

AGREEMENT

for the

OPERATION AND MANAGEMENT

of the

LAGUNA SECA RECREATION AREA

between

THE COUNTY OF MONTEREY

and

SPORTS CAR ASSOCIATION OF THE MONTEREY PENINSULIA

dated

January ____, 2017

OPERATION AND MANAGEMENT AGREEMENT

This Operation and Management Agreement (“Agreement”) dated January ___, 2017 is between the COUNTY OF MONTEREY, California (the “County”) and the SPORTS CAR RACING ASSOCIATION OF THE MONTEREY PENINSULA, a not for profit corporation (“SCRAMP”).

R E C I T A L S

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

WHEREAS, since the County’s acquisition of LSRA in 1974 SCRAMP has operated and managed the race track and associated facilities located within LSRA (currently known as Mazda Raceway Laguna Seca, hereinafter “Raceway”) under a series of concession agreements between SCRAMP and the County, most recently under a concession agreement originally dated February 8, 2000, amended from time-to-time, and which expired on March 31, 2014; and

WHEREAS, SCRAMP has continued to operate and manage the Raceway on a month-to-month basis as a holdover concessionaire since April 1, 2014; and

WHEREAS, in addition to the Raceway, LRSA includes various campgrounds and a rifle/pistol range operated by the County Parks Department; and

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

WHEREAS, beginning in 2015 the County pursued a competitive process to determine and retain the services of the most qualified entity or person to manage and operate the entirety of LSRA under a new concession agreement containing mutually acceptable terms; and

WHEREAS, pursuant to such competitive process the County determined to negotiate for a concession agreement with parties that responded to the Request for Proposals, but the County has yet been unable to reach mutually agreeable terms for a long-term concession agreement; and

WHEREAS, the County intends to continue negotiating with the responding parties for a long-term concession agreement; however, with the 2017 racing season rapidly approaching there is a need to obtain operation and management services; and

WHEREAS, SCRAMP is organized for the purpose of supporting activities at the Raceway and related facilities, and other activities and events at LSRA; and

WHEREAS, the County and SCRAMP have reached mutually acceptable terms for the operation and management of LSRA: and,

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

NOW THEREFORE, the County and SCRAMP agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS.

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

- 1.1 “Agreement” means this Management Agreement.

1.2 “Allowed Expenses” means expenses for services and supplies related to the Management of the Management Premises that are to be funded by the County but does not include Management Fee Expenses, or expenses related to the Immediate Repairs or the STCIP.

1.3 “Allowed Expenses Fund” means the account held by SCRAMP into which it shall deposit and hold funds provided by the County for the purpose of paying Allowed Expenses, as more fully described in Article 5.

1.4 “Army Deed” means that certain quitclaim deed from the United States Government to the County dated October 31, 1974 and recorded in Monterey County Official Records at Reel 944 Page 1077, conveying LSRA to the County, 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.

1.5 “BOS” means the County Board of Supervisors.

1.6 “County” means the County of Monterey.

1.7 “County Representative” means the person designated by the County Administrative Officer for contract management purposes as described in Article 16.

1.8 “Effective Date” means January 1, 2017.

1.9 “GAAP” means generally accepted accounted principles as defined and promulgated by the American Institute of Certified Public Accountants.

1.10 “Gross Revenue” means all revenue generated, directly or indirectly, as result of the Management of the LSRA Premises by SCRAMP. Gross Revenue includes, but is not limited to, all sales, revenue derived from the provision of services, or monetary or in-kind receipts from any and all sources of income derived in whole or in part from any business transacted in, at, or from the Management Premises, whether from customers or otherwise, both cash and on credit,

and in cases of sales or charges on credit, whether or not payment is actually made. Gross Revenue does not include donations or contributions made to SCRAMP.

1.11 “Immediate Repairs” means repair and maintenance items at the Management Premises that require attention for health and safety reasons within the first six (6) months of the Term, as described in Article 7.

1.12 “Improvements” means the Immediate Repairs and improvements pursuant to the STCIP.

1.13 “Initial Capital Improvement Funding” means funds provided by the County, other than NOI Capital, for the Improvements.

1.14 “LSRA” means the Laguna Seca Recreation Area.

1.15 “Major Spectator Events” means those events limited and defined by the Use Permit and, in general, described as a maximum of five (5) events of 12,000 – 20,000 persons. The general public may attend Major Spectator Events by ticket purchase under conditions established by SCRAMP and approved by the County Representative.

1.16 “Management” means the operation, management and maintenance of the Management Premises for and on behalf of the County pursuant to the terms of this Agreement.

1.17 “Management Fee” means the fee payable to SCRAMP by the County for services described in Article 3, which is equal to the Management Fee Expenses.

1.18 “Management Fee Advance” means the sum of Two Hundred Seventy Thousand Dollars (\$270,000).

