

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is entered into between the County of San Luis Obispo, hereinafter referred to as "County" and the Friends of the Adobes, Inc., a nonprofit corporation, hereinafter referred to as "Lessee," and will replace and supersede any and all previous written or verbal agreements made and entered into by and between County and Lessee with respect to the Premises hereinafter described.

1. **Premises:** County hereby leases to Lessee, and Lessee hereby hires and takes from County, for the term and upon the conditions hereinafter set forth, those certain Premises commonly known as the Rios Caledonia Adobe, a historical museum, visitor center and gift shop, located in the community of San Miguel, County of San Luis Obispo, State of California.

2. **Term:** The term of this Agreement shall be for a period of five (5) years, commencing on **January 1, 2016**, and ending on **December 31, 2020**, both dates inclusive. This Agreement may be terminated without cause by either party by giving ninety (90) days prior written notice to the other party of its intention to do so.

3. **Mutual Option to Extend:** Upon mutual consent of the Central Services Director ("Director") or Director's designee, and Lessee, Director and Lessee shall have the option to renew this Agreement under the same terms and conditions for three (3) additional consecutive terms of five (5) years each. Any option extension must be in writing and signed by Director, or Director's designee, and Lessee prior to the commencement of the effective extension term.

4. **Rent:** In lieu of monetary rent, consideration shall be Lessee's satisfactory performance of the operation and maintenance of the Premises to County's standards or better in lieu of County's obligation to do the same is deemed to be adequate compensation for this Agreement. County has the right to enter and inspect the Premises and direct Lessee to do specific operation and maintenance of the Premises by a specific date.

Lessee shall maintain such records and accounts as the County Auditor-Controller may require. The County shall have the right through its representative, and at all reasonable times, to inspect such books and records, including State of California Sales Tax Records; and Lessee hereby agrees that all such records and instruments are available to the County. All Federal tax returns of Lessee insofar as this Agreement is concerned shall also be made available to the County for accounting purposes.

County further reserves the right to examine all such books and records at any time during a one (1) year period following the termination of this Agreement.

5. **Use of Premises:** Lessee shall conduct, manage and maintain the Premises for the primary purpose of a operating a historical museum, visitor information center and gift shop. In the event said Premises ceases to be used or made available for such

public purposes during the term hereof, as determined by the Central Services Director, ("Director") or Director's designee, this Agreement shall immediately and automatically terminate.

Lessee agrees that no representation, except such as are contained herein, have been made to Lessee respecting the condition of the Premises. The taking possession of the Premises by Lessee shall be conclusive evidence as against Lessee that the Premises were in acceptable and satisfactory condition when possession of the same was so taken; and Lessee will, at the termination of this Agreement, by lapse of time or otherwise, return the Premises to County in as good condition, ordinary wear excepted.

Lessee shall operate the Premises in accordance with the following terms and conditions:

A. Premises shall be used for the purpose of displaying and exhibiting historical objects and artifacts.

B. Lessee shall furnish and install at Lessee's own expense all necessary furniture, furnishings and equipment required for proper service to the general public and keep same in a first class manner throughout the term of this Agreement and any extensions thereof.

C. Permission is further given hereunder for Lessee to operate and maintain its office, historical library, gift shop and work center.

D. Lessee shall maintain for sale in the gift shop a reasonable stock of items for sale, such as souvenir and gift items, handmade items (souvenirs), paintings, books and booklets, stationary, postcards prints, and the like, the proceeds which are to benefit the Lessee. The County shall have access to, and the right to inspect the schedule of prices and rates for goods sold or services rendered or performed upon the Premises. If the County determines that any prices or process are unreasonable or inappropriate, for the services rendered, or the items sold, the same shall be modified as directed by the County; provided that Lessee prior to such modification shall be given a reasonable opportunity to confer with County to justify such prices. The County reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public.

E. The storage and service thereof shall be in an area approved by the Director, or Director's designee.

Lessee shall operate the Premises in a business like manner and to the satisfaction of the Director subject to the maintenance of said areas in conformance with the highest standards of safety for patrons of said operation. A competent employee shall be on the Premises at all times while the concession is in operation.

