

Approved September 7, 2016

SERVICE MARK AGREEMENT

THIS SERVICE MARK AGREEMENT (hereinafter referred to as "Agreement") is effective _____ (date) by and between OLIVE OIL COMMISSION OF CALIFORNIA, with its principal place of business in Sacramento, California (hereinafter referred to as "Commission") and _____, with its principal place of business in _____, California (hereinafter referred to as "Handler").

RECITALS

WHEREAS, Commission is the owner of a logo for the Olive Oil Commission of California. A copy of the logo and approved language in conjunction with the use of the logo is attached hereto as **Exhibit A** and incorporated herein by this reference (hereinafter "logo" or "logo design");

WHEREAS, the logo was developed by the Commission and is the sole and exclusive property of the Commission;

WHEREAS, Handler desires to obtain a license for use of the logo design, and Commission desires to allow Handler to use the logo design under the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the parties hereto agree as follows:

1. Use of the Logo. Subject to the terms and conditions of this Agreement, Handler agrees to use the Commission's logo design and language as an identifier of and meeting the provisions of the Commission.

2. License. Commission hereby grants to Handler, the revocable, non-exclusive right to use the logo, and Handler agrees to use said logo only in connection with the offering for sale, selling, marketing, or distribution of olive oil produced and sampled in compliance with Commission law and standards in California. Handler agrees to maintain, and submit to Commission or its agent upon request, documentation sufficient to prove that all olive oil sold, marketed, or distributed under the logo are, in fact, olive oil produced in California and sampled pursuant to Commission law and standards. Handler acknowledges and agrees that all goodwill developed in connection with the use of the logo is for the benefit of the Commission. It is understood and agreed that the logo shall only be used by Handler for the sale, marketing, or distribution by Handler of olive oil produced in California, and for no other purpose. Handler further agrees that the logo shall only be used by Handler for the sale, marketing, or distribution of olive oil which are sampled in compliance with

Commission law and standards. Handler agrees to maintain, and submit to Commission or its agent upon request, documentation sufficient to prove that all olive oil sold, marketed, or distributed under the logo are, in fact, sampled in compliance with Commission law and standards.

3. Registration of Logo/Service Mark and Logo. The Commission logo/ servicemark is a registered California service mark. [The Commission's application for federal registration of the logo design is currently pending at the U.S. Patent and Trademark Office.] Commission also reserves the right to file applications for registration of the marks in any state or country. Handler agrees to cooperate with Commission to affect such filing(s). Handler hereby agrees that it shall not file with the United States Patent and Trademark Office, the California Secretary of State, or any other state or country, an application for registration of the marks, or any type of trademark, service mark, trade name, or the like, which in any way utilizes the marks or any portion or facsimile of the marks. Additionally, Handler hereby acknowledges and agrees that this Agreement does not provide Handler with any type of ownership interest in the marks, but provides Handler with only the use of the marks during the term of this Agreement. Handler hereby waives any and all possible rights to ownership or use of the marks other than as specifically provided in this Agreement.

4. Term. The term of this Agreement shall be for a period of 12 months, commencing _____ (date), and terminating _____, (ending date) unless terminated earlier as provided below.

5. Future Use. Although Commission makes no promises herein regarding whether or not this Agreement will be renewed at the end of the term described in paragraph 6 above, Commission represents that it will negotiate in good faith regarding renewal of this Agreement if requested by Handler.

Handler understands and agrees that Commission is the owner of the logo design/logo/service mark and that both mark is an asset of the Commission. Handler further understands and agrees that Commission has the right to assign or transfer ownership of such asset to another entity if necessary or desirable. However, Commission understands that Handler may be interested in long-term use of the mark, and as such, Commission agrees that if it voluntarily assigns or transfers the logo design/logo/servicemark, it will do so only on condition that the new owner agrees to allow Handler to continue to use the mark under conditions similar to those described in this Agreement (so long as Handler is not in breach or default of this Agreement at the time of Commission's voluntary assignment or transfer of the marks).

6. Termination. This Agreement may be terminated only for good cause. In the event either party believes it has good cause for termination of this Agreement, the terminating party shall send written notice to the other party stating the intent to terminate and the reasons for the termination. Any notice given pursuant to this paragraph 8 shall be given only in a manner in which the sending and receipt of the notice can be adequately evidenced (i.e., personal service by a process server, or

certified mail, return receipt requested, or overnight express mail service which has tracking/documenting capabilities.

