



Monterey County Board of Supervisors

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

Board Order

Agreement No.: A-13415

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

- a. Approved a 15-year Facility Use Agreement between the Sea Otter Classic, Inc., doing business as the Sea Otter Classic, and the County of Monterey to produce the Sea Otter Classic Sports Festival at the Laguna Seca Recreation Area for the years 2017-2031;
- b. Authorized the Chair of the Board to sign the Agreement on behalf of the County; and
- c. Authorized the Assistant County Administrative Officer or designee to issue Standard Form Special Event Permits each year (2017-2031) for the Sea Otter Classic Sports Festival and enter into Memoranda of Understanding with the Sea Otter Classic, Inc., as necessary, to address specific details on maintenance and operations pursuant to and consistent with provisions of the Agreement.

PASSED AND ADOPTED on this 22nd day of December 2016, by the following vote, to wit:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, 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 79 for the meeting on December 22, 2016.

Dated: January 18, 2017
File ID: 17-0002

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By *Danise Hancock*
Deputy

LAGUNA SECA RECREATION AREA

Facility Use Agreement

This Master Facility Use Agreement (“Agreement”) is made and entered into as of this 22 day of December, 2016 by and between the COUNTY OF MONTEREY, hereafter referred to as “COUNTY”, and THE SEA OTTER CLASSIC, INC, doing business as THE SEA OTTER CLASSIC Sports Festival, hereafter referred to as “SEA OTTER CLASSIC”, relative to an annual Sports Festival event at the Laguna Seca Recreation Area and related facilities.

WHEREAS, COUNTY owns and operates Laguna Seca Recreation Area and other County Park facilities; and

WHEREAS, SEA OTTER CLASSIC desires to utilize the Laguna Seca Recreation Area Facility and other County Park property to promote and conduct an annual bicycle focused sports event; and

WHEREAS, COUNTY is willing to grant to SEA OTTER CLASSIC a license to use the Laguna Seca Recreation Area and all its areas and facilities, with the exception of ranges, maintenance and office facilities.

WHEREAS, the Parties desire to enter into a long-term Facility Use Agreement for the production of an annual bicycle focused Sports Festival.

NOW, THEREFORE, the Parties agree as follows:

SECTION I – USE OF FACILITIES

- A. SEA OTTER CLASSIC will be allowed to use the entire Laguna Seca Recreation Area facility, excluding ranges, maintenance and office facilities, for a Sports Festival to be held annually on a Thursday, Friday, Saturday and Sunday as set forth in Section II, below. Maximum attendance of 20,000 paid persons per day (including campers).
- B. In addition to the actual days that the Sports Festival is being held as set forth in Section II below, SEA OTTER CLASSIC will have access to the indicated Laguna Seca Recreation Area facilities according to the schedule below. Each Party shall give notice to the other Party by October 1st of the year prior to the next annual Sports Festival event if the following schedule requires modification(s):
 - 1) The Swale area shall be available to SEA OTTER CLASSIC beginning at 8:00 am forty-five (45) days prior to the Sports Festival for set-up and such availability shall conclude and terminate at 5:00 pm five (5) days following the Sports Festival.
 - 2) The Lakebed Special Event Area (including Turn 2 parking) shall be available to SEA OTTER CLASSIC beginning at 8:00 am twenty-one (21) days prior to the Sports Festival weekend for set-up and such availability shall conclude and terminate at 5:00 pm five (5) days following the Sports Festival.