1.19 “Management Fee Expenses” means SCRAMP’s annual expenses for or related to personnel, including salary and benefits, and insurance costs required for the performance of this Agreement, as more generally described in Article 3, and as set specifically forth in Exhibit A.

1.20 “Management Incentive Fee” means the fee set forth in Section 3.2, below.

1.21 “Management Premises” means all areas of the LSRA, including, but not limited to, the race track, paddock, infield, and camping areas, but specifically excluding the rifle range and the current County Maintenance Yard and Office. A map of the Management Premises is attached hereto as Exhibit B.

1.22 “Material Default” means a material breach of any material provision of this Agreement which continues for a period of thirty (30) days after written notice thereof is received by the Party against whom the default is claimed, including but not limited to each action specifically identified herein as a Material Default and the bankruptcy or insolvency of a Party.

1.23 “Medium Spectator Events” means those events limited and defined by the Use Permit and, in general, described as a maximum of six (6) medium events of 5,000 – 11,999 persons. The general public may attend Medium Spectator Events by ticket purchase under condition established by SCRAMP and approved by the County Representative.

1.24 “NOI” means the annual net operating income derived from or arising out of activities at the Management Premises. Specifically determined by calculating all gross revenue received (cash basis) minus all operating expenses which include Management Fees and Allowed Expenses.

1.25 “NOI Capital” means NOI that shall be expended annually on Improvements.

1.26 “Party” means the County or SCRAMP singularly; “Parties” means the County and SCRAMP jointly.

1.27 “SCRAMP” means the Sports Car Racing Association of the Monterey Peninsula.

1.28 “Small Spectator Events” are those events limited and defined by the Use Permit and, in general, described as a maximum of twenty-four (24) events of 1,000 – 4,999 persons. The general public may attend Small Spectator Events by ticket purchase under conditions established by SCRAMP and approved by the County Representative.

1.29 “STCIP” means the Short Term Capital Improvement Program described in Article 8.

1.30 “Term” means the term of this Agreement as set forth in Section 2.5.

1.31 “Termination Date” means December 31, 2019.

1.32 “Track Assignment” means funds of the County generated from operations at the Management Premises, to be used at the Management Premises pursuant to the Army Deed.

1.33 “Use Permit” means that certain permit number 2991 issued by the County Planning Commission on or about October 26, 1983, pursuant to Resolution number 83-376.

ARTICLE 2. OPERATION AND MANAGEMENT AGREEMENT AND TERM.

2.1 Operation and Management.

The County hereby hires SCRAMP to operate and manage the Management Premises for and on behalf of the County pursuant to the terms of this Agreement. This Agreement shall supplant the holdover concession agreement under which SCRAMP and the County have operated since April 1, 2014, and such holdover concession agreement is hereby terminated. SCRAMP shall be entitled to exercise its rights and required to perform its obligations pursuant to this Agreement on and after the Effective Date. SCRAMP acknowledges that the County has delivered the Management Premises to SCRAMP as of the Effective Date free, clear and unencumbered by any and all tenancies and parties in possession, with the exception of SCRAMP itself and other than the rights reserved to the County as set forth herein.

2.2 Nature of Operation and Management Services.

This Agreement is a contract for Management services only, and is not to be considered or interpreted as a lease for any purpose. This Agreement confers only permission to occupy and use the Management Premises for Management purposes in accordance with the terms and conditions of this Agreement. The expenditure by SCRAMP of capital and/or labor in the course of operation and management of the Management Premises shall not confer to SCRAMP any interest in LSRA except as provided herein.

2.3 Conditions Subsequent.

The Army Deed requires the written concurrence of the Secretary of the Interior, or current authorized federal official or agency, for any concession agreement relating to or involving the Management Premises. SCRAMP acknowledges this is a services agreement and not a concession agreement; however, if the County determines the Deed requires concurrence of the Secretary of the Interior the County will use commercially reasonable efforts to diligently seek such written concurrence. The County cannot guarantee such concurrence or timing in which such concurrence may be obtained. If such written concurrence is denied, this Agreement shall immediately terminate.

2.4 Term.

The Term shall be from the Effective Date through and including the Termination Date, unless earlier terminated as provided herein.

ARTICLE 3. COMPENSATION.

3.1 Management Fee.

SCRAMP shall receive the annual Management Fee from the County for the performance of its services pursuant to this Agreement. The Management Fee shall be an

amount equal to the annual Management Fee Expenses. To insure adequate cash flow for SCRAMP to perform its obligations hereunder, County shall provide SCRAMP the Management Fee Advance to be paid no later than February 14, 2017, and thereafter on the last day of each month during the Term. At the end of each calendar year County and SCRAMP shall reconcile the Management Fee Advance received by SCRAMP to the annual Management Fee Expenses, and County shall either deduct or add the difference thereof to the annual Management Incentive Fee.

