

## OFFICE USE AGREEMENT

This OFFICE USE AGREEMENT ("Agreement") is made and entered into as of March 26, 2013, by and between the CITY OF FAIRFIELD, a municipal corporation ("City") and the FAIRFIELD CONFERENCE & VISITORS BUREAU, a California nonprofit mutual benefit corporation ("Corporation").

### RECITALS

A. City and Corporation entered into that certain Agreement for Operating and Administration of the Fairfield Tourism Business Improvement District as of December 20, 2012 (the "Administrative Agreement") under which Corporation agreed to perform certain services for the City related to the Fairfield Tourism Business Improvement District.

B. Corporation has requested the use of certain office space on the first floor of City Hall, 1000 Webster, Fairfield, to house Corporation's activities under the Administrative Agreement.

C. City has agreed to permit Corporation to use the office space in City Hall as described more particularly in Section 1.01 below during the term of the Administrative Agreement, all as provided more particularly below.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Corporation agree as follows:

#### ARTICLE 1 Use of Premises

1.01 City hereby grants Corporation a right to use Rooms 3 and 4 on the ground floor of the City Hall consisting of approximately 429 square feet (the "Premises"), the location of which is shown on the diagram attached hereto as Exhibit "A" and by this reference made a part hereof, together with the nonexclusive right, in common with others, to the use of common entrance ways, lobbies, corridors, lavatories, ramps, and similar access and service ways shown on Exhibit A and identified as the "Shared Area." Corporation's staff and visitors shall have the right to use the public parking area adjacent to the City Hall, based upon availability.

1.02 The Premises shall be used and occupied solely for office and related purposes.

1.03 Corporation shall comply with the rules for use of the Premises and Shared Area attached hereto as Exhibit "B", as they may be modified reasonably by City in writing from time to time. Corporation acknowledges that City intends to enter into use agreements with other nonprofit organizations ("Co-Users") for the use of offices adjacent to the Premises, and Corporation agrees to use the Shared Area cooperatively with Co-Users. Corporation, at its own expense and in conjunction with the Co-Users, may place a kiosk or other signage in the City Hall lobby provided its design and location has been approved by the City in writing in the City's sole discretion.

**ARTICLE 2**  
**Preparation of Premises for Occupancy**

2.01 City agrees to undertake the work in the Premises described on Exhibit "C" on a schedule to be mutually agreed with Corporation. Corporation shall reimburse the City for its share of the actual costs of such work within thirty (30) days of the completion thereof. Except for the foregoing work, Corporation shall take the Premises in its AS IS condition on the date of occupancy.

2.02 Corporation shall not make any alterations or modifications to, or any improvements in, the Premises except in compliance with Article 8 herein. Any additional alterations, modifications or improvements of the Premises, must be approved by the City.

**ARTICLE 3**  
**Term**

3.01 The term of this Agreement shall commence on whichever of the following dates shall last occur: (a) the date first written above; or (b) the date on which the governing body of the City approves this Agreement (as applicable, the "Commencement Date").

3.02 The term shall expire on the earliest of: (a) December 31, 2013; (b) the date on which the Administrative Agreement terminates, (c) the date that is thirty (30) days after Corporation gives City written notice that it wishes to terminate, (d) the occurrence of an event of default as defined by Article 15 below, or (e) the date that is ninety (90) days after City gives Corporation written notice that it wishes to terminate earlier due to the need to use the Premises to accommodate City staff or programs or due to the fact that the City's agreements with the other two Co-Users have terminated. In the event the Administrative Agreement is extended, the City Manager may, in his or her discretion, change the date in article 3.02 (a) above to the new termination date of the Administrative Agreement.

**ARTICLE 4**  
**Consideration**

4.01 In consideration of the rights under this Agreement, Corporation shall comply with all terms of this Agreement. Within ten (10) days of the Commencement Date, Corporation shall deposit \$500 with City as security deposit. The deposit shall not accrue interest and shall be returned to Corporation within thirty (30) days of termination of this Agreement, less any deduction for sums due the City but unpaid or damage to the Premises or Shared Area.

**ARTICLE 5**  
**Utilities and Furnishings.**

5.01 City shall provide electricity, gas and internet service to the Premises at no charge. No telephone service shall be provided, and Corporation is prohibited from installing land line telephone service in the Premises.

5.02 City shall provide the furnishings and equipment listed in Exhibit "D" (the "Furnishings"). Corporation shall take the Furnishings in their AS IS condition, and City shall have no obligation to replace or repair the Furnishings during the term hereof.

