

AGREEMENT

This Agreement (“Agreement”), made and entered into as of October 1, 2021, (the “Effective Date”) is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”), and Sonoma County Fair and Exposition, Inc., a California non-profit corporation (hereinafter “Fair”).

WITNESSETH

WHEREAS, County proposed to hold and conduct an annual County Fair in said County at the Sonoma County Fairgrounds (hereinafter “Fairgrounds”) (APN 009-381-002, 004, 006; 009-392-002; 014-653-001, 005, 007; 009-410-001; 009-420-001; 009-371-010; 038-201-024; 038-202-013; 009-371-010; 009-401-001, 002, 003, 004, 006, 007, 008; 038-252-001) , and acting by and through its duly elected, qualified and acting Board of Supervisors, in regular sessions assembled, on the 29th day of November, 1955, by resolution did so announce and declare such purpose; and

WHEREAS, since that date County and Fair have entered into agreements by the terms of which Fair was authorized to conduct said County Fair on behalf of County and was authorized and appointed County’s agent for the purpose of managing, using, possessing, and operating the said Fair and Fairgrounds; and

WHEREAS, County proposes to conduct a County Fair each year during the term of this Agreement on dates to be hereafter selected; and

WHEREAS, the State of California may appropriate certain monies for the encouragement of State and County Fairs, and said monies are apportioned to such Fairs in accordance with rules and regulations prescribed by said State and the Department of Food and Agriculture of said State pursuant to the Food and Agriculture Code; and

WHEREAS, County has facilities available to hold a Fair for the purpose of exhibiting and advertising the agricultural and livestock products of County and the State of California; and

WHEREAS, it is the mutual desire of the parties hereto that Fair act as an agent of County for the purpose of holding and conducting a Fair annually, and have the use, possession and management of the Fairgrounds for the term of this Agreement; and

WHEREAS, the Fairgrounds serve an important function supporting emergency and disaster responses, including serving as a CalFire base camp, a mass care and emergency shelter site, and a large animal shelter.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Appointment of Agent. Pursuant to Government Code Section 25905, County hereby constitutes and appoints Fair as the agent of County for the following purposes: (a) to conduct an annual County Fair, and (b) to manage, use, possess and operate the Fairgrounds.

Fair is hereby authorized and empowered to do all things necessary and proper under the law, its Articles of Incorporation, Bylaws and this Agreement in the management and operation of the Fair and Fairgrounds as agent of County, including without limitation, entering into contracts with others to conduct events at the Fairgrounds, subject to the terms of Sections 1.1 and 1.4 hereof.

- 1.1. Use and Lease Agreements. The Fair is authorized to enter into lease, license, use, or concession agreements upon the Fairgrounds consistent with its authority to manage, use, possess and operate the Fairgrounds, provided that all such agreements are:
 - a) Expressly made subordinate to this Agreement; and
 - b) Conditioned on the County's right to immediately cancel or terminate such agreements, for any reason or no reason, at any time after the termination or expiration of this Agreement, without any penalty or liability accruing to the County or the Fair.
- 1.2. Improvement Agreements. The Fair is authorized to permit or cause the installation of new facilities, or enter into commitments for such installation, in an amount less than One Hundred Thousand Dollars (\$100,000). Notwithstanding any other provision of this Agreement, Fair shall obtain the County Board of Supervisors prior written approval before making any commitments for the installation of new facilities on the Fairgrounds in excess of One Hundred Thousand Dollars (\$100,000).
- 1.3. Goods, Services, and Other Contracts. Fair's contracts for goods, services, and other types agreements not constituting an agreement for use, lease, or improvements, shall not exceed the term remaining on this Agreement, unless the agreement includes a subordination provision in the form attached hereto as Exhibit A or the County separately provides written consent thereto.
- 1.4. County Emergency Uses. Notwithstanding any other provision of this Agreement, in the event of a declared emergency consistent with Government Code Section 8558, as may be determined to exist by County, the County may, use and make the Fairgrounds (or any portion thereof) available for related response activities and services, which may be implemented by County and its contractors. Third-party organizations occupying or using the Fairgrounds for such purposes may be required by County or Fair to enter into agreements regarding such use or occupancy, all revenue from which will be due and payable to the Fair. County shall reimburse Fair for all staff costs associated with the County's deployment of Fair's employees in the event of an emergency and for actual operational expenses incurred by Fair resulting from County's emergency use of the property. In the event the County's emergency use extends longer than thirty (30) days, Fair may request County to reimburse Fair for cost of operations in proportion to facilities actually occupied by County and those facilities that cannot be otherwise used due to County's use. Except as the