- 3) The fire break adjacent to the Rifle/Pistol Range shall be available to SEA OTTER CLASSIC at 8:00 am ten (10) days prior to the Sports Festival for set-up and such availability shall conclude and terminate at 5:00 pm three (3) days following the Sports Festival.
- 4) The Trackview Pavilion shall be available to SEA OTTER CLASSIC beginning at 8:00 am six (6) days prior to the Sports Festival for set up and such availability shall conclude and terminate at 4:00 pm on the Monday following the Sports Festival.
- 5) The Red 9, Wolf Hill and Lookout Ridge parking areas shall be available to SEA OTTER CLASSIC at 8:00 am fourteen (14) days prior to the Sports Festival for set up and such availability shall conclude and terminate at 5:00 pm three (3) days following the Sports Festival.
- 6) The Paddock shall be available to SEA OTTER CLASSIC beginning at 8:00 am three (3) days prior to the Sports Festival for set up and such availability shall conclude and terminate at 5:00 pm two (2) days following the Sports Festival.
- 7) The Racetrack and Paddock Classroom building shall be available to SEA OTTER CLASSIC beginning at 5:00 pm on the day prior to the Sports Festival and such availability shall conclude and terminate at 8:00 am on the day following the Sports Festival.
- 8) All available Laguna Seca Recreation Area permanent and temporary campground sites shall be available to SEA OTTER CLASSIC beginning at 2:00 p.m. on Wednesday prior to the Sports Festival and such availability shall conclude and terminate on 4:00 p.m. on Sunday of the Sports Festival.
- 9) All other utilized Laguna Seca Recreation Area facilities shall be made available to SEA OTTER CLASSIC commencing at 8:00 am three (3) days prior to the Sports Festival for set up and such availability shall conclude and terminate at 7:00 am on the Monday following the Sports Festival.
- 10) All areas of the Laguna Seca Recreation Area made available to SEA OTTER CLASSIC for use during the Sports Festival shall be ready for use by COUNTY or its assigned no later than the day and time indicated above; SEA OTTER CLASSIC shall specifically indemnify and defend COUNTY for any claims or damages for the area(s) not being ready for use on that day and time.
- 11) SEA OTTER CLASSIC may arrange with COUNTY to utilize areas and facilities as indicated in sections 8 and 9, or otherwise mutually agreed to by the parties, during the indicated periods above for temporary camping for attendees exempt from payment as set forth in section IIIB, below to facilitate set-up and/or tear-down of the Sports Festival.

- C. SEA OTTER CLASSIC shall be allowed to use Wolf Hill and Lookout Ridge for overflow camping and cycling events if necessary and available and upon reasonable written notice to COUNTY. Cycling activities in these areas must be separately approved by COUNTY. If Sea Otter desires to utilize Toro Park or other County property as part of the Sports Festival, the parties shall negotiate for that use separately.

- D. During the days of operation of the Sports Festival, COUNTY will close down the Racetrack to motorized racing and other noise generating activities. The Racetrack shall be available to SEA OTTER CLASSIC beginning at 4:00 pm on the day prior to the Sports Festival and such availability shall conclude and terminate at 8:00 am on the day following the Sports Festival.
- E. The Laguna Seca Recreation Area will be provided on an "as-is" basis. In addition to the permanent facilities, for areas that are open to the public during the Sports Festival, the COUNTY will provide and maintain restroom capacity at the current level provided by the existing permanent restroom facilities and provide portable chemical toilets to meet the Monterey County Health Department's standards and requirements, provide trash cans, recycle containers, , and up to (10) ten yard dumpsters as required, and will clean the public areas of all litter and trash prior to the transfer of the area to SEA OTTER CLASSIC. Areas not open to the public during the Sports Festival shall be the responsibility of SEA OTTER CLASSIC. COUNTY will pump all septic tanks and holding tanks within 3 days prior to the Sports Festival and SEA OTTER CLASSIC will pump all septic tanks and holding tanks within 3 days following the Sports Festival.
- F. Subject to availability, COUNTY will make available to SEA OTTER CLASSIC traffic cones, barricades, water buffalos, grey water tanks, and pots and pans washing stations to SEA OTTER CLASSIC at no additional charge. SEA OTTER CLASSIC shall be responsible for any damage to said items.
- G. SEA OTTER CLASSIC shall be responsible for maintaining the entire Laguna Seca Recreation Area from litter and trash during the Sports Festival and shall assure all SEA OTTER CLASSIC vendors and contractors meet the requirements for sanitation and litter of their individual areas. SEA OTTER CLASSIC shall be ultimately responsible for collecting and removing all litter and trash from the Laguna Seca Recreation Area facility and depositing it in dumpsters provided by the COUNTY within 24 hours following the conclusion of the Sports Festival. As part of the collection and disposal of all trash and litter, SEA OTTER CLASSIC shall develop and implement a plan to recycle waste products (including but not limited to aluminum, glass, plastic, cardboard, and cooking oils) generated by the Sports Festival to the greatest extent possible and feasible.
- H. As COUNTY develops additional permanent physical facilities within the LSRA, such as building structures or tent structures, SEA OTTER CLASSIC will have the option of negotiating with COUNTY for utilization of these additional facilities at that time. County retains sole right to develop LSRA as County deems necessary, without consultation with SEA OTTER CLASSIC. In the event, such development impacts current LSRA in a manner that causes SEA OTTER CLASSIC to be unable to hold its annual event SEA OTTER CLASSIC may seek and be granted relief solely by early termination of this Agreement and in no event shall SEA OTTER CLASSIC be entitled to any damages of any kind as a result of such termination. SEA OTTER CLASSIC will be given notice of the potential of such development no earlier than 18 months prior to the development commencing.
- I. SEA OTTER CLASSIC will be allowed the opportunity to reserve the Trackview Pavilion or other available meeting facility, at no additional charge, for four (4) days per year for staff planning meetings. This utilization is in addition to the Trackview Pavilion usage noted above, and may not be sublet. If utilized SEA OTTER CLASSIC shall be responsible for any damage

to the facility. These additional utilization days must be scheduled 30 days in advance and will not be available if Trackview Pavilion has already been reserved.

