



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

Agreement No.: A-13877

Upon motion of Supervisor Adams, seconded by Supervisor Phillips and carried by those members present, the Board of Supervisors hereby:

- a. Approved a Sponsorship Agreement between Lexus USA and the County of Monterey for official luxury auto sponsorship of the WeatherTech Raceway at Laguna Seca; and
- b. Authorized the Chair of the Board to execute the Agreement retroactively to March 31, 2018.

PASSED AND ADOPTED on this 1st day of May 2018, by the following vote, to wit:

AYES: Supervisors Alejo, Salinas, Phillips, Parker and Adams

NOES: None

ABSENT: None

I, Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting May 1, 2018.

Dated: May 2, 2018
File ID: A 18-091

Nicholas E. Chiulos, Acting Clerk of the Board of Supervisors
County of Monterey, State of California

By Danise Hancock
Deputy

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**SPONSORSHIP AGREEMENT
"Official Luxury Auto"**

This Sponsorship Agreement ("**Agreement**") is entered into as of March 31, 2018 ("**Effective Date**") by and between **LEXUS, a division of TOYOTA MOTOR SALES, U.S.A., INC.** ("**Sponsor**" and/or "**Lexus**"), a California corporation, and the **COUNTY OF MONTEREY ("County")**, a political subdivision of the State of California (each a "**Party**," collectively, the "**Parties**").

RECITALS

WHEREAS, the County owns the Laguna Seca Recreational Area ("**LSRA**") and all assets thereof including intellectual property rights and event rights, and hosts professional motor racing events at the Laguna Seca Raceway located therein (the "**Raceway**"); and

WHEREAS, Sports Car Racing Association of the Monterey Peninsula ("**SCRAMP**") manages the Raceway for Monterey County, and is the County's agent for such purposes; and

WHEREAS, Lexus is in the business of importing, marketing, and/or distributing luxury automobiles, trucks, sports utility vehicles, and related parts and accessories in the United States and elsewhere; and

WHEREAS, the County desires Lexus to be the exclusive luxury auto sponsor of the Raceway, and Lexus desires to be the exclusive luxury auto sponsor of such Raceway, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. Sponsorship of Raceway and Events; Exclusivity. Lexus shall be an official sponsor of the Raceway and shall be designated as the official luxury auto of the Raceway (the "**Sponsorship**").
 - (a) During the Term, and subject to the terms hereof, the County shall not make any other manufacturer, importer, dealer, lessor, distributor, or other provider of automobiles, vans, trucks, recreational vehicles or other motor vehicles, and/or any automotive finance company a sponsor of the Raceway; provided, however, that the County shall, without limitation, retain all rights to:
 - (i) Grant individual event sponsorships for racing events at the Raceway; however, the County shall not remove or alter major Lexus signage (as defined in **Section B of Exhibit A**) unless required contractually pursuant to an agreement between the

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- County and Dorna, and the County may grant event or premises sponsorships for non-racing events at LSRA or the Raceway;
- (ii) Otherwise arrange for, permit or sell advertising or licensing, which may be displayed at the Raceway, or in connection with County promotions, or related to the use of the Raceway image or trade name; and
 - (iii) Collect all revenue, fees, and royalties related to (i) and (ii) above.
- (b) Lexus has the right to include the following category of products in its on-site activations at the Events: mobility robots, humanoid robots, support robots, rehabilitation robots, wearable robots, medical devices, and financing of mobility products and services (the “**Mobility Category**”). Should County wish to offer advertising, promotional and/or sponsorship rights, signage or other opportunities in connection with the Events to any entity that falls within the Mobility Category, then Lexus shall have the right of first negotiation to obtain such rights in the Mobility Category. County and Lexus shall engage in exclusive, good-faith negotiations for thirty (30) business days from the date the County notifies Lexus in writing of such desire, and if Lexus and County have not entered into a definitive agreement as of the expiration of that period, then County shall be free to enter into negotiations with a third party with respect to such rights in the Mobility Category.
2. Consideration. In consideration for rights granted Lexus and the County's obligations under this Agreement, and subject to Lexus's receipt of proper invoices from the County, Lexus shall pay the County the following amounts (collectively or individually, the “**Sponsorship Fee**”):
- (a) 2018 Agreement Year: Two Hundred Thousand US Dollars (\$200,000.00 USD), payable on or before April 31, 2018;
 - (b) 2019 Agreement Year: Three Hundred Twenty-Seven Thousand US Dollars (\$327,000.00 USD), payable on or before April 1, 2019; and
 - (c) Agreement Years 2020 through 2022: *Strictly provided that this Agreement is extended through March 31, 2023 per the terms of Section 3(a) below*, Three Hundred Twenty-Seven Thousand US Dollars (\$327,000.00 USD) each Agreement Year, payable on or before April 1st of each respective Agreement Year.

Payment of the Sponsorship Fee(s) shall be made by checks payable to Monterey County and mailed to the address set forth in Section 23.

3. Term.

- (a) The initial term of this Agreement shall begin on the Effective Date and end on March 31, 2020, (“**Initial Term**”), unless sooner terminated in accordance with this Agreement; provided, however, that Lexus shall have the right to extend this Agreement for an additional three (3) year period through March 31, 2023, on the terms and conditions set forth herein, by providing written notice to the County on or before December 1, 2019 (the

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“**Extension Term**”). For purposes of this Agreement, the Initial Term and the Extension Term may be collectively or individually referred to herein as the “**Term**.” Furthermore, each twelve (12) month period during the Term, beginning with April 1st and continuing through March 31st of the following year, shall be an “**Agreement Year**”.

(b) Right of First Negotiation and Right to Match:

- (i) Provided that this Agreement is extended by Lexus per the terms of Section 3(a) above, beginning on September 1, 2022 and continuing through November 30, 2022 Lexus shall have the exclusive right of first negotiation to enter into a new sponsorship agreement with the County for Lexus to be the official luxury auto, the official auto for the Raceway, or rights within the Mobility Category for years 2023 – 2027 on terms similar hereto. If the Parties do not come to an agreement by November 30, 2022 the County may negotiate with another party in the applicable category(ies); provided, however, that if County reaches agreement on sponsorship terms with another party, Lexus shall have a right of first refusal to match such terms, which Lexus may exercise by providing written notice to County within thirty (30) days of receiving written notice of such offer and its terms from County.

4. County's Obligations

- (a) The County has the authority to grant, and it hereby grants to Lexus, the promotional rights set forth in this Agreement, including those rights listed in **Exhibit “A”**. If the County is prohibited from providing any of the promotional rights set forth in Exhibit A, then at Lexus’s sole option and discretion the Parties shall negotiate in good faith to promptly determine substitute rights or benefits of comparable value and impact (“**Make-Goods**”). If, after good faith efforts, the Parties are unable to agree on suitable Make-Goods, then at Lexus’s sole option and discretion the Parties shall negotiate in good faith a refund corresponding to the value of the promotional rights paid for but not provided and/or an appropriate adjustment to the Sponsorship Fees. If the Sponsorship benefits at issue comprise a substantial portion of the overall Sponsorship benefits, in addition to receiving a refund, Lexus shall have the right, upon written notice to the County, to terminate this Agreement without further obligation or penalty and without waiving any of its rights or remedies.
- (b) The County shall require SCRAMP to perform the following duties with respect to the Major Race Events (“**Major Race Events**”) and all activities connected therewith or incident thereto, including the following:
- (i) SCRAMP will, or will cause others to (at no expense to Lexus), organize, promote, produce, run and perform all acts necessary to stage the Major Race Events and operate the Raceway, which acts may include, but are not limited to: (1) preparing and distributing entry forms or tickets, if any, which comply with all applicable legal requirements and which include Lexus and SCRAMP on the liability waiver; (2) obtaining in advance all permits, licenses and bonds required to conduct the

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Major Race Events and operate the Raceway; (3) obtaining in advance any approval from third parties required to conduct the Major Race Events and perform its obligations hereunder, including without limitation, Lexus' participation as set forth herein; (4) providing, as required, trained staff for traffic control, crowd control, staging area facilities, and medical, fire and safety protection, security and police support; (5) complying with any and all federal, state and local rules and regulations governing the Major Race Events and operation of the Raceway; and (6) obtaining signed liability releases from persons using the Raceway naming Lexus as a released party.

