

SUBJECT: Consideration of Modification to Loan Agreement and Amendment to License and Development Agreement with the Tulare County Junior Livestock Show and Community Fair

SOURCE: City Manager

COMMENT: At its meeting on September 7, 2010, the City Council approved direct financial assistance from the City to the Fair by a Construction Loan Agreement, whereby up to \$2,000,000 in City financing would be made available to the Fair at an annual interest rate of three percent (3%) over a ten (10) year amortization period, with no prepayment penalty. The purpose of the financing was to provide assistance to the Fair to complete construction in relocating from its original Downtown site that now serves as the location of the South County Justice Center. Upon completion of construction in 2011, the Fair financed a total amount of \$1,900,283.11, and consistent with the Agreement, began making semi-annual payments of \$110,620.00 in January 2012. For the past three years, the Fair has made its payments, paying the balance of financing down to \$1,387,540.42 (please see attached financing schedule).

Beginning in January 2015, the Fair has requested that the City Council consider a modification to the Construction Loan Agreement, whereby the Fair would first pay \$132,860.97 toward reducing the current principal to \$1,200,000, then refinance the new balance over twenty-five (25) years at an annual interest rate of four percent (4%). Instead of semi-annual payments in January and July of each year, the Fair would make a single annual payment in July (please see attached financing schedule). Also, the Fair proposes to modify the License and Development Agreement regarding the ten (10) acre joint-use property immediately adjacent to the east of the Fair, to designate the property as exclusive use for the Fair, and in consideration not seek reimbursement for eligible development expenses in (approximately \$60,000) of the property as specified in the Agreement (Part 4.3.3).

As an alternative, the Fair has pursued independent financing through the Bank of the Sierra, however, given the City owns the fifteen (15) acres of land upon which the Fair is located, the City would need to commit the property as collateral to the Bank's loan. Under City financing, the City maintains control of the property, and per the Construction Loan Agreement in the event of default, would assume possession of Fair facilities without a foreclosure process or other compensation for improvements on the property.

C/M



Item No. 18

Consistent with Council's consideration and direction, the City Attorney can draft an Amendment to the Construction Loan Agreement, License and Development Agreement, and Promissory Note.

RECOMMENDATION: That the City Council consider the request of the Fair to refinance its Construction Loan Agreement, as well as Amendment to the License and Development Agreement, and provide direction to staff accordingly.

ATTACHMENTS: 1. Current Loan Amortization Schedule
2. Proposed Loan Amortization Schedule
3. Construction Loan Agreement
4. License and Development Agreement

Porterville Fair
 Amortization Schedule - City of Porterville Construction Loan
Equal Payments - 2 payments per year for 10 years

PRINCIPAL \$ 1,900,283.11
 INTEREST 3.0000%
 # OF PAYMENTS 20
 PMTS/YEAR 2
 PAYMENT \$ 110,620.00

| | DUE | PMT | INTEREST | PRINCIPAL | PRINCIPAL BALANCE |
|----|-----------|---------------------|-------------------|---------------------|----------------------|
| 1 | 1/15/2012 | 110,620.00 | 27,391.80 | 83,228.20 | 1,817,054.91 |
| 2 | 7/15/2012 | 110,620.00 | 27,255.82 | 83,364.18 | 1,733,690.73 |
| 3 | 1/15/2013 | 110,620.00 | 26,005.36 | 84,614.64 | 1,649,076.09 |
| 4 | 7/15/2013 | 110,620.00 | 24,736.14 | 85,883.86 | 1,563,192.24 |
| 5 | 1/15/2014 | 110,620.00 | 23,447.88 | 87,172.12 | 1,476,020.12 |
| 6 | 7/15/2014 | 110,620.00 | 22,140.30 | 88,479.70 | 1,387,540.42 |
| 7 | 1/15/2015 | 110,620.00 | 20,813.11 | 89,806.89 | 1,297,733.53 |
| 8 | 7/15/2015 | 110,620.00 | 19,466.00 | 91,154.00 | 1,206,579.53 |
| 9 | 1/15/2016 | 110,620.00 | 18,098.69 | 92,521.31 | 1,114,058.22 |
| 10 | 7/15/2016 | 110,620.00 | 16,710.87 | 93,909.13 | 1,020,149.10 |
| 11 | 1/15/2017 | 110,620.00 | 15,302.24 | 95,317.76 | 924,831.33 |
| 12 | 7/15/2017 | 110,620.00 | 13,872.47 | 96,747.53 | 828,083.80 |
| 13 | 1/15/2018 | 110,620.00 | 12,421.26 | 98,198.74 | 729,885.06 |
| 14 | 7/15/2018 | 110,620.00 | 10,948.28 | 99,671.72 | 630,213.34 |
| 15 | 1/15/2019 | 110,620.00 | 9,453.20 | 101,166.80 | 529,046.54 |
| 16 | 7/15/2019 | 110,620.00 | 7,935.70 | 102,684.30 | 426,362.23 |
| 17 | 1/15/2020 | 110,620.00 | 6,395.43 | 104,224.57 | 322,137.67 |
| 18 | 7/15/2020 | 110,620.00 | 4,832.07 | 105,787.93 | 216,349.73 |
| 19 | 1/15/2021 | 110,620.00 | 3,245.25 | 107,374.75 | 108,974.98 |
| 20 | 7/15/2021 | 110,620.00 | 1,634.62 | 108,985.38 | (10.40) |
| | | <u>2,212,400.00</u> | <u>312,106.49</u> | <u>1,900,293.51</u> | |

Porterville Fair
 Amortization Schedule - City of Porterville Construction Loan (Proposed)
Equal Payments - 1 payment per year for 25 years

