

CONCESSION AGREEMENT
for the
OPERATION AND MANAGEMENT
of the
LAGUNA SECA RECREATION AREA
between
THE COUNTY OF MONTEREY
and
FRIENDS OF LAGUNA SECA
dated
_____, 2023

CONCESSION AGREEMENT

This Concession Agreement (“Agreement”) dated _____, 2023 is between the County of Monterey, California (“County”), a political subdivision of the State of California, and Friends of Laguna Seca, a California non-profit public benefit corporation (“Contractor”) (each a “Party,” collectively, the “Parties”).

RECITALS

WHEREAS, in 1974 the area now known as Laguna Seca Recreation Area (“LSRA”), formerly part of Fort Ord, was transferred from the United States Government to County pursuant to a quitclaim deed, which deed has been amended twice (collectively, the “Army Deed”); and,

WHEREAS, since County’s acquisition of LSRA in 1974, County has operated and managed the racetrack and associated facilities located within LSRA (currently known as WeatherTech® Raceway Laguna Seca, hereinafter “Raceway”) under a series of concession and management agreements, most recently under a management agreement with A&D Narigi Consulting, LLC (“Manager”), effective January 1, 2020, and which expires on December 31, 2023; and,

WHEREAS, in addition to the Raceway, LSRA includes various campgrounds and two rifle/pistol ranges; and

WHEREAS, in 1983, the County Planning Commission approved Use Permit No. 2991 (“Use Permit”) governing the operation and general development of LSRA; and

WHEREAS, LSRA has historically held contracted events in addition to events permitted pursuant to the Use Permit; and,

WHEREAS, Contractor is organized for the specific purpose of supporting LSRA and its related facilities, activities and events; and

WHEREAS, County and Contractor have reached mutually agreeable terms for the operation and management of LSRA pursuant to a new concession agreement (“Agreement”), and now desire to set forth those terms in writing; and,

WHEREAS, Manager has agreed to the assignment of its management agreement to Contractor, and supports the granting of a concession to Contractor; and,

WHEREAS, it is the intent of the Parties that the operation and management of LSRA shall be consistent with historical practice, and the terms of the Use Permit and Army Deed, until a new master plan for LSRA is prepared and approved, and appropriate environmental review is performed; and,

WHEREAS, it is the further intent of the Parties that Contractor may operate and manage LSRA without day-to-day interference from County provided that Contractor complies with all terms and conditions of this Agreement, and County has the ability to provide necessary and appropriate oversight in its fiduciary role as owner of a major County asset; and,

WHEREAS, it is the further intent of the Parties that Contractor, its officer, employees and agents be considered independent Contractors and not County employees, pursuant to the guidelines set forth in Assembly Bill 5 (Gonzalez, 2019);

NOW THEREFORE,

County and Contractor agree as follows:

ARTICLE 1. DEFINITIONS.

The following definitions and terms shall be interpreted to have the following meaning and intent.

- 1.1. “Adverse Consequences” means any and all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys’ fees and expenses.
- 1.2. “Agreement” means this Concession Agreement.
- 1.3. “Army Deed” means that certain quitclaim deed from the United States Government to County dated October 31, 1974 and recorded in Monterey County Official Records at Reel 944 Page 1077, conveying LSRA to County, as amended on August 6, 1986 by document recorded in Monterey County Official Records at Reel 2012 Page 235, and as further amended on January 21, 2000 by Document No. 2000082485, Monterey County Official Records. A copy of the Army Deed is attached hereto and incorporated herein by reference as Exhibit A.
- 1.4. “Board” means Contractor’s Board of Directors.

- 1.5. “Business Plan” means the long-term business plan described in Section 4.11
- 1.6. “Capital Expenditures” means all expenses on a calendar year basis for Capital Improvements and other Depreciable Assets as set forth in the Facility Master Plan.
- 1.7. “Capital Expense Fund” means an account with a financial institution established by Contractor as set forth in Section 6.3.
- 1.8. “Capital Improvements” means those physical improvements to the Concession Premises identified in the Facility Master Plan.
- 1.9. “Concession” means the right to utilize, administer, operate, maintain, improve, and manage the entirety of the Concession Premises and the Personal Property for public park and recreation purposes, subject to the terms and conditions in this Agreement.
- 1.10. “Concession Fee” means the sum paid to County pursuant to Article 3.
- 1.11. “Concession Premises” means all areas of the LSRA, including, but not limited to, the racetrack, paddock, infield, camping areas, and open space/habitat parcels but specifically excluding the rifle/pistol ranges and certain cell/radio towers. A map of the Concession Premises is attached hereto as Exhibit B.
- 1.12. “Conditions Precedent” means those conditions set forth in Section 2.3.
- 1.13. “Contractor” means the Friends of Laguna Seca, a California non-profit public benefit corporation.
- 1.14. “County” means the County of Monterey.

- 1.15. “County Representative” means the person designated in writing by County to Contractor for Agreement liaison purposes as described in Section 11.2.
- 1.16. “County Services” means those services currently provided by County for the operation and maintenance of the Concession Premises. County Services include but are not limited to Information Technology services and other County overhead costs associated with the management and operation of the Concession Premises.
- 1.17. “Countywide Cost Allocation Plan (COWCAP)” means the distribution of Centralized Service Unit costs to Benefiting Departments.
- 1.18. “Depreciable Assets” means those fixed and mobile assets at the Concession premises used for generating income or profit, that have a useful life of more than a year and gradually reduces in value over time, and that are on the County depreciation schedule for accounting purposes.
- 1.19. “Effective Date” means the date last signed by one of the parties, which date is [to be inserted].
- 1.20. “Facility Master Plan” means the facility master plan described in Section 5.2, as may be amended from time to time.
- 1.21. “Fiscal Year” means County’s fiscal year, July 1 – June 30.
- 1.22. “Gross Revenue” means all revenue generated, directly or indirectly, as result of events or activities occurring, pursuant to this Agreement, on, at or in the Concession Premises. Except as may be specifically agreed to in writing otherwise, Gross

Revenue includes, but is not limited to, all revenue derived from advertising, sponsorship, event sanctioning fees, partnerships, donations, pledges, ticket sales, merchandise sales, food or beverage sales; daily track or other facility rentals; the provision of services; or monetary or in-kind receipts from any and all sources of income derived in whole or in part from any business transacted on, at, or in the Concession Premises, whether from customers or otherwise, both cash and on credit, and in cases of sales or charges on credit, whether or not payment is actually made or received.

- 1.23. “Immediate Repairs” means those repair and maintenance items at the Concession Premises in the Facility Master Plan that require attention for health and safety reasons within twelve (12) months following the Operational Date, as described in Article 5.
- 1.24. “Improvements” means the improvements built or installed, or caused to be built or installed by Contractor on the Concession Premises pursuant to this Agreement, such improvements to be owned by County at the end of the term. Improvements include, but are not limited to, Capital Improvements.
- 1.25. “Irrevocable Obligation to Spend” means one of the following: (i) Contractor has entered into a written contract or Agreement that obligates Contractor to spend the sums set forth in the contracts on capital improvements as set forth in the Facility Master Plan. Such written contract could include a pledge agreement from a donor to Contractor whereby the donor requires that Contractor spend the specified sum on capital improvements, (ii) Contractor has provided County with a bond in an amount

- equivalent to an amount to pay for an identified capital improvement, or (iii) Contractor has established an escrow account with a reputable financial institution for the benefit of County into which is deposited an amount equivalent to an amount to pay for an identified capital improvement.
- 1.26. “LSRA” means the Laguna Seca Recreation Area.
- 1.27. “Major Spectator Events” means those events so defined by the Use Permit and as historically sponsored under the prior concession and management agreements, and in general are described as large events with an attendance of 12,000 – 20,000 persons per day. The general public may attend Major Spectator Events by ticket purchase under the conditions established by Contractor.
- 1.28. “Manager” means A&D Narigi Consulting, LLC.
- 1.29. “Management Agreement” means that certain agreement between County and Manager for the management and operation of LSRA, effective January 1, 2020, through December 31, 2023, as amended from time-to-time.
- 1.30. “Material Agreement, Term, Covenant or Condition” means the obligations set forth in Sections 3.1, 4.19, 5.1, 5.2, 6.4, 6.5, 6.7, and 8.1, and Articles 9, 10 and 11.
- 1.31. “Medium Spectator Events” means those events defined by the Use Permit and as sponsored under the prior concession and management agreements, and in general are described as medium events with an attendance of 5,000 – 12,000 persons per day. The general public may attend Medium Spectator Events by ticket purchase under the conditions established by Contractor.

