

## CONCESSIONAIRE AGREEMENT

THIS AGREEMENT is entered into as of June 15, 2009, by and between COUNTY OF MARIN, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and \_\_\_\_\_, hereinafter referred to as "CONCESSIONAIRE." For purpose of administration of this Agreement "DIRECTOR" means the Director of Cultural and Visitor Services, County of Marin, or his/her designee.

### WITNESSETH:

FOR AND IN CONSIDERATION of the mutual covenants and agreements herein contained, it is mutually agreed as follows:

County hereby grants to Concessionaire license to operate, during the term of this Agreement, the food and beverage concession maintained at Marin Center, 10 Avenue of the Flags, San Rafael, California, 94903, for visitors and guests of County, subject to the terms and conditions as set forth below. The parties intend that a license, not a lease, easement or any other interest in real property be created hereby and Concessionaire acknowledges he/she is not receiving any interest in real property by this Agreement. Except as expressly otherwise provided herein, the rights granted under this license are exclusive.

**1. TERM.** The term of this Agreement shall commence on June 15, 2009, and end on June 15, 2014 (the "TERM"). In County's sole discretion, County may grant Concessionaire the option to extend the Term of the Agreement for one (1) two-year period, upon the expiration of the initial Term. If Concessionaire desires to extend the Term, then Concessionaire shall so notify County at least ninety (90) days prior to the expiration of the Term. At least sixty (60) days prior to the expiration of the Term, County shall notify Concessionaire as to whether or not County shall permit such extension of the Term. During this notification period, County has the option to renegotiate the Concession Fee.

At any time during the Term of this Agreement, either party shall have the right to terminate this Agreement upon ninety (90) days prior written notice to other party.

The term "TERM" as used in this Agreement shall include any and all extension periods.

### **2. USE.**

**2.1 Use of Licensed Property.** Concessionaire shall use the Licensed Property and the Facilities for only the following:

(a) Operation of Food and Beverage Concession. Operation and maintenance of food concessions, including selling, vending and dispensing meals, salads and snack items, and a

variety of alcoholic and non-alcoholic of beverages at Marin Center, San Rafael, California, 94903, and upon recommendation of Concessionaire and approval of Director, from food cart(s) or booths at other Marin Center sites. Prior to the commencement of the Term, Concessionaire shall submit its proposed menu to Director for approval, which approval shall not be unreasonably withheld. The concession rights licensed hereby shall consist of the right to sell food, soft drinks, hot and cold alcoholic and non-alcoholic beverages, for the prices and types and descriptions more particularly referenced in **Exhibit B** of this agreement, to any and all members of the public who may attend the theatrical, performance, or other events, at which the right to attend is not limited to particular groups of persons but is open to all members of the public upon payment of an admission price or at no admission charge to them, and at such other events for which County may authorize the provision of concession services and so notify Concessionaire.

However, if in the sole discretion of County it is determined that the operation of such concession is not in keeping with a particular activity to be conducted on or in the Marin Center premises on any specific occasion, or for any other reason if it is determined by said County that it is not in the best interest of the public that such concession be operated, then in that event, said County may direct that the operation of said concession or any party thereof, including the sale of alcoholic beverages, not be conducted by Concessionaire, or any other person, group, or entity.

Concessionaire shall conduct his/her concession activities only at such locations as are specifically approved for such activities and so specified by County from time to time. Should concession service be authorized by County on or in an area which does not have existing facilities for the provision of service, Concessionaire shall at his/her own expense provide adequate and suitable portable service facilities that have the advance approval of County.

(b) Promotion. Promotion of the Licensed Property and the facilities through publicity, advertising, special events, brochures, etc., and contacts with local organizations shall be at Concessionaire's expense and subject to Director's prior written approval, unless specifically initiated by County. Promotional material must include acknowledgment that facilities are located in Marin Center.

Concessionaire agrees to cover all events scheduled at Marin Center as determined by Director or his/her designee.

(c) Public Use of the Center. Marin Center is primarily for the use of the public for the purpose of attending conventions, trade shows, exhibits, performing arts, theatrical attractions, concerts, and other like events, and the public right to said Center shall not be infringed upon by any activity of Concessionaire. The responsibility of Concessionaire shall be to render service to the public in a dignified manner and Concessionaire agrees to perform such service to all persons regardless of race, color, creed, sex, or place of national origin.

The concession rights granted to Concessionaire under this agreement are limited to service from specified sale and portable stands, as authorized by Director or his/her designee, and exclude any right to serve food or beverages at private parties or at special events or functions, where Director has determined the suspension of any and all concession operations to be in the public interest. Also excluded from this agreement is the right of Concessionaire to

cater banquet or meal functions, which is or may be covered under separate agreement(s). County further reserves the right during the term of this agreement to grant catering privileges to other caterers, individuals, or organizations at any location on the Marin Center premises, and to permit the sale of specialty or ethnic food items by facility users. However, Concessionaire shall maintain exclusive right to liquor concession for all events specified in above Paragraph C herein for the duration of this agreement.