PRINCIPAL \$ 1,200,000.00
 INTEREST 4.0000%
 # OF PAYMENTS 25
 PMTS/YEAR 1
 PAYMENT \$ 76,814.36

| | | | | | PRINCIPAL |
|----|-----------|---------------------|-------------------|---------------------|--------------|
| | DUE | PMT | INTEREST | PRINCIPAL | BALANCE |
| 1 | 7/15/2015 | 76,814.36 | 48,000.00 | 28,814.36 | 1,171,185.64 |
| 2 | 7/15/2016 | 76,814.36 | 46,847.43 | 29,966.93 | 1,141,218.71 |
| 3 | 7/15/2017 | 76,814.36 | 45,648.75 | 31,165.61 | 1,110,053.09 |
| 4 | 7/15/2018 | 76,814.36 | 44,402.12 | 32,412.24 | 1,077,640.86 |
| 5 | 7/15/2019 | 76,814.36 | 43,105.63 | 33,708.73 | 1,043,932.13 |
| 6 | 7/15/2020 | 76,814.36 | 41,757.29 | 35,057.07 | 1,008,875.06 |
| 7 | 7/15/2021 | 76,814.36 | 40,355.00 | 36,459.36 | 972,415.70 |
| 8 | 7/15/2022 | 76,814.36 | 38,896.63 | 37,917.73 | 934,497.97 |
| 9 | 7/15/2023 | 76,814.36 | 37,379.92 | 39,434.44 | 895,063.53 |
| 10 | 7/15/2024 | 76,814.36 | 35,802.54 | 41,011.82 | 854,051.71 |
| 11 | 7/15/2025 | 76,814.36 | 34,162.07 | 42,652.29 | 811,399.42 |
| 12 | 7/15/2026 | 76,814.36 | 32,455.98 | 44,358.38 | 767,041.03 |
| 13 | 7/15/2027 | 76,814.36 | 30,681.64 | 46,132.72 | 720,908.31 |
| 14 | 7/15/2028 | 76,814.36 | 28,836.33 | 47,978.03 | 672,930.29 |
| 15 | 7/15/2029 | 76,814.36 | 26,917.21 | 49,897.15 | 623,033.14 |
| 16 | 7/15/2030 | 76,814.36 | 24,921.33 | 51,893.03 | 571,140.10 |
| 17 | 7/15/2031 | 76,814.36 | 22,845.60 | 53,968.76 | 517,171.35 |
| 18 | 7/15/2032 | 76,814.36 | 20,686.85 | 56,127.51 | 461,043.84 |
| 19 | 7/15/2033 | 76,814.36 | 18,441.75 | 58,372.61 | 402,671.23 |
| 20 | 7/15/2034 | 76,814.36 | 16,106.85 | 60,707.51 | 341,963.72 |
| 21 | 7/15/2035 | 76,814.36 | 13,678.55 | 63,135.81 | 278,827.91 |
| 22 | 7/15/2036 | 76,814.36 | 11,153.12 | 65,661.24 | 213,166.67 |
| 23 | 7/15/2037 | 76,814.36 | 8,526.67 | 68,287.69 | 144,878.98 |
| 24 | 7/15/2038 | 76,814.36 | 5,795.16 | 71,019.20 | 73,859.78 |
| 25 | 7/15/2039 | 76,814.36 | 2,954.39 | 73,859.97 | (0.19) |
| | | <u>1,920,359.00</u> | <u>720,358.81</u> | <u>1,200,000.19</u> | |

CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT is executed by the TULARE COUNTY JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR, hereinafter called "FAIR," licensee of certain real property in the County of Tulare, State of California, described in Exhibit "A" attached hereto, for the purpose of obtaining a loan from the CITY OF PORTERVILLE, owner of said real property, hereinafter called "CITY," the proceeds of which shall be used for the construction of certain improvements upon said real property consisting of Fairgrounds facilities as listed in Section 4.2 (Phases 1 through 3) of the License and Development Agreement between the parties dated December 10, 2009 (attached hereto as Exhibit "B"). This loan agreement is contingent upon execution of Amendment No. 1 to License and Development Agreement Between City of Porterville and Tulare County Junior Livestock Show and Community Fair (also attached hereto as part of Exhibit "B").

LOAN AMOUNT:

1. City shall loan to Fair the funds necessary for Fair to have constructed on the licensed real property, the improvements identified in Exhibit "B" in an amount not to exceed TWO MILLION DOLLARS (\$2,000,000.00). The actual amount of the loan shall be determined upon completion of all such improvements and the submission by Fair to City of proper evidence of costs of said improvements, as more fully set forth hereinafter. Said loan shall be evidenced by a Promissory Note consistent with the terms of this Agreement and executed by the parties, the form of which is attached hereto as Exhibit "E."

DISBURSEMENTS FROM LOANS IN PROCESS ACCOUNTS:

~~2. (a) From said total the following Loans In Process Accounts shall be established at City:~~

| | |
|---|-----------------|
| Account "A" for onsite construction | \$ 1,900,000.00 |
| Account "B" for contingency | \$ 100,000.00 |

(b) As to the above accounts which are established, the following shall prevail:

Account "A" shall be used for the purpose of defraying the cost of construction of improvements contemplated by the plans and specifications heretofore approved by City.

Account "B" shall be a contingency account and may be used by City in its discretion to pay any shortages for the items for which Account "A" is established.

(c) Accounts "A" and "B" are to be disbursed by City during the progress of the work of construction on a monthly basis after review and approval by the Oversight

Committee per 2(d) below. Fair shall, as a condition precedent to the monthly disbursement of any of the funds from said Accounts "A" and "B", furnish City and Oversight Committee with bills, invoices or other evidences of costs incurred by Fair equal to the total funds requested to be disbursed from said accounts, and also furnish releases of lien rights covering work performed and materials furnished for said improvements. All funds disbursed by City from said accounts will be received by Fair in trust for the purpose of fully paying all contractors, subcontractors, materialmen, laborers and others engaged in the construction of the subject improvements.

(d) Fair shall establish an Oversight Committee to meet monthly to review and approve for submission to City all such requests for disbursements. Membership in said Oversight Committee shall be as set forth in Exhibit "C" attached hereto and incorporated by this reference and shall include at least one representative of City.

(e) City may defer making any disbursement from said Accounts "A" and "B" (i) until it receives evidence that the work being performed conforms with the plans and specifications approved by City, or, if no plans and specifications are required, then in accordance with good construction practices, and in any event in compliance with all laws and regulations of local, federal or state authorities relating thereto; (ii) until City's authorized representative certifies in writing that the construction required for the making of such disbursement has been completed; (iii) until any default existing under the provisions of this agreement has been corrected; (iv) so long as any conflicting claims based upon assignments, or otherwise, are being made to any of the funds in said accounts; (v) so long as any notice to withhold served upon City remains unsatisfied, or any lien or claim of mechanics, materialmen or others affecting said real property appears and remains of record, or any suit upon any such notice to withhold or for the foreclosure of any such lien or claim is pending; and (vi) so long as any levy or service of any process affecting or appearing to affect the funds in said accounts or any part thereof remains in force.