parties may otherwise agree in writing, Fair shall not be obligated to equip, provision, or otherwise support any emergency use of the Fairgrounds by County. In no event shall County be liable to any third party due to event cancellation. Fair shall include provisions in all of its licenses, leases, and other contracts, that entitle the Fair to cancel events without liability to licensees, lessees, vendors, or contractors due to County's use of the Fairgrounds in the event of an emergency.

2. Term. Fair's appointment as agent of County and this Agreement shall be effective for the period commencing October 1, 2021 and ending September 30, 2026, unless terminated earlier or extended pursuant to Section 25.

3. Termination of Agreement and Appointment. This Agreement and Fair's appointment as agent may be terminated at any time by order of County's Board of Supervisors. The Board shall give timely notice of any such termination to the State Department of Food and Agriculture. Upon such termination, Fair shall immediately tender to County the possessions of the Fairgrounds and all other property and funds of County in possession of Fair.

4. Authority to Conduct Fair; Debt. The laws of the State of California vests in County and its duly elected and appointed officials and none other, the power and authority to hold and conduct an annual County Fair. Fair agrees that the usual records required by law, generally accepted accounting principles, and this Agreement must be kept in connection therewith, which said records constitute County records, and that all money constituting gross receipts from or in connection with the operation, holding and conducting of said Fair and through the use, possession and management of the Fairgrounds constitute County monies. All debts and obligations lawfully incurred by Fair are the debts and obligations of County therefore prior to the creation of any debt obligations by Fair in connection with the use and operation of the fairgrounds, Fair shall obtain Board of Supervisors prior written approval. In the event of a declared emergency, the County Administrator, in his or her capacity as the Director of Emergency Services pursuant to Chapter 10 of the Sonoma County Code, shall be authorized to approve the creation of any debt by Fair as related to such declared emergency, provided that such debt shall be presented to the Board of Supervisors at the earliest reasonable opportunity. Fair, acting under the authority of law applicable thereto, and subject to restrictions thereof, will hold and conduct a County Fair, annually, on the Fairgrounds.

5. Non-Fair Events and Opportunities. Fair shall use its best efforts to maximize utilization and improvement of the Fairgrounds and revenues derived therefrom by licensing the use of Fairgrounds' facilities which are revenue -producing or which may be conducted for public benefit without loss to Fair or County. Notwithstanding, Fair may, from time to time, authorize the use of Fairgrounds for community-oriented events which use will result in a loss to Fair but for which there are compensating public benefits; provided that Fair shall adopt a policy, subject to County approval, concerning such community-oriented uses and which shall include standards by which such uses will be allowed notwithstanding any revenue losses; provided however, that any use or other agreement which in the opinion of the Board of Directors of Fair or County's Risk Manager substantially increases the liability exposure of County or Fair shall require the user to indemnify and insure County and Fair and their officers,

directors and employees against such liability exposure with limits no less than \$1,000,000 Combined Single Limit Personal Injury and Property Damage.

6. Preparation of Budget; Application for Apportionment. Fair shall annually submit to its Fair Board a tentative budget for the succeeding calendar year on or before the 30th day of November of each year. As part of its budget process, Fair shall present its proposed capital budget to County's General Services Department. Upon approval of the tentative budget by the Fair Board, or by December 15th at the latest, Fair shall submit its tentative budget for the calendar year to County. County shall make such alterations as it deems appropriate in said budget allowing Fair a reasonable amount of time to comment on any such alterations, and, if required under current regulations, forward the Board approved budget to the State Department of Food and Agriculture, Division of Fairs and Expositions, in accordance with Government Code Section 25905.