3.2 Management Incentive Fee.

SCRAMP shall receive a Management Incentive Fee equal to twenty percent (20%) of NOI. The Management Incentive Fee shall be paid based on the County Representative's verification and acceptance of a profit and loss statement provided by SCRAMP which provides NOI for the prior calendar year. SCRAMP shall provide the County Representative the profit and loss statement no later than April 15 of each year. SCRAMP shall have the right to review the financial documentation utilized by the County to verify the NOI, however the County Representative's determination of NOI shall be final and conclusive.

3.3 Payment of Management Incentive Fee.

The Management Incentive Fee will be calculated and paid annually within 120 days from the close of each calendar year ending December 2017 and December 2018.

ARTICLE 4. OPERATION AND MAINTENANCE.

4.1 General.

SCRAMP shall be solely responsible for the management, operation and maintenance of the Management Premises and its various components and facilities to standards of operation and performance at least equal to those generally applicable to major racetracks and similar

facilities except as specifically set forth herein. Under the general oversight of the County Representative, SCRAMP shall operate, manage and maintain the Management Premises in a manner designed to maximize Gross Revenue while complying with the terms of the Use Permit as implemented by historical practice. SCRAMP shall use its best efforts to manage, operate and maintain the Management Premises in a safe, healthy and first class condition.

4.2 Limitations.

All operations and uses at the Management Premises during the Term must be consistent with the Use Permit as implemented by historical practice.

4.3 Contracting.

In performing its duties and obligations hereunder, SCRAMP shall have the right to contract with third party vendors, suppliers, independent contractors, promoters and sanctioning bodies on behalf of the County; however, all contracts must be in the name of the County, and reviewed and approved by the County Representative. No such third party contract shall extend beyond the Term without SCRAMP first obtaining the prior written consent of the County Representative.

4.4 Acknowledgement of Title.

SCRAMP hereby acknowledges the fee simple title of the County in the Management Premises and the improvements located thereon, and covenants and agrees never to assail, contest or resist said title.

4.5 Intellectual Property.

The County shall own all intellectual property rights relating in any way to the Management Premises including, but not limited to, logos and identifying terms, and domain names for internet purposes. SCRAMP may propose and file for such intellectual property right

protection (whether copyright or trademark) but all such applications shall be in the name of and approved by the County. SCRAMP shall have the right during the Term to an exclusive license for the use of such intellectual property.

4.6 Park Capacity Limitations.

Daily attendance levels and overnight camping use at the Management Premises are subject to capacity limitations and the County shall retain the authority to impose limitations on attendance levels for public health and safety purposes.

4.7 Signage.

If SCRAMP desires to place new permanent signage at the Management Premises, SCRAMP shall obtain prior review and concurrence in writing from the County Representative. SCRAMP shall not construe any such review and concurrence as approval by the County or any other regulatory agency with jurisdiction over permits for such signage.

4.8 Directional Signage.

SCRAMP shall provide and install permanent internal directional signs at the Management Premises indicating the location of facilities, parking, and general necessary information for visitors and event spectators. Placement of permanent signage must be first reviewed and approved by the County Representative.

4.9 Permission to Disseminate Information.

SCRAMP shall be permitted to submit press releases, circulate articles and periodicals promoting the Management Premises and/or release still photographs, video, motion pictures, and use the internet in an advertising media campaign. All such disseminated information shall, in addition to identifying SCRAMP, as operator, identify the County as the owner of the Management Premises.

4.10 Use of Road System.

SCRAMP shall be responsible for coordinating and gaining approval for the use of all roads providing ingress and egress to the Management Premises, including roads maintained by Federal, State, and local agencies. The County shall use commercially reasonable efforts to assist SCRAMP in obtaining access to and use of roads under the County's jurisdiction and will cooperate with other agencies in obtaining such access and use for SCRAMP; however, the County cannot guarantee or warrant that SCRAMP shall have access to and use of any road or property not within the jurisdiction of the County.

4.11 Annual Operation Plan.

4.11.1. SCRAMP shall prepare and provide to the County an Annual Operation Plan for review and approval by February 31, 2017 for the first year of the Term and by December 1, 2017 for the final year of the Term.

4.11.2. The Annual Operation Plan shall include an annual budget and be linked to the annual Improvements as and when approved by the County.

4.11.3. The Annual Operation Plan shall provide for the provision of necessary emergency services.

4.11.4. SCRAMP acknowledges that the County BOS may, in its sole discretion, review the Annual Operation Plan in an open public meeting. Approval of the Annual Operation Plan by the County Representative shall be in writing, subject to mutually approved program changes by the Parties throughout the year. The County agrees to not disclose any proprietary or other such confidential information of SCRAMP that would negatively impact SCRAMP's Management of the Management Premises. The County Representative in consultation with

SCRAMP may make modifications to the operational plan and SCRAMP agrees to accept and implement all such County modifications.