- 1.32. “Naming Rights” means the exclusive right to have a name of any kind associated with the entirety of (i) the LSRA, (ii) the Raceway (with or without the paddock), (iii) any building, compound or other physical structure at LSRA (i.e. the bridges); (iv) the campground facilities, or (v) the rifle/pistol ranges if such ranges become part of the Concession Premises pursuant to Section 4.20, for a defined period, with or without compensation. Naming Rights do not include routine advertising or sponsorships for specific events at the Concession Premises.
- 1.33. “NOI” means the annual net operating income (or portion thereof) derived from or arising out of activities at the Concession Premises in a calendar year. NOI shall be determined by calculating all Gross Revenue minus all Operating Expenses. NOI excludes capital expenditures, depreciation and amortization, gain/loss on sale of assets, interest expense, and other non-operating items.
- 1.34. “Operating Expense Fund” means an account with a financial institution established by Contractor as set forth in Section 2.3.2.
- 1.35. “Operating Expense Reserve” means an amount equal to five million dollars (\$5,000,000).
- 1.36. “Operating Expenses” means all expenses associated with the operations and maintenance of the Concession Premises and includes any taxes, fees, assessments, and any permit or licensing fees imposed by any local, state or federal agency, but does not include capital expenditures, depreciation and amortization, gain/loss on sale of assets, interest expense, and other non-operating items.

- 1.37. “Operational Date” means the date upon which all the Conditions Precedent are satisfied, as evidenced by the written agreement of the Parties, and Contractor may enter upon the Concession Premises and implement the terms of this Agreement.
- 1.38. “Party” means County or Contractor individually, “Parties” means County and Contractor, collectively.
- 1.39. “Personal Property” means all tangible personal property owned by County and located at the LSRA.
- 1.40. “Raceway Facilities” means the area at the Concession Premises that includes the racetrack and associated buildings, land and facilities.
- 1.41. “Reunion” means that event called the Rolex® Monterey Motorsports Reunion held annually at LSRA, including the event known as the Pre-Reunion.
- 1.42. “Sea Otter Agreement” means that certain agreement for the staging of that event known as the Sea Otter Classic between County and LTF Triathlon Series, LLC, a wholly owned subsidiary of Life Time, Inc., effective December 22, 2016.
- 1.43. “Small Spectator Events” means those events defined by the Use Permit and as sponsored under the prior concession and management agreements, and in general are described as small events with an attendance of 1,000 – 5,000 persons per day. The general public may attend Small Spectator Events by ticket purchase under the conditions established by Contractor.

- 1.44. "Spectator Events" means events at the Concession Premises at which the general public is allowed to attend and observe. Spectator Events include, but are not limited to Large, Medium and Small Spectator Events.
- 1.45. "STCIP" means the short-term capital improvement program to be included in the Facility Master Plan as described in Section 5.2.
- 1.46. "Term" means the term of this Agreement and the Concession as set forth in Section 2.5.
- 1.47. "Termination Date" means the date on which the Term expires as set forth in Section 2.5, or the date on which this Agreement is otherwise terminated.
- 1.48. "Use Permit" means that certain permit number 2991 issued by the County Planning Commission on or about October 26, 1983, pursuant to Resolution number 83-376. A copy of the Use Permit is attached hereto as Exhibit C.
- 1.49. "WeatherTech® Agreement" means that certain agreement between County and WeatherTech Direct LLC effective April 1, 2018, as amended by that certain Amendment No. 1 effective as of March 22, 2022, and that certain amendment No. 2 effective as of July 1, 2023.

ARTICLE 2. GRANT OF CONCESSION AND TERM.

2.1. Concession Granted.

Subject to the satisfaction of the Conditions Precedent set forth in Section 2.3, below, County hereby grants Contractor an exclusive Concession, subject to the terms of this

Agreement. County shall deliver possession of the Concession Premises and Personal Property to Contractor on the Operational Date free, clear and unencumbered by any and all tenancies and parties in possession with the exception of (1) the WeatherTech® Agreement, (2) the Sea Otter Agreement, (3) the Rolex® Agreement, (4) the Army Deed, (5) the Use Permit, and such other agreements as the Parties may acknowledge and agree to in writing. Commencing on the Effective Date, Contractor shall have the right to access the Concession Premises at all reasonable times upon 48 hours written notice to County for all appropriate purposes, including for the purpose of inspecting the Concession Premises and planning to transition the utilization of the Concession Premises to Contractor. Prior to the Operational Date, Manager shall continue to manage LSRA pursuant to the Management Agreement.

2.2. Nature of Concession.

This Agreement grants an exclusive Concession and is not to be considered or interpreted as a lease for any purpose. This Agreement confers only permission to occupy and use the Concession Premises for purposes of the Concession in accordance with the terms and conditions herein. The expenditure of capital and/or labor in the course of operation and management of the Concession Premises shall not confer any interest on the part of Contractor in the Concession Premises except as provided herein.

Contractor does not assume or have any responsibility with respect to any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due) of County or any predecessor concessionaire, contractor, or manager that arose or existed prior to the Operational Date that are not specifically assumed by Contractor in this Agreement. County

shall pay or cause to be paid in full any outstanding invoices or amounts that are due and payable to any prior concessionaire, contractor, manager, third party vendor or any other third party within 30 days after the County Auditor-Controller receives a certified invoice. If any such outstanding invoices are pending review and approval by the County Representative as of the Effective Date or the County Representative received any outstanding invoice after the Effective Date, the County Representative shall transmit such invoices to the County Auditor-Controller within fourteen (14) days of either the Effective Date or of receipt, whichever is later, to ensure payment of the invoices by the County Auditor-Controller.

It is the intent of the Parties that Contractor be an independent contractor under California law, and this Agreement is not to be construed or implemented in a way that makes Contractor anything other than an independent contractor. Contractor may not utilize the Concession Premises for any use other than to perform its obligations hereunder, and may not utilize the Concession Premises as its general headquarters, or otherwise represent it as such.

2.3. Conditions Precedent.

2.3.1. Contractor shall have established the Capital Expense Fund and County shall have received an account statement from the financial institution verifying that the sum of One Million Dollars (\$1,000,000) has been deposited into the Capital Expense Fund and is available to Contractor for capital expense purposes. This condition is for the sole benefit of County.

2.3.2. Contractor shall have established the Operating Expense Fund and County shall have received an account statement from the financial institution verifying that the sum of five Million Dollars (\$5,000,000) has been deposited into the Operating Expense Fund and is

available to Contractor for operating expense purposes. This condition is for the sole benefit of County.

2.3.3 Contractor and County shall mutually agree upon the detailed financial statement that must be prepared pursuant to Section 6.1.

2.3.4 County shall have assigned, on terms and conditions reasonably acceptable to Contractor, all contracts and agreements that extend beyond the Operational Date to Contractor effective as of the Operational Date, as set forth in Section 4.16. This condition is for the benefit of both Parties.

2.3.5 The Secretary of the Interior, or designee, shall have given written concurrence on the use of a concession agreement for management of the concession premises as required by the Army Deed. If such written concurrence is denied, this Agreement shall immediately terminate.

2.3.6 If any of the Conditions Precedent set forth above in Sections 2.3.1, 2.3.2, 2.3.3 or 2.3.4 are not satisfied or waived on or before sixty (60) days after the Effective Date, then the Party for whose benefit the condition exists, as set forth above, may unilaterally cancel this Agreement by written notice to the other Party.

If the Condition Precedent set forth in Section 2.3.5 is not satisfied within ninety (90) days of the Effective Date, the Parties shall meet and confer in good faith to determine whether additional time shall be allowed for the satisfaction of the condition, or whether the Agreement shall be terminated.

In the event of the termination of this Agreement due to non-satisfaction of any of the conditions set forth above, neither Party shall thereafter have any further obligation or liability to the other under this Agreement.

2.4 Condition of Concession Premises.

As of the Effective Date Contractor represents and warrants to County that it has performed its due diligence regarding the condition of the Concession Premises and the finances thereof, and that it shall accept possession of the Concession Premises in an “as-is” condition. County makes no warranties or representations with respect to any condition of the real or personal property that comprise the Concession Premises, or its fitness for a specific purpose, except as specifically set forth herein. County represents and warrants to Contractor that, to the knowledge of County, the Concession Premises is in compliance with all applicable federal, state, or local laws, ordinances and governmental rules or regulations pertaining to the operation or use of the Concession Premises, and that there are no agreements, restrictions or prohibitions affecting the Concession Premises or this Agreement that limit, conflict or otherwise interfere with Contractor’s use of the Concession Premises or other rights under this Agreement except the Army Deed, Use Agreement, the WeatherTech® Agreement, the Sea Otter Agreement, and other event sanctioning and Naming Rights agreements as may be in effect as of the Effective Date for future years.

2.5. Term.

2.5.1 The Term initially shall be approximately five and one-half (5 ½) years and commence on the Effective Date and expire at midnight on December 31, 2028, unless extended or earlier terminated as provided herein.

2.5.2 Upon the expenditure, or Irrevocable Obligation to Expend, the sum of Ten Million Dollars (\$10,000,000) in Capital Improvements during the Term, as set forth in the Facility Master Plan and as reasonably verified by County, the Term shall be extended for an additional twenty-five (25) years, to expire at midnight on December 31, 2053, without further action or approval by County, unless extended or earlier terminated as provided herein.