Lessee shall have the right and duty to manage, operate and control all of the above-mentioned activities and do all the things necessary in the exercise of such management, operation and control subject to the terms and conditions of this Agreement. Lessee shall operate and maintain the Premises and facilities together with the nonexclusive right to use access roads.

Lessee shall not use Premises for any purpose other than as set forth without first obtaining consent of the Director, or Director's designee. Lessee expressly agrees at all times during the term of this Agreement, at its own cost and expense to maintain and operate said Premises and area adjacent, in a clean, safe wholesome and sanitary condition, free of trash, garbage or obstruction of any kind, and in compliance with any and all present and future local, state and federal laws, rules or regulations of any governmental authority now or at any time during the term of this Agreement, and this Agreement is expressly subject to the provisions and requirements of any existing and future agreements between the County and the United States or the State of California relative to the development operation or maintenance of said facilities. Lessee shall without delay, remedy any defective, dangerous or unsanitary condition.

All advertising matter to be published or circulated by or on behalf of the Lessee shall be submitted to and approved by the Director, prior to publication or circulation. Lessee shall be responsible for the accuracy of the information at all times and all advertising shall be at the Lessee's sole cost and expense.

The County may grant permits to persons or corporations engaged in the production of still and motion picture and related activities, for the use of said Premises for such purposes when such permission does not interfere with the primary business of Lessee.

6. Utilities: Lessee shall be responsible for the payment of all utility charges pertaining to its operation, excepting sewer, water, and electricity. County shall not be required to furnish any service to the Premises, including but not limited to heat, natural gas, propane, and garbage disposal, and shall not be liable for any failure of water supply or of any service by any utility. Lessee shall be responsible for all costs relative to the installation and use of utility services. Lessee shall place all utilities in the name of Lessee, and Lessee agrees to promptly pay all charges for all utilities and services used or charges imposed in or about or supplied to the Premises, and shall indemnify the County against any and all liability on such account.

7. Janitorial: Lessee shall provide janitorial service for the Premises including, but not limited to, routine cleaning of the appliances, restrooms, windows and floors.

Lessee shall be solely responsible for complete janitorial services and the furnishing of janitorial supplies, lamps and tubes for the proper maintenance of the gift shop and adobe rooms.

8. **Maintenance and Repairs:** Lessee accepts the Premises, including the interior and exterior and all associated facilities "as-is." Lessee shall maintain and keep the Premises in a good state of repair, including but not limited to, electrical, lighting, plumbing facilities, heating, kitchen facilities, interior paint, roof, walls, doors and windows during the term of this Agreement and any extension or renewals thereof and shall not, at any time, commit or suffer to be committed any waste, nuisance, or unlawful act thereon.

Should Lessee fail or neglect to make repairs, as necessary to protect the health, safety, or welfare of individuals using the Premises, County may, after reasonable notice to Lessee, make said repair and charge Lessee for same. Lessee shall reimburse County for said costs associated with repairs on demand.

No repair shall be undertaken until Lessee shall have procured and paid for all required permits and authorizations of various governmental departments or entities having jurisdiction. All work performed in connection with any repair shall be performed in a first class workmanlike manner and in compliance with all building and zoning laws, and with all other laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers thereof. There shall be maintained, at Lessee's expense, at all times during permitted construction, worker's compensation insurance in accordance with laws covering all persons employed in connection with the repair, and general liability insurance for the mutual benefit of County and Lessee covering the additional hazards during construction. Repairs that materially alter the structure are addressed in Paragraph 9 titled "Improvements."

9. **Landscaping:** County shall be responsible for providing all existing trees, lawn and plants on the Premises with routine care. Any refuse created by County's responsibilities as contained in this Paragraph shall be promptly and properly disposed of at County's sole cost and expense.

10. **Improvements:** The parties agree that Lessee shall have the right to make alterations to the building on the Premises, but that any such alterations shall be subject to the following conditions:

A. No alteration shall be made at any time, which shall impair the structural soundness or diminish the value of the building of which the Premises is a part.

B. No alteration shall be made until all plans and specifications are submitted to and approved by the Director, or Director's designee, in writing.

C. No signs, names or placards shall be inscribed, painted or fixed upon said Premises without written consent of the Director, or Director's designee.