- J. Subject to space availability and the sole discretion of COUNTY, SEA OTTER CLASSIC is authorized to store up to six standard shipping/cargo containers of up to 40 feet long x 8 feet wide x 10 feet high for personal property (non-hazardous material) storage at the Laguna Seca Recreation Area. Neither the containers nor the space within may be sublet or used for commercial or business purposes other than the storage of SEA OTTER CLASSIC's non-hazardous personal property. The exact location for the placement of the containers shall be at the sole discretion of COUNTY. The cost and maintenance of the containers is entirely that of SEA OTTER CLASSIC, who shall be required to maintain and keep them in a clean, painted, rust free, and secure condition. COUNTY shall have no liability of any kind for the containers or their contents, for any reason or arising from any claim or source or reason. SEA OTTER CLASSIC's duty to indemnify and insure COUNTY as stated in Sections VII and VIII, below, shall apply to any claim for damage or injury to anything or anyone, arising from the existence, presence, or contents of the containers. Within 30 days of the termination of this Agreement, SEA OTTER CLASSIC shall remove any previously approved containers at its own cost and return the area to its original condition. If SEA OTTER CLASSIC fails to move or remove any storage container when given notice and directed to do so, COUNTY may, without waiving any other right, remove, sell, use, or otherwise dispose of the containers and their contents, and SEA OTTER CLASSIC shall hold COUNTY harmless for such action. COUNTY shall provide SEA OTTER CLASSIC 24-hour access to the storage container area and shall provide County with keys and/or combination lock codes for immediate access. County agrees to only access containers in the event of an emergency or immediate need due to public health and safety.
- K. SEA OTTER CLASSIC shall be allowed to select and utilize vendors of its choice for the buildout and conduct of the Sports Festival and will not be required to utilize vendors affiliated with the County's Laguna Seca Recreation Area agent or concessionaire.
- L. The COUNTY may, in its sole discretion, assign its interests under this Agreement to any concessionaire contracted by the COUNTY to operate all or a portion of the Laguna Seca Recreation Area. Regardless of whether the County makes such an assignment, and in special consideration of the extension of the term of this Agreement through 2027, SEA OTTER CLASSIC acknowledges that it will need to cooperate with the future operator(s) of Laguna Seca Recreation Area. SEA OTTER CLASSIC hereby agrees to amend this Agreement in the future to accommodate needs of the future operator(s), so long as any such amendment(s) do not require substantial change to SEA OTTER CLASSIC's historical use of the Laguna Seca Recreational Area or unreasonable expense or hardship to SEA OTTER CLASSIC. Subject to the preceding qualifications, such amendments may, without limitation, address the following areas: set up/take down time periods, areas available for use, exclusivity of use, promotional activities, campground rules, visitor conduct rules, insurance/indemnity, utilities usage, infrastructure, construction activities and public safety. Any amendment(s) to this Agreement can be made only by mutual agreement between SEA OTTER CLASSIC and COUNTY.

SECTION II – FACILITY USE DATES AND TERM

- A. COUNTY will provide the facilities as described above to SEA OTTER CLASSIC for the bicycle focused Sports Festival during the month of April in the years 2017 through 2031 as a

County primary special event weekend, subject to the Laguna Seca Recreation Area use permit, and the Force Majeure, Section IX, of this Agreement. Sea Otter Classic shall conduct the Sports Festival on the following dates during years 2017-2031:

April 20-23, 2017
April 19-22, 2018
April 11-14, 2019
April 16-19, 2020
April 15-18, 2021
April 7-10, 2022
April 20-23, 2023
April 18-21, 2024
April 10-13, 2025
April 16-19, 2026
April 15-18, 2027
April 20-23, 2028
April 19-22, 2029
April 11-14, 2030
April 17-20, 2031

COUNTY reserves the right and shall maintain final control of scheduling of events, including the Sports Festival, at the Laguna Seca Recreation Area. The above scheduled dates can be changed only by mutual agreement between the parties.

SECTION III – PAYMENT

- A. The SEA OTTER CLASSIC shall pay COUNTY a total of **\$2,699,416.00** for the entire 15-year term of this Agreement. Payments will be made in annual installments as specified below for use of the facilities and services and under the conditions noted in SECTION I – USE OF FACILITIES of this Agreement:

Event Year 2017 - \$175,000.00

First non-refundable deposit of \$25,000.00 due payable by December 31, 2016.
Second non-refundable deposit of \$50,000.00. due payable by March 20, 2017
Balance of \$100,000.00 due payable within three (3) days prior to the event.

