended to reflect the terms and conditions of this Section as to the applicable Extended Term and this Lease as so amended shall continue in full force and effect during the applicable Extended Term.

15. MISCELLANEOUS.

15.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property, the Premises, the Building and the Common Area; and there are no agreements either oral or written other than as set forth herein.

15.2 Time of Essence. Time is of the essence of this Lease.

15.3 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

15.4 Law. This Lease shall be construed and enforced in accordance with the law of the state of California, without reference to its choice of law provisions.

15.5 Successors and Assigns. Subject to the assignment provisions herein, this Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and Tenant.

15.6 Third Party Beneficiaries. Nothing herein is intended to create any third party benefit.

15.7 Memorandum of Lease; Title. Tenant may elect to have either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Landlord shall cooperate with Tenant in executing and acknowledging any such memorandum of lease.

15.8 Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

15.9 Interpretation. The titles to the sections of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

15.10 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

15.11 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to the address below, or to such other place as Landlord or Tenant may designate in a written notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

LANDLORD: Napa County Fair Association
[insert address]

TENANT: City of Calistoga
[insert address]

15.12 Brokerage Commission. Each party hereby represents and warrants that it has not obtained the services of a broker in connection with this Lease.

15.13 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she or it is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

15.14 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted.

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LANDLORD:

NAPA COUNTY FAIR ASSOCIATION

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

TENANT:

CITY OF CALISTOGA, a municipal corporation

By: _____

Name: Richard Spitler

Its: City Manager

Approved as to Form:

By: _____
City Attorney

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

[to be inserted]

Exhibit B
DEPICTION OF THE PREMISES
[to be inserted]

Entrance

Reception Area

Break Room

Storage

Restroom

Conference Room

Hallway

Storage

Office

Storage

Office

