

LAKE SAN ANTONIO SOUTH SHORE

Facility Use Agreement

This Facility Use Agreement ("Agreement") is made and entered into as of the last date of the respective signatures, by and between the COUNTY OF MONTEREY, hereafter referred to as "COUNTY", and WILDFLOWER TRIATHLON LLC, hereinafter referred to as WILDFLOWER TRIATHLON; relative to an annual Triathlon event at the Lake San Antonio South Shore and related facilities, hereinafter TRIATHLON. Collectively, the COUNTY and WILDFLOWER TRIATHLON may be referred to as the "Parties".

WHEREAS, COUNTY owns and operates Lake San Antonio South Shore and other COUNTY Park facilities; and

WHEREAS, WILDFLOWER TRIATHLON desires to utilize the Lake San Antonio South Shore and other COUNTY Park property to promote and conduct the TRIATHLON; and

WHEREAS, COUNTY is willing to grant to WILDFLOWER TRIATHLON a license to use the Lake San Antonio South Shore, all camping facilities, all lodging units, all parking lots and the entry stations (hereinafter referred to as the "Use Area") for the TRIATHLON. Use of all facilities, listed and not listed, shall be outlined by the Parties in their annual Concession Agreement for Special Events ("Concession Agreement") concerning the TRIATHLON; and

WHEREAS, if WILDFLOWER TRIATHLON requires the use of additional facilities not in the Use Area, those shall be negotiated by the Parties and outlined in the annual Concession Agreement; and

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

NOW, THEREFORE, the Parties agree as follows:

SECTION I – USE OF FACILITIES

- A. WILDFLOWER TRIATHLON will be allowed to use the entire Lake San Antonio South Shore Facility defined as the Use Area, excluding the Parks office, Parks Maintenance Yard, Staff/Ranger Residences and any facilities specifically owned or managed by the COUNTY, or designated operator, for the TRIATHLON. Attached hereto as Exhibit A is a list of specific facilities not at WILDFLOWER TRIATHLON's disposal and a map of Lake San Antonio South Shore indicating the areas referenced herein.
- B. TRIATHLON is to be held annually on a Friday, Saturday and Sunday as set forth in Section II below. Maximum attendance of 6,000 participants and 20,000 spectators per day, including staff, volunteers, vendors, participants and spectators.
- C. TRIATHLON Training Weekends will be held weekly on a Friday, Saturday and Sunday beginning the last weekend in March and ending the weekend prior to the TRIATHLON. WILDFLOWER TRIATHLON shall have Training Weekend participants make camping or resort reservations in advance. Participants shall pay the approved fee schedule amounts, for camping or resort lodging, in place at the time of the reservation.

- D. In addition to the actual days that the TRIATHLON is being held as set forth in Section II below, WILDFLOWER TRIATHLON will have access to the indicated Lake San Antonio South Shore 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 TRIATHLON event if the following schedule requires modification(s):
- 1) WILDFLOWER TRIATHLON shall have access to areas, as outlined by the Parties in their annual Concession Agreement concerning the TRIATHLON, thirty (30) days in advance of the event for preparation of FACILITY.
 - 2) WILDFLOWER TRIATHLON shall have access to areas for Training Weekends as outlined by the Parties in their annual Concession Agreement concerning the TRIATHLON.
 - 3) The Lynch area shall be available to WILDFLOWER TRIATHLON for set-up beginning at 8:00 a.m. ten (10) days prior to the TRIATHLON start date as listed in Section II. All such availability shall conclude and terminate at 5:00 pm seven (7) days following the TRIATHLON as listed in Section II.
 - 4) All available Lake San Antonio South Shore campground sites shall be available to WILDFLOWER TRIATHLON beginning at noon on Thursday of the TRIATHLON and such availability shall conclude and terminate at 6:00 p.m. on Sunday of the TRIATHLON. COUNTY reserves the right to rent campsites starting on the Tuesday following the TRIATHLON, subject to provision of a limited area for WILDFLOWER TRIATHLON staff involved in cleanup and transition activities that extend beyond the period above and at a fee set by COUNTY.
 - 5) All areas of the Lake San Antonio South Shore made available to WILDFLOWER TRIATHLON for use during the TRIATHLON shall be made available for use by COUNTY, or its assigned designee, no later than the day and time indicated above. WILDFLOWER TRIATHLON shall specifically indemnify and defend COUNTY for any claims or damages arising directly as a result of WILDFLOWER TRIATHLON's failure to vacate the premises. WILDFLOWER TRIATHLON shall specifically indemnify and defend COUNTY for any claims or damages arising directly as a result of area(s) not being ready for use on the day and time specified.
 - 6) During the days of operation of the TRIATHLON (Friday, Saturday, Sunday), COUNTY will close the Lake San Antonio South Shore operations to the public and all other activities.
 - 7) WILDFLOWER TRIATHLON shall have access to Lake areas, for Training Weekends and TRIATHLON as outlined by the Parties in their annual Concession Agreement concerning the TRIATHLON. WILDFLOWER TRIATHLON shall ensure the safety of TRIATHLON participants and the public.
 - 8) Access to Lake San Antonio South Shore will not be allowed from Lake San Antonio North Shore during the days of operation of the TRIATHLON (Friday, Saturday, Sunday.) WILDFLOWER TRIATHLON shall be responsible for providing security to monitor the closure.
- E. The Lake San Antonio South Shore is provided on an "as-is" basis. If improvements are needed to COUNTY property, WILDFLOWER TRIATHLON, at their own expense, may make property improvements (hereinafter "Improvements") with prior written approval from COUNTY. WILDFLOWER TRIATHLON is solely responsible for obtaining any permits required by state or local laws and regulations. All Improvements must meet any and all building and other applicable legal requirements. Cost of improvements approved by

