

RESOLUTION NO. BO5-2016-198

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA TO DECLARE ITS INTENTION TO CONSIDER QUALIFICATIONS FOR THE POSSIBLE DEVELOPMENT, LEASE, USE AND/OR OPERATIONS OF THE SANTA CLARA COUNTY FAIRGROUNDS (APNS: 497-38-001 AND 477-21-089) AND DELEGATING AUTHORITY TO THE DIRECTOR OF ASSET AND ECONOMIC DEVELOPMENT (AS THE BOARD'S DESIGNEE) TO CONDUCT, MODIFY AND EXTEND THE REQUEST FOR PROPOSAL PROCESS FOR THE FAIRGROUNDS PROPERTY; TO AMEND THE REQUEST FOR PROPOSAL DOCUMENTS; TO NEGOTIATE AND AMEND A GROUND LEASE(S) AND OTHER AGREEMENTS FOR THE FAIRGROUNDS SUBJECT TO REVIEW AND APPROVAL AS TO FORM AND LEGALITY BY COUNTY COUNSEL; AND, TO RETURN TO THE BOARD WITH RECOMMENDATIONS FOR SELECTION OF A SUCCESSFUL RESPONDENT(S) AND APPROVAL OF A GROUND LEASE (OR OTHER AGREEMENTS, AS NECESSARY).

WHEREAS, the County owns approximately 150 acres of real property (the "Property") used for fairgrounds purposes, located both within the unincorporated area of the County of Santa Clara (APN: 497-38-001) and the incorporated area of the City of San Jose (APN: 477-21-089); and,

WHEREAS, the Board of Supervisors has expressed a desire to continue to host the County fair at the fairgrounds while at the same time creating or supporting the development of a regional destination comprised of high-quality active and passive recreational opportunities at the Property; and,

WHEREAS, in order to solicit proposals for the development of the Property consistent with applicable law and Board of Supervisors intent, the County desires to issue a Request for Proposals (RFP); and,

WHEREAS, the Property will only be developed after first having complied with the applicable provisions (if any) of Sections 25351, 25351.1, 65402 and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5, of the California Government Code; and,

WHEREAS, the Property will only be developed and construction initiated after first having complied with the applicable provisions of California Environmental Quality Act ("CEQA") (California Public Resources Code §§21000 et seq.) and the State CEQA Guidelines (California Code of Regulations §§15000-15387).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Santa Clara hereby declares its intent to consider responses to the RFP for the development of the Santa Clara County Fairgrounds property;

Adopted: 12/13/2016

DEC 13 2016

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BE IT FURTHER RESOLVED that the Board hereby delegates to the Director of Asset and Economic Development (as designee), the authority to conduct the RFP process, issue the RFP, receive, open and examine responses (both oral and written) subject to the requirements and conditions of this resolution including all of the following:

PROPERTY:

Santa Clara County Fairgrounds (the "Property") comprising approximately 150 acres, of which 136 acres is located at 344 Tully Road (APN 497-38-001) within the unincorporated area of Santa Clara County, California, and 14 acres are located across Tully Road, known as the North Parking Lot A (APN 477-21-089) within the incorporated area of the City of San Jose, California.

NATURE OF INTEREST TO BE CONSIDERED:

To provide a regional destination comprised of high-quality active and passive recreational opportunities for families of and visitors to Santa Clara County. While the Board of Supervisors has not made any decisions with respect to the reuse potential of any of the existing facilities, it is expected that current community events will continue to be hosted at the Fairgrounds, utilizing all or some portion of existing facilities, or new facilities built and operated by the proposer, or both. In addition, the Property will continue to be home to the County Fair each year, building on the County's agricultural heritage and tradition while looking to the future of the Silicon Valley innovation economy.

The County will consider any one or more activities, purposes or uses, including but not limited to, management, marketing, operation, development, expansion, building, rebuilding, furnishing, refurnishing or repairing buildings, facilities or operations by lease, license, contract, development agreement, joint venture agreement, concession contract and/or management agreement where such activities, purposes or uses:

1. Do not interfere with the use of the Property for fair purposes (consistent with Section 25908 of the California Government Code, and where applicable, A21-15 through A21-19 of the County Ordinance Code);

and/or,

2. Are for fairground, park, amusement, recreation and/or vehicle parking, or such industrial or commercial development incidental thereto or not inconsistent therewith (consistent with Section 25536 of the California Government Code);

and/or,

3. Are for residential, commercial, industrial and/or cultural use or development in relation to County revenue generating purposes (consistent with Section 25515 et seq. of the California Government Code).

MINIMUM QUALIFICATIONS:

The minimum qualifications are set forth in the attached RFP (Exhibit A).

WRITTEN RESPONSES DUE (Received) BY:

March 30, 2017, by no later than 9:00 AM
(Pacific Standard Time).

PLACE TO DELIVER WRITTEN RESPONSES:

County of Santa Clara
Office of County Executive
Attn: Bruce Knopf, Director, Asset & Economic Development
70 W. Hedding Street, East Wing, 11th Floor,
San Jose, California 95110.

DATE AND PLACE OF PUBLIC MEETING TO OPEN WRITTEN RESPONSES AND RECEIVE ORAL RESPONSES TO THE RFP:

TIME: March 30, 2017 at 9:00 AM
or at a time shortly thereafter on the same day.
PLACE: County of Santa Clara
Office of County Executive
70 W. Hedding Street, East Wing, 11th Floor,
San Jose, California 95110.

BE IT FURTHER RESOLVED that the Director of Asset and Economic Development (as the Board's designee) is hereby delegated the authority to conduct, modify and extend the request for proposal process for the Fairgrounds property; to amend the request for proposal documents; to negotiate and amend a ground lease(s) and other agreements for the Fairgrounds subject to review and approval as to form and legality by County Counsel; and, to return to the Board with recommendations for selection of a successful respondent(s) and approval of a ground lease (or other agreements, as necessary). Delegation of authority shall expire on December 31, 2017;

BE IT FURTHER RESOLVED that the Board hereby directs, at the time and place fixed herein (but no less than 60 days from Board adoption of this resolution), the Director of Asset and Economic Development (as designee) to open and examine all sealed written responses and consider all oral bids, and to thereafter (consistent with the RFP terms) declare those which are from responsible participants and which conform to the terms and conditions in this resolution. In addition, at a minimum, an oral bid, in order to be considered, must offer a

base rent and percentage rent (RFP Attachment 8) value that is at least five (5) percent higher than the highest base rent and percentage rent value of written qualified responses (RFP Attachment 8) before such oral bid can be reviewed for further consideration consistent with the RFP terms contained. All oral responses received on the bid opening date must also satisfy all other RFP requirements, including submission requirements. In considering responses, the pro forma information (RFP Appendix C) and the proposed rent and compensation information provided by each Respondent (RFP Attachment 8), although important, will not be the sole basis for County's selection of a successful response(s);

BE IT FURTHER RESOLVED that the Board hereby directs the Director to return to the Board, at a time and place to be noticed and scheduled pursuant to applicable law, by no later than thirty (30) days following the issuance of the Notice of Intent to Award (as set out in the RFP terms), in order for the Board to receive and consider the RFP responses; to consider any requested protests; to approve or reject the recommended Respondent(s) and ground lease(s) (and/or related agreements, where applicable); and, to consider any other recommendations for Property disposition or issuance of other requests for proposals or bids. After making any required findings and taking any other necessary or required actions pursuant to applicable law, the Board of Supervisors may reject any and all responses or protests, reject any or all recommendations, or may elect to approve the recommended Respondent(s) and proposed ground lease(s) (or related agreements) (as applicable);

BE IT FURTHER RESOLVED that the Board hereby finds, as a condition of accepting any response to the RFP or later entering into any lease or other agreement, that in the event there is any legal action or litigation undertaken by the County to enforce the provisions of a bid offer, proposal, response or any subsequent written agreement, the successful bidder(s), respondent(s), contractor(s) and lessee(s) (including all successors and assigns) shall be required to pay all reasonable attorneys' fees and litigation costs incurred by the County;

BE IT FURTHER RESOLVED by the Board that the Property will only be developed after first having complied with the applicable provisions (if any) of Sections 25351, 25351.1, 65402 and Article 8 (commencing with Section 54220) of Chapter 5 of Part 1 of Division 2 of Title 5, of the California Government Code;

BE IT FURTHER RESOLVED by the Board that the Property will only be developed and construction initiated after first having complied with the applicable provisions of California Environmental Quality Act ("CEQA") (California Public Resources Code §§21000 et seq.) and the State CEQA Guidelines (California Code of Regulations §§15000-15387); and,

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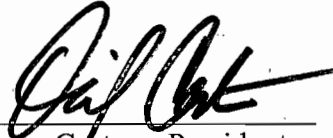
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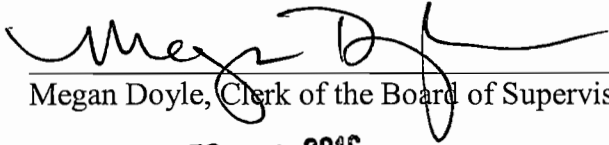
BE IT FURTHER RESOLVED by the Board that the Clerk of the Board shall give or cause to be given notice of the adoption of this resolution (1) by posting copies of the resolution in at least three public places in the County for at least 15 days before the date to receive responses; (2) by publishing notice, for at least three consecutive weeks prior to the date set for opening of responses, in a newspaper of general circulation published in the County; and, (3) by mailing or delivering notice, at least 15 days prior to accepting responses, to any person who has filed a written request for notice with either the Clerk of the Board or with any other person designated by the Board to receive these requests.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on DEC 13 2016, by the following vote:

AYES: Supervisors **CHAVEZ, CORTESE, ~~SIMITIAN~~, WASSERMAN, YEAGER**
NOES: Supervisors **NONE**
ABSENT: Supervisors **NONE**
ABSTAIN: Supervisors **SIMITIAN**


Dave Cortese, President
Board of Supervisors

ATTEST:


Megan Doyle, Clerk of the Board of Supervisors
Date: DEC 13 2016

APPROVED AS TO FORM AND LEGALITY:


Shirley R. Edwards, Deputy County Counsel

ATTACHMENT TO THIS RESOLUTION:

Exhibit A – RFP

Request for Proposals and Financial Plans



**FOR
LONG-TERM LEASE OF REAL PROPERTY
Approximately 150 acres
with approximately 120,000 sq. ft. of building(s)
located at 344 Tully Road, San Jose, CA.**

**Seeking Investors and Operators of Commercial
Recreation and Event Center Uses for the
Santa Clara County Fairgrounds**

Issued by: The County of Santa Clara

RFP Issued December 13, 2016

Responses Due No Later Than 9:00 AM, March 30, 2017

REQUEST FOR PROPOSAL [RFP Number]

COMMERCIAL RECREATION AND EVENT CENTER USES FOR
THE SANTA CLARA COUNTY FAIRGROUNDS

ISSUE DATE: December 13, 2016

PROPOSALS DUE:

March 30, 2017 by 9:00 A.M. Pacific Time

(Date may be extended by the County at Its sole discretion)

Delivered to:

County of Santa Clara
Office of the County Executive
Asset & Economic Development
ATTN: Bruce Knopf
70 West Hedding St., 11th Floor
San Jose, CA 95110

CONTACT: Glen Williams
408-512-4844
Glen.Williams@ceo.sccgov.org

Table of Contents

1.	PURPOSE OF RFP	1
	Summary of County Objectives	1
	Description of the Solicitation Process	4
	RFP Organization	6
2.	THE VISION AND THE OPPORTUNITY	7
	Vision for the Fairgrounds	7
	The Opportunity	7
	Preliminary Business Terms	10
3.	RFP SUBMISSION REQUIREMENTS AND EVALUATION PROCESS AND SCHEDULE.....	11
	RFP Submission Requirements	11
	Evaluation Criteria	15
	RFP Schedule	16
4.	PROTEST PROCESS.....	20
5.	GENERAL TERMS, CONDITIONS AND LIMITATIONS	22
	General Caveat.....	22
	Revisions to RFP	22
	Cancellation of Solicitation and Rejection of Offers	22
	Ownership of Submittals	22
	Incurred Expenses	22
	Confidentiality of Documents	23
	Use of Electronic Versions of the RFP	23
	Nondiscrimination	23
	Wage Theft Prevention Policy	23
	Other Miscellaneous	23

Appendices

APPENDIX A: Summary of RFQ Responses

APPENDIX B: Ground Lease Template

APPENDIX C: Pro Forma Template (required to be submitted with proposal)

APPENDIX D: About the Fairgrounds

Figures and Attachments

Figure 1	Preliminary Site Plan: Esplanade Drive	9
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Attachments

******NOTICE******

Attachment 1 MUST be completed and forwarded to the County contact as early as possible, so as to assure that you receive all communications, addenda and updates to the RFP. Attachments 2, 3, 4, 5, 6, 7 and 8 MUST be submitted with the proposal. Attachment 9 MUST be returned (via email) to County as soon as Respondent receives an Addenda from County, in each instance.

ATTACHMENT 1: Preliminary Notice of Intention To Respond

ATTACHMENT 2: Non-Disclosure Agreement

ATTACHMENT 3: Non-Collusion Declaration

ATTACHMENT 4: Declaration of Local Business

ATTACHMENT 5: Client References

ATTACHMENT 6: Declaration of Compliance With Wage Theft Prevention Policy

ATTACHMENT 7: Bid Rent Form for Lease of Property

ATTACHMENT 8: Financial Proposal Summary Form for Lease of Property

ATTACHMENT 9: RFP Addenda Acknowledgement of Receipt

1. PURPOSE OF RFP

The County of Santa Clara (County) is issuing this Request for Proposals and Financial Plans (RFP) to solicit responses from qualified teams of business operators (Respondents) prepared to invest in business enterprises that will contribute to the County's efforts to develop the 150-acre Fairgrounds. The vision for the Fairgrounds is for a high-quality, vibrant community and regional gathering place focused on providing active and passive recreational opportunities for the County's residents and visitors. In addition to providing significant passive recreation open space, it is expected that various community events currently taking place on approximately 30 acres of the Fairgrounds will be able to continue to host their events at the Fairgrounds. In addition, the Fairgrounds will continue to host the annual County Fair.