2.2 Use of Licensed Property. Concessionaire shall use the Licensed Property and the facilities for only the following:

(a) Operation of Food Concession. Operation and maintenance of food sales, including selling and dispensing snacks, sandwiches, salads, pastries, ice cream, hot dogs and hamburgers, candy, and light lunches, etc. The sale of alcoholic beverages at the Licensed Property shall be subject to permits and signage as directed by the State of California Alcoholic Beverage Control Board. Prior to the commencement of the Term, Concessionaire shall submit its proposed menu and price list to Director for Director's approval, which approval shall not be unreasonably withheld. The following food items may not be included on the proposed menu:

- (1) Popcorn (or similar loose kernel, candy, nut, or corn product)
- (2) Candy (loose candy, i.e. peanuts, Milk Duds, chocolate-covered raisins, gumdrops, gum, etc.) and
- (3) Cigarettes (or similar tobacco products).

Items and services that Concessionaire shall make available for sale shall include, but not necessarily be limited to, those set forth on attached Exhibit B and incorporated by reference herein.

Prices shall be commensurate with those charged throughout the performing arts, convention centers and fairgrounds industry in general, and submitted for the prior approval of County. Concessionaire is required to maintain on file with County, a current list of all items to be offered for sale, and the prices to be charged per particular item. Prices and/or menu shall not deviate from that originally agreed upon, without prior written approval of County. County reserves the right to exclude any item from sale on licensed premises.

2.3 Days and Hours of Operation of the Licensed Property. Concessionaire shall open its business at the Licensed Property to the public during show hours of public events.

2.4 Facility Manager. Concessionaire shall hire and assign a qualified, experienced Manager for its operations. Said Manager will be physically available during reasonable operating hours. The qualifications of said Manager shall be submitted to Director upon request. During the hours when the Manager is not on duty or available, there shall be a designated Assistant Manager. The Manager and Assistant Manager shall be the authorized representatives of Concessionaire and entitled to act in all matters relating to the operation of the facility assigned hereunder. Director shall be advised in writing of the names of the Manager and Assistant Manager. Concessionaire shall provide telephone numbers of the Manager and

Assistant Manager or other representatives in order that County may communicate quickly with representatives during emergencies or other unusual circumstances.

2.5 Concessionaire's Employees. All employees shall be fully trained and qualified to perform such duties in an efficient and courteous manner. If any employee of Concessionaire fails to so perform his/her duties, Concessionaire shall take any and all appropriate action to discipline such employee, including, without limitation, dismissal of such employee. If Concessionaire fails to take such action and such employee continues to perform his/her duties in a manner inconsistent with the standard set forth herein, Concessionaire shall, upon Director's demand, take action to remove employee from the premises as Concessionaire shall in its sole discretion deem appropriate.

2.6 Rates and Charges. Prior to the commencement of this Agreement, and thereafter upon County's request, Concessionaire shall submit to County a schedule of the prices Concessionaire shall charge the public for goods and services sold at the Licensed Property. Director shall review and approve price schedule. Director shall review all suggested price increases with Concessionaire thirty (30) days prior to Concessionaire implementing any such increases. Other comparable food and beverage prices in Marin, San Francisco and Bay Area performing arts, convention centers and fairgrounds, will be the benchmark from which Director will base approval decisions.

2.7 Quality of Concessionaire's Services.

(a) Concessionaire shall conduct its operations in an orderly manner and so as not to annoy, disturb or offend County staff or operations.

(b) Concessionaire shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, customers and patrons, and upon objection of County concerning the conduct, demeanor or appearance of any such person, Concessionaire shall immediately take all necessary steps to remedy the situation.

(c) Concessionaire shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefor.

(d) Concessionaire shall serve only the best quality products obtainable for the type of service offered.

(e) Director reserves the right to prohibit the sale, rental or use by Concessionaire of any article or item which Director regards as objectionable, unnecessary or of inferior quality for proper service to the public.

(f) No pesticides, herbicides or fungicides may be used or sold by Concessionaire without Director's prior written consent, which may be granted or withheld in County's sole discretion.

(g) No Styrofoam products may be used or sold by Concessionaire without Director's prior written consent, which may be granted or withheld in County's sole discretion.

(h) Concessionaire shall not store food, supplies, equipment or any other item in public view on the Licensed Property, except as specifically approved in writing by Director at his/her sole discretion.

(i) Concessionaire's personnel may drive private vehicles into areas of the Marin Center site prohibited to non-County vehicles only as required for loading and unloading items used to operate the Licensed Property.

(j) Notwithstanding (i) above, Concessionaire shall use its best efforts to arrange for all food, supplies and other items needed for operation of the Licensed Property to be delivered by the fewest possible vehicles. Concessionaire shall use its best efforts to minimize the disruptions and amount of traffic at the Marin Center site. Concessionaire shall be at Marin Center to receive all deliveries only during normal business hours, Monday through Friday, 8 a.m. to 5 p.m.

(k) County retains the right to let a selected caterer use the kitchen and facilities on any day for special event catering.

2.8 Compliance with Laws. Concessionaire shall comply with all laws concerning the Licensed Property or Concessionaire's use of the Licensed Property. The judgment of any court of competent jurisdiction or the admission by Concessionaire in any action or proceeding against Concessionaire that Concessionaire has violated any laws in the use of the Licensed Property shall be deemed to be conclusive determination of that fact between County and Concessionaire, even though County is not a party to such action or proceeding.