(f) City shall disburse said funds within five (5) days of its approval of all requests submitted in conformance with Subsections 2 (c), (d) and (e) hereinabove.

INTEREST ON DISBURSEMENTS:

3. Interest shall accrue on each disbursement made by City from all of said Loans in Process Accounts at the rate of three percent (3%) per annum, compounded semi-annually on each January 15 and July 15.

PAYMENTS:

4. Fair shall repay said loan, including principal and interest, in twenty (20) semi-annual payments, commencing with an interest only payment due on or before January 15, 2011, and interest and principal payment due on or before July 15, 2011, and each succeeding January 15 and July 15 thereafter until paid in full. The term of

the loan shall be ten (10) years commencing on January 15, 2011 and terminating on January 15, 2021.

It is anticipated that all construction of improvements shall be completed on or before December 31, 2010. At the time of such completion the actual amount of the loan shall be determined based upon the total of disbursements from the Loans in Process Accounts set forth in Paragraph 2 above. City shall then establish the principal/interest portions of the semi-annual payments by dividing the amount of the loan into twenty (20) payments amortized over 10 years, and a copy of said calculation shall be attached hereto as Exhibit "D" and incorporated herein by this reference. If construction and/or disbursements are not completed prior to the first payment deadline, until construction/disbursements are completed, at least 30 days prior to the payment due date for each semi-annual payment, City shall provide to Fair an invoice with the specific payment amount due in accord with this agreement.

PREPAYMENT:

5. Fair may, at any time, prepay any or all of the amount then due and payable without imposition of any prepayment penalty.

COMMENCEMENT OF CONSTRUCTION AND COMPLIANCE WITH PLANS AND SPECIFICATIONS:

6. (a) Fair shall promptly commence construction of said improvements and continue such construction diligently and without delay in a good and workmanlike manner. Fair will complete such improvements in accordance with the plans and specifications approved by City, including any additional specifications prescribed by City, and in compliance with all requirements of governmental authorities having or asserting jurisdiction.

(b) No change shall be made in the plans and specifications approved by City, which would result in said improvements having a value less than the value which would have existed had such deviation not occurred. In the event a change in the plans or specifications results in a decrease in the value of any improvement, City may reduce the principal amount of the loan by an amount equivalent to the reduction in value of said improvements.

(c) Fair, should City so request, will immediately upon completion of the building foundations cause a survey to be made and certified by a licensed engineer or surveyor, showing that said foundations are located entirely within the property lines and do not encroach upon any easement or breach or violate any covenant, condition or restriction of record, or any building or zoning ordinance.

(d) It is anticipated that all construction shall be completed on or before December 31, 2010. Should Fair determine this will not happen, it shall promptly so notify City, in writing, and provide a new scheduled completion date.

NO PURCHASES UNDER CONDITIONAL SALES AGREEMENTS, ETC.:

7. No supplies, materials, equipment, fixtures, carpets, appliances, or any part of said improvements shall be purchased or installed under any conditional sales agreement, lease or under any other arrangement wherein the right is reserved or accrues to anyone to remove or to repossess any such items without prior written approval of the City. It is expressly agreed that all such items (other than leased items approved by City) become a part of the real property upon delivery to the site. It is understood by City and Fair that certain items such as fire and burglar alarms, video, and telephone equipment are routinely leased rather than purchased and remain the property of the installer.

SECURITY AGREEMENT:

8. Fair hereby grants to City a security interest in all supplies, materials, fixtures, carpets, appliances, furniture or equipment now or hereafter located on said real property, together with all proceeds thereof, including insurance proceeds paid or payable as the result of any loss, injury or damage of the foregoing collateral, whether or not City is named beneficiary under any such insurance. Upon request, from time to time, Fair shall furnish City with an inventory of such collateral. Nothing contained in this paragraph shall affect the provisions of Paragraph 7.

INSURANCE:

9. Upon request, Fair agrees to furnish City with a valid fire and extended coverage insurance policy covering the collateral described in Paragraph 8 above, written by an insurance company satisfactory to City, in an amount as required by City, with loss payable to Fair and City as their interests may appear.

DEPOSIT BY FAIR OF ADDITIONAL FUNDS AND DISPOSITION OF REMAINING FUNDS AFTER COMPLETION:

10. If at any time City shall determine that the amount of funds remaining in said accounts is less than the amount required to complete and pay for said improvements and shall demand that Fair deposit with City for credit to said accounts an amount equal to the deficiency as estimated by City, Fair shall comply with such demand within ten (10) days from the date thereof, and the judgment of City shall be final and conclusive in this report.

STOPPAGE OF WORK BY CITY:

11. City or its agents shall have the right at all times to enter upon said real property and the improvements during the period of construction. If the work of construction is not in conformance with the plans specifications or is not otherwise satisfactory to City, it shall have the right to stop the work and order the replacement of any unsatisfactory work theretofore incorporated in said improvements, and to withhold

all disbursements from the accounts until it is satisfied with the work. If the work is not made satisfactory to City within sixty (60) calendar days from the date written notice of the deficiency and demand for cure is provided by the City, such shall constitute a default hereunder. In the event the deficiency is such that the parties agree it will take more than sixty days to remedy, if the work is not made satisfactory within the mutually agreed upon time period in writing, such shall constitute a default hereunder. In addition to all other remedies available to the City, City shall have the option to have such unsatisfactory or deficient work repaired or replaced at Fair's expense, such costs to be subtracted from the available account balances then in place.

DEFAULT BY FAIR:

12. (a) In the event of a default by Fair in the performance of any of the terms, covenants and conditions contained in this agreement, or any Note given in conjunction herewith, or in the event of the filing of a Bankruptcy or chapter proceeding by or against Fair, all sums disbursed or advanced by City shall at the option of City immediately become due and payable and City shall have no obligation to disburse any further funds from said account, or otherwise, and City shall be released from any and all obligations to Fair under the terms of this agreement.