COUNTY may be deducted from payment due COUNTY with the approval of the Director of the Resource Management Agency, or designee. Improvements that are not accepted by the COUNTY shall be removed no later than seven (7) days following the conclusion of the TRIATHLON.

- F. WILDFLOWER TRIATHLON shall maintain the permanent restroom facilities starting the Wednesday before the start of the TRIATHLON through Sunday night at the end of the TRIATHLON. The procurement of all sanitary facilities necessary for the TRIATHLON shall be the responsibility of WILDFLOWER TRIATHLON and all costs borne by WILDFLOWER TRIATHLON. WILDFLOWER TRIATHLON shall also pay for all costs related to service and maintenance of all portable chemical toilets throughout the TRIATHLON to meet the California Plumbing Code 2016 Table 422.1 for A-5 Occupancy (outdoor activities).
- G. COUNTY shall allow the use of available on-site trash cans and recycle containers and will clean the public areas of litter and trash prior to the transfer of the area to WILDFLOWER TRIATHLON. WILDFLOWER TRIATHLON shall be responsible for removal of all trash and recycled materials from Lake San Antonio South Shore following the end of the event and all costs shall be borne by WILDFLOWER TRIATHLON. WILDFLOWER TRIATHLON shall return all trash cans and recycle containers to their original location or as directed by COUNTY staff.
- H. WILDFLOWER TRIATHLON shall be responsible for maintaining the entire Lake San Antonio South Shore from litter and trash during the TRIATHLON and shall assure all WILDFLOWER TRIATHLON vendors and contractors meet the requirements for sanitation and litter of their individual areas. WILDFLOWER TRIATHLON shall be ultimately responsible for collecting and removing all litter and trash from the Lake San Antonio South Shore facility and depositing it in dumpsters within seven (7) days following the conclusion of the TRIATHLON. As part of the collection and disposal of all trash and litter, WILDFLOWER TRIATHLON 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 TRIATHLON to the greatest extent possible and feasible. WILDFLOWER TRIATHLON shall have all dumpsters emptied following the end of the TRIATHLON event and all costs for dumpster removal shall be borne by WILDFLOWER TRIATHLON.
- I. As COUNTY develops additional permanent facilities within the Lake San Antonio South Shore facility, such as building structures or tent structures, WILDFLOWER TRIATHLON will have the option of negotiating with COUNTY for utilization of these additional facilities (additional fee may be required) at that time.
- J. WILDFLOWER TRIATHLON shall abide by all Parks Sound Policies as established in the annual Concession Agreement. WILDFLOWER TRIATHLON agrees to established penalties for non-compliance as set forth in the annual Concession Agreement.
- K. Subject to space availability and the sole discretion of COUNTY, WILDFLOWER TRIATHLON may be authorized to utilize a designated area, up to 150 feet by 150 feet square feet, for year-round storage. Standard shipping/cargo containers may be utilized up to 40 feet long x 8 feet wide x 10 feet high for non-hazardous personal property for use at the TRIATHLON event. Neither the containers nor the space within may be sublet or used for commercial or business purposes other than the storage of WILDFLOWER TRIATHLON's non-hazardous personal property used solely for WILDFLOWER TRIATHLON events held at

