

FUNDING AGREEMENT TO OPERATE THE SOLANO COUNTY FAIR

This Agreement is made on _____, 2020 between County of Solano, a political subdivision of the State of California, ("County"), and Solano County Fair Association, a California non-profit corporation, ("SCFA").

RECITALS

A. County owns approximately 149.1 acres of real property and improvements located at the intersection of I-80 and Hwy. 37, and bounded by Fairgrounds Drive on the west and Coach Lane on the south (the "Premises") on a portion of which there are erected buildings and structures to provide for conventions and expositions, for exhibiting and displaying the agricultural, horticultural, viticultural, livestock and other products of the County, and the operation of a satellite wagering facility in that area specifically delineated on the attached Exhibit A ("Fairgrounds Property") which includes +/- 30 acres of the total Premises.

B. SCFA is a 501(c)(3) non-profit organization listed on the California Roster of Public Agencies experienced in the business of operating and managing fairs and has operated the County Fair on behalf of the County since 1946.

C. In 2013, County approved a specific plan for the site (the "Solano360 Specific Plan") that provides for a long-term framework for the development of the Premises including a revitalization of the Fairgrounds Property.

D. County has issued a solicitation for a developer to implement the Solano360 Specific Plan which could impact SCFA's use of the Fairgrounds Property during the term of this Agreement

E. County desires to engage the services of SCFA to conduct the annual County Fair ("Fair") and Ag Day until such time as the Fairgrounds Property is redeveloped, and SCFA desires to provide such services on the following terms and conditions.

F. The parties agree that this Agreement is intended to supersede all prior agreements related to the responsibilities between the parties for the operation and maintenance of the Fairgrounds Property and to hold the annual County Fair until such time as the Fairgrounds Property is further developed, or as otherwise modified by the Parties.

In consideration of the mutual covenants contained in this Agreement, the parties agree:

1. SCFA RESPONSIBILITIES

SCFA will:

- A. Hold and conduct an annual Fair and Ag Day on the Fairgrounds Property on mutually agreed upon dates. SCFA will propose a schedule for the Fair, which should be a minimum of three days, along with necessary time for set-up and tear down and proposed use and areas of the Fairgrounds Property (Fair Time). Ag Day, a field trip opportunity for Solano County third graders will be on the

- third Tuesday in March, unless otherwise agreed to by the Parties.
- B. Ensure the Fair complies with all applicable federal, state and local laws, statutes and rules, including, but not limited to, building codes, food handling regulations and event permits. SCFA shall have the power and authority to establish rules and policies governing charges, and may enter into use permits, concessions and licenses upon such terms as it deems advisable within the scope of its authority; however, the annual Fair must be consistent with current County policies and regulations (e.g., smoking, land use prohibitions).
 - C. On or before December 1st of each year of this Agreement, SCFA will submit a report detailing the proposed activities for the annual Fair, including the proposed number of days the Fair will operate, what facilities will be utilized, and a proposed access plan for the Premises. Such report Within 60 days from the conclusion of the annual Fair, SCFA will submit a summary of the Fair, including reports of attendance, expenses, and revenues received. Upon the mutual agreement of the County Administrator and the SCFA, the report may be in the form of a presentation to the Board of Supervisors at a regular meeting, a meeting with the County Administrator or in the form of a written document submitted to the County Administrator.
 - D. Establish and maintain a system of accounts for budgeted funds that complies with generally accepted accounting principles as required by County and/or the State of California, Department of Food and Agriculture, Division of Fairs and Exposition ("F&E").
 - E. Document all costs by maintaining complete and accurate records of all financial transactions associated with the operations of the Fair and the Fairgrounds Property, including but not limited to, invoices and other official documentation that sufficiently supports all charges made by SCFA.
 - F. Preserve all books, records and supporting documents as public records until destroyed according to the requirements of applicable law.
 - G. No later than November of each year of this Agreement, submit a budget that encompasses the proposed revenues and expenses for the upcoming Fair to the County for approval, and once approved by the County's Board of Supervisors, submit the budget to F&E, as required by law.
 - H. Comply with all applicable laws in amending budgets after SCFA's budget is approved by F&E.
 - I. Operate within its budget and the General Manager shall take all appropriate actions to avoid an operating loss for the annual Fair.
 - J. Submit to a biennial audit, prepared by the County Auditor, no later than April 1st for the two preceding fiscal years. The audit will be submitted to the Board of Supervisors for approval.
 - K. Coordinate with the Solano County Sheriff ("Sheriff"), and the Vallejo Police Department as necessary, to establish a plan ("Security Plan") for a law enforcement presence during the annual Solano County Fair, including the number of officers to be present on the grounds, the dates and times for the presence of officers, and the expected duties of officers. The Plan will be

completed no later than thirty (30) days prior to the commencement of the annual Solano County Fair.