2.9 Other Limitations on Concessionaire's Use of Licensed Property. Concessionaire shall not use the Licensed Property for, or permit in or upon the Licensed Property, any of the following: (i) any nuisance or offensive, noisy or dangerous trade, business, manufacture or occupation; (ii) any activity which violates public policy; or (iii) any auction, liquidation, fire or bankruptcy sale. Concessionaire agrees not to cause, permit or suffer any destruction to the Licensed Property. Concessionaire shall not alter any existing structure or construct any new structure on licensed property without approval from County.

2.10 Exterior Displays. Concessionaire shall not, without prior written approval of Director, keep, display, sell or permit the display or sale of any merchandise outside of the Licensed Property.

2.11 Coin-Operated and Other Machines. Concessionaire shall not install, maintain, use or allow in or upon the Licensed Property any pinball machine, coin-operated music machine, video machine or other coin-operated amusement device of any kind or character without prior written approval of Director. If Concessionaire violates the provisions of Section 2.11, County may, in addition to its other rights and remedies, enter the Licensed Property and remove and store, or otherwise dispose of, any such machines and devices at the expense of Concessionaire.

2.12 Provision and Maintenance of Equipment and Facilities.

(a) It is understood that Concessionaire may utilize County's existing supply of food service equipment at Marin Center premises in performing its obligations hereunder.

Concessionaire will take reasonable and proper care of such equipment and will return it to County in good condition as provided below. Such County equipment may not be removed from Marin Center premises.

(b) County will provide the services of its maintenance staff if and when required for proper maintenance of the food service facilities. It is understood and agreed that maintenance, in this sense, does not include the normal housekeeping and sanitation responsibilities assumed by Concessionaire in the food preparation, storage, serving and dining areas.

(c) Concessionaire will be responsible for housekeeping and sanitation in the food preparation, handling, storage and serving areas and will clean tabletops in the dining areas. Daily housekeeping is defined as the cleaning of all kitchen equipment, food preparation and serving surfaces, and kitchen floor, in compliance with health and safety codes. The County Health Inspector may inspect the concession areas at any time.

(d) County will be responsible for cleaning of all floors in the serving and dining area(s) at least once per week. On a quarterly basis, County will be responsible to wash, strip and wax all floors in the serving and dining area(s), clean all walls, windows (inside and out), ceilings, hoods, flues and electric light fixtures within the kitchen area(s).

(e) County will furnish, without charge to Concessionaire for the use thereof, such space, furniture and equipment as may be required to provide the food services desired by County. County's initial inventory of equipment is listed in **Exhibit A**, attached hereto and incorporated herein.

(f) Concessionaire will be responsible for reasonable and proper care of equipment furnished by County and will return it in good and operable condition to County at the termination of this Agreement allowing for ordinary wear and tear. The phrase, "ordinary wear and tear", as used in this Agreement, will include all loss or damage which result from breakage, pilferage, or damage arising in the ordinary course of operations and is not confined to wear resulting merely from use.

(g) County will assume overall responsibility for the maintenance and repair of all the equipment furnished Concessionaire for the performance of this Agreement.

(h) County will, from time to time, furnish additional equipment, as requisitioned by Concessionaire and approved by County, for replacement of such items as may be lost or damaged in the operation of the food service.

(i) Concessionaire will be responsible for prompt and orderly collection of trash and recyclables in kitchen, serving, and dining areas, and transporting to collection point at Marin Center trash receptacles and containers. Concessionaire shall not allow refuse, garbage, or trash to overflow collection containers or be stored in public view except in a location and manner reasonably approved by Director.

(j) County will furnish without charge to Concessionaire for the use thereof, all light, heat, power, gas, hot and cold water, pest control, and trash and garbage disposal necessary for the performance of this Agreement.

## 2.13 Miscellaneous Use Requirements.

(a) Health and Safety Regulations. Concessionaire shall, at its own expense, comply with all applicable health and safety regulations, rules, and statutes.

(b) Condition of Premises. Concessionaire shall immediately report in writing to County, on a confidential basis, any observable defects in or about the Licensed Property which could foreseeably lead to personal injury or further property damage. Concessionaire shall at all times be alert to detection of such defects and shall report them promptly upon observation. Director may, at its option, provide a form for such reports from time to time.

(c) Emergency. Notwithstanding the foregoing, if Concessionaire becomes aware of any act of vandalism or of any casualty, or any other condition involving imminent danger of loss of life or injury to persons or public property, Concessionaire shall immediately report same to County Sheriff (x6911 for emergency only, or x7233), Deputy Director (x6397), and/or Director (x6398), whichever is deemed as most appropriate by Concessionaire Manager. If Concessionaire or its employees are at the licensed property at the time of the occurrence of any emergency situation, Concessionaire shall take whatever steps are reasonably necessary to protect County and its property.

(d) Protection of Facility. Concessionaire recognizes that the licensed property is located within the Marin Center, owned, operated and maintained by County of Marin as an essential part of its operation of county government. Concessionaire agrees not to interfere in any way with County's activities and to protect the public at all times from hazards.