4.11.5. If the BOS requires a presentation of the Annual Operation Plan SCRAMP shall present a review of the past calendar year's operations and Improvements at the same meeting. The BOS shall have the right to require SCRAMP to appear before it and make such other presentation relating to the Management Premises as the BOS may reasonably determine.

4.12 Master Calendar.

SCRAMP shall maintain a master calendar of all activities and uses of the Management Premises, including but not limited to uses of the Raceway, Raceway maintenance and repair, camp grounds, pavilion, Newman building, luxury suites, and any other facility or Improvement currently existing or added to the Management Premises during the Term.

4.13 Advertisement of Major Spectator Events.

Prior to March 1 of each year during the Term, at County expense, SCRAMP shall cause an advertisement of the schedule for Major Spectator Events to be published at least twice in a local newspaper of general circulation. The advertisement shall be no smaller than "3X5" and shall be printed in no smaller than 12 point type face. SCRAMP shall provide the County Representative a copy of the advertisement upon publication. SCRAMP shall similarly publish any change in the schedule for Major Spectator Events immediately upon such rescheduling.

4.14 Schedule of Fees.

SCRAMP shall be responsible for developing an annual schedule of fees for the use of the Management Premises, including the Raceway, camping, entrance, pavilion, Newman building, and any other facility or Improvement currently existing or added to the Management

Premises during the Term. The Schedule of Fees is subject to review and approval by the County Representative.

4.15 Permanent Residence.

SCRAMP acknowledges and agrees that the LSRA is not intended to be a permanent residence for any person and will not allow any person to reside permanently on the Management Premises. Any temporary residence must be approved by the County Representative and SCRAMP must satisfy all requirements for such temporary residences that the County, in its discretion, may require. Such temporary residences may create a possessory interest as defined in California Revenue and Taxation Code section 107, and subject to taxation. SCRAMP may be responsible for the payment of such tax or require the person(s) temporarily residing on the Management Premises to pay such tax, but the County shall not be liable for the payment of any such tax.

ARTICLE 5. MANAGEMENT SERVICES FUNDING.

5.1 General.

Except as specifically provided in this Agreement, SCRAMP shall be solely responsible for all expenses associated with the provision of Management of the Management Premises, including human resources expenses, insurances, and indemnification of County.

5.2 Allowed Expenses Fund.

County shall provide to SCRAMP within forty-five (45) days of the Effective Date the sum of \$150,000 which shall be deposited by SCRAMP in the Allowed Expenses Fund. Upon the use of funds on Allowed Expenses, SCRAMP shall provide the County Representative periodically at SCRAMP's discretion, but no later than the end of each month a receipt(s) documenting the purpose of the expense. If the County Representative approves the expense as

appropriate, the County shall pay to SCRAMP an amount equal to the expense, which shall be deposited in the Allowed Expenses Fund. Funds in the Allowed Expense Fund shall remain the property of the County and shall be held in trust by SCRAMP for the sole purpose of paying Allowed Expenses. The Allowed Expenses Fund shall be reconciled by SCRAMP monthly, and a copy of such reconciliation shall be provided and shall be subject to acceptance by the County representative. The County shall have the right to audit at any time, upon 24 hours' notice, the Allowed Expenses Fund, and SCRAMP shall immediately return to the County and funds in the Allowed Expenses Fund upon written demand by the County.

5.3 Expenses in Excess of Allowed Expenses Fund.

Should SCRAMP reasonably determine that a necessary Allowed Expense exceeds the funds then residing in the Allowed Expenses Fund, SCRAMP shall notify the County Representative and provide justification for the expense. If approved by the County Representative, the County shall provide necessary funds to SCRAMP to pay for the Allowed Expense. Immediately upon expenditure of such funds SCRAMP shall provide to the County Representative a receipt documenting the expense.

ARTICLE 6. IMPROVEMENT FUNDING.

6.1 The County shall provide Initial Capital Improvement Funding which shall be used by SCRAMP and or the County to fund the Improvements.

6.2 The County shall allocate a portion of NOI as NOI Capital and such funding shall also be used to fund the Improvements.

ARTICLE 7. IMMEDIATE HEALTH AND SAFETY REPAIRS AND MAINTENANCE

7.1 Within eight (8) weeks after the Effective Date the Parties shall use their best efforts to agree upon: (a) the Immediate Repairs and (b) the amount of the Track Assignment and NOI

Capital that shall be available to pay for specific Immediate Repairs. The County Representative shall have the authority to convey the County's agreement.

7.2 SCRAMP shall cause the Immediate Repairs to be performed within the first nine (9) months of the Term.

7.3 Upon receipt of an invoice or receipt for such Immediate Repairs SCRAMP shall immediately forward the invoice to the County. The County shall promptly review the invoice or receipt and inspect the Immediate Repairs that have been made.