- (c) The County shall be responsible for the payment of all federal, state and local sales and use taxes, now effective or imposed with respect to the Major Race Events and the Raceway. Except as specifically set forth herein, the County shall not be responsible for the payment of any taxes imposed as a result of the rights granted to Lexus hereunder. Should Lexus receive a bill or statement of taxes that are the responsibility of the County, Lexus shall immediately forward such bill or statement to the County. Upon request by Lexus, proof of compliance (i.e., copy of bond and other necessary documents) shall be sent to Lexus in accordance with Section 23.
- (d) If the County learns of any manufacturer, importer, dealer, lessor, distributor, or other provider of automobiles, vans, trucks, recreational vehicles or other motor vehicles, and/or any automotive finance company or mobility robots, humanoid robots, support robots, rehabilitation robots, wearable robots, medical devices, and financing of mobility products and services ("**Competitor**") being marketed, advertised, or promoted in any manner that states or implies an association between the Competitor and the Raceway, or is overtly intended, and/or has the effect, to attack, harm, embarrass and/or disparage the Lexus Entities, their respective affiliates, and/or their respective products or services, and/or the "Toyota" and "Lexus" brand or any of the Lexus Marks and such association is unauthorized hereunder ("**Ambush Marketing**"), County will (i) promptly notify Lexus in writing of the Ambush Marketing circumstances, and (ii) promptly make commercially reasonable efforts, and cooperate in good faith with Lexus, to prevent or stop such Ambush Marketing in order to protect the promotional rights and exclusivity granted to Lexus under this Agreement. In addition, County shall not knowingly permit Ambush Marketing by any Competitor.

5. Trademarks.

(a) LEXUS MARKS.

- (i) Lexus, on behalf of itself and Lexus Entities (as defined in Section 9(a)), hereby grants to the County a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable (except to SCRAMP, as permitted herein, and to authorized Personnel (as defined in Section 13(b)) with Lexus's prior written consent), royalty-free license and right during the Term to use trademarks, trade names, service marks, insignias, logos designs, social

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media handles, or other indicia of identification, whether registered or not, of Lexus and Lexus Entities (collectively, "**Lexus Marks**"), solely in the exact form, style and type, in connection with the advertising, promotional and other materials and communications created by or on behalf of the County in connection with Lexus's sponsorship of the Raceway (excluding any Lexus Marks contained therein and used in accordance with the terms of the Agreement, collectively the "**County Content**"), subject to Lexus' prior written approval of each such use. SCRAMP and its affiliates and agents, if any, shall have no interest in or right to the use of such except for purposes of the performance of its obligations to the County at the Raceway, and except for any limited non-exclusive right of usage which Lexus may grant in writing pursuant to this Agreement. Any such limited non-exclusive right shall, in any event, be expressly limited to the Major Race Events and the Raceway and any activities or promotions reasonably incident thereto. For sake of clarity, County agrees that any Raceway- or Event-related press or broadcast materials, advertising or promotional materials, or social media posts (whether printed or on the Internet) that refer to Lexus or any Lexus Affiliate shall be subject to Lexus's prior review and written approval.

- (ii) Whenever the County uses a Lexus Mark licensed hereunder, it shall (i) print or display the following statement: "The [**relevant Lexus Mark**] is used solely by permission of Lexus." or (ii) when the statement is impractical, either print a registered trademark symbol (®) or trademark symbol (™), whichever is appropriate. In the alternative, the County may request, in writing, an alternate display method, which shall be subject to Lexus' approval.
- (iii) County acknowledges and agrees that the Lexus Marks are and shall remain exclusively the property of Lexus or Lexus Entities, as applicable. County shall not directly or indirectly obtain or attempt to obtain during the Term or any time thereafter any right, title or interest in or to the Lexus Marks. No change in the ownership of the Lexus Marks shall be effected by this Agreement, and all rights and licenses not expressly granted by Lexus to County with respect to the Lexus Marks are hereby reserved to Lexus and Lexus Entities, as applicable. In the event the County, or any affiliate or agent attempts to transfer or assign this limited non-exclusive license, such limited license shall terminate immediately without further action from Lexus.

(b) LAGUNA SECA RACEWAY MARKS

- (i) The County hereby grants, or shall do all things necessary to grant and ensure, Lexus the non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), and non-sublicensable license and right to use from time to time, during the Term, the Laguna Seca Raceway trademarks, trade names, service marks, insignias, logos designs, social media handles, or other indicia of identification, whether registered or not, owned by the County (collectively, the "**Laguna Seca Marks**"), solely in the exact form, style and type then prescribed by

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County, in advertising, promotional and other materials and communications created by or on behalf of Lexus in connection with Lexus's sponsorship rights hereunder, upon County's approval (which shall not be unreasonably withheld or delayed). For avoidance of doubt, after the Term, Lexus shall not be required to take down or remove any existing materials or communications incorporating Laguna Seca Marks from any media channels and may continue to use such content for internal, historical and non-commercial purposes without limitation as to time or media. Lexus shall have the exclusive right in the luxury auto category as the Official Luxury Auto Sponsor of Laguna Seca Raceway to use the Laguna Seca Marks in advertising and promotional programs.

- (ii) Whenever Lexus uses a Laguna Seca Mark licensed hereunder, it shall (i) print or display the following statement: "The [**relevant Laguna Seca Mark**] is used solely by permission of Monterey County " or (ii) when the statement is impractical, either print a registered trademark symbol (®) or trademark symbol (™), whichever is appropriate. In the alternative, Lexus may request, in writing, an alternate display method, which shall be subject to the County's approval.
- (iii) Lexus acknowledges and agrees that the Laguna Seca Marks are and shall remain exclusively the property of County. Lexus shall not directly or indirectly obtain or attempt to obtain during the Term or any time thereafter any right, title or interest in or to the Laguna Seca Marks. No change in the ownership of the Laguna Seca Marks shall be effected by this Agreement, and all rights and licenses not expressly granted by County to Lexus with respect to the Laguna Seca Marks are hereby reserved to County.
- (iv) Lexus acknowledges and agrees that as of the Effective Date of this Agreement WeatherTech is the official title sponsor of the entire Raceway, and Lexus will refer to the Raceway in any Lexus advertising, promotional and other public-facing materials and communications (as permitted herein), Lexus refer to the Raceway as "WeatherTech Raceway Laguna Seca," subject to any guidance provided by the County or SCRAMP (e.g., use of the official WeatherTech Raceway Laguna Seca logo at the top of a Lexus press release, without requirement to repeatedly refer to the Raceway as "WeatherTech Raceway Laguna Seca" throughout the entire text of the press release). Notwithstanding the foregoing, the County acknowledges and agrees that the aforementioned obligation only applies to the title sponsor of the Raceway as of the Effective Date hereof, WeatherTech, and *should WeatherTech cease to be the title sponsor of the Raceway at any time during the Term hereof* Lexus shall have no obligation to refer to any future title sponsor of the Raceway when referring to the Raceway in any Lexus advertising, promotional and other public-facing materials and communications and may instead refer to the Raceway as "Laguna Seca Raceway."