(e) Keys. Concessionaire agrees to furnish to Director or his/her designees any keys to offices, storage areas, and/or equipment leased to Concessionaire on Marin Center property.

2.14 Presentation Standards. Concessionaire shall provide the following as minimum presentation amenities at no cost to Marin Center and users for all public events:

- (a) Tables, size, number, and location to be determined by Director, or his/her designee.
- (b) Tablecloths for all tables where food will be consumed. Color and quality of cloths to be approved by Director, or his/her designee.
- (c) Bud vases with flowers at all tables where food will be consumed.
- (d) Signboard may not be prepared with chalk or felt pen. All menu and price signage must be professionally prepared, subject to advance approval by Director, or his/her designee.
- (e) Concessionaire's staff will regularly and routinely clear and clean all preparation and public dining tables, service tables and bars, counter, and floors, and set up in conjunction with concession sales at events in all facilities.

2.15 Other Considerations – Marin County Fair. Concessionaire shall provide the dinner, hosted bar, and beverages “at cost” for the annual kick-off gala for the Marin County Fair.

2.16 Kitchen Equipment and Facilities. Marin Center will provide the kitchen equipment set forth in Exhibit A. Concessionaire acknowledges that said equipment is, at the time of execution of this Agreement, in good working order. Concessionaire will train all personnel in the proper operation of said equipment and shall keep all equipment clean. Concessionaire shall repair or replace any equipment destroyed or damaged due to the willful or negligent acts of its employees. County shall supply to Concessionaire, without charge, electric power and water service necessary for the performance of Concessionaire's obligations hereunder.

County will be responsible for the maintenance of said equipment due to normal wear and tear, including replacement of any item covered by warranty.

(a) Concessionaire will provide Marin Center with table and chair requirements one (1) week before they are needed. Concessionaire shall be responsible for setting up tables and chairs in their place of use. After the event, Concessionaire is responsible for stacking chairs and racking tables. After a food or beverage event, Concessionaire shall sweep and mop the sales areas of the room and remove all spots from the carpeting which were caused by the event. If lobby areas are used, said areas shall be swept and cleaned following the event.

(b) Concessionaire shall be responsible for clean-up of the service areas and the immediate surrounding areas, immediately following all events. Concessionaire shall collect and remove all beverage containers and ice dollies from the function area.

(c) Concessionaire is required to adhere to the highest possible standards of kitchen cleanliness. Trash and garbage will be removed immediately. Post event clean-up and ware washing will be completed within twenty-four (24) hours. All kitchen equipment shall be cleaned in accordance with the manufacturer's instructions. The floor of the kitchen and corridors used for the service shall be swept and mopped.

(d) Marin Center is required to provide appropriate refuse containers for use in function areas. After each function served, all garbage, including that which has been placed in permanent Marin Center containers, shall be removed and placed in the area and in the dumpsters designated by Marin Center. Concessionaire shall keep the garbage area in a neat and clean condition during its use.

(e) Clean-up shall proceed expeditiously after each function so as to allow Marin Center reasonable opportunity to prepare the function space for reuse. Should it be necessary, in the judgment of the Marin Center Manager, for Marin Center to clean up following a function, Marin Center may bill Concessionaire for such services at its normal hourly rates.

2.17 Alcoholic Beverages – Limitations. Alcoholic beverages are authorized for sale in conformance with and subject to the following provisions:

(a) Concessionaire shall obtain and maintain an On-Sale Liquor License on approval of the Alcoholic Beverage Control, and shall pay the annual renewal fees.

(b) Concessionaire understands and agrees that said On-Sale General Liquor License and the exercise thereof is applicable solely and exclusively to the premises referenced



herein and will be subject in all aspects as applicable solely and exclusively to the premises referenced herein and will be subject in all aspects to Alcoholic Beverage Control codes and regulations. If concessionaire wishes to cater alcoholic beverages off site, the Department of Alcoholic Beverage Control must be contacted to apply for the appropriate license.

(c) Concessionaire shall suspend the sale of alcoholic beverages and surrender all privileges under said On-Sale Liquor License during the period of the annual Marin County Fair, unless a separate and independent contract to cover the sale of alcoholic beverages during this period has been negotiated by the parties.

(d) On request of Director, Concessionaire shall surrender his/her On-Sale General Liquor License whenever Marin Center premises are used for private parties and receptions, or for special events or functions where Director has determined the best interests of the public will be served by suspending all concession operations.

(e) Concessionaire's right to **sell** alcoholic beverages at private banquets or meal functions, where the facility user is a non-profit 501 (C ) 3 organization, shall not include the right to **serve** beer and wine during the banquet or meal, providing the said non-profit organization has applied for a Special Temporary License from the Department of Alcoholic Beverage Control. In such event, Concessionaire shall surrender his/her On-Sale General Liquor License on request of Director.

(f) If any question shall arise as to which Concessionaire shall serve at any function, or portion thereof, such question shall be resolved by Director promptly and prior to the function in question.

(g) County, by and through Director or his/her designee, retains the right to limit or prohibit the sale of alcoholic beverages by any one Concessionaire or user, at any event or function deemed unsuitable.

