

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF SAN MATEO
AND THE SAN MATEO COUNTY EXPOSITION AND FAIR ASSOCIATION
RELATING TO THE REPAVING OF THE SAN MATEO EVENT CENTER EAST
PARKING LOT**

This Memorandum of Understanding (“MOU”) is entered into by the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter referred to as the “County”, and the SAN MATEO COUNTY EXPOSITION AND FAIR ASSOCIATION, non-profit corporation, hereinafter referred to as the “Association,” and is intended to document the parties’ agreement with regard to the repaving of the east parking lot at the San Mateo County Event Center.

WHEREAS County is the owner of certain property known and designated as the San Mateo County Event Center (“Event Center”), in the City of San Mateo, County of San Mateo, State of California, and has caused to be erected thereon buildings and structures to provide for conference, conventions and expositions, and for exhibiting and displaying the agricultural, horticultural, viticultural, livestock and other products of said County;

WHEREAS pursuant to that certain “Agreement Providing for Conduct of San Mateo County Fair and for Management of Event Center” between County and Association (the “Event Center Management Agreement”), as amended, a copy of which is attached hereto as **Exhibit A**, Association manages the Event Center and its satellite wagering facility in accordance with the terms and provisions of the Event Center Management Agreement;

WHEREAS the Event Center Management Agreement contains provisions for the use, maintenance, and improvement of the Event Center, including Section 9 of the Event Center Management Agreement—titled “Use of Property, Major Maintenance, and Capital Improvements”— which provides as follows:

- a. The County has ownership and control of all the Event Center property. The Association acknowledges that in performing the services set forth in this agreement that it does not have decision making authority on the use of the property or buildings.
- b. No major maintenance or capital improvements can be undertaken without the prior approval of the County. “Major maintenance” as used herein shall be understood to be selected items of maintenance which cost more than \$100,000. “Capital improvements” are those improvements which cost more than \$100,000. The County and Association will jointly perform major maintenance and capital improvements of all Event Center buildings and grounds.

- c. Non-reimbursed emergency and or unanticipated major maintenance items will be handled on a case by case basis. The Association and the County agree to meet promptly to discuss and seek mutual agreement on the handling of such items.
- d. Association will be responsible for the administration and supervision of all major maintenance and capital improvements. The Association will keep the County informed of all stages of such projects. For all projects in which the bid procedure is not required, the General Manager shall consider using County services;

WHEREAS the County, in exercising its ownership of the Event Center, desires to improve its property, and also maintain and ensure the safety of its property, by rehabilitating and repaving the Event Center's east parking lot at the County's expense;

WHEREAS the project to rehabilitate and repave the Event Center's east parking lot (the "Event Center Pavement Rehabilitation Project") falls within the scope of Section 9 of the Event Center Management Agreement, and thus will be administered and supervised by the Association;

WHEREAS the Association at its own expense has entered into an Individual Project Agreement with the California Fairs Financing Authority ("CFFA"), to perform Event Center Pavement Rehabilitation Project services and work including project management, plan review and approval, bid management, and construction inspections;

WHEREAS in May 2017 the Association, by and through its agent CFFA, solicited bids from certain qualified contractors to perform the Event Center Pavement Rehabilitation Project;

WHEREAS on or about June 5, 2017, Association, by and through its agent CFFA, notified the lowest qualified bidder, O.C. Jones & Sons, of its intent to select O.C. Jones & Sons to perform services for the Event Center Pavement Rehabilitation Project pursuant to an agreement between CFFA as the Association's project manager and the selected contractor ("Agreement"), a copy of which is attached hereto as **Exhibit B**;

WHEREAS the start date for O.C. Jones & Sons to commence work on the Event Center Pavement Rehabilitation Project is July 28, 2017, with a scheduled completion date of August 31, 2017, and time is of the essence; and

WHEREAS the County and the Association are entering into this MOU to document their agreement on various matters with regard to the costs, administration and supervision of the Event Center Pavement Rehabilitation Project.