Event Year 2018 - \$175,000.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2017.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2018.
Balance of \$100,000.00 due payable within three (3) days prior to the event.

Event Year 2019 - \$175,000.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2018.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2019.
Balance of \$100,000.00 due payable within three (3) days prior to the event.

Event Year 2020 - \$175,000.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2019.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2020.
Balance of \$100,000.00 due payable within three days prior to the event.

Event Year 2021 - \$178,500.00

First Non-refundable deposit of \$25,000.00 due payable by November 1, 2020.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2021.
Balance of \$103,500.00 due payable within three days prior to the event.

Event Year 2022 - \$178,500.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2021.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2022.
Balance of \$103,500.00 due payable within three (3) days prior to the event.

Event Year 2023 - \$178,500.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2022.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2023.
Balance of \$103,500.00 due payable within three days prior to the event.

Event Year 2024 - \$178,500.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2023.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2024.
Balance of \$103,500.00 due payable within three days prior to the event.

Event Year 2025 - \$182,070.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2024.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2025.
Balance of \$107,070.00 due payable within three (3) days prior to the event.

Event Year 2026 - \$182,070.00

First non-refundable deposit of \$25,000.00 due payable by November 1, 2025.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2026.
Balance of \$107,070.00 due payable within three (3) days prior to the event.

Event Year 2027 - \$182,070.00

First non-refundable deposit of \$25,000.00 due payable by November October 1, 2026.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2027.
Balance of \$107,070.00 due payable within three (3) days prior to the event.

Event Year 2028 - \$182,070.00

First non-refundable deposit of \$25,000.00 due payable by November October 1, 2027.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2028.
Balance of \$107,070.00 due payable within three (3) days prior to the event.

Event Year 2029 - \$185,712.00

First non-refundable deposit of \$25,000.00 due payable by November October 1, 2028.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2029.
Balance of \$110,712.00 due payable within three (3) days prior to the event.

Event Year 2030 - \$185,712.00

First non-refundable deposit of \$25,000.00 due payable by November October 1, 2029.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2030.
Balance of \$110,712.00 due payable within three (3) days prior to the event.

Event Year 2031 - \$185,712.00

First non-refundable deposit of \$25,000.00 due payable by November October 1, 2030.
Second non-refundable deposit of \$50,000.00 due payable by March 20, 2031.
Balance of \$110,712.00 due payable within three (3) days prior to the event.

- B. COUNTY will not receive any share of revenue from proceeds generated by SEA OTTER CLASSIC as a product of holding the event other than the amounts outlined in this agreement. COUNTY will be provided two complimentary 10' x 10' booth spaces in a premiere location for each annual Sports Festival, where County may generate revenue or conduct other legitimate County business transactions.

- C. As set forth in section A, above, prior to each annual event, SEA OTTER CLASSIC shall pay to COUNTY a non-refundable deposit of \$25,000, payable not later than November 1st in the year prior to the applicable Sports Festival. The deposit will be applied to the full payment due COUNTY for the Sports Festival. If through no fault of COUNTY, the Sports Festival is canceled then COUNTY shall nevertheless retain the full amount of the deposit. SEA OTTER CLASSIC shall obtain a bond for the benefit of the County in the amount of \$30,000. This bond shall be for covering any damage both physical and/or intellectual that may result from holding the SEA OTTER CLASSIC event at LSRA. SEA OTTER CLASSIC may at its option provide County with a certified check as security deposit in lieu of this bond to be held by County and returned 30 days after County accepts receipt of LSRA as in acceptable condition upon inspection.

