

**USE AGREEMENT BETWEEN
TOWN OF YOUNTVILLE
AND
HOOPES VINEYARD, LLC**

This Use Agreement (the “Agreement”) is effective as of July 16, 2024 (the “Effective Date”), by and between the Town of Yountville, a municipal corporation (“Town”), and Hoopes Vineyard LLC, a California limited liability company (“User”) (collectively, “Parties”; individually “Party”).

RECITALS

WHEREAS, Town is the owner of that certain real property located at 6554 Yount Street, Yountville, CA 94599 (APN 036-070-026-000) and certain improvements thereon, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference (the “Site”).

WHEREAS, Town has a goal of providing interim use of the Yountville Commons site to include a Farmstand and Farm Provisions Café for public benefit.

WHEREAS, the Parties hereto desire to enter into this Agreement for use and operation of the Site as a Farmstand and Farm Provisions Café.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the, parties hereto agree as follows:

I. Term

This Agreement shall commence on the Effective Date and shall remain in effect for a period of five (5) years, unless extended by written agreement of the Parties or terminated earlier in accordance with Section X (“Termination”) below.

II. User’s Use of Site

A. The Town will make the Site available to User for the following activities:

Operation of a local café/food service/beverage operation and “Oasis” farmstand serving local/seasonal produce, beverages, locally sourced and inspired fast casual food and beverage items and servicing events that may take place upon agreement with Town, such as concessionaire for Little League games, summer festivals, Community Support Agriculture (“CSA”) box pick up and drop box, and a commercial kitchen for preparation of same.

B. Use of the Site by User shall not be inconsistent with or interfere with the regular conduct of Town business at, on, or near the Site.

- C. The Town grants User the use of those parking areas and structures necessary for the full utilization of said Site during such periods when said Site is used for the aforementioned activities in accordance herewith.

III. User's Duties

A. User shall, at its sole cost and expense, be responsible for:

- i. Beginning on August 1, 2024 or as close thereafter pending completion of needed site improvements or directed by Town, whichever is later (the "Commencement Date"), operating the Site as follows:
 - a. Operating six days per week, for no less than 50 hours total hours per week. Revision of operational hours will be agreed upon in writing by User and Town.
- ii. Providing sale of seasonal produce, food, beverages and other provisions on Site with discounts and special promotions for Yountville residents.
- iii. Obtaining any and all necessary permits or approvals for the sale of alcoholic beverages on the Site.
- iv. Supporting local culinary students by creating and offering credit-based work experience programs with local culinary programs, including with but not limited to Napa Valley College and the Culinary Institute of America ("CIA").
- v. Featuring temporary menus and special food items from local chefs.
- vi. Catering events hosted on the Site by or for local organizations, charitable entities, and/or youth sport leagues, including but not limited to Yountville Little League.
- vii. All maintenance responsibilities described in **Exhibit B**, attached hereto and incorporated herein by reference.
- viii. Ensuring User's use of the Site is under the direct supervision of a responsible employee or agent of User who will be present at all times during such use.
- ix. Any special setup required for use of the Site.
- x. Providing all materials, equipment, and supervisory personnel necessary for its activities, it being understood and agreed, however,

that certain permanent equipment owned by the Town on Site may be used for such activities upon approval of the Town Manager.