NOW, THEREFORE, in consideration of the foregoing and the terms, covenants and conditions herein contained, the County and the Association agree as follows:

1. EVENT CENTER PAVEMENT REHABILITATION PROJECT GUIDELINES AND SPECIFICATIONS

a. Description of work

The work will be done in accordance with the Agreement, and as set forth in the Event Center Pavement Rehabilitation Project bid materials, consists of, in general:

1. Milling the existing asphalt concrete (AC) parking lot to a minimum depth of three (3) inches and stockpiled on-site at a designated area for recycling.
2. A new rough base grade is then established, allowing for new AC overlay sections and positive drainage to existing drain inlets.
3. The new rough base grade is then stabilized, with Portland cement, to the designated depth shown on the plans and a percentage determined by contractor's mix design. This cement treated section is designated as the Full-Depth Reconstruction (FDR) section. Cement mix design shall achieve an unconfined compressive strength (UCS) of 300 psi., as determined by ASTM 1633. The FDR Section shall meet, Section 200 of these specifications.
4. The stockpiled recycled AC will be processed using the portable batch plant method, known as, Cold Central Plant Recycling (CCPR). The contractor shall provide a mix design for the CCPR material, as determined by Section 300 of these specification. The CCPR material shall be placed over the completed FDR Section, as shown on plans.
5. A Hot-Mix-Asphalt (HMA) overlay shall be placed on the completed CCPR Section in areas designated on the project plans.
6. The entire work area is then sealed with a Type I Slurry Seal, over a Type III Slurry Seal as specified in Section 400.0 of these specifications.
7. The re-constructed parking lot is then stripped, per plans.

b. Budget

Subject to approval from the County's Board of Supervisors, the budget for the Event Center Pavement Rehabilitation Project shall be \$2,793,793.10 for materials, costs, and labor, plus a 5% contingency of \$139,689.65, for a total of two million nine hundred thirty-three thousand four hundred eighty-two and seventy-five cents (\$2,933,482.75) (the "Budget Amount"). As set forth herein, Association shall seek approval from the County for any additional amounts required in excess of the Budget Amount to complete the Event Center Pavement Rehabilitation Project.

2. ASSOCIATION RESPONSIBILITIES.

In addition to the various terms and conditions set forth in this MOU, Association certifies and agrees to the following responsibilities:

- Through CFFA, all project management, plan review and approval, bid management and construction inspections for the Event Center Pavement Rehabilitation;
- With CFFA, keep the County informed of all stages of the Event Center Pavement Rehabilitation Project;
- Through CFFA, ensure that costs and expenses for the Event Center Pavement Rehabilitation Project stay within the Budget Amount approved by the County's Board of Supervisors;
- Present to the County any requests for funding for the Event Center Pavement Rehabilitation Project in excess of the Budget Amount; and
- Within fifteen (15) business days of making final payment to its contractor for Event Center Pavement Rehabilitation Project services performed, provide an accounting of funds deposited by the County into the Association's Capital Improvement Fund ("CIF") to pay for services performed, inclusive of interest earned by those funds, and remit to the County the remaining balance of funds, if any, including any interest earned by those funds while maintained by the Association.

3. COUNTY RESPONSIBILITIES.

In addition to the various terms and conditions set forth in this MOU, County certifies and agrees to the following responsibilities:

- Fund the Event Center Pavement Rehabilitation Project in an amount up to two million nine hundred thirty-three thousand four hundred eighty-two and seventy-five cents (\$2,933,482.75), to be deposited by the County in the Association's CIF, which is itself maintained in the County's treasury.

4. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT:

The County shall have the right to direct the Association, through its agent CFFA, to exercise its right under the Agreement to access and examine its selected contractor's records and documents to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed by the selected contractor.