6. Publicity Rights. Subject to the terms hereof, Lexus shall have the right to generate publicity with respect to Lexus's sponsorship of the Raceway via press materials and other forms of

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communication (including, without limitation, social media posts) to be distributed by Lexus and its designees or to the media for non-editorial/commercial purposes. Lexus shall also have the right to take photographs and to make films, videotapes, or other visual or audio records, for the purpose of advertising and/or promoting Lexus's affiliation with the Raceway and/or private Lexus events at the Raceway. The County will obtain in advance all rights, licenses, consents and approvals from third parties required to provide Lexus these publicity rights, except when prohibited by commercial rights, e.g. television, sanctioning body commercial rights, etc. The County shall require SCRAMP to coordinate discussions prior to each Major Race Event between sponsors and Lexus to ensure that each party's interests are communicated amongst each other. (e.g., SCRAMP to coordinate discussion between Dorna (SBK) and Lexus to ensure all parties have agreed to appropriate publicity rights).

7. Prior Approval.

- (a) Any advertising or other material prepared by or on behalf of the County that includes any Lexus Mark or materials provided by Lexus must receive the prior written approval of Lexus prior to any use, publication or broadcast thereof.
- (b) Any advertising or other material prepared by Lexus, or Lexus's representatives or agents, which contains or otherwise utilizes any Laguna Seca Mark, shall be in accordance with any mutually agreed upon written guidelines for use of any of the Laguna Seca Mark.

8. Default; Remedies; and Termination.

- (a) Any one of the following events shall constitute an event of default ("**Event of Default**") under this Agreement regardless of whether any such event shall be voluntary or involuntary or shall result from the operation of applicable laws, rules or regulations or shall be pursuant to or in compliance with any judgment, decree or order of any court of competent jurisdiction:
 - (i) Either Party shall make any material misrepresentation or omission or shall breach any representation or warranty made in this Agreement;
 - (ii) Either Party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or similar law, or shall make a general assignment for the benefit of creditors, or shall have an involuntary case or other proceeding instituted against it seeking similar relief;
 - (iii) Either Party shall otherwise fail to perform or observe any other covenant or condition set forth herein and such failure shall continue un-remedied for a period of ten (10) days after the receipt of written notice thereof from the non-defaulting Party;
 - (iv) Either Party should commit an act in which brings the other Party's name into disrepute;

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- (v) The County breaches any term of Section 1 (Sponsorship of Raceway and Events; Exclusivity), Section 4 (County's Obligations), Section 5 (Trademarks), Section 6 (Publicity), Section 7 (Prior Approval), Section 10 (Insurance), Section 11 (Loan Vehicles), or Section 12 (Representations and Warranties); and
 - (vi) The County is declared to be in default under the County's agreement with any other sponsor and any relevant cure periods have expired.
- (b) Upon the occurrence of an Event of Default, and at any time thereafter so long as the same shall be continuing, the non-defaulting Party may declare, at its option, that the defaulting Party is in breach of this Agreement by providing written notice to the defaulting Party. In such case, the Parties shall meet and confer in good faith within seven (7) days of the defaulting-Party's receipt of the notice of default to discuss the circumstances of the default. The defaulting Party shall be given a reasonable time, not exceeding twenty-one (21) days following receipt of the notice of default, to cure the default. If the default is not cured within that time, the non-defaulting Party:
- (i) May immediately terminate this Agreement without any liability whatsoever to the defaulting Party;
 - (ii) May seek enforcement by appropriate court action of the terms hereof and recover damages for the breach hereof;
 - (iii) May exercise any other right or remedy available to it under law or in equity; or
 - (iv) May seek any permitted combination of such remedies.
- (c) Upon termination by Lexus pursuant to Section 9(b) above, the County shall not be entitled to any further payments of the Sponsorship Fee, and shall return to Lexus that amount of the immediately preceding paid Sponsorship Fee that is in proportion to the number of days following the payment of said Sponsorship Fee that the Event of Default was declared.

No remedy is intended to be exclusive, but each shall be cumulative and the exercise of any such remedy shall not preclude the simultaneous or later exercise of any other remedy.

9. Indemnification

(a) GENERAL

- (i) The County hereby agrees to defend, indemnify and hold Lexus, and its parents, subsidiaries, and affiliated entities, as well as each officer, director, employee, representative, agent, distributor, dealer, dealer association, successor and permitted assign of any of the above (collectively, the "**Lexus Entities**"), harmless from and against any and all claims, suits, actions, and proceedings brought by a third party (collectively, "**Claims**") against such Lexus Entities and all resulting damages, liabilities, losses, judgments, costs, and expenses whatsoever (including, but not

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limited to, reasonable attorneys' fees and legal expenses) (collectively, "**Damages**") arising out of or related to: (1) County's breach, misrepresentation or non-performance under this Agreement or an agreement with any other sponsor, persons, or entities associated with any events or the Raceway; (2) County's failure to comply with any and all federal, state and local laws, rules and regulations including, but not limited to, those related to internet privacy, electronic communications, and intellectual property infringement; (3) any payment owed by the County or SCRAMP to persons or entities associated with any event or the Raceway; and (4) any material supplied by the County or SCRAMP pursuant to this Agreement; (5) the negligent or willful misconduct of the County Entities and/or SCRAMP; and (6) any other Claims which arise from any event or the operation of the Raceway, including, but not limited to, claims for personal injury, death and property damage, excepting from this indemnity the negligence or willful misconduct of Lexus, the Lexus Entities, or Lexus's guests or invitees to the Raceway.

- (ii) Lexus hereby agrees to defend, indemnify and hold the County, and their related and affiliated entities, as well as each officer, director, employee, representative, agent, successor and permitted assign of any of the above (collectively, the "**County Entities**"), harmless from and against any and all Claims against such County Entities and all resulting Damages arising out of or related to: (1) Lexus's material breach of its warranties and representations; (2) Lexus's failure to comply with any and all applicable federal, state and local laws, rules and regulations including, but not limited to, those related to intellectual property infringement; (3) any material supplied by Lexus pursuant to this Agreement if used in accordance with Lexus' written instructions; and (4) the grossly negligent or willful misconduct of Lexus, or the Lexus Entities.

(b) INTELLECTUAL PROPERTY

- (i) The County hereby agrees to defend, indemnify and hold the Lexus Entities harmless from and against any and all Claims against such Lexus Entities and all resulting Damages arising out of or related to any alleged infringing activity in connection with: (1) the operation of the website related to any events or the Raceway; and (2) any claim that the Laguna Seca Marks, or the use thereof, infringe upon the intellectual property rights of a third party. With respect to any such action, suit or proceeding the Lexus Entities shall have the option, but not the obligation, to participate in or assume Lexus's defense, either jointly with the County, with any other party, independently or otherwise, using counsel satisfactory to Lexus. The County shall reimburse Lexus for all costs, including reasonable attorneys' fees incurred in such action, suit or proceeding.
- (ii) Lexus hereby agrees to defend, indemnify and hold the County Entities harmless from and against any and all Claims against such County Entities and all resulting Damages arising out of or related to any claim that the Lexus Marks, or the use thereof, infringe upon the intellectual property rights of a third party. With respect to any such action,

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suit or proceeding the County and its affiliated entities shall have the option, but not the obligation, to participate in or assume the County's defense, either jointly with Lexus, with any other party, independently or otherwise, using counsel satisfactory to the County. Lexus shall reimburse the County for all costs, including reasonable attorneys' fees incurred in such action, suit or proceeding.

10. Insurance.

- (a) The County shall at all time during the Term of this Agreement meet or cause to be met the insurance requirements set forth on Exhibit "C".
- (b) Lexus shall maintain a policy of commercial general liability insurance including coverage for bodily injury, property damage, and personal injury, with limits of liability of at least One Million Dollars (\$1,000,000) per occurrence. Lexus shall, upon County's request, provide proof of such required insurance as well as proof evidencing the statutory Worker's Compensation insurance. All insurance coverages required hereunder shall be procured from insurers with a Best's performance rating of at least A- and with a financial size category of at least Class VII. The County acknowledges and agrees that the County shall not be an additional "named" insured under TMS/USA insurance policies.