(b) In addition to any other consequences of default, should Fair fail to make a semi-annual loan payment within thirty (30) days of its due date, it is specifically understood and agreed as follows:

(i) this Construction Loan Agreement shall be terminated without any need for City to provide any further notices to Fair and without any right of Fair to cure such default; and

~~(ii) all improvements constructed or under construction on the subject real property shall immediately become the property of City with no right of Fair to receive any compensation therefore; and~~

(iii) that certain License and Development Agreement between City and Fair, dated December 10, 2009, and attached as Exhibit B, and as amended per Exhibit E, shall terminate and Fair shall no longer have any right or interest to occupy or use the subject real property; and

(iv) Fair shall immediately convey copies to City of all documents, records, contracts and invoices from contractors; materialmen, suppliers and parties providing professional services relating to the design, development and construction of all said improvements on the subject real property.

CESSATION OF WORK, COMPLETION BY CITY, ETC.:

13. Should the work of constructing the improvements cease, specifically including stoppage by City in accordance with Paragraph 11 hereof, or should said work

for any reason whatsoever not progress continuously in a manner satisfactory to City, it being the sole judge as to this requirement, then City may, at its option and without notice, declare Fair to be in default hereunder, and City may thereupon, should it so elect, take possession of said property and let contracts for the completion of said improvements and pay the cost thereof, plus a fee of fifteen (15) percent for supervision of construction, disbursing all or any part of the loan for such purposes; and should the cost of completing said improvements plus such fee exceed the undisbursed balance of the loan, then the amount of such excess may be expended by City, in which event such amount shall be considered as an additional loan to Fair, and the repayment thereof, together with interest thereon at the rate provided in the promissory note, shall be repaid within thirty (30) days after the completion of said improvements, and Fair agrees to pay the same. Fair further hereby authorizes City at its option at any time, whether default exists or not, either in its own name or in the name of Fair, to do any act or thing necessary or expedient in the opinion of City to secure the performance of construction contracts and assure the completion of construction of the improvements substantially in accordance with the plans and specifications, disbursing all or any part of the loan funds for such purposes. In addition to the specific rights and remedies hereinabove mentioned, City shall have the right to avail itself of any other rights or remedies to which it may be entitled under any existing law or laws or as otherwise specified in this Agreement.

MECHANIC'S LIENS AND NOTICES TO WITHHOLD:

14. In the event of the filing with City of a notice to withhold or the recording of a mechanic's lien pursuant to Division 3, Part 4, Title 15 of the Civil Code of the State of California, City may summarily refuse to honor any request for payment pursuant to this agreement. In the event Fair fails to furnish City with a bond causing such notice or lien to be released within ten (10) days after the filing or recording thereof, such failure shall at the option of City constitute a default under the terms of this agreement.

INDEMNIFICATION:

15. Fair agrees to indemnify and hold harmless City from and against any and all claims, damages, losses, liability or expense (including but not limited to attorney's fees) arising from the works of improvements contemplated herein or this loan transaction, including but not limited to, any claim made by any person performing labor or furnishing material by way of a mechanic's lien, stop notice, equitable lien, or other proceeding, and any claims made by any purchasers or the subject property or their successors, or any other person with regard to any claimed defects in design or construction of the improvements.

INVOLVEMENT OF CITY IN LEGAL PROCEEDINGS:

16. The City shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder or the payment of any funds in said account and in connection therewith pay out of said

deposited funds necessary expenses, employ counsel and pay his/her reasonable fees, all of which the undersigned agree to repay to the City upon demand.

INSPECTIONS BY CITY DO NOT CONSTITUTE SUPERVISION OF CONSTRUCTION:

17. Fair agrees that City shall be under no obligation to construct or supervise construction of said improvements; that inspections by City of the construction of said improvements shall be for the purpose of protecting the security of City; that such inspections are not to be construed as a representation by City that the improvements have been or will be constructed in strict compliance with said plans and specifications; and that such inspections are not to be construed as a representation that the construction is or will be free from faulty material or workmanship.

DESIGNATION OF CITY AS FAIR'S AGENT:

18. Fair does hereby irrevocably appoint, designate, empower and authorize City as Fair's agent, coupled with an interest, to sign and file for record any notices of completion, notices of cessation of labor, or any other notice or written document that City may deem necessary to file or record to protect its interest. The City is hereby irrevocably authorized to deliver copies of this contract or excerpts therefrom to any person, firm or corporation supplying labor, materials, supplies or equipment for the improvements contemplated by this Agreement.

BOOKS AND RECORDS:

19. The undersigned Fair and contractor shall maintain complete and accurate books and records showing all of the income and disbursements made in connection with the work of improvements and such books and records shall be available for inspection and copy by the City upon request.

CITY'S RELIANCE ON STATEMENTS AND DISCLOSURES OF FAIR:

20. Fair has made certain statements and disclosures in order to induce City to make said loan and enter into this agreement, and in the event Fair has made material misrepresentations or failed to disclose any material fact, City may treat such misrepresentation or omission as a breach of this agreement, and the act of so doing shall not affect any remedies City may have under the promissory note and loan agreement for such misrepresentation or concealment.

CITY NOT LIABLE FOR ACTS OR OMISSIONS OF FAIR OR OTHERS:

21. City shall in no way be liable for any acts or omissions of Fair, any agent or contractor employed by Fair, or any person furnishing labor and/or materials used in or related to the construction of said improvements.

TIME OF THE ESSENCE:

22. Time is of the essence of this agreement and of each and every provision hereof. The waiver by City of any breach or breaches hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach or breaches.

SUCCESSORS AND ASSIGNS, AND INTEGRATED AGREEMENT:

23. This agreement is made for the sole benefit and protection of Fair and City, and City's successors and assigns, and no other person shall have any right of action or right to rely thereon. This agreement and the other executed loan documents contain all of the terms and conditions agreed upon between Fair and City, and no other

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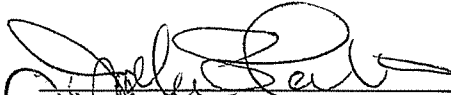
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agreement regarding the subject matter thereof shall be deemed to exist or bind any party unless in writing and signed by the party to be charged.

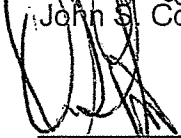
NO MODIFICATION OR CHANGE IN THIS INSTRUMENT SHALL BE VALID UNLESS APPROVED IN WRITING BY AN OFFICER OF CITY.