A Request for Qualifications and Expression of Interest (RFQ) was issued on June 21, 2016, to which 10 responses were received by the County. Each of the ten (10) Respondents was offered an opportunity to present their concept at a public meeting which was held on August 30, 2016; nine (9) Respondents made presentations. A summary of the responses received with links to their presentations is provided in **Appendix A** of this RFP and can be viewed at www.FairgroundsVision.net. It is not necessary to have participated in the RFQ process in order to respond to this RFP.

Summary of County Objectives

The County is seeking proposals from Respondents whose team members share a common vision for the Fairgrounds and whose business concepts for the site are synergistic and would contribute to the successful implementation of the vision. It is anticipated that Respondent(s) will consist of one or more business operators and a management entity who will manage the community events center, coordinate activities on the overall Fairgrounds property, and run the annual County Fair.

The successful Respondent(s) will (a) propose a cohesive plan for all or a substantial portion of the Fairgrounds; (b) demonstrate it has the qualifications and experience to successfully plan, design, develop, and manage the proposed concept through its full implementation; (c) have the financial capacity to pay a market-rate ground lease and invest in their own facilities; and (d) contribute financially in a meaningful way to the public uses envisioned for the Fairgrounds. The public uses include the open space and the community events center described in more detail in **Chapter 2**.

At the RFQ stage, the County was focused on identifying individual business operators whose business concepts are consistent with the vision for the Fairgrounds and providing Respondents with opportunities to hear other Respondents' concepts. At this RFP stage, the County is encouraging the formation of teams of business operators with synergistic uses and a shared vision for the full 150 acres (or a substantial portion of the full acreage) with realistic business and financial plans with whom the County could initiate negotiations. The Board has expressed a preference to see approximately half the remaining acreage, or approximately 60 acres, allocated to passive recreation and open space uses. This is not a fixed target and depending on the nature of the uses proposed, master planning and land use planning efforts may reflect more or less than 60 acres of public open space, as appropriate.

The County expects that encouraging the formation of teams at this stage will result in the most creative and innovative mix of land uses, the most logical distribution of uses, the most efficient use of shared spaces (parking, open space, etc.) and resources, the greatest amount of private investment, and the most compelling financial plans. The County believes this process will make the negotiation of lease agreements more efficient. However, the County reserves the option to negotiate with team leaders and individual business operators to fine tune the mix of uses and allocation of land among them to optimize the synergy on the site, if necessary, and to separately analyze the financial aspects of each proposal. If individual business operators are unable to form or join a team, the County will still accept proposals from these individual business operators. However, the County's preference is to receive proposals from teams and the evaluation criteria reflect this preference.

The Fairgrounds land is owned by the County, and the County does not intend to sell the land. The County intends to enter into one or more ground leases or other agreements with successful Respondents, the terms of which would be negotiated upon selection.

The 136 acres of contiguous land south of Tully Road is all within the County of Santa Clara's unincorporated area and is zoned for public use. The 14-acre parcel north of Tully Road, which is part of the 150-acre Fairgrounds, is not contiguous with the 136 acres south of Tully Road and lies within the incorporated area of the City of San Jose. It is currently zoned for commercial uses by the City of San Jose; however, the County's current operations are public purpose uses and are not subject to City zoning restrictions at this time. The County may elect to consider a fee sale of the 14-acre parcel across Tully Road, if it is deemed to be in the best interest of the County and the County's residents and/or if it would support successful implementation of the development and use of the remaining Fairgrounds property. Respondents may propose alternative, yet complementary, uses for the 14-acre parcel as part of a plan for the overall Fairgrounds.

It is the County Board of Supervisors' intention that the revenue generated through the lease of the Fairgrounds could be available to fund capital improvements and ongoing operations and maintenance related to the overall site. The County will not fund capital improvements for private business activities or subsidize the operations of individual private business interests.

The County is committed to supporting the development of the Fairgrounds as a home for the annual County Fair, an accessible and financially self-sustaining Community Events Center, and a destination for active and passive recreational opportunities. Overall concepts for the Fairgrounds and individual business operations should adhere to and be consistent with the Guiding Principles that were developed by the Board of Supervisors and which are presented below.

Guiding Principles

The County Board of Supervisors developed the following Guiding Principles to direct the development of community outreach, analytical studies, creation of options and concepts, and future planning for the Fairgrounds.

Transparency

The process of planning for the future of the Santa Clara County Fairgrounds shall be conducted with the maximum amount of visibility to the various stakeholders with interest in the Fairgrounds, to the neighbors surrounding the Fairgrounds, and to the general public.

Inclusion

Throughout the process of research and development of alternatives, every effort shall be made to assure that all interested parties have an opportunity to have their voices heard, and their opinions and advice included in the reporting and consideration of alternatives.

Heritage

Planning for the future of the Fairgrounds shall be done in a manner that is respectful of the history, traditions, and agricultural heritage of this cherished community asset, without compromising the future needs of the County.

Community

Consideration shall be given to existing community utilization of the Fairgrounds. Planning will include an analysis of programs and functions that may be impacted by changes in the design or utilization of parts of the Fairgrounds and what options there are through either alternative methods or locations for accommodating those functions.

Economic Growth

Plan the future uses of the Fairgrounds property in such a way as to create and support economic growth.

Maximization

The goal of the master-planning effort shall be to maximize the overall usefulness of the County Fairgrounds in meeting the mission of the County. The objective is to achieve the optimum balance between on-site services to the community, such as the County Fair and community event programming, and revenue generation to sustain high-priority County programs.

Open Space and Recreation

Any and all proposals for alternative uses for any portion of the Fairgrounds shall include a component of open space and recreational use, available to the adjoining neighborhoods and to Santa Clara County residents wherever they may reside.

Long Horizon

The County has a long-term focus on this treasured resource and seeks to preserve its ownership and control of the property. Therefore, long-term leasing of any portion of the Property not currently needed would be given preference over the sale of land.

Potential Restrictions on Use

RESPONDENTS ARE URGED TO FAMILIARIZE THEMSELVES WITH CITY AND COUNTY GENERAL PLANS, CITY OF SAN JOSE AND COUNTY ZONING ORDINANCES, ENTITLEMENT AND PERMITTING PROCESSES, CEQA APPROVAL PROCESS, AND ALL OTHER ORDINANCES, REGULATIONS AND RULES PERTAINING TO LAND USE, DEVELOPMENT, CONSTRUCTION AND/OR PROPOSED USE OF THE FACILITIES AND PROPERTY, INCLUDING ANY OTHER LOCAL, STATE OF CALIFORNIA OR FEDERAL LICENSING OR OTHER REQUIREMENTS.

As a County fair, relevant provisions of the California Codes apply. For example, the California Department of Food and Agriculture's ("CDFA") Division of Fairs and Expositions ("F&E") is

responsible for providing fiscal and policy oversight of the network of California fairgrounds and oversees use and provision of available funding and services to these fairgrounds.

Another agency with potential jurisdiction over fairground use is the California Emergency Management Agency (Cal EMA) which has a clearly defined role for coordinating requests for state resources during a State of Emergency in California, and during federally declared disasters, and assisting with mutual aid requests between Operational Areas (OA) when counties and cities have declared a Local Emergency. These duties are defined in the California Government Code (CGC) starting in Article 8550, in what is commonly referred to as the California Emergency Services Act (ESA) and in the California Disaster and Civil Defense Master Mutual Aid Agreement. Fairgrounds often serve Cal EMA emergency purposes.

In addition, Fairgrounds operations are currently subject to County Ordinance Code Sections A14-55; B3-125 and B13-82.

Other obligations or conditions of use may apply to any proposed development of the Fairgrounds in response to this RFP. It is the responsibility and obligation of each Respondent to conduct its/his/her own due diligence and reasonable inquiry as to any legal or other restrictions or potential limitations on use, development or activities on this 150-acre property, including an inquiry as to whether recorded or unrecorded encumbrances or other obligations restrict or limit any such proposed development. Respondents are urged to review and understand existing uses of the site, including current operations and relocation needs; the County's General Plan, including the Land Use Element; County Ordinance Codes and Resolutions (where applicable); City Ordinances and General Plan; City of San Jose Urban Growth Boundary (if applicable and County policies relating thereto, except where previously set aside by resolution of the County); and, other local, state and federal laws or agreements that may pertain to the use of this site for the Respondent's proposed development, including any relevant case law, memorandum of understanding or other agreements pertaining to the Fairgrounds property.

No representation is made by the County that the current facilities or property meet any or all of the current requirements for operation or development intended by any Respondent to this RFP. Respondents are solely responsible for making all applications and submittals, and paying all fees required to obtain all licenses, approvals and permits necessary for design, mitigation, planning, construction and operation of any development or operation at the Fairgrounds.

Description of the Solicitation Process

The first stage of the overall RFQ/RFP process was designed to achieve the following:

- 1) Identify end-users with business concepts that may be appropriate for the Fairgrounds;
- 2) Create an open and transparent opportunity for end-users to selectively partner with one another, if so desired, and to work together to develop an overall concept for the Fairgrounds, identifying land use synergies and opportunities to take advantage of shared assets and shared public spaces; and

The current stage of the RFQ/RFP process is designed to solicit proposals from single entities or teams of entities that offer a viable set of proposed uses and a management plan which either taken alone or in combination with others would represent a proposed plan for the full 150-acre

Fairgrounds (or a substantial portion of the Fairgrounds) that creates a regional destination for high-quality active and passive recreational opportunities for the families of and visitors to Santa Clara County.

Based on the RFP responses, the Respondent(s) that best meets the selection criteria will be selected to enter into negotiations regarding the business terms of a ground lease(s) for the development and use of some or all of the Fairgrounds, subject to the requirements to continue to host community events and the County Fair. The length of the lease(s) and other terms will be negotiated, taking into account the amount of investment being contributed; the acreage required; the value of the proposed uses to the public; the quality and useful life of the proposed improvements; and the contributions being made to infrastructure, open space/parkland, and other non-income producing assets. A lease template has been developed by the County (see **Appendix B**) and shall establish the baseline for all negotiations.

Phased Solicitation Process

Stage 1: Request for Qualifications

On June 21, 2016, the County issued an RFQ, casting broadly for end-users with appropriate business concepts who would be interested in investing in their business enterprises and operating on the site. The County was looking for qualifications and evidence of successful track records from experienced business operators rather than fully developed concepts for the full Fairgrounds acreage. The objective of the RFQ stage was to encourage interest and participation by a variety of potential end-users regardless of the size of the operation and the resources of the entities. Ten (10) submittals were received by the County.

Stage 2: Meeting August 30, 2016

At the publicly-noticed meeting, held on August 30, 2016, each Respondent had a 15 minute opportunity to showcase and present his/her business concept and make a case for why and how the business concept is consistent with the vision for the Fairgrounds. Of the ten (10) submittals received, all were invited to participate in the meeting, and nine (9) entities presented their concepts. While the meeting was publicly noticed and open to the public, only RFQ Respondents, or representatives of the Respondents, had the opportunity to present their concepts.

This meeting was intended as an opportunity to introduce Respondents to one another and share concepts and information to facilitate the assembly of teams for purposes of responding to this RFP. This opportunity was provided to maintain the transparency of the process and to allow Respondents to partner and assemble teams based on the quality of the concepts and potential synergies, so that the overall concepts are cohesive and efficient in terms of site planning, capital improvements, and operations.

Stage 3: Request for Proposals

The RFP is designed to solicit proposals from teams of businesses and/or other entities for the full 150-acres of Fairgrounds land or a substantial portion thereof. Teaming at the RFP stage is voluntary. Single-entity proposals will be accepted during the RFP stage, but proposals that represent a more comprehensive approach to use of the Fairgrounds will factor higher in the evaluation process. At the RFP stage, proposals will be evaluated according to specific criteria which are identified in **Chapter 3**.

At this RFP stage, and to the extent that a proposal represents a team of end-users, it will be up to the Respondents to select a "Lead Respondent." The Lead Respondent may reach out to additional end-users and include them on the team regardless of whether the end-user participated in the RFQ process. It will be up to the Lead Respondent to recommend end-users whose business concepts are compatible with the overall vision for the Fairgrounds. Individual business operators may participate in more than one team response. Lead Respondents may not impose an exclusivity requirement. Note that ALL Respondents (NOT just the Lead Respondent) are required to fill out and comply with the requirements of Attachment 3 (Non-Collusion Declaration) and the confidentiality provisions of Part 5 of this RFP, herein below.

Ideally, following receipt of responses to the RFP, the County would then select a preferred Respondent or Respondents and enter into negotiations.

Stage 4 (As Needed): County Refinement of Land Use Mix and Management Structure

The County retains the option to enter into negotiations with the lead Respondent and/or individual users to refine the mix and allocation of uses and the management structure to enhance synergies and joint uses on the site, as well as the operational efficiency of the proposed concept.

RFP Organization

The following sections of this RFP provide additional background and detail about the site, the opportunity that is being offered, the requirements and schedule for responding to this RFP, and the criteria by which proposals will be evaluated.

Supplemental information regarding the site's existing conditions and market context may be found in the Existing Conditions Report which was prepared in 2015 as part of the Fairgrounds Outreach and Vision process. The Existing Conditions Report, historical background, the RFQ, a summary of the RFQ responses, this RFP and other supporting documents are available on the Fairground project website: **www.fairgroundsvision.net**. Any future addenda will be posted to this website as well.