2.5.3 Upon the expenditure, or Irrevocable Obligation to Expend, the additional sum of Forty Million Dollars (\$40,000,000) in Capital Improvements during the Term (as extended in Section 2.5.2, above) as set forth in the Facility Master Plan, and as reasonably verified by County, the Term shall be extended for an additional twenty-five (25) years, to expire at midnight on December 31, 2078, without further action or approval by County, unless extended or earlier terminated as provided herein.

ARTICLE 3. CONCESSION FEE.

3.1. As consideration for the grant of the Concession, Contractor agrees to pay to County annually a sum equal to ten percent (10%) of NOI for the prior calendar year no later than sixty (60) days after the end of the calendar year during the Term, beginning sixty (60) days after December 31, 2028.

County agrees that such funds shall be deposited into and maintained in the Laguna Seca Enterprise Fund and used solely for the benefit of LSRA or such other County park and recreation purposes as permitted by the Army Deed with the approval of Contractor, such approval not to be unreasonably withheld or delayed. Contractor and County agree to meet and confer within thirty (30) days of each calendar year beginning on January 1, 2028, to discuss the operational needs of the Concession Premises, Capital Expenditures for the upcoming calendar

year, Operating Expenses for the upcoming calendar, planned maintenance and repair for the upcoming calendar year, and the balance of the Concession Fee paid into the Laguna Seca Enterprise Fund. At the annual meeting. Contractor may reasonably request, and the County Representative may approve, expenditures from the Laguna Seca Enterprise Fund for use at the Concession Premises, unless such approval is required by the Board of Supervisors in which event the County Representative shall process such request to the Board of Supervisors.

ARTICLE 4. OPERATIONS AND MAINTENANCE.

4.1. General.

After the Operational Date, except as specifically set forth herein, Contractor shall be solely responsible for the management, operation, and maintenance of the Concession Premises, and shall be solely responsible for all costs and expenses associated therewith, except as specifically agreed to by the Parties in writing. Such expenses shall include, but not be limited to, all electricity, natural gas/propane, garbage, telephone, vehicle fuel, security systems and other utilities and similar services supplied to or consumed in or on the Concession Premises.

Certain facilities are specifically excluded from the Concession Premises as set forth in Section 1.12. Those facilities are separately metered for electrical service. County shall be solely responsible for payment of those separately metered services.

Contractor shall manage, operate and maintain the Concession Premises in a safe, healthy and clean condition, and in a manner reasonably designed to maximize revenue in the reasonable operation of Contractor's business in the Concession Premises, consistent with the terms of this Agreement. Contractor may use or permit the use of the Concession Premises for any purpose

allowed under applicable law, including, but not limited to, historical usage of the Concession Premises under the Use Permit and prior Concession Premises management arrangements.

The Parties agree that County shall maintain any necessary permits for the water and wastewater systems at LSRA; Contractor shall be assigned and shall maintain any necessary permits for fuel tanks at LSRA, whether underground or above ground.

The Parties acknowledge that certain areas at LSRA have been designated as subject to an Environmental Services Cooperative Agreement (“ESCA”) as they may contain unexploded munitions or ordnance. Such areas are depicted on the map enclosed as Exhibit B. Such areas shall not be subject to ground disturbance, digging, excavation or other intrusive activities without consultation and approval by County, the ESCA team and the Army.

4.2. Acknowledgement of Title.

Contractor hereby acknowledges all right, title and interest of County in the Concession Premises, the improvements located thereon, and all intellectual property relating to LSRA, and covenants and agrees never to assail, contest or resist said title.

4.3. Personal Property.

No later than thirty (30) days after the Effective Date the Parties shall assess and inventory the Personal Property. Following completion of the inventory and on or before November 1, 2023, Contractor shall indicate if it wishes to acquire any of the Personal Property items. County shall sell such Personal Property to Contractor at its then fair market value. If the Parties cannot agree on the fair market value of the Personal Property, the Parties shall meet and confer in good faith to select and retain a third party with the appropriate expertise in valuation of the Personal

Property and the third party's determination shall be conclusive in establishing the fair market value of the Personal Property. County shall remove all Personal Property not to be acquired by Contractor. Notwithstanding the foregoing, Contractor shall be obligated to purchase all inventory at the LSRA gift shop and other items for sale to the general public, and all vehicle fuel.

If the Parties have not finished the inventory by the Operational Date, or if Contractor otherwise needs to utilize any of the Personal Property following the Operational Date, Contractor will be permitted to use the Personal Property solely for purposes of its obligations hereunder, and shall be responsible for its proper operation, maintenance, and repair. In consideration of the use of the Personal Property, Contractor shall pay to County monthly a reasonable sum to be mutually agreed upon by the Contractor and County. County shall document the condition of the Personal Property, and Contractor shall be entitled only to normal wear and tear of such Personal Property during its use. Contractor shall not be allowed to use the Personal Property beyond December 31, 2023, and shall have either purchased the Personal Property by that time or County shall remove the Personal Property.

4.4. County Services

County allocates its service costs, including services to the Concession Premises, through the implementation of County's cost allocation plan, commonly known as COWCAP. Contractor intends to provide for such services on its own; however, a reasonable transition period may be required for County to provide for such services, and some services will continue to be provided. Immediately upon the Effective Date, the Parties shall negotiate in good faith for Contractor to provide such services after the Operational Date. For so long as County continues to provide

such services after the Operational Date, they shall continue to be a charge against the Concession Premises and shall be an Operating Expense. Contractor acknowledges that COWCAP charges are two (2) years in arrears, and that the charge accruing for Fiscal Year 2021/2022 is \$36,144 that will be due in Fiscal Year 2023-24, but is unknown for Fiscal Year 2022/2023 that will be due in Fiscal Year 2024/2025. County shall be responsible for COWCAP charges accruing for Fiscal Year 2021/2022 and due in Fiscal Year 2023/2024; Contractor shall be responsible for payment of any accruing COWCAP charges accruing for Fiscal Year 2022/2023 and due beginning in Fiscal Year 2024-25 and thereafter during the term. County shall bill Contractor for the COWCAP expenses as soon as the amount is determined, and Contractor shall pay to the County that amount no later than July 31 of each Fiscal Year in which the charges are due.

Contractor acknowledges that certain expenses are directly billed to LSRA and not included in COWCAP, and will continue to be charged after the Effective Date. Such charges are primarily charges for employee time associated with oversight of Contractor in its performance of this Agreement and Contractor shall be responsible for the payment of those direct charges. Such charges shall be billed directly to Contractor no less frequently than every Fiscal Year quarter, and shall be due within 30 days of the bill.

4.5 Intellectual Property.

County represents to Contractor that, to the best of County's knowledge, County owns all intellectual property rights relating in any way to the Concession Premises including, but not limited to, logos, trademarks and identifying terms, domain names for internet purposes, and telephone numbers. Contractor may propose and file for such intellectual property right protection (whether copyright or trademark) but all such applications shall be in the name of

County. Contractor shall have the right during the Term to the non-exclusive use of such intellectual property. Contractor shall defend against any challenge to County's intellectual property Contractor may use pursuant to this Agreement, and shall prosecute violations of County's intellectual property related to the Concession Premises.

4.6. Park Attendance Limitations.

Daily attendance levels at the Concession Premises are subject to event attendance limitations as set forth in in the Use Permit until and unless Contractor secures an amended or new use permit for the Concession Premises that authorizes different event attendance limits at the Concession Premises. County shall retain the authority to impose limitations on attendance levels as reasonably necessary for public health and safety purposes.

4.7. Signage.

In the event Contractor desires to place new permanent signage at the Concession Premises, Contractor shall seek prior review and input from the County Representative. Contractor shall obtain all necessary permits for such signage, including any necessary County or Caltrans permits.

4.8. Required Directional Signage.

Contractor shall provide, install and maintain permanent internal directional signs at the Concession Premises indicating the location of facilities, parking, and general necessary information for visitors and event spectators.

4.9. Dissemination of Information.

Contractor is authorized to submit press releases, circulate articles and periodicals promoting the Concession Premises and/or release still photographs, video, motion pictures, and use of internet in any advertising media campaign. All such disseminated information prepared by Contractor that identifies Contractor as the operator of LSRA shall also identify County in similar type face size as the owner of the Concession Premises.

4.10. Use of Road System.

Contractor shall be responsible for coordinating and gaining approval for the use of all roads providing ingress and egress to the Concession Premises including roads maintained by Federal, State, and local agencies. Contractor shall obtain and provide for all appropriate traffic control measures for the safe operation of the Concession Premises. County shall make all reasonable efforts to assist Contractor in obtaining access and use to roads under its jurisdiction as well as cooperate with other agencies in obtaining access and use; however, County cannot guarantee or warrant that Contractor shall have use and access to any road or property not within the jurisdiction of County.