- xii. Designating a point of contact for Town to communicate with for all urgent operational problems and providing Town notice of changes in reporting personnel within one (1) week of the change.
 - xiii. Complying with (and causing any and all of its employees, agents, visitors, and licensee, to comply with) all laws, codes, statutes, ordinances and regulations applicable to this Agreement and use of the Site.
 - xiii. User shall neither discriminate nor permit discrimination against any person or group of persons on the grounds of race, sex, creed, national origin, color, disability as defined by law, religion, age, medical condition, marital status, ancestry, sexual orientation, or other protected basis. A breach of this provision is cause for termination of the Agreement.
- B. User acknowledges that it has fully inspected the Site and accepts the same, in its existing condition, but prior to improvement of the Site by Town, and agrees that no demands for alterations, repairs, or additions are to be made upon the Site as of the Effective Date. User acknowledges that Town may from time to time, in its sole discretion, improve the Site and the structures or facilities thereon, and User agrees to accept such improvements for its use or, if such improvements are not acceptable to User, terminate this Agreement in accordance with Section X. If a change is noted in Site condition or Site has in some way been damaged, User acknowledges the responsibility for informing Town of the situation as soon as possible after learning of the change or damage. User shall, at its own expense, maintain the Site in good working order and repair and in a neat, clean and sanitary condition, the User shall surrender the Site at termination of the Agreement in as good a condition as received, normal wear and tear excepted.

IV. Fees

- A. In consideration for the use of the Site, on or before the Commencement Date and each month thereafter, User shall pay the sum of \$100.00 per month that the Site is used for the license granted in this Agreement (the "License Fee").
- B. User shall maintain any and all ledgers, books of account, invoices, and other business records or documents evidencing or relating to its gross operating revenues, even if there is a change of ownership, for a minimum of three (3) years, or for any longer period required by law, from the date of expiration or termination of this Agreement. All such records shall be made available for inspection, audit,

and/or copying at any time during regular business hours upon oral or written request of Town.

- C. Town reserves the right to use any and all available legal and equitable remedies to collect any License Fee(s) owed by User under this Section.
- D. Payment for use of the Site specified in this Agreement shall be made payable to the Town of Yountville, 6550 Yount St., Yountville, CA 94599.

V. Maintenance

Maintenance responsibilities of the Parties for use of the Site is set forth in **Exhibit B** hereto. Except as set forth in **Exhibit B**, the maintenance of Site shall be the responsibility of the Town, unless otherwise agreed to in writing. If maintenance is not adequately performed by User, the Town will have the necessary work performed and bill User therefor. When possible, advance notification of inadequate maintenance will be given to allow User an opportunity to provide additional maintenance to avoid such additional billing.

VI. Disputes

In the event of a disagreement between the Town and User on the interpretation of any provision of this Agreement, the Parties shall meet and confer at mutually agreeable times to attempt to resolve any differences or disputes.

VII. Insurance

- A. Without limiting User's indemnification provided herein below, User shall maintain at all times during the term of this Agreement the following insurance coverages:

- General Liability:
 - General Aggregate: \$2,000,000
 - Products Comp/Op Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$2,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Liquor Liability
 - General Aggregate: \$2,000,000
 - Each Occurrence \$1,000,000

- Workers' Compensation:

• Workers' Compensation	Statutory Limits
• EL Each Accident	\$1,000,000
• EL Disease - Policy Limit	\$1,000,000
• EL Disease - Each Employee	\$1,000,000

- B. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.
- C. General Liability Insurance. Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.
- D. Claims-Made Policies. If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the Agreement. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after termination of the Agreement. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, User must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- E. Additional Insured Endorsements. The Town, its Town Council, Boards, Commissions, officers, and employees of Town must be endorsed as an additional insured for each policy required herein, other than Worker's Compensation, for liability arising out of this Agreement by or on behalf of User. User's insurance policies shall be primary as respects any claims related to or arising out of this Agreement. Any insurance, pooled coverage or self-insurance maintained by the Town, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf.
- F. Waiver of Subrogation. User hereby waives all rights of subrogation against the Town. User shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.

- G. Report of Claims to Town. User shall report to the Town, in addition to User's insurer, any and all insurance claims submitted to User's insurer in connection with the use of the Site pursuant to this Agreement.
- H. Premium Payments and Deductibles. User must disclose all deductibles and self-insured retention amounts to the Town. The Town may require User to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, Town must approve all such amounts prior to execution of this Agreement. Town has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. User shall be responsible for all premiums and deductibles in all of User's insurance policies. The amount of deductibles for insurance coverage required herein are subject to Town's approval.
- I. Duty to Defend and Indemnify. User's duties to defend and indemnify Town under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration or early termination of this Agreement.