Executed this 7th day of September, 2010

TULARE COUNTY JUNIOR LIVESTOCK SHOW
AND COMMUNITY FAIR



John S. Corkins, President

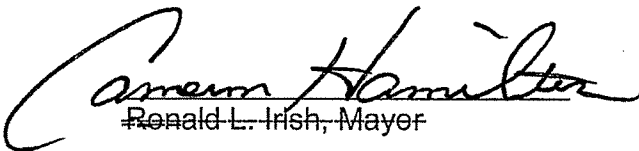


Dennis Sexton, Vice President

Approved as to form:

By:
Legal Counsel

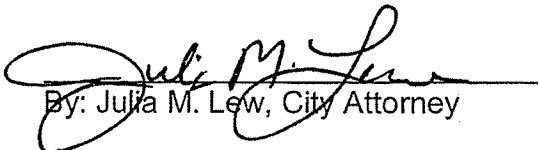
CITY OF PORTERVILLE



Ronald L. Irish, Mayor

Cameron Hamilton, Vice Mayor

Approved as to form:



By: Julia M. Lew, City Attorney

LICENSE AND
DEVELOPMENT AGREEMENT
(Porterville, California)

THIS PROPERTY LICENSE AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 10TH day of December 2009, by and between the CITY OF PORTERVILLE (the "City"), a municipal corporation, and TULARE COUNTY JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR ("Fair"), with respect to the following:

WHEREAS, the City is the owner of an approximate 37± acres of land, located in the City of Porterville, County of Tulare, State of California, more particularly described on Exhibits A-1 and A-2 attached hereto and depicted as the "Property." The Property is currently a part of the Porterville Municipal Airport.

WHEREAS, the Fair desires an exclusive License for the approximate 15 acres of land depicted on Exhibit A-1, and referenced as Parcel 1, to develop as a Fairplex (community fair); and

WHEREAS, the Fair desires to utilize the approximate 10 acres of land depicted on Exhibit A-2, and referenced as Parcel 2, to be used for parking, staging, and a carnival midway during the period of May 1 through June 1 annually, and used throughout the year by the Fair for general uses until such time as the City begins construction, development, or usage of the property whereas the terms of use by the Fair will be modified, but not be unduly limited or eliminated. Such development will be mutually complementary; and

WHEREAS, the City is willing to enter into a License with the Fair under the terms and conditions set forth below.

ACCORDINGLY IT IS AGREED:

PART 1
LICENSE, TERM, OPTION TO EXTEND, HOLDOVER, ASSIGNMENT,
SUBLICENSING

1.1 License.

The Fair will obtain a License of the Premises located in the City of Porterville, County of Tulare, California, depicted on Exhibit A-1, from the City on the terms and conditions set forth below.

1.2 Licensee's Usage Date and Terms

The Fair will be entitled to exclusive use of Parcel 1 of the Premises on the date to be mutually agreed upon by the Fair and the City. If the Fair commences utilization of the Premises on other than the first day of a calendar month, the initial term will consist of the unexpired portion of the calendar month in which the Fair holds the license of the

Premises plus fifty (50) full years from the first day of the calendar month immediately following. The anniversary date will be the first day of the first full month of the term.

1.3 Licensee's Option to Extend Term

Provided Fair is not then in default of this License at maturity of the initial term, the Fair is granted the option to extend this License for a period of two (2) fifty (50) year extensions. In the event the property is not released from FAA obligations at the end of the initial term, said extensions may be subject to Federal approval.

~~1.4 Assignment and Sublicensing~~

The Fair may not assign this Agreement to any organization, nor shall the Fair grant any sublicenses inconsistent with the uses allowed in Section 3.1, without the prior written consent of the City, which consent will not be unreasonably withheld.

PART II LICENSE FEE

2.1 Amount

The Fair will pay the following License Fee to the City for the exclusive use and occupancy of the Property.

2.1.1 Annual License Fee

2.1.1.1 Tier 1

The Fair acknowledges that the property is under the purview of the Federal Aviation Administration (FAA) and, as such, commands an annual license fee equal to fair market value for the property. Therefore, until such time as the land is released from FAA obligations, the annual license fee shall be the sum of \$13,500. In the event the Fair takes use of the Property on a day other than the first day of the month, the annual license fee shall include payment of \$37.00 per day for any unexpired portion of the calendar month in which the Fair has possession of the Property. License Fees shall be paid in annual installments on the anniversary date.

The City agrees to provide annual license fee assistance in an amount not to exceed \$13,500 during the license period of the Fair. The assistance is provided from the Porterville Municipal Airport fund as a credit against the debt owed from the Airport to the City. Said assistance shall be available to the Fair for a period not to exceed ten (10) years or until such time as the Fair either (a) purchases the property from the City or (b) is no longer operating at the site.

2.1.1.2 Tier 2

Upon release of the property from FAA purview, the annual license fee shall be reduced to \$1.00 per year for the remainder of the term of this License and any extensions thereof. Said reduction shall be effective upon the first

anniversary date following the release from the FAA. There shall be no proration nor shall there be any refund of license fees.

2.1.2 Place of Payment

The Fair will pay all license fees at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257

**PART III
USE OF PREMISES**

3.1 Allowed Uses

The Fair and the Fair's sublicensees will use the Premises to:

- Provide a venue for junior exhibitors of livestock, agricultural products, handicrafts, and other artistic works; and
- Provide a source of community entertainment, as well as a showplace for local businesses, civic groups, and youth groups; and
- Provide a venue for local community groups to participate in community service.

The Fair will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all building, safety, and public health requirements and regulations. Additionally, at no profit to the Fair, the Fair will make every effort to support the use of the fairgrounds by all community oriented and/or non-profit organizations. These organizations may include, but are not limited to, 4-H Clubs, Future Farmers of America Chapters, Comision Honorifica Mexicana-Americana, Inc., and other community service organizations.

3.2 Prohibited Uses

Fair will not commit or permit the commission of any acts on the Property that:

1. Increase the City's existing rates for, or causes the cancellation of any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or
2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, where now in force or hereafter enacted, applicable to the Premises; or
3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California; or
4. Adult oriented business or residual uses will not be allowed.

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**PART IV
DEVELOPMENT OBLIGATIONS**

4.1 Development Assistance

4.1.1 To assist with the relocation of the Fair to Parcel 1 of the City-owned property described on Exhibit A-1, the City agrees to provide financial assistance to the Fair from the proceeds of the sale of the Olive Street site upon which the Fairgrounds is currently located. Said assistance shall be the net proceeds from the property sale, exclusive of brokerage, escrow, and other related fees, and is subject to the terms and conditions set forth in this Agreement. ~~The proceeds of the assistance may be utilized by~~ the Fair for relocation, construction of facilities, and related costs. No portion of the assistance may be allocated to costs relating to the operation of the Fair.