Lake San Antonio South Shore. The exact location for the placement of the containers shall be at the sole discretion of COUNTY. The authorization for placement and use may be granted or withheld by COUNTY, without any reason given, whether reasonable or not. If such storage is authorized, the cost and maintenance of the containers is entirely that of WILDFLOWER TRIATHLON, 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. WILDFLOWER TRIATHLON'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. At the sole discretion of COUNTY, with or without cause, with thirty (30) days' notice, COUNTY may require that WILDFLOWER TRIATHLON move or remove some or all of the containers, and WILDFLOWER TRIATHLON shall be solely responsible for arranging and the cost of such move/removal. Within sixty (60) days of the termination of this Agreement, WILDFLOWER TRIATHLON shall remove any previously approved containers at its own cost and return the area to its original condition. If WILDFLOWER TRIATHLON 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 WILDFLOWER TRIATHLON shall hold COUNTY harmless for such action. WILDFLOWER TRIATHLON shall provide a site plan and narrative explaining the layout and location of the storage area in detail with particular attention to ensuring it does not conflict with operations and is aesthetically pleasing.

- 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 Lake San Antonio. Regardless of whether the COUNTY makes such an assignment, and in special consideration of the extension of the term of this Agreement through 2027, WILDFLOWER TRIATHLON acknowledges that it will need to cooperate with the future operator(s), so long as any such amendment(s) do not require substantial change to WILDFLOWER TRIATHLON's historical use of Lake San Antonio or unreasonable expense or hardship to WILDFLOWER TRIATHLON. 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 WILDFLOWER TRIATHLON and COUNTY.

SECTION II – FACILITY USE DATES AND TERM

- A. COUNTY will provide the facilities as described above to WILDFLOWER TRIATHLON for the TRIATHLON during the month of May in the years 2018 through 2022 as a County Parks Department primary special event weekend, subject to the Lake San Antonio South Shore use permit and the Force Majeure, Section IX, of this Agreement. WILDFLOWER TRIATHLON shall conduct the TRIATHLON on the following dates during years 2018-2022:

May 4-6, 2018
May 3-5, 2019
May 1-3, 2020
April 30-May 2, 2021
April 29-May 1, 2022

COUNTY reserves the right and shall maintain final control of scheduling of events, including the TRIATHLON, at the Lake San Antonio South Shore. The above scheduled dates can be changed only by mutual agreement between the parties.

- B. In calendar year 2021, the Parties agree to meet and discuss and negotiate in good faith the potential mutually agreeable extension of this Agreement for an additional five-year period, 2023 through 2027. The exact provisions and conditions of that extension, including but not limited to fees, window of TRIATHLON dates, insurance, and/or available infrastructure shall be subject to negotiation or renegotiation at that time.

SECTION III – PAYMENT

- A. WILDFLOWER TRIATHLON shall pay COUNTY a flat fee at the rates specified below for TRIATHLON at Lake San Antonio South Shore use, which shall be increased annually in the amount of the Consumer Price Index (CPI) for the previous year, according to the following schedule:

2018 – \$180,000

2019 – \$185,000 + 2017 CPI = 2019 Base Amount

2020 – 2019 Base Amount + 2018 CPI = 2020 Base Amount

2021 – 2020 Base Amount + 2019 CPI = 2021 Base Amount

2022 – 2021 Base Amount + 2020 CPI = 2022 Base Amount

The fee for the preceding year shall be established as the base amount for each subsequent year.

