

AGREEMENT

THIS AGREEMENT is made and entered into as of this **17th day of December, 2013** by and between the COUNTY OF MONTEREY, hereafter referred to as “COUNTY”, and the PARKS FOUNDATION OF MONTEREY COUNTY, a nonprofit corporation created under the laws of the State of California, hereafter referred to as “FOUNDATION” for a **ten (10)** year term ending **December 31, 2023**.

WHEREAS, COUNTY owns and operates eight county parks, hereafter referred to as “PARKS”. Said properties include Jacks Peak Park, Laguna Seca Recreation Area, Toro Park, Royal Oaks Park, Manzanita Park, San Lorenzo Park, Lake San Antonio Recreation Area, all located in Monterey County and Lake Nacimiento Recreation Area, located in San Luis Obispo County.

COUNTY retains sole control of all PARKS areas and, except as set forth in this agreement, reserves the right to determine the use, and to use, all or any portion of the PARKS listed above, for park and recreation purposes in its sole discretion, and

WHEREAS, FOUNDATION exists for the sole purpose of assisting the Monterey County Parks Department in facilitating the acquisition, development, maintenance, and operation of COUNTY’s PARK facilities, for which purpose all funds not required for the maintenance and operation of the FOUNDATION raised by FOUNDATION are designated to be used, and

WHEREAS, the purpose of this agreement is to authorize FOUNDATION, to utilize COUNTY Parks facilities, as available for FOUNDATION business and social meetings, for fund raising, special events activities, and to operate concessions as approved by the COUNTY at PARKS to help acquire, develop, operate, and maintain said PARKS as a service to the general public.

NOW, THEREFORE, the parties agree as follows:

I. COUNTY promises and agrees:

1. To permit FOUNDATION to hold special public events which benefit PARKS as follows:

COUNTY authorizes and permits FOUNDATION to use area(s) in said PARKS for the purpose of conducting major and minor special public events to raise funds for the purpose of assisting in the acquisition, development, maintenance and operation of PARKS. Access to, and use of said areas will be permitted only if no event or activity has been previously scheduled. Such access and use will also be subject to restrictions set forth in COUNTY’s Concession Agreement for Special Events and Special Event Use Application; and will be approved at the discretion of the Director of Parks.

County may, at the sole discretion of the County's Director of Parks, consider waiving applicable park related facility fees in connection with the permit to hold special public events by Foundation.

- (1) Major Events: The major special public events are defined as events in excess of 4,000, but less than 20,000 persons per day, which the general public may attend by ticket purchase under the conditions established by FOUNDATION and approved in a Special Event permit issued by COUNTY. They shall be of one or two days in duration each.
 - (2) Minor Events: The minor events are defined as events which attract a limited audience of less than 4,000 people per day.
 - (3) Major and minor events shall include, but not be limited to, activities such as dinner concerts, festivals, cultural events, picnics, bingo, and other social functions relating to the organized purpose of the FOUNDATION. FOUNDATION may contract for or provide food or beverage, retail sales, and other necessary services to perform major and minor events subject to paragraph II.1 of this agreement.
2. To permit FOUNDATION to use the COUNTY's PARKS facilities to operate concessions including PARKS related retail sales, etc., at the discretion of the Director of Parks. This agreement does not give FOUNDATION exclusive right to provide such services and shall not infringe upon service provided by existing Parks Department concessionaires, unless approved by affected concessionaire and PARKS.
 3. To permit FOUNDATION to utilize group picnic areas, as available during major and minor special events.
 4. To permit FOUNDATION to use facilities at the PARKS headquarters (855 E. Laurel Drive, Salinas) to conduct FOUNDATION's routine business activities and to hold monthly meetings. Special FOUNDATION meetings may also be held at park units on a space available basis. Meetings shall be scheduled in advance with the prior approval of PARKS. This provision shall not be deemed to limit the PARKS' ability to make available other park facilities for other meetings and other purposes as required by FOUNDATION with the prior approval of PARKS. There is no cost to the FOUNDATION for the use of administrative facilities to conduct monthly business meetings.
 5. To cooperate with and assist FOUNDATION in the development of PARKS related programs.