### **3. LICENSE FEES – PAYMENT – REPORTS - RECORDKEEPING.**

3.1 Monthly License Fee and Rental Fee. As consideration for the Concession rights herein described, Concessionaire shall pay to County the total of the following rental payments and percentages of gross revenue derived from concession operations and conducted on the premises:

- (a) 15% from the sale of alcoholic beverages at events at Marin Center; and
- (b) 5% from the sale of non-alcoholic items at events at Marin Center; and
- (c) Thirty (30) % from the sale of alcoholic beverages at the Marin County Fair, and
- (d) Twenty-two (22) % from the sale of non-alcoholic foods & beverages at the Marin County Fair.

(e) No later than the 20<sup>th</sup> of the month throughout the Term, County shall receive from Concessionaire, on a form approved by County at its address set forth in the introductory paragraph (Attention: Marin Center), a written statement showing Concessionaire's net receipts (as defined below) for the preceding month signed and certified to be correct by Concessionaire's chief financial officer. A Concession Fee installment equal to the percentages specified in the preceding paragraph of net receipts for the period covered by the statement shall be due and payable concurrently with Concessionaire's statement of net receipts.

3.2 Definition of Gross Receipts. The term "gross receipts" shall mean the dollar aggregate of the selling prices of all goods, merchandise or services sold, leased, licensed or delivered at or from the Licensed Property by Concessionaire, whether made for cash, check, credit account, exchange, coupon redemption, or otherwise. It shall be a condition of any such permitted license, concession or other arrangement that such gross sales clear through Concessionaire's books and records so that Concessionaire shall be in a position to render full and complete reports as required by this Agreement. Each charge or sale upon credit shall be treated as a sale in each month during which any deposit, fee, advance payment or other payment is received, to the extent of such payment.

3.3 Net Receipts. The following items may be deducted from gross receipts in determining net receipts, and payment to County, but only to the extent that they have been included in the gross receipts.

(a) The amount of any city, county, state or federal sales, use or excise taxes on sales or services rendered from the Licensed Property where such taxes are added to the selling price, are stated separately and are paid by Concessionaire directly to taxing authority.

3.4 Record Keeping, Inspection. Concessionaire shall keep, at Concessionaire's office, full and accurate books of account, cash receipts and other pertinent data customarily used in Concessionaire's activities under this Agreement, including, without limitation, Concessionaire's gross receipts ("Record Keeping"). Concessionaire shall utilize only those recording machines or records, including, without limitation, cash registers, tapes, books, ledgers, journals, sales slips, guests checks, invoices and cash register maintenance logs, which are acceptable to County and by which every sale and other transaction made from the Licensed Property shall be recorded. Concessionaire shall provide cash register(s) for all sales conducted at Marin Center. Type of cash register(s) to be approved by Director or his/her designee. Each cash register must be equipped to provide customer sales slip as well as registered sales. The sales tape must be kept to be available for review by County audit staff, as needed, and may not be returned to Concessionaire. Concessionaire shall keep such books of account, cash receipts and other pertinent data for a period of not less than three years following the end of each year of the Term of this Agreement. County and its authorized representatives shall have the right to examine Concessionaire's records kept at a location different from the Licensed Property. If such a location is outside the area of County's jurisdiction, Concessionaire shall pay all costs of County's travel and other costs associated with any examination of records at such a location.

Concessionaire shall fully cooperate with County in making any such inspections and examinations and shall provide County, its employees, agents and four (4) representatives with adequate and convenient facilities therefore. County shall also be entitled, once in any year during the Term of this Agreement, and once after expiration or termination of the Term, to an

audit of the books of account, cash receipts, records and other pertinent data showing business done by Concessionaire on the Licensed Property, to be made by a certified public accountant to be designated by County. If any audit shows that there is a deficiency in the payment of License Fees, the deficiency shall become immediately due and payable. The costs of such an audit shall be paid by County unless an audit disclosed that Concessionaire understated gross receipts by two percent (2%) or more, or discovered record keeping inadequacies which in the opinion of the auditors, could result in the understatement of gross receipts by two percent (2%) or more, in which case Concessionaire shall pay all of County's costs of audit. The acceptance by County of any monies paid to County by Concessionaire as License Fees, as shown by any statement furnished by Concessionaire, shall not be an admission of either the accuracy of such statement, or the sufficiency of the amount of the License Fees. Recommendations to improve record keeping made by the auditor and approved by County shall be implemented by Concessionaire.

Any audit undertaken on behalf of County to determine any overdue amount(s) shall be in addition to audits allowed and shall be at the cost of Concessionaire. Extra expense of audit due to inaccurate or inadequate record keeping shall be at the cost of Concessionaire.

3.5 Confidentiality of Information. Any information obtained by County pursuant to the provisions of Section 3.4 shall be treated as confidential, except in any proceedings between the parties hereto, and except further that County may divulge such information to a lender and/or to any person required by law.

3.6 No Partnership Formed. County is not and shall not in any way or for any purpose become an agent, partner, or joint venture of Concessionaire in its business or otherwise.

