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AGREEMENT

THIS AGREEMENT, hereinafter referred to as "Agreement", is made and entered into this 23rd day of August, 2022, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY" and SCOTTISH SOCIETY OF CENTRAL CALIFORNIA, a 501(c)(3) non-profit California Corporation whose address is 17750 E. Lone Oak Road, Sanger, CA 93657, hereinafter referred to as "CONTRACTOR."

## WITNESSETH

WHEREAS, the CONTRACTOR desires to conduct a Scottish Highlands Gathering and Games Event (the "Event") at Kearney Park in the years 2022, 2023 and 2024, and potentially in the years 2025 and 2026 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 August 23, 2022, through the 30<sup>th</sup> day of June 2024, 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 (the "Property") to conduct a one day Event each year, provided that the Property, at all times during the Event, shall be

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

10 The Event date in 2022 shall be September 17. Event dates in 2023, 2024,  
11 2025, and 2026 shall be mutually agreed upon by COUNTY and CONTRACTOR.  
12 COUNTY is not responsible if inclement weather affects or otherwise prevents  
13 CONTRACTOR from holding the Event on the date stated.

14 CONTRACTOR represents that it anticipates an attendance of approximately  
15 3,000 persons at the Event.

16 3. COMPENSATION:

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

19 (i) Three Thousand Two Hundred Seventy Dollars (\$3,270.00)  
20 per day for use of Property for the Event, which is not refundable in 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 deposit shall not be  
23 refunded to the extent that the COUNTY incurs costs or expenses to clean up the  
24 Property, or otherwise repair any damage to the Property, in connection with the  
25 Event. The posting of such deposit shall neither substitute nor serve as any sort of  
26 limitation on CONTRACTOR's obligations hereunder to clean up, repair, or otherwise  
27 replace any damage to the Property caused in connection with the Event.

28 B. CONTRACTOR shall make the following payments, in full, to the

1 COUNTY no later than thirty (30) days after the date of the invoice from the County.

2 (i) The CONTRACTOR agrees to pay the COUNTY the standard  
3 vehicle entrance fee ("VEF") of Five Dollars (\$5.00) per vehicle entering the property  
4 each day of the Event, and CONTRACTOR shall use sequentially numbered tickets to  
5 serve as the vehicle entry passes for the Event. COUNTY shall have the right to verify  
6 the vehicle count during the Event, either by mechanical means or by physical count,  
7 and it is hereby agreed that the accuracy of COUNTY'S count shall not be disputed  
8 and shall be accepted as the final and official count for the purpose of calculating the  
9 CONTRACTOR'S total VEF payment component pursuant to this Paragraph 3(B)(i)  
10 (based on the number of vehicles entering the Property during the Event, multiplied by  
11 the standard VEF charge of Five Dollars (\$5.00) per vehicle). CONTRACTOR will be  
12 allowed to create up to twenty-five (25), COUNTY approved, proprietary Event staff  
13 vehicle identification markers that must be placed on the Event staff vehicle front  
14 windshield, in the upper right hand corner, to identify event staff vehicles which will  
15 neither be charged the standard VEF nor counted in calculating the CONTRACTOR'S  
16 total VEF payment component pursuant to this Paragraph 3(B)(i); provided that such  
17 Event staff vehicles shall be required to use the appropriate vehicle entrance gate  
18 which will be specified in advance of the event date by the COUNTY. CONTRACTOR  
19 shall make such payment to the COUNTY within thirty (30) days of the date of the  
20 invoice from the COUNTY, and it is expressly acknowledged that such obligation on  
21 the part of the CONTRACTOR shall survive the expiration of the term of this  
22 Agreement.

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

25 (i) COUNTY shall have the sole right to immediately terminate  
26 this Agreement, upon written notice thereof given by COUNTY'S Director of the  
27 Department of Public Works and Planning or his or her designee, to CONTRACTOR;  
28 and COUNTY shall be entitled to retain all of such funds (if any) having theretofore

1 been paid by CONTRACTOR, and CONTRACTOR shall remain liable to COUNTY for  
2 full payment of all of such amounts, and for any other damages caused to COUNTY.