4.1.2 It is anticipated that the Fair and the City will prepare an application for tax-exempt bonds through California Communities, or a similar organization, in an amount supportable by a capital fund raising campaign for the construction of facilities. Said amount of bonding shall not exceed Two Million Dollars (\$2,000,000.00).

4.2 Development of Parcel 1 (Exhibit A-1) Fair agrees to construct upon Parcel 1 those improvements that are related to fair activities. Improvements may be made in Phases as set forth below:

Phase 1

- Site Preparation
- Installation of On-Site Infrastructure
- Construction of Multipurpose Building #1
- Construction of Livestock Barn
- Construction of Rabbit Barn/Livestock Office
- Construction of Outdoor Stage (2)
- Construction of 100' x 200' Entertainment Area
- Storage for Pens, Panels, and Livestock Parking
- Preparation of Area for "Kiddie Land"
- Restroom (1)
- Ticket Booth(s)
- Concession Stands
- Bank of the Sierra Structure
- Fire Lanes
- Site Landscaping and Irrigation
- Parking Lot along Teapot Dome Avenue

Phase 2

- Construction of Livestock Barn
- Construction of Livestock Parking
- Pen and Panel Storage Area
- Restroom #2

Phase 3

Construction of Multipurpose Building #2

- 4.2.1 Fair will submit plans for Project Review Committee review.
- 4.2.2 Fair will submit complete plans for issuance of building permit for the initial phase within six (6) months from date of this Agreement.
- 4.2.3 City Connection Fees (Impact Fees) including Trunk Line Sewer Fees, Treatment Plant Fees, Sewer Connection Charges, Water Trunk Fees, Water Connection Fees, Street Light Fees, Storm Drainage Fees, Fire Hydrant Fees, ~~Transportation Impact Fees, Frontage Improvement~~ Valuation Threshold, and Park Impact Fees will be calculated for the project. Said fees shall be deferred while the site remains under the ownership of the City. In the event that the Fair acquires ownership of the site, fees shall become due and payable to the City. Furthermore, Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
- 4.2.4 Fair will be responsible for all fees related to the issuance of a building permits, with the exception of those fees identified in Section 4.2.3 above. Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
- 4.2.5 Fair will be responsible for utility connections and associated fees.
- 4.2.6 Concurrent with the Agreement, Fair will apply for an alcohol agreement, which shall not be unreasonably withheld. Fair desires to utilize an "Adult Refreshment Area" concept to keep the consumption of alcohol within contained areas and away from the general public. A copy of said agreement is included as Exhibit B.
- 4.2.7 City hereby agrees to expedite the issuance of the building permit for the Project in order that the building permit or comments will be available within fourteen (14) days of submittal of complete building plans, inclusive of electrical and plumbing plans.
- 4.2.8 City will provide water and sewer services to the property boundary.
- 4.2.9 City will make every effort to obtain approval for the release of land from the purview of the Federal Aviation Administration within twelve months from the date of this Agreement. All fees and expenses related to the FAA release will be the responsibility of the City.

4.3 Development of Parcel 2 (Exhibit A-2)

- 4.3.1 City anticipates developing Parcel 2 for shared use by the City, Fair, and other public/governmental use. Future use may include a training/entertainment center.
- 4.3.2 City will provide the Fair exclusive use of all or a portion of Parcel 2 for the thirty-day period surrounding the annual fair, and may be used by the Fair throughout the year for general uses until such time as the City begins construction, development, or usage of the property. Fair will provide insurance pursuant to Section 7 of this Agreement for the use of this parcel.

- 4.3.3 In conjunction with development of Phase I by the Fair, Fair may perform site improvements to Parcel 2. Site work is subject to reimbursement to the Fair upon future development of Parcel 2 by the City, or within four (4) years from the date of the completion of mutually agreed upon improvements, whichever occurs first.
- 4.3.4 City will install curb, gutter, sidewalk, and street paveout along Teapot Dome Avenue.

4.4 Other Obligations

- ~~4.4.1~~ City agrees to allow the Fair use of a portion of City's Sports Complex as indicated on Exhibit C located on Scranton Avenue during the thirty-day period surrounding the fair week each year for overflow parking.
- 4.4.2 Fair will provide insurance pursuant to Section 7 of this Agreement for times that the Fair is utilizing the Sports Complex for overflow parking.
- 4.4.3 City will prepare and record parcel maps for Parcels 1 and 2 as shown on Exhibit A-1 and A-2.
- 4.4.4 Fair agrees to grant City access to drill a water well(s) as may be deemed necessary by the City. Location(s) of water well(s) will be mutually agreed upon by City and Fair and shall be situated so as not to interfere with Fair operations.

PART V MAINTENANCE, REPAIR, AND UPKEEP

5.1 Licensee's Responsibilities

Maintenance, repair, and upkeep of the grounds and buildings on Parcel 1 will be solely the responsibility of the Fair. All portions of Parcel 1 shall be kept free and clear of weeds and debris until developed.

5.2 Licensor's Responsibilities

Maintenance, repair, and upkeep of the grounds and buildings on Parcels 2 and 3 will be solely the responsibility of the City. All portions of Parcels 2 and 3 shall be kept free and clear of weeds and debris until developed.

PART VI UTILITIES

6.1 Licensee's Responsibilities

Fair shall be responsible for and will pay for all utilities and services furnished to the Property identified on Exhibit A-1, including gas, electricity, telephone, water, trash collection, and all related connection charges.

6.2 Licensor's Responsibilities

City shall be responsible for and will pay for all utilities and services furnished to the Properties identified on Exhibit A-2 and A-3, including gas, electricity, telephone, water, trash collection, and all related connection charges.

PART VII INSURANCE

7.1 Licensee's Insurance

The Fair, at its own expense, shall procure and maintain, throughout the term of this License, public liability insurance including bodily injury and property damage insuring the Fair and the City with minimum coverage as follows:

- ~~\$1,000,000 for personal injury for each person~~
- \$1,000,000 for personal injury or death of two or more persons in each accident or event.

The policy must contain, or be endorsed to contain, the following:

City of Porterville

The City of Porterville, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessee, and premises owned, occupied or used by Lessee. The coverage must contain no special limitations on the scope of protection afforded to the City, its officers, employees, or agents.