7.4 Upon satisfaction that the Immediate Repair has been performed and its associated invoice is accurate, the County shall promptly pay from the Track Assignment or NOI the amount of the invoice in conformance with the Auditor – Controller's payment policies.

ARTICLE 8. SHORT TERM CAPITAL IMPROVEMENT PLAN

8.1 Within three (3) months after the Effective Date, SCRAMP shall prepare and submit to the County for its approval the STCIP. The STCIP shall be designed to address health and safety concerns, and necessary capital additions, repairs and maintenance at the Management Premises not identified as an Immediate Repair.

8.2 All improvements required by the STCIP shall be owned by the County notwithstanding SCRAMP's role in the planning, development and implementation of the STCIP.

8.3 All Improvements required by the STCIP shall be paid for with NOI Capital or the Track Assignment as shall be determined by the County Representative; however, the use of Track Assignment and NOI Capital shall be subject to appropriation by the County BOS.

ARTICLE 9.

[Reserved]

ARTICLE 10. FINANCIAL OPERATIONS

10.1 Gross Revenue

SCRAMP shall deposit all Gross Revenue into an account designated by the County.

10.2 Taxes, Fees and Assessments.

SCRAMP shall be responsible for the payment of all taxes, fees and assessments associated with its performance under this Agreement. This Agreement may create a possessory interest, as defined in California Revenue and Taxation Code section 107, subject to taxation. SCRAMP shall be responsible for the payment of such tax; and in no event shall the County be liable for the payment of, or reimbursement to SCRAMP for, any such tax.

10.3 Records and Reports.

SCRAMP shall keep or cause to be kept full, complete and proper books, records, and accounts of all Gross Revenue and expenditures associated with its performance of this Agreement. All such records shall be kept for at least two (2) years after the expiration of the year to which the records relate. The County or the County Representatives shall have the right to examine SCRAMP's records at reasonable times upon at least forty-eight (48) hours' prior notice, and from time to time throughout the Term.

10.4 Financial Systems.

SCRAMP shall utilize a robust accounting system that allows SCRAMP to follow generally accepted accounting practices, including the ability to allocate personnel and other key fixed costs to Major, Medium, and Small Spectator Events, track rentals, and all other activities at the Management Premises to determine which make significant contributions to and which may detract from NOI. This system shall be able to individually track all major cost centers,

specifically each Major Spectator Event and track rental program including any out-of-pocket costs related to sponsorships, promotion agreements or other activities.

10.5 Issuance of Debt.

10.5.1. SCRAMP shall have no right to and shall not secure any debt, loan or other financing with real property, or personal property owned by the County, at the Management Premises without first obtaining the express prior written consent of the County.

10.5.2. SCRAMP shall not enter into any unsecured debt related to any Improvements which spans more than one calendar year without express written consent of the County.

10.5.3. SCRAMP shall not enter into any unsecured debt, beyond that of normal vendor terms, without providing notice to the County prior to issuance of such debt.

10.6 Property Depreciation.

SCRAMP shall have no right to claim and shall not claim depreciation on real property, or personal property or Improvements belonging to the County, at the Management Premises without first obtaining the prior express written consent of the County; provided that SCRAMP shall retain all rights to depreciation deductions and tax credits arising from SCRAMP ownership of any personal property belonging to SCRAMP.

ARTICLE 11. ADVERTISING, SPONSORSHIPS AND EVENT SANCTIONING

Subject to section 4.3, above, on behalf of the County SCRAMP may enter into advertising, sponsorship and event sanctioning agreements relating to the Management Premises as follows:

11.1 All advertising, sponsorships and event sanctioning shall be tasteful and not be a cause for embarrassment to the County.

11.2 There shall be no advertising, sponsorships or event sanctioning for tobacco, gun or marijuana companies or adult entertainment businesses.

11.3 Prior express, written County approval must be obtained for all sponsorships and brands to be associated with any portion of the Management Premises, or any facilities therein, pursuant to a naming rights agreement.

11.4 SCRAMP shall make available to the County all material advertising, sponsorship and event sanctioning agreements.

11.5 No advertising, sponsorship or event sanctioning agreement shall extend beyond the Term without the express, written approval of the County.

ARTICLE 12. COUNTY EVENTS

12.1 The County reserves the right to hold events, without charge and utilize the Management Premises in its entirety or in part, upon coordination with SCRAMP.

ARTICLE 13. INSURANCE AND INDEMNIFICATION

13.1 SCRAMP shall indemnify, defend, and hold harmless the County 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 SCRAMP's performance of this Agreement, and or the use of the former Fort Ord road system and traffic circulation roads within the LSRA, and the

public performance of music, unless such claims, liabilities or losses arise out of the sole negligence or willful misconduct of the County or the United States of America.