D. No alteration shall be undertaken until Lessee shall have procured and paid for all required permits and authorizations of various governmental departments or entities having jurisdiction

E. All work performed in connection with any alteration shall be performed in a first class workmanlike manner and in compliance with all building and zoning laws, and with all other laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments and appropriate departments, commissions, boards, and officers thereof. Nothing contained herein shall be construed by Lessee to be a waiver by the Director, or Director's designee, of Lessee's need to acquire building and construction permits including, but not limited to, required permits from the Planning and Building and Environmental Health Departments and other applicable licenses through governmental processes.

F. There shall be maintained, at Lessee's expense, at all times during permitted construction or alteration, worker's compensation insurance in accordance with laws covering all persons employed in connection with the alteration, and general liability insurance for the mutual benefit of County and Lessee covering the additional hazards during construction.

11. Ownership of Improvements: At the expiration or earlier termination of this Agreement, all alterations, modifications, or improvements upon the Premises made by Lessee shall, absent any agreement between the County and Lessee to the contrary, become the property of the County. If County otherwise elects, which election shall be made by giving a notice in writing prior to the expiration or other termination of this Agreement, such improvements shall be removed from the Premises at Lessee's sole cost and expense, and Lessee shall promptly repair any damage caused by such removal in a first class manner.

12. Insurance: Lessee shall obtain and maintain for the entire term of the Agreement and Lessee shall not perform any work under this Agreement until after it has obtained insurance complying with the provisions of this paragraph. Said policies shall be issued by companies authorized to do business in the State of California. Lessee shall maintain said insurance in force at all times. The following coverage with the following features shall be provided:

A. Commercial Liability Insurance: Lessee shall maintain in full force and effect for the period covered by this Agreement, commercial liability insurance. This insurance shall include, but shall not be limited to, comprehensive general and automobile liability insurance providing protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from any act or occurrence arising out of Lessee's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The policy shall be in the form of Insurance Services Office (ISO) Form CG 00 01 covering commercial general liability on an "occurrence" basis for bodily injury and property damage, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limit. The following endorsements must be attached to the policy:

(1) If the insurance policy covers on an "accident" basis, it must be changed to "occurrence".

(2) The policy must cover personal injury as well as bodily injury.

(3) Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.

B. Workers' Compensation Insurance: In accordance with the provisions of sections 3700 et seq., of the California Labor Code, if Lessee has any employees, Lessee is required to be insured against liability for workers' compensation or to undertake self-insurance. Lessee agrees to comply with such provisions before commencing the performance of this Agreement.

C. Additional Insureds to be Covered: The commercial general liability policies shall name "County of San Luis Obispo, its officers and employees" as additional insureds. The policy shall provide that the Lessee's insurance will operate as primary insurance and that no other insurance maintained by the County, or additional insureds will be called upon to contribute to a loss hereunder.

D. Certification of Coverage: Prior to commencing work under this Agreement, Lessee shall furnish County with the following for each insurance policy required to be maintained by this Agreement:

(1) A copy of the Certificate of Insurance shall be provided. The certificate of insurance must include a certification that the policy will not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the County.

(2) A Workers' Compensation certificate of insurance must be provided.

(3) Upon written request by the County, the Lessee shall provide a copy of the complete insurance policy.

(4) Approval of Insurance by County shall not relieve or decrease the extent to which the Lessee may be held responsible for payment of damages resulting from Lessee's services or operations pursuant to this Agreement. Further, County's act of acceptance of an insurance policy does not waive or relieve Lessee's obligations to provide the insurance coverage required by the specific written provisions of this Agreement.

E. Effect of Failure or Refusal: If Lessee fails or refuses to procure or maintain the insurance required by this Agreement, or fails or refuses to furnish County with the certifications required by *Subparagraph D.* above, County shall have the right, at its option, to forthwith terminate the Agreement for cause.

13. Indemnification: To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with Lessee's performance or attempted performance of any obligation

or duty provided for or relating to this Agreement and/or the Premises, except such loss or damage which was caused by sole negligence or willful misconduct of the County.

