AGREEMENT

THIS AGREEMENT is entered into this ____ day of _______ 2013, between the CITY OF STOCKTON, a municipal corporation (“City”), and the Stockton/San Joaquin Asparagus Festival, Inc. a nonprofit public benefit corporation (“Contractor”).

RECITALS

A. Contractor desires to use certain property commonly known as the “Festival Site” and specifically described in Exhibit A for the purpose of conducting a festival known as the Asparagus Festival (“Festival”).

B. The Festival creates a unique event for the enjoyment of its residents and visitors and at the same time provides a benefit to numerous charities located in San Joaquin County.

C. The Festival provides a public benefit by creating unique opportunities to promote tourism in the City and promote the Downtown Area.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, and for such other good and valuable consideration, the receipt of which is hereby acknowledged, City and Contractor agree as follows:

1. Contractor’s Services. Subject to the terms and conditions set forth in this Agreement, Contractor shall carry out the services described in Exhibit A. Contractor shall carry out services at that time, place and in the manner specified in Exhibit A.

2. City Assistance, Facilities, Equipment and Staff Support. Except as set forth in Exhibit A, Contractor shall, at its sole cost and expense, furnish all facilities, equipment and personnel that may be required for carrying out the Festival. City shall furnish to Contractor only the facilities, equipment and City staff resources listed in Exhibit A according to the terms and conditions set forth in Exhibit A.

3. Term. The term of this Agreement shall be from the date of execution through June 30, 2016. The term of the agreement is for three years with two potential one-year extensions. The three year term includes the 2014, 2015 and 2016 events. The one-year extensions to this Agreement shall be made by mutual consent of the City and Contractor by June 30 of the proceeding calendar year. The 2017 event will be agreed to by June 30, 2016 and the 2018 event by June 30, 2017.

4. Costs. City will reduce to zero fees associated with certain of Contractors facility rentals and permits as described more particularly in Exhibit A. Contractor will reimburse the City for costs incurred by City staff in support of the Festival as described more particularly in Exhibit A. Invoices submitted by City to the Contractor and
payments made by the Contractor to the City shall conform to the requirements described in Exhibit A.

5. **Changes.** City may request changes in the services to be carried out by Contractor. Minor changes to the footprint of the Festival Site, dates and times of the Festival and street closures can be made by and between the City Manager and the Executive Director of the Festival. All other changes must be made by amendment of this Agreement and approved by the City Council and the Festival Board of Directors.

6. **Contractor’s Status.** In performing the obligations set forth in this Agreement, Contractor shall have the status of an independent contractor and Contractor shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Contractor are its agents and employees and are not agents or employees of City.

7. **Termination for Convenience of City.** Either party may terminate this Agreement by providing written notice of same to the other party only between April 30 and June 30 of each contract year. Once Notice to Terminate has been provided, neither party shall be responsible for the contractual obligations or costs of the other party that would have been incurred in future events under the original terms of the contract. Any materials or supplies purchased by Contractor shall be disposed of by Contractor. Any materials purchased by City for Festival shall be disposed of by City in consultation with Contractor.

8. **Non-Assignability.** The Contractor shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Contractor shall be solely responsible for reimbursing subcontractors.

9. **Indemnity and Hold Harmless.** Contractor shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Contractor in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City’s acceptance of the insurance certificates required under this Agreement does not relieve the Contractor from its obligation under this paragraph.

10. **Insurance.** During the term of this Agreement, Contractor shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached Exhibit B and shall otherwise comply with the other provisions of Exhibit B.
11. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Contractor: Executive Director  
Stockton Asparagus Festival  
P.O. Box 2393  
Stockton, CA 95202

To City: City Manager  
City of Stockton  
425 N. El Dorado Street  
Stockton, CA 95202

12. **Conformance to Applicable Laws.** Contractor shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Contractor shall not discriminate in the employment of employees, volunteers, subcontractors etc. or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

13. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Contractor's engaging in any operation or activity set forth in this Agreement, Contractor shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Contractor covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement. Additional information related to required permits is described in Exhibit A.

14. **Records and Audits.** City reserves the right to review or request an audit of Contractor's records, documents or papers as may be required to confirm Contractor’s continuing existence as a legal nonprofit entity and to ensure compliance in accordance with the terms of this Agreement. City will provide Contractor ten days notice to produce said documentation. Contractor agrees that City or its delegate will have the right to review, obtain and copy all records pertaining to the performance of this Agreement. Contractor agrees to provide the City or its delegate with any relevant information requested and shall permit City or its delegate access to it's premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspection and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three years after expiration under this Agreement.