13.2 Without limiting SCRAMP's duty to defend and indemnify the County and the United States of Americas as set forth above, SCRAMP shall provide insurance coverages for its operations at the Management Premises as set forth in Exhibit C. The County shall be named as an additional insured on all policies.

ARTICLE 14. AUDIT RIGHTS

14.1 The County has the right, at its sole cost and expense, to audit on an annual basis the operations, management and finances of the Management Premises, including finances of SCRAMP related to the Management of the Management Premises. SCRAMP acknowledges and agrees that the County's Auditor – Controller has the independent right at any time to audit County assets and operations, and any such audit will be in addition to the annual audit authorized by this section.

14.2 The County has the right to inspect and audit SCRAMP's finances and operations related to the performance of this Agreement as the County deems necessary upon twenty-four (24) hours' prior written notice to SCRAMP. Upon receipt of such notice of intent to inspect such records and facilities, SCRAMP will take all necessary actions to make available all records and facilities to the County Representative.

ARTICLE 15. PUBLIC ACCESS

15.1 The general public shall have access at all times to the Management Premises subject to reasonable and customary use or entrance fees.

15.2 Neither SCRAMP, its members, officers, employees, donors to SCRAMP, or sponsors, vendors, advertisers or naming rights entities, shall have special privileges for the use

of any facilities at the Management Premises unless specifically approved in writing by the County Representative.

ARTICLE 16. COUNTY OVERSIGHT AND ACCESS

16.1 The County shall designate a representative for contract management purposes and SCRAMP shall make all reasonable efforts to ensure that the designated representative has full access to and complete information regarding all SCRAMP contracts, sub-contracts, vendor agreements/arrangements, facility access, financial records, policy discussions, sponsorship agreements/arrangements, strategic planning, capital improvement planning and implementation, track rental rate setting, Major and Medium Spectator Event agreements, and all other LSRA operational and financial access as the County finds to be necessary to adequately manage this Agreement.

16.2 In addition to the rights reserved pursuant to Articles 12 and 14, the County and its agents shall have the right to enter the Management Premises at any time for any appropriate purpose. In making such entry pursuant to this section, the County shall not unreasonably interfere with SCRAMP's operation and management of the Management Premises.

16.3 The County Representative is authorized to approve promotional packages, which may include tickets or passes to events, which may be required for SCRAMP to effectively promote, market and grow business and business prospects at the Management Premises, including promotional packages to volunteers in order to encourage and promote volunteer activities for the benefit of LSRA. SCRAMP shall request such packages in writing which writing shall support the business purpose for such packages.

ARTICLE 17. TERMINATION

17.1 Termination for Convenience.

This Agreement may be terminated by County for no reason or any reason upon sixty (60) days written notice.

17.2 Termination for Material Default.

If a Material Default occurs, the defaulting Party shall be given thirty (30) days written notice from the non-defaulting Party to cure the default. If the Material Default is not cured within the thirty (30) day period the non-defaulting Party may terminate this Agreement upon thirty (30) days prior written notice to the defaulting Party.

17.3 Effect of Termination.

17.3.1. All real property and improvements shall remain owned by the County.

17.3.2. SCRAP shall negotiate in good faith for County acquisition of personal property owned by SCRAP and used at the Management Premises.

ARTICLE 18. MISCELLANEOUS PROVISIONS

18.1 Complete Agreement.

This Agreement constitutes the full and complete agreement between the Parties regarding the subject matter hereof. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement.

18.2 Amendment.

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

18.3 Successors and Assigns.

This Agreement, and the rights and obligations of SCRAP hereunder, may be assigned or delegated by the County without the prior consent of SCRAP, either express,

implied, written or unwritten. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of the Army Deed, Use Permit, any contracts then in effect regarding the Management Premises, and other ordinances or resolutions of the County then in effect. SCRAMP shall be obligated to accept such assignment without objection or contest for a period of 90 days. Beginning no earlier than thirty (30) days following the effective date of the assignment or delegation SCRAMP may terminate this Agreement by providing sixty (60) days written notice to the assignee/delegatee.

18.4 Dispute Resolution.

If there are disputes and/or controversies between the Parties relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the Parties shall in good faith meet and confer within twenty-one (21) calendar days after written notice of a dispute has been sent by one Party to the other Party. If the Parties are not able to resolve the dispute through informal negotiation, the Parties agree to submit such dispute to formal mediation before resorting to litigation. If the Parties cannot agree upon the identity of a mediator within ten (10) business days after a Party requests mediation, then the Parties shall each select a mediator and those two mediators will select a third mediator to mediate the dispute. The Parties shall share equally in the cost of the mediator who ultimately mediates the dispute, but neither Party shall be entitled to collect or be reimbursed for other related costs, including but not limited to attorneys' fees. If mediation proves unsuccessful and litigation of any dispute occurs, the prevailing Party shall be entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief to which the Party may be entitled. If a Party refuses to participate in mediation prior to commencing litigation, that Party shall be deemed to have waived its right to attorneys' fees and costs as the prevailing Party.