7. Payment of Premiums. Fair will pay all premiums awarded by the judges at the annual Fair, subject to the prior approval of the premium list by the Department of Food and Agriculture, provided that all premium awards are made in accordance with a published premium list approved by the Department of Food and Agriculture, and applicable rules and regulations of the Department of Food and Agriculture. It is agreed that "premium" means awards given for excellence of exhibits.

8. Maintenance of Management Policies. Fair shall establish and maintain policies for personnel administration, purchasing, contract management (and associated insurance requirements) and accounting. Said policies shall be periodically reviewed with appropriate County departments. The Fair personnel policy shall require a written personnel services contract between the Fair Manager and the Fair as vacancies occur and are filled. Such contracts shall have the prior written approval as to form from County Counsel.

9. Insurance.

9.1 General Liability Insurance. County shall at its own expense purchase and maintain General Liability insurance (coverage to include Bodily Injury, Personal Injury, Property Damage, Contractual liability, Public Officials Errors & Omissions Liability, and Employment Practices Liability) and automobile liability insurance in amount of Thirty Five Million Dollars (\$35,000,000) per occurrence (subject to change at the County's sole discretion) to cover Fair's exposure; provided that Fair shall pay its pro-rata share of the premium for such insurance, as determined by County. Determination of annual premiums are based upon experience/exposure allocation using prior year actual payroll (exposure) and claims experience (10 years). The allocation weights payroll exposure at 20% and claims experience at 80%. This coverage can be provided by a program of self-insurance or a combination of self-insurance and purchased coverage.

9.2 Workers' Compensation Insurance. County shall at its own expense purchase and maintain Workers' Compensation Insurance with statutory limits, and Employers Liability Insurance, with limits no less than One Million dollars (\$1,000,000) per Accident, and One Million dollars (\$1,000,000) Disease per employee (subject to change at the County's sole discretion) to cover Fair's exposure; provided that Fair shall pay its pro-rata share of the

premium for such insurance. This coverage can be provided by a program of self-insurance or a combination of self-insurance and purchased coverage.

9.3 Property Insurance. County shall at its own expense purchase and maintain property insurance coverage with limits set by County's Board of Supervisors, covering improvements located upon the Fairgrounds; provided that Fair shall pay its pro-rata share of the premium for such insurance. Fair shall make no other arrangements for property insurance coverage without the prior approval of County.

9.4 Bond and Crime Insurance. County shall at its own expense purchase and maintain a blanket employees' faithful performance or honesty bond in the minimum amount of One Million Dollars (\$1,000,000) per occurrence to cover Fair's exposure at any one time; provided that Fair shall pay its pro-rata share of the premium for such insurance.

9.5 Pollution Liability Insurance. County shall at its own expense purchase and maintain pollution liability in amount Ten Million Dollars (\$10,000,000) per occurrence and aggregate (subject to change at the County's sole discretion) to cover Fair's exposure; provided that Fair shall pay its pro-rata share of the premium for such insurance.

9.6 Cyber Liability Insurance. County shall at its own expense purchase and maintain cyber liability insurance in an amount deemed appropriate (at the County's sole discretion) to cover Fair's exposure; provided that Fair shall pay its pro-rata share of the premium for such insurance.

10. Indemnification. County shall, and hereby agrees to, indemnify, defend and hold harmless the Directors, officers, and employees of Fair, acting within the scope of their respective position, from and against any and all claims, loss, damage or liability, including attorneys' fees and all costs of defense, arising out of the operation and management of the Fairgrounds, including both fairtime and interim activities, or arising in any manner out of the performance of this Agreement or any functions connected therewith, in the same manner and to the same extent as County is obligated to indemnify and defend County's officers and employees.