### 3.7 Taxes.

(a) Possessory Interest Taxes. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code (107). For all purposes of compliance by County with a Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by County. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this Agreement and, if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

3.8 Late Charge. Concessionaire hereby acknowledges that late payment by Concessionaire to County of any License Fee or other sum payable by Concessionaire pursuant to this Agreement will cause County to incur costs not contemplated by this Agreement, the exact amount of which would be extremely difficult and impracticable to ascertain. Such costs include, without limitation, processing and accounting charges, personnel costs and late charges which may be imposed on County by terms of any indebtedness secured by the Licensed Property. Accordingly, if County does not receive any License Fee or any other sum owed by Concessionaire within five (5) days of its due date; Concessionaire shall pay to County a late charge equal to ten percent (10%) of any such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs County will incur by

reason of late payment by Concessionaire. Acceptance of such late charge by County shall in no event constitute a waiver of Concessionaire's default with respect to such overdue amount, nor prevent County from exercising any of its other rights and remedies.

3.9 Interest. In addition to the late charges provided in **Section 3.8** any License Fee or sum due hereunder not paid within ten (10) days after County has sent notice to Concessionaire, shall bear interest from the eleventh day at the rate of fourteen percent (14%) per annum, or the applicable maximum legal rate of interest, if any, whichever rate is lower, until paid.

#### **4. SIGNS AND ADVERTISING.**

4.1 County's Approval of Signs. Concessionaire, at its sole cost and expense, may install and maintain on the Licensed Property or at other location(s) within Marin Center, only those sign(s) of the type, color, size and location approved in writing by Director, in Director's sole discretion.

4.2 Removal of Signs. If, at any time or from time to time, Director reasonably objects to any item or sign displayed by Concessionaire on the Licensed Property, County shall notify Concessionaire and Concessionaire shall, at its own expense, immediately remove the sign or item to which Director objects. If Concessionaire fails to remove such objectionable item(s) from the licensed property, County shall have the right to remove, and store or otherwise dispose of such objectionable item(s) at Concessionaire's expense.

4.3 Advertising. During the Term of this Agreement, Concessionaire shall have the right to use the name of Marin Center and Marin County Fair in advertising its business, only as such business is conducted at the Licensed property; provided, however, that Concessionaire shall not acquire any right to or interest in any name or distinctive designation which is, or may become, identified with the Licensed Property or Marin Center. Concessionaire's right to use the name of Marin Center and Marin County Fair shall terminate upon the expiration or termination of this Agreement.

**5. UTILITIES AND BUILDING RENTAL.** During the occupancy of the designated concession and storage area, Concessionaire shall at all times maintain the concession areas and the areas immediately adjacent thereto, in a neat, clean and hygienic condition. Concessionaire shall also comply fully with the orders of the Fire Marshal, any public health officers within whose jurisdiction Concessionaire's operations fall, County, and with any and all applicable ordinances of County of Marin, statutes of the State of California, and the United States of America. In addition, when County finds that services rendered or products sold to the public are substandard or that performance of any other condition or covenant of this license is not being performed or complied with, Concessionaire shall, upon receiving notice thereof, immediately correct any such violations, deficiencies or omissions.

**6. CONCESSION EQUIPMENT – APPROVAL BY COUNTY, MAINTENANCE-RESTORATION.** With the exception of the kitchen equipment listed in **attached Exhibit A**, Concessionaire shall furnish all of the equipment necessary to the efficient operation of business

to be conducted in the designated concession locations, which equipment shall be of good quality and of current models. No equipment that may be required in the operations to be conducted on the licensed premises shall be brought into or onto said premises without the prior approval of each piece of equipment by County. Concessionaire shall provide County with a complete list of the equipment he/she proposed to furnish for the concession operation, stating brand names, model numbers, quantities, year of manufacture, and other identifying data. All such equipment shall, after installation, be kept in good working order by Concessionaire. Once installed or placed on the premises and put into operation, the equipment shall not be removed therefrom during the term of this license without the approval of County.

All equipment installed shall fully comply with the requirements of the Fire Marshal, any public health officer, and applicable ordinance of the County of Marin and State of California.

County shall furnish Concessionaire with one (1) sale stand location within the Exhibit Hall, one (1) sale stand location within the Auditorium, and one (1) sale stand in Showcase Theatre lobby. Sale stand equipment shall include two (2) back tables, one (1) portable bar, area lighting and refuse containers.

The sale stands shall be located within the Exhibit Hall and the Auditorium as indicated on the **attached Exhibit D map**. County reserves the right to change the location of said sale stands to accommodate the special requirements of shows or events.

By execution of this agreement, Concessionaire acknowledges that he/she has inspected and approved the condition of sale stand equipment, location sites and other concession specifications herein mentioned.

**7. INDEMNIFICATION.** Concessionaire agrees to indemnify, hold harmless, defend and protect County, its officers, directors, agents and employees (each of whom is an indemnitee and hereafter referred to as "County") from and against any and all claims, losses, damages, demands, liabilities, suits, costs, expenses, including attorney's fees, penalties, judgments or obligations whatsoever for or in connection with injury (or death) or damage to any person or property or for any pecuniary or monetary loss resulting from, arising out of, or in any way related to activity conducted by Concessionaire under this Agreement including, but not limited to Concessionaire's development, construction, occupation, use, operation, or maintenance of the concession, premises or facilities, regardless of how the injury or damage was caused or suffered, unless the injury or death or damage resulted from the sole negligence or the intentional and willful misconduct of County, its officers, directors, agents or employees.

