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AGREEMENT

THIS AGREEMENT, hereinafter referred to as “Agreement”, is made and entered into this 5th day of September, 2023, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as “COUNTY”, and Two Fayre Ladies whose address is 2539 Mercantile Dr, Suite 1, Rancho Cordova, CA 95742 hereinafter referred to as “CONTRACTOR”.

WITNESSETH

WHEREAS, the CONTRACTOR desires to conduct a once a year, two-day Renaissance Fair Event (the “Event”) at Kearney Park in the years 2023, 2024, 2025, and potentially in the years 2026, and 2027 should the Term of this Agreement be accordingly extended; and

WHEREAS, the COUNTY desires to make Kearney Park available to the CONTRACTOR for said Event under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and for other valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. TERM

The initial term of this Agreement shall be for three years, commencing September 5, 2023, through the 31st day of December 2025, unless terminated earlier in the manner specified below in paragraph 9 “Termination”. Upon expiration of said initial three-year term, this Agreement shall automatically renew on its anniversary date for no more than two (2) additional one-year terms, unless terminated earlier in the manner specified in paragraph 9, “Termination”.

2. PERMISSION TO USE:

Subject to the terms and conditions of this Agreement, the CONTRACTOR shall be entitled to exclusive use of Kearney Park (“Property”) to conduct a two-day Event each year of the Term, provided the Property, at all times during the Event, shall be open to all members of the public under the same terms and conditions of persons

1 who are invited by, or otherwise allowed by CONTRACTOR to attend or participate in
2 the Event. In conjunction with this Event, CONTRACTOR shall be solely responsible
3 for providing all adequate and appropriate staffing, equipment, and supplies to set-up,
4 operate, breakdown, clean up (both during the Event and upon its conclusion), and
5 administratively coordinate the Event. CONTRACTOR shall be the responsible
6 sponsor of the Event but may enlist the assistance of or contract with other sponsors
7 for the Event provided the CONTRACTOR shall always be responsible for all of its
8 obligations under this Agreement.

9 In 2023, the Event shall occur on November 11 and 12. Event dates in 2024
10 and 2025 shall be mutually agreed upon by COUNTY and CONTRACTOR. COUNTY
11 is not responsible if inclement weather affects or otherwise prevents CONTRACTOR
12 from holding the Event on the mutually agreed to dates stated.

13 CONTRACTOR represents that it anticipates an attendance of approximately
14 4,500 persons at the Event.

15 **3. COMPENSATION:**

16 A. CONTRACTOR shall make the following payments, in full, to the
17 COUNTY prior to the Event.

18 (i) Three Thousand Two Hundred Seventy Dollars (\$3,270.00) per
19 day for use of Property for the Event, which is not refundable in
20 any event; and

21 (ii) One Thousand Dollars (\$1,000.00) per day for a cleanup/
22 damage deposit which is refundable, provided however, such
23 deposit shall not be refunded to the extent that the COUNTY
24 incurs costs or expenses to clean up the Property, or otherwise
25 repair any damage to the Property, in connection with the Event.

26 The posting of such deposit shall neither substitute nor serve as
27 any sort of limitation on CONTRACTOR'S obligations hereunder
28 to clean up, repair, or otherwise replace any damage to the

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Property caused in connection with the Event.

B. CONTRACTOR shall make the following payments, in full, to the COUNTY no later than thirty (30) days after the date of the invoice from the COUNTY.