14. Assignment: Lessee shall neither transfer nor assign this Agreement or any property on the Premises, nor sublet the Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Agreement.

15. Waiver: Lessee hereby waives any claim against the County, its officers, agents or employees for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this Agreement, or any part thereof or by 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.

16. Rules and Laws: The Director, or Director's designee, reserves the right at any time to make such reasonable rules and regulations as in his/her judgment may from time to time be necessary for the safety, care, and cleanliness of the Premises, and for the preservation of good order therein, and Lessee hereby agrees to strictly comply therewith. Lessee shall comply with and observe any and all applicable statutes, ordinances, rules and regulations, including, those of the federal, state, municipal, County or other public authority, and as amended, as well as those relating to land use and zoning now or hereafter applicable to the Premises, and to all covenants, easements, reservations and restrictions of record applicable to the Premises.

17. Notices: All notices to Lessee shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to Lessee at:

Friends of the Adobes, Inc.
P. O. Box 326
San Miguel, CA 93451

All notices to County shall be given in writing personally or by depositing the same in the United States mail, postage prepaid, or by certified or registered mail, return receipt requested, and addressed to:

County of San Luis Obispo
Central Services Department
Attention: Real Property Manager
1087 Santa Rosa Street
San Luis Obispo, CA 93408

Either party may change address by notifying the other party in writing.

18. Taxes: During the term of this Agreement, Lessee hereby agrees to pay, prior to delinquency, all taxes and assessments, including both general and special, levied or assessed against the Premises and in connection with the Premises and Lessee's operation thereof, including without limitation, taxes on Lessee's possessory interest

hereunder or in the Premises, and taxes or assessments on all structures, improvements, and fixtures now or hereinafter existing on the Premises, and on any personal property situated in, on, or about the Premises, or in, on or about any structures or improvements thereon. **Lessee is hereby informed that a possessory interest subject to property taxation shall be created by this Agreement and that the party to whom the possessory interest is vested (Lessee) shall be subject to the payment of property taxes levied on such interest and must pay such taxes.**

19. **Inspection of Premises:** Director, or Director's designee, reserves the right of ingress and egress at any reasonable time to inspect, investigate and survey the Premises as deemed necessary by Director, or Director's designee, and the right to reasonably request that Lessee perform any and all work of any nature for the preservation and maintenance of the Premises or improvements thereon.

20. **Non-Discrimination:** Lessee and County shall not discriminate against any person or class of persons in violation of the Civil Rights Act of 1964 as amended or any other applicable laws prohibiting discrimination in the use of the Premises.

21. **Safety:** Lessee shall immediately correct any unsafe condition on the Premises, as well as any unsafe practices occurring thereon. Lessee shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the Premises and shall operate the Premises in a manner to protect the health, safety, and welfare of the general public.

22. **Protection on Premises:** Lessee agrees to take all reasonable precautions to protect Premises from damage, theft, vandalism and other such hazards.

23. **Law:** This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California.

24. **Venue:** The duties and obligations of the parties created hereunder are performable in San Luis Obispo County, and such County shall be the venue for any action or proceeding that may be brought or arise out of or in connection with or by reason of this Agreement.

25. **Americans with Disabilities Act** Lessor shall be responsible for alterations necessary to comply with the Americans With Disabilities Act of 1990, 42 U.S.C. sect. 12101 et seq., as currently enacted and in accordance with applicable laws. In accordance with Civil Code Section 1938, Lessor represents that the property:

- has not undergone inspection by a Certified Access Specialist (CASp); or
- has undergone inspection by a Certified Access Specialist (CASp), and has been determined to meet all applicable construction-related accessibility standards pursuant to Section 55.53.

26. Smoking: Lessee shall comply with and observe any and all applicable statutes, ordinances, rules and regulations, including, those of the federal, state, municipal, County or other public authority regulating smoking on County properties, including those statutes, ordinances, rules and regulations applying to buildings or structures owned, leased or otherwise operated by the County of San Luis Obispo to conduct County business. Notwithstanding any smoking prohibition set forth by County ordinance, any Lessee may request written approval of a designated smoking area by the County Public Health Officer, if permitted by law or statute.