- L. Use its best efforts to manage and direct the Fair in a manner that will produce revenue that meets or exceeds the costs of the annual Fair.
- M. At SCFA's sole option, manage and operate the satellite wagering facility year-round.
- N. Cooperate fully with the County at all times to implement the intent of this Agreement.

2. COUNTY RESPONSIBILITIES

County will:

- A. Provide SCFA with the use of the Fairgrounds Property during the Fair Time.
- B. Provide SCFA with secure storage for SCFA's Fair-related personal property during non-Fair Time.
- C. Be solely responsible for the maintenance of the Premises during non-Fair Time.

3. TERM AND TERMINATION

- A. The term shall commence _____, 2020 and shall expire December 31, 2022, unless extended pursuant to Section 2.C. below.
- B. Either party may terminate this Agreement, at any time, with or without cause, upon 90 days written notice from one to the other.
- C. Concurrent with the annual approval of SCFA's budget, the parties agree to recommend to the Board of Supervisors that this Agreement be annually amended to extend the term in additional one (1) year increments.

4. COMPENSATION

- A. In exchange for producing a minimum of a 3-day Fair annually, County will pay SCFA the equivalent of the rent received from any ground leases on the Fairgrounds Property that are in effect as of the date of this Agreement within thirty days of receipt of lease payment. These leases include the existing Courtyard by Marriott (or Bay Hospitality), the existing Chevron gas station, Carl's Jr. and Baskin Robbins located at 10 Sage Street, and the existing Parking Management Agreement with Six Flags Discovery Kingdom the rent collected from the Revenue for 2020 is estimated at \$687,910.11 based on the following:

	<i>Estimated 2020 County Revenue</i>
Bay Hospitality	\$ 134,087.07
Bay Hospitality (Cell Tower Sub-Leases)	\$ 7,806.84
10 Sage St. Vjo (Chevron)	\$ 69,483.76
Sprint Nextel	\$ 17,990.22
AT&T/Cingular Wireless	\$ 43,489.89

Six Flags - Parking

\$	415,052.33
\$	687,910.11

- B. County will contribute the equivalent of future lease payments in calendar years 2021 and 2022 for each subsequent annual Fair in an amount not to exceed \$700,000.
- C. The SCFA shall so retain such sums as have been or may be appropriated by the State Department of Food and Agriculture to the County from the Fair and Exposition fund of the State of California, which the Board of Supervisors of County, with the consent of the State Department of Food and Agriculture may determine to use for fair and exposition purposes. From such sums, the SCFA shall pay and discharge all operating expenses and obligations incurred in connection with the preparation, maintenance, management, and operation of said property and of the Fair.
- D. Distribution of any revenue from leases executed after the date of execution of this Agreement that do not renew, replace or modify any lease existing as of the date of execution of this Agreement will be determined, in the County's sole discretion, at the time the new lease is executed.
- E. Beyond the County contribution above, SCFA is responsible for generating all other revenue necessary to put on the annual Fair.

5. INSURANCE

- A. Without limiting SCFA's obligation to indemnify County, SCFA must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work under this Agreement and the results of that work by SCFA, SCFA's agents, representatives, employees or subcontractors.
- B. Minimum Scope of Insurance
Coverage must be at least as broad as:
 - 1) Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01).
 - 2) Insurance Services Office Form Number CA 00 01 covering Automobile Liability, code 1 (any auto).
 - 3) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- C. Minimum Limits of Insurance
SCFA must maintain limits no less than:

(1) General Liability: (Including operations, products and completed operations.)	\$5,000,000	per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate
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		limit shall be twice the required occurrence limit.
(2) Automobile Liability:	\$1,000,000	per accident for bodily injury and property damage.
(3) Workers' Compensation:	As required by the State of California.	
(4) Employer's Liability:	\$1,000,000	per accident for bodily injury or disease.

D. If SCFA maintains higher limits than the minimums shown above, County is entitled to coverage for the higher limits maintained by SCFA.

E. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either:

- 1) The insurer will reduce or eliminate such deductibles or self-insured retentions with respect to County, its officers, officials, agents, employees and volunteers; or
- 2) SCFA must provide a financial guarantee satisfactory to County guaranteeing payment of losses and related investigations, claim administration and defense expenses.

F. Other Insurance Provisions

The general liability and automobile liability policies must contain, or be endorsed to contain, the following provisions:

- 1) The County of Solano, its officers, officials, agents, employees, and volunteers must be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of SCFA; and with respect to liability arising out of work or operations performed by or on behalf of SCFA including materials, parts or equipment furnished in connection with such work or operations. General Liability coverage shall be provided in the form of an Additional Insured endorsement (CG 20 10 11 85 or equivalent) to SCFA's insurance policy, or as a separate owner's policy.
- 2) For any claims related to work performed under this Agreement, SCFA's insurance coverage must be primary insurance with respect to the County of Solano, its officers, officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, agents, employees, or volunteers is excess of SCFA's insurance and shall not contribute to it.
- 3) Each insurance policy required by this clause must be endorsed to state that coverage may not be canceled by SCFA, except after 30 days prior written notice has been provided to County.