(i) The CONTRACTOR agrees to pay the COUNTY the standard vehicle entrance fee ("VEF") of Five Dollars (\$5.00) per vehicle entering the Property each day of the Event, and CONTRACTOR shall use sequentially numbered tickets to serve as the vehicle entry passes for the Event. COUNTY shall have the right to verify the vehicle count during the Event, either by mechanical means or by physical count, and it is hereby agreed that the accuracy of COUNTY'S count shall not be disputed and shall be accepted as the final and official count for the purpose of calculating the CONTRACTOR'S total VEF payment component pursuant to this Paragraph 3(B)(i) (based on the number of vehicles entering the Property during the Event, multiplied by the standard VEF charge of Five Dollars (\$5.00) per vehicle). CONTRACTOR will be allowed to create up to twenty-five (25), COUNTY approved, proprietary Event staff vehicle identification markers that must be placed on the Event staff vehicle front windshield, in the upper right hand corner, to identify Event staff vehicles which will neither be charged the standard VEF nor counted in calculating the CONTRACTOR'S total VEF payment component pursuant to this Paragraph 3(B)(i); provided that such Event staff vehicles shall be required to use the appropriate vehicle entrance gate which will be specified in advance of the Event date by the COUNTY.

CONTRACTOR shall make such payment to the COUNTY within thirty (30) days of the date of the invoice from the COUNTY, and it

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is expressly acknowledged that such obligation on the part of the CONTRACTOR shall survive the expiration of the term of this Agreement.

C. If CONTRACTOR fails to pay fully any of the foregoing amounts to COUNTY within the time specified above, then:

(i) COUNTY shall have the sole right to immediately terminate this Agreement, upon written notice thereof given by COUNTY'S Director of the Department of Public Works and Planning or his or her designee, to CONTRACTOR; and COUNTY shall be entitled to retain all of such funds (if any) having theretofore been paid by CONTRACTOR, and CONTRACTOR shall remain liable to COUNTY for full payment of all of such amounts, and for any other damages caused to COUNTY.

D. All payments by CONTRACTOR to COUNTY shall be made and delivered to: Fresno County Parks, 2220 Tulare Street, 6th Floor, Fresno, CA 93721.

4. EVENT ENTRANCE FEE AUTHORIZATION:

The CONTRACTOR shall not be prohibited from collecting an additional fee for entry (i.e. in addition to the standard VEF payable to the County under Paragraph 3(B)(i)), for entry onto the Property during the dates of the Event, and the amount of such additional fee is neither approved nor disapproved of by COUNTY.

5. SECURITY, TRAFFIC CONTROL, PARKING, RUBBISH AND SANITARY FACILITIES:

A. CONTRACTOR shall be solely responsible for providing crowd control by making adequate and appropriate arrangements for security to ensure the safety of all persons in and around the Property during the day of the Event. In this regard, CONTRACTOR shall, without any cost or expense to COUNTY, provide all necessary security and traffic control

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on the day of the Event, sufficient, as determined by the Fresno County Sheriff's Office and the California Highway Patrol, to ensure the safety of all patrons, Event participants, invitees and members of the public who come onto the Property, and County staff. The CONTRACTOR also shall be responsible for providing adequate and appropriate traffic and parking control.

B. The CONTRACTOR shall provide an adequate number of clean, portable toilets (stocked with appropriate paper supplies) and hand washing stations (stocked with appropriate paper supplies and soap) in the Event area, as determined by the County's Resources Manager.

C. The CONTRACTOR shall be responsible for providing, at its sole expense, adequate dumpsters for disposal of all refuse generated by the Event, and litter and debris control. CONTRACTOR shall also provide, at its own expense, any additional personnel, trash cans, equipment and supplies needed, over and above the COUNTY'S normal and customary operation for making the Property available to CONTRACTOR in the paragraph immediately above, in order to maintain the Property in a safe, clean, attractive, and orderly condition during the Event. CONTRACTOR shall provide, at its sole expense, containers for recycling. CONTRACTOR shall dispose of recycled material at an approved recycling facility.

6. CONSTRUCTION OF FACILITIES, STRUCTURES, TENTS AND STANDS:

A. The CONTRACTOR shall, upon the pre-approval from COUNTY and at the CONTRACTOR's sole expense, be allowed to construct and maintain on the Property, during the Event, such temporary facilities and structures as are necessary for conducting the Event, including, but not limited to, fences, barriers, grandstands

1 and signs, provided however, such temporary facilities and structures shall not cause
2 any damage to the Property.