County shall have no responsibility to safeguard the equipment and property of Concessionaire or any of its invitees. County shall have no responsibility to safeguard or protect Concessionaire, or its employees, agents, officers, directors, or any of its invitees from bodily injury (including death) or personal or corporate injury resulting in pecuniary or financial loss.

If a claim is made against County or County is named a co-defendant in any action, Concessionaire shall immediately notify County of such fact, and at County's option, Concessionaire shall either retain legal counsel to represent County in such action at

Concessionaire's sole expense or reimburse County for County's litigation costs, expenses and attorney's fees in representing itself.

If a claim is made against both County and Concessionaire for the joint and several liability of County and Concessionaire, and the determination as to the apportionment of liability between County and Concessionaire made by court of competent jurisdiction, then notwithstanding such apportionment by the Court of liability between County and Concessionaire, Concessionaire shall nevertheless remain responsible to indemnify and hold harmless County as fully set forth hereinabove, unless the court determines the injury or damage resulted from the sole negligence or intentional and willful misconduct of County.

Concessionaire hereby waives all claims and recourse against County, including the right of contribution for loss or damage or expenses by reason of death or injury to persons or damage to property, and releases County from any liability relating to or in any way connected to Concessionaire's activities or Concessionaire's use of the concession, premises or facilities, unless injury or damage is caused by the sole negligence or the intentional and willful misconduct of County. The provision of this paragraph shall survive the termination or expiration of this Agreement.

**8. INSURANCE.** Concessionaire shall obtain and maintain during the term of this Agreement, at its own expense, the below named policies of insurance with companies licensed to do business in the State of California, and with a rating of A VIII or better by Best's Key Rating Guide and which are acceptable to County in its sole opinion. Concessionaire shall, at least 15 (fifteen) days prior to the commencement of the Agreement, furnish County with evidence of insurance. The commercial general liability policy shall name County, its officials, employees and volunteers as additional insureds in the form of a policy endorsement which must be attached to the evidence of insurance. Each insurance policy shall be endorsed to provide County with 30 (thirty) days notice of cancellation or termination of coverage. Any deductible or self-insured retention must be approved by County.

8.1 Workers' Compensation as required by law, and employer's liability with a limit of \$1,000,000 per accident for bodily injury or disease.

8.2 Commercial General Liability on an occurrence form for bodily injury, personal injury, property damage and liquor liability with limits of no less than \$1,000,000 per occurrence and \$2,000,000 per aggregate. Liquor liability may be provided by a separate policy carrying the same required limits

8.3 Automobile Liability covering owned, non-owned and hired vehicles and including contractual liability covering all liability assumed under this agreement with a limit of no less than \$1,000,000 per accident for bodily injury and/or property damage.

**9. ASSIGNMENT AND SUBLETTING.** Concessionaire shall not assign, sublease, or convey any interest in this Agreement to any person, or entity, without the prior written consent of County. Any attempt to assign or sublet premises without such prior written consent shall be void. Consent by County to any single assignment or subletting shall not constitute consent to

any further assignment or subletting without further written consent by County. Concessionaire agrees that it will not unreasonably withhold use of the Premises by a County department or other organizations unless such use materially interferes with Concessionaire's use of property.

If so then County and Concessionaire agree to work out in good faith, a mutual use of the premises by other departments or organizations. Concessionaire's interest hereunder shall not be assignable in bankruptcy, nor shall said interest be assignable by operation of law. Any document by which any such interest hereunder is conveyed with such consent shall provide that the person acquiring such interest acknowledges familiarity with the terms of this Agreement and takes his/her interest subject to the terms and conditions hereof and recognizes that, upon termination of the interest of Concessionaire, his/her interest shall also be terminated. However, in the event of termination of this Agreement, County, at its sole option may elect to treat any assignee, subtenant, or holder of an interest conveyed by Concessionaire as County's tenant.

**10. WAIVER OF CLAIMS.** Concessionaire hereby waives any claim against County, its officers, Director, agents or employees for damage or loss caused in connection with, or as a result of, any suit or proceeding directly or indirectly attacking the validity of this Agreement or any part thereof, or as a result of any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

**11. WAIVER OF CONTRACT TERMS.** No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed as a waiver at any time thereafter of the same or of any other term, condition or covenant herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of County to re-enter the premises or to exercise any right, power, privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege or option or be construed as a waiver of any such default or a relinquishment of any right or acquiescence therein. No notice to Concessionaire shall be required to restore or revive performance under this Agreement after a waiver by County of any default. The exercise of any option, right, power, remedy or privilege of County shall be construed as being exhausted by its exercise in one or more instances. The rights, powers, options and remedies given to County by this Agreement shall be deemed cumulative.

**12. MODIFICATION OF AGREEMENT.** Notwithstanding any of the provisions of this Agreement, the parties may, by mutual consent, agree in writing to amend any of its provisions which are not otherwise forbidden by law. County shall have the right to grant reasonable extensions of time to Concessionaire for any purpose or for the performance of any obligation of Concessionaire hereunder.