18.5 Execution in Parts or Counterparts.

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

18.6 Party Authorization.

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

18.7 No Predetermination or Irrevocable Commitment of Resources.

Nothing herein shall constitute a determination by the County or SCRAMP that any action shall be undertaken or that any unconditional or irrevocable commitment of resources shall be made until such time as the required compliance with all local, state, or federal laws, including without limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, have been completed.

18.8 Notices.

Any notice pursuant to this Agreement shall be given in writing by a Party or its legal representative by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, (d) legible facsimile transmission, or (e) electronic mail or other electronic means sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance with this section, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first

attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission or electronic mail, as of the date of the facsimile or electronic transmission (or next business day if transmitted on a day other than a business day). Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

For the County:

County Administrative Officer
168 W. Alisal Street, 3rd Floor
Salinas, CA 93901
Phone No. (831) 755-5113
Facsimile: (831) 757-5792

For SCRAM:

Mazda Raceway Laguna Seca
1021 Monterey-Salinas Highway
Salinas, CA 93908
Phone No. (831) 242-8201
Facsimile: (831) 373-0533
e-mail: www.mazdaraceway.com

Copy to:

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

18.9 Severability and Validity of Agreement.

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

18.10 Singular Includes Plural.

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

18.11 Captions.

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

18.12 Excusable Delay.

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

18.13 Tense, Number, and Gender.

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

18.14

[Reserved]

18.15 Survival.

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

18.16 Exhibits Incorporated.

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

18.17 Further Assurances.

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

18.18 No Third-Party Beneficiary.

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

18.19 Construction.

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

18.20 Calculation of Time Periods.

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

herein. As used in this Agreement, the term “business day” shall mean a calendar day that is not a Saturday, Sunday, or legal holiday under the laws of the State of California.

18.21 County’s Police Power.

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

18.22 Surrender at End of Term.

At the expiration or sooner termination of the Term, SCRAMP shall (a) subject to (b) hereof, remove its personal property, furniture, fixtures and equipment and shall surrender the Management Premises to the County, (b) negotiate in good faith with the County for the acquisition by the County at fair market value of all personal property assets owned by SCRAMP and used exclusively in connection with SCRAMP’s management and operation of the Management Premises, (c) at County’s option, assign to County all advertising, sponsorship and event sanctioning agreements as contemplated in Section 10.5. All alterations, additions and improvements to the Management Premises including Intellectual Property and all rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions shall inure to the benefit of, and be owned by, the County.

18.23 Waivers.

Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any of its rights hereunder except to the extent that passage of time constitutes an express waiver under any other provision of this Agreement. No waiver by either Party at any

time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either Party may have under this Agreement or at law or in equity shall be cumulative, and shall not be deemed inconsistent with each other; no one of them, whether exercised or not, shall be deemed to be an exclusion of any other, and any or all of such rights and remedies may be exercised at the same time.

18.24 Time.

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

18.25 No Agency or Partnership.

SCRAMP is an independent contractor of the County. The Parties do not intend to create, and nothing in this Agreement shall be construed to create, an agency, partnership, trust or other relationship between the County and SCRAMP with duties or incidents different from those of parties to an arms-length contract.

18.26 Applicable Law.

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of
the date first above written.

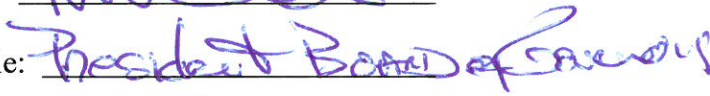
MONTEREY COUNTY

SPORTS CAR RACING ASSOCIATION
OF THE MONTEREY PENINSULA

By: _____

By:  _____

Title: _____

Title:  _____

Date: January __, 2017

Date: January 24, 2017

Approved as to Form and Content

Charles J. McKee, County Counsel

By:  _____

Leslie J. Girard
Chief Assistant County Counsel

EXHIBIT A

**LIST OF ALLOWED MANAGEMENT FEE EXPENSES
With ESTIMATES**

<u>Description</u>	<u>Amount</u>
Salaries (Includes additional Park/Camping)	\$ 182,192
Employee Benefits	338
Employee Welfare	249
Insurance Health	38,544
Worker's Comp	4,230
Payroll Service Fees	328
Payroll Taxes	13,721
Additional Salaries Burden	6,090
Accounting	3,971
Insurance Auto	2,482
Liability Insurance	4,276
LSR Legal Fees	7,963
PR Agency Fees	486
Outside Services	5,131
Total	\$ 270,000