If the cause for termination is one that cannot be cured, the Agreement shall terminate on the date the written notice of termination is received by the other party or on any future date specified in the notice. If the cause for termination is one that can be cured, the notice shall give 10 days from receipt of the notice in which to cure. If a cure is made within the 10 days, the Agreement shall continue until the end of the term. If a cure is not made within the 10 days, the Agreement shall terminate on the eleventh day after the terminated party received the notice of termination.

“Good cause” for Commission to terminate this Agreement immediately includes but is not limited to: 1) any breach described in paragraph 9 below or any other material breach or default of this Agreement; 2) the filing of any administrative or civil action by Handler against Commission, whether related or unrelated to this Agreement; 3) circumstances in which the Commission or its activities/operations are suspended or terminated, or in which its funds are reduced or eliminated, by any of the following: a) the Commission’s board of directors, b) Commission members, c) the California Legislature, d) a court, e) the California Department of Food and Agriculture, or f) any other government agency; or 4) any circumstance in which the Commission’s ownership of the marks or its right to license the use of the marks is taken away involuntarily.

In the event Commission terminates this Agreement for cause, Handler shall cease selling, using, or distributing the logo and shall cease using the mark in any way, upon the effective date of the termination, and shall return all unused material bearing the marks to Commission within 15 days after the effective date of termination. Further, in the event Commission terminates the Agreement for cause because of a breach or default by Handler or because Handler has filed an action against Commission, Handler, and any of Handler’s officers, directors, or partners, shall not be eligible to enter a subsequent agreement for use of the mark(s) until Handler has abstained from any and all use of the logo and marks and from any further violation of the terms of this Agreement, for a period of two years.

7. Breach. The use by Handler, whether with or without its knowledge, of the logo for the sale of olive oil not produced in California shall constitute a material breach of this Agreement. The use by Handler, whether with or without its knowledge, of the logo for the sale of olive oil which are not sampled in compliance with Commission law and standards shall constitute a material breach of this Agreement. The failure or refusal of Handler to permit Commission or its qualified agents or representatives to inspect, at all reasonable times, Handler’s business facilities and plant where its olive oil is delivered, processed, packaged and sold shall constitute a material breach of this Agreement. The failure or refusal of Handler to timely remit Commission assessment reports or payments shall constitute a material breach of this Agreement. Other acts or omissions by Handler or Commission, not expressly identified herein, may also constitute a material breach of this Agreement.

8. Indemnification. Handler agrees to indemnify and hold Commission and its officers, directors, employees, and agents harmless from any and all liability, loss, damages, attorney's fees and other expenses which Commission or its officers, directors, employees, or agents may sustain or incur as a consequence of Handler's breach of this Agreement or its use or misuse of the logo/logo/service mark, including, but not limited to, indemnity for sums paid or liabilities incurred in settlement of and expenses paid or incurred in connection with claims, suits or judgments against Commission or its officers, directors, employees, or agents, expenses paid or incurred in enforcing the terms of this Agreement, and procuring or attempting to procure release from liability or in recovering or attempting to recover losses or other expenses paid or incurred as a result of Handler's breach of this Agreement or its use or misuse of the logo/logo/service mark.

9. Civil Actions. Commission may commence civil actions and utilize all remedies provided in law or equity for the enforcement of the terms of this Agreement, and for the obtaining of injunctive relief or specific performance, with respect to the covenants, terms and conditions of this Agreement.

10. Liquidated Damages. In the event of a material breach of this Agreement by Handler involving the misuse of the logo, it is and will be impracticable and extremely difficult to fix the actual damages to Commission by reason of Handler's breach. Therefore, the parties to this Agreement fix the following as liquidated damages that Handler agrees to pay to Commission \$25,000 for each material breach of this Agreement by Handler involving the misuse of the logo:

This sum represents a reasonable approximation of the damages that are likely to result to Commission from each material breach of this Agreement.

11. No Waiver. Commission's failure to enforce any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement. The subsequent granting of a license by Commission shall not be deemed to be a waiver of any prior occurring breach by Handler of any term, covenant, or condition of this Agreement.

12. Attorney's Fees and Venue. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other reasonable relief to which it may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Sacramento, State of California for any proceeding arising hereunder.

13. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to their

rights and obligations for the licensing of the logo. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or in writing have been made by any party or anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promises shall be valid or binding.

14. Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

15. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

16. Survival. The following paragraphs shall survive the termination of this Agreement: 3, 4, 7, 8,9,12, 14, 15, and 16.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and in the year first set forth above.

HANDLER:

a _____

By: _____

Type or Print Signature and Title

Area Code & Telephone

COMMISSION:

OLIVE OIL COMMISSION OF CALIFORNIA, a California state government agency

By: _____

Type or Print Signature and Title