- B. Additional reimbursement will be required for COUNTY, or assignee, staff assigned during the five (5) days of event. That amount is currently set to be \$2,500 per day (\$7,500 for event) and will adjust each year by CPI. This is for monitoring, supervision, emergency repair work, etc. at the sole discretion of COUNTY. If additional staff is required, the Parties agree to meet and discuss the need and cost.
- C. If COUNTY facilities are not returned to pre-event condition, or better, WILDFLOWER TRIATHLON shall be invoiced for cleanup and restoration performed by staff, vendors or contractors at the fully-loaded rate applicable to staff and at actual cost for vendors or contractors.
- D. The Monterey County Resource Management Agency, or other designated COUNTY staff, shall calculate the adjustment based on the U.S. Department of Labor Consumer Price Indexes, all item indexes, all urban consumers for the San Francisco-Oakland-San Jose area.
- E. COUNTY shall prepare and provide WILDFLOWER TRIATHLON an invoice for actual utility costs during dates of occupancy by WILDFLOWER TRIATHLON within sixty (60) days after the closing date of the TRIATHLON. WILDFLOWER TRIATHLON shall reimburse COUNTY within thirty (30) days of receipt of invoice from COUNTY.
- F. COUNTY reserves the right to all-access to TRIATHLON at no charge by approved County representatives. COUNTY staff shall be allowed to enter the event at no charge if they are in an appropriate COUNTY vehicle and possess COUNTY identification without any additional credentials or ticket. WILDFLOWER TRIATHLON shall provide all-access credentials, both

admission and parking, for use as COUNTY deems necessary for management staff, COUNTY's agents, and other COUNTY staff as needed. COUNTY commits that such credentials will be used for business purposes only. All complimentary credentials shall not be subject to resale, and are subject to cancellation by WILDFLOWER TRIATHLON if resale is attempted and identified (e.g., eBay, Stubhub, Craigslist).

- G. Prior to each annual event, WILDFLOWER TRIATHLON shall pay to COUNTY a Non-Refundable Deposit of \$25,000, payable not later than November 15 in the year prior to the applicable TRIATHLON. The deposit will be applied to the full payment due COUNTY for the TRIATHLON.
- H. The remainder of the full amount of the flat fee for each year shall be paid as detailed below. The full amount of the fee may be paid in three (3) additional installments as follows:

Non-Refundable Deposit	\$25,000.00	Due no later than November 15 of prior event year
First Payment	\$50,000.00	Due no later than February 1 of the event year
Second Payment	\$50,000.00	Due no later than March 15 of the event year
Third Payment	Balance	Due no later than April 15 of the event year

SECTION IV-PROMOTION, PUBLICITY, AND ADVERTISING

- A. COUNTY hereby authorizes WILDFLOWER TRIATHLON to use the name "Lake San Antonio South Shore" subject to this Agreement in its promotional information. If the name of the Lake San Antonio South Shore Facility as a whole is changed, by way of a naming rights agreement with COUNTY or by other action or cause, WILDFLOWER TRIATHLON shall be required to use the new name in its promotional information that has not yet been submitted for printing/manufacturing.
- B. Further, WILDFLOWER TRIATHLON may, at its own expense, have a reasonably sized sign (not exceeding 32 square feet) painted, erected and maintained within the Lake San Antonio South Shore facility. The sign may remain for the duration of each TRIATHLON event. The content, format, color schemes, and location of all signs shall be subject to the approval of COUNTY. Said approval shall not be unreasonably withheld.
- C. COUNTY will promote and publicize the TRIATHLON event in its Calendar of Events and other calendars of events to which COUNTY posts information as time and staff resources permit.
- D. COUNTY authorizes WILDFLOWER TRIATHLON, at the discretion of the County Administrative Officer, or designee, 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 Lake San Antonio South Shore ten (10) days prior to the TRIATHLON and concluding three (3) days following the TRIATHLON event. WILDFLOWER TRIATHLON 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. WILDFLOWER TRIATHLON 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 WILDFLOWER TRIATHLON's conduct of same. COUNTY makes no representation or warranty with respect to the suitability of the Lake San Antonio South Shore for WILDFLOWER TRIATHLON's purposes, nor the success or other results of WILDFLOWER TRIATHLON activities conducted hereunder.