2. *THE VISION AND THE OPPORTUNITY*

Vision for the Fairgrounds

Consistent with the Guiding Principles established by the Board of Supervisors, and direction provided by the Board on September 29, 2015 and January 26, 2016, the vision for the Fairgrounds is to provide a regional destination comprised of high-quality active and passive recreational opportunities for families of and visitors to Santa Clara County. While the Board of Supervisors has not made any decisions with respect to the reuse potential of any of the existing facilities, it is expected that current community events will continue to be hosted at the Fairgrounds, utilizing all or some portion of existing facilities, or new facilities built and operated by the proposer, or both. The Fairgrounds is an important and accessible location for regional and community organizations to host events. In addition, the Fairgrounds will continue to be home to the County Fair each year, building on the County's agricultural heritage and tradition while looking to the future of the Silicon Valley innovation economy.

As described previously, the Fairgrounds comprise approximately 150 acres of land, consisting of approximately 136 acres of unincorporated land located at 344 Tully Road (APN 497-38-001) and an additional 14 acres across Tully Road, known as the North Parking Lot A (APN 477-21-089), which is incorporated within the City of San Jose.

The Opportunity

The opportunity described in this RFP includes the full 150 acres of land that comprise the Fairgrounds. The County would like to see a continuation of the existing Event Center function, currently primarily concentrated on approximately 30 acres adjacent to and south of Tully Road. The Board has expressed a preference to see approximately half the remaining acreage, or approximately 60 acres, allocated to passive recreation and open space uses. This is not a fixed target and depending on the nature of the uses proposed, a land use plan that shows more or less public open space may be appropriate. It is desired that the Event Center and the passive recreational areas serve as shared spaces, designed and programmed in a way to "flex" activities into common areas and open space to accommodate the County Fair and other large-scale, community events each year. Together, the Event Center and the passive recreation areas are referred to as shared spaces or shared assets and are considered important public benefits to be provided as part of this process.

While there are myriad ways for the site to be planned and programmed, the considerations described above leave approximately 60 acres for privately-sponsored commercial recreational uses. Preliminary site illustrations do not account for all of the parking that is likely to be required. Respondents to this RFP will need to identify a shared parking solution that meets the needs of the specific proposal. The shared assets described above may be a parking resource, especially for large events.

At this time, the County is soliciting responses from teams of one or more business entrepreneurs whose business enterprises represent appropriate uses for the site and whose uses collectively contribute to the overall vision for the Fairgrounds. Those proposals that can temporarily and fluidly expand and contract to use the shared spaces when available are invited

to propose concepts that take advantage of these shared assets. Proposals that offer privately constructed facilities that also can lend themselves to multiple uses that flex to be part of larger events are particularly attractive. In addition, each proposal must include a description of the entity who will be responsible for the programming and management of the Community Event Center, putting on the annual County Fair, and coordinating joint activities on the Fairgrounds site as a whole.

Current/Long-Standing Uses and Tenants

The Fairgrounds has been called home to several user groups that provide income to the FMC on a continuing basis, as follows:

- Farmers Market: Year-round on Wednesdays, Fridays and Sundays; average of 150 total stalls.
- Dog Training: Over 50 years of year-round, dog training classes held on a weekly basis.
- Santa Clara Paintball and Laser Tag: Utilizes 10 acres at the Fairgrounds.
- 408 MX: Regular motocross and BMX practice and racing events.
- Brashers San Jose Auto Auction: Held year-round, every Thursday at the Fairgrounds.
- RV and Boat Storage.
- Temporary staging for area construction projects.
- RV Park. Respondents are hereby given notice that an RV Park with occupants exists at the Fairgrounds. With respect to some or all of these occupants, there may or may not be obligations to provide notice, relocation assistance and/or funding to address relocation needs.
- Off-Track Betting.

For information about the financials of FMC and the revenues associated with the user groups identified above, please see the Existing Conditions Report. The Existing Conditions Report, historical background, the RFQ, a summary of the RFQ responses, this RFP, and other supporting documents are available on the Fairground project website: **www.fairgroundsvision.net**.

Site Considerations

During the visioning work conducted over the last year, SWA Group prepared a sample rendering of a potential new infrastructure (roadway) configuration and an illustration of how passive and active recreation uses might fit on the site. Respondents to the RFP are not bound by this concept. However, the County would look favorably on proposals that achieve similar results.

This sample rendering, **Figure 1** below, shows a curving "Esplanade Drive" that could serve as an extension of 7th Street to Umbarger, which can be used both as a main access roadway and closed off for major events such as the County Fair, festivals, parades or races. In this rendering, the 30-acre Event Center lies east of Esplanade Drive. The Off-Track Betting facility is located on the west side of the new proposed roadway, thus providing separation from the community

events at the Event Center. This alternative provides direct access into the Fairgrounds from a signalized intersection of a north/south street connecting the Fairgrounds to Downtown San Jose. It can improve traffic flow and help mitigate the current flaws at that intersection. The curving arc of the Esplanade through the Fairgrounds serves as a design amenity emphasizing the casual recreational focus of the Fairgrounds. The connection to 7th Street also provides the opportunity for a more dramatic sense of arrival and placemaking.

Figure 1 Preliminary Site Plan: Esplanade Drive



Source: SWA Group

Incidental Commercial Use

Some level of commercial use, complementary to active and passive recreation, is often included within projects of this type to help pay for capital investment and operating expenses, and to provide services and amenities to the users of the recreational facilities. Ancillary commercial uses that complement the recreation components may be considered. In addition, the 14-acre parking lot located across Tully is a possible candidate for incidental commercial uses, such as a hotel, restaurants, snack bars, recreation retail, etc.

At the RFP stage, RFP Respondents may include ancillary commercial uses in their proposal as long as the use is incidental to and not inconsistent with the community and recreation uses proposed on site. All incidental commercial use proposals will be evaluated on a case-by-case basis.

Preliminary Business Terms

Preliminary business terms are described below and should be reflected in the Financial Plans submitted as part of responses to this RFP (see **Chapter 3** for submittal requirements).

- 1. Lease Payments:** RFP Respondents should expect to negotiate certain ground lease terms with the County consistent with the County's lease template (see **Appendix B**), which would take into account the amount of investment being contributed, the acreage required, the public value being provided, the quality and useful life of the proposed improvements, and the contributions being made to infrastructure, open space, parkland, and other non-income producing assets. The County would consider a ground lease for all or a substantial portion of the 150 acres, depending on the type and scope of proposals received as part of this RFP process. A decision on whether to enter into a single lease for the entire site or a substantial portion of it, or to enter into multiple leases with individual business enterprises, would be made at a later date depending on the nature of the proposals received.
- 2. Common Area Maintenance (CAM):** All RFP Respondents should be prepared to participate in funding the maintenance of the common areas of the Fairgrounds, similar to a Business Improvement District (BID).
- 3. Capital Investment:** At a minimum, each Respondent should expect to fund its own capital costs and potentially share in contributing capital to improve shared spaces, such as the Event Center and the public open space. The amount of capital required will vary depending on the use proposed, and the amount of investment would have an impact on the terms of the lease. The County would allow third party financing, but will not subordinate its fee interest in the land.
- 4. Use of Revenue:** It is the County Board of Supervisors' intention that the revenue generated from the Fairgrounds could fund capital improvements and ongoing operations and maintenance related to the overall site, particularly the Community Events Center, the RV Park, and the public open space. The County will not fund capital improvements for private business activities or subsidize the operations of individual private business interests.

3. RFP SUBMISSION REQUIREMENTS AND EVALUATION PROCESS AND SCHEDULE

RFP Submission Requirements

The responses should reflect and propose a means to achieve the purpose, objectives and vision set out in this RFP herein above. Respondents shall submit one reproducible original, ten (10) copies bound or in binders, and one electronic copy submitted on a CD/DVD or flash drive of their Proposal. Proposals must be submitted by mail or hand delivered. The responses should be organized according to the following outline in order to facilitate a thorough and fair review and evaluation of the submittals.

A. Transmittal Letter

Provide a transmittal letter that includes a summary overview of your team's vision and concept for the Fairgrounds, anticipated approach to the opportunity, and your team's experience and qualifications. The transmittal letter is an opportunity to make a compelling case for your vision and proposed concept and financial proposal. The transmittal letter should identify the primary contact person, or the Lead Respondent, for the response.

B. Land Use Concept and Strategy

Describe in a detailed narrative (with graphics as appropriate) your team's concept and strategy for the Fairgrounds, focusing on how your concept is consistent with the County's Guiding Principles and consistent with the vision for the Fairgrounds.

In addition to the narrative requested above, the concept should include (but need not be limited to) the following:

- 1. Schematic Plan.** A schematic development plan that clearly indicates the following:
 - Proposed location and size of uses and structures.
 - Existing structures that are to remain and/or structures that are to be demolished or replaced.
 - The open space system.
 - The roadway and parking system.
 - Shared and flex spaces.
- 2. Support Tables.** The distribution of uses should be keyed to a table (or multiple tables) which quantifies the mix and distribution of uses in acres and/or square feet. If phasing is contemplated, the support tables should demonstrate the proposed phasing.
- 3. Graphics.** Graphics may include perspectives, elevations, renderings, graphics, and/or illustrative images with supporting text which describe structures and building types, initial building character, streetscapes, pedestrian perspectives, siting and key identity elements, amenities, or other features. (These elements should be keyed to the development plan.)

C. Financial Proposal

In order to address the County's desire to establish a reliable, long-term and sustainable revenue stream from the use of the Fairgrounds, the Proposal must provide as much detail as possible on the financial aspects of the Respondent's concept.

- 1. Narrative Description.** In narrative form, please describe key financial aspects of the financial proposal, in a manner consistent with the proposed concept and strategy, and which should include:
 - *Ground Lease.* The response should acknowledge that the County, as lessor, intends to enter into one or more ground lease(s) with one or more entities, as tenants, and the Respondent(s) should indicate a willingness to enter into such a ground lease with the County. Please indicate that the team as a whole or the individual end-users have the financial capacity to pay a market-rate ground lease. Also indicate the term of each lease that end users believe is necessary to support the financing of necessary private improvements.
 - *Development Funding Strategy.* The response should indicate affirmatively that each Respondent is willing and able to fund its own capital improvements. Provide an explanation of the capital investment and financial structure of the project, including potential sources of equity and/or debt financing. Include a breakdown of contributions from each component business entity.
- 2. Financial Statements.** Include recent financial statements for each of the business entities participating in the submittal. The evaluation committee will be looking for information to help assess the ability of the Respondent to fund and/or finance the capital improvements and contributions to open space and the Events Center. Financial statements will be reviewed as part of the evaluation process and vetted during negotiations with the Selected Respondent(s).
- 3. Pro Forma.** Using the template provided in **Appendix C** (four separate worksheets), prepare a forecast of annual attendance, summary of sources and uses for your business-specific and sitewide capital improvements, and the revenues and expenses of the Respondent's concept in the form of an annual pro forma Statement of Cash Flows for the first 20 years of the plan. In addition, the template requests a summary of revenues to the County, including ground lease revenue and common area maintenance.

The purpose of the attendance estimates and pro forma is to understand the economic impact, the financial structure and economics of each Respondent's concept, the role played by each of its component entities, and to provide a starting point for negotiations with the selected Respondent(s). It is understood that the pro forma will become more precise as the plan and the financial structures are refined based on post-selection due diligence and negotiations. Nevertheless, the credibility and financial outcomes of the pro forma will be an important selection criterion, and should present a viable and reasonable forecast of cost and revenues, along with risks and benefits.

The pro forma template is designed to clearly document assumptions regarding operating revenues, upfront capital investments and public benefits, ground lease payments, CAM payments, and other operating expenses. A public workshop to respond to questions about the pro forma template will be held and one-on-one assistance explaining the desired information will be offered.

By responding to this RFP, each Respondent hereby acknowledges, agrees and understands that the pro forma information (Exhibit C) and the proposed rent and compensation information provided by each Respondent (Attachment 8), although important, will not be the sole basis for County's selection of a successful response.

D. Management and Operations Plan

The management and operations plan should identify the composition and organizational structure of the Respondent(s). In addition, Respondents should propose a management structure for the site as a whole that will support the implementation and operation of the mix of uses and end-users they are proposing. If the current FMC is proposed to be the management entity, any changes recommended to its current structure, responsibilities, and funding should be specified. If another management entity is proposed, its composition, responsibilities, and funding should be clearly described.

Ultimately, it will be up to the County to determine whether to adopt this final structure, and whether in whole or in part, and to negotiate the terms of agreements needed to implement it, but RFP Respondents should set forth their best thinking on the framework for implementation.

The management and operations plan should include, at a minimum, the following elements.

1. Management Plan

- The management plan should describe the management structure and how the overall management of the Fairgrounds will be organized. From the Respondent's perspective, describe the optimal County/management entity/business operator relationship and the nature of County participation sought by the Respondent in connection with the development and use of the Fairgrounds and how that would contribute to the success of the project. Questions for consideration include:
 - Is there one master lessee, or is it proposed that the County would have individual leases with multiple tenants?
 - What entity would have management responsibility for the overall continuing quality of the Fairgrounds?
 - In your proposal, what entity would have responsibility for the Annual County Fair?
 - How would the management of the Community Events Center, maintenance of common areas, and other management responsibilities be funded?

- Identify each participating business entity and describe its organizational status including company name, legal status, and company address.
- Provide an organizational chart showing the organizational structure, including the reporting and operational relationships between individual end-users.

2. Operations

- Estimated annual attendance volume and daily peaks.
- Operations costs should be reflected in the project pro forma cash flow, along with identified revenue sources.

3. Community Relations and Outreach

- The management plan should specify how ongoing interaction with the FMC Board, the County, the community and other stakeholders would be accomplished.
- The management plan should include a description of how the needs of local non-profit community groups for affordable space will be handled when a use is requested for open space and/or parts of the community center. It should specifically address what below-market accommodation will be made for non-profit local community groups.