VIII. Indemnification

- A. User shall indemnify, defend, and hold harmless the Town, its officers, officials, agents, employees, and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees and interest arising out of or in connection with User's use of the Site pursuant to this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence, or willful misconduct of the Town.
- B. User shall be solely responsible for all personal property, fixtures and improvements located at the premises, belonging to User. User acknowledges and agrees that this hold harmless and indemnification provision extends to any loss or damage to the contents of the premises, personal property owned by User or by a third party, and whether to any furniture, equipment, supplies, or fixtures.
- C. No elective or appointive councilmember, commission member, officer, employee or other agent of the Town shall be personally liable to the User, its successors, and assigns, in the event of any default or breach by the Town or for any amount which may become due to the User, its successors, and assigns under this Agreement, or for any obligation of the Town under this Agreement.

- D. If any claim or action is brought against the Town relating to User's use of the Facilities in connection with this Agreement, User shall render any reasonable assistance that the Town may require in the defense of that claim or action.
- E. The provisions of this Section VIII extend to all User's activities on Site pursuant to the terms of this Agreement. The provisions of Section VIII shall survive termination of this Agreement.

IX. Access

Certain employees or agents of User may be issued keys by the Town Manager. Keys are not to be duplicated. Lost keys shall be the responsibility of each respective individual, and User will be billed by the Town for the cost of replacement.

X. Termination

A. Without Cause.

- i. Either Party may terminate this Agreement, for any reason or no reason whatsoever, by delivering written notice to the other Party at least one hundred twenty (120) days prior to the termination date.
- ii. Notwithstanding the foregoing, in no case shall User be entitled to reimbursement in an amount, nor any additional reimbursement or compensation other than provided herein, including, but not limited to, payment for any alleged damages or injures (including lost opportunity damages) purportedly caused by the termination of this Agreement by Town hereto.

B. For Cause. Either Party may terminate this Agreement for cause by delivering written notice stating the reasons for such termination to the other Party. The Agreement shall be terminated upon receipt of written notice by User. Should Town terminate this Agreement for cause as described above, User shall not be entitled to any reimbursement of any License Fee(s) established under Section IV. Nor shall User be entitled to payment for any alleged damages or injures (including lost opportunity damages) purportedly caused by the termination of this Agreement by Town hereto.

C. Ownership of Property. Any items of User's property which shall remain in or on the Site after termination of this Agreement may, at the option of the Town, be deemed abandoned and in such case may be disposed of by Town in any manner allowed by law. User's Property is defined as any personal property, fixtures or improvements remaining in or on the Site at that time, owned by User.

- D. Remedies. Town retains any and all available legal and equitable remedies for User's breach of this Agreement.

XI. Non-assignment

The benefits and/or obligations of User under this Agreement shall not be assignable by User to any other person or entity without Town's prior written approval.

XII. No Third-Party Beneficiaries

Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the Parties.

XIII. Binding on Successors

This Agreement shall be binding on the successors and assigns of the Parties.

XIV. Relationship of the Parties

- A. User is, and shall at all times remain as to Town, a wholly independent contractor.
- B. User shall have no power to incur any debt, obligation, or liability on behalf of Town or otherwise to act on behalf of Town as an agent. User, its officers, employees and agents shall not have any power to bind or commit Town to any decision or course of action, and User, its officers, employees and agents shall not represent to any person or party that it or they are acting as agents of Town or that it or they have the power to bind or commit the Town. Neither Town nor any of its agents shall have control over the conduct of User or any of User's employees, except as set forth in this Agreement.
- C. User shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all its employees, agents, or subcontractors. Town shall not be liable for any payment, compensation, or federal and state taxes for any of User's employees, agents, or subcontractors.
- D. Under no circumstances shall User or its officers, employees, or agents look to Town as an employer. User, its officers, employees, and agents shall not be entitled to any benefits. Town makes no representation as to the effect of this independent contractor relationship on any previously earned California Public Employees Retirement System ("CalPERS") retirement benefits, if any, and User specifically assumes the responsibility for making such a determination. User shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation, and other applicable federal and state taxes.

