



ALAMEDA
COUNTY
FAIRGROUNDS
PLEASANTON

4501 Pleasanton Avenue, Pleasanton CA, 94566
(925) 426-7600 Ph (925) 426-7599 Fax

AGREEMENT –USE OF ALAMEDA COUNTY FAIRGROUNDS

Date: October 28, 2011

This Agreement by and between the Alameda County Agricultural Fair Association hereinafter called the Association, and **Alameda County Central Railroad Society** represented in this Agreement by Gary Lewis, a duly authorized representative, hereinafter called the Licensee.

WITNESSETH:

1. The Licensee represents and warrants that the legal name as contained in the License along with all other information in this license are accurate and correct in all respects and makes this warranty as of the date of this License and continuing through its duration. Licensee further represents and warrants that the Authorized Representative listed in the License has full, complete and absolute authority to bind the Licensee. If the Licensee is a corporation, it warrants and represents that it is in good standing and active and, if it is not a Corporation, it warrants and represents that it is authorized to do business in the State of California. Any change in the Licensee's legal name, fictitious name, address, telephone number, or Authorized Representative, shall be forwarded to the Association, in writing, within three (3) days after the change. Furthermore, the individual executing this License on behalf of the Licensee absolutely, personally, unconditionally, and continually warrants and guarantees Licensee's full and faithful performance and payment of all obligations under this License.
2. THAT WHEREAS, The Licensee desires to secure from the Association certain rights and privileges and to obtain permission from the Association to use Association premises on:
1/1/2012 to 12/31/2014 with two (2) one (1) year options to renew if mutually agreed upon.
3. This License is only for the dates as set forth in this License. Licensee agrees, that the fact it has been granted a License in the past shall not entitle Licensee to any right to use the fairgrounds in the future or in the same location as provided in the past. Additionally, nothing shall prevent the Association from granting a License to an entity, which is competitive to the Licensee hereunder.
4. NOW, THEREFORE, Association hereby grants to the Licensee the right to occupy the space(s) described below for the purposes hereinafter set forth, subject to the terms and conditions of this Agreement:
A portion of Building F on the Fairgrounds. Association may request Model Railroad & Train Club to relocate to a different building.
5. The purposes of occupancy shall be limited to, and shall be for no other purpose or purposes whatsoever:
Hold weekly meetings and construct, maintain and exhibit (during events) the miniature train display by the Model Railroad & Train Club in a significant portion of Building F at the Alameda County Fairgrounds.
6. Licensee agrees to pay to Association for the rights and privileges hereby granted, the amounts and in the manner set forth below:
7. RENTAL FEE: A rental fee payment in the amount of **\$0.00 (Value of Rent and Utilities: \$38,300)** shall be paid by the Licensee to the Association no later than thirty (30) days prior to the date of use of Fairgrounds facilities as heretofore set forth. Failure of Licensee to pay the rental fee by the time stipulated, unless otherwise approved by Fair Management, shall be cause for termination of the Agreement by Fair Management.

8. **TRADE:** Upon execution of this License Agreement, Licensee agrees to pay for all materials needed to repair the roof of all the Building F, not to exceed \$12,000, and the Association agrees to pay for all the labor for the roofing project valued at \$10,000. If Association requests Licensee to vacate Building F prior to January 1, 2014 and no alternative location is offered, the Association will reimburse Licensee on a prorated basis of the materials for the roof project as follows:
 - a. If Licensee is requested to vacate before December 31, 2012; the Association shall reimburse Licensee \$8,000
 - b. If Licensee is requested to vacate after January 1, 2013 but before December 31, 2013; the Association shall reimburse Licensee \$4,000
 - c. If Licensee is requested to vacate after January 1, 2014; there shall be no reimbursement by Association
9. The Association shall have the right to audit and monitor any and all sales or donations and the right of timely access to the premises when requested by Association.
10. Licensee further agrees that he will not sell, exchange or barter, or permit his employees to sell, exchange or barter, any permits issued to Licensee or his employees hereunder. It is mutually agreed that this License Agreement or the privileges granted herein, or any part thereof, cannot be assigned or transferred without the written consent of the Association.
11. It is mutually understood and agreed that no alteration or variation of the terms of this contract shall be valid, unless made in writing and signed by the parties hereto, and that no oral understandings or Agreements not incorporated herein and no alterations or variations of the terms hereof, unless made in writing and signed by the parties hereto, shall be binding upon any of the parties hereto.
12. Rules and regulations of the Association are made a part of this Agreement as though fully incorporated herein, and Licensee agrees that he has read this Agreement and the said Rules and Regulations and understands that they shall apply, unless amended by mutual consent in writing of the parties hereto.
13. In the event Licensee fails to comply in any respect with the terms of this Agreement and the Rules and Regulations referred to herein, all payments for this rental space shall at the option of the Association be deemed earned and non-refundable by the Association and the Association shall have the right to occupy the space in any manner deemed for the best interests of the Association. If the Association may terminate this Agreement without cause, Licensee shall be compensated as outlined in Section 8. Licensee must vacate premises upon 90 days written notice.
14. **Special Provisions:** Any additional use of Facilities, accessories, labor, and/or equipment is subject to charges shown on the Rental Rate Sheet provided:

Use of the facility and grounds outside of what is outlined in section 5 must be pre-approved by Association.