SECTION VI -WILDFLOWER TRIATHLON LLC'S OBLIGATIONS

- A. WILDFLOWER TRIATHLON shall complete a separate annual Special Use Event Application and Concession Agreement for Special Events and have said Concession Agreement approved, and fully executed by the Resource Management Agency Director, or designee, for each event at least one hundred twenty (120) days prior to the beginning of the TRIATHLON. A copy of a current annual Special Use Event Application is attached hereto as Exhibit B and Concession Agreement for Special Events, is attached hereto as Exhibit C. The COUNTY may, in its sole discretion, modify the format of the Special Use Event Application and Concession Agreement for Special Events.
- B. WILDFLOWER TRIATHLON shall provide all security as needed during set up, event and cleanup. Cost shall be borne by WILDFLOWER TRIATHLON
- C. WILDFLOWER TRIATHLON shall have septic pumped following TRIATHLON cleanup. Cost shall be borne by WILDFLOWER TRIATHLON.
- D. WILDFLOWER TRIATHLON shall prepare all trails used to COUNTY standards. Cost shall be borne by WILDFLOWER TRIATHLON.
- E. WILDFLOWER TRIATHLON shall prepare all campgrounds for their use. Cost shall be borne by WILDFLOWER TRIATHLON.
- F. WILDFLOWER TRIATHLON shall prepare the swim course and monitor the course during the event as necessary. Cost shall be borne by WILDFLOWER TRIATHLON.
- G. If WILDFLOWER TRIATHLON is using water trucks for dust control, water must be pumped from Lake San Antonio and not the well system. Cost shall be borne by WILDFLOWER TRIATHLON.
- H. WILDFLOWER TRIATHLON shall provide support for the bicycle course during Training Weekends and TRIATHLON as required by applicable County agencies or other agencies that have jurisdiction on the course. Support includes, but is not limited to, signage, traffic control, chemical toilets, trash and litter cleanup. Agencies include, but are not limited to the Monterey County Health Department, Monterey County Sheriff's Office, Monterey County Public Works Department, California Highway Patrol, and San Luis Obispo County agencies. WILDFLOWER TRIATHLON shall be responsible for obtaining all permits required.

- I. WILDFLOWER TRIATHLON shall not commit or permit any injury or damage to any part of the Lake San Antonio South Shore or their appurtenances nor any waste thereon. All property utilized by WILDFLOWER TRIATHLON in the course of the operations contemplated hereby shall be returned to COUNTY in pre-event condition or better.
- J. A mandatory walk-through of the property before and after the TRIATHLON with a representative from WILDFLOWER TRIATHLON and one from the COUNTY is required. Walk-throughs shall be documented with notes and photographs, and agreed upon by both parties. Timing of the walk-throughs will be on mutually agreeable dates no more than one (1) week prior to beginning set up and no later than fourteen (14) days following cleanup of the event.
- K. WILDFLOWER TRIATHLON shall promptly arrange and pay to have repairs made for any damage, reasonable wear and tear excepted, to the Lake San Antonio South Shore or other facilities arising out of WILDFLOWER TRIATHLON's operation hereunder. WILDFLOWER TRIATHLON will complete all environmental repairs, as required by COUNTY, within fourteen (14) days following the TRIATHLON event. If repairs are not made or do not meet COUNTY standards, WILDFLOWER TRIATHLON shall be invoiced for environmental repairs performed by staff, vendors or contractors at the fully-loaded rate applicable to staff and at actual cost for vendors or contractors.
- L. WILDFLOWER TRIATHLON shall be responsible for and promptly pay all taxes and assessments of any kind whatsoever assessed or levied for the use of the Lake San Antonio South Shore and/or for storage of its personal property at the Lake San Antonio South Shore, 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 WILDFLOWER TRIATHLON to COUNTY pursuant to this Agreement.
- M. WILDFLOWER TRIATHLON, its agents, employees, and patrons shall be bound by all existing federal, state, and county laws, ordinances, regulations and use permits that apply to Lake San Antonio South Shore and WILDFLOWER TRIATHLON's operations.
- N. WILDFLOWER TRIATHLON 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

WILDFLOWER TRIATHLON shall indemnify, defend, and hold harmless the COUNTY, the United States of America, Urban Parks Concessionaires, or any other resident concessionaire of the Resource Management Agency and each of their officers, agents, and employees from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies to WILDFLOWER TRIATHLON in connection with the performance of this Agreement, and/or the use of the Ft. Hunter Liggett road systems adjacent to Lake San Antonio South Shore, and the public performance of music, 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

the WILDFLOWER TRIATHLON's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the COUNTY. "WILDFLOWER TRIATHLON's performance" includes WILDFLOWER TRIATHLON's action or inaction and the action or inaction of WILDFLOWER TRIATHLON's officers, employees, agents and subcontractors.