4.11. Business Plan.

The Parties acknowledge that Contractor has previously presented to the Board of Supervisors the Business Plan setting forth its long-term plan for the operation and maintenance of the Concession Premises. No later than January 31st of each year Contractor shall present status reports on and updates to the Business Plan to the Board of Supervisors.

Contractor shall use its best efforts to implement the Business Plan. Should conditions or circumstances interfere with or preclude the successful implementation of the Business Plan, Contractor shall inform the County Representative regarding such conditions or circumstances.

The County Representative shall have authority to take appropriate action with respect to such conditions or circumstances as may be requested by Contractor, subject to any necessary approval by the Board of Supervisors.

4.12 Master Calendar.

Contractor shall maintain a master calendar specifying the date and time of all Spectator Events, and all other material third party activities and uses of the Concession Premises

4.13. Advertisement of Major Spectator Events.

Prior to March 1 of each year, Contractor shall cause an advertisement to be published at least twice in a local newspaper of general circulation the schedule for Major Spectator Events for that calendar year. The advertisement shall be no smaller than “3X5” and shall be printed in no smaller than 12-point type face. Contractor shall provide the County Representative a copy of the advertisement promptly prior to or following publication. Contractor shall similarly publish any change in the schedule for Major Spectator Events promptly following any such rescheduling.

4.14. Schedule of Fees.

Contractor shall annually prepare a schedule of fees for access to and use of Raceway Facilities on the Concession Premises and present the schedule of fees to the County Representative for publication and public disclosure. Contractor shall also prepare a schedule of fees for access to and use of the campgrounds at the Concession Premises during ticketed and non-ticketed events, a schedule of campground fees, and a schedule of day use fees to the County Representative for approval, which shall not be unreasonably withheld, and publication. The

County acknowledges and agrees that the cost of any campground improvements or upgrades that may occur as part of the Facility Master Plan may be require a reasonable increase in campground fees and charges above historical rates and charges. Except as specifically set forth in this Agreement, or unless specifically agreed to in writing by County as expressed by the County Representative, Contractor shall not allow any access to or use of any facilities on the Concession Premises without payment of the applicable fee.

4.15. Sound Limitation.

In the conduct of all activities at the Concession Premises, Contractor shall comply, and shall use reasonable efforts to cause third parties to comply, with sound limitations consistent with past practices at the Concession Premises until and unless Contractor secures an amended or new use permit for the Concession Premises that authorizes different sound limitations at the Concession Premises. Notwithstanding anything to the contrary set forth in this Agreement, if Contractor is unable to reasonably cause an event to be conducted in compliance with the sound limitations, such event shall not be permitted to occur.

4.16 Assignment of Agreements and Licensing of Events.

Prior to the Operational Date, County shall assign, or cause to be assigned, to Contractor, on terms and conditions reasonably acceptable to Contractor, all agreements relating to the Concession Premises existing as of the Operational Date, including but not limited to the A&D Narigi Agreement, WeatherTech® Agreement, the Sea Otter Agreement, the Rolex® Agreement, and the All Field Sports Agreement (if it has not been assigned to A&D Narigi prior to the Operational Date). Upon assignment, Contractor shall be solely responsible for all obligations of County thereunder accruing from and after the Operational Date. Such assigned contracts must be assignable back to County in the event this Agreement is terminated. Upon

assignment of the A&D Narigi Agreement, Contractor shall ensure that Manager shall not authorize expenditures nor receive Gross Revenue.

The Sea Otter Classic and Reunion shall remain County events. County hereby grants to Contractor a license to stage the Sea Otter Classic and the Reunion on behalf of County, and receive all revenue generated by those events less any related expenditures incurred by County, including any revenue that has been paid prior to the Operational Date for events occurring in calendar year 2023, in accordance with Section 6.1 of the Agreement. Contractor shall be responsible for any expenses for events occurring in calendar year 2023 paid by County prior to the Operational Date, and shall reimburse County for any such expenses. After the Operational Date, Contractor shall be responsible for discharging all County responsibilities and obligations under the Sea Otter and Rolex® Agreements, and shall be responsible for all expenses associated with staging those events.

4.17. Contracting Authority.

Contractor is hereby delegated authority to sign contracts in its own name for the operation and maintenance of the Concession Premises, and for Capital Expenditures; however, in all contract matters and to the extent these laws equally apply to Contractor, Contractor shall be subject to the laws and regulations applicable to County in the letting of contracts including, without limitation, required formal bidding. Contractor shall provide the County Representative with copies of all contracts within 14 calendar days of execution.

All contracts shall have appropriate defense and indemnification language in favor of County, its officers and employees, and insurance requirements. All insurance policies shall name County, its officers and employees as additional insureds, be primary and noncontributory to any insurance maintained by County, and shall waive subrogation. Should contracts require

specialized defense and indemnification, or insurance requirements, Contractor shall consult with the County Representative regarding those specialized requirements prior to executing such contracts.

4.18. Use of Charitable Organizations.

Contractor will endeavor in good faith to (i) engage local (Monterey County) civic organizations to provide services at public events held at the Concession Premises in a manner generally consistent with historical practice, and (ii) provide preference to local (Monterey County) vendors providing services at public events held at the Concession Premises, as long as the quality of the vendor services and the terms and conditions of the transaction, on an overall basis, are fair and reasonable to Contractor and are at least as favorable as those that are generally available from vendors whose principal place of business is outside of Monterey County.

4.19. Advertising, Sponsorships and Sanctioning.

4.19.1. Contractor shall not cause nor permit advertising or sponsorships of events at the Concession Premises that are distasteful or a cause for embarrassment to County.

4.19.2. Contractor shall not cause or permit advertising or sponsorships of events at the Concession Premises for tobacco, gun related companies, or adult entertainment businesses. Cannabis advertising, sponsorships or event sanctioning shall be by mutual agreement of the Parties.

4.19.3. All Naming Rights, advertising, sponsorship and event sanctioning agreements entered into by Contractor shall provide that, in the event this Agreement is terminated, such agreements shall (i) be assigned to County at County's sole option or, (ii)

terminate if County does not opt to assume such agreement prior to the termination of this Agreement.

4.19.4. Contractor shall have the sole and exclusive right to negotiate and enter into (i) sponsorship, advertising, and event sanctioning agreements for the Concession Premises and (ii) all Naming Rights agreements. All such Naming Rights agreements proposed to be conveyed by Contractor to any person or entity shall be compatible with and complement the use of the Concession Premises as a park and raceway facility, shall not be a cause for embarrassment of County, and shall comply with all County policies regarding the naming of facilities. Following the Effective Date, County shall not enter into any new agreements that will be binding upon the Concession Premises or Contractor after the Operational Date, or modify, extend or renew any such agreement without the review and approval of Contractor, which Contractor agrees shall not be unreasonably withheld.

4.20. Rifle/Pistol Ranges.

County employees currently staff and manage the lower rifle/pistol range, and the upper rifle/pistol range is utilized by the Monterey County Peace Officers Association. Additional time is needed to address certain contract and employee issues relating to the ranges. Both ranges, therefore, are not included in the Concession Premises as of the Effective Date. The Parties shall meet and confer in good faith following the effective date to discuss the potential inclusion of the ranges in the Concession Premises and events taking place at the Concession Premises that may require the temporary use of the ranges for parking consistent with historic practices. County shall allow Contractor to use portions of the lower rifle/pistol range for spillover parking consistent with historic practices. Contractor shall be responsible for any damages from such use

and shall be responsible for cleanup after the event for which the range is used for spillover parking. Except as otherwise provided herein, County will be responsible for all costs and expenses associated with the operation and maintenance of the ranges, and shall retain all revenue, unless and until the ranges are included in the Concession Premises. Contractor shall facilitate and allow reasonable access to the ranges. The County shall also close or otherwise restrict the operation of the rifle/pistol range during major events.,

4.21 Use of Facilities by Contractor.

In order to maintain Contractor's status as an independent contractor, County may provide Contractor with temporary facilities to utilize on an as-needed basis for events at the Concession Premises. Should Contractor desire a more permanent presence in order to carry out its obligations pursuant to this Agreement, County will provide such facilities; however, Contractor shall pay fair market rent for the use of such facilities, as mutually determined and set forth in a subsequent agreement, which rent shall be considered an Operating Expense. Contractor shall identify any such facility prior to the Operational Date. If the Parties cannot agree on the fair market value of rent for the use of such facilities, the Parties shall meet and confer in good faith to select and retain a third party with the appropriate expertise in rent valuation and the third party's determination shall be conclusive in establishing the fair market value of the rent. Such facilities may include office equipment, including computers, but Contractor shall not be provided, nor shall use, County electronic mail addresses, or have access to County's intranet. Nothing in this subsection shall preclude any future manager for Contractor from maintaining a permanent presence to carry out day-to-day operations and management of the Concession Premises.