Designated parking area is Festival Paved Lot. Only 3 handicap spaces will be provided directly outside the rented Building F. Do not block roadway access in front of Building. Photo ID badges are to be used for parking and entrance into events.
15. This Agreement is not binding upon the Association until it has been duly accepted and signed by its authorized representative. All risk of loss, damage, injury, or liability of any nature whatsoever to Licensee or his property arising in any respect, directly or indirectly out of use or occupation of any part of the premises of the Association pursuant to this Agreement shall be borne by Licensee. Whenever by the terms hereof this Agreement becomes null and void or Association exercises a right herein given to cancel this Agreement, all of Licensee's rights hereunder shall cease. Licensee if in possession of these Facilities, shall immediately surrender possession thereof to Association, and Association shall have the right to dispossess Licensee and its invitees without liability to action for prosecution or damages as a result thereof.
16. In the event of legal action by the Association against Licensee arising in any respect out of this license, Licensee agrees to pay all costs to the Association of such action including reasonable attorney fees.
17. The Association must approve all sound and P.A. devices in writing. Amplified sound systems may not exceed local or county noise ordinance and shall remain below a d.b.i. of 65 at 100 feet from sound system.

18. Licensee shall furnish upon request receipts for license fees and tax deposits.
19. All property of any nature whatsoever used in connection with the assigned space by Licensee at his own expense, and the Association is hereby authorized and made the agent of Licensee to remove and store any and all property not removed with five days after release is obtained from the Association management, and Licensee shall reimburse the Association for any costs or expenses, including but not limited to reasonable attorney fees, incurred in so doing.
20. Fair Employment Practices. Licensee agrees to comply with all applicable laws, regulations and executive orders regarding employment and equal access to public facilities, in the use of this license, Licensee will not discriminate against an employee or applicant for employment because of race, color, religion, ancestry, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection or training, including apprenticeship. Licensee shall post in conspicuous places, available to employees and applicants for employment, notices provided by the State of California, setting forth the provisions of the Fair Employment Practices Section.
21. Licensee shall to comply with all Local, State, and Federal laws and Alameda County Fair Association rules and regulations. Alameda County Fair Association "Use Guidelines" are hereby incorporated into this contract. Licensee shall obtain appropriate sign permits for advertising. The Alameda County Fair Association will make available information regarding Licensee to any Local, State and Federal agency upon request.
22. Licensee will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practice Commission, or any other agency of the State of California designated by the Association, for the purposes of investigation of this license.
23. INSURANCE: As determined by the Fair Management based on the type of event and liability exposure, Licensee shall provide the Fair Association a certificate of evidence of BROAD FORM COMPREHENSIVE GENERAL LIABILITY insurance WITH A LIMIT OF NOT LESS than ONE MILLION DOLLARS (\$1,000,000) COMBINED SINGLE LIMIT for BODILY INJURY and PROPERTY DAMAGE. Said certificate shall include and name as additional insureds the ALAMEDA COUNTY AGRICULTURAL FAIR ASSOCIATION, the COUNTY OF ALAMEDA AND STATE OF CALIFORNIA and shall provide coverage to the Officers, Directors and Employees of the Alameda County Agricultural Fair Association and the Board of Supervisors and any and all of their respective officers, deputies and employees, whether sued as individuals and/or in their official capacities and/or whether sued singly and/or collectively and/or in any combination whatsoever. A certificate hereinabove specified and required shall be properly endorsed, giving at least TEN (10) DAYS prior written notice in case of cancellation or material change in the form of coverage and shall be issued to the Alameda County Agricultural Fair Association and SHALL BE FILED BY SAID LICENSEE WITH THE MANAGER of said ALAMEDA COUNTY AGRICULTURAL FAIR ASSOCIATION.
 - (A) The Licensee agrees to defend, indemnify and save harmless The State of California, County of Alameda, the Alameda County Agricultural Fair Association, and, their officers, agents, deputies and employees from any and all claims or liability, causes of action and suites accruing or resulting from any damage to real or personal property, done directly or indirectly by the Licensee or any spectator, solicited or unsolicited, and for damage caused by accident, neglect and/or arising out of or in any way connected with the exercise of Licensee of the privileges herein granted; and that a certificate of insurance shall be provided showing the County of Alameda, the Alameda County Fair Association and the State of California, their officers, agents and employees, as additional insured. Licensee shall pay a reasonable attorney's fee in the event suit is brought to enforce any of the provisions of this Agreement.
 - (B) The Licensee agrees that the Association shall not be held liable for damage to equipment, displays, merchandise or items in storage, either owned or loaned by Licensee or on loan to Licensee, that is located in or around Building F.
24. Any applicable license and/or taxes are to be paid by Licensee. Licensee agrees to obtain sales tax permit from the State Board of Equalization and will be responsible for payment of taxes levied on any such interest. It is understood and agreed to by the Licensee that the purpose for the use of the Fairgrounds facilities must comply with the City, County and State rules, regulations, laws and ordinances, and further