**ARTICLE 6**  
**Taxes**

6.01 Corporation shall be responsible for any business license, use or other taxes which may be assessed as a consequence of Corporation's activities in the Premises.

**ARTICLE 7**  
**Maintenance and Repairs**

7.01 City shall reasonably maintain, repair and replace, as necessary, and keep in good order and condition, as applicable: (a) the heating, ventilating and air conditioning systems serving the Premises and the Shared Area; (b) the electrical lines and systems serving the Premises and the Shared Area; (c) the interior of the Premises and the interior and exterior structure of the City Hall, including the roof, exterior walls, load-bearing walls, support beams, foundation, columns and exterior doors and windows; and (d) the Shared Area; provided, however, that Corporation shall reimburse City for the cost of any repairs to the Premises or Shared Area that are required due to the negligence or willful misconduct of Corporation.

7.02 Corporation shall be responsible for the costs of cleaning the Premises. City shall provide cleaning services and Corporation shall reimburse City for its reasonable costs of cleaning.

**ARTICLE 8**  
**Alterations**

8.01 Corporation may not make any removals, additions, improvements or other alterations in or to the Premises without City approval.

8.02 All articles of personal property and all business and trade fixtures, furniture and movable partitions owned, leased or installed in the Premises by Corporation at its expense shall be and remain the property of Corporation and may be removed by Corporation at any time, provided that Corporation, at its expense, shall repair any damage to City Hall caused by such removal or by the original installation. Corporation shall remove all of the aforementioned property at the expiration or termination of this Agreement, and Corporation shall, at its expense, repair any damage to City Hall caused by such removal or by the original installation.

**ARTICLE 9**  
**Damage to Corporation's Property**

9.01 Subject to the provisions of Article 12 of this Agreement, unless the same shall be caused by the negligence or intentional misconduct of City, its officers, agents or employees, neither City nor its officers, agents or employees shall be liable to Corporation for any loss of or damage to personal property of Corporation located in the Premises resulting from earthquake, fire, explosion, steam, gas, electricity, water or moisture in or from any part of City Hall,

including its roof, walls, ceilings and floors, or from the pipes, appliances, or mechanical and electrical systems in City Hall or from any other place or from any other cause, whether or not similar to the foregoing causes.

9.02 Corporation shall immediately notify City verbally, and promptly thereafter in writing, in the event of any damage to City Hall, Premises or Corporation's property resulting from any fire, accident, occurrence or condition in, on or about the Premises or City Hall.

**ARTICLE 10**  
**Personal Property Taxes**

10.01 Corporation shall be liable for and shall pay or reimburse City for any taxes levied against or attributable to any of Corporation's personal property placed in the Premises.

**ARTICLE 11**  
**Insurance; Mutual Waiver of Subrogation**

11.01 City shall obtain and maintain in effect at all times during the term of this Agreement insurance covering all risks of direct physical loss or damage to the Premises and City Hall and to all alterations, installations, additions and improvements made to or within City Hall at City's cost and expense, to the extent of their full replacement value, as well as general comprehensive liability in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damages.

11.02 Corporation, at Corporation's expense, shall obtain and maintain in effect, at all times during the term of this Agreement, an insurance policy covering all risks of direct physical loss or damage to Corporation's personal property in, on or about the Premises to the extent of their full replacement value, as well as comprehensive general liability insurance in an amount no less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damages. Corporation's insurance shall be reviewed and approved by City's risk manager.

11.03 Notwithstanding any other provision of this Agreement, neither City nor Corporation shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any structure or other tangible property, or any resulting loss of income or additional expense, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if such loss or damage is covered by insurance benefiting the party suffering such loss or damage or was required to be covered by insurance pursuant to this Article. If required to make the foregoing waiver of subrogation binding upon their respective insurance carriers, City and Corporation shall give notice to their respective insurance carriers that such mutual waiver of subrogation is contained in this Agreement. Corporation agrees to cause all other occupants of the City Hall claiming by, under, or through Corporation to execute and deliver to City such a waiver of claims and to obtain such waiver of subrogation rights endorsements.

**ARTICLE 12**  
**Hold Harmless**

12.01 Corporation shall hold harmless and defend City, its officers, agents and employees, at Corporation's sole cost with counsel reasonably satisfactory to City, from and against any and all claims, damages or causes of action for damages on account of any injury to or death of any person or any loss of or damage to property occurring in, on or about the Premises at any time during the term of this Agreement, provided such injury, death, loss or damage is not directly caused by the intentional misconduct or gross negligence of City, its officers, agents or employees.