SECTION IV-PROMOTION, PUBLICITY, AND ADVERTISING

- A. COUNTY hereby authorizes SEA OTTER CLASSIC to use the name "Laguna Seca Recreation Area" subject to this Agreement in its promotional information that must be approved by COUNTY prior to final printing or release. In the event that the name of the Laguna Seca Recreation Area Facility as a whole is changed, by way of a naming rights agreement with COUNTY or by other action or cause, SEA OTTER CLASSIC shall be required to use the new name in its promotional information. COUNTY will promote SEA OTTER CLASSIC on the COUNTY marquee sign on Highway 68 in front of Laguna Seca for at least one week prior to the Sports Festival and for an additional time period, if available, to be determined by COUNTY.
- B. Further, SEA OTTER CLASSIC may, at its own expense, have a reasonably sized sign (not exceeding 32 square feet) painted, erected and maintained within the Laguna Seca Recreation Area facility. The sign may remain for the duration of this Agreement. The content, format, color schemes, and location of all signs shall be subject to the Laguna Seca Sign Plan and approval by COUNTY. Said approval shall not be unreasonably withheld.
- C. COUNTY will promote and publicize the Sports Festival event in its Calendar of Events and other calendars of events to which COUNTY posts information.
- D. COUNTY authorizes SEA OTTER CLASSIC to attach temporary signage on all appropriate County structures within the park. Except as may otherwise be limited by current contractual restrictions regarding the naming rights and advertising of structures and at locations within the Laguna Seca Recreation Area, SEA OTTER CLASSIC will be allowed to place signage on the Turn 5 and Turn 3-4 pedestrian bridges and crossings over the Racetrack four (4) days prior to the Sports Festival and concluding three (3) days following the Sports Festival event. Other COUNTY structures include, but are not limited to, pedestrian and auto bridges, fencing and buildings. A list of other COUNTY structures exempted from this authorization, if any, will be provided to Sea Otter Classic by July 1st of the year prior to the Sports Festival. SEA OTTER CLASSIC agrees to honor any current applicable contractual limitations regarding covering signage at the facility. SEA OTTER CLASSIC agrees to work with County to mitigate temporary signage conflicts that may arise during future contract negotiations with other parties.

SECTION V – RELATIONSHIP

Neither party hereto is the agent of the other and neither party shall have the right to act for or on behalf of the other or bind the other in any manner whatsoever. Neither party shall be responsible for any debts, obligations, or expenses incurred by the other party, whether or not in connection with the event contemplated hereby in the absence of written approval thereof in advance. SEA OTTER CLASSIC shall clearly establish at all times during the term hereof that COUNTY is not a co-partner or otherwise liable or obligated for any cost, expenses, or SEA OTTER CLASSIC's conduct of same. COUNTY makes no representation or warranty with respect to the suitability of the Laguna Seca Recreation Area for SEA OTTER CLASSIC's purposes nor the success or other results of SEA OTTER CLASSIC activities conducted hereunder.

SECTION VI-SEA OTTER CLASSIC'S OBLIGATION

- A. SEA OTTER CLASSIC shall complete and comply with a separate annual Special Use Event Application and Concession Agreement for Special Events and all required plans and approvals, approved by the County Designee, for each event at least 30 days prior to the event. (A copy of a current sample of the annual Special Use Event Application and Concession Agreement for Special Events is attached hereto as Exhibit "B".)
- B. SEA OTTER CLASSIC shall not commit or permit any injury or damage to any part of the Laguna Seca Recreation Area or their appurtenances nor any waste thereon. All property utilized by SEA OTTER CLASSIC in the course of the operations contemplated hereby shall be returned to COUNTY in the same condition or repair after each program use, reasonable wear and tear excepted.
- C. SEA OTTER CLASSIC shall promptly arrange and pay to have repairs made for any damage, reasonable wear to tear excepted, to the Laguna Seca Recreation Area or other facilities arising out of SEA OTTER CLASSIC's operation hereunder. SEA OTTER CLASSIC will complete all environmental repairs, as required by COUNTY, within 14 days following the Sports Festival event.
- D. SEA OTTER CLASSIC shall be responsible for and promptly pay all taxes and assessments of any kind whatsoever assessed or levied for the use of the Laguna Seca Recreation Area and/or for storage of its personal property at the Laguna Seca Recreation Area, including but not limited to taxable possessory interest if one is created by this Agreement. The payments of any such taxes, assessments or charges shall not constitute cause for modification of fees payable by SEA OTTER CLASSIC to COUNTY pursuant to this Agreement.
- E. SEA OTTER CLASSIC, its agents, employees, and patrons shall be bound by all existing federal, state, and county laws, ordinances, regulations and use permits that apply to Laguna Seca Recreation Area and SEA OTTER CLASSIC's operations.
- F. SEA OTTER CLASSIC shall be responsible for and promptly obtain all necessary licenses and permits to conduct the event, including but not limited to those licenses necessary for the public performance of music if applicable, and shall comply with all applicable federal, state, and local laws and regulations in the performance of this Agreement.

SECTION VII – INDEMNITY AND HOLD HARMLESS

SEA OTTER CLASSIC shall indemnify, defend, and hold harmless the County of Monterey and the United States of America their officers, agents, and employees from and against any and all claims, liabilities, and losses whatsoever (including, but not limited to, damages to property and injuries to or death of persons, court costs, and attorney's fees) occurring or resulting to any and all persons, firms, or corporations furnishing or supplying work, service, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any participant, person, firm, or corporation for damage, injury, or death arising out of or connected with SEA OTTER CLASSIC's performance of this Agreement, and or the use of the former Fort Ord road system and traffic circulation roads within the Laguna Seca Recreation Area, and the public performance of music, unless such claims, liabilities or losses arise out of the sole negligence or willful misconduct of COUNTY or the United States of America: "SEA OTTER CLASSIC's performance" includes SEA OTTER CLASSIC's action or inaction and the action or inaction of SEA OTTER CLASSIC's officers, employees, agents, and subcontractors.