4.22. No Permanent Residence.

Contractor acknowledges and agrees that the Concession Premises is not intended to be a permanent residence for any person and will not allow any person to reside permanently on the Concession Premises. Any temporary residence (other than camping at the campgrounds) must be approved by the County Representative, and Contractor must satisfy all requirements for such temporary residences that County, in its discretion, may require. Such temporary residences may create a possessory interest as defined in California Revenue and Taxation Code section 107, and subject to taxation, and may be subject to federal income taxation. Contractor shall be responsible for the payment of such tax but may require the person(s) temporarily residing on the Concession Premises to pay such tax; however, in no event shall County be liable for the payment of any such tax, and Contractor agrees to indemnify County if such tax is levied for such tax. Nothing in this Section shall prohibit Contractor from providing a designated camp site for (1) one or more volunteers to reside in exchange for volunteer's agreement to provide maintenance and repair services to the campground and other facilities within the Concession Premises, or (2) designated sponsor or vendor representatives in exchange for providing services to the Concession Premises during ticketed events.

4.23. County access.

Notwithstanding any other provision of this Agreement, County and its agents shall have the right to enter the Concession Premises at any time for any appropriate purpose, provided that such entry does not interfere with Contractor's performance under this Agreement. Contractor shall provide up to 15 all-access passes and parking permits as may be requested by the County Representative.

The Concession Premises includes several cell/radio towers, and an information technology building. Such facilities are identified in Exhibit B. Those facilities are critical to

County’s operations, and County shall have access to the facilities at all times. The information technology building provides access from the Concession Premises to the County’s intranet and to the internet; such access shall be disconnected at a time mutually negotiated, and Contractor shall be solely responsible for access from the Concession Premises to the internet.

4.24. Security

4.24.1. At its sole discretion, Contractor shall maintain appropriate security at the Concession Premises to maintain order during spectator events, and to protect the Concession Premises from damage at all times.

ARTICLE 5. CAPITAL IMPROVEMENTS.

5.1. Contractor covenants to use a minimum of fifty percent (50%) of NOI for Capital Improvements, which sum shall be deposited in the Capital Expense Fund.

5.2. Facility Master Plan.

Contractor shall develop a Facility Master Plan and present it to the Board of Supervisors within one year of the Operational Date. The Facility Master Plan is intended to reflect Contractor’s long-term vision for alterations, additions, and Improvements to the Concession Premises. Implementation of the Facility Master Plan shall be subject to applicable requirements of law including the California Environmental Quality Act (“CEQA”). The Facility Master Plan shall also set forth a plan for the replacement of Depreciable Assets at the end of their useful life, as set forth in County’s depreciation schedule for the Concession Premises, including how such replacement shall be funded or financed if Contractor’s use of such assets is consistent with Contractor’s Business Plan for the Concession Premises. The Parties shall meet and confer

regarding replacement or demolition of Depreciable Assets prior to the end of their useful life as set forth in the depreciation schedule.

Contractor shall implement the Facility Master Plan, subject to obtaining all necessary governmental permits and approvals, to the extent the financial obligations of the Facility Master Plan are consistent with the Contractor's financial obligations herein. All Improvements contemplated in the Facility Master Plan shall, if and when constructed or installed, be owned by County notwithstanding Contractor's role in the planning, development or implementation of the Facility Master Plan.

The Facility Master Plan shall identify any Immediate Repairs. Contractor shall cause the Immediate Repairs to be performed within twelve (12) months following the Operational Date. Such performance shall be evidenced by contract(s) or agreement(s) between a vendor or contractor and Contractor. Notwithstanding Contractor's obligation to identify any Immediate Repairs in the Facility Master Plan, to the extent that the County has received independent funding to undertake any repair and maintenance prior to the Effective Date, County shall be obligated to undertake those repairs and maintenance.

The Facility Master Plan shall include an STCIP. The STCIP shall be designed to address repairs and maintenance that Contractor deems necessary at the Concession Premises not identified as an Immediate Repair, to be completed within five (5) years of the Operational Date. All Improvements contemplated in the STCIP shall be owned by County notwithstanding Contractor's role in the planning, development or implementation of the STCIP.

5.3. Water System Upgrade.

The Parties acknowledge that County has undertaken an upgrade to the water system at LSRA. County shall continue with that upgrade at its sole expense. After the upgrade, Contractor shall be responsible for ongoing maintenance.

5.4. Compliance with the California Environmental Quality Act and the National Environmental Policy Act.

The Facility Master Plan is to be a planning document only and shall not constitute County's approval to undertake any Improvements that may be subject to CEQA or NEPA. Contractor must receive County's approval prior to undertaking Improvements that may be subject to CEQA or NEPA in order to satisfy the requirements of those laws.

ARTICLE 6. FINANCIAL OPERATIONS

6.1. Revenues and Expenses.

On or before the Operational Date, County shall pay to Contractor all Gross Revenue received for events occurring after the Operational Date, less expenses incurred by County for such events. In the event such expenditures exceed such revenues, Contractor shall reimburse County the difference. Contractor shall be responsible for all Operating Expenses and Capital Expenditures after the Operational Date, and the County shall have no obligation for such Operating Expenses or Capital Expenditures except expenses for the new pedestrian bridge and track resurfacing projects, and any outstanding amounts that are due and payable under the Agreement between Choura Events and County, effective on or about April 4, 2019, prior to the Operational Date, unless previously approved or subsequently agreed to in writing.

Prior to the Operational Date, County and Contractor shall mutually review and approve a detailed financial statement that delineates all revenue that County has received and expenses

County has incurred for sponsorships, advertising, and sanctioning for the 2023 calendar year, all revenue and associated expenses from track rentals and spectator events, all Operating Expenses and Capital Expenditures for the 2023 calendar year that County is responsible for paying prior to the Operational Date, all taxes, assessments, permit fees, and licensing fees the County must pay, outstanding COWCAP charges, direct expenses charged to the Concession Premises, the balance of the Laguna Seca Enterprise Fund, any allocated, but unspent, funding or grant funds for future improvements at the Concession Premises, and the pro-rata distribution of any pre-paid Gross Revenue and Operational Expenses for the 2023 calendar year that are shared between County and Contractor. County shall be entitled to all revenue generated at the Concession premises prior to January 1, 2023, but not yet received.

6.2. Operating Expense Fund.

Prior to the Operational Date, Contractor shall establish the Operating Expense Fund at an appropriate financial institution, and shall make the initial deposit into that fund as described in Section 2.3.2. During the Term, all funds in the Operating Expense Fund shall be held in trust by Contractor for the benefit of LSRA, to be used solely and exclusively for the operations and maintenance of the Concession Premises and not Capital Expenditures. At all times, Contractor shall maintain a minimum of five million dollars (\$5,000,000) in the Operating Expense Fund as the Operating Expense Reserve. The Operating Expense Reserve shall be used solely and exclusively to fund Operating Expenses during such time as Gross Revenue is insufficient to pay for such expenses, and shall be replenished as soon as Gross Revenue is sufficient to do so. Contractor shall submit to County a quarterly bank statements with applicable bank reconciliation showing the condition of the Operating Expense Fund.

6.3. Capital Expense Fund.

Prior to the Operational Date, Contractor shall establish the Capital Expense Fund at an appropriate financial institution, and shall make the initial deposit into that fund as described in Section 2.3.1. During the Term, all funds in the Capital Expense Fund shall be held in trust by Contractor for the benefit of LSRA, to be used solely and exclusively for Capital Expenditures as set forth in the Facility Master Plan. Contractor shall submit to County quarterly bank statements with applicable bank reconciliation, showing the condition of the Capital Expense Fund. Contractor covenants to annually deposit into the Capital Expense Fund a minimum of fifty percent (50%) of NOI.

6.4. Cash Handling.

At all times, Contractor shall maintain internal controls and implement best financial practices regarding the handling of cash and all financial transactions at the Concession Premises.

6.5. Records and Reports.

Contractor shall use Generally Accepted Accounting Principles (“GAAP”) in keeping the financial records required pursuant to this Agreement. Contractor shall keep or cause to be kept full, complete, and proper books, records, and accounts of all Gross Revenue, Operating Expenses, Capital Expenditures and NOI relating to the Concession Premises. All such records shall be kept at the Concession Premises for at least seven (7) years after the expiration of the year for which the records are maintained. The County Representative shall have the right to

examine Contractor's records at reasonable times upon forty-eight (48) hours' notice, and from time to time throughout the Term.

No later than six months following the end of each calendar year, Contractor shall provide to County reviewed financial statements for the prior calendar year, from a reputable independent Certified Public Accountant (CPA), including a Statement of Financial Position, Statement of Activities, Statement of Cash Flow, and Statement of Functional Expenses. All reviews performed by independent entities shall be conducted by a licensed CPA in compliance with professional standards promulgated by the American Institute of Certified Public Accountants. No later than the end of a month, Contractor shall provide to County copies of financial statements showing the status of the Operating Expense Fund and Capital Expense Fund for the prior month.