12.02 This Article 12 shall survive the expiration or termination of this Agreement.

**ARTICLE 13**  
**City's Access to Premises**

13.01 City and its employees, contractors, agents, and authorized representatives shall have the right to enter the Shared Area at any time, and to enter the Premises at any time during emergencies or at other times as necessary to perform support services.

**ARTICLE 14**  
**Assignment, Subletting, etc.**

14.01 Corporation may not assign, transfer, mortgage or encumber this Agreement, or suffer or permit the Premises or any part thereof to be used or occupied by any other person or entity.

**ARTICLE 15**  
**Default and Remedies**

15.01 The occurrence of any one of the following shall constitute a default by Corporation under this Agreement: (a) Corporation shall fail to pay any charge for cleaning or repairs hereunder when due, and such failure is not cured within three (3) business days after Corporation receives written notice thereof from City; or (b) Corporation shall fail to perform or comply with any of the other covenants or conditions of this Agreement, and such failure is not cured within thirty (30) days after Corporation receives written notice thereof from City; provided, however, that if the failure to perform or comply cannot reasonably be cured within thirty (30) days, Corporation shall not be in default if Corporation commences to cure the failure to perform or comply within the thirty (30) day period and diligently and in good faith continues to cure the same thereafter. Notices given by City to Corporation under this section shall specify the provision(s) of this Agreement with which Corporation is not in compliance, and shall demand that Corporation pay the charge payable, or perform or comply with any other provision of this Agreement, as the case may be, within the applicable period of time. No such notice shall be deemed a forfeiture or a termination of this Agreement unless it specifically provides therefor.

15.02 If Corporation commits a default under this Agreement, City shall have the right to terminate this Agreement upon written notice to Corporation, in addition to any and all rights and remedies available at law or in equity.

**ARTICLE 16**  
**No Waiver**

16.01 The failure of City or Corporation to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not be deemed a waiver by City or Corporation of its right to such redress for a prior, concurrent or subsequent violation of the same or to subsequently insist upon strict performance of any other covenant or condition of this Agreement. The receipt and acceptance by City of any sum payable for services with knowledge of any preceding breach by Corporation of any covenant, term or condition of this Agreement shall not be deemed a waiver of such breach. No provision of this Agreement and no default by City or Corporation hereunder shall be deemed to have been waived by the other party unless such waiver is in writing and signed by the waiving party.

**ARTICLE 17**  
**Litigation Expenses**

17.01 In the event any action, suit or proceeding is commenced under or in connection with this Agreement, or for recovery of possession of the Premises, the losing party shall pay to the prevailing party, and the prevailing party shall be entitled to an award for, the reasonable amount of the attorneys' fees, court costs and other litigation expenses incurred by the prevailing party in connection with such action, suit or proceeding.

**ARTICLE 18**  
**No Relocation**

18.01 Corporation agrees on behalf of itself and any successor in interest, in entering this Agreement, that termination of this Agreement and surrender of the Premises by Corporation for any reason whatsoever shall not be a displacement of the Corporation, or any successor or assign of Corporation, requiring the Corporation to furnish or provide relation assistance, benefits or compensation under the provisions of Government Code Section 7260, *et seq.*, or any other provisions of local, state or federal law. Corporation further agrees, on behalf of itself and any successors in interest, that it shall have no right to, and waives all interest in, such relocation assistance, benefits or compensation, and agrees that it shall not present any claim or demand therefor.

**ARTICLE 19**  
**Damage by Fire or Other Casualty**

19.01 If the Premises, City Hall, or any material portion thereof shall be damaged by fire or other casualty, City shall have no obligation to repair the damage and may instead terminate the Agreement upon written notice.

**ARTICLE 20**  
**Notices**

20.01 Any notice or communication which is required under this Agreement shall be sent by registered or certified mail, return receipt requested, or by Federal Express or any other nationally recognized overnight delivery service, addressed to the parties as follows:

If to Corporation:

Fairfield Conference & Visitors Bureau  
1111 Webster Street  
Fairfield, CA 94533  
Attn: President/CEO  
Telephone: (707) 399-2445  
Email: anand@visitfairfieldca.com

If to City:

City of Fairfield  
1000 Webster Street, 2<sup>nd</sup> Floor  
Fairfield, CA 94533  
Attn: Director of Community Development  
Telephone: (707) 428-7649

or at such other address or addresses as the parties shall designate by written notice to each other. All notices sent by mail shall be deemed given on the date the return receipt is signed or delivery rejected by the addressee. Notice sent by Federal Express or any other nationally recognized overnight delivery service shall be deemed to have been duly given one (1) business day after delivery to the service prior to its deadline for overnight delivery.