The Fair shall also procure and maintain, at its expense, throughout the term of this License, insurance against loss or damage to any structures constituting any part of the demised Premises, by fire and lightning, with extended coverage insurance.

The Fair will provide the City with a certificate or certificates of coverage showing the policy or policies are issued by insurers permitted to conduct business in the State of California.

The policy must not be suspended, voided, canceled, or reduced in coverage or in limits, except after 30 days prior written notice has been given to the City.

PART VIII TERMINATION FOR CAUSE

8.1 Cause.

Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

- (a) is adjudged a bankruptcy; or
- (b) becomes insolvent or has a receiver appointed; or
- (c) makes a general assignment for the benefit of creditors; or

- (d) suffers any judgment which remains unsatisfied for 90 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement; or
- (e) materially breaches this Agreement.

8.2 Notice to Defaulting Party.

For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 90 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within that 90-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of the termination. If the nature of breach is such that it cannot be cured within the 90-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate after delivering a written notice specifying the date of termination.

8.3 Delivery of Notices

Notices given under Section 8.2 will be deemed delivered as provided in Section 9 below.

8.4 Ownership of Improvements

Upon termination of this Agreement, City shall have the option of purchasing any structures, fixtures, signs, or other improvements made upon the site by Fair over the term of this Agreement. City agrees to reimburse Fair for those improvements being purchased by City an amount determined to be the appraised value at the termination period, less the original financial assistance provided to Fair as stated in Section 4.1 of this Agreement. Fair shall be responsible for the removal of all structures, fixtures, signs, and other improvements not acquired by City and shall restore the premises to the same condition as that existing prior to the erection or installation of improvements. Should the Fair fail or refuse to remove improvements, City may do so at Fair's sole cost and expense.

8.5 Obligations Surviving Termination

Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

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**PART IX
NOTIFICATIONS**

9.1 All notices or other communications required or permitted hereunder shall be in writing, and may be personally delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City of Porterville
291 N. Main Street
Porterville, CA 93257
Attn: City Clerk

To Fair: Tulare County Junior Livestock Show and
Community Fair
P.O. Box 369
Porterville, CA 93258
Attn: President

subject to the right of a party to designate a different address for itself by notice similarly given. Any notice so given by United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail as above provided. Any notice not so given by registered or certified mail shall be deemed given upon receipt of the same by the party to whom the same is given.

**PART X
AIRPORT DISCLOSURE STATEMENT**

10.1 **Notice of Airport in Vicinity:** The subject property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Fair may wish to consider what airport annoyances, if any, are associated with the property before completing this transaction and determine whether they are acceptable.

10.2 **Notice of Intent to Record Restrictive Covenant:** It is the intent of the City of Porterville to record a Restrictive Covenant upon all City-owned property within the Airport Development Area concurrent with this Agreement. A draft of said Covenant is shown as Exhibit D.

**PART XI
MISCELLANEOUS PROVISIONS**

11.1 **Quiet Enjoyment**

Upon payment of the license fees and the performance of all the terms, covenants, and conditions by the Fair to be performed as herein provided, the Fair will be allowed to

peaceably and quietly hold and enjoy the premises during the term of this license, or any extended term thereof.

11.2 Surrender

The Fair will peaceably surrender use of the Premises upon the expiration or other termination of this License, and will return the Premises to the City in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire earthquake or other casualty not the fault of the Fair.

11.3 Addenda

This Agreement may be modified, amended, or terminated at any time by mutual consent in writing of the parties hereto in the form of an Addendum to the Agreement.

11.4 Entire Agreement Represented

This Agreement represents the entire understanding between the City and the Fair as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived, or repealed without the written consent of both parties.

11.5 Headings

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

11.6 Interpretation

This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

11.7 No Third Party Beneficiaries

Unless specifically set forth, the parties to this Agreement do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

11.8 Governing Law

This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement will be brought in Tulare County California. The City waives the removal provisions of California Code of Civil Procedure Section 394.

11.9 Waivers

The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

11.10 Exhibits and Recitals

All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

11.11 Conflict with Laws or Regulations; Severability

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulations governing its subject, the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases, the remainder of the Agreement will continue in full force and effect. If either party, exercising its sole discretion, elects to defend this Agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

11.11.1 Legal Fees In the event that an action shall be instituted by either party hereto for the enforcement of any of its rights or remedies in or under this Agreement, the party in whose favor judgment shall be rendered therein shall be entitled to recover from the other party all costs and expenses incurred by said prevailing party in said action, including reasonable attorney's fees as fixed by the court therein.

11.12 Further Assurances

Each party will execute any additional documents and will perform any further acts which may be reasonably required to affect the purposes of this Agreement. The Fair will, on request by the City, execute appropriate estoppels certificates and attornments in favor of any trust deed holders or encumbrances.

11.13 Assurances of Non-discrimination

The Fair will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

The Fair herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this License is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein licensed nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein licensed.

11.14 Licensor's Right to Enter to Inspect and Post

The Fair will permit the City and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by the Fair, or for the purpose of inspecting the Premises.

11.15 Brokers

All negotiations relative to this Agreement have been carried out directly by representatives of the City and the Fair without the participation of brokers, and each party represents to the other that there are no unpaid broker's fees in connection with this Agreement.

11.16 Successors and Assigns

This Agreement is binding on and will inure to benefit the successors and assigns of the parties, but nothing in this section shall be construed as consent by the City to any sublicense or assignment by the Fair if such consent is otherwise required by the terms of this Agreement.

11.17 Representations of Authority

Each party executing this Agreement represents and warrants to the other parties that the party has full power and authority to execute and deliver this Agreement in the manner contemplated hereby and that this Agreement is binding upon the party in accordance with its terms.

11.18 Venue

If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. Fair hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

11.19 Counsel

The parties represent and warrant that this Agreement has been freely negotiated and has been reviewed by each party's respective legal counsel.

11.20 Duplicate Originals

This Agreement will be executed in duplicate originals.

11.21 Time is of the Essence

Time is of the essence for this Agreement.