11. Force Majeure; Cancellation.

- (a) Definition. A "**Force Majeure Event**" means any unforeseen circumstance beyond the reasonable control of, and not due to the negligence or willful misconduct of, the affected Party, which could not have been avoided by due diligence and use of reasonable efforts. A Force Majeure Event may include without limitation drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, acts of terrorism, explosions, strikes, lock-outs or labor disputes, or orders or judgments of any governmental entity.
- (b) Effect of Force Majeure. In the event that either Party is unable to perform or is precluded from performing any of its obligations under this Agreement due to a Force Majeure Event, such obligations shall be suspended for as long as the Force Majeure Event occurs; provided, however, that the party declaring a Force Majeure Event shall (i) make all reasonable efforts to continue to meet its obligations throughout the duration of the Force Majeure Event, and (ii) notify the other, unaffected, Party of the Force Majeure Event promptly upon its commencement (including the nature of the event) as well as when it has terminated. During the Force Majeure Event, the affected Party's nonperformance of such obligations shall not be deemed a breach of this Agreement.
- (c) Cancellation. Notwithstanding anything to the contrary herein, if any Event or Major Racing Event is canceled or the Raceway is unavailable for Lexus's use on pre-reserved track days (whether due to a Force Majeure Event or otherwise) (each a "**Cancelled Event**"), County shall use best efforts to reschedule the Cancelled Event for a date acceptable to County and Lexus. If a Cancelled Event is so rescheduled, the parties agree

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to negotiate in good faith concerning an appropriate refund of any Sponsorship Fees already paid by Lexus and/or reduction of any Sponsorship Fees not yet paid.

12. Confidentiality; Press Releases.

- (a) Confidential Information. Each Party agrees to keep confidential and not to disclose the terms of this Agreement or any proprietary, non-public, or confidential information of the other Party disclosed to or learned by it during the Term of this Agreement or the negotiations leading to its execution, including proposals, financial information, plans with respect to advertising, marketing, sales, and any other proprietary, non-public, or confidential information relating to the business of the other Party ("**Confidential Information**"); provided, however, that each Party may disclose such Confidential Information (i) in confidence to its respective employees and contractors with a need to know, Affiliates and related companies, accountants, and legal, financial, and marketing advisers; (ii) to the extent required by law or a court or regulatory proceeding, subject to giving the other Party advance written notice thereof so that a protective order or similar protection may be sought and obtained; or (iii) with the other Party's prior written consent.
- (b) Exceptions. In no event shall Confidential Information be deemed to include (i) information that is or becomes publicly available without breach of this Agreement; (ii) information that was known to the receiving Party before disclosure by the disclosing Party and free of any obligation of confidentiality; (iii) information that is rightfully received from a third Party without any obligation of confidentiality; or (iv) information that was developed by the receiving Party independently of and without reference to the disclosing Party's Confidential Information.
- (c) Press Releases. Neither Party shall issue any press release or public announcement concerning the existence of this Agreement without the other Party's prior written approval. Any such press release or public announcement shall be jointly developed and agreed upon by the parties.

13. Loan Vehicles.

- (a) Subject to the terms and conditions of the Lexus Vehicle Borrower Agreement set forth in Exhibit "D", Lexus shall provide to the County, for temporary use by the County and SCRAMP during the Term of this Agreement, certain vehicles as described in Exhibit "B" (the "**Loan Vehicles**").
- (b) The Loan Vehicles will be provided to the County fully licensed with copies of title and registration documents evidencing title in Lexus' name. The Loan Vehicles shall be solely for the use of the County or SCRAMP personnel (collectively, "**Personnel**"); provided, however, that no one under the age of twenty-one (21) may drive the Loan Vehicles, unless approved in advance and in writing by Lexus (on a case-by-case basis). The County shall execute Lexus's "Loan Vehicle Agreement," the form of which is attached hereto as Exhibit "D," as the same may be amended by Lexus from time to time, with respect to the

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Loan Vehicles. Any Loan Vehicle Agreement executed by the County and/or SCRAMP during the Term shall become part of, and subject to the terms of, this Agreement. The County agrees to take all measures to insure compliance by the County, SCRAMP and the Personnel with the terms of such Loan Vehicle Agreement.

- (c) SCRAMP agrees to operate and maintain, or shall cause others to operate and maintain, the Loan Vehicles at its own expense and in accordance with the manufacturer's requirements and recommendations therefore, so that the manufacturer's warranty will remain in effect for the Loan Vehicles at all times during the Term hereof. Except to the extent that the manufacturer's limited warranty is applicable to any required repair of the Loan Vehicles, all maintenance and repair work performed on the Loan Vehicles will be at SCRAMP's expense.

14. Representations and Warranties.

- (a) Unless this Agreement specifically provides otherwise, or unless the County otherwise provides advance written notice to Lexus, all rights and obligations of the County set forth herein may be exercised or undertaken (as the case may be) by SCRAMP on behalf of the County pursuant to that certain operation and management agreement between the County and SCRAMP dated January 23, 2017.
- (b) The County hereby represents and warrants to Lexus that: (i) the execution and delivery of this Agreement and the performance of the transactions contemplated under this Agreement have been duly and validly authorized; (ii) the County has no contractual or other obligations of any kind that would prevent it from performing any of its obligations under this Agreement; (iii) the County has the authority to grant the sponsorship and promotional rights to Lexus which are the subject of this Agreement and has obtained all required authorizations or approvals related thereto; and (iv) the County shall use its best efforts to ensure that its actions, SCRAMP's action, and those of their employees, agents and representatives do not damage, detract from, cast into disrepute, or reflect unfavorably upon Lexus' public image, goodwill, or business reputation.
- (c) Lexus hereby represents and warrants to the County that: (i) the execution and delivery of this Agreement and the performance of the transactions contemplated under this Agreement have been duly and validly authorized; (ii) Lexus has no contractual or other obligations of any kind that would prevent it from performing any of its obligations under this Agreement; and (iii) Lexus shall use its best efforts to ensure that its actions, and those of its employees, agents and representatives associated with Lexus' obligations under this Agreement do not damage, detract from, cast into disrepute, or reflect unfavorably upon the County's and SCRAMP's public image, goodwill, or business reputation.

15. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees. With the exception of the exercise and undertaking of the County's rights and obligations by SCRAMP referenced in Section 14(a), above, neither Party may assign its rights or obligations under this Agreement without the other

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Party's prior written consent. Any attempt to assign, transfer or delegate without such consent shall be void. Notwithstanding the existence or terms of any subcontract or delegation, County shall remain responsible for the full maintenance of the Raceway and production of the Events and Major Racing Events at the Raceway.

16. Independence.

(a) The Parties shall at all times act independently. Nothing contained in this Agreement shall be construed to make either Party the partner, joint venture, principal, agent or employee of the other Party hereto. Specifically, the County or the County Entities shall not have any express or implied authority to act for or on behalf of Lexus. Further, no officer, director, employee, agent, affiliate or contractor retained by the County or the County Entities to perform work on Lexus's behalf hereunder shall be deemed to be an employee, agent or contractor of Lexus. The County is solely responsible for payment of (i) all income, disability, withholding, and other employment taxes as well as (ii) all medical benefit premiums, vacation pay, sick pay or other fringe benefits for their respective officers, directors and employees, and (iii) all necessary payments to their respective agents, affiliates or contractors, including to SCRAM. Without limiting any remedy hereunder, the County shall indemnify, defend, protect and hold Lexus harmless from any claims for any such payments.