**13. NONDISCRIMINATION.** Concessionaire or its employees or members shall not discriminate because of sex, sexual orientation, disability, race, color, age, religion, ancestry, or national origin against any person by refusing to furnish such person any accommodation, facility, service or privilege offered to or enjoyed by the general public. Concessionaire or its employees or members shall not publicize its accommodations, facilities, services or privileges

in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of sex, sexual orientation, disability, race, color, age, religion, ancestry or national origin.

In the performance of this contract, Concessionaire will not discriminate against any applicant because of sex, sexual orientation, disability, race, color, age, religion, ancestry or national origin. Concessionaire will take affirmative action to insure that members are recruited and treated without regard to their sex, sexual orientation, disability, race, color, age, religion, ancestry or national origin.

Concessionaire acknowledges the application of Section 504 of the Federal Rehabilitation Act (29 USC Section 794) and the provisions of the Americans With Disabilities Act (42 USC Sections, 121101, et seq.) and agrees that in the performance of this contract to recognize that discrimination against any otherwise qualified handicapped individual is prohibited.

**14. NOTICES.** Notices or communications under this Agreement shall be directed to County at the attention of Director, Department of Cultural and Visitor Services, 10 Avenue of the Flags, San Rafael, California 94903, and to Concessionaire at

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**15. TERMINATION FOR CAUSE.** Either party may terminate this Agreement for breach of contract of any of the provisions hereof if, after written notice of violation of the Agreement, notified party has not taken action to correct such violation or default within ten working days.

**16. ADVICE OF COUNSEL.** Each party hereto has been provided full opportunity for review of this Agreement by legal counsel. Therefore, no presumption or rule that any ambiguity shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

**17. AUTHORITY OF DIRECTOR.** Director, or his/her designee, acting for and on behalf of County, shall within the policy established by County, decide any or all questions which may arise under this license agreement as to the acceptability of goods, equipment, and services supplied by Concessionaire, the acceptability of the manner and quality of performance tendered by Concessionaire, and all questions relating to the granting or withholding of approval provided for in this agreement. In the case of disagreement or dispute between Concessionaire and Director, Director shall, prior to taking action, confer in good faith with Concessionaire.

**18. AUTOMATIC TERMINATION.** This license right to operate on the premises of Marin Center may at the pleasure of County be automatically terminated without notice on the following conditions, in which event Concessionaire shall forthwith vacate the possession of the designated concession areas just as though the license had been terminated by expiration of the agreement period or because of the material breach of covenant on the part of Concessionaire:



- (a) The appointment of a receiver to take possession of all or substantially all of the assets of Concessionaire;
- (b) A general assignment by Concessionaire under any insolvency or bankruptcy act;
- (c) Any action taken or suffered by Concessionaire under any insolvency or bankruptcy act;
- (d) Suspension or revocation of Concessionaire's Liquor License for actions or reasons reasonably within the control of Concessionaire;
- (e) Death of Concessionaire;
- (f) Dissolution of the corporation, in the event Concessionaire is a corporation;
- (g) Failure to make application for the On-Sale General Liquor License within ten (10) days from the execution of this agreement, or failure to provide County with evidence of such action within the same time period;
- (h) Failure to obtain the On-Sale General Liquor License within ninety (90) days of making application for said license; or
- (i) Failure to obtain and maintain insurance coverage as specified in **Paragraph 8** of this agreement.

**19. ENTIRE AGREEMENT.** This instrument contains the entire Agreement of the parties relating to the rights granted and obligations assumed and supersedes all prior written and oral discussions.

IN WITNESS WHEREOF, this Agreement has been executed in triplicate, by and in behalf of the parties hereto, this June 18, 2009.

COUNTY OF MARIN

CONCESSIONAIRE

By \_\_\_\_\_  
President

By \_\_\_\_\_  
(Title)

ATTEST:

By \_\_\_\_\_  
Clerk of the Board

Approved as to Form:

By \_\_\_\_\_  
County Counsel  
County of Marin

Exhibit A  
Food and Beverage Concession Agreement

Marin Center owns and provides the following equipment in the kitchen:

Walk-In Refrigerator

Three (3) door Traulsen Reach-In Refrigerator

One (1) Commercial Grade Range with six (6) burners and two (2) ovens

Two (2) Commercial Grade Convection Ovens.

Stainless Steel Double Sink (2)

Stereo brand Dishwasher and control

Insinkerator brand Disposal

Steel Shelving

LEGEND:

- 120 V. DUPLEX RECEPTACLE, 20 AMP
- 120 V. 750WATT RECEPTACLE, 20 AMP
- 200 V. 30 AMP RECEPTACLE
- WATER/TIGHT FLOOR BOXES, 120 V.
- DUPLEX RECEPTACLE, 20 AMP
- 200 V. 100 AMP

NOTE:  
NO BOOTHS OR SET-UPS IN CONCESSION AREA

MARIN CENTER - EXHIBIT HALL  
EXHIBIT FLOOR AREA - 22,500 SQUARE FEET

EXHIBIT D