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

5 4. EVENT ENTRANCE FEE AUTHORIZATION:

6 The CONTRACTOR shall not be prohibited from collecting an additional fee for  
7 entry (i.e. in addition to the standard VEF payable to the County under Paragraph  
8 3(B)(i), for entry onto the Property during the dates of the Event, and the amount of  
9 such additional fee is neither approved nor disapproved of by COUNTY.

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

12 A. The CONTRACTOR shall be solely responsible for providing crowd  
13 control by making adequate and appropriate arrangements for security  
14 to ensure the safety of all persons in and around the Property during the  
15 day of the Event. In this regard, CONTRACTOR shall, without any cost or expense to  
16 COUNTY, provide all necessary security and traffic control on the day of the Event,  
17 sufficient, as determined by the Fresno County Sheriffs Department and the California  
18 Highway Patrol, to ensure the safety of all patrons, Event participants, invitees and  
19 members of the public who come onto the Property, and County staff. The  
20 CONTRACTOR also shall be responsible for providing adequate and appropriate  
21 traffic and parking control.

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

26 C. The CONTRACTOR shall be responsible for providing, at its sole  
27 expense, adequate dumpsters for disposal of all refuse generated by the Event, and  
28 litter and debris control. CONTRACTOR shall also provide, at its own expense, any

1 additional personnel, trash cans, equipment and supplies needed, over and above the  
2 COUNTY'S normal and customary operation for making the Property available to  
3 CONTRACTOR in the paragraph immediately above, in order to maintain the Property  
4 in a safe, clean, attractive and orderly condition during the Event. CONTRACTOR shall  
5 provide, at its sole expense, containers for recycling. CONTRACTOR shall dispose of  
6 recycled material at an approved recycling facility.

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

8 A. The CONTRACTOR, upon the pre-approval of COUNTY  
9 and at the CONTRACTOR's sole expense, shall be allowed to construct and maintain  
10 on the Property, during the Event, such temporary facilities and structures as are  
11 necessary for conducting the Event including, but not limited to, fences, barriers,  
12 grandstands and signs, provided however, such temporary facilities and structures shall  
13 not cause any damage to the Property.

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

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

25 D. All structures, facilities, concession stands, tents and  
26 items provided by CONTRACTOR shall be removed by CONTRACTOR  
27 at CONTRACTOR'S sole expense no later than twenty-four (24) hours following the  
28 conclusion of the Event, and CONTRACTOR shall fully restore the Property to its

1 original condition as it existed prior to the Event.

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

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

10 CONTRACTOR shall  
11 be liable for any and all theft of, and damage and destruction to any and all plants,  
12 shrubs, trees, turf, paved surfaces, irrigation systems, equipment and structures and  
13 improvements located upon the Property, and improvements located beneath the  
14 Property, excluding reasonable wear and tear, and for all cleanup of all litter and  
15 debris caused by CONTRACTOR or its officers, employees, agents, sponsors,  
16 patrons, Event participants, invitees and members of the public who come onto the  
17 Property. COUNTY shall inspect the Property for cleanup purposes no later than  
18 twenty-four (24) hours after the conclusion of Event. COUNTY shall inspect the  
19 Property for theft, damage and destruction no later than seventy-two (72) hours after  
20 CONTRACTOR has removed all temporary structures, facilities, concession stands  
21 and tents referred to in section 6 above. If, as a result of said inspections by COUNTY  
22 any theft, damage or destruction, or litter or debris is found to exist, COUNTY shall  
23 remove any litter and debris and repair or replace any loss, damage or destruction,  
24 and the costs and expenses for repairs or replacement, or cleanup first shall be  
25 deducted from the cleaning/damage deposit until exhausted, and thereafter, shall be  
26 billed to CONTRACTOR, who shall be fully responsible for paying all such amounts  
27 due. COUNTY shall determine its costs and expenses chargeable to CONTRACTOR  
28 by using COUNTY'S actual cost and expenses of materials, supplies, goods, and

1 labor, including COUNTY overhead, as applicable.

2 8. SALES:

3 A. Souvenirs and Apparel: The CONTRACTOR shall have  
4 the right to sell official Event souvenirs and apparel on-site of the Property and to  
5 retain one hundred percent (100%) of such revenue.

6 B. Food, Drinks and Merchandise: The CONTRACTOR or its  
7 Concessionaire (s) may sell food, drinks and merchandise on site of the  
8 Property and shall retain One Hundred Percent (100%) of such revenue. Alcohol  
9 sales shall be permitted at the Event, conditioned on compliance with all applicable  
10 laws and regulations, specifically including the responsibility of CONTRACTOR or its  
11 concessionaire(s) to obtain all necessary licenses for such sales as required by the  
12 Alcoholic Beverage Control Board.