3 B. The CONTRACTOR shall also be and is hereby granted permission to
4 erect tents, concession stands, or both, during the Event provided however, such
5 temporary facilities and structures shall not cause any damage to the Property.

6 C. All construction and installation, including electrical
7 hook-ups, shall be made by CONTRACTOR and at CONTRACTOR'S sole expense,
8 and shall always be done in a good workmanlike manner, with appropriate equipment,
9 supplies and materials, by properly skilled personnel, who shall have contractor's
10 licenses for performing any of such work where contractor's licenses would be
11 required by building and construction codes and laws. CONTRACTOR shall obtain all
12 necessary building permits.

13 D. All structures, facilities, concession stands, tents and items provided
14 by CONTRACTOR shall be removed by CONTRACTOR at CONTRACTOR'S sole
15 expense no later than twenty-four (24) hours following the conclusion of the Event, and
16 CONTRACTOR shall fully restore the Property to its original condition as it existed
17 prior to the Event.

18 7. MAINTENANCE OF, AND PAYMENT FOR DAMAGE TO PROPERTY:

19 COUNTY shall be responsible for making the Property available to
20 CONTRACTOR immediately prior to CONTRACTOR'S Event in as clean, attractive
21 and orderly a condition as would be normal for COUNTY'S parks and recreation
22 facilities that are of a similar type to the Property, provided, however, COUNTY shall
23 not have any obligation to continue to maintain or clean up the Property during the
24 Event, or provide any other services during the event.

25 CONTRACTOR shall be liable for any and all theft of, and damage and
26 destruction to any and all plants, shrubs, trees, turf, paved surfaces, irrigation systems,
27 equipment and structures and improvements located upon the Property, and
28 improvements located beneath the Property, excluding reasonable wear and tear, and

1 for all cleanup of all litter and debris caused by CONTRACTOR or its officers,
2 employees, agents, sponsors, patrons, Event participants, invitees and members of
3 the public who come onto the Property. COUNTY shall inspect the Property for
4 cleanup purposes no later than twenty-four (24) hours after the conclusion of Event.
5 COUNTY shall inspect the Property for theft, damage and destruction no later than
6 seventy-two (72) hours after CONTRACTOR has removed all temporary structures,
7 facilities, concession stands and tents referred to in section 6 above. If, as a result of
8 said inspections by COUNTY, any theft, damage or destruction, or litter or debris is
9 found to exist, COUNTY shall remove any litter and debris and repair or replace any
10 loss, damage or destruction, and the costs and expenses for repairs or replacement,
11 or cleanup first shall be deducted from the cleaning/damage deposit until exhausted,
12 and thereafter, shall be billed to CONTRACTOR, who shall be fully responsible for
13 paying all such amounts due. COUNTY shall determine its costs and expenses
14 chargeable to CONTRACTOR by using COUNTY'S actual cost and expenses of
15 materials, supplies, goods, and labor, including COUNTY overhead, as applicable.

16 8. SALES:

17 A. Souvenirs and Apparel: The CONTRACTOR shall have
18 the right to sell official Event souvenirs and apparel onsite of the Property
19 and to retain one hundred percent (100%) of such revenue.

20 B. Food, Drinks and Merchandise: The CONTRACTOR or its
21 Concessionaire(s) may sell food, drinks and merchandise onsite of the
22 Property and shall retain one hundred percent (100%) of such revenue.
23 Alcohol sales shall be permitted at the Event, conditioned on compliance
24 with all applicable laws and regulations, specifically including the
25 responsibility of CONTRACTOR or its concessionaire(s) to obtain all
26 necessary licenses for such sales as required by the Alcoholic Beverage
27 Control Board.

28 C. Sales and Use Taxes, and Other Taxes: CONTRACTOR shall be

1 solely responsible for complying with any and all laws concerning the
2 charging of, collecting, and paying to the appropriate governmental
3 authorities, all sales and use taxes, and any other taxes and charges, in
4 connection with the sales of any food, drinks (including, but not limited to,
5 alcoholic beverages), merchandise, and other goods in connection with
6 the Event, and the COUNTY shall not have any obligation in connection
7 therewith.