(b) Similarly, neither Lexus nor the Lexus Entities shall not have any express or implied authority to act for or on behalf of the County. Further, no officer, director, employee, agent, affiliate or contractor retained by Lexus or the Lexus Entities to perform work or services related to Lexus's rights and obligations under this Agreement shall be deemed to be an employee, agent or contractor of the County. Lexus is solely responsible for payment of (i) all income, disability, withholding, and other employment taxes as well as (ii) all medical benefit premiums, vacation pay, sick pay or other fringe benefits for its officers, directors, employees, and affiliates and (iii) all necessary payments to its agents, distributors or contractors. Without limiting any remedy hereunder, Lexus shall indemnify, defend, protect and hold the County harmless from any claims for any such payments.

17. Governing Law. This Agreement shall be governed by, interpreted under and enforced in accordance with the laws of the State of California. Any action brought to enforce or interpret this Agreement shall be filed in Monterey County, California.

18. Entire Agreement; Joint Drafting; Changes/Amendments. This Agreement, together with Exhibits "A" through "D" attached hereto (which are incorporated herein by reference) and any extensions or renewals of this Agreement, constitute the Parties' entire agreement with respect to the subject matter of this Agreement and supersedes all prior statements or agreements, both written and oral. This Agreement was fully negotiated and shall be deemed to have been jointly drafted by both Parties. This Agreement may be amended only by a writing signed by both Parties.

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19. **Severability.** If any provision in this Agreement is held invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, the remainder of the provisions or enforceable parts of this Agreement shall not be affected, and shall be enforced to the fullest extent permitted by law.
20. **Alternative Dispute Resolution.** Any and all disputes, claims and/or causes of action arising out of or relating to this Agreement (including without limitation, any alleged violation of this Agreement, any controversy relating to the interpretation or enforceability of this Section or the arbitrability of any dispute, or any claim that this Agreement or any part thereof is invalid, illegal or otherwise voidable or void) (each, a “**Dispute**”) shall be resolved in accordance with the procedures specified below in this Section 20, which shall be the sole and exclusive procedures for the resolution of any such Disputes:
- (a) **Negotiation.** The Parties shall attempt promptly and in good faith to resolve any Dispute by negotiation.
 - (b) **Mediation.** If any Dispute should arise between the Parties, which cannot be resolved through negotiation, the Parties shall endeavor to settle the Dispute by mediation. Either Party may request in writing that the other Party mediate the Dispute; such notice shall set forth the subject of the Dispute and the relief requested (“**Dispute Notice**”). Unless the Parties otherwise agree, the mediation shall be conducted in the greater Monterey-area, Monterey County, California, by a mediator affiliated with and under the rules of either the American Arbitration Association or JAMS.
 - (c) **Arbitration.** If within sixty (60) days after the date of the Dispute Notice the Dispute is not resolved, either Party may serve the other Party with a written notice of binding arbitration. Unless the Parties otherwise agree, the arbitration shall be conducted by and under the commercial arbitration rules of either the American Arbitration Association or JAMS. The arbitration shall be conducted by a panel of three (3) arbitrators. The Party initiating the arbitration shall designate its selected arbitrator in its notice of arbitration. The other Party shall have ten (10) business days to designate its Party-selected arbitrator. The arbitrators selected by the Parties shall then agree upon a third arbitrator within fifteen (15) business days after the selection of the second arbitrator. If either Party fails to appoint an arbitrator, or if the Party-selected arbitrators cannot agree on the third arbitrator, then the dispute resolution service whose rules govern the arbitration shall appoint the arbitrator. The arbitration shall take place in the greater Monterey-area, Monterey County, California, and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, to the exclusion of state laws inconsistent therewith, and judgment upon the award rendered by the arbitrators may be entered by any court having jurisdiction thereof.
 - (d) **Provisional Remedies; Legal Action.** Notwithstanding the provisions of this Section, a Party may file a complaint limited to seeking provisional judicial relief pending the outcome of the mediation and/or arbitration provided by this Section 20; provided, however, that County shall not seek, and no such provisional judicial relief sought by County shall include or otherwise entitle County to, any self-help type remedies (e.g.,

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suspension, delay in performance or termination), but always subject to County's right to terminate this Agreement pursuant to Section 8. If any legal action or proceeding becomes necessary to seek provisional equitable relief, or to enforce the provisions of this Section 20 or to enforce the arbitration award, such legal action or proceeding shall be brought exclusively either (a) in any state court of competent jurisdiction located in Monterey County, California, or (b) in the United States Federal District Court, the Northern District of California for Monterey, and the Parties expressly consent and waive any objections to subject matter jurisdiction, personal jurisdiction and venue in such courts. The Parties further expressly consent and waive any objections to being served with process of any such legal action or proceeding in accordance with the notice provisions of Section 23.

- (e) *Confidentiality*. All negotiations and proceedings pursuant to this Section 20 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by Applicable Law.
21. Attorneys' Fees. Should either Party institute or participate in a legal or equitable action or proceeding against the other Party seeking to enforce or interpret this Agreement, the non-prevailing Party in the proceeding shall pay the prevailing Party's costs, including without limitation, expert and professional fees, reasonable attorneys' fees, and costs and fees on appeal. Said obligation of the non-prevailing Party shall be deemed to accrue on the date of commencement of such action or proceeding.
22. Cumulative Remedies. All rights and remedies of the Parties are cumulative and are in addition to, not in limitation of, any rights and remedies the parties may have at law or in equity, and all such rights and remedies may be exercised singularly or concurrently.
23. Notices. Whenever notice is to be given by any Party to the other Party under this Agreement, such notice shall be made by any one of the following methods: personally; by overnight courier service from which proof of delivery can be obtained via next business day delivery, delivery charges prepaid; or by registered or certified mail, postage prepaid, return receipt requested. Notices shall be effective upon receipt or refusal thereof. Any Party may change its address and other noticing information by giving the other party written notice of such change in accordance with this Section. All notices shall be sent to the addresses set forth below:

To Lexus:

Lexus, a division of Toyota Motor Sales, U.S.A., Inc.
6565 Headquarters Drive
Plano, TX 75024
Attn: Lexus Engagement and Partnership Manager

To County:

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Monterey County Administrative Office
168 W. Alisal St., 3rd Floor
Salinas, CA 93901
Attention: Dewayne Woods

With a copy to:

Monterey County Counsel
168 W. Alisal St., 3rd Floor
Salinas, CA 93901

To SCRAMP:

WeatherTech Raceway Laguna Seca
1021 Monterey Salinas Highway
Salinas, CA 93908
Attention: Steve Fields, SVP Sales

24. Non-Waiver. The waiver by a Party of the performance of any covenant, condition, obligation, representation, warranty or promise in this Agreement shall not invalidate this Agreement or be deemed a waiver by such Party of any other covenant, condition, obligation, representation, warranty or promise. The waiver by any Party of the time for performing any act or condition under this Agreement does not constitute a waiver of the act or condition itself.
25. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same instrument. If a Party hereto elects to use an electronic signature system to complete the execution of this Agreement (including without limitation, any modification, amendment or supplement thereto), neither Party shall challenge or otherwise refute the legal effect, admissibility, validity, or enforceability of this Agreement or the execution thereof on the grounds that (a) this Agreement used electronic signature or electronic record in its formation, (b) this Agreement solely is retained or was communicated in electronic form, or (c) submission of copies thereof in any legal or other proceeding does not satisfy the requirements of the business records exception of the hearsay rule or the best evidence rule.
26. Time is of the Essence. County agrees that time is an important consideration in this Agreement as it relates to the promotional benefits and other services and rights it provides hereunder.
27. Survival of Provisions. The following provisions shall survive and continue after any termination of this Agreement: Section 9 (Indemnification), Section 10 (Insurance), Section 23 (Survival) and any other provision hereof which provides that it survives expiration or which must survive expiration in order to be fully operative.