15. **Confidentiality.** Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

16. **Conflicts of Interest.** Contractor covenants that other than this Agreement, Contractor has no financial interest with any official, employee or other representative of the City. Contractor and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any
manner of degree by the performance of Contractor’s services under this Agreement. If such an interest arises, Contractor will immediately notify the City.

17. **Waiver.** In the event either City or Contractor at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

18. **Governing Law.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Northern District, Sacramento Division.

19. **No Personal Liability.** No official or employee of City shall be personally liable to Contractor in the event of any default or breach by the City or for any amount due Contractor.

20. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

21. **Scope of Agreement.** This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

**THIS AGREEMENT** executed the date and year first above written.

**CITY OF STOCKTON**

__________________________
City Manager

ATTEST:

__________________________
City Clerk

**CONTRACTOR**

By: _______________________
Signature

__________________________
Print name

Title: _______________________

[If Contractor is a corporation signature(s) must comply with Corporations Code §313.]

__________________________
City Attorney
EXHIBIT A

Scope of Contractor's Services

1. Festival Date

The Festival shall be conducted by Contractor for three days (Friday, Saturday and Sunday) during the last full weekend of April of each year.

When the Festival takes place on a regularly scheduled open Friday for the City, additional accommodations will be made as outlined in the “Employee and Public Access” section below.

2. Festival Site

City will grant without cost to Contractor the right to use and occupy public property and public rights-of-way within the Festival Site. The Festival Site is identified by yellow shading in Attachment 1 to this Exhibit. This right to use and occupy the Festival Site is subject to the conditions outlined in the “Employee and Public Access” section below.

More specifically, within the Festival Site, the Contractor will have the right to use and occupy the following locations:

- Public streets and sidewalks within the Festival Site
- The entire footprint of Weber Point
- Park space between Weber Point and the Civic Auditorium
- The Civic Auditorium and area in front of the building
- Martin Luther King, Jr. Plaza
- City-owned storage garage and former Parks and Recreation annex on Lindsey Street
- Parking area beneath the Permit Center
- DeCarli Plaza
- Civic Court (based on the timeframes outlined below)

Contractor shall have the right to use the Festival Site from the Sunday at 6:00 pm before the Festival begins until the Monday at 6:00 pm after the Festival ends. Contractor shall also have the exclusive use of Weber Point Events Center beginning at 8:00 am on the Wednesday of the week prior to the Festival.

City shall grant closure to portions of the following streets within the Festival Site from 3:00 pm the Sunday before the Festival begins until 6:00 pm, at the latest, the Monday after the Festival ends, for staging, set-up and clean-up purposes:

- Center Street
- Miner Avenue
• Fremont Street  
• Lindsay Street  

In addition, Civic Court will be closed from 6:00 am the Thursday before the Festival beings until 6:00 pm, at the latest, the Monday after the Festival ends.

City shall make available parking structures and areas for use by the Contractor in accordance with a parking plan to be included in the annual production plan (described in Section 6, Event Coordination)

City shall make available the following parking structures and areas for use by Festival patrons:

• Arena parking garage  
• The State owned parking lot between El Dorado and Center Streets during the hours the City operates the lot by contract  
• Additional City owned surface lots as outlined in the parking plan to be included in the annual production plan

City shall provide appropriate staff for these parking structures, and will retain revenue obtained from parking fees.

3. **Employee and Public Access**

Employees and the public will have unhindered access to City Hall and the Permit Center at all times during open working hours of the City. In addition, City employees will be allowed access to City Hall at any time throughout the duration that the Contractor occupies the Festival Site.

More specifically, the following accommodations will be made to ensure access to City Hall:

• Contractor will provide open access to City Hall on Lindsay Street sidewalk to the sally port and south steps during open business hours (including ADA Access)  
• Access gates to City Hall will be opened by Contractor by 6 am and not closed until 6 pm Monday through Thursday  
• Contractor will provide access to exit Festival Site beyond 6 pm Monday through Thursday  
• Contractor will provide a 24/7 contact to gain access in or out of Festival site

In addition, preparation and set-up activities of the Contractor will not inhibit the ability of City to conduct City business. The following activities will be scheduled after City business hours:

• Sound checks immediately adjacent to City Hall
Council Dates
When the Festival is scheduled to take place during a week when a City Council meeting is scheduled, the following additional accommodations will be made:

- Contractor will provide open access to Permit Center and City Hall through Civic Court and Lindsay Street sidewalk to the sally port and south steps until 8 pm (including ADA Access)
- Contractor will provide pedestrian and vehicular access to exit Festival Site until 9 pm on the night of the Council Meeting

Open Fridays
When the Festival is scheduled to take place during a regularly scheduled open Friday, the following additional accommodations will be made:

- City Hall and Permit Center will be open from 8 am to 12 pm
- Set up activities or festival events will not be scheduled adjacent to City Hall from 8 am to 12 pm; no actions of the Contractor will inhibit the ability of the public or employees to conduct City business during these hours
- Contractor will provide open access to Permit Center and City Hall on Lindsay Street sidewalk to the sally port and south steps during open business hours (including ADA Access)
- Contractor will not occupy for Festival use the parking spaces on El Dorado Street adjacent to City Hall; City will coordinate signage and enforcement to keep said parking spaces available to the public
- Contractor will provide access to City employees to exit the Festival Site after 12 pm

4. Costs

City will reduce to zero contractor’s fees associated with the following:

- Rental fees for the Civic Auditorium
- Rental fees for Weber Point
- Street closure permits
- Special event permits
- Tent Inspection permits
- City of Stockton Business License

City will provide staffing resources from police, fire, public works, and community services prior to, during, and after the Festival in accordance with the needs identified in the annual production plan (described in Section 6, Event Coordination). The exact hours of employee services will be determined by City, in consultation with Contractor. Activities conducted by City staff will be agreed to in advance through an approved staffing plan to be included in the annual production plan. All additional requests for City staff resources will be coordinated through a staff liaison identified in the annual
production plan. City will work with the Contractor to reduce the costs of city staff time where possible.

City shall be responsible for the provision and cost of water, wastewater, stormwater and electrical utilities to the Festival site. However, Contractor shall be responsible for any damages to utility infrastructure as determined by the annual inspection of the Festival site.

Contractor will reimburse City for all actual City staffing costs at the following percentages:

<table>
<thead>
<tr>
<th>Year</th>
<th>Reimbursement (of total actual costs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1 (2014)</td>
<td>60%</td>
</tr>
<tr>
<td>Year 2 (2015)</td>
<td>80%</td>
</tr>
<tr>
<td>Year 3 (2016)</td>
<td>100%</td>
</tr>
<tr>
<td>Years 4-5 (2017-18)</td>
<td>100%</td>
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</tbody>
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Materials and supplies required by the City for exclusive use of the Contractor shall be purchased by Contractor. Costs shall be shared by Contractor and City for materials and supplies required by City for Contractor use and future City use. All such equipment shall be maintained in serviceable condition by either Contractor or City. In the event the equipment becomes unusable, it shall be replaced in time for the next year’s Festival. City will provide standard equipment that is necessary for the completion of the regular duties of employees assigned as resources to the Festival in the annual City staffing plan (described in Section 6, Event Coordination).

City shall make available the following materials for use during the Festival:
- Temporary cyclone fencing co-owned by City and Contractor

City shall provide Contractor with a detailed invoice for City staff cost reimbursements by May 30 of each year. Contractor shall provide reimbursement to City by June 30 of each year.

5. **Informational Booths & Sponsorship Acknowledgement**

City shall be allowed 3 informational booths at no charge to promote the City, its departments, activities, programs and events. No political endorsements or activities shall be allowed.
Contractor agrees to acknowledge support by City when appropriate and include on printed information relating to this event, determined in concert with the City’s Public Information Officer, the following: “Logo recognition as a “Sponsor” in addition to recognition at Opening Ceremonies and mention at all venues of the event.”

6. Event Coordination

While City will reduce to zero the cost of Contractors permits and licenses, Contractor will retain the responsibility for submitting the necessary paperwork in order to document and facilitate the event coordination with City.

Contractor and City will consult and collaborate together in advance of the Festival to develop an annual production plan. Each party will be responsible for certain elements of the production plan as outlined below. Contractor will submit a preliminary annual production plan for the Festival not later than 90 days before the date of the Festival. City will have 20 days to comment on the annual production plan. A final annual production plan will be agreed to by Contractor and City not later than 60 days before the date of the Festival.