agrees to comply with AB253 (Chapter 356 statutes of 1977) adds section 107.6 to Revenue & Taxation Code. Licensee recognizes and understands that this license may create a possessory interest subject to payment of taxation, and Licensee may be subject to payment of property taxes levied on such interest. Licensee further agrees to observe all municipal, county, and State sign ordinances and regulations. Fair Management shall provide requesting municipal, county and State agencies all information available to the Association to expedite contact with Licensee.

25. Licensee shall conduct his business in a quiet and orderly manner; shall deposit all rubbish, slop, garbage, tin cans, paper; etc. in receptacles provided by the Association and shall keep the area within and surrounding the assigned space free from all rubbish and debris. Licensee agrees to maintain the premises of the Association which Licensee is hereby permitted to use or to which Licensee has access by reason of this Agreement, in good condition, and to return these premises in the same condition as they were before use or access by Licensee, except only for ordinary wear and tear, damage by the elements, acts of God, or casualties beyond the control of Licensee.
26. Venue for any legal proceedings brought in connection with this Agreement or any aspect of the relationship between the parties, shall be in Alameda County. This Agreement and all documents related thereto shall be governed by and construed in accordance with the Laws of the State of California.
27. The Association will be permitted to enter and to inspect the licensed premises at any and all times.
28. Licensee, his officers, agents and employees shall act in an independent capacity and shall not represent themselves or be construed to be officers, agents, or employees of the Association or the County of Alameda.
29. Time is of the essence in every provision of this license.
30. This license does not constitute a lease, but constitutes a mere license to Licensee and is limited to those premises which are expressly and specifically described in paragraph 2 above and to those premises only. All activities of Licensee, his agents, employees or representatives must be confined within the space allotted to the Licensee and may not be carried elsewhere on the premises of the Association.
31. Licensee hereby waives any and all claims for compensation for any and all loss or damage sustained by reasons of any defect, deficiency or impairment of the electrical, computer systems, plumbing and air conditioning installations or any part thereof furnished on the fairgrounds, or by reason of any loss or impairment of lighting, electrical current or water which may occur from any cause, or for any loss or damage sustained resulting from fire, blackout, brown-out, water, wind, civil commotion, riot, labor strikes, or act of God and the Licensee, his agent, officers, and other authorized representatives, hereby waive all rights and claims, action and causes of action and damages arising from any of the causes aforesaid or in any manner whatsoever.
32. Licensee by signing this Agreement assures, the Alameda County Fair Agricultural Association that it, Licensee and each of Licensee's sublicenses, leases, sub-contractors, vendors, exhibitors, promoters, agents and employees, if any, comply with the American with Disabilities Act ("ADA") of 1990, (42.U.S.C. 12101 et seq.) and California Disabled Persons Act (Cal Civil. Code 54 et Seq.) and all relevant provisions of the Health and Safety and Business and Professions Codes, as well as all applicable regulations and Guidelines issued pursuant to the ADA, namely the American with Disabilities Act Guidelines ("ADAAAG") and all applicable regulations and guidelines issued pursuant to California law including Title 24 of California's Building Code. Failure to comply may subject Licensee to civil liability and damages. Licensee further agrees that this covenant to comply may subject Licensee to civil liability and damages. Licensee further agrees that this covenant to comply with State and Federal disability access requirements continues for the duration of the Agreement.
33. The Licensee agrees that it is responsible for the success or failure of its Event. The fact that Licensee is restricted by and subject to the terms and conditions of this License is a risk that Licensee freely assumes.

34. IN WITNESS WHEREOF, This Agreement has been executed in triplicate, by and on behalf of the parties hereto, the day and year first above written.

Organization / Individual:

Alameda County Central Railroad Society
Organization

Gary Lewis
Individual

Address **4501 Pleasanton Ave, Pleasanton, CA 94566** Phone No: cell 510-772-7854

(Signature of authorized representative)

Date

April Mitchell, Manager Marketing & Events
Alameda County Fair Association

Date