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28. Signing Authority. The person(s) executing this Agreement on behalf of the respective Parties hereby represents that he or she has the authority to sign on behalf of such Party.

[Signature page follows.]


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

**LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC.**


MONTEREY COUNTY

DocuSigned by:
By:  4/26/2018
70F7C7C6035C4DE...
Its: Cooper Ericksen
VP - Lexus Marketing, Lexus Marketing

By: _____
Luis Alejo
Chair of the Board of Supervisors

**Procurement Authorization
LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, U.S.A., INC.**


**APPROVED AS TO FORM
CHARLES J. MCKEE, County Counsel**

DocuSigned by:
By:  4/26/2018
8D56217E747C4D1...
Its: Steven Morse
Senior Analyst, TMS Strat Sourcing & Contracts

By: _____
Kelly L. Donlon
Deputy County Counsel

**SPORTSCAR RACING ASSOCIATION
OF THE MONTEREY PENINSULA**

DocuSigned by:
By:  4/26/2018
7950B142FC83483...
Steve Fields
SVP, Sales

TMS/USA CONTRACTS
REVIEWED
DS 

4/26/2018

EXHIBIT "A"

MONTEREY COUNTY'S OBLIGATIONS

In consideration of Lexus's obligations under this Agreement, and subject to the terms and conditions listed herein and in the Agreement, the County, via its agent SCRAMP, shall provide the following promotional benefits/site enhancements to Lexus in each Agreement Year throughout the Term of this Agreement:

A. Official Rights

1. Official & Exclusive Status: Lexus will be the Official and Exclusive Luxury Auto of the Raceway.
2. Lexus logo will be referenced in selected advertising, media references and television shows and controlled or placed by the County or SCRAMP, including advertising that supports Major Race Events. Additionally, Lexus's race teams will be featured in Event posters and programs whenever applicable.
3. Lexus will have the right to use the name and logo for Laguna Seca Raceway.
4. Branding inclusion in all future video games featuring the Raceway (i.e. Microsoft Forza, Sony Playstation Gran Turismo).

B. Signage & Product Showcase Elements

1. Lexus Signage & Branding at the Raceway:
 - i. Two (2) Secondary Start/Finish Bridge Billboards
 - ii. Ten (10) 3'x8' Trackside A-Frames
 - iii. Six (6) 9'x60' Turn 1 Billboards
 - iv. Two (2) 105" x 125' Vehicle Bridge Interior Billboards – Leading to the Paddock
 - v. A-Road Platform Branding Elements
 - vi. A-Road Entrance Gate Arch Branding Elements
 - vii. One (1) Full-Page – Inside Front Cover Ads in each Event souvenir program (excluding souvenir programs for SBK World Superbike and Porsche Rennsport Reunion)
 - viii. Fifty (50) 30-Second Scoring Trylon Spots, per day, per Event
 - ix. One (1) eNewsletter Digital Banner (160x600)
 - x. Two (2) Annual Web Banners (160x600, 728x90):

Signage rights are a combination of year-round and selected Events (Events excluded from "on-track" branding is SBK World Superbike and 2018 Porsche Rennsport Reunion).

Initial Lexus signage production and installation shall be at the sole cost and expense of the County or SCRAMP; provided, however, that Lexus shall provide SCRAMP

with the Lexus Marks for use on such signage. Lexus shall be responsible for all costs associated with any Lexus signage changes requested by Lexus throughout the Term. Notwithstanding the foregoing and unless otherwise mutually agreed in advance and in writing, the County agrees that with respect to any Lexus replacement signage needs that are solely due to damage not caused by Lexus or standard wear and tear, such replacement costs shall be at the sole cost and expense of the County or SCRAMP.

2. Lexus Product Showcase Display Areas

- i. A-Road and South Boundary Entry Platform – Select Events
- ii. Pace Car Safety Car Paddock Display – Select Events
- iii. Permanent vehicle display, with signage on the fence, near the SCRAMP offices at S Perimeter Road and Directors Rd., with space to display two (2) Lexus vehicles, as selected and provided by Lexus.
- iv. One (1) 60'x100' Paddock Display location for IMSA Weekend

C. Hospitality and Access

1. Lexus shall receive one (1) VIP Hospitality area during the IMSA sanctioned event annually:
 - i. Includes fifty (50) VIP Hospitality Passes per day
 - ii. Lexus shall be responsible for all food and beverage within their hospitality area.
 - a. Lexus shall be provided with a track-approved caterer for all food and beverage needs.
2. Ten (10) VIP Hard Card passes for all events at the Raceway (subject to any event restrictions advised by County)
 - i. VIP passes that allow access to all areas at the Raceway, including those specified as sponsored only areas. These passes shall allow access to the pit area, unless restricted by the sanctioning body.
3. Ten (10) Blue 2 Annual Parking Passes for use at all events at the Raceway (subject to any event restrictions advised by County)
4. Two Hundred (200) General Admission Passes to all major motorsports events at the Raceway, including, for all IMSA sanctioned events at the Raceway (subject to any event restrictions advised by County). Does not include Ferrari Challenge and Porsche Rennsport Reunion events.
5. Dedicated Annual “Surprise & Delight” Wolf Hill Parking Area
 - i. Room for two hundred (200) Lexus vehicle parking spaces
 - ii. Lexus will develop and provide to the County or SCRAMP all Lexus signage and directional indicators for this area, at Lexus’s sole cost and expense (the “**Lexus Parking Signage**”). The County or SCRAMP shall be solely responsible for (a) storing such Lexus Parking Signage; (b) placing and picking up the Lexus Parking Signage for each event at the Raceway (subject to any event restrictions advised by the County); and (c) providing direction to event attendees driving Lexus brand vehicles as they drive into the event, directing

them to park in the dedicated Lexus parking area (Wolf Hill Parking Area) until all available spots are filled.

D. Lexus Track Days

1. Lexus shall have the opportunity to utilize the Raceway as follows:
 - i. January 1, 2019 through March 31, 2019, five (5) Limited Sound Days:
 - a. 105dBa Sound Level Days
 - b. In accordance with County Track Rental Agreement Policies
 - c. Schedule available after Major Motorsports Event schedule, annually
 - ii. Each of 2019 – 2022 Agreement Years (as defined in Section 3(a) of the Agreement), five (5) Limited Sound Days per Agreement Year:
 - a. 105dBa Sound Level Days
 - b. In accordance with County Track Rental Agreement Policies
 - c. Schedule available after Major Motorsports Event schedule, annually

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EXHIBIT "B"

LOAN VEHICLES

A. Loan Vehicles

- 1) Subject to the terms and conditions of the Loan Vehicle Agreement (Exhibit "D"), Lexus shall provide the following Loan Vehicles types at the beginning of each race season during the Term of the Agreement, to be used by the County and SCRAMP for the following Agreement Year:
 - (i) Three (3) fully equipped current model pace cars. The models of such pace cars to be determined by Lexus in its sole discretion. Lexus shall be solely responsible for the cost of modifications to ensure that such vehicles meet the respective sanctioning body's pace car performance and safety requirements. SCRAMP shall be responsible for compliance with all shopping mall rules and regulations and with all local, state and federal laws, rules and regulations concerning such displays, including all costs and expenses of such compliance. SCRAMP shall be responsible for maintenance that is required due to use beyond that of the normal pace car scope, i.e. hot laps, parades and other promotional activities.
 - (ii) Ten (10) vehicles for day-to-day use by SCRAMP department heads. The models of such vehicles to be mutually agreed upon between the Parties.
 - (iii) Five (5) vehicles for track administration, safety, and maintenance, of which two (2) shall be designated for event use as "fast cars" and should be vehicles capable of carrying a medical doctor and equipment to an on-track accident scene, and one (1) shall be designated for County administrative use. The models of such vehicles to be mutually agreed upon between the Parties.
 - (iv) Four (4) trucks, of which all need to be 4-wheel drive for use as part of facility and track maintenance, it is recommended that these have bed liners installed as needed. One Toyota Tundra for Signage and Sales & Marketing and three (3) Toyota Tacoma's equipped with four-wheel drive (4WD) or (AWD) for Track Maintenance. All Trucks must be supplied with trailer-towing hitch equipment included.