The annual production plan shall provide details that include but are not limited to the following:

- Updated map of the Festival Site detailing venues, secured areas, entry points and public access to City Hall (Contractor)
- Schedule for the full duration that Contractor occupies Festival Site including but not limited to load-in/load-out schedule, site closures, set up activities, event hours and event venues (Contractor)
- Items with which Contractor requests the assistance of City consistent with this Agreement (Contractor)
- Where and how Contractor will be provided access City utilities (City)
- Incident Action Plan for the event (City)
- Security and safety plan for the event (City and Contractor)
- City Staffing Plan for the use of City staff resources (City and Contractor)
- Identify city staff liaison that will serve as the coordination point with Contractor for all issues including any changes to City staffing plan (City)
- Annual Festival Site Inspection Checklist (City and Contractor)
- Parking plan identifying which parking structures or lots that will be available for Contractor use and staffed to facilitate parking for event patrons (City and Contractor)
- Contact and emergency contact information for City staff, Contractor and Festival Site security (City and Contractor)

City and Contractor will conduct an annual inspection of Festival Site prior to the event. A preliminary inspection will take place during the week in advance of the Contractor occupying the Festival Site. A formal inspection will take place on the Wednesday
preceding the event. A follow up inspection will be conducted by City and Contractor no later than the Tuesday following completion of the Festival. City and Contractor will agree to the conditions of the Festival Site for all inspections noted above based on an inspection checklist agreed to and provided in the annual production plan. The pre and post event inspections noted above will be conducted by the same individuals representing City and Contractor for each given year.

Not later than 30 days prior to the date of the Festival, Contractor will deposit with the City the sum of five thousand dollars ($5,000) as a damage deposit for the entire Festival Site. Such deposit, or a portion thereof, depending upon the extent of the damages, if any, shall be returned to Contractor not more than 30 days following the completion of the Festival.

Contractor agrees that no improvements or alterations, temporary or permanent, structural or nonstructural, shall be made to or on the Festival Site without the express written consent of City.

Contractor shall maintain the Festival Site in a safe, sanitary and sightly condition and good repair. Contractor agrees that, at its own cost and expense, it shall repair and yield the Festival Site back to the City at the conclusion of the Festival in a condition no less than that which existed prior to the Festival, including removal of all garbage or debris generated as a result of the Festival. In addition, Contractor agrees to power wash all sidewalks, plazas, and public hardscape immediately following the Festival.

City reserves the right to have a Deputy City Manager or designee enter the Festival Site at any time for the purpose of inspecting any facilities and all aspects of the production and operation of the Festival.

7. **Other Guidelines**

Contractor will observe and comply with the rules and regulations promulgated by the City’s Police and Fire Departments for the production of the Festival, and shall cooperate with City in the implementation of those rules and regulations.

Contractor will observe and comply with the County’s Environmental Health guidelines for food handling under the applicable laws, and shall cooperate with County in the implementation of those guidelines.

Contractor agrees to keep the Festival Site free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by or on behalf of Contractor.

The execution of this Agreement shall constitute written consent to the use and/or occupation of the Festival Site by such vendors or subcontractors as are listed in the Contractor’s annual production plan, solely for those purposes described in that plan.
INSURANCE REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, or employees.

1. INSURANCE Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than “A: VII” in Best Insurance Key Rating Guide, the following policies of insurance:

   A. AUTOMOBILE LIABILITY insurance, endorsed for “any auto” with the following limits of liability: $1,000,000 per accident for bodily injury and property damage.

   B. WORKERS’ COMPENSATION insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than $1,000,000 per accident/injury/disease.

   C. COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;

   FOR ADDITIONAL REQUIREMENT(S):

     (i) COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY insurance which shall include Contractual Liability, Products and Completed Operations coverage’s, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than $2,000,000 per occurrence, and if written on an Aggregate basis, $4,000,000 Aggregate limit.

     (ii) EVENTS COVERAGE, Not less than $1,000,000 covering all subcontractors and vendors participating in the Festival.

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

1. The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.

2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

3. For any claims related to services or products provided under this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Contractor’s insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days’ prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers’ compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

5. Regardless of these contract minimum insurance requirements, the Contractor and its insurer shall agree to commit the Contractor's full policy limits and these minimum requirements shall not restrict the Contractor's liability or coverage limit obligations.

6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY’s execution of the Agreement and start of work.

8. Proper address for mailing certificates, endorsements and notices shall be:

   City of Stockton
   Attention: Risk Services
   425 N. El Dorado Street
   Stockton, CA 95202

9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY’s Risk Manager (209) 937-8617. Our fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor’s insurance shall have the same impact as described above.