5. TERM.

Subject to compliance with all terms and conditions, the initial term of the MOU shall be from July 11, 2017, through and including September 30, 2017. The term of the MOU may be extended by mutual written, signed agreement of the parties.

6. RIGHT OF TERMINATION.

County and/or Association may terminate this MOU with or without cause effective as of thirty (30) days upon written notice to the other parties.

7. NO POWER TO CONTRACT IN THE NAME OF THE OTHER PARTY

Neither Association nor anyone acting on its behalf shall have the right or authority to enter into any contract in the name of the County or otherwise bind the County in any way without the express written consent of the County. Likewise, neither the County nor anyone acting on behalf of the County under this Agreement shall have the right or authority to enter into any contract in the name of the Association or to otherwise bind the Association in any way without the express written consent of the Association.

8. HOLD HARMLESS AND INDEMNIFICATION.

Association shall defend, hold harmless and indemnify County, its officers, agents and/or employees from any and all claims for injuries to persons and/or damages that arise out of the terms and conditions of this MOU or the Agreement.

In the event of concurrent negligence of any parties to this MOU or their officers, agents and/or employees, then the liability for any and all claims for injuries or damages which arise out of the terms and conditions of this MOU shall be apportioned under California's theory of comparative negligence as presently established or may be hereafter modified.

9. COMPLIANCE WITH LAWS.

The Agreement shall ensure that all services be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

Further, Association shall certify that Event Center Pavement Rehabilitation Project work will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Association shall ensure that any contractor(s) selected by the Association to perform Event Center Pavement Rehabilitation Project work will timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. MERGER CLAUSE.

This MOU constitutes the sole MOU of the parties hereto pertaining to the Event Center Pavement Rehabilitation Project and correctly states the rights, duties, and obligations of each party as of this document's dates. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications to this MOU shall be in writing and signed by the parties.

11. NO THIRD PARTY BENEFICIARIES

This Agreement is entered into for the sole benefit of the County and the Association. Nothing contained herein or in the parties' course of dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement.

12. CONTROLLING LAW.

The validity of this MOU and of its terms, the rights and duties of the parties under this MOU, the interpretation of this MOU, the performance of this MOU, and any other dispute of any nature arising out of this MOU shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

13. NOTICES.

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of the County, to:

Michael Callagy, Assistant County Manager

400 County Center
Redwood City, CA 94063
(650) 363-4123
www.smcgov.org

In the case of the Association, to:

Dana Stoehr, Chief Operating Officer

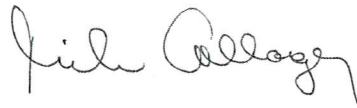
2495 S. Delaware Street
San Mateo, CA 94403
(650) 574-3247
https://www.smcec.co/

14. ELECTRONIC SIGNATURE.

Both County and Association wish to permit this Agreement and future documents relating to this MOU to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this MOU may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this MOU.

IN WITNESS WHEREOF the parties hereto by their duly authorized representative, have affixed their hands on this 11th day of July, 2017.

COUNTY OF SAN MATEO



By _____
Assistant County Manager

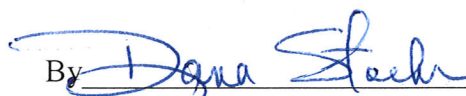
ATTEST:



Resolution No. 075329

Clerk of Said Board

SAN MATEO COUNTY EXPOSITION AND
FAIR ASSOCIATION



By _____
Chief Operating Officer

EXHIBIT A

[INSERT EXECUTED COPY OF DOCUMENT TITLED “AGREEMENT PROVIDING FOR CONDUCT OF SAN MATEO COUNTY FAIR AND FOR MANAGEMENT OF EVENT CENTER” between County and Association,” INCLUDING ANY ATTACHMENTS THERETO]

EXHIBIT B

[INSERT EXECUTED COPY OF DOCUMENT TITLED “CONTRACT AGREEMENT & ATTACHMENT A” BETWEEN CFFA AND O.C. JONES & SONS, INC.]