11. County Fair Fund; Checking Accounts; Surplus Funds. All net proceeds received by Fair, from whatever source, shall be deposited within the earlier of sixty (60) days after the conclusion of the annual County Fair in a County Fair Fund, or October 30th. However, Fair may establish and maintain checking accounts with financial institutions, with whom the Fair shall enter a Contract for Deposit of Public Moneys per California Government Code Title 5 (commencing with Section 53630), with balances required for Fair's operations; provided that such balances shall be regularly monitored so that funds in excess of those required for operations will be transferred to the County Fair Fund.

12. Board of Directors Meetings and Minutes. The Fair's Board of Directors shall comply with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*). Fair agrees to post a certified copy of the minutes of each meeting of the Board of Directors of said Fair for a minimum of 10 days in a public place and to the County Fair website

as soon after the meeting as possible. If the minutes have not had the prior approval of Fair's Board of Directors, then the minutes will be marked "draft."

13. Requirements for Fair Contracts for Purchase and Sale of Personal Property, Goods and Services. Fair shall not enter into any contracts with a provision that either indemnifies or releases the contracting party from liability for the contracting party's negligent acts or omissions, unless otherwise approved by the County's Risk Manager. Fair will maintain written policies for purchase of goods, services and personal property which policies shall ensure that Fair will receive full value for monies expended. Fair also agrees to include in any contracts it enters into with vendors who operate on the Fairgrounds property a requirement that such vendor will comply with non-discrimination and accessibility requirements under the Americans with Disabilities Act.

14. Allocations from Fair and Exposition's Fund. Fair and County agree that with respect to the commitment or expenditure of any funds allocated by an executive order of the State Director of Food and Agriculture pursuant to Section 19620 *et seq.* of the Business and Professions Code, the procedures with respect to purchase, employment of personnel and contracts provided by this Agreement must be followed.

15. Compliance with Law. Fair shall comply with all applicable laws and regulations, and will not permit or allow any violation of applicable laws or regulations at or in connection with the Fair or the Fairgrounds insofar as it is possible to prevent the same. In particular, Fair shall comply with Title II of the Americans with Disabilities Act of 1990 and the California Disabled Persons Act (Civil Code section 54, *et seq.*) with regard to access to its programs and facilities.

16. Conflicts of Interest. No Board member, official, or employee of Fair shall be interested in any contract made by it or be a purchaser or vendor in connection with any sale or purchase made by said Fair, and all Fair members, officials, and employees shall comply with the provision of Government Code Section 1090 and the Political Reform Act and other applicable provisions by law.

17. Status of Fair Employees. All persons occupying permanent employee positions of Fair, which positions have heretofore been or may hereafter be approved and authorized as permanent employee allocations by the Board of Supervisors of County, are County employees in the unclassified service as provided in County's Ordinance No. 305A. Between County and Fair, Fair is the appointing authority for those positions. The compensation paid to such employees by Fair is on behalf of County and shall be paid from Fair funds on deposit with County. Compensation shall include the payment of all accrued, but unpaid, leave balances, due upon employee's separation from County employment.

18. County Services. County agrees to provide to Fair, at cost, the services of such County personnel as may be reasonably requested by Fair in the fulfillment of the agency hereby created, such personnel to include, but not necessarily be limited to the offices of Human Resources, General Services, Information Systems, Transportation and Public Works, and County Counsel, provided Fair shall have the right to contract for any and all such services, except legal services, with private entities. Notwithstanding the foregoing, Fair may retain the

services of counsel other than County Counsel: (1) with the prior written consent of County Counsel; or (2) where County Counsel has declared the existence of a conflict of interest which prevents County Counsel from advising or representing Fair on a particular matter. Where Fair desires to use other counsel, Fair shall consult with County Counsel and County Counsel shall determine, within ten (10) days, whether County Counsel consents to the use of other legal counsel. Consulting and support regarding the County safety policy and safety management program, Workers' Compensation and injury management procedures, medical leave policy, disability and reasonable accommodation policy and temporary transitional duty policy is provided under the County's self-insurance program.