**ARTICLE 21**  
**No Representations by City**

21.01 Corporation acknowledges that neither City nor any of City's agents, representatives, officers or employees has made any representations or promises with respect to the Premises or the Shared Area except as herein expressly set forth, and that it has not executed this Agreement in reliance upon any representations or promises of City or City's agents, representatives, officers or employees with respect to the Premises or the Shared Area except as herein expressly set forth. Corporation acknowledges that neither City nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Corporation's business or for any other purpose, nor has City or its agents or employees agreed to undertake any alterations or construct any improvements to the Premises except as expressly provided in this Agreement.

**ARTICLE 22**  
**Miscellaneous**

22.01 Words of any gender used herein shall include any other gender, and singular words include the plural, and vice versa, and "person" includes persons, firms and corporations and all other types of entities and organizations.

22.02 Time is of the essence of the notice requirements and the obligations of the parties under this Agreement.

22.03 If there are any covenants yet to be performed by Corporation as of the date of expiration or termination of the term hereof, including, without limitation, the payment of taxes or payment of charges under this Agreement due the City as of such date, such covenants shall survive the expiration or termination of the term hereof whether or not they are then known or determined.

22.04 This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and any purported agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it, in whole or in part, unless such purported agreement is in writing and signed by the party against whom enforcement is sought.

22.05 This Agreement shall be governed and interpreted in accordance with the laws of California.

22.06 The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

22.07 The individuals executing this Agreement on behalf of City and Corporation represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of City and Corporation, respectively.

22.08 The covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of City and Corporation and, except as otherwise provided in this Agreement, their respective successors and assigns.

22.09 The Article headings are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope of any Article of this Agreement nor the intent of any of its provisions.

22.10 This Agreement may be executed in multiple counterparts each of which said executed counterparts shall be deemed an original for all purposes.

*[Signatures appear on next page.]*



IN WITNESS WHEREOF, and intending to be legally bound hereby, City has caused this Agreement to be executed on its behalf by a duly authorized officer, and Corporation has caused this Agreement to be executed on its behalf by a duly authorized officer, all as of the day and year first written above.

**City:**

CITY OF FAIRFIELD,  
a municipal corporation

By:   
Name: Sean P. Quinn  
Its: City Manager *EAB*

**Corporation:**

FAIRFIELD CONFERENCE AND VISITORS BUREAU,  
a California nonprofit mutual benefit corporation