II. FOUNDATION promises and agrees:

1. To accept, the sole cost for all non-park fees as may apply, responsibility and obligation to stage each major and minor special event referred to above in

Paragraph I.1 at PARKS, provide necessary equipment, manpower and utilities, secure all use permits, licenses or permits required or necessary for staging of events, and comply with all laws and regulations imposed by lawful authority as further set forth in the County's concession agreement for special events and special event use application.

2. To notify COUNTY in writing in advance of any special events the FOUNDATION desires to hold subject to any limitations and/or restrictions made a part of this agreement. Special events are subject to approval by County's Director of Parks. All special event access and use approval will be subject to park availability.
3. To provide COUNTY with a financial profit and loss statement for each special event within 45 days after said event. Said profit and loss statement shall conform to standard accounting practices.
4. To provide COUNTY with an annual financial compilation report 60 days after the close of their calendar year. COUNTY to have the right to examine the financial records of FOUNDATION at any time upon reasonable notice.
5. To initiate press releases, stories, periodicals, and advertising media. Establish and operate concessions relating to each special event including admission charges, food and beverages, selling of programs and other services.
6. To permit Parks Department employees and their families who reside within PARKS and any COUNTY employee, on official business, to ingress and egress without charge during special events.
7. Hold Harmless/Indemnification. FOUNDATION shall defend, indemnify and save the County of Monterey, its agents, officers and employees harmless from and against any and all liability, claims, suits, actions, damages, penalties and/or causes of action arising out of any personal injury, loss of life or damage to property, violation of any federal, state or local law or ordinance or other cause in connection with the activities of FOUNDATION, its subcontractors, agents and employees under this agreement or on account of the performance or character of the work, unforeseen difficulties, accidents, occurrences or other causes and from and against all expenses incurred in obtaining expert testimony and the attendance of witnesses, expenses and liability incurred in and about any such claim, the investigation thereof or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered therein. However, this indemnity will not extend to any loss, damage, or expense arising out of the sole negligence or willful misconduct of the County of Monterey or its agents, officers, or employees. The obligation to defend and indemnify shall be effective even if the County of Monterey, its agents or servants, is found to have been comparatively negligent. County's approval of the FOUNDATION's

insurance coverage does not relieve the FOUNDATION or subcontractors of liability under this Indemnification Clause.

8. Workers' Compensation Insurance. The FOUNDATION shall provide, during the life of this agreement, workers' compensation insurance for all of its employees engaged in work under this agreement, on or at the site of the project, and, in case any work is sublet, the FOUNDATION shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the FOUNDATION's insurance. In case any class of employees engaged in work under this agreement, on or at the site of the project, is not protected under the Workers' Compensation Statute, the FOUNDATION shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The FOUNDATION shall file with the County certificates of insurance protecting workers.
9. Public Liability and Property Damage Insurance. FOUNDATION at its own cost and expense shall maintain liability and property damage insurance for the period covered by this contract in the amount of \$1,000,000 combined single limit. Such coverage shall include, but shall not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property resulting from activities contemplated under this agreement, use of owned and non-owned automobiles, products, and completed operations. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the County and shall provide that notice must be given to County at least 45 days prior to cancellation or material change. County, its officers and employees shall be named as additional insureds, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance effected by the County will be called upon to contribute to a loss suffered by FOUNDATION or any subcontractor hereunder. The FOUNDATION shall cause to be delivered to the County Parks Director prior to commencing work under authority of this agreement, a certificate executed by the insurer evidencing such insurance or permission to self-insure.
10. To utilize all funds raised for PARKS development, maintenance, and/or operation either through special events held at specific PARKS or through other solicitations of funds for that purpose only. Such funds shall be held by FOUNDATION in special accounts designated for use only at PARKS. The FOUNDATION may utilize no more than ten percent of funds for its administrative expenses. That while this permit is in force, FOUNDATION may not commit or authorize any of the following acts:
 - a) The transfer, sale, or assignment of this agreement or any interest herein to any person, company or partnership, nor sub-assign any function or portion of this permit without prior written approval from the Board of Supervisors of the County of Monterey.