6.6. Taxes and Fees.

Contractor shall be responsible for all taxes, fees and assessments associated with its performance under this Agreement. This Agreement may create a possessory interest as defined in California Revenue and Taxation Code section 107, and subject to taxation. Contractor may be responsible for the payment of such tax, and County shall not be liable for the payment of any such tax. Contractor shall be solely responsible for the payment of all taxes, assessments and fees associated with or payable as a result of the exercise of its rights and obligations under this Agreement, and shall be responsible for filing all required reports with the State of California. Contractor shall create its own account with taxing agencies that collect sales tax, income tax and other required tax obligations. County shall terminate all its existing accounts unless otherwise advised by the taxing agencies.

6.7. Issuance of Debt.

6.7.1. Contractor shall not secure any debt, loan or other financing with real property or improvements at the Concession Premises without the express written consent of County.

6.7.2. Contractor shall not enter into any unsecured debt which will exist beyond the Term.

6.8. Property Depreciation.

Contractor may not claim depreciation on real property, real property improvements existing or under construction as of the Operational Date, or Improvements at the Concession Premises without the express written consent of County; provided that Contractor shall retain all rights to depreciation deductions and tax credits arising from Contractor's ownership of any other assets that are not real property, real property improvements existing or under construction as of the Operational Date, County-owned Personal Property, or Improvements.

ARTICLE 7 COUNTY EVENTS

7.1. County reserves the right to hold events and utilize the Concession Premises in its entirety or in part, for example for officer or employee meetings and retreats, without a rental fee upon coordination with Contractor; provided, however, that County shall not utilize any portion of the Concession Premises during ticketed events and at any time or in any manner that may conflict with or otherwise adversely impact the use of the Concession Premises by or through Contractor. County shall be responsible for paying all of other costs of the event at retail value, including security, catering, entertainment, tables, chair, linens, or any other costs. Should County desire to hold an event for which an entrance fee will be charged, County will consult with Contractor and either 1) request Contractor to hold and manage the event pursuant to the

terms of this Agreement, or 2) enter into a side agreement with Contractor whereby County will pay Contractor to manage the event.

7.2. County warrants that the use of any portion of the Concession Premises pursuant to this Article 7 shall be solely for County purposes or business, and County shall not assign or sub-license such use to any other person or entity whatsoever; provided, however, that County may contract with vendors for the provision of services related to County purposes or business.

ARTICLE 8 INSURANCE AND INDEMNIFICATION

8.1. Contractor shall provide insurance coverage for its operations at the Concession Premises as set forth in Exhibit D which insurance shall be primary and non-contributory to any insurance carried by County covering the Concession Premises. CONTRACTOR shall provide County with certificates of insurance or other satisfactory documentation which evidences that all insurance required under this Article 8 is in full force and effect, and County and its officers and employees shall be named as an additional insured on all such policies.

8.2. Contractor Indemnification Obligation.

Contractor shall indemnify, defend and hold harmless County and the United States of America, their officers, employees and agents, from and against Adverse Consequences resulting from, arising out of, relating to, in the nature of, or caused by (i) any act or omission of Contractor, its agents, contractors, employees, licensees or sub-concessionaires, except to the extent caused by the sole negligence or willful misconduct of County or the United States of America, their agents, contractors, employees or licensees, or (ii) any breach or default in the performance of any obligation of Contractor under the terms of this Agreement.

8.3. County Indemnification Obligation.

County shall indemnify and defend Contractor against, and hold Contractor harmless from, any and all Adverse Consequences resulting from, arising out of, relating to, in the nature of, or caused by (i) any act or omission of County, its agents, contractors, employees, or licensees, except to the extent caused by the sole negligence or willful misconduct of Contractor, its agents, contractors, employees or licensees, or (ii) any liability of County, including any liability of County that becomes a liability of Contractor under any statutory or common law doctrine of de facto merger or successor liability, or any liability under Environmental, Health, and Safety Requirements, arising from conditions predating the Effective Date.

As used in this Agreement, “Environmental, Health, and Safety Requirements” means all federal, state, and local statutes, regulations, ordinances, and similar provisions having the force or effect of law, all judicial and administrative orders and determinations, and all common law concerning public health and safety, worker health and safety, pollution, or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, exposure to, or cleanup of any hazardous materials, substances, wastes, chemical substances, mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, odor, mold, or radiation.

8.4. Matters Involving Third Parties.

8.4.1. If any third party shall notify any Party (the “Indemnified Party”) with respect to any matter (a “Third Party Claim”) which may give rise to a claim for indemnification against

the other Party (the “Indemnifying Party”) under this Article 8, then the Indemnified Party shall promptly notify the Indemnifying Party thereof in writing; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced by the delay.

8.4.2. The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice satisfactory to the Indemnified Party so long as (A) the Indemnifying Party notifies the Indemnified Party in writing within fifteen (15) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party from and against the entirety of any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (B) the Indemnifying Party provides the Indemnified Party with evidence acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third Party Claim and fulfill its indemnification obligations hereunder, (C) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (D) settlement of, or an adverse judgment with respect to, the Third Party Claim is not, in the good faith judgment of the Indemnified Party, likely to establish a precedential custom or practice adverse to the continuing business interests or the reputation of the Indemnified Party, and (E) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently.

8.4.3. So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 8.4.2, above, (A) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim,

(B) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably), and (C) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably).

8.4.4. In the event any of the conditions in Section 8.4.2, above, is or becomes unsatisfied, however, (A) the Indemnified Party may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, the Third Party Claim in any manner it reasonably may deem appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith), (B) the Indemnifying Party will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses), and (C) the Indemnifying Party will remain responsible for any Adverse Consequences the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Article 8.

8.5. Other Indemnification.

The foregoing indemnification provisions are in addition to, and not in derogation of, any statutory, equitable, or common law remedy (including without limitation any such remedy arising under Environmental, Health and Safety Requirements) any Party may have with respect to the utilization of the Concession Premises as contemplated in this Agreement.

ARTICLE 9 AUDIT RIGHTS

Upon not less than fourteen (14) calendar days' prior written notice from County to Contractor, during normal business hours on days and times that Contractor reasonably approves to avoid significant disruption of Contractor's business and under reasonable circumstances (other than during Spectator Events), County has right to audit on an annual basis (i.e., once each year) the operations and finances of the Concession Premises and Contractor, at County's sole expense. Contractor acknowledges and agrees that County's Auditor – Controller has the independent right at any time to audit County assets and operations, and any such audit will be in addition to the annual audit set forth in this section. Contractor shall reasonably cooperate with County and the Auditor – Controller in any audit, and shall make available to County all records and access to facilities reasonably necessary for such audits. In performing any audit pursuant to this section, County shall not unreasonably interfere with Contractor's utilization and operation of the Concession Premises.

ARTICLE 10 PUBLIC ACCESS

10.1. The general public shall have access to LSRA subject to such rules and regulations as Contractor may implement from time to time, and reasonable and customary use or entrance fees as presented to the County Representative pursuant to Section 4.14.

10.2 Except as provided in Section 10.3, below, neither Contractor, its members, officers or employees shall have special privileges regarding access to or the use of any facilities at the Concession Premises unless specifically approved by County's Board of Supervisors.

10.3. Contractor may establish and implement one or more programs whereby Contractor's officers, directors or founders, donors, members, sponsors, Naming Rights entities, and/or

volunteers are provided certain reasonable and customary benefits at the Concession Premises in recognition of their contribution to the success and improvement of the Concession Premises.

ARTICLE 11 COUNTY OVERSIGHT AND ACCESS

11.1. County’s Board of Supervisors shall be allowed to appoint one Supervisor to the Board in a non-voting capacity only. The appointed Supervisor shall otherwise participate fully in all matters involving the Board. County may change the appointed Supervisor annually, and, at County’s sole discretion, change its appointee’s status to full voting capacity.

11.2 County shall designate in writing to Contractor a County Representative to act on behalf of County with respect to County’s rights and obligations under this Agreement. County may remove and replace the County Representative at any time upon written notice to Contractor. The County Representative shall be the primary point of contact for Contractor with County, and upon request, shall have access to the books and records of Contractor relating to the Concession Premises, including contracts, sub-contracts, vendor agreements, facility access, financial records, policy discussions, sponsorship agreements, strategic planning, capital improvement planning and implementation, rental rates, Spectator Event agreements (collectively “Contractor’s Books and Records”); provided that County acknowledges and agrees that the Contractor’s Books and Records may contain certain information reasonably determined by Contractor to be confidential (the “Confidential Information”) including, but not limited to, information concerning state and federal income tax returns and filing information, internal evaluations, and personnel files related to present and past employees of Contractor. Unless Contractor authorizes, the County Representative shall not make copies of, or otherwise remove from the Concession Premises, any Contractor’s Books and Records. If Contractor claims that Contractor’s Books and Records contain such Confidential Information that County desires to

review, Contractor and County shall meet and confer regarding such information. After such consultation, Contractor shall determine whether such information shall be disclosed to County; however, County retains its rights to contest whether such information is Confidential Information that should be disclosed.