SECTION VIII – INSURANCE

A. Evidence of Coverage:

Prior to the execution of each annual Concession Agreement for Special Events, for each TRIATHLON event under this Agreement, WILDFLOWER TRIATHLON shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, upon request, WILDFLOWER TRIATHLON shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Resource Management Agency Administrative Services Division, unless otherwise directed. An annual Concession Agreement shall not be approved and WILDFLOWER TRIATHLON shall not be allowed to proceed with the TRIATHLON under this Agreement until it has obtained all insurance required and such insurance has been approved by the COUNTY. This approval of insurance shall neither relieve nor decrease the liability of the WILDFLOWER TRIATHLON.

B. Qualifying Insurer:

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the COUNTY's Risk Manager.

C. Insurance Requirements. Without limiting WILDFLOWER TRIATHLON's duty to indemnify, WILDFLOWER TRIATHLON 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 insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$5,000,000 per occurrence with a \$10,000,000 aggregate. Excess liability coverage that provides an additional \$5,000,000 per occurrence for specified competitive events shall be provided.
- 2) Business Auto Liability, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, with a combined single limit for Bodily Injury and Property Damage of not less than \$2,000,000 per occurrence.
- 3) Workers' Compensation covering statutory requirements of the State of California and Employer's Liability of not less than \$1,000,000 each employee, \$1,000,000 each accident and \$1,000,000 each disease.

- 4) Liquor liability insurance, with limits not less than \$2,000,000 each occurrence combined single limit for Bodily Injury and Property Damage.
- 5) Accident Medical Benefits Insurance to cover spectators, entertainers, employees and volunteers, with limits not less than \$25,000 each person.

D. Other Insurance Requirements:

- 1) All insurance required by this Agreement shall be with a company acceptable to the COUNTY and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date WILDFLOWER TRIATHLON completes its performance under this Agreement.
- 2) Each liability policy shall provide that the COUNTY shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for WILDFLOWER TRIATHLON and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 3) 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 further 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 WILDFLOWER TRIATHLON's performance of this Agreement. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 4) WILDFLOWER TRIATHLON shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.
- 5) WILDFLOWER TRIATHLON shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County Administrative Officer, or designee. If the certificate is not received by the expiration date, County shall notify WILDFLOWER TRIATHLON and WILDFLOWER TRIATHLON shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by WILDFLOWER TRIATHLON to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

SECTION IX – FORCE MAJEURE

- A. COUNTY and WILDFLOWER TRIATHLON 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. WILDFLOWER TRIATHLON acknowledges notice that COUNTY may terminate this Agreement at any time if the Lake San Antonio South Shore 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) WILDFLOWER TRIATHLON 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 WILDFLOWER TRIATHLON 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. WILDFLOWER TRIATHLON 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 WILDFLOWER TRIATHLON's interest in this Agreement and/or a change in the composition or ownership of WILDFLOWER TRIATHLON, 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 fifty percent (50%) of the equity and/or business control of WILDFLOWER TRIATHLON.
- 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 forty-five (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 WILDFLOWER TRIATHLON 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 fashion. COUNTY may impose such reasonable conditions upon the transfer as it deems appropriate in its sole discretion. Further, any single consent to Transfer shall not be the basis for or implied consent to additional Transfers, and WILDFLOWER TRIATHLON 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.

SECTION XII – TERMINATION

- A. The COUNTY reserves the right to cancel this Agreement or any extension of this Agreement, for any reason with written notice given no later than September 1 of each year under the Agreement. If the Agreement is cancelled by the COUNTY pursuant to this paragraph, the Faithful Performance Security shall be returned by COUNTY to WILDFLOWER TRIATHLON and the parties will each have a mutual right to terminate the Agreement for convenience with no further liability to each other.
- B. The County reserves the right to cancel this Agreement or any extension of this Agreement with cause immediately. "Cause" includes but is not limited to the failure of WILDFLOWER TRIATHLON to have in force all required insurance; failure to make timely payment when due, failure to obtain required permits; or any breach of terms and conditions of this Agreement or any related annual Concession Agreement. In addition to all other remedies, including termination of this Agreement, any damages shall be recoverable from the principal and sureties upon the faithful performance bond or security.
- C. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and WILDFLOWER TRIATHLON. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- D. Severability. If a Clause of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this Agreement will continue in effect.