4. Key Personnel

- Identify the key individuals with responsibility for executing the business concept and ensuring compatibility with the vision for the Fairgrounds. Identify specific personnel who would be responsible for the day-to-day management of each aspect of the project. In narrative form, please demonstrate the team's experience developing and operating relevant business concepts and/or managing similar organizations and entities. Also please describe the previous experience of the Lead Respondent its and consultants and development team members working together. The County will be looking for relevant experience of key personnel with respect to the development and operation of undertakings of similar use and scale as envisioned at the Fairgrounds both in terms of their individual experience and their project experience working together, especially where the Respondent held a financial interest throughout the duration of the project. Personal CVs or resumes should be included.
- Using Attachment 5, please provide references who can attest to the Respondent's capacity to contribute to the development and operation of the Fairgrounds. Include the reference's name, title, company, relationship to the Respondent, address, e-mail address, and telephone number. If references were previously provided as part of the RFQ response, those same references may be included in the RFP response.

E. Supplemental Questions

1. Please describe how the team's concept meets the basic tenets of sustainable planning and smart growth (e.g., energy conservation, reuse and recycling of building materials, preservation and expansion of open-space, mix of land uses, multi-modal transportation planning, pedestrian friendly, etc.).

2. Please describe in as much detail as possible the community benefits offered by your proposed plan.

Evaluation Criteria

With the goal of achieving the purpose, objectives and vision set out in this RFP herein above, the proposals submitted by each of the Respondents will be evaluated according to the criteria stated below:

A. Transmittal Letter

1. The response meets Part A of the submittal requirements.

B. Concept and Strategy

1. The response meets Part B of the submittal requirements.
2. The response demonstrates an understanding of the opportunity and describes a realistic, feasible and sound land use plan and strategy.
3. The response proposes a quality and thoughtful concept for the entire Fairgrounds (or a substantial portion of it), and reflects familiarity with the local and regional context.
4. The response addresses the public benefits sought through this process and clearly describes the vision for the Event Center, the RV Park, and the public open space, both in terms of quantity (e.g., acreage or square footage) and level and quality of improvements envisioned.

C. Financial Proposal

1. The response meets Part C of the submittal requirements
2. The response provides a detailed and realistic financial strategy, and reflects an overall capacity to pay a market rate ground lease, fund each business' capital improvements, contribute financially to the capital needs of the overall Fairgrounds.
3. The response demonstrates evidence of capacity to provide necessary capital for this project. Disclosure of current uncommitted equity capital on hand, lines of credit available, and estimates of how much debt and equity could be made available for this project.
4. The response provides a complete project financial pro forma showing all revenues and costs on a year-by-year basis, sources and uses of financing, lease revenue to the County, and other developer return metrics as shown in the pro forma template (see **Appendix C**).

D. Management and Operations Plan

1. The response meets Part D of the submittal requirements.
2. The response describes a sound organizational structure and a clear decision making process among team members.

3. The response references the specific experience and expertise with similar projects of key individuals, demonstrates a clear and compelling track-record, and describes the firmness of the commitment of key individuals.
4. The response describes a thoughtful public/community outreach/interaction strategy.

E. Supplemental Questions

The response provides thoughtful answers to the supplemental questions posed in Part E of the submittal requirements.

RFP Schedule

Step 1: Issue RFP

Upon approval by the Board of Supervisors, the County issued the RFP on December 13, 2016. Respondents will have until March 30, 2017 to respond. Any changes to the deadline may be authorized by the County Executive as delegated by the Board.

Step 2: Deadline to Submit Questions and Requests for Clarification of the RFP

Written questions or requests for clarification regarding the opportunity generally, and/or the RFP process and requirements specifically, may be submitted by email on or before January 27, 2017, Questions should be emailed to:

Mr. Glen Williams
Asset Development Manager
Office of the County Executive
County of Santa Clara
Email: glen.williams@ceo.sccgov.org

The County will issue addenda as appropriate and post responses to the Fairgrounds website. The County will review all written questions and requests for clarification and will endeavor to respond within one week after the above deadline. The County may decline to answer any inquiries at its sole discretion. Addenda and other information will be provided to Respondents by email only at the email address provided by Respondent in Attachment 1. Upon receipt of addenda, each Respondent must return an acknowledgement of receipt of Addenda in each instance (Attachment 9).

Step 3: Cash Flow Pro Forma Workshop and Assistance

A workshop for potential RFP Respondents to explain the submittal requirements related to each team's Financial Proposal (Section C above), particularly preparation of the pro forma will be held. Following an overview of the submittal requirements, one-on-one technical assistance (up to one hour per team) will be offered on an as-needed basis. The date for the workshop is January 19, 2017. Details of the workshop, including time and location will be provided to all registrants who have submitted Attachment 1.

Step 4: Deadline to Submit RFP Responses

The deadline for responses to the RFP is 9:00 AM, March 30, 2017. One reproducible original and ten (10) bound copies, plus an electronic pdf on a CD/DVD or flash drive, will need to be hand-delivered or received at the following address in a sealed envelope:

Glen Williams
Asset Development Manager
Office of the County Executive
County of Santa Clara
70 West Hedding Street, East Wing, 11th Floor
San Jose, CA 95110

Responses that are received after the designated time or by facsimile or electronically will not be accepted.

Bids will be open on March 30, 2017 at 9:00 AM, 11th Floor, East Wing, 70 W. Hedding Street, San Jose, California 95110.

Oral Bids: Oral Bids will be accepted at 9:00 AM on the same date and location as the opening of sealed bids.

Although oral bids will be received, any and all documentation supportive of an oral bid must also accompany the oral bid at the same time, including all signed RFP attachments, exhibits and written responses required of sealed bid Respondents. **In addition, at a minimum, an oral bid, in order to be considered, must offer a base rent and percentage rent (Attachment 8) value that is at least five (5) percent higher than the highest base rent and percentage rent value of written qualified responses (Attachment 8) before such oral bid can be reviewed for further consideration consistent with the RFP terms contained herein.**

Modification to any other term and/or conditions in the RFP forms and materials will not be accepted from anyone, including those making oral bids.

No determination on successful Respondents will be made at bid opening. County will collect all bids and initiate the review process.

Step 5: Evaluation of Responses

All proposals received by the bid deadline will be reviewed first for initial compliance with the submittal requirements. Those that are in compliance will be subjected to a systematic review based on the criteria described in this RFP. The proposals of all Respondents will be ranked by a County-selected Review Panel in accordance with the criteria set out in this RFP.

Step 6: Respondent Interviews and Presentations

The highest ranked Respondents may be interviewed or may be requested to make a presentation, or a series of presentations, to the County's Review Panel. During the presentations and/or interviews, the Respondents will be expected to present the design, development, technical and financial aspects of their proposals. Respondents selected for

interviews will have the opportunity to clarify the proposals contained in the RFP response and advise the Review Panel of any pertinent new information.

Step 7: Notification of Selection of Preferred Respondent(s) for Negotiations of Lease(s)

Upon completion of the interviews and presentations, one or more of the Respondents will be designated as the selected Respondent(s). The County will notify the selected Respondent(s).

Step 8: Negotiations and (If Necessary) County Refinement of Proposed Uses and Management Structure

The County may enter into negotiations with the selected Respondent(s) to refine the mix and allocation of uses, and the proposed management structure, to enhance overall synergies on the site and the effectiveness of the management entity.

The County will then prepare the ground lease document in substantially the same form and content as the lease attached as Attachment B (and related agreements, if any). The lease and all other agreements are subject to review and approval by County Council.

If a selected Respondent (and affiliates, if any) fails, for any or no reason, to execute the lease (and related agreements, if any) within the time determined for negotiation of the lease (as solely determined by County), the County may elect to terminate the selection process with that Respondent and negotiate the same terms and conditions with an alternative Respondent or it may in its sole and absolute discretion elect to terminate the selection process and this RFP, re-issue the RFP, or issue a new RFP.

Topics of Negotiation

Starting with County's ground lease template, the business terms of the ground lease and associated documents will be negotiated with the selected Respondent(s). Terms to be negotiated may include, among others, the following:

1. Base lease rates, participation, in-kind provision of facilities, and other considerations for the land.
2. Infrastructure needs, phasing, and financing.
3. Respondent and County roles and obligations.
4. Key elements of the site plan and program.
5. Performance requirements and milestones.
6. Additional agreements and exhibits.

The County retains the option to suggest changes in the composition of end users (e.g., Fairgrounds visitors, occupants or activities) included in the selected Respondent's or Respondents' proposal(s), if necessary, to achieve a more viable outcome consistent with the guiding principles adopted by the Board of Supervisors, and/or in the event that acceptable terms cannot be reached with any particular user that is part of the original proposal.

Step 9: Issue of Notice of Intent to Award

Upon completion of negotiations with the selected Respondent(s), the Director of Asset & Economic Development will issue to all other Respondents a Notice of Intent to Award, by

electronic mail (email) to the email address provided by the Respondents in Attachment 1 and by posting on the County electronic procurement software BidSync. The protest process and deadlines are outlined herein below.

Step 10: Completion of Negotiations

Upon completion of negotiations, and at the completion of the protest process and deadlines outlined below (if there are protests), the selected Respondent(s) (and affiliates, if any) must sign the negotiated ground lease (and related agreements, if any) before the lease is presented to the Santa Clara County Board of Supervisors for review and approval. Until approved and executed by the Board of Supervisors, the lease is not binding on the County.

Step 11: Approval of Ground Lease

The ground lease (and related agreements, if any), after completion of negotiations and execution by the selected Respondent(s), will be presented to the Board of Supervisor at a noticed public hearing for determination as to whether or not to approve said lease.

4. PROTEST PROCESS

Respondents whose proposals were not selected may file a written protest ("Protesters") no later than 5 business days after the Notice of Intent to Award has been posted on the County electronic procurement software BidSync. On the same date that the Notice of Intent to Award is issued, all proposals (with confidential provisions claimed by proposers redacted, at County's discretion) will be made available for inspection and copying at the Office of the County Executive, 70 W. Hedding Street, 11th Floor, San Jose, California 95110, or will be sent by electronic means upon a Respondent's request. Any protests received after this time will not be considered.

Filing a Protest. The protest of the award must be in writing. The following must be written on the cover of the protest: "Protest Relating to RFP for Fairgrounds Development." The written protest must be emailed, faxed or mailed to the following address:

Bruce Knopf
Director, Asset & Economic Development
Office of the County Executive
70 W. Hedding Street, 11th Floor, San Jose, California 95110
Email: bruce.knopf@ceo.sccgov.org

Contents of Protest: The written protest must contain the following information: (1) the name, street address, electronic mail address, telephone and facsimile number of the Protester; (2) signature of the Protester or its legally authorized representative; (3) grounds for the protest; (4) copies of any relevant documents; (5) the form of Remedy requested; and (6) the method by which the Protester would like to receive the Reviewing Officer's written decision. The written protest must clearly state the grounds for the protest. Protests should be concise and logically arranged. Protests may not be more than two pages in length. The Remedies available are: (1) request to re-issue (with notice) the RFP, (2) request to re-evaluate the qualifications of all Respondents (with or without the same evaluation team members), or (3) request to issue a new RFP (with notice). After submitting the written protest, a Protester may not present any additional grounds for protest, argument or narrative, including upon appeal.

Grounds for Protest. Protests shall be based only on one or more of the following grounds:

- The Protester believes the County failed in a material and substantial way to follow the RFP's procedures and adhere to requirements set forth in this RFP or any County-issued addendum thereto.
- The Protester believes there was material misconduct or impropriety by County officials or evaluation team members so as to substantially impact the outcome of the decision to award.
- The Protester believes there was abuse of process or abuse of discretion by County officials or evaluation team members so as to materially and substantially impact the outcome of the decision to award.

Protest Resolution. The Director of Asset and Economic Development ("Director") , or his or her designee, may sustain the protest, or must forward the protest to the Reviewing Officer within 2 business days, along with the RFP, the consensus scoring and the Notice of Intent to Award. The "Reviewing Officer" is Jeff Draper, Director, Facilities and Fleet Department. The Director is required to provide written notification to the Protester that the protest is being forwarded to the Reviewing Officer. The Director has five business days from the date of the written notification issued by the Director to forward any documents and grounds to reject the protest to the Reviewing Officer (with a copy to the Protester) that the Director believes is relevant to the review of the protest. The Protester has three business days from the Protester's receipt of the Director's additional documentation to forward additional documents that the Protester deems supportive of its original grounds for protest or in support of the reasons originally presented for seeking the Remedy proposed. Protester may not present any additional grounds for protest, argument or narrative.

The Reviewing Officer shall review the protest to determine whether the grounds for the protest have merit. The Reviewing Officer shall consider only the documents and information submitted by the Protester and the Director for grounds for protest and Remedy sought, and grounds to reject the protest and Remedy sought.

The Reviewing Officer will issue a written decision on a timely written protest within ten business days of receiving the protest materials from the Director; however, the time for decision may be extended by the Reviewing Officer. The Reviewing Officer will issue the written decision to the Protester and the Director. The decision of the Reviewing Officer shall be final.

Remedies: If the Reviewing Officer sustains a protest in whole or in part, the Reviewing Officer shall refer the matter back to the Director for redress consistent with the Reviewing Officer's decision. If the Reviewing Officer rejects the protest, the decision of the Reviewing Officer, as well as any recommendations from the Director, will be presented to the Board of Supervisors for final determination. Only documentation and testimony in support of the Protester's original grounds for protest and Remedy may be presented to the Board of Supervisors at this stage in the protest process.

Document and information requests may be addressed to:

Glen Williams
Asset Development Manager
Office of the County Executive
County of Santa Clara
70 West Hedding Street, 11th Floor, San Jose, California 95110
Email: glen.williams@ceo.sccgov.org

5. GENERAL TERMS, CONDITIONS AND LIMITATIONS

General Caveat

All concepts and plans depicted in this RFP are conceptual and subject to change.

Revisions to RFP

The County may modify this RFP solicitation at any time by issuance of an addendum or addenda (see Attachment 9) to Respondents who have filled out and provided County the Attachment 1. The County may change the dates and the schedule contained in this RFP solicitation in the County's sole discretion.