G. Waiver of Subrogation

- 1) SCFA agrees to waive subrogation which any insurer of SCFA may acquire from SCFA by virtue of the payment of any loss. SCFA agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

- 2) The Workers' Compensation policy must be endorsed with a waiver of subrogation in favor of County for all work performed by SCFA, its employees, agents and subcontractors.

H. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII unless otherwise acceptable to County.

I. Verification of Coverage

- 1) SCFA must furnish County with original certificates and endorsements effecting coverage required by this Agreement.
- 2) The endorsements should be on forms provided by County or, if on other than County's forms, must conform to County's requirements and be acceptable to County.
- 3) County must receive and approve all certificates and endorsements before work commences.
- 4) However, failure to do so shall not operate as a waiver of these insurance requirements.
- 5) County reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

6. INDEMNIFICATION

A. SCFA will indemnify, hold harmless and assume the defense of, the County, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly arising from SCFA's performance of this Agreement or from any persons directly or indirectly employed by, or acting as agent for, SCFA, excepting the sole negligence or willful misconduct of the County.

B. County will indemnify, hold harmless and assume the defense of, the SCFA, its officers, employees, agents and elective and appointive boards from all claims, losses, damages, including property damages, personal injury, death and liability of every kind, directly or indirectly arising from County's performance of this Agreement or from any persons directly or indirectly employed by, or acting as agent for, County, excepting the sole negligence or willful misconduct of the SCFA.

C. Acceptance of insurance required by this Agreement does not relieve SCFA from liability under this indemnification clause. This indemnification clause shall apply to all damages or a claim for damages suffered by SCFA's operations regardless if any insurance is applicable or not.

7. GENERAL PROVISIONS

A. COMPLIANCE WITH LAW

SCFA will comply with all federal, state and local laws and regulations applicable to SCFA's performance, including, but not limited to, licensing, employment and purchasing practices, wages, hours and conditions of employment.

B. CONFLICT OF INTEREST

SCFA will ensure that SCFA's employees and/or their immediate families and/or Board of Directors and/or officers have no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any interest, direct or indirect, including separate contracts for the work to be performed hereunder, which conflicts with the Solano County Fair or management of the fairgrounds. SCFA will employ or retain no such person while rendering services under this Agreement.

C. DRUG FREE WORKPLACE

SCFA warrants that SCFA is knowledgeable of Government Code section 8350 et seq., regarding a drug free workplace and will abide by and implement its statutory requirements.

D. HEALTH AND SAFETY STANDARDS

SCFA will abide by all health and safety standards set forth by the State of California and/or the County pursuant to the Injury and Illness Prevention Program. SCFA will abide by all health and safety standards set forth by the State of California and/or the County pursuant to the Injury and Illness Prevention Program. If applicable, SCFA will receive all health and safety information and training.

E. INSPECTION

Authorized representatives of County, the state and/or the federal government may inspect and/or audit SCFA's performance, place of business and/or records pertaining to this Agreement.

F. NONDISCRIMINATION

- 1) In rendering services under this Agreement, SCFA will comply with all applicable federal, state and local laws, rules and regulations and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion, sexual orientation, or other protected status.
- 2) Further, SCFA will not discriminate against its employees in those areas which include, but are not limited to, employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

G. NOTICE

Any notice necessary to the performance of this Agreement shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

COUNTY
County Administrator
Solano County
675 Texas St., Ste. 6500
Fairfield, CA 94533

CONTRACTOR
General Manager
Solano County Fair Association
900 Fairgrounds Drive
Vallejo, CA 94589

If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

H. CHANGES AND AMENDMENTS

This agreement may not be modified unless such modification is in writing and signed by both parties to this agreement.

I. CHOICE OF LAW

The parties have executed and delivered this Agreement in the County of Solano, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. Solano County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement.

J. WAIVER

Any failure of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, under this Agreement or any provision of this Agreement.

K. ENTIRE AGREEMENT

This Agreement, including any exhibits referenced, constitutes the entire agreement between the parties for the management of the Fairgrounds Property only and there are no inducements, promises, terms, conditions or obligations made or entered into by County or SCFA other than those contained into this Agreement. This Agreement supersedes all prior Agreements or agreements, verbal or written, between the parties.

COUNTY OF SOLANO, a Political
Subdivision of the State of California

SOLANO COUNTY FAIR ASSOCIATION

By _____
Birgitta E. Corsello, County Administrator

By _____
Mike Ioakimedes, CEO/Executive Director

APPROVED AS TO FORM

APPROVED AS TO FORM

By _____
County Counsel

By _____
SCFA Legal Counsel

Exhibit A
Fairgrounds Property

DRAFT