SECTION XIII-ADMINISTRATION

COUNTY appoints its County Administrative Officer, or designee, 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
Resource Management Agency
Attn: Shawne Ellerbee
1441 Schilling Place, 2nd Floor
Salinas, CA 93901
831-755-4794

CONCESSIONAIRE:

Wildflower Triathlon LLC
Attn: Chris Colon
3900 E. Mexico Avenue, Suite 1350
Denver, CO 80210

Tri-California Events, Inc.
Attn: Terry Davis
1284 Adobe Lane
Pacific Grove, CA 93950
831-373-0678

SECTION XV – EQUAL OPPORTUNITY

WILDFLOWER TRIATHLON shall comply with the terms of this Agreement herein without any discriminatory practice based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information.

SECTION XVI – COMPLETE AGREEMENT

This Agreement embodies the complete understanding of the Parties 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.

The Parties also hereby agree to terminate Professional Services Agreement No. A-08158 in its entirety, and to terminate any other prior agreements concerning the TRIATHLON and associated events.

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 in the County of Monterey.

SECTION XVIII– NO REPRESENTATION OR WARRANTY OF FITNESS

WILDFLOWER TRIATHLON acknowledges that it has been advised by COUNTY that the conditions, facilities, and area in the Lake San Antonio South Shore, which WILDFLOWER TRIATHLON is authorized to use in accordance with this Agreement, has not been represented as being fit for WILDFLOWER TRIATHLON's intended use or for any particular use. WILDFLOWER TRIATHLON acknowledges that it has been advised to inspect the condition, facilities, and other areas WILDFLOWER TRIATHLON is permitted to use hereunder prior to the issuance of this Agreement, and/or prior to WILDFLOWER TRIATHLON's actual use from time to time. Based upon WILDFLOWER TRIATHLON's personal inspection or upon WILDFLOWER TRIATHLON's right

to inspect, WILDFLOWER TRIATHLON further acknowledges that the conditions, facilities, and other areas are safe and adequate for WILDFLOWER TRIATHLON's intended use. WILDFLOWER TRIATHLON shall have exclusive use of this Lake San Antonio South Shore as described above during periods of time WILDFLOWER TRIATHLON is scheduled to use the facilities under this Agreement. WILDFLOWER TRIATHLON shall be responsible for all equipment and for adequate safeguards for the protection of WILDFLOWER TRIATHLON and others.

SECTION XIX – FAITHFUL PERFORMANCE SECURITY

- A. Thirty (30) days prior to the event WILDFLOWER TRIATHLON shall provide COUNTY with a \$25,000 cashier's check payable to COUNTY as security to guarantee payment of any monies which may be payable to COUNTY under this Agreement, including but not limited to: any damage to park property; utility charges; removal by COUNTY of such property as may be left in the Lake San Antonio South Shore in violation of terms of this Agreement; and cost to COUNTY of restoring Lake San Antonio South Shore occupied and left in unsatisfactory condition. COUNTY will return this security, or unused portions of this security, within one hundred twenty (120) days following the last day of the annual TRIATHLON event.
- B. Neither the provisions of this Section XIX, any bond or security accepted by COUNTY pursuant thereto, nor any damages recovered by COUNTY thereunder shall be constructed to excuse faithful performance by WILDFLOWER TRIATHLON or limit the liability of WILDFLOWER TRIATHLON 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 below.

THE WILDFLOWER TRIATHLON LLC

Date: 10/31/17

By: [Signature]

Title: President

Date: 31 October 2017

By: [Signature]

Title: Exec Vice Pres Ops

COUNTY OF MONTEREY

Date: _____

By: _____

Chair, Monterey County
Board of Supervisors

Approved as To Form
COUNTY COUNSEL

BY: [Signature]
Deputy County Counsel

EXHIBIT A – Map and List of Lake San Antonio South Shore Use Areas

EXHIBIT B – Special Use Event Application

EXHIBIT C – Concession Agreement for Special Events

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

12-4-17