SECTION VIII – INSURANCE

Without limiting SEA OTTER CLASSIC's duty to indemnify, SEA OTTER CLASSIC shall maintain in force at all times during the performance of this Agreement a policy or policies of insurance covering all of its operations including, but not limited to, the following coverage and in the minimum limits of liability as stated herein:

- 1) Commercial General Liability (see Exhibit D), but not limited to Personal Injury, Bodily Injury, Property Damage, including coverages for Personal Injury, Contractual Liability and Products/Completed Operations, and Property Damage in the amount of \$5,000,000 Per Occurrence Combined Single Limit for Bodily Injury with a \$5,000,000 aggregate for the event.
- 2) Commercial General Liability (see Exhibit E), but not limited to Personal Injury, Bodily Injury, Property Damage, including coverages for Personal Injury, Contractual Liability and Products/Completed Operations, and Property Damage in the amount of \$1,000,000 Per Occurrence Combined Single Limit for Bodily Injury with a \$3,000,000 aggregate plus Umbrella/Excess liability coverage in the amount of \$4,000,000 per occurrence for specified competitive events.
- 3) Business Auto Liability, including but not limited to Property Damage, Bodily Injury, Personal Injuries, Non-Owned and Hired Car, in the amount of \$1,000,000 Per Occurrence Combined Single Limit for Bodily Injury and Property Damage.
- 3) Workers' Compensation covering statutory requirements of the State of California and Employer's Liability of not less than \$1,000,000 each employee, each accident and each disease.
- 4) Liquor liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage
- 5) Commercial General, Liquor Liability and Auto Liability policies shall provide an endorsement naming the County of Monterey, the United States of America, and its

officers, agents and employees as additional insureds, and shall further provide thirty days' written notice to COUNTY in advance of cancellation or non-renewal of said policies.

- 6) Commercial General, Liquor Liability and Auto Liability policies shall also be endorsed to provide that such insurance is Primary Insurance and that no insurance or self-insurance of the additional insureds shall be called on to contribute to any loss incurred in connection with SEA OTTER CLASSIC's performance of this Agreement.
- 7) Accident Medical Benefits Insurance to cover spectators, entertainers, employees and volunteers, with limits not less than \$25,000 each person.
- 8) The insurance carried must be with established and reputable companies acceptable to COUNTY. Acceptance or approval of insurance shall in no way modify or change the Indemnity and Hold Harmless clauses in this Agreement, which shall continue in full force and effect.
- 9) Prior to the execution of each annual Concession Agreement for Special Events, for each Sports Festival event under this Agreement, SEA OTTER CLASSIC shall file certificates of insurance with the County Administrative Officer, or designee, including appropriate endorsements, showing that SEA OTTER CLASSIC has in effect the insurance required by this Agreement.

SECTION IX – FORCE MAJEURE

- A. COUNTY and SEA OTTER CLASSIC shall be relieved of their obligation to the other if unable to perform the terms and conditions of this Agreement by virtue of governmental regulations or order, or by strike or war (declared or undeclared) or other calamity such as fire, earthquake, hurricane, or similar acts of God, or because of other similar or dissimilar cause or causes beyond their control.
- B. SEA OTTER CLASSIC acknowledges notice that COUNTY may terminate this Agreement at any time if the Laguna Seca Recreation Area and facilities are required by COUNTY's grantor of the property hereunder, the United States of America, for the national defense.

SECTION X – BANKRUPTCY

This Agreement shall automatically terminate if:

- 1) SEA OTTER CLASSIC 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, or:
- 2) A proceeding in bankruptcy or for appointment of a receiver is commenced against SEA OTTER CLASSIC in any Federal or State court, unless the same is dismissed within thirty (30) days. In all such cases, the termination shall become effective as of the filing of such petition or the appointment of such receiver or trustee or the commencing of such court

action, whichever occurs first and, immediately upon such termination, all rights hereunder shall revert to COUNTY.