**PART XII
REPRESENTATIONS AND WARRANTIES OF CITY**

City hereby makes the following representations and warranties to and agreements with Fair, which are true as of the date hereof, which shall be true as of the date of the License, which are not intended to replace or limit in any manner any express or implied warranty provided under the applicable law and which, except to the extent they relate to events or

circumstances occurring or arising after the License, shall survive the License. Fair shall be entitled to rely upon said representations and warranties notwithstanding Fair's inspections and investigations:

12.1 As of the date of License, City has complied or will comply with all applicable federal, state or local laws, regulations, ordinances or orders and has completed all proceedings or other actions necessary to complete the License and all of the transactions contemplated by this Agreement and the Annual License Fee reflects the fair market License value of the Property as of the date of this Agreement. There are no unrecorded liens or encumbrances affecting the Property and no person or entity has any right, title or interest in or to the Property other than City.

12.2 City has not received notice of, nor does City have any knowledge of, any pending or threatened action of governmental proceeding in eminent domain, zoning change or other proposed change, nor does City know of any fact which might give rise to any such proceeding, nor does City know of any other type of existing or intended use of any adjacent or nearby real property which might adversely affect the use of the Property for Fair purposes.

12.3 There are not presently pending any assessments by any governmental entity or public utility (other than for annual ad valorem real property taxes) of any nature with respect to the Property or any part of the Property. No property tax with respect to the Property is delinquent, and all requirements of all insurance policies with respect to the Property have been, and are being, fully complied with.

12.4 As of the date of the License, there shall be no easements, licenses, leases or tenancies of any type on the Property or any portion of the Property except those approved by Fair in accordance with this Agreement.

12.5 There are no encroachments upon the Property or any portion of the Property or any easement, appurtenance or other interest in the Property except those existing utilities above and below ground surface that are to remain in service. No improvements located on the Property encroach upon any property adjacent to the Property or upon any easement, building setback line, appurtenance or other interest in real property except as shown on the Preliminary Title Report, dated July 7, 2009, and shown as Exhibit E.

12.6 There are no liens or encumbrances against the Property for work performed or commenced or material supplied with respect to the Property, nor can there be claimed against the Property any such lien.

12.7 There is no suit or arbitration, bond issuance or proposal for bond issuance, proposals for public improvement assessment, pay-back agreement, paving agreement, road expansion or improvement agreement, utility moratorium, use moratorium, improvement moratorium, license fee increase moratorium, or legal, administrative or other proceeding or governmental investigation or requirement, formal or informal, existing or pending or threatened which affects the Property or which adversely affects

Fair's ability to develop the Property for Fair purposes, or which imposes any other charge or expense upon, or relating to, the Property which has not been disclosed to Fair in writing prior to the date of this Agreement, or, in the case of any such requirement, fully complied with.

12.8 City has no knowledge, nor has City received notice of any environmental rule, order or regulation which would adversely affect the commercial development on the Property .

~~12.9 This Agreement is a valid obligation of City and is binding upon City in accordance with its terms.~~

12.10 This Agreement, when executed by City, shall have been duly and properly executed and neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute:

(i) a default or an event which with notice or the passage of time or both would constitute a default under, or a violation or breach of, any indenture, license, lease, franchise, mortgage, deed of trust or other instrument or agreement to which City is a party or by which City, or City's property, including without limitation, the Property, may be bound, or

(ii) an event which would permit any party to any agreement or instrument affecting the Property or affecting City's ability to perform its obligations under this Agreement to terminate it, or permit the holder of any indebtedness to accelerate its maturity, or

(iii) a violation of any statute, order, rule or regulation applicable to City or any portion of the Property.

12.11 After the date of this Agreement, City shall not undertake any work on the Property which may result in the creation of a mechanic's lien on the Property or any portion of this Property.

12.12 City has no knowledge of any adverse geological or soil condition affecting the Property.

12.13 No portion of the Property lies within a flood plain designated by the federal, state or local government.

PART XIII FIRST RIGHT OF REFUSAL

13.1 In the event the City obtains the release of land from purview of the Federal Aviation Administration and desires to sell the released land, Fair shall have the First Right of Refusal for Parcel 1 and Parcel 2.

13.2 Purchase Price

The purchase price shall be established by the fair market value of the land at the time of the transaction as set forth in an appraisal obtained by the City from a licensed appraiser.

13.3 Lapse of Option

If at the time of offer of land for sale, the Fair is no longer operating upon Parcel 1, this First Right of Refusal shall automatically terminate.

13.4 Purchase and Sale

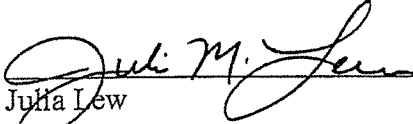
In the event the City makes an offer to sell the property, and the Fair accepts said offer, then the parties shall open an escrow (the "Option Escrow") with the Escrow Holder. The Escrow shall close fifteen days after the date of the exercise of the Option (the "Option Closing Date"). Prior to the Option Closing Date, City shall deposit a fully executed and acknowledged Grant Deed conveying the Property to the Fair. If the Option Escrow is in a position to close on the Option Closing Date (or as soon thereafter as is possible but in no event later than 30 days following the option Closing Date), Escrow Holder shall deliver to Fair the Grant Deed by depositing the same with the County Recorder of the County of Tulare, California, with instructions to record the same and thereafter to mail the same to Fair and shall deliver to City funds in the amount as agreed upon as the fair market value of the property. City shall bear the fee for recordation of the Grant Deed, one-half of the Escrow Holder's fee and any additional charges customarily charged to sellers in Tulare County. Fair shall bear the documentary transfer tax required, one-half of Escrow Holder's fee and any additional costs and charges customarily charged to buyers in Tulare County.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

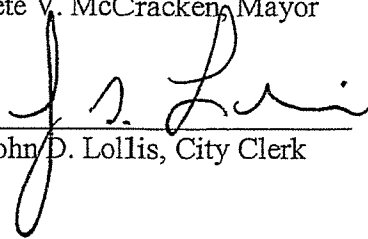
APPROVED AS TO FORM:

CITY:


Julia Lew
City Attorney

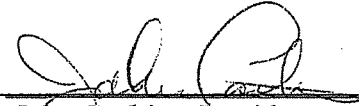
CITY OF PORTERVILLE
a Municipal Corporation


BY: 
Pete V. McCracken, Mayor

BY: 
John D. Lollis, City Clerk

FAIR:

Tulare County Junior Livestock
Show and Community Fair

BY: 
John Gorkins, President

BY: 
Dennis Sexton,
First Vice President