

1 AGREEMENT

2 THIS AGREEMENT ("Agreement") is made and entered into this 31st day of
3 January 2017, by and between the COUNTY OF FRESNO, a political subdivision of
4 the State of California, hereinafter referred to as "COUNTY" and the SCOTTISH
5 SOCIETY OF CENTRAL CALIFORNIA, a 501(c)(3) non-profit California corporation
6 whose address is 17750 E. Lone Oak Road, Sanger, CA 93657, hereinafter referred to
7 as "CONTRACTOR."

8 WITNESSETH

9 WHEREAS, the CONTRACTOR desires to conduct a Scottish Highlands
10 Gathering and Games Event (the "Event") at Kearney Park for one day in each of the
11 years 2017, 2018 and 2019; and

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

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

16 1. TERM

17 The term of this Agreement shall begin on the date first written above and shall
18 end thirty (30) days after the date Event is held in 2019.

19 2. PERMISSION TO USE:

20 Subject to the terms and conditions of this Agreement, the CONTRACTOR shall
21 be entitled to exclusive use of Kearney Park (the "Property") to conduct a one day Event
22 each year, provided that the Property, at all times during the Event, shall be open to all
23 members of the public under the same terms and conditions of persons who are invited
24 by, or otherwise allowed by, CONTRACTOR to attend or participate in the Event. In
25 conjunction with this Event, CONTRACTOR shall be solely responsible for providing all
26 adequate and appropriate staffing, equipment, and supplies to set-up, operate,
27 breakdown, clean up (both during the Event and upon its conclusion), and
28 administratively coordinate the Event. CONTRACTOR shall be the responsible sponsor
of the Event but may enlist the assistance of or contract with other sponsors for the

1 Event provided that CONTRACTOR shall always be responsible for all of its obligations
2 under this Agreement.

3 The Event date in 2017 shall be September 16. Event dates in 2018 and 2019
4 shall be mutually agreed upon by COUNTY and CONTRACTOR at a later date.

5 COUNTY is not responsible if inclement weather affects or otherwise prevents
6 CONTRACTOR from holding the Event on an agreed upon date.

7 CONTRACTOR represents that it anticipates an attendance of approximately
8 3,000 persons at the Event.

9 3. COMPENSATION:

10 A. CONTRACTOR shall make the following payments, in full, to the
11 COUNTY prior to the Event.

12 (i) Three Thousand Two Hundred and Seventy Dollars (\$3,270.00)
13 or the current Master Schedule of Fees rate, whichever is greater,
14 per day for use of Property for the Event, which is non-refundable;
15 and

16 (ii) One Thousand Dollars (\$1,000.00) per day for a cleanup/
17 damage deposit which is refundable, provided however, such
18 deposit shall not be refunded to the extent that the COUNTY incurs
19 costs or expenses to clean up the Property, or otherwise repair any
20 damage to the Property, in connection with the Event. The posting
21 of such deposit shall neither substitute nor serve as any sort of
22 limitation on CONTRACTOR's obligations hereunder to clean up,
23 repair, or otherwise replace any damage to the Property caused in
24 connection with the Event.

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

28 (i) The CONTRACTOR agrees to pay the COUNTY the standard
vehicle entrance fee ("VEF") of Five Dollars (\$5.00) or the current
Master Schedule of Fees rate, whichever is greater, per vehicle

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

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

26 (i) COUNTY shall have the sole right to immediately terminate this
27 Agreement, upon written notice thereof given to CONTRACTOR by
28 COUNTY's Director of the Department of Public Works and
Planning or his or her designee and COUNTY shall be entitled to

1 retain all of such funds (if any) having theretofore been paid by
2 CONTRACTOR. CONTRACTOR shall also remain liable to
3 COUNTY for full payment of any remaining amounts due COUNTY
4 and for any other damages caused to COUNTY.

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

8 4. EVENT ENTRANCE FEE AUTHORIZATION:

9 The CONTRACTOR shall not be prohibited from collecting an additional fee for
10 entry (i.e. in addition to the standard VEF payable to the County under Paragraph
11 3(B)(i), for entry onto the Property during the dates of the Event, and the amount of
12 such additional fee is neither approved nor disapproved of by COUNTY.

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

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

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

C. CONTRACTOR shall be responsible for providing, at its sole

1 expense, adequate dumpsters for disposal of all refuse generated by the
2 Event, and litter and debris control. CONTRACTOR shall also provide, at
3 its own expense, any additional personnel, trash cans, equipment and
4 supplies needed, over and above the COUNTY'S normal and customary
5 operation for making the Property available to CONTRACTOR, in order to
6 maintain the Property in a safe, clean, attractive and orderly condition
7 during the Event. CONTRACTOR shall provide, at its sole expense,
8 containers for recycling. CONTRACTOR shall dispose of recycled
9 material at a COUNTY approved recycling facility.