SECTION XI – TRANSFER

- A. SEA OTTER CLASSIC shall not make or permit any Transfer of its interest in the Agreement without the prior written approval of the COUNTY. A Transfer is defined as a sale, sublease, subcontract of SEA OTTER CLASSIC's interest in this Agreement and/or a change in the composition or ownership of SEA OTTER CLASSIC, by any cause or for any reason, so that the current existing owners, as set forth in the attached statement of owners and interests, combined, control less than 50% of the equity and/or business control of SEA OTTER CLASSIC, INC.
- B. A request for Transfer must include information regarding the proposed Transferee, including the name, address, and ownership of Transferee; the nature of Transferee's business; Transferee's character and reputation; and Transferee's current financial statements (certified by an officer, a partner, or an owner of Transferee); all the terms of the proposed Transfer, including the consideration payable by Transferee; and a copy of all documentation concerning the proposed Transfer; and any other information or documentation reasonably requested by COUNTY.
- C. COUNTY may recover its reasonable fees and costs in determining whether or not to approve any Transfer, up to \$10,000.00, and such fees are due and payable whether or not the Transfer is approved. COUNTY must respond in writing to a request for Transfer within 45 days of submission to COUNTY of pertinent financial data of proposed Transferee.
- D. Notwithstanding any other provision of this Agreement, as the interest granted to SEA OTTER CLASSIC herein is a personal non-assignable license interest only, COUNTY may withhold its consent to any Transfer in its sole discretion, provided that such discretion shall not be exercised in an arbitrary or unreasonable fashion. Except as to the term and payment schedule set forth in Section II A and Section III A, COUNTY may impose such reasonable conditions upon the transfer as it deems appropriate. Further, any single consent to Transfer shall not be the basis for or implied consent to additional Transfers, and SEA OTTER CLASSIC shall remain liable under the Agreement, notwithstanding such approved Transfer.
- E. Any Transfer without the prior written approval and consent of COUNTY may, at the option of COUNTY, be viewed as a material and non-curable breach of this Agreement, and shall be void.
- F. This Agreement may be assigned by COUNTY to a Laguna Seca Recreation Area facility manager subject to all terms and conditions stipulated within this Agreement.

SECTION XII – TERMINATION

- A. Notwithstanding any other term or condition contained herein, whether express or implied, either SEA OTTER CLASSIC or the COUNTY may terminate this Agreement with cause that is not cured within ninety (90) days and with written notice to the other party.

- B. Except in the case of an attempted Transfer without approval, which shall, at the option of COUNTY, be the basis for immediate termination, COUNTY may terminate this Agreement for breach of terms and conditions of this Agreement or any related annual Agreement for Special Events that are not first remedied upon sixty (60) days written notice.
- C. SEA OTTER CLASSIC shall well truly observe, fulfill and perform each and every term, covenant and condition of this Agreement and the related annual Concession Agreement for Special Events. In case of any breach of any term, covenant or condition of this Agreement and a failure by SEA OTTER CLASSIC to remedy the same upon thirty (30) days' notice, in addition to all other remedies, including termination of this Agreement, the damages pertaining to said breach shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon the faithful performance bond or security.

SECTION XIII-ADMINISTRATION

COUNTY appoints its County Administrator as its agent for the general supervision and administration of this Agreement.

SECTION XIV – NOTICES

Any notice to be given to the parties hereunder shall be given by mail, certified or postage prepaid, addressed to the parties as follows:

COUNTY:

County of Monterey
 County Administration
 168 W. Alisal Street
 Salinas, CA 93901
 (831) 755-4895

SEA OTTER CLASSIC:

Sea Otter Classic, Inc.
 215 W. Franklin Street, Suite #214
 Monterey, CA 93940
 (831) 373-1839

SECTION XV – EQUAL OPPORTUNITY

SEA OTTER CLASSIC shall comply with the terms of this Agreement herein without any discriminatory practice based on sex, sexual preference, age, color, religion, handicap, marital status, national origin, or ancestry.

SECTION XVI – COMPLETE AGREEMENT

- A. This Agreement embodies the complete understanding of the parties hereto and cannot be amended or modified except in writing signed by each party hereto. Except as set forth herein, there are no other oral or written agreements, representations or warranties, express or implied.

- B. However, from time to time, COUNTY and SEA OTTER CLASSIC may enter into a Memorandum of Understanding to address specific details on maintenance and operations pursuant to and consistent with the provisions of this Agreement.

SECTION XVII – CONTROLLING LAW

This agreement and all disputes hereunder shall be interpreted under and governed by the laws of the State of California and venue for all actions to enforce the terms of this Agreement shall be the County of Monterey.