27. Hazardous Waste: Contractor and County shall at all times and in all respects comply with all federal, state and local laws, ordinances and regulations ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, UREA formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials" or "TOXIC SUBSTANCES" under such laws, ordinance or regulations (collectively, "Hazardous Materials"). Contractor shall, except in the event of County's sole negligence, indemnify, defend, protect, and hold County, each of County's officers, directors, employees, agents, attorneys, successors and assigns, free and harmless from and against any and all claims, liabilities, penalties, forfeitures, losses or expenses or death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by: (a) The presence in, on, under or about the Premises or discharge in or from the Premises of any Hazardous Materials or Contractor's use, analysis, storage, transportation, disposal, release, threatened release, discharge or generation of Hazardous Materials, to, in, on, under, about or from the Premises, or (b) Contractor's or County's failure to comply with any Hazardous Materials Law. Contractor's or County's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary repair, cleanup or detoxification or decontamination of the Premises, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith caused by Contractor and County and shall survive the expiration or earlier termination of the term of the Contract. For purposes of the release and indemnity provisions hereof, any acts or omissions of County, or by employees, agents, assignees, Contractors or subcontractors of County or others acting for or on behalf of County (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to County.

28. Closure: At any time, should an occurrence such as war, armed conflict, public emergency, public nuisance, calamity, fire, earthquake, flood, act of God, strike, or similar act, or other event which necessitates the closing of the Premises, or a portion thereof, to the general public, and prevent performance of this Agreement in accordance with the rights and privileges granted herein, Lessee shall have no recourse by law or equity to County for losses incurred.

29. Eminent Domain: If the whole of the Premises shall be taken or condemned by any competent authority under power of eminent domain for a public or a quasipublic use or purpose, then the services Lessee hereby created shall cease and terminate as

of the date actual physical possession of the Premises is taken by the condemnor. All compensation and damages awarded for such total taking shall belong to and be the sole property of County, provided, however, that Lessee shall be entitled to receive any award for the taking of or damage to Lessee's equipment, fixtures, or any improvements made by Lessee to the Premises which the Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Agreement.

In the event that there shall be partial taking of the Premises during the Agreement term under the power of eminent domain, this Agreement shall terminate as to the portion of the Premises so taken on the date when actual physical possession of said portion is taken by the condemnor, but this Agreement shall at County's option, continue in full force and effect. The compensation and damages for such partial taking shall belong to and be sole property of County, provided, however, that Lessee shall be entitled to receive any award made by Lessee to the Premises which Lessee would have had, but for the condemnation, the right to remove on expiration or sooner termination of this Agreement, and, in the event that this Agreement is continued as to the portion of the Premises not condemned, any award made for alterations, modifications or repairs which may be reasonably required in order to place the remaining portion of the Premises not taken in a suitable condition shall belong to County.

30. Breach: Notwithstanding any other provisions contained herein, County may terminate this Agreement if Lessee shall fail, neglect or refuse to perform and obey any term or condition set forth in this Agreement, and said default continues for a period of thirty (30) days after the County has given Lessee written notice of such default. Any waiver by County of any failure by Lessee to comply with the terms and conditions of this Agreement shall not be construed to be a waiver by County of any similar or other failure by Lessee to comply with any other term or condition hereof.

31. Severability: The invalidity of any provision of this Agreement shall not affect the validity, enforceability of any other provision of this Agreement.

32. Status: Lessee shall during the entire term of this Agreement, be construed to be an independent Contractor, and shall in no event be construed to be an employee of County.

33. Entire Agreement and Modifications: This Agreement embodies the whole Agreement between the parties hereto as it pertains to the subject real property and there are no promised terms, conditions, or obligations referring to the subject matter hereof, other than as contained herein. Any alterations, changes or modifications to this Agreement must be in writing and executed by both Lessee and County.

/////////////////////////////////NOTHING FURTHER PAST THIS POINT/////////////////////////////////

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement on the date set forth below.

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors
this ___ day of _____, 2016.

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA NEAL
County Counsel

By: Shanna McIntyre
Deputy County Counsel

Date: 2/19/16

LESSEE:

Friends of the Adobes, Inc.

By: Gary McMaster
Gary McMaster,
President