- E. In the event that User or any employee, agent, or subcontractor of User providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the Town, User shall indemnify, defend, and hold harmless Town for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of User or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Town.

XV. Notice

Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, or e-mail, addressed as follows:

TOWN:
6550 Yount St.
Yountville, CA 94599
(707) 844-8851
ATTN: Town Manager
E-mail: BRaulston@yville.com

USER:
Hoopes Vineyard, LLC
PO BOX 3600
Yountville, CA 94599
Attn: Lindsay Hoopes
lindsay@hoopesvineyard.com

Any notice personally given shall be effective upon receipt. Any notice sent by mail shall be effective five (5) days after deposit in the United States mail. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice sent by e-mail shall be effective the day of delivery if emailed to the email address listed above and simultaneously deposited in the U.S. mail, postage prepaid.

XVI. Integration, Entire Agreement, Amendment

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

XVII. California Law

This Agreement shall be governed by and the rights, duties and obligations of the Parties and shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the Superior Court of Napa County, California.

XVIII. Waiver

The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

XIX. Severability

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

XX. Headings

The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or subsection thereof at the head of which it appears, the language of the section or subsection shall control and govern in the construction of this Agreement.

XXI. No Presumption Against Drafter

Each Party had an opportunity to consult with an attorney in reviewing and drafting this Agreement. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting.

XXII. Counterparts; Electronic Signatures

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument. The parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include faxed or emailed versions of an original signature, electronically scanned and transmitted versions (e.g., via pdf) of an original signature, or a digital signature.

TO EFFECTUATE THIS AGREEMENT, the Parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“Town”
The Town of Yountville

“User”
Hoopes Vineyard, LLC

By: Brad Raulston

By: _____

Date: _____

Date: _____

By: _____

Date: _____

Approved as to Form:

Gary B. Bell, Town Attorney

Attest:

Hilary Gaede, Town Clerk

Exhibits:

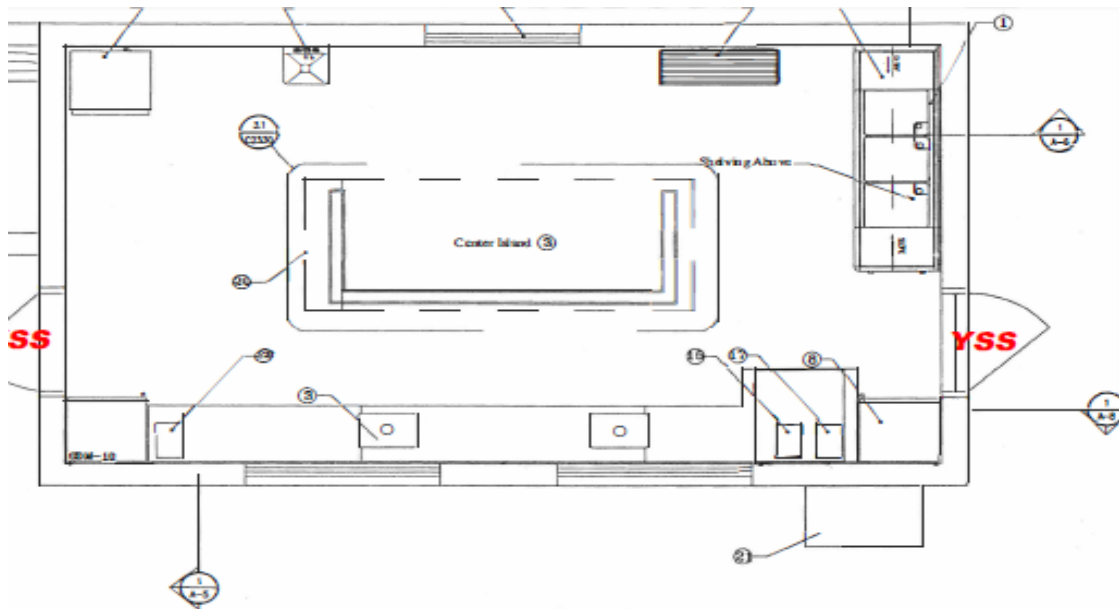
Exhibit “A” Site Description

Exhibit “B” Maintenance of Site

EXHIBIT "A" SITE DESCRIPTION

Real property located at 6554 Yount Street, Yountville, CA 94599 (APN 036-070-026-000) – Yountville Commons Concession Stand and existing equipment.

Town shall maintain ownership of all Site improvements, equipment, furnishings, and other personal property existing on the Site as of the Commencement Date.



Site Design of "Snack Shack" Facility

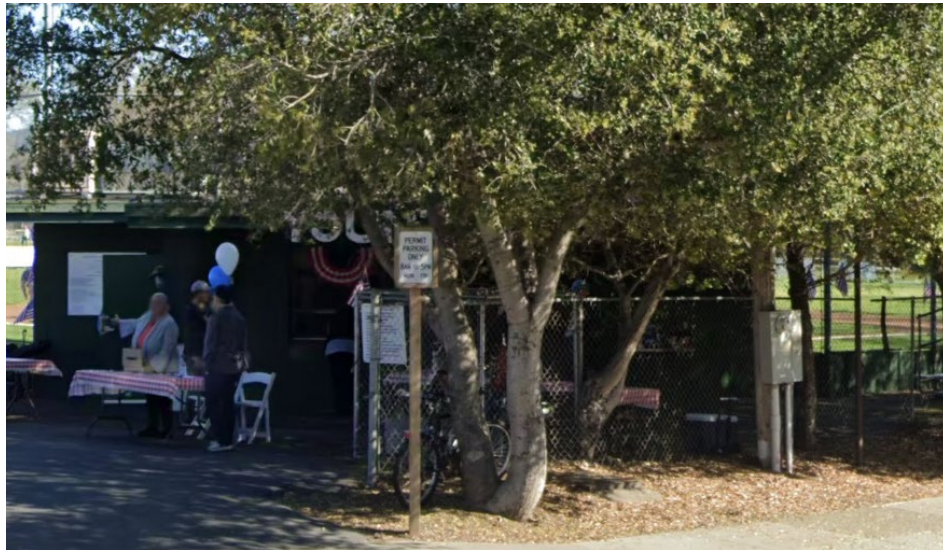


EXHIBIT “B” MAINTENANCE OF SITE

This **Exhibit “B”** provides for specific maintenance responsibilities for the Site listed herein. Except as specifically set forth in this **Exhibit “B”**, the maintenance of Site shall be the responsibility of the Town, unless otherwise agreed to in writing.

User shall be responsible for:

- Purchase/Lease and Maintenance of all additional equipment related to the User’s operations and use of the Site.
- Cleaning of the facility and areas of the Site used and/or occupied by User.
- Internet, Cable, Phone services as needed by User.
- Regular maintenance and cleaning of industrial hood.
- Regular maintenance and cleaning of grease interceptor.
- Applying for and maintaining all required legal permitting for use of the facility and Site as a food service site.

Town shall be responsible for:

- Parking Lot maintenance and repair.
- All outdoor building and landscape maintenance and repair.
- General indoor facility and equipment maintenance and repair for issues not caused by the User. Not to include Users owned equipment.
- Utility costs include water, shared trash and recycling service, sewer, and power.
- Providing access to a restroom during business hours.