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EXHIBIT "C"

COUNTY'S INSURANCE REQUIREMENTS

Insurance coverage required to be provided by the County, via SCRAMP, to Lexus shall include the following:

I. All insurance carriers must have a current minimum A.M. Best rating of "A" excellent, and a financial size rating of at least Class V.

II. **Commercial General Liability/ Event Liability**

Minimum Bodily Injury and Property Damage Liability combined single limits shall be:

General Aggregate	\$5,000,000
Each Occurrence	\$5,000,000
Contractual Liability	\$5,000,000

(Covering liabilities assumed by the County in the Agreement between Lexus and the County.)

The County's liability and collision/comprehensive coverage shall be endorsed to apply, on a primary basis, to any auto provided to the County by Lexus, including display vehicles provided by Lexus for the events. SCRAMP Coverage afforded to Lexus shall be primary and any insurance carried by Lexus shall be excess to and non-contributing with SCRAMP's insurance.

III. **Automobile Liability**

Automobile liability insurance on all owned, non-owned, and/or hired vehicles with minimum coverage of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and physical damage insurance for the actual cash value of each such vehicle. Unless otherwise specifically agreed in writing by Lexus, (a) such coverage shall not only apply to vehicles owned and/or leased by the County, the County Entities (including SCRAMP) or the Personnel, but also any vehicles that may be provided or made available by Lexus hereunder (e.g., pursuant to Section 14 of the Agreement); and (b) County's automobile insurance shall be primary to any insurance that Lexus or any Lexus Entities may have. The County shall assume, irrespective of liability, no more than a One Thousand Dollar (\$1,000.00) deductible for each comprehensive or collision loss.

The County's liability and collision/comprehensive coverage shall be endorsed to apply, on a primary basis, to any auto provided to SCRAMP by Lexus, including display vehicles provided by Lexus for the events.

IV. **Workers Compensation & Employers Liability**

Minimum acceptable limits shall be:

Workers Compensation Statutory
Employers Liability

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Each Accident	\$1,000,000
Disease-policy limit	\$1,000,000
Disease-each employee	\$1,000,000

The County shall comply with all applicable workers' compensation and other laws that may accrue in favor of any person employed by County.

V. **Umbrella Liability Insurance**
Minimum coverage of Four Million Dollars (\$4,000,000)

VI. **The following conditions shall also apply:**

County shall make certain that: (a) SCRAMP maintains at least One Million Dollars (\$1,000,000) commercial liability insurance, employer's liability with a minimum coverage of One Million Dollars (\$1,000,000), automobile liability insurance on all owned, non-owned, and/or hired vehicles with minimum coverage of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and/or property damage, and umbrella liability insurance with a minimum coverage of Twenty Five Million Dollars (\$25,000,000); and (b) any individual or entity providing catering or related activities for the Raceway ("Caterer") maintains at least One Million Dollars (\$1,000,000) commercial liability insurance. If County or Caterer serves alcoholic drinks at the Raceway, County or Caterer must have full liquor liability insurance coverage as part of its commercial general liability insurance coverage.

County shall provide Lexus with proof of the acquisition of all of the above-identified insurance coverage in the form of one or more certificates of insurance upon request and at least five (5) business days after the execution of this Agreement and at the beginning of each Agreement Year (and, if reasonably requested by Lexus, at any other time).

The commercial liability and automobile insurance policies required hereunder shall name Lexus and its parent, subsidiary and affiliated companies as Additional Insureds and shall specify that the insurance carrier shall endeavor to provide Lexus thirty (30) days' written notice prior to any change, cancellation or reduction in such coverage.

Lexus reserves the right to review and must be satisfied with the insurer as well as the types and level of coverage to be maintained by County during the Term. All insurance coverages required hereunder shall be procured from insurers with a Best's performance rating of at least A- and with a financial size category of at least Class VII.

EXHIBIT "D"

LOAN VEHICLE AGREEMENT

**"Borrower": The County of Monterey and the Sports Car Racing Association of the Monterey Peninsula ("SCRAMP")
1021 Monterey Salinas Highway
Salinas, CA 93908**

In return for the use of one or more loan vehicles provided by Lexus, a division of Toyota Motor Sales, U.S.A., Inc. or one or more of its parents, subsidiaries and affiliates (collectively, "**Lexus**"), Borrower agrees to the following:

1. VEHICLE(S) BORROWED AND USE RESTRICTIONS

Lexus loans to Borrower the vehicle(s) listed in **Exhibit 1** (the "**Vehicle(s)**"). In addition to any other restrictions on use specified in this Agreement, each Vehicle is subject to the "**Vehicle Use Restriction**" specified in **Exhibit 1** for that Vehicle. Borrower is solely responsible for ensuring that the use of each Vehicle is strictly limited in accordance with its respective Vehicle Use Restriction. The Vehicle Use Restriction definitions are as follows:

- A. "**Unrestricted Use**": The Vehicle(s) is certified compliant with Federal Motor Vehicle Safety Standards ("FMVSS") and may be operated on public roads in compliance with laws applicable to similar vehicles.
- B. "**Research or Demonstration**": The Vehicle(s) is not certified compliant with FMVSS but may be operated on public roads only for research and demonstration purposes.
- C. "**Restricted Use**": The Vehicle(s) is not certified compliant with FMVSS or has been modified and may not satisfy FMVSS or other legal requirements for use on public roads. Therefore, the Vehicle(s) must not be operated on public roads. Additionally, the Vehicle(s) must not be transported over a public road except by flatbed truck, enclosed trailer or other method that Lexus may specifically authorize in writing.
- D. "**Driving Prohibited**": The Vehicle(s) is provided to Borrower for display, training, education and/or testing purposes only and not for driving. The Vehicle(s) must not be driven or transported over a public road or highway except by flatbed truck, enclosed trailer or other method that Lexus may specifically authorize in writing. The Vehicle(s) must not be displayed with any material modifications unless Lexus specifically approves them in writing, and the display of the Vehicle(s) must not place Lexus or the Vehicle(s) in an unflattering light to the public or audience.

2. VEHICLE(S) OWNERSHIP, RETURN DATE AND CONDITION

- A. The Vehicle(s) remains at all times the exclusive property of Lexus.
- B. Borrower will return each Vehicle to Lexus, at the address listed for that Vehicle in **Exhibit 1**, at 5:00 p.m. local time on the earlier of the date specified in **Exhibit 1** for the particular Vehicle or within three (3) days of written notice by Lexus demanding return of the Vehicle. Lexus may, in its sole discretion, demand return of the Vehicle(s) at any time upon written notice to the "**Borrower Contact**" identified in **Exhibit 1**.
- C. Borrower will return the Vehicle(s) to Lexus in the same condition as received, reasonable wear and use excepted. Borrower is solely responsible for routine maintenance and costs and will consult the Vehicle(s) Owner's Manual (the "**Owner's Manual**") for routine maintenance

- requirements.
- D. Borrower must coordinate all non-routine maintenance and repairs through the “**Lexus Contact**” identified in **Exhibit 1**. Borrower is solely responsible for all repair costs resulting from accident, abuse or failure to properly operate, maintain, garage or otherwise shelter the Vehicle(s).
 - E. If Borrower breaches this Agreement, Lexus or its representatives may, without prior notice, take immediate possession of the Vehicle(s) and peaceably enter Borrower’s property to do so.