EXHIBIT B

MAP OF MANAGEMENT PREMISES

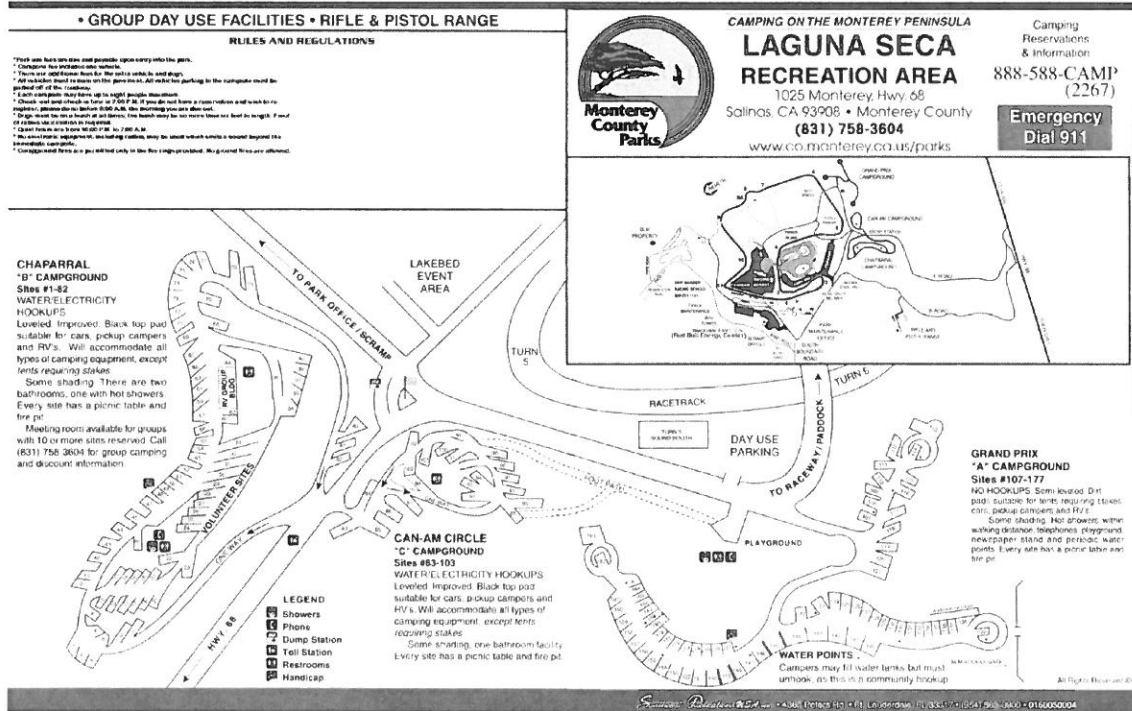


EXHIBIT C

MAZDA RACEWAY LAGUNA SECA INSURANCE REQUIREMENTS

Types of Coverage	Minimum Amounts Required
1. Comprehensive Commercial General Liability including Personal Injury and Products/Completed Operations	
A. Bodily Injury Per Occurrence	\$5,000,000
B. Bodily Injury Aggregate	\$5,000,000
C. Participant Liability Per Occurrence	\$5,000,000
D. Property Damage	\$5,000,000
E. Combined Single Limit	\$5,000,000
2. Comprehensive Auto Liability including Non-Owned and Hired Cars	
A. Bodily Injury Per Person	\$5,000,000
B. Bodily Injury per Occurrence	\$5,000,000
C. Property Damage	\$5,000,000
D. Combined Single Limit	\$5,000,000
3. Participant Accident Coverage*	\$3,000 minimum
4. Workers' Compensation	Statutory Minimums

NOTE: Additional amounts and/or types of coverage may be required for unique or unusual racetrack activities, as determined by the Director of Parks.

* Workers' Compensation insurance may satisfy Participant Accident coverage requirement in some cases.

1. County of Monterey, its officers, agents and employees; the United States of America, its officers, agents and employees; The Sports Car Racing Association of the Monterey Peninsula (S.C.R.A.M.P.), its officers, agents and employees; and Mazda Motor of America Inc., d.b.a. Mazda North American Operations, its parent subsidiary and affiliated companies, and their officers, directors and employees are named as additional insureds.
2. The Permittee's insurance is primary insurance, and no insurance of the additional insureds shall be called on to contribute to any loss incurred in connection with the Permittee's performance of this agreement.
3. This insurance policy shall not be canceled or reduced without ten-day written notice to S.C.R.A.M.P.

* * * Photographers must be behind positive barrier protection.

For video/film shoots and film shoots only, if a company wants to put a photographer on track and provides proof of their insurance covering *all of their activities* AND hold SCRAMP and its additional insureds *completely harmless* for any and all activities, that can be considered.

This is a tenuous proposition however as it is a must that their insurer confirms they know their client is putting a photographer in harm's way and this is covered.