13 C. Sales and Use Taxes, and Other Taxes: CONTRACTOR shall be  
14 solely responsible for complying with any and all laws concerning the charging of,  
15 collecting, and paying to the appropriate governmental authorities, all sales and use  
16 taxes, and any other taxes and charges, in connection with the sales of any food,  
17 drinks (including, but not limited to, alcoholic beverages), merchandise and other  
18 goods in connection with the Event, and the COUNTY shall not have any obligation in  
19 connection therewith.

20 9. TERMINATION:

21 A. Non-Allocation of Funds: The terms of this Agreement,  
22 and the services to be provided thereunder, are contingent upon the availability of  
23 funds by the COUNTY in connection with the performance of its obligations under this  
24 Agreement. Should sufficient funds not be allocated, the services provided may be  
25 modified, or this Agreement terminated, at any time by giving the CONTRACTOR ten  
26 (10) days advance written notice.

27 B. Breach of Contract: The COUNTY'S Director of Public Works and  
28 Planning, or his or her designee may immediately suspend or terminate this

1 Agreement in whole or in part, upon the determination by COUNTY that there is on the  
2 part of the CONTRACTOR:

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

7 In no event shall any receipt of any funds by the COUNTY constitute a  
8 waiver by the COUNTY of any breach of this Agreement or any default which may  
9 then exist on the part of the CONTRACTOR with regard to any additional funds  
10 payable to COUNTY in connection with this Agreement. Neither shall such payment  
11 impair or prejudice any remedy available to the COUNTY with respect to the breach or  
12 default for any additional funds owed by CONTRACTOR to COUNTY.

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

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

21 11. INDEPENDENT CONTRACTOR: In the conducting of the Event and the  
22 performance of the work, duties and obligations assumed by CONTRACTOR under  
23 this Agreement, it is mutually understood and agreed that CONTRACTOR, including  
24 any and all of the CONTRACTOR'S officers, agents, and employees, will at all times  
25 be acting and performing as an independent contractor, and shall act in an  
26 independent capacity and not as an officer, agent, servant, employee, joint venturer,  
27 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to  
28 control or supervise or direct the manner or method by which CONTRACTOR shall

1 perform its obligations under this Agreement. However, COUNTY shall retain the right  
2 to administer this Agreement so as to verify that CONTRACTOR is performing its  
3 obligations in accordance with the terms and conditions thereof. CONTRACTOR and  
4 COUNTY shall comply with all applicable provisions of law and the rules and  
5 regulations, if any, of governmental authorities having jurisdiction over the subject  
6 matter.

7 Because of its status as an independent contractor, CONTRACTOR, including  
8 any and all of the CONTRACTOR'S officers, agents and employees shall have  
9 absolutely no right to employment rights and benefits available to COUNTY  
10 employees. CONTRACTOR shall be solely liable and responsible for providing to, or  
11 on behalf of, its employees all legally required employee benefits. In addition,  
12 CONTRACTOR shall be solely responsible and save COUNTY harmless from all  
13 matters relating to payment of CONTRACTOR'S employees and agents, including, but  
14 not limited to, compliance with Social Security withholding and all other regulations  
15 governing such matters.

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

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

22 14. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save,  
23 hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents,  
24 and employees, from any and all costs and expenses (including attorney's fees and  
25 costs), damages, liabilities, claims, and losses occurring or resulting to COUNTY in  
26 connection with the performance, or failure to perform, by CONTRACTOR, its officers,  
27 agents, employees, or sponsors, in connection with this Agreement, and from any and  
28 all costs and expenses (including attorney's fees and costs), damages, liabilities,

1 claims and losses occurring or resulting to any person, firm, corporation, sponsors,  
2 patrons, Event participants, invitees and members of the public who come onto the  
3 Property who may be injured or damaged by the performance, or failure to perform, of  
4 CONTRACTOR, its officers, agents, employees, or sponsors in connection with this  
5 Agreement.

6 15. INSURANCE: Without limiting the COUNTY'S rights to obtain  
7 indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole  
8 expense, shall maintain in full force and effect the following insurance policies  
9 throughout the term of this Agreement.