19. Risk Management Programs. Fair agrees to comply with County Risk Management programs including the County safety policy and safety management program, Workers' Compensation program, medical leave policy, disability and reasonable accommodation policy and temporary transitional duty policy. Prior to the Fair opening, a 3rd party pre-Fair safety inspection will be completed and Fair will correct any deficiencies identified therein. Fair agrees to report all claims to County Risk Management within 24 hours of notification of such claims.

20. Reimbursement for County Services. Fair shall designate County as local agency to receive funds pursuant to Section 19610.4 of the California Business and Professions Code. Such funds are generated from parimutuel handle at live race meeting during the annual Fair and simulcast at other times of the year in the amount of 0.33 of one (1) percent of the parimutuel handle. The amount generated shall offset charges to Fair from County for indirect County costs actually associated with Fair, including the costs of insurance premiums described in Section 8 of this Agreement. In the event of a dispute over the amounts charged to Fair by County for the indirect costs, County and Fair shall meet and confer to discuss the charges and Fair may request to conduct an annual audit related to those charges. If the amount generated from this source in any year is less than the total indirect costs, then Fair will pay any amount remaining. If the amount generated from the parimutuel source in any year is greater than the total County indirect costs, then County agrees that said amount may be carried over to the next year. In either case indirect County costs billed to the Fair shall be paid by June 30 each year. In the event County revokes its appointment of Fair as its agent to conduct an annual Fair and to manage the Fairgrounds, any amounts remaining from the parimutuel source accruing to County shall be released to County.

21. Audit. The Fair shall, at its sole cost and expense, have an annual audit, conducted by the qualified firm of their choice. The Fair will provide the County with one electronic copy of the annual audit by August 31 of each year. In addition, the Fair will provide a copy of any letters to management as a result of the audit.

22. Assignment. This Agreement shall not be subject to any form of transfer, assignment, or delegation by Fair by any means whatsoever, whether voluntary or involuntary.

23. Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement.

24. Maintenance. Fair will provide for water and sewer services for the Fairgrounds. Fair shall provide for proper drainage on the Fairgrounds. Fair shall be responsible for obtaining and complying with any necessary permits. Fair will perform reasonable maintenance on all such facilities or services. Fair shall require vendors to comply with all laws and regulations regarding sewer and storm drain use. Fair shall require vendors to make and maintain proper connection to the sewer system. Fair shall prohibit vendors from discharging grease or any other harmful or prohibited substances to the sanitary sewer or storm drain system.

25. Notice of Request Changes to this Agreement; Effect of Expiration Without Termination Notice. The parties recognize that operational conditions change over time and that amendments to this Agreement may be necessary or desirable to accommodate new circumstances. To facilitate timely review of requested changes and to avoid a lapse between the expiration of this Agreement and the commencement of any subsequent agreement, both parties agree to use their best efforts to tender requested changes to this Agreement, if any, no later than ninety (90) days before the proposed effective date for such changes. Notwithstanding the foregoing, should this Agreement expire before the parties execute any renewal or new agreement, this Agreement shall continue in full force and effect until either (1) the Fair or the County issue a written termination notice to the other party or (2) a new agreement between the parties is made effective.

26. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COUNTY OF SONOMA, a political
subdivision of the State of California

By: _____
Chairperson, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors
of the County of Sonoma,
State of California

SONOMA COUNTY FAIR AND EXPOSITION, INC., a
non-profit corporation

By: _____

President

SUBMITTED TO THE DEPARTMENT OF FOOD
AND AGRICULTURE FOR REVIEW AND APPROVAL
[PURSUANT TO CAL. BUS. & PROF. CODE SECTION
19622.3]:

BY: _____
Fair Manager

Submittal Date: _____

EXHIBIT A
Subordination Language

Termination or Expiration of Contract Between Fair and the County of Sonoma. [Contractor] hereby acknowledges that this [Contract] is subordinate to that certain Agreement by and between Fair and the County of Sonoma dated as of [Date] (“County Contract”).

Notwithstanding anything stated to the contrary herein, in the event the County Contract is cancelled or terminated for any reason, or at any time after the County Contract expires , County shall have the right to immediately terminate this [Contract], without any penalty or liability accruing to County or Fair.