8 9. TERMINATION:

9 A. Non-Allocation of Funds: The terms of this Agreement, and the
10 services to be provided thereunder, are contingent upon the
11 availability of funds by the COUNTY in connection with the
12 performance of its obligation under this Agreement. Should sufficient
13 funds not be allocated, the services provided may be modified, or this
14 Agreement terminated, at any time by giving the CONTRACTOR ten
15 (10) days advanced written notice.

16 B. Breach of Contract: COUNTY'S Director of the Department of Public
17 Works and Planning, or his or her designee may immediately
18 suspend or terminate this Agreement in whole or in part, upon the
19 determination by COUNTY that there is on the part of the
20 CONTRACTOR:

- 21 1) An illegal or improper use of funds;
- 22 2) A failure to comply with any term of this Agreement; or
- 23 3) A substantially incorrect or incomplete report or false information
24 submitted to the COUNTY.

25 In no event shall any receipt of any funds by the COUNTY constitute a
26 waiver by the COUNTY of any breach of this Agreement or any default
27 which may then exist on the part of the CONTRACTOR with regard to
28 any additional funds payable to COUNTY in connection with this

1 Agreement. Neither shall such payment impair or prejudice any remedy
2 available to the COUNTY with respect to the breach or default for any
3 additional funds owed by CONTRACTOR to COUNTY.

4 C. Without Cause: Under circumstances other than those set
5 forth above, this Agreement may be terminated by COUNTY's Director of
6 Public Works and Planning or his or her designee or CONTRACTOR
7 upon the giving of fifteen (15) days advance written notice of an intention
8 to terminate to the other party.

9 10. COMPLIANCE WITH LAWS: CONTRACTOR shall comply with
10 any and all federal, state and local laws (including, but not limited to, the Fresno
11 County Ordinance Code), ordinances and regulations applicable to the work, activities,
12 and sales covered by this Agreement.

13 11. INDEPENDENT CONTRACTOR: In the conducting of the Event and the
14 performance of the work, duties and obligations assumed by CONTRACTOR under
15 this Agreement, it is mutually understood and agreed that CONTRACTOR, including
16 any and all of the CONTRACTOR'S officers, agents, and employees, will at all times
17 be acting and performing as an independent contractor, and shall act in an
18 independent capacity and not as an officer, agent, servant, employee, joint venturer,
19 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to
20 control or supervise or direct the manner or method by which CONTRACTOR shall
21 perform its obligations under this Agreement. However, COUNTY shall retain the right
22 to administer this Agreement so as to verify that CONTRACTOR is performing its
23 obligations in accordance with the terms and conditions thereof. CONTRACTOR and
24 COUNTY shall comply with all applicable provisions of law and the rules and
25 regulations, if any, of governmental authorities having jurisdiction over the subject
26 matter.

27 Because of its status as an independent contractor, CONTRACTOR, including
28 any and all of the CONTRACTOR'S officers, agents and employees shall have

1 absolutely no right to employment rights and benefits available to COUNTY
2 employees. CONTRACTOR shall be solely liable and responsible for providing to, or
3 on behalf of, its employees all legally required employee benefits. In addition,
4 CONTRACTOR shall be solely responsible and save COUNTY harmless from all
5 matters relating to payment of CONTRACTOR'S employees and agents, including, but
6 not limited to, compliance with Social Security withholding and all other regulations
7 governing such matters.

8 12. MODIFICATION: Any matters of this Agreement may be modified
9 from time to time by the written consent of all the parties without, in any way, affecting
10 the remainder.

11 13. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract
12 this Agreement nor their rights or duties under this Agreement without the prior written
13 consent of the other party.