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

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

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

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

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

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

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

14 With regard to the condition of the property, the CONTRACTOR shall
15 be liable for any and all theft of, and damage and destruction to, any and all plants,
16 shrubs, trees, turf, paved surfaces, irrigation systems, equipment and structures and
17 improvements located upon the Property, and improvements located beneath the
18 Property, excluding reasonable wear and tear, and for all cleanup of all litter and debris
19 caused by CONTRACTOR or its officers, employees, agents, sponsors, patrons, Event
20 participants, invitees and members of the public who come onto the Property. COUNTY
21 shall inspect the Property for cleanup purposes no later than twenty-four (24) hours
22 after the conclusion of each Event. COUNTY shall inspect the Property for theft,
23 damage and destruction no later than seventy-two (72) hours after CONTRACTOR has
24 removed all temporary structures, facilities, concession stands and tents referred to in
25 Section 6 above. If, as a result of said inspections by COUNTY, any theft, damage or
26 destruction, or litter or debris is found to exist, COUNTY shall remove any litter and
27 debris and repair or replace any loss, damage or destruction, and the costs and
28 expenses for repairs, replacement or cleanup shall be deducted from the
cleaning/damage deposit until exhausted. Should the total of such costs or expenses
exceed the amount of CONTRACTOR's deposit, the excess, shall be billed to

1 CONTRACTOR, who shall be fully responsible for paying all such amounts due.

2 COUNTY shall determine its costs and expenses chargeable to CONTRACTOR by
3 using COUNTY's actual cost and expenses of materials, supplies, goods, and labor,
4 including COUNTY overhead, as applicable.

5 8. SALES:

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

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

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

25 9. TERMINATION:

26 A.. Breach of Contract: The COUNTY'S Director of Public Works and
27 Planning, or his or her designee may immediately suspend or terminate
28 this Agreement in whole or in part, upon the determination by COUNTY
that there is on the part of the CONTRACTOR:

1) An illegal or improper use of funds;

- 1 2) A failure to comply with any term of this Agreement; or
2 3) A substantially incorrect or incomplete report or false information
3 submitted to the COUNTY.

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

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

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

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

COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the subject matter.

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

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

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

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

15. INSURANCE: Without limiting the COUNTY'S rights to obtain

1 indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole
2 expense, shall maintain in full force and effect the following insurance policies
3 throughout the term of this Agreement.

4 A. Comprehensive General Liability Insurance with limits of
5 not less than One Million Dollars (\$1,000,000.00) per occurrence and an
6 annual aggregate of Two Million Dollars (\$2,000,000.00).

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

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

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

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

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

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

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

15 16. AUDITS AND INSPECTIONS:

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

22 If this Agreement exceeds ten thousand dollars (\$10,000), the CONTRACTOR
23 shall be subject to the examination and audit of the Auditor General for a period of three
24 (3) years after final payment under the Agreement (Government 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 COUNTY

28 County of Fresno
John R. Thompson, Dep. Dir.
Department of Public
Works and Planning

CONTRACTOR

Robyn Gutierrez, Chief
Scottish Society of Central California
P.O. Box 7868
Fresno, CA 93747

2220 Tulare St. 6th floor (559) 250-1758
Fresno, CA 93721
(559) 262-4078

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

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

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

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

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1 IN WITNESS WHEREOF, the parties have executed this Agreement on the date
2 set forth above.
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4 SCOTTISH SOCIETY

COUNTY OF FRESNO

5 *Signed on behalf of the*
Scottish Society of Central California

6 BY: *John Crawford*

Title

Steward

B. Pacheco

Brian Pacheco, Chairman
Board of Supervisors

8 ATTEST:

Bernice E. Seidel, Clerk
Board of Supervisors

9 *SIGNED ON BEHALVE OF THE*
SCOTTISH SOCIETY OF CENTRAL
CALIFORNIA

10 By: *TL Simpson*

Title

CHIEF

11 By: *L. Seidel*

Deputy

12
13 APPROVED AS TO LEGAL FORM
14 Daniel C. Cederborg
County Counsel

REVIEWED AND RECOMMENDED
FOR APPROVAL

15 By: *James T. Smith*

16 Deputy

17 By: *Steven E. White*

Steven E. White, Director
Department of Public Works and
Planning

18
19 APPROVED AS TO ACCOUNTING
FORM
20 Oscar J. Garcia CPA
Auditor-Controller/ Treasurer-Tax
Collector

21 By: *Colin E. Cady*

22 Deputy

23
24
25 FOR ACCOUNTING USE ONLY

26 Fund: 0001
Subclass 10000
27 Org. No 7910
Account 5055