11.3. Contractor shall allow the County Representative to attend all meetings of the Board as an observer only. Contractor shall, upon request, give the County Representative, copies of all notices, minutes, consents and other materials, financial or otherwise, which the Contractor provides to its Board as they relate solely to Contractor's performance under this Agreement; provided, however, that Contractor reserves the right to exclude the County Representative from access to any material or meeting or portion thereof if Contractor believes in the good faith judgment of its Board that such exclusion is reasonably necessary to preserve the attorney-client privilege, to protect Confidential Information, or for other similar reasons. Contractor shall provide the County Representative with a written explanation as to why any matter is protected by the attorney-client privilege, is Confidential Information, or is protected for some other similar reason. The decision of the Board with respect to the privileged or confidential nature of such information shall be final and binding, but County reserves its right to contest whether any matter is privileged or whether any information is Confidential Information. County agrees to hold in confidence and trust all Confidential Information and materials that it may receive, or be given access to, in connection with meetings of the Board pursuant to this Agreement, and not disclose to any third party, and shall cause its representative to do the same. Notwithstanding the foregoing, County may disclose such information to (a) its auditors and other professional advisors who are assisting it in overseeing Contractor's use of the Concession Premises, and County agrees to instruct each such party concerning the disclosure restrictions as set forth in

this Agreement, and (b) where required to be disclosed pursuant to law, regulation, or by order of a court of competent jurisdiction; provided that County shall, to the extent reasonably practical under the circumstances, notify Contractor of the information to be disclosed and the circumstances in which the disclosure is required prior to disclosure so that Contractor may seek a protective order or other appropriate remedies. Contractor shall defend, indemnify and hold harmless County from any claim or lawsuit contending that such Confidential Information, or information protected by the attorney-client privilege or for some other reason, is required to be disclosed by Contractor to County under this Agreement or applicable law, and subsequently required to be disclosed by County pursuant to The California Public Records Act.

ARTICLE 12 DEFAULT AND REMEDIES

12.1. Event of Default. It shall be an event of default under this Agreement if a Party fails to perform or observe any Material Agreement, Term, Covenant or Condition of this Agreement in any substantial respect and if such performance, nonperformance, or nonobservance continues for a period of thirty (30) days after written notice thereof by the non-defaulting Party to the defaulting Party or, if such performance or observance cannot be performed within such 30-day period, then if the defaulting Party has not in good faith commenced such performance or observance within such 30-day period and does not diligently and in good faith proceed therewith to completion, the non-defaulting Party can either perform the act or observance itself and claim reasonable compensation from the defaulting Party or terminate this Agreement. In addition, the terminating Party shall have all remedies now or later allowed by law or in equity. Notwithstanding anything to the contrary in this Agreement, the Parties agree that in the event of default by a Party hereunder, there shall be absolutely no personal liability of any person, firm or entity who or which is an officer, employee or agent of the defaulting Party, and the non-

defaulting Party shall look solely to the assets (including insurance) and properties of the defaulting Party for the satisfaction of each and every remedy of the non-defaulting Party for such default arising under this Agreement or otherwise by law, except in the case of fraud or actual malice on the part of any person, firm or entity who or which is an officer, employee or agent of the defaulting Party, in which case the non-defaulting Party may pursue each and every remedy regarding such person, firm or entity.

ARTICLE 13 DAMAGE OR DESTRUCTION

13.1. If the whole or any part of the buildings and improvements within the Concession Premises are damaged or destroyed by fire, or by any other cause whatsoever, Contractor shall forthwith proceed to restore the same (subject to changes necessary to comply with then existing laws applicable thereto and any changes in design approved by Contractor and County). Contractor shall be entitled to all proceeds of property insurance and right of recovery against insurers on policies covering such damage or destruction.

13.2. Notwithstanding anything to the contrary contained in this Agreement, if the whole or any part of the buildings and improvements within the Concession Premises are wholly or partially damaged or destroyed within two (2) years of the Termination Date, then Contractor need not restore the same and Contractor shall, at the request of County, demolish the damaged or destroyed buildings and improvements and remove all debris from the Concession Premises, and County shall be entitled to all proceeds of insurance and right of recovery against insurers on policies covering such damage or destruction, less amounts paid or incurred by Contractor in connection with such damage or destruction.

13.3. Should the Concession Premises be damaged or destroyed, in whole or in part, during a declared local, state or national emergency, the Parties shall reasonably cooperate to obtain available reimbursement for eligible expenses from the Federal Emergency Management Agency, or other source. Contractor shall cooperate with County in seeking or obtaining such reimbursement for expenses incurred during a local, state or national emergency declared prior to the Operational Date.

ARTICLE 14 BANKRUPTCY AND DISSOLUTION

This Agreement shall automatically terminate if: 1) Contractor shall make an assignment for the benefit of creditors, file a voluntary petition for bankruptcy, or initiate a State court action for appointment of a receiver; 2) a proceeding in bankruptcy or for appointment of a receiver is commenced against Contractor in any Federal or State court, unless the same is dismissed within thirty (30) days; or 3) Contractor files for dissolution with the State of California. In all such cases, the termination shall become effective as of the filing of such petition, the appointment of such receiver or trustee or the commencing of such court action, or the filing of the request for dissolution, whichever occurs first and, immediately upon such termination, all rights hereunder shall revert to County.

ARTICLE 15 EFFECT OF TERMINATION

15.1. At the expiration or sooner termination of this Agreement;

15.1.1. All real property and Improvements shall remain owned by County.

15.1.2. Contractor shall negotiate in good faith for County’s acquisition of tangible personal property owned by Contractor and used exclusively in the operation and management of the Concession Premises.

15.1.3. Contractor shall, within thirty (30) days of the Termination Date, satisfy and pay all debts and expenses arising prior to or existing as of the Termination Date, and provide County with a reconciliation of the Operating Expense Fund and Capital Expense Fund.

15.1.4. All Gross Revenue, including all funds in the Operating Expense Fund that have been generated by events at the Concession Premises, that remains unspent and in the possession of Contractor following the satisfaction of the provisions of Section 15.1.3, above shall be transferred to County, and such funds remaining in the Capital Expense Fund generated from events at the Concession premises shall also be transferred to County, all to be deposited in the Laguna Seca Enterprise Fund. Funds in the Operating Expense Fund or Capital Expense Fund provided by third parties or donors shall be conveyed by Contractor to the Laguna Seca Foundation; if such Foundation is not in existence at such time, all such funds shall be transferred to the County to be deposited in the Laguna Seca Enterprise Fund. Contractor shall keep detailed records of the source of funds in the Operating Expense Fund and Capital Expense Fund for this purpose.

15.1.5 The obligations set forth in this Article 15 shall survive the expiration or sooner termination of this Agreement.

ARTICLE 16 REPRESENTATIONS AND WARRANTIES

16.1. Contractor Representations and Warranties.

Contractor represents and warrants to County that the following statements are true and correct as of the Effective Date: 1) Contractor is lawfully formed and operating under federal, state and local law; 2) Contractor has access to financial resources to satisfy the conditions precedent set forth in Section 2.3; and 3) there is no legal or regulatory proceeding or final judgement against Contractor, its officers, employees or agents that will prevent Contractor from commencing and undertaking its obligations hereunder.

16.2. County Representations and Warranties.

County represents and warrants to Contractor that the following statements are true and correct as of the Effective Date: 1) County is the holder of a fee simple interest in the Concession Premises free and clear of all encumbrances except for any encumbrance of record and those matters described in section 2.1, above, and no other person or entity has any right, title or interest in or to the Concession Premises or any portion thereof; 2) Subject to the terms of the Army Deed and Use Permit, and pursuant to the historical usage of the Concession Premises, County has full right and lawful authority to execute and perform this Agreement for the Term, in the manner, and upon the conditions and provisions herein contained; and 3) subject to the terms of the Army Deed and Use Permit there is no legal impediment to the utilization of the Concession Premises as a public park and recreation facility consistent with its historical use.

ARTICLE 17 MISCELLANEOUS PROVISIONS

17.1. Complete Agreement.

The foregoing constitutes the full and complete agreement regarding the Concession. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

17.2. Amendment.

This Agreement may be amended from time-to-time by mutual consent of the Parties. Such amendments may only be in the form of a writing signed by each of the Parties.

17.3. Successors and Assigns.

This Agreement and the Concession, and the rights and duties of Contractor hereunder, may not be assigned or delegated without the express written consent of County. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of the Army Deed, Use Permit, historical use under prior Concession Premises management arrangements, any contracts then in effect regarding the Concession Premises, and other ordinances or resolutions of County then in effect.