14 14. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save,
15 hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents,
16 and employees, from any and all costs and expenses (including attorney's fees and
17 costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in
18 connection with the performance, or failure to perform, by CONTRACTOR, its officers,
19 agents, employees, or sponsors, in connection with this Agreement, and from any and
20 all costs and expenses (including attorney's fees and costs), damages, liabilities,
21 claims and losses occurring or resulting to any person, firm, corporation, sponsors,
22 patrons, Event participants, invitees and members of the public who come onto the
23 Property who may be injured or damaged by the performance, or failure to perform, of
24 CONTRACTOR, its officers, agents, employees, or sponsors in connection with this
25 Agreement.

26 15. INSURANCE: Without limiting the COUNTY'S rights to obtain
27 indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole
28 expense, shall maintain in full force and effect the following insurance policies

1 throughout the term of this Agreement.

2 A. Comprehensive General Liability Insurance with limits of
3 not less than Two Million Dollars (\$2,000,000.00) per occurrence and an
4 annual aggregate of Four Million Dollars (\$4,000,000.00). Coverage
5 must include products, completed operations, property damage, bodily
6 injury, personal injury, and advertising injury.

7 B. A policy of Workers Compensation insurance as may be
8 required by the California Labor Code.

9 C. Automobile liability. Automobile liability insurance with limits of not
10 less than One Million Dollars (\$1,000,000) per occurrence for bodily
11 injury and for property damages. Coverage must include any auto used
12 in connection with this Agreement.

13 CONTRACTOR shall obtain endorsements to the Comprehensive General
14 Liability and Automobile Liability Insurance naming the COUNTY, its officers, agents,
15 and employees, individually and collectively as additional insured, but only insofar as
16 the operations of CONTRACTOR under this Agreement are concerned. Such
17 coverage for additional insured shall apply as primary insurance and any other
18 insurance, or self-insurance, maintained by COUNTY, its officers, agents, and
19 employees shall be excess only and not contributing with insurance provided under
20 the CONTRACTOR'S policies herein. This insurance shall not be canceled or changed
21 without a minimum of thirty (30) days advance, written notice given to COUNTY.

22 Within five (5) days of its execution of this Agreement, CONTRACTOR shall
23 provide certificates of insurance on the foregoing policies as required herein, to the
24 COUNTY'S Department of Public Works and Planning, stating that such insurance
25 coverages have been obtained and are in full force; COUNTY, its officers, agents, and
26 employees will not be responsible for any premiums on the policies. The
27 Comprehensive General Liability Insurance and the Automobile Liability Insurance
28 shall name the COUNTY, its officers, agents, and employees, individually and

1 collectively, as additional insured, but only insofar as the operations of CONTRACTOR
2 under this Agreement are concerned; that such coverages for additional insured shall
3 apply as primary insurance and any other insurance, or self-insurance, maintained by
4 the COUNTY, its officers, agents, and employees, shall be excess only and not
5 contributing with insurance provided under the CONTRACTOR's policies herein; and
6 that this insurance shall not be canceled or changed without a minimum of thirty (30)
7 days advance, written notice given to COUNTY.

8 In the event CONTRACTOR fails to keep in effect at all times insurance
9 coverage as herein provided, the COUNTY may, in addition to other remedies it may
10 have, suspend or terminate this Agreement upon the occurrence of such event.

11 All policies shall be with admitted insurers licensed to do business in the State
12 of California. Insurance purchased shall be purchased from companies possessing a
13 current A.M. Best, Inc. rating of A FSC VII or better.

14 16. AUDITS AND INSPECTIONS:

15 The CONTRACTOR shall at any time during business hours, and as
16 often as the COUNTY may deem necessary, make available to the COUNTY for
17 examination all of its records and data with respect to the matters covered in the
18 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the
19 COUNTY to audit and inspect all such records and data necessary to ensure the
20 CONTRACTORS compliance with the terms of this Agreement.

21 If this Agreement exceeds ten thousand dollars (\$10,000.00), the
22 CONTRACTOR shall be subject to the examination and audit of the Auditor General
23 for a period of three (3) years after final payment under the Agreement (Government
24 Code Section 8546.7).

25 17. NOTICES: The persons and their addresses having authority to
26 give or receive notices under this Agreement include the following:

27	<u>COUNTY</u>	<u>CONTRACTOR</u>
28	County of Fresno	Two Fayre Ladies
	Steve E. White, Director	Raelynn Debone

1 Department of Public
2 Works and Planning
3 2220 Tulare St. 6th floor
4 Fresno, CA 93721
5 (559) 600-4078

2539 Mercantile Dr, Suite 1
Rancho Cordova, CA 95742
(916) 223-6725

6 Any and all notices between the COUNTY and the CONTRACTOR provided for
7 or permitted under this Agreement or by law shall be in writing and shall be deemed
8 duly served when personally delivered to one of the parties, or in lieu of such personal
9 services, when deposited in the United States Mail, postage prepaid, addressed to
10 such party.

11 18. AUTHORIZED SIGNATURE: The CONTRACTOR represents and warrants
12 to the COUNTY that:

13 (A) The CONTRACTOR is duly authorized and empowered to sign and perform its
14 obligations under this Agreement.

15 (B) The individual signing this Agreement on behalf of the CONTRACTOR is duly
16 authorized to do so and his or her signature on the Agreement legally binds the
17 CONTRACTOR to the terms of this Agreement.

18 19. ELECTRONIC SIGNATURES: The Parties agree that this Agreement may
19 be executed by electronic signature as provided in this section.

20 (A) An "electronic signature" means any symbol or process intended by an individual
21 signing this Agreement to represent their signature, including but not limited to (1) a
22 digital signature; (2) a faxed version of an original handwritten signature; or (3) an
23 electronically scanned and transmitted (for example by PDF document) of a
24 handwritten signature.

25 (B) Each electronic signature affixed or attached to this Agreement (1) is deemed
26 equivalent to a valid original handwritten signature of the person signing this
27 Agreement for all purposes, including but not limited to evidentiary proof in any
28 administrative or judicial proceeding, and (2) has the same force and effect as the
valid original handwritten signature of that person.

(C)The provisions of this section satisfy the requirements of Civil Code section 1633.5,

1 subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division 3, Part
2 2, Title 2.5, beginning with section 1633.1).

3 (D) Each party using a digital signature represents that it has undertaken and satisfied
4 the requirements of Government Code section 16.5, subdivision (a), paragraphs (1)
5 through (5), and agrees that each other party may rely upon that representation.

6 (E) This Agreement is not conditioned upon the parties conducting the transactions
7 under it by electronic means and either party may sign this Agreement with an original
8 handwritten signature.

9 20. GOVERNING LAW: For purposes of venue, this agreement shall be
10 deemed to be performed in Fresno County. Venue for any action arising out of or
11 related to this Agreement shall only be in Fresno County, California.

12 The rights and obligations of the parties and all interpretation and performance
13 of the Agreement shall be governed in all respects by the laws of the State of
14 California.

15 21. ENTIRE AGREEMENT: This Agreement constitutes the entire
16 Agreement between the CONTRACTOR and COUNTY with respect to the subject
17 matter thereof and supersedes all previous Agreement negotiations, proposals,
18 commitments, writings, advertisements, publications, and understandings of any
19 nature whatsoever unless expressly included in this Agreement.

20 22. COUNTERPARTS: This Agreement may be signed in counterparts, each of
21 which is an original, and all of which together constitute this Agreement.

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The parties are signing this Agreement on the date stated in the introductory clause.

Two Fayre Ladies
BY: Raf DeBane
Title Owner/Director
Two Fayre Ladies

COUNTY OF FRESNO
Sal Quintero
Sal Quintero, Chairman
Board of Supervisors of the
County of Fresno

ATTEST:
Bernice E. Seidel
Clerk to the Board of Supervisors
County of Fresno, State of California

By Alexandria Vieira
Deputy

FOR ACCOUNTING USE ONLY:
Fund: 0001
Subclass: 10000
Org. No: 7910
Account: 5055