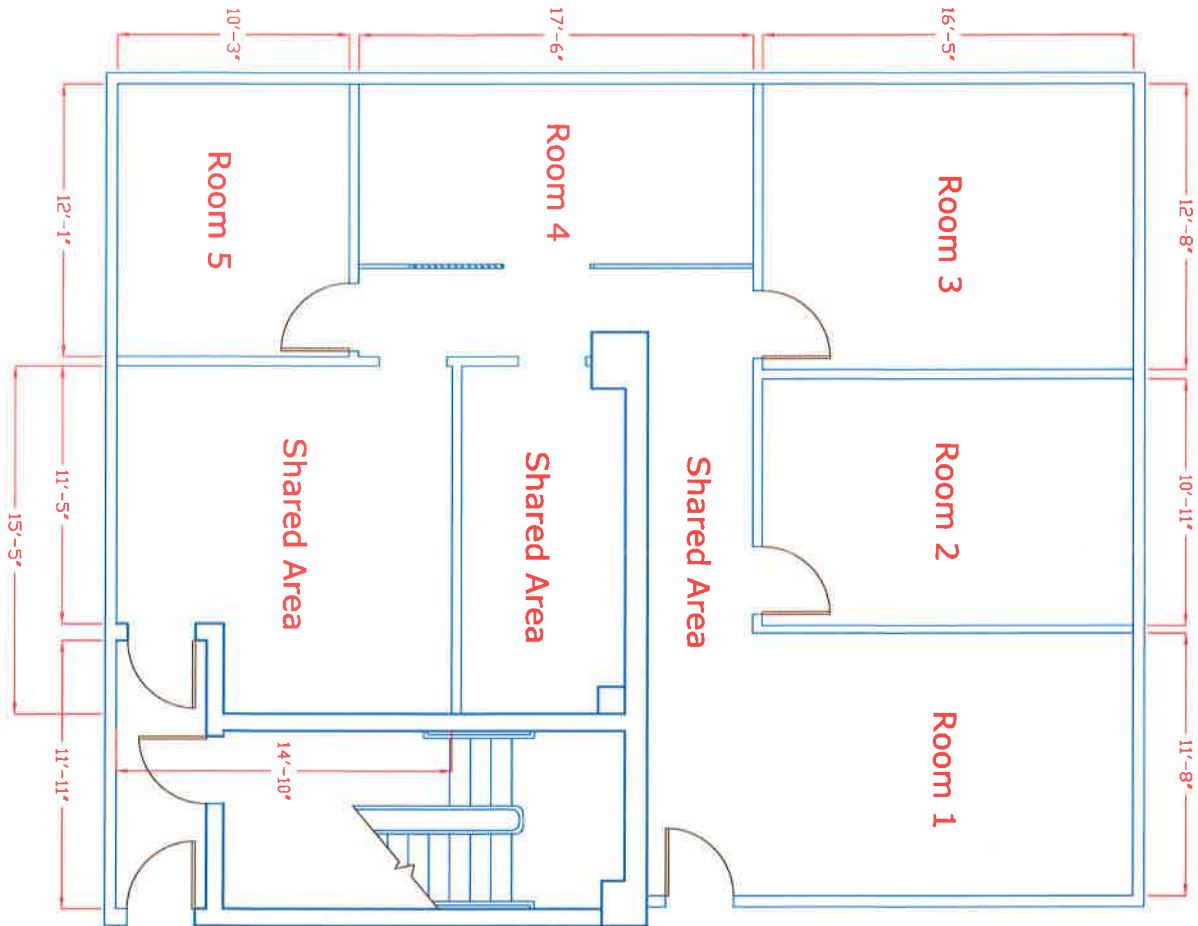
By:   
Name: Anand Patel  
Its: President/CEO

EXHIBIT A



LOBBY AREA



City of Fairfield  
 Community Resources Department  
 Housing Rehabilitation Office  
 1049 Union Ave., Suite C  
 Fairfield, CA 94533

Community Resources Department	
SCALE: 3/8"=1'0"	DRAWN BY: HERNANDO
DATE: 2/13/13	REVISED:
(E) Floor Plan-Housing	
ADDRESS: 1000 Webster St., 1st Floor FAIRFIELD, CA 94533	SHEET NO 1

## EXHIBIT B

### Rules for Use of Premises and Shared Area

#### Building Hours & Access

1. Building Hours are Monday through Thursday from 8:00am to 5:30pm. The Main Doors to the Building and the Elevators will be unlocked and accessible during these hours only.
2. After hours access to the Office and Shared Area must be done through card access door and Tenant's Conference Room door. There will be no access to Floors 2-4 after hours.
3. Any after hours clients must be escorted in and out of the Building.
4. Tenant will confirm that card access door is secured when entering and leaving the Building after hours.
5. Tenant will be issued one Access Card per employee. These Access Cards can be used to access the 1<sup>st</sup> floor and Office after hours. Lost or stolen Access Cards must be reported to Landlord immediately. Cost to replace Access Cards will be \$25.00.
6. 1<sup>st</sup> floor Public Restrooms are available to Tenant during and after Building Hours.
7. Tenant will be respectful of others in the Building. Tenant will not cause or permit and noise that may disrupt the quiet enjoyment of others in the Building.

#### Keys

8. Tenant will be issued two (2) keys to the Office. These keys cannot be duplicated. Should Tenant require additional keys, Tenant will contact Landlord and Landlord will provide the necessary keys at the cost of \$5.00 each.

#### Lobby

9. Tenant is responsible to ensure that any of their property located in the Lobby Area (i.e. kiosk, brochures, signage, etc.) is to be kept clean and in an acceptable appearance.
10. Kiosks displaying Tenant's advertising or marketing materials should be kept full and in good condition.
11. Tenant may not use the Lobby Area as a waiting area. No additional seating may be placed in the Lobby Area.

#### Maintenance

12. For maintenance issues, Tenant will contact Economic Development At 707-428-7727
13. For EMERGENCY after hours maintenance issues, Tenant will contact Fairfield Police Department Dispatch at 707-428-7300.



**EXHIBIT C**

**Work to be Undertaken by City**

Add a door to the Welcome Area hallway

A handwritten signature in blue ink, consisting of a stylized 'J' or 'L' shape with a loop at the bottom.