3. PERMITTED USERS

Borrower will ensure that only Permitted Users operate the Vehicle(s). A “**Permitted User**” is:

- A. If Borrower is an individual, Borrower and any individual who (i) is at least 21 years old, (ii) is permitted and authorized by Borrower to operate the Vehicle, (iii) resides permanently with Borrower, (iv) has not been excluded as a driver/insured from the Borrower’s own policy of insurance, and (v) has a valid driver’s license:
- B. If Borrower is an entity, any employee of Borrower who (i) is at least 21 years old, (ii) is permitted and authorized by Borrower to operate the Vehicle(s), (iii) has not been excluded as a driver/insured from the Borrower’s insurance, and (iv) has a valid driver’s license; and
- C. Any other person whom Lexus specifically authorizes in writing.

4. BORROWER’S OBLIGATIONS REGARDING OPERATION OF VEHICLE(S)

Borrower will ensure that:

- A. Each Permitted User is apprised of and complies with all restrictions and instructions from Lexus regarding the use, operation and possession of the Vehicle(s), including but not limited to those contained in this Agreement and the Owner’s Manual.
- B. Each Permitted User operates the Vehicle(s) in a safe and lawful manner, solely within the continental United States, and each occupant wears a seat belt or suitable and approved child passenger restraint at all times.
- C. No Permitted User operates the Vehicles(s) while under the influence of any intoxicant, narcotic, prescription medicine or other substance that could impair the ability to operate the Vehicle(s) safely.
- D. No smoking takes place in the Vehicle(s) at any time.
- E. No Permitted User operates the Vehicle(s) for hire or public conveyance or in any race or competitive event.
- F. Borrower pays all storage, traffic, parking and other charges and fines associated with the use, operation or possession of the Vehicle(s).
- G. Borrower properly garages or otherwise protects the Vehicle(s) when not in use.
- H. Borrower does not, without the express written permission of Lexus, publicly or commercially use or display, or permit or assist in the use or display of, photographs or depictions of the Vehicle(s).
- I. Borrower, within twenty-four (24) hours, will report any collision, accident, physical damage or criminal or potentially criminal incident involving the Vehicle(s) to appropriate government authorities and the Lexus Contact, and cooperate with Lexus in investigating such incidents and claims.

5. INSURANCE REQUIREMENTS

Borrower will at all times keep in effect (or, if Borrower is a government entity, provide equivalent self-insured protection), at Borrower's sole expense, primary non-contributory automobile liability insurance for each Vehicle, with a carrier that is approved in each state in which the Vehicle is operated (the "**Operating States**"), of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury and property damage; comprehensive and collision insurance for the actual cash value of each Vehicle; and other coverages in amounts at least equal to the minimum amounts required by the Operating States. Upon request, Borrower will promptly provide Lexus with a certificate of insurance.

6. WAIVER, RELEASE AND INDEMNIFICATION

- A. BORROWER WILL BEAR ALL RISKS OF DAMAGE, INJURY OR LOSS OF ANY SORT ARISING OUT OF THE USE, OPERATION AND/OR POSSESSION OF THE VEHICLE(S).
- B. BORROWER, INCLUDING ALL PERSONS OR ENTITIES CLAIMING UNDER BORROWER, BY SUBROGATION OR OTHERWISE, RELEASES LEXUS AND ITS OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, REPRESENTATIVES, SHAREHOLDERS, DISTRIBUTORS AND DEALERS, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY "**LEXUS PARTIES**"), TO THE FULLEST EXTENT PERMITTED BY LAW, FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, LIABILITIES, CAUSES OF ACTION, DAMAGES, JUDGMENTS AND EXPENSES, OF ANY AND EVERY SORT, INCLUDING BUT NOT LIMITED TO INCIDENTAL AND CONSEQUENTIAL DAMAGES, LOST PROFITS, ATTORNEYS' AND EXPERT WITNESS FEES, AND COSTS, ARISING IN ANY WAY FROM BORROWER'S USE, OPERATION AND/OR POSSESSION OF THE VEHICLE(S) OR BREACH OF THIS AGREEMENT (COLLECTIVELY, "**CLAIMS**").
- C. BORROWER WILL DEFEND AND INDEMNIFY THE LEXUS PARTIES FROM AND AGAINST ANY AND ALL CLAIMS ASSERTED BY ANY PERSON OR ENTITY.

7. DISCLAIMER OF WARRANTIES

TO THE GREATEST EXTENT ALLOWED BY LAW, LEXUS PROVIDES THE VEHICLE(S) "AS IS," WITH NO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED.

8. DATA COLLECTION AND USE

The Vehicle(s) has features that allow information regarding usage and condition to be remotely obtained from the Vehicle(s) (the "**Remote Information**"). Borrower agrees, and will obtain the written agreement of all Permitted Users and Vehicle occupants, not to use or disseminate any Remote Information. Borrower further agrees that at all times Lexus has exclusive ownership of and right to collect and use Remote Information in Lexus's sole discretion.

9. ASSIGNMENT AND CHANGE IN OWNERSHIP

- A. Borrower may not assign, transfer, sublet or otherwise encumber its rights or obligations under this Agreement.
- B. Lexus has the right to assign any or all of its rights and obligations under this Agreement at any time and without the consent of Borrower.
- C. Borrower agrees to promptly notify the Lexus Contact identified in **Exhibit 1** in the event of a change in ownership of Borrower. Upon receipt of such notice, Lexus may, in its sole discretion

and without prior notice, take immediate possession of the Vehicle(s) and peaceably enter Borrower's property to do so.

10. MISCELLANEOUS PROVISIONS

- A. No waiver or amendment of any term of this Agreement will be effective unless made in writing and signed by an authorized representative of Lexus.
- B. All notices will be sent to the Lexus Contact or Borrower Contact by certified mail or fax, with a copy by email, and will be considered given on the date of certified mail receipt or fax confirmation of transmission.
- C. Neither Borrower nor any Permitted User is an employee, agent, representative or partner of Lexus or authorized to act on behalf of or bind Lexus in any way.
- D. All disputes involving interpretation of this Agreement or arising from the relationship created hereby ("**Disputes**") will be governed by the laws of the State of California without regard to California's conflicts of law principles. Any litigation of Disputes must take place exclusively in the state courts located in Monterey County, California or the District Court, of Monterey, California. The parties consent to personal jurisdiction in such courts and waive any right to contend that such courts constitute an improper or inconvenient venue. The prevailing party in any Dispute will be entitled to recover its reasonable and necessary attorneys' fees, expert witness fees and costs.
- E. This Agreement supersedes all prior agreements on the same subjects, and no representations or promises have been made or relied upon by either party except as expressly set forth herein, except that if the loan vehicle arrangement memorialized by this Agreement is intended to fall within a program established by a master agreement, statement of work or other, encompassing agreement, then the provisions of such other agreement or statement of work will prevail over any inconsistent provisions of this Agreement.

Exhibit 1 to Loan Vehicle Agreement

“Toyota Contact”

Name: Jennifer Mathis
 Title: Lexus Engagement Event & Partnership Manager
 Address: 6565 Headquarters Drive, Plano, TX 75024
 Phone: 469-292-4579
 Email: Jennifer.Mathis@lexus.com
 Fax: 310-974-5198

“Borrower Contact”

Name: Steve Fields
 Title: Senior VP, Sales – WeatherTech Seca Laguna Raceway
 Address: 1021 Monterey-Salinas Highway, Salinas, CA 93908
 Phone: 831-277-5798
 Email: Steve@Laguna-Seca.com
 Fax: 831-373-0533

					VEHICLE USE RESTRICTIONS: CHECK APPROPRIATE BOX			
Model	Serial Number	Delivery Date	Return Date	Return Location	Unrestricted Use	Research or Demonstration	Restricted Use	Display Only
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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