17.4 Compliance with Governmental Laws and Regulations.

Contractor shall comply with all applicable rules, regulations, ordinances, statutes and laws of all county, municipal, state, federal and other governmental authorities, now or hereafter in effect pertaining to the Concession Premises or Contractor's use of the Concession Premises that could include, but not be limited to, CEQA, NEPA, the California Public Records Act, and laws applicable to County for the development or construction of works of public improvement and the letting of contracts for Improvements. Contractor may request the use of County services

and County's Job Order Contracting process as may be appropriate or necessary; however, Contractor shall be responsible for all costs associated with such use, including County staff time and expenses. Contractor shall comply with all regulations of the Monterey Bay Air Resources District regarding the storage and dispensing of vehicle fuel at the Concession Premises, and shall maintain any required permit for such storage and dispensing. Contractor shall pay all costs of compliance which are required as a result of or in connection with any act or omission of Contractor or activity of Contractor at the Concession Premises, including, without limitation and if applicable, laws applicable to County for the development or construction of works of public improvement and the letting of contracts for Improvements. Without limiting County's discretion as the owner of the Concession Premises and as the governmental entity with regulatory authority, County will cooperate and coordinate with Contractor to process and approve, in the most expedient manner reasonably practicable, permits and other approvals necessary or desirable to facilitate the improvement and use of the Concession Premises as contemplated in this Agreement.

17.5 Future Constraints on Use.

If for any reason other than the fault of either Party, a final adjudication (i.e., not subject to further appeal) by a governmental agency with jurisdiction (including regulatory agencies and courts of law) shall prohibit or negatively impact the utilization of the Concession Premises as contemplated in this Agreement, including, but not limited to the uses of the Concession Premises allowed under the Army Deed and Use Permit, then the Parties shall negotiate in good faith regarding the impact of the constraints. If the Parties cannot agree on any modification of this Agreement that addresses the impact of such constraints, Contractor may terminate this Agreement by notifying County within ninety (90) days following receipt of notice of the finality

of such adjudication. Both Parties shall, in good faith, fully cooperate and participate in all available proceedings and exhaust all reasonable avenues relating to the prohibition of such use, and shall diligently contest any litigation or other proceeding the object of which is to prohibit such use.

17.6. Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the Parties shall in good faith meet and confer within twenty-one (21) calendar days after written notice has been sent to the Disputing party. In the event that the Parties are not able to resolve the dispute through informal negotiation, the Parties agree to submit such dispute to formal mediation before litigation. If the Parties cannot agree upon the identity of a mediator within ten (10) business days after a Party requests mediation, then the Parties shall each select a mediator and those two mediators will select a third mediator to mediate the dispute. The Parties shall share equally in the cost of the mediator or mediators who ultimately mediate the dispute, but neither Party shall be entitled to collect or be reimbursed for other related costs, including but not limited to attorneys' fees.

If mediation proves unsuccessful, the Parties agree all remaining disputes shall be submitted to JAMS for binding arbitration. If a JAMS neutral served as mediator, the same neutral may serve as arbitrator unless either Party objects when the arbitration matter is first set by JAMS. The California Arbitration Act at California Code of Civil Procedure Section 1280 et seq. and the JAMS Employment Arbitration Rules and Procedure then in effect shall govern arbitration hereunder. The arbitration shall be conducted in California. The Parties shall split the cost of the

arbitration, including all administrative fees and costs of arbitration, provided that each Party shall pay its respective attorneys' fees. Each Party may be represented by legal counsel. The Parties shall be allowed adequate discovery. The arbitrator shall issue a written decision explaining the reasons for his/her award. The decision and award of the arbitrator shall be final and binding on the Parties. The arbitrator shall not have the power to commit errors of law, fact, or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

17.7. Execution in Parts or Counterparts; Electronic Signatures.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the Parties. Facsimile or electronic signatures shall be binding. This Agreement may also be executed by electronic signature via DocuSign only.

17.8. Party Authorization.

The governing bodies of the Parties have each authorized execution of this Agreement, as evidenced by their respective signatures below.

17.9. No Predetermination or Irrevocable Commitment of Resources.

Nothing herein shall constitute a determination by County or Contractor that any action shall be undertaken or that any unconditional or irrevocable commitment of resources shall be made until such time as the required compliance with all local, state, or federal laws, including without

limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, have been completed.

17.10. Notices.

Any notice pursuant to this Agreement shall be given in writing by a Party or its legal representative by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, (d) legible facsimile transmission, or (e) electronic mail or other electronic means sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance with this Section, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission or electronic mail, as of the date of the facsimile or electronic transmission (or next business day if transmitted on a day other than a business day). Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

For County:

County Administrative Officer
168 W. Alisal Street, 3rd Floor
Salinas, CA 92101
e-mail:
facsimile:

For CONTRACTOR:

Friends of Laguna Seca
c/o Ross Merrill
18900 Portola Drive
Salinas, CA 93908
e-mail: ross@merrillfarms.com
facsimile: (831) 424-0447

Copy to:

County Counsel
168 W. Alisal Street, 3rd Floor
Salinas, CA 92101
e-mail:
facsimile:

Copy to:

Jason Retterer, Esq
JRG Attorneys at Law
318 Cayuga St.
Salinas, CA 93908
e-mail: jason@jrgattorneys.com
facsimile: (831) 754-2444

17.11. Severability and Validity of Agreement.

Should any part, term or provision of this Agreement be decided by a court of law to be illegal, in excess of a Party’s authority, in conflict with any law of the State, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby, and each Party hereby agrees it would have entered into this Agreement upon the same remaining terms as provided herein.

17.12. Singular Includes Plural.

Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

17.13. Captions.

The headings and titles to the section of this Agreement are not a part of this Agreement, are for convenience of reference only, and shall have no effect upon the construction or interpretation of any part of this Agreement.

17.14. Applicable Law.

The laws of the State of California shall govern the validity, performance and enforcement of this Agreement.

17.15. Excusable Delay.

Any prevention, delay or stoppage due to strikes, walkouts, labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the Party obligated to perform, shall excuse the performance by such Party for a period equal to any such prevention, delay or stoppage.

17.16. Tense, Number, and Gender.

Each number, tense and gender used in this Agreement shall include any other tense, number or gender where the context and references so require. Any pronoun herein shall be read in such gender as the context may require.

17.17. Recordation.

Upon written request of either County or Contractor, County and Contractor shall execute and record this Agreement or any memorandum of this Agreement which may thereafter be recorded in the Official Records of Monterey County.

17.18. Survival.

The obligations of County and Contractor under this Agreement shall survive the expiration or other termination of this Agreement, to the extent applicable following such expiration or termination, and shall remain in effect until fulfilled. This covenant specifically includes, without limitation, each indemnity obligation set forth herein.

17.19. Exhibits Incorporated.

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement by reference as though fully set forth herein.

17.20. Further Assurances.

Each Party agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to the Effective Date, as may be reasonably requested by the other Party to consummate more effectively the purposes or subject matter of this Agreement.

17.21. No Third-Party Beneficiary.

The provisions of this Agreement are and will be for the benefit of County and Contractor only and are not for the benefit of any third-party, and accordingly, no third-party shall have the right to enforce the provisions of this Agreement.

17.22. Construction.

The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

17.23. Calculation of Time Periods.

In computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under the laws of the State of California, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. The final day of any such period shall be deemed to end at 5 P.M., California time, unless otherwise specified herein. As used in this Agreement, the term “business day” shall mean a calendar day that is not a Saturday, Sunday, or legal holiday under the laws of the State of California.

17.24. County’s Police Power.

Nothing in this Agreement shall alter in any way County’s rights or duties as a governmental agency with jurisdiction over the Concession Premises to act in the manner otherwise permitted or required under applicable laws for the health, safety and general welfare of the public.

17.25. Surrender at End of Term.

At the expiration or sooner termination of this Agreement, Contractor shall (i) remove its personal property, furniture, fixtures and equipment and shall surrender the Concession Premises to County, (ii) negotiate in good faith with County the acquisition by County at fair market value of all personal property assets owned by Contractor and used exclusively in connection with Contractor's utilization of the Concession Premises, (iii) at County's option, assign to County all advertising, sponsorship and event sanctioning agreements as contemplated in Section _____. All alterations, additions and improvements to the Concession Premises including intellectual property and all rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions shall inure to the benefit of, and be owned by, County.

17.26. Waivers.

Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder except to the extent that passage of time constitutes an express waiver under any other provision of this Agreement. No waiver by either Party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action shall not be unreasonably withheld, conditioned or delayed except as may be otherwise specifically provided in this Agreement, and consent or approval on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either

Party may have under this Agreement or at law or in equity shall be cumulative, and shall not be deemed inconsistent with each other; no one of them, whether exercised or not, shall be deemed to be an exclusion of any other, and any or all of such rights and remedies may be exercised at the same time.

17.27. Time of the Essence.

Time is of the essence of this Agreement and of each and every one of the provisions contained herein.

17.28 Use of Laguna Seca Enterprise Fund.

Notwithstanding anything to the contrary in this Agreement, provided that the funds in the Laguna Seca Enterprise Fund are used by County solely for charges and obligations of County with respect to the Concession Premises as contemplated in this Agreement, any financial obligations of County under this Agreement shall be charges only against the Laguna Seca Enterprise Fund and shall not, without the written concurrence of County, be charges against or obligations of County's General Fund or other funds.

[SIGNATURE PAGE]