SECTION XVIII– NO REPRESENTATION OR WARRANTY OF FITNESS

SEA OTTER CLASSIC acknowledges that it has been advised by COUNTY that the conditions, facilities, and area in the Laguna Seca Recreation Area and Toro Park which SEA OTTER CLASSIC is authorized to use in accordance with this Agreement has not been represented as being fit for SEA OTTER CLASSIC's intended use or for any particular use. SEA OTTER CLASSIC acknowledges that it has been advised to inspect the condition, facilities, and other areas SEA OTTER CLASSIC is permitted to use hereunder prior to the issuance of this Agreement, and/or prior to SEA OTTER CLASSIC's actual use from time to time. Based upon SEA OTTER CLASSIC's personal inspection or upon SEA OTTER CLASSIC's right to inspect, SEA OTTER CLASSIC further acknowledges that the conditions, facilities, and other areas are safe and adequate for SEA OTTER CLASSIC's intended use. SEA OTTER CLASSIC shall have exclusive use of this Laguna Seca Recreation Area as described above during periods of time SEA OTTER CLASSIC is scheduled to use the facilities under this Agreement. SEA OTTER CLASSIC shall be responsible for all equipment and for adequate safeguards for the protection of SEA OTTER CLASSIC and others.

SECTION XIX – AGREEMENT SUBORDINATION

This Agreement is subject to and subordinate to all the terms and conditions of the following:

- 1) The certain quitclaim deed with the United States as Grantor and the County of Monterey as Grantee dated the 31st day of October 1974, and recorded in 944, page 1077, Monterey County Records, as amended on August 6, 1986 and recorded in Monterey County Official Records at Reel 2012 Page 235, and on January 21, 2000 by Document No. 2000082485, Monterey County Official Records, and that certain Use Agreement, permit number 2991 issued by the County Planning Commission on or about October 26, 1983, pursuant to Resolution number 83-376, copies of which are on file at the County Parks Department headquarters at 855 E. Laurel Drive, Building G, Salinas, California.
- 2) SEA OTTER CLASSIC acknowledges reading the foregoing documents and knowing the contents thereof.
- 3) SEA OTTER CLASSIC also acknowledges that COUNTY has the right and authority to enter into agreements with others for the Naming Rights to the Laguna Seca Recreation Area, all or part of its facilities, and independently has the authority and right to change or modify the name of the Laguna Seca Recreation Area at any time and for any reason or for none at all. In the event that COUNTY decides to change the name of the Laguna Seca

Recreation Area or enter into contractual relationships regarding the naming rights for the Recreation Area as a whole or any structures contained therein, SEA OTTER CLASSIC agrees that it shall be bound to the use of those names and to honor and not cover over the signage that may become affixed to those structures in the future, if so required by COUNTY.

SECTION XX – FAITHFUL PERFORMANCE BOND

- A. Thirty days prior to the event, SEA OTTER CLASSIC shall provide COUNTY with a bond in the amount of \$30,000 as a security bond to guarantee payment of any monies which may be payable to COUNTY under this Agreement; any damage to park property; utility charges, if any; removal by COUNTY of CONCESSIONAIRE’s personal property as may be left on the premises in violation of terms of this agreement; and cost to COUNTY of restoring premises occupied and left by CONCESIONAIRE in unsatisfactory condition. SEA OTTER CLASSIC may at its option provide County with a certified check as security deposit in lieu of this bond to be held by County and returned 30 days after County accepts receipt of LSRA as in acceptable condition upon inspection County has the sole right to cash/deposit check and determine amount and method to remit to SEA OTTER CLASSIC at end of event after County inspection of LSRA.
- B. Neither the provisions of this section, any bond or security accepted by COUNTY pursuant thereto, nor any damages recovered by COUNTY thereunder shall be construed to excuse faithful performance by SEA OTTER CLASSIC or limit the liability of SEA OTTER CLASSIC under this Agreement or for damages, either to the full amount of the bond/security or otherwise.

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

SEA OTTER CLASSIC, INC

COUNTY OF MONTEREY

By: [Signature]

By: [Signature]

Title: [Signature]

Title: Chair

By: _____

Chair Monterey County Board of Supervisors

Title: _____

~~COUNTY OF MONTEREY~~
~~APPROVED AS TO INDEMNITY/~~
~~INSURANCE LANGUAGE~~

Approved as to Form and Legality
COUNTY COUNSEL

By: [Signature]
12/16/16 clerk

BY: [Signature]
Deputy County Counsel

- EXHIBIT A – Map of Laguna Seca Recreation Area
- EXHIBIT C – Statement of Current Ownership of Sea Otter Classic, Inc.
- EXHIBIT D – Certificate of Insurance/endorsements for event/festival coverage
- EXHIBIT E – Certificate of Insurance/endorsements for competitive event coverage

Reviewed (as to fiscal provisions)

[Signature]

Auditor/Controller
County of Monterey 12-13-16