- b) The change or alteration of PARKS terrain or drainage system, changes to existing PARKS facilities or cutting, removing or destroying any shrubs and/or trees without the prior written approval of the Director of Parks.
- c) The construction of improvements or installation of any permanent fence, barrier, sign, bridge, exhibit, or structure without prior written approval of COUNTY's Director of Parks or his designee.
- d) The sale of any alcoholic beverages other than beer and wine at its concession stands during major or minor special events only. Such sale shall be under permit of the Alcohol Beverage Control Board.
- e) FOUNDATION warrants that during the rendition of any and all services pursuant to the terms of this Agreement, FOUNDATION will fully comply with all federal, state and local laws and regulations which prohibit discrimination against any employee or applicant for employment, or recipient of services because of race, color, religion, sex, national origin, physical or mental handicap or age.

III. It is mutually understood and agreed:

1. That if FOUNDATION shall become bankrupt or insolvent, or if there shall be any default in the terms of this permit by FOUNDATION, COUNTY may cancel and terminate this agreement by the following procedure:

COUNTY shall give FOUNDATION written notice to the particulars of the default, if FOUNDATION fails to remedy the default within a period of 30 days, or within such greater time as COUNTY may approve, then this permit shall automatically terminate and all rights of FOUNDATION shall cease and terminate.

2. PARKS related structures and improvements, if any, installed by FOUNDATION shall remain the property of COUNTY who shall have final determination as to their use in accordance with PARKS operation plan.
3. FOUNDATION may seek after and enter into sponsorship agreements with individuals or companies to place structures, improvements, and facilities at PARKS with prior written approval of COUNTY's Director of Parks.
4. FOUNDATION agrees to cooperate with and keep the COUNTY informed regarding all of its programs.
5. This agreement shall be subject to any and all of the ordinances of COUNTY regulating the use of land at COUNTY PARKS.

6. This agreement shall be subject to revocation by either party, without cause, at any time upon giving prior 90 day notice thereof to other party.
7. COUNTY reserves the right to enter into future concession agreements involving retail sales and the sale of food and beverages at PARKS for the primary purpose of serving year-round PARKS visitors. Such future concessionaires shall have the right to engage in such sales during FOUNDATION's major and minor events. This does not abridge the right of FOUNDATION to operate concessions at major and minor events.
8. All FOUNDATION special public events and activities scheduled at PARKS in a specific area will be subject to prior availability of said area.
9. COUNTY Director of Parks, or his/her designee, and the FOUNDATION's Executive Board shall meet each May and cooperatively develop their respective annual operations, maintenance and capital improvements budgets for the PARKS related facilities subject to this agreement.
10. That the FOUNDATION has entered into an agreement dated January 12, 1999 with the Pasadera Country Club, LLC (subsequently renamed 'The Nicklaus Club') for the lease of FOUNDATION's property as described in that certain Gift Deed recorded at Reel 2330, Page 43, Official Records of Monterey County, for the purpose of constructing and operating a golf driving range in connection with the Pasadera Country Club, located adjacent to the FOUNDATION's property. It is further agreed and understood that the lease agreement contains language that the Pasadera Country Club, aka, The Nicklaus Club's use shall be subordinate to the use of the property by PARKS for general activity parking purposes associated with the Laguna Seca Recreational area up to a total of twelve (12) days per calendar year, and up to an additional and separate seven (7) days for camping and parking purposes during other PARKS special events.
11. That the use of FOUNDATION's property by PARKS is subject to Monterey County Use Permit No. 990133, adopted on April 29, 1999 and attached hereto by reference. PARKS may, at any time, make a request to the Pasadera Country Club, aka, The Nicklaus Club, to use additional available parking days, in excess of that stated above.
12. Such use shall be subject to the limitations placed on FOUNDATION's property by the hereinbefore referenced Use Permit.
13. That notice to COUNTY shall be delivered to it as follows:

Monterey County Parks Department
P.O. Box 5249
Salinas, CA 93915

14. That notices to FOUNDATION shall be deemed delivered when personally delivered to, or 24 hours after mailing addressed to FOUNDATION at:

Parks Foundation of Monterey County
P.O. Box 4864
Salinas, CA 93912

15. That no amendment to this agreement shall be valid or binding unless made in writing and duly authorized on behalf of both parties.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date set forth above.

Dated: _____

COUNTY OF MONTEREY

By: _____
Chair, Board of Supervisors

Dated: _____

PARKS FOUNDATION OF
MONTEREY COUNTY

By: _____
President

APPROVED AS TO FORM
MONTEREY COUNTY COUNSEL

Deputy County Counsel