10 A. Comprehensive General Liability Insurance with limits of  
11 not less than Two Million Dollars (\$2,000,000.00) per occurrence and an annual  
12 aggregate of Four Million Dollars (\$4,000,000.00).

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

15 C. Comprehensive Automobile Liability Insurance with limits for bodily  
16 injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person,  
17 Five Hundred Thousand Dollars (\$500,000) per accident and for property damages of  
18 not less than Fifty Thousand Dollars (\$50,000), or such coverage with a combined  
19 single limit of Five Hundred Thousand Dollars (\$500,000). Coverage shall include  
20 owned and non-owned vehicles used by CONTRACTOR in connection with this  
21 Agreement.

22 CONTRACTOR shall obtain endorsements to the Comprehensive General  
23 Liability and Automobile Liability Insurance naming the COUNTY, its officers, agents,  
24 and employees, individually and collectively as additional insured, but only insofar as  
25 the operations of CONTRACTOR under this Agreement are concerned. Such  
26 coverage for additional insured shall apply as primary insurance and any other  
27 insurance, or self insurance, maintained by COUNTY, its officers, agents, and  
28 employees shall be excess only and not contributing with insurance provided under

1 the CONTRACTOR'S policies herein. This insurance shall not be canceled or  
2 changed without a minimum of thirty (30) days advance, written notice given to  
3 COUNTY.

4 Within five (5) days of its execution of this Agreement, CONTRACTOR shall  
5 provide certificates of insurance on the foregoing policies as required herein, to the  
6 COUNTY'S DEPARTMENT OF PUBLIC WORKS AND PLANNING, stating that such  
7 insurance coverages have been obtained and are in full force; COUNTY, its officers,  
8 agents, and employees will not be responsible for any premiums on the policies. The  
9 Comprehensive General Liability Insurance and the Automobile Liability Insurance  
10 shall name the COUNTY, its officers, agents, and employees, individually and  
11 collectively, as additional insured, but only insofar as the operations of CONTRACTOR  
12 under this Agreement are concerned; that such coverages for additional insured shall  
13 apply as primary insurance and any other insurance, or self-insurance, maintained by  
14 the COUNTY, its officers, agents, and employees, shall be excess only and not  
15 contributing with insurance provided under the CONTRACTOR's policies herein; and  
16 that this insurance shall not be canceled or changed without a minimum of thirty (30)  
17 days advance, written notice given to COUNTY.

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

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

24 16. AUDITS AND INSPECTIONS:

25 The CONTRACTOR shall at any time during business hours, and as  
26 often as the COUNTY may deem necessary, make available to the COUNTY for  
27 examination all of its records and data with respect to the matters covered in the  
28 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the

1 COUNTY to audit and inspect all such records and data necessary to ensure the  
2 CONTRACTORS compliance with the terms of this Agreement.

3 If this Agreement exceeds ten thousand dollars (\$10,000), the CONTRACTOR  
4 shall be subject to the examination and audit of the Auditor General for a period of  
5 three (3) years after final payment under the Agreement (Government Code Section  
6 8546.7).

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

9 COUNTY

10 County of Fresno  
11 Steven E. White, Director  
12 Department of Public  
13 Works and Planning  
2220 Tulare St. 6<sup>th</sup> floor  
Fresno, CA 93721  
(559) 600-4078

CONTRACTOR

Robyn Gutierrez, Chief  
Scottish Society of Central California  
P.O. Box 5699  
Fresno, CA 93755  
(559) 250-1758

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

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

22 The rights and obligations of the parties and all interpretation and performance  
23 of the Agreement shall be governed in all respects by the laws of the State of  
24 California.

25 19. ENTIRE AGREEMENT: This Agreement constitutes the entire  
26 Agreement between the CONTRACTOR and COUNTY with respect to the subject  
27 matter thereof and supersedes all previous Agreement negotiations, proposals,  
28 commitments, writings, advertisements, publications, and understandings of any

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nature whatsoever unless expressly included in this Agreement.

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

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

SCOTTISH SOCIETY

COUNTY OF FRESNO

BY: *James Cheppain*  
Title

*Brian Pacheco*  
Brian Pacheco, Chairman of the Board of Supervisors of the County of Fresno

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

By *Hannah*  
Deputy

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