Cancellation of Solicitation and Rejection of Offers

The County may, when deemed in the best interest of the County, cancel this solicitation and reject the responses submitted, in whole or in part, seek new responses, or require amendments or modifications to the RFP or any of the responses, with no liability whatsoever, all in the County's sole discretion.

Ownership of Submittals

Any and all information submitted in response to this RFP will be the property of the County and will not be returned to any Respondent or to any third party. The County shall have the right to use and produce any documents and information submitted in response to this RFP, including in response to a request made under the California Public Records Act.

Each Respondent submitting a response to this RFP agrees that the preparation of all materials for submittal to the County of Santa Clara are at the Respondent's sole cost and expense and the County of Santa Clara shall not, under any circumstances, be responsible for any costs or expenses incurred by a Respondent in that regard.

Notwithstanding the foregoing, the County may, at the County's discretion, produce in response to a CPRA request a redacted version of the Respondent's documents and materials if Respondent shall: (1) submit a redacted extra copy of its documents and materials with its response to this RFP (on or before the Bid Due Date) such that only its confidential information shall not be visible and (2) execute an indemnity agreement in favor of the County, in a form acceptable to the County in its sole and absolute discretion.

Incurred Expenses

Any costs or expenses incurred by the Respondent in preparing and submitting a response to this RFP solicitation will be the sole responsibility of the Respondent. The County assumes no risk and shall not be responsible for any costs or expenses incurred by Respondents in connection with this RFP process.

Confidentiality of Documents

Prior to County's opening of the RFP responses, the contents of any response shall not be disclosed to parties other than the County and its consultant team. All information and documents submitted to County are subject to the California Public Records Act and other applicable laws in determining whether they are subject to public disclosure.

Use of Electronic Versions of the RFP

This RFP is being made available by electronic means. By responding to the RFP, each Respondent hereby acknowledges and agrees to acceptance of this RFP by electronic means, and each Respondent acknowledges and accepts full responsibility to insure that no changes are made to the RFP by it or any third parties. In the event of conflict between a version of the RFP in the Respondent's possession and the version maintained by the Office of the County Executive's Director of Asset & Economic Development, the version maintained by the Office of the County Executive's Director of Asset & Economic Development shall govern.

Nondiscrimination

The County supports the principles of equal opportunity, will not discriminate, and will not allow or permit discrimination on the basis of gender, race, color, national origin, religion, sexual orientation, age, or disability in this solicitation process. The County encourages the participation of small, women-owned, minority-owned, and locally-based businesses.

Wage Theft Prevention Policy

The County of Santa Clara does not tolerate wage theft. Accordingly, Santa Clara County Board of Supervisors' Policy Manual, Section 5.5.5.4, includes the following:

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

Other Miscellaneous

1. The County assumes no obligations, responsibilities or liabilities to reimburse any of the costs incurred by Respondents considering a response to and/or responding to this RFP. All such costs shall be borne solely by each Respondent and its team. The RFP does not commit the County to award, nor does it commit the County to pay any cost or expense incurred in the submission of any bid, materials, studies, responses, or in making necessary studies or designs for the preparation thereof, nor lease, procure or contract for services, supplies or use of County property. Furthermore, no reimbursable cost may be incurred in anticipation of an award of a lease or contract.
2. No Contract. This RFP and the selection process shall in no way be deemed to create a binding contract or agreement of any kind between the County of Santa Clara and any Respondent submitting a proposal, nor shall any information herein be construed as a representation or warranty on behalf of the County or as a statement on which the Respondent may justifiably rely in executing any lease or agreement with the County. All legal rights and obligations between any successful Respondent and the County will come into existence if and only if a lease or other agreement is approved by the Santa Clara County Board of Supervisors and the same is fully executed by all the parties. The legal rights and obligations of each party shall at that time be only those rights and obligations which are set forth in such lease or agreement.
3. Prohibition of Gifts. County of Santa Clara officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms or corporations either engaged in business with the County of Santa Clara or proposing to do business with the County of Santa Clara. The offering of any gift may be grounds for disqualification. To avoid even the appearance of impropriety, Respondents submitting a proposal shall not offer any gifts or souvenirs, even of minimal value, to County of Santa Clara officers, employees or advisors.
4. The County reserves the right to do the following at any time:
 - Cancel, withdraw, postpone or extend this RFP in whole or in part at any time prior to execution of a transaction by the County without the County incurring any obligations or liabilities. Reject any or all bid(s), without indicating any reason for such rejection.
 - Waive or correct any minor or inadvertent defect, irregularity or technical error in a bid, in the RFP, or the RFP process, or as part of or before any subsequent contract negotiation.
 - Request that any or all Respondents supplement or modify all or certain aspects of their bid or other documents or materials submitted.
 - In County's sole and absolute discretion, with or without reason, terminate the RFP, and/or at its option, issue a new RFP without liability or obligation of the County.
 - Modify the selection process, the specifications or requirements, or the contents or format of the bids, the RFP or the RFP process.

- Extend a deadline specified in this RFP, including deadlines for accepting bids.
 - Negotiate with any or none of the Respondents.
 - Modify in the final agreement any terms and/or conditions described in this RFP.
 - Terminate failed negotiations with a Respondent or Respondents without the County incurring liability, and negotiate with other Respondents.
 - Disqualify any Respondent on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the bid or other data available to the County.
 - Eliminate, reject, or disqualify a bid of any Respondent who fails to submit a responsive bid as determined solely by the County in its absolute discretion.
5. Neither you, your organization nor any of your representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to a bid, County's selection of a bid, this RFP or these RFP procedures.
6. All documents, information and records provided to or made available to County in response to the RFP, or otherwise provided, become the sole and exclusive property of the County. The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If proprietary information is contained in documents submitted to County, and the submitter expressly claims that such information falls within one or more CPRA exemptions, the submitter must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the confidential information. In the event of a request for such information, the County will make reasonable efforts to provide notice to submitter prior to such disclosure if the submitter has provided County with current contact information. If the submitter contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it/he/she is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If the submitter fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure.

Each submitter of information or documents agrees that it shall defend, indemnify and hold County harmless for, from and against each and every loss, damage (whether general, punitive or otherwise), liability, action, administrative proceedings, claim, demand, lawsuit, cause of action, judgment, settlement amount, mediation cost, attorneys' fees, court cost, , litigation, injury, allegation and penalties (the "CPRA Claims") that may or do result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by submitter or any of the submitter's representatives.

Any and all proposed development at the Fairgrounds may constitute a "project" under the California Environmental Quality Act ("CEQA"), in which case, the tenant shall pay for all costs associated with County's compliance with and liability for CEQA obligations. In addition, if any third party commences or threatens administrative appeal or litigation against County objecting

to or otherwise challenging any action or omission under CEQA by County with respect to the Fairgrounds, the tenant(s) shall indemnify, hold harmless and defend County (with defense counsel selected by County) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such actual or threatened litigation or administrative challenge in relation to tenant's proposed use, project or development at or near the Fairgrounds.

APPENDIX A:
Summary of RFQ Responses

Fairgrounds RFQ Respondent	
Criterion	408MX
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To assist in widening the sphere of recreational activity and services that empower and strengthen the South Bay community
Proposed Concept (RFQ Evaluation Criteria #1)	Continuation and improvement of motocross facilities and services
Desired Role	End-user of existing 408MX business
Acreage Requirements	10+ acres (currently use 10 acres)
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Utilize a slightly larger area to create a park-like atmosphere where families can enjoy the track, entertainment, socialize with friends, have a barbecue and watch the amazing athletes compete and practice their skills
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Currently lease land at SCCFGs & work collaboratively with FMC to share parking and host large events
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	Kept up all obligations on lease and maintenance of facility at SCCFGs for 8 years
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Annual lease at SCCFGs
Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Not stated
Relevant Experience (RFQ Evaluation Criteria #5)	Tenant at SCCFGs for 8 years

Experience of Key Individuals (RFQ Evaluation Criteria #6)	Owner has 35 years experience in business management, estimating, construction, asphalt, excavation and motocross; No resumes included
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Statement of ability to manage and pay for improvements; Currently generate revenue from parking and camping fees that go to FMC
References	FMC; SCCFGs Sales and Event Department Supervisor; 2 x private companies

Fairgrounds RFQ Respondent	
Criterion	Borelli Investment Company / San Jose Flea Market
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To assist in revitalizing an extraordinary space that can serve as a priceless oasis near the center of the nation's tenth largest city
Proposed Concept (RFQ Evaluation Criteria #1)	<p>Option 1: Public Market @ The Faire - a unique, upscale, Old World European-style open-air market and community gathering place; Work closely with the County to devise a plan to renovate the existing event center (6 structures - including pavilion and exposition halls) to use them for the Market as well as other events on the FGs; Operate 7 days per week, 365 days per year (preferred)</p> <p>Option 2: Manage the annual County Fair, community events and the event center</p> <p>Option 3: Master operator/ developer of SCCFGs including Public Market, managing annual County Fair and other events, creating and operating recreational fields, constructing playgrounds, and overseeing an open space greenbelt for the community</p>
Desired Role	<p>Option 1: End-user of open-air market (preferred)</p> <p>Option 2: Operate open-air market and manage community event facility</p> <p>Option 3: Collaborate closely with County to serve as master developer and operator of SCCFGs</p>
Acreage Requirements	<p>Options 1 and 2: 50 acres</p> <p>Option 3: Entire property</p>
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Focused on a major refresh of the existing event center; Create a vibrant, signature, community-gathering place that will serve as "a regional destination comprised of high-quality active and passive recreational opportunities for families of and visitors to Santa Clara County"
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Not specifically stated (some team members have public sector experience)

<p>Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)</p>	<p>The Flea Market currently recruits, trains, manages and incentivizes a staff of 400 full- and part-time employees; Proposed Market will have a permanent staff of 7 employees</p>
<p>Experience with Ground Leases (RFQ Evaluation Criteria #4)</p>	<p>Not Stated</p>
<p>Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)</p>	<p>Yes - Option 1: for land and parking near the Tully Road entrance, including the existing event center (6 structures including the pavilion and exposition halls); Option 2: Joint master lease with sub-leases for the Market and the recreation uses</p>
<p>Relevant Experience (RFQ Evaluation Criteria #5)</p>	<p>Project team includes The Flea Market (Has operated The Flea Market in San Jose for 57 years; Currently developing Market Park San Jose with Borelli Investment; Experience in hosting special events in open-air market environment); Borelli Investment Company (real estate developer/ project manager and broker); Kenneth Rodrigues & Partners (architects); The Schoennauer Company (land use consultant and lobbyist), HMH Engineers (civil engineers), and NorthMarq Capital (capital advisor and financing specialist)</p>
<p>Experience of Key Individuals (RFQ Evaluation Criteria #6)</p>	<p>Owner and operator of The Flea Market for 41 years, along with Bay 101 Casino and a number of other private businesses.</p>
<p>Capacity to Provide Capital (RFQ Evaluation Criteria #7)</p>	<p>The Flea Market (team lead) will invest private capital to improve the permanent structures and other features with the Market's footprint</p>
<p>References</p>	<p>General Contractor; Aramark (food and venue services); The Health Trust</p>

Fairgrounds RFQ Respondent	
Criterion	Cambrian Go Karts
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To expand family-friendly amenities to the SCCFGs
Proposed Concept (RFQ Evaluation Criteria #1)	The New San Jose Mile Karting Facility including 1-mile racing track and 20 air-conditioned shopping containers to be used for storage, maintenance, new equipment sales, registration, office, restrooms and showers; Broader amenities (playground, arcade, indoor/ outdoor eating area, apparel and gift store); Operate 7 days per week
Desired Role	End-user of new Karting Facility
Acreage Requirements	Not Stated
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Bring a world-class kart track to CA and create a safe, family-friendly environment; Target 1-2 national events in Year 1
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	None stated
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	Will create a corporation staffed 14-18 full-time employees and 6-8 part-time employees
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Not Stated
Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Yes - payment \$100 pm during construction; \$12,500 pm from 2nd month of operation through end of 1st year; \$25,000 pm years 2-5; \$30,000 pm years 6-10; desired option to renew for additional 10 years

Relevant Experience (RFQ Evaluation Criteria #5)	Operate Cambrian Go-Karts that assembles, sells, delivers and maintains new and used go karts
Experience of Key Individuals (RFQ Evaluation Criteria #6)	Owners have been involved in industry for 24+ years; operated Cambrian Go-Karts for 12 years
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Cambrian Go Karts will pay for all engineering costs via support from private investors
References	Not included

Fairgrounds RFQ Respondent	
Criterion	El Mercado Popular
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To be part of the growth, change and improvements at the FGs
Proposed Concept (RFQ Evaluation Criteria #1)	Outdoor recreation event providing fresh organic fruits and vegetables for families in low income areas; Business startup assistance to farmers and vendors and free space for certified farmers; Continuation of farmers market under long-term lease agreement; Grow business by opening more days
Desired Role	End-user to operate a Farmers Market
Acreage Requirements	Currently 14 acres; No specification of desired acreage
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Invest in the area used to contribute to the overall improvement of the FGs; Continue to provide low income communities with the same quality markets as ones in upscale communities; Allocate more financial resources to support local schools and non-profits
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Currently lease land at SCCFGs and work collaboratively with FMC
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	Good standing with all required permits granted by the State
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Short-term lease at SCCFGs
Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Yes - ideally 5 years with option for 5 year renewal

Relevant Experience (RFQ Evaluation Criteria #5)	Currently operate 3 markets including at SCCFGs
Experience of Key Individuals (RFQ Evaluation Criteria #6)	Owners have 25+ year experience in farming and farmers market operations; Resumes included
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Income from farm and private real estate holdings; Willing to fund own capital improvements & pay market-rate lease for land
References	FMC; Santa Cruz County Fair; Non-Profit advocacy organization

Fairgrounds RFQ Respondent	
Criterion	Global Opportunities and Investments Corporation
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To master plan and develop the SCCFGs into a mixed-use, internationally and culturally-oriented attraction complex; Solicited RFQ responses from technical firms and presented a short-list of 6 architectural firms, 2 amusement park designers and 5 financial consultants and project management companies
Proposed Concept (RFQ Evaluation Criteria #1)	Development of a model agricultural farm and business and technology incubator, coupled with the renovation of the FGs portion of the 150-acre site; Additional land uses may include office building, amusement park, hotel and dining
Desired Role	Master developer and General Partner in the formation of a limited partnership to be formed in conjunction with the potential and selected and successful developer with proven public-private partnership program, investors, JV partners, and appropriate stakeholders
Acreage Requirements	150-acres
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Recapitalize and reorganize the SCCFGs
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Not Stated
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	3 privately-held CA companies, all of which are authorized to issue shares of stock; Organized to secure funding and oversee roles of team collaborators
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Not Stated

Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Not Stated
Relevant Experience (RFQ Evaluation Criteria #5)	Core team members have experience in engineering, business and financial consulting, grant writing, and project and construction management; Potential collaborators have experience in financial, economic and marketing studies, technical services, creative design, project management, management and operation, and business evaluation
Experience of Key Individuals (RFQ Evaluation Criteria #6)	Key people have extensive experience in finance, management and operation
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Intention to secure seed money from private investors and grants for \$10 million in initial funding
References	None provided

Fairgrounds RFQ Respondent	
Criterion	Recreation Entertainment Global (RPG)
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To create outdoor recreation opportunities to serve County residents and attract visitors to the SCCFGs year-round and share the historic community treasure with the public by transforming it into a diverse and exciting resource for all to be proud of
Proposed Concept (RFQ Evaluation Criteria #1)	Commercial Family Recreation and Adventure Park - year-round recreation facility including interactive playground and splash park, outdoor laser tag, paintball activities, ropes courses, ziplines, and rock climbing, with a focus on technology and incorporating augmented reality
Desired Role	Develop, build and operate the Commercial Family Recreation and Adventure Park
Acreage Requirements	30-40 acres: 30-35 acres for commercial recreation facilities and 3-5 acres designated for community benefit public improvements
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Develop a facility that is designed for entertainment, education, recreation and revenue, encouraging overnight visitation to the area while also serving as an amenity for local residents; Improving connectivity with surrounding businesses and the community
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Yes - partners with FMC and SC County for 13 years and also working closely with the cities of Palo Alto, San Jose and San Francisco
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	Working within the constraints of a short 1-3 year lease, they have continued to grow and improve the facility in terms of customer base, sustainability and profitability
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Current anchor tenant at the SCCFGs

Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Yes - 30 years, location is flexible but high visibility is preferable
Relevant Experience (RFQ Evaluation Criteria #5)	13 years of operation of SC Paintball on the SCCFGs site
Experience of Key Individuals (RFQ Evaluation Criteria #6)	Includes founders and senior level staff with mix of development, operations and technical expertise; Combines 20 years of experience working with fairs and fairgrounds
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Fully commit to contributing to the onsite infrastructure needs of the property; Support the development of a BID; Proposed \$15-20 million investment, including \$3-4 million invested into the public spaces; Phased development to allow for existing operations and cash flow to support basic concept development, design and permit fees; Use funds from equity partners and venture capital for core infrastructure and construction phases; Public improvements to include large playground, toddler splash zone, running and pedestrian path, dog park, and picnic areas
References	FMC; Suppliers; Event and Design specialists

Fairgrounds RFQ Respondent	
Criterion	San Jose Giants Baseball Club
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To create a landmark community gathering space at the SCCFGs, half to be dedicated to a public park and open space, and half for active recreational community uses
Proposed Concept (RFQ Evaluation Criteria #1)	State-of-the-art ballpark for the San Jose Giants and associated amenities - Sports Bar and Grill at the Complex, Family Fun Zone and Public Batting Cages, SJ Giants Hall of Fame, SJ Giants Dugout Store, Community Urban Farm, and Youth Sports Complex (6 baseball diamonds, 4 soccer fields, clubhouse and homework area, healthy food and beverage area, family fun zone); Embrace innovation and sustainability to become a green facility and ongoing digital communications leader in Minor League Baseball
Desired Role	Develop and operate stadium and other amenities; Manage all baseball and outside events located on the leased land
Acreage Requirements	Stadium/ Ballpark: 10-15 acres (excluding parking approx. 6 acres); Community Urban Farm: additional 4-5 acres; Youth Sports Complex: additional 30-40 acres Total: 40-55 acres
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Be synergistic with other venues on the site; provide fun, affordable, family entertainment for the community, embrace Silicon Valley's leadership in technology and sustainability, celebrate rich heritage of Santa Clara Valley, and create an environment that honors community service and healthy lifestyles
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Yes - partnered with City of San Jose to maintain, improve and operate Municipal Stadium
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	As majority owners, the San Francisco Giants have exhibited the financial capacity to fund high profile venues.

<p>Experience with Ground Leases (RFQ Evaluation Criteria #4)</p>	<p>Not Stated</p>
<p>Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)</p>	<p>Yes - stadium ideally with frontage to Monterey Road adjacent to the access road on the west side of the SCCFGs property</p>
<p>Relevant Experience (RFQ Evaluation Criteria #5)</p>	<p>Operated a successful family entertainment venue in the South Bay community for 74+ years; Experienced in developing ballpark facilities (notably AT&T Park)</p>
<p>Experience of Key Individuals (RFQ Evaluation Criteria #6)</p>	<p>All team members are senior level SJ employees who collectively have 125 years of specific experience in operating and developing ballparks.</p>
<p>Capacity to Provide Capital (RFQ Evaluation Criteria #7)</p>	<p>Proposed funding is as follows Stadium/ Ballpark: Capital Costs and Maintenance - SJ Giants/ County/ Other; Operation - SJ Giants Youth Sports: Capital Costs - County/ Other; Maintenance - County/ Private Grants/ Other; Operation - SJ Giants Parking Lot: Capital Costs and Maintenance - County/ Other; Operation - 3rd Party</p>
<p>References</p>	<p>Banking Partner x 2; Credit Union; Local Union; Local Contractors Association</p>

Fairgrounds RFQ Respondent	
Criterion	San Jose Soccer Complex Foundation
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To provide a regional destination comprised of high-quality active and passive recreational opportunities for families and visitors to SC County
Proposed Concept (RFQ Evaluation Criteria #1)	12-18 field soccer complex
Desired Role	Operator of soccer complex
Acreage Requirements	30-50 acres
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Planning, development and operation of a first-class soccer complex; provide quality soccer fields serving County residents and visitors; generate economic benefits to nearby commercial business, as well as on-site food and beverage operators, and substantial parking revenue to the FGs; enter into a long-term ground lease as one of the principal parties to the overall implementation of the FGs vision
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Not Stated
Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)	501(c)3 that receives most of its funding from tournaments California Youth Soccer Association District 2 donations, generated from fees for operation of the Association's leagues and tournaments
Experience with Ground Leases (RFQ Evaluation Criteria #4)	Not Stated
Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)	Yes

Relevant Experience (RFQ Evaluation Criteria #5)	Management of 11 field Morgan Hill Soccer complex through 2009, with a break-even financial outcome; 25+ years experience in operating tournaments
Experience of Key Individuals (RFQ Evaluation Criteria #6)	Board members supported by Project Management firm
Capacity to Provide Capital (RFQ Evaluation Criteria #7)	Willing and able to fund capital improvements and pay a fair market value land lease; \$1.4 million in current assets without liability
References	None provided

Fairgrounds RFQ Respondent	
Criterion	Santa Clara County Fairgrounds Management Corporation
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To preserve the FGs as a unique and cherished gathering place for the people of SC County and create a world-class, vibrant community gathering place with both active and passive recreational opportunities where diverse cultures and generations can come together to connect, celebrate, collaborate, and create
Proposed Concept (RFQ Evaluation Criteria #1)	Continue in the capacity of providing overall management responsibility for the entire Fairgrounds District; Elements of FMC's plans to maximize land use synergies include recreation spaces, revitalized event center, expanding annual County Fair, 5K run and walk course, farm-to-table community garden, farmers/flea market, overnight accommodation, and continued modeling of sustainable development
Desired Role	Overall manager; operator of event center, expand income of event center and FGs through revitalization of existing structures; produce annual County Fair; create new signature events; and commit to investigating and pursuing creative and innovative revenue sharing with partners
Acreage Requirements	Entire FGs
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Economic enhancement and social impact for the surrounding area through refurbishment and reconfiguration of the event center to expand event offerings and revenue-generating opportunities; a park-like look and feel; active and passive recreational opportunities; continued affordable community access to event and meeting facilities; fiscal neutrality and sustainability for partnering public agencies; transportation interconnectivity; and transformation of the property into an economic Silicon Valley gathering place, blending agricultural roots with a STEAM (science, technology, engineering, agriculture/art, and math) presence
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Yes - current stewards of FGs

<p>Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)</p>	<p>501(c)3 non-profit with track record of operating the FGs property profitably; Governed by 5-member Board of Directors; Proposed changes to FMC's governance structures to permit board expansion and to include subject matter experts and representation of all stakeholders, including the County and the City</p>
<p>Experience with Ground Leases (RFQ Evaluation Criteria #4)</p>	<p>Not Stated - but held ground leases with other parties</p>
<p>Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)</p>	<p>Long-term agreement to manage the FGs, including possible master lease agreement</p>
<p>Relevant Experience (RFQ Evaluation Criteria #5)</p>	<p>20+ years of experience managing the SCCFGs</p>
<p>Experience of Key Individuals (RFQ Evaluation Criteria #6)</p>	<p>FMC leadership and management team, supported by consultants and advisors; FMC's new leadership has successfully identified new sources of revenue</p>
<p>Capacity to Provide Capital (RFQ Evaluation Criteria #7)</p>	<p>Total 2015 revenues \$6.6 million, up from \$5.4 million in 2014; FMC has achieved or exceeded budgeted profitability since January 2014 and is now building financial reserves</p>
<p>References</p>	<p>California Fair Service Authority; Hispanic Chamber of Commerce; Farmers Market owner; event and entertainment companies x 2</p>

Fairgrounds RFQ Respondent	
Criterion	Silicon Valley Curling Center
Understanding of Opportunity (RFQ Evaluation Criteria #1)	To create a landmark destination that will attract visitors to the FGs to participate in active and passive recreation, through leagues, tournaments, classes, outreach events and viewing parties
Proposed Concept (RFQ Evaluation Criteria #1)	World-class curling center in a 20,000 SF building with 10,000 SF ice surface, ice plant, and a warm section for viewing, changing and other support areas. Additional space within the desired plot will be utilized for parking, with an assumption that shared/ overflow parking will be available either elsewhere on the FGs site or within the surrounding neighborhood. The facility would be the only dedicated curling facility in CA and would provide the best ice conditions and training opportunities in the state. Consider opening the ice for skating during the winter months and removing the ice for use as an exhibit hall or storage facility
Desired Role	End-user to build and operate a recreational and competitive curling center
Acreage Requirements	1 acre
Approach to Achieving Vision for the FGs (RFQ Evaluation Criteria #2)	Create a grand community recreation space; promote family sports time and create a real opportunity for local top athletes to train for national and international competitions; and attract both active participants and passive spectators, bolstering the many other activities on the FGs and active community participation
Experience in Public Sector Partnerships (RFQ Evaluation Criteria #2)	Not Stated

<p>Business Acumen & Resource Capacity (RFQ Evaluation Criteria #3)</p>	<p>501(c)3 non-profit created specifically to develop a curling center at SCCFGs. 5-member Board of Directors and 8+ proposed staff positions including CEO, COO, Treasurer, Secretary, Director of Facilities Management and Operations, Director of Business Development, Director Strategic Development, and Fundraising Leadership Team</p>
<p>Experience with Ground Leases (RFQ Evaluation Criteria #4)</p>	<p>Not Stated</p>
<p>Willingness to Enter into Ground Lease (RFQ Evaluation Criteria #4)</p>	<p>Yes</p>
<p>Relevant Experience (RFQ Evaluation Criteria #5)</p>	<p>Majority of management team are current and former leaders of the San Francisco Bay Area Curling Club.</p>
<p>Experience of Key Individuals (RFQ Evaluation Criteria #6)</p>	<p>Management team consists of experienced executives, elite curlers and curling center managers. Across the team, individuals have experience in building and development, including construction, club management, fundraising, national governing body organization, elite training and competition, and education and outreach program development</p>
<p>Capacity to Provide Capital (RFQ Evaluation Criteria #7)</p>	<p>Proposal to raise \$1.6 million in construction funds plus initial operating costs through loans and donations from members. Anticipate reaching financial break-even operations within 2 years primarily through membership and league fees, tournament revenue, and corporate team building/ training revenue. 3 members of the management team have collectively raised \$10 million for various new businesses and have already secured tentative commitments from a number of curlers for hundreds of thousands of dollars for this project</p>
<p>References</p>	<p>Professional athlete; curling center manager; creator of numerous clubs</p>

APPENDIX B:
Ground Lease Template

GROUND LEASE TEMPLATE

(At the sole discretion of County, the terms or conditions of this draft Lease template may be modified at any time prior to execution by the President of the Santa Clara County Board of Supervisors or designee).

This Ground Lease (this "Lease") effective as of the last date signed by all Parties below (the "Effective Date"), is entered into by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (the "County" or "Landlord"), and the _____, a California corporation with its principal place of business located at _____ (the "Tenant").

WITNESSETH:

WHEREAS, the County is the owner of fee title to the real property more particularly described in Exhibit A attached hereto (the "Fairgrounds");

WHEREAS, pursuant to the County's authority under California Government Code §25536(a) [or alternatively _____ INSERT], the County has devoted the Fairgrounds to ultimate use for fairground purposes or commercial development incidental to or not inconsistent with such purposes;

WHEREAS, on _____, the County issued a Request for Proposals No. _____ (the "RFP"), to which _____ ("Tenant") responded in writing. Tenant's written response to the RFP was accepted by County as the most responsive bid and, based on that response and County's material reliance on the information and commitments made by Tenant in its RFP response, County now enters into this Lease with Tenant. The RFP No. _____ and Tenant's written response to the RFP No. _____ are hereby incorporated by this reference into this Lease;

WHEREAS, pursuant to California Government Code §25536(a) [or alternatively _____ INSERT], the Board of Supervisors of the County (the "Board"), by no less than four fifths vote [or alternatively _____], adopted a resolution on _____ approving the conveyance of a leasehold interest to the Tenant for an approximately _____ acre portion of the Fairgrounds (the "Project Site"), as more particularly described in Exhibit B attached hereto, and delegating authority to the County Executive, or designee, to enter into this Lease in furtherance thereof on behalf of the County;

WHEREAS, Tenant acknowledges, agrees and understands that all design, construction, improvements, development, operation and management of the Project Site shall be at the sole cost and expense of Tenant and County shall have no liability or obligation for or in relation to such costs or expenses; and,

WHEREAS, the County now desires to lease to the Tenant, and the Tenant now desires to hire from the County, the Project Site, for purposes of the design, development, construction, management and operation of the Project Site for the purposes intended as further described herein below in this Lease.

NOW THEREFORE, in consideration of the mutual promises contained here, and valuable consideration the receipt of which is acknowledged, the Parties agree to the foregoing and as follows:

SECTION 1. The Fairgrounds and Project Site.

A. The County hereby leases to the Tenant and the Tenant hereby hires from the County, on the terms and conditions herein set forth, the Project Site subject, however, to title exceptions numbers _____ set forth in the Preliminary Title Report issued by ____ Title Company on _____, which is attached hereto as Exhibit C, and those title encumbrances and interests otherwise expressly permitted pursuant to the provisions of this Lease or already existing prior to the Effective Date of this Lease.

B. Tenant acknowledges it has conducted a personal inspection of and has performed due diligence in relation to the Project Site and the surrounding area and accepts the Project Site in its “AS-IS”, “WHERE-IS”, WITH ALL FAULTS” condition. Tenant further agrees to make no demands on County for any improvements or alterations to the Project Site. The County shall not have any obligation, responsibility or liability to make any alteration or improvement to the Project Site prior to the commencement of the Term or at any time thereafter. Except as otherwise expressly stated in this Lease, County offers no warranties (express or implied) for the Project Site, including but not limited to its/their condition, habitability, structural integrity, environment, health, safety, soil, air, water or utilities. Tenant accepts this Lease and the Project Site subject to all existing permits, licenses, limitations, conditions, requirements, leases, easements, ownership interests and any other conditions or obligations attaching or applicable to the Project Site, together with any future installations, restrictions, limitations or requirements that may exist from time to time. Tenant accepts all aspects of the Project Site, including, without limitation:

- Any asbestos, PCB's, other Hazardous Materials in, under or around any structure, soil, water, ground water or air;
- Zoning and any use restrictions that may be imposed; and
- Water and utility availability or lack of availability.

(1) TENANT warrants that TENANT has carefully examined this Lease and has undertaken a complete and independent evaluation and investigation of the Fairgrounds, the

Project Site, all matters relating to the Lease arrangements and the risks inherent in the execution of this Lease and has fully informed itself as to all existing conditions and limitations affecting the Tenant proposed use, the construction and completion of the Project and any later Alterations and business practices required, needed or desired in the operation and management of the uses contemplated hereunder. Knowing all this, Tenant is still voluntarily willing, ready and able to enter into this Lease.

(2) Tenant acknowledges that County has made no representations, express or implied, about the Project Site or its/their suitability for Tenant's purposes, intended or otherwise. Tenant further warrants and represents to County, for the express benefit of County, that in entering into this Lease, Tenant has not relied upon any statement, fact, promise or representation (whether express or implied, written or oral) not specifically set forth herein and that any statement, fact, promise or representation (whether express or implied, written or oral) made at any time to Tenant, which is not expressly incorporated herein, is hereby waived by Tenant.

C. Accessibility Standards Notice. In accordance with California Civil Code Section 1938, Landlord hereby notifies Tenant that Landlord has no actual knowledge (without the duty to investigate or inquire) of whether or not the Fairgrounds, the Project Site or the Project have been inspected by a Certified Access Specialist (CASp). Landlord has not arranged for or obtained an inspection by a CASp.

D. No Relocation Assistance.

(1) It is understood that this Lease is intended to give Tenant a temporary conditional use of the Project Site for the Term. Tenant acknowledges, understands and agrees that neither Tenant nor any of the Tenant Representatives, or any subtenants, occupants or users of the Project Site shall be entitled to claim, seek or obtain relocation benefits, assistance, damages (liquidated or otherwise), costs, claims or fees from the County upon expiration, termination or cancellation of this Lease, except as expressly provided for elsewhere in this Lease. For purposes of this Lease, "Tenant Representatives" means and shall include Tenant's agents, contractors, subcontractors, representatives, officers, employees, members, partners, shareholders, affiliates, assigns, directors and managers.

(2) At Landlord's discretion and upon Landlord request, Tenant, its successors and assigns, shall deliver the Project and Project Site, at Lease Termination, to Landlord free from all occupancies and tenancies of every nature or kind. With respect to all occupancies and tenancies on the Project or Project Site, Tenant, its successors and assigns, shall be solely and exclusively liable and responsible for notice and payment of any and all relocation costs and expenses required to be paid in accordance with applicable laws, regardless of whether or not such legal obligations are those of the County or Tenant. Tenant and its successors and assigns,

and not Landlord, shall be solely responsible and liable for paying all relocation assistance and for providing all noticing pursuant to applicable law.

(3) Nothing in this Lease shall be construed as relieving, nor does it relieve, the Tenant, its successors and assigns, of any prior, existing or continuing obligation(s) to comply in any or all respects with any and all applicable statutes and regulations, including but not limited to (if applicable) California Health and Safety Code Section 52080 et seq. (e.g. affordability obligations and/or relocation assistance for tenants) and California Government Code Sections 65863.10 through and including 65863.13 (e.g., notice to tenants).

(4) Tenant Indemnity For Notice and Relocation Obligations. Tenant represents, warrants and agrees to defend, indemnify and hold harmless the County and each of the County Representatives from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with any obligation to provide or any failure to provide adequate notice or relocation assistance, excepting only such loss or damage which is directly caused by the sole gross negligence or willful misconduct of the County or a County Representative. The Tenant will conduct all defenses at its sole cost and expense. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of Tenant, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of Tenant, its affiliates or other parties are not a limitation upon the obligation of the Tenant including without limitation the amount of indemnification to be provided by the Tenant (or any of its successors or assigns).

E. Consideration for Entering into this Lease. [To be Determined (“TBD”)....] Tenant shall pay to Landlord, the amount of _____ Dollars (\$____) which shall be Landlord’s consideration (“Consideration”) for entering into this Lease. The Consideration shall be paid in two installments. The first installment in the amount of _____ Dollars (\$____) (the “First Consideration Installment”) shall be paid within five (5) days of Landlord’s delivery of a fully executed Lease to Tenant, and the second installment in the amount of ____ Dollars (\$____) (the “Second Consideration Installment”) shall be paid within thirty (30) days of Tenant’s receipt of the required _____ permit [INSERT NAME OF LAND USE PERMIT] from _____[INSERT]. The First Consideration Installment shall be [shall not be] fully refundable to Tenant, prior to the date Tenant is required to pay the Second Consideration Installment, if [INSERT ALTERNATIVE or] this Lease is terminated for any reason prior to such date. Within ____ days following the date Tenant is required to pay the Second Consideration Installment, the First Consideration Installment and Second Consideration Installment shall immediately become non-refundable to Tenant. Tenant acknowledges that Landlord has withheld the Project Site from the market during the negotiation of this Lease and has incurred

costs and expenses as a result of Tenant's obligations set out herein (some of which obligations are to be performed after the Effective Date and before the Project Completion Date) and that the Consideration payment to Landlord is fair compensation for Landlord's signing this Lease. Landlord and Tenant agree that should this Lease terminate for any reason (except a Landlord default), prior to the Project Completion Date, Landlord shall be entitled to retain the Consideration. Upon the Project Completion Date Landlord shall continue to hold the Consideration as a security deposit in accordance with the security deposition provisions set out in this Lease herein below.

F. Security Deposit. As security for Tenant's performance of its obligations under this Lease, following the Project Completion Date Landlord shall continue to hold the Consideration as a security deposit ("Security Deposit"). Landlord thereafter shall hold the Security Deposit during the Term and no portion thereof shall be credited against Rent. So long as Landlord holds any Security Deposit, if Tenant defaults, after any required notice and expiration of applicable cure periods, on any provision of this Lease, Landlord may, without prejudice to any other remedy it has, apply all or part of any Security Deposit to: any Rent or other sum in default; any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under any provision of this Lease; or any expense, loss or damage that Landlord may suffer because of Tenant's default, including unpaid amounts for future Rents calculated pursuant to applicable terms of this Lease. Tenant waives the provision of Civil Code section 1950.7, and all other provisions of law that provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in payment of Rent, to repair damage caused by Tenant, or to clean the Project or Project Site. Landlord may recover additional sums reasonably necessary to compensate Landlord for any other foreseeable or unforeseeable loss or damage caused by the act or omission of Tenant. Landlord shall not be required to keep the Security Deposit separate from its general accounts, or to pay interest thereon.

G. No Cost to Landlord: No Counterclaim, No Abatement. The Rent payable under this Lease shall be absolutely net to Landlord, so that this Lease shall yield to Landlord the full amount of the Base Monthly Rent, the Percentage Rent and all Additional Rent owed to Landlord throughout the Term. Tenant shall pay Rent without assertion of any counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction. This is a triple-net lease.

SECTION 2. Rent, Additional Rent, Impositions and Taxes.

A. Base Monthly Rent [INSERT alternative if this is Annual Base Rent]. The Tenant shall pay to County, on the first day of each month during the Term, the sum of _____ (\$____.00) ("Base Monthly Rent"), payable on the Commencement Date which shall be _____ [INSERT alternative date, e.g. on a date certain on or before the "Project

Completion Date”, as solely determined by Landlord] and continuing thereafter each month for the entire duration of the Term until the Termination Date as set out herein below.

B. **Rent.** All “Base Monthly Rent and “Percentage Rent” shall be deemed and is “Rent”.

C. **Percentage Rent.** TBD. INSERT HERE

D. **Additional Rent.** “Additional Rent” means, other than Rent, all sums, Impositions, Interest, costs, expenses and other payments which Tenant in any of the provisions of this Lease assumes, agrees or is required to pay. Tenant’s obligation to pay Additional Rent shall begin to accrue on the Commencement Date and shall continue to accrue throughout the Term. Additional Rent shall be payable by Tenant to the appropriate party on or before the date required to be paid as per the terms of this Lease or by operation of law, whichever is sooner.

E. **Rent Increases.** TBD....INSERT HERE

F. **Place of Payment and Filing.** Rent and all Additional Rent payable to County shall be paid on time and delivered to the _____, _____ California _____ . The designated place of payment and filing may be changed at any time by County upon ten (10) days’ written notice to TENANT. Rent payments may be made by _____ made payable to the County of Santa Clara _____. TENANT assumes all risk of loss if payments are made by mail. The COUNTY offers electronic payment for any payments hereunder, thus the TENANT shall utilize such COUNTY electronic payment system for any payments under this Lease, unless otherwise directed in writing by the County. For electronic payments, the TENANT shall submit all its payments using the following information:

Bank Name: _____

Account Name: _____

Routing / ABA: _____

Account #:

Lease Name: _____

(1) **Insufficient Funds.** If any payment of Rent or Additional Rent or other payments made by check is returned due to insufficient funds, or otherwise, more than once during the Term, COUNTY shall have the right to require TENANT to make all subsequent payments by cashier’s check, certified check or ACH automatic debit system.

(2) **Lawful Currency.** All Rent shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by

TENANT or receipt by COUNTY of a lesser amount than the amount due shall be deemed to be other than on account of the amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as payment of Rent, Additional Rent or other sums owed be deemed an accord and satisfaction, and COUNTY shall accept such check or payment without prejudice to COUNTY's right to recover the balance of said amount due or pursue any other remedies in this Lease.

(3) Charge for Late Payment.

(a) TENANT hereby acknowledges that the late payment of Rent or any other sums due hereunder will cause COUNTY to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc. All Rent due hereunder, if not paid when due, shall bear interest, the amount of which shall be solely determined by Landlord. All interest owed shall be Additional Rent. This provision shall survive the expiration or sooner termination of the Lease. Despite any other provision of this Lease, the total liability for interest payments shall not exceed the limits, if any, imposed by the usury laws of the State of California. Any interest paid in excess of those limits shall be refunded to Tenant by application of the amount of excess interest paid against any sums outstanding in any order that Landlord requires. If the amount of excess interest paid exceeds the sums outstanding, the portion exceeding those sums shall be refunded to Tenant by Landlord.

(b) Accordingly, if any payment of Rent or Additional Rent or of any other sum due COUNTY is not received by COUNTY within three (3) business days of TENANT's receipt of notice from COUNTY that such payment is due, a late charge of one and one half percent (1.5%) of the payment due and unpaid plus \$100 shall be added to the payment, and the total sum shall become immediately due and payable to COUNTY. An additional charge of one and one half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

(c) TENANT and COUNTY hereby agree that such late charges represent a fair and reasonable estimate of the costs that COUNTY will incur by reason of TENANT's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by COUNTY shall in no event constitute a waiver of TENANT's default with respect to such overdue payment, or prevent COUNTY from exercising any of the other rights and remedies granted hereunder.

G. Processing Fee. TBD. Within thirty (30) days of the Execution Date of this Lease, TENANT shall pay to COUNTY a processing fee of _____ (\$_____,000) for issuance of this Lease. Said processing fee is deemed earned by COUNTY and is not

refundable. COUNTY shall provide TENANT with an invoice for processing fee and TENANT shall promptly pay the total processing fee amount within thirty (30) days after receipt of invoice and delivered to COUNTY at the address provided in Section __ (NOTICES), below.

H. Impositions; Operating Expenses. This Lease is a triple net lease and, in addition to Rent, the Tenant shall directly pay, before delinquency, all operating expenses, taxes, assessments, insurance, costs of maintenance, replacement and repairs, and utility or service charges, fees, charges and other costs incurred during the Term which in any way relate to the operation and maintenance of the Project Site or the Project ("Impositions"). Impositions are Additional Rent.

(1) Assessments. Tenant shall not cause or voluntarily agree to allow an assessment to attach to the Project Site or the Project after the Effective Date. On Lease Termination Tenant shall pay any outstanding unpaid balance on any assessment that Tenant causes to attach to the Project.

(2) Services and Utility Charges. Tenant shall pay before delinquency all charges for gas, water, electricity, light, heat or power, telephone or other communication service, sewer, trash removal, cable and all other services or utilities used during the Term in, upon or about the Project by Tenant or any of its contractors, subcontractors, employees, subtenants, licensees, invitees, subtenant or assignees. Tenant shall also obtain, or cause to be obtained, without cost to Landlord, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Project of wires, pipes, conduits, tubes and other equipment, appliances and infrastructure for use in supplying any service to and upon the Project. All such payments shall be Additional Rent.

I. Taxes. Tenant shall pay and shall be liable and responsible for any and all Tax Expenses (as defined below) applicable to the Project Site or its use. Prior to delinquency, Tenant shall pay any and all taxes and assessments levied upon the Project Site, including, without limitation, (a) any and all taxes and assessments resulting from or relating to any increase in real property taxes attributable to any and all improvements, fixtures, or equipment of any kind whatsoever placed or existing in, on or about the Project Site, and (b) taxes and assessments levied or assessed upon or with respect to the possession, operation, use or occupancy of the Project Site during the Term. "Tax Expenses" means, without limitation, any form of tax and assessment (general, special, supplemental, ordinary or extraordinary), commercial rental tax, payments under any improvement bond or bonds, license fees, license tax, business license fee, rental tax, transaction tax or levy imposed by any authority having the direct or indirect power of tax (including any governmental, school, agricultural, lighting or other improvement district) as against any legal or equitable interest in the Project Site or any other tax, fee, or excise, however described, including, but not limited to, any tax imposed in substitution (partially or totally) of any tax previously included within the definition of Tax

Expenses and any cost and/or fee (including without limit attorneys' and appraisers' fees and court costs) incurred in calculating, contesting or negotiating any such taxes or assessments. All Tax Expenses are Additional Rent.

(1) Possessory Interests. In accordance with the requirements of California Revenue and Taxation Code Section 107.6, the Tenant is hereby informed that this Lease may create a possessory interest in the Tenant that may be subject to property taxation and Tenant hereby represents, warrants and agrees to pay all such possessory interest tax when due and payable at its sole liability, cost and expense.

J. Change In Ownership. Tenant shall pay any increases in Impositions caused by any reassessment due to a "change in ownership" of Landlord's rights, title and interest in and to the Project Site and/or this Lease during the Term, as "change in ownership" is defined, from time to time, in the California Constitution or in the California Revenue and Taxation Code.

SECTION 3. Term of Lease.

A. Term. The "Initial Term" of this Lease shall commence on the date of recordation of the Lease in the office of the County Recorder of County of Santa Clara, State of California, or on _____, whichever is earlier (the "Commencement Date"), and shall expire on the last day of the month that is ____ () years from the Commencement Date (the "Termination Date"), unless such Term is sooner terminated or extended as herein provided. The Initial Term and all Renewal Terms are each and collectively referred to herein as the "Term".

B. Option(s) to Renew Term. TBD.

(1) Tenant shall have the option to renew the Initial Term (the "Renewal Term") for a period of ____ years commencing at the Termination Date of the Initial Term. If Tenant elects to seek renewal, then County may impose such additional terms or conditions that it deems necessary or advisable to protect the County's interests or to otherwise address any deficiencies in the Lease terms for the benefit of County. Tenant is not required to renew the Term if Tenant is unwilling or unable to accept the new or revised terms or conditions required of Landlord. The manner of Tenant's right to exercise its options to renew the Initial Term and the Rent determination for any Renewal Term are set out below. TBD.....

(2) Option Exercise. Tenant may exercise an option to renew the Initial Term (as previously extended, if applicable), only if at the time of exercise and at commencement date of the applicable Renewal Term, Tenant is not in default, after notice and the expiration of any applicable cure period, under this Lease and only if Tenant is willing, able and ready to agree to any additional or modified terms or conditions that County elects to include in the renewed Lease. In order to exercise an option, Tenant must deliver to Landlord written notice of exercise

to renew the Initial Term not later than the one hundred eightieth (180th) day before, and no sooner than the two hundred seventieth (270th) day before, the expiration of the Initial Term. If Tenant fails to deliver timely notice to Landlord of Tenant's exercise of its option, then the option right (and the right to exercise any successive option) shall automatically expire and be of no further force or effect. If Tenant properly exercises its option to renew the Initial Term, then the Term shall be renewed for the described period on all the same terms and conditions as set out in this Lease or as otherwise modified or amended by County, except the Base Monthly Rent for the first _____ months of any extended Term shall be determined in accordance with this Section 3.B.(3) below.

(3) Fair Market Base Monthly Rent Adjustment. The Base Monthly Rent for the first _____ months of any Renewal Term shall be increased, but in no event decreased, on the first day of each Renewal Term to an amount equal to the Fair Market Base Monthly Rent (as defined below) for the Project Site as follows:

INSERT TBD.

SECTION 4. Termination.

A. Termination for Cause. County may terminate this Lease at any time for cause, which can include any default by Tenant (see Section 19 below). For purposes of this Lease, cause (default) includes, but is not limited to, any of the following:

(1) Material breach of any provision or obligation of this Lease by Tenant. No cure period shall be granted;

(2) Violation by Tenant of any applicable law;

(3) Assignment or Transfer by Tenant of this Lease to anyone or any entity without the advance written consent of County;

(4) Failure to complete the Project by the Project Completion Date in a satisfactory or safe manner as solely determined by County;

(5) Failure to pay any monetary obligation when due, and such failure shall continue for five (5) working days after written notice from Landlord is sent;

(6) Failure to commence or diligently pursue construction of the Project for any reason other than due to Force Majeure;

(7) Tenant files a voluntary petition in bankruptcy or files any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or

seeks or consents to or acquiesces in the appointment of any trustee, receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or makes any general assignment for the benefit of creditors, or Tenant admits in writing its inability to pay its debts generally as they become due;

(8) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Tenant seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, unless the order, judgment or decree is vacated within forty five (45) days after the first date of entry thereof, or any trustee receiver or liquidator of Tenant or of all or any substantial part of its property, or of any or all of the royalties, revenues, rents, issues or profits thereof shall be appointed without the consent or acquiescence of Tenant, unless such appointment is vacated within forty five (45) days after the first date of entry thereof, (which forty five (45) day period shall be extended in all cases during any period Tenant is diligently pursuing a bona fide appeal);

(9) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of the interest of Tenant in the Project, unless the execution, attachment or similar process is released, bonded, satisfied, or vacated or stayed within forty five days after its entry or levy, (which forty-five (45) day period shall be extended during any period in which Tenant is diligently pursuing a bona fide appeal);

(10) Tenant fails at any time to continuously maintain, manage and operate the Project for the Permitted Use in accordance with all terms and conditions of this Lease during the Term;

(11) Tenant fails to continuously maintain the insurance coverage required of it or its Tenant Representatives under any provision of this Lease or fails to deliver a copy of a policy of insurance complying with any insurance requirement of this Lease, and Tenant fails to remedy the default within fifteen days after written notice from Landlord is sent; or,

(12) Subject only to a Force Majeure Event (as defined in this Lease), Tenant violates any other promises, covenants or agreements contained herein, and Tenant fails to cure such default within _____ days after written notice from Landlord is sent.

B. Notice to Cure. In addition to any other rights of the County and without limiting or restricting any other right of the County as allowed by law or by the terms of this Lease, before terminating this Lease for cause under this Section 4, except as otherwise indicated or where a different cure period is specified, the County will provide Tenant at least thirty (30) days advance written notice to cure or remedy the situation to the reasonable satisfaction of the COUNTY (the "Cure Period"). A failure to cure within the Cure Period may result in the

termination of this Lease pursuant to the provisions of Section 19 below or any other applicable provision found elsewhere in this Lease.

C. Termination without Cause. This Lease may be terminated at any time prior to _____ for convenience (for any or no reason) by either Party upon providing _____ () days advance written notice to the other Party. TBD.

D. Authority to Terminate on Behalf of County. For emergency, security purposes or for other County priority needs, County may, at its sole option, and without Tenant recourse or County liability, terminate the Lease and/or any or all Permitted Use or temporarily cancel or discontinue Tenant's Permitted Use, in whole or in part, without advance notice. If Tenant fails to utilize the Project Site for the Permitted Use for any consecutive two months, then this Lease shall automatically terminate without notice by either Party and without County liability or Tenant recourse.

(1) The County Executive or designee shall have the right and authority to exercise County's right of termination on behalf of the County pursuant to this Lease. Should this Lease be terminated for any reason, the County will have no liability whatsoever with respect to any costs incurred by Tenant or for any actual or anticipated loss of sales and/or profits by Tenant, except as otherwise expressly stated to the contrary herein.

E. Ownership of Improvements. The Tenant shall own all buildings and other related facilities constructed by Tenant on the Project Site during the Term and shall remain so vested during the Term, provided Tenant remains in compliance with all the provisions of this Lease. Upon termination of this Lease for any reason, the title to all improvements, structures and Alterations shall vest in and become the sole and exclusive property of the County.

(1) Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall execute, acknowledge and deliver to COUNTY, within thirty (30) days after receipt of written demand therefor, a good and sufficient quitclaim deed (as determined solely by County) whereby all right, title, and interest of TENANT in the Project Site, the Project and all buildings, structures and improvements thereon, is quitclaimed to COUNTY excluding any of TENANT's personal property not otherwise abandoned pursuant to the Lease terms stated herein and excluding all property that is considered Hazardous Material by County. County shall have the right to record or to require Tenant to record said deed in the office of the County Recorder of the County of Santa Clara, State of California. Should TENANT fail or refuse to deliver the required deed to COUNTY, COUNTY may prepare and record a notice reciting the failure of TENANT to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of TENANT or those claiming under TENANT in and to the Project Site, the Project, the Alterations and any and all improvements and structures thereon.

F. Condition of Project Site Upon Lease Expiration or Termination. Tenant further agrees that on termination of this Lease, Tenant will surrender all improvements, structures, facilities and the Project Site to Landlord in good condition and repair, normal wear and tear and damage excepted. In this regard, "normal wear and tear" shall be construed to mean wear and tear caused to the Project Site by the natural aging process which occurs in spite of prudent application of commercially reasonable standards for maintenance, repair, replacement, and janitorial practices, and does not include items of Tenant-caused neglect, willful or intentional misconduct or deferred maintenance. Notwithstanding anything to the contrary stated or suggested herein, Tenant shall cause the following to be done prior to the termination of this Lease: (i) all interior walls shall be painted or cleaned so that they appear freshly painted, (ii) all tiled floors shall be cleaned and waxed, (iii) all carpets shall be cleaned and shampooed, (iv) all broken, marred, stained or nonconforming acoustical ceiling tiles shall be replaced, (v) all cabling placed above the ceiling by Tenant or Tenant's contractors shall be removed, (vi) all windows shall be washed, (vii) the HVAC system shall be serviced by a reputable and licensed service firm and left in "good operating condition", which condition shall be so certified by such firm (if possible), and (viii) the plumbing and electrical systems and lighting shall be left in good order (including replacement of any burned out, discolored or broken light bulbs, ballasts, or lenses). On or before the termination of this Lease, Tenant shall remove all its personal property from the Project Site that is not attached to the buildings or land. All property and trade fixtures not so removed shall be deemed to have been abandoned by Tenant after sixty days past the termination date of this Lease. Tenant shall ascertain from Landlord within ninety (90) days before the date of termination of this Lease whether Landlord desires to have any improvements removed and the Project Site or any parts thereof restored to a condition reasonably acceptable to Landlord. If Landlord shall so desire, Tenant shall, at Tenant's sole cost and expense, remove such improvements as Landlord requires and shall repair and restore the Project Site or such parts thereof to a condition reasonably acceptable to Landlord. Such Tenant repair and restoration obligations shall include causing the Project Site to be brought into compliance with all applicable building codes and Laws in effect at the time of the removal, repair and restoration to the extent such compliance is necessitated by the repair and restoration work.

G. Failure to Surrender and Holding Over. If Tenant holds over after the expiration or sooner termination of this Lease, Landlord may, at Landlord's sole and exclusive option, allow for such holding over and such holding over shall, therefore, be construed as a month to month tenancy, at one hundred twenty five percent (125%) of the Base Monthly Rent for the month preceding expiration or sooner termination of this Lease (without regard to temporary abatements or reductions then in effect) in addition to all other Rent due under this Lease, and shall otherwise be on the terms and conditions of this Lease, except for the following: those provisions relating to the Lease Term to the extent inconsistent with a month to month tenancy (as solely determined by Landlord) and any options or rights to extend or renew this Lease, which provisions shall be of no further force and effect.

H. Landlord's Right to Re-Enter.

(1) The Tenant agrees, upon the termination of this Lease, to quit and surrender the Project Site in good order and condition as required under the terms of this Lease. TENANT agrees to yield and peaceably deliver possession of the Project and Project Site to COUNTY on the date of termination of this Lease, whatsoever the reason for such termination.

(2) Upon giving written notice of termination to TENANT, COUNTY shall have the right to re-enter and take possession of the Project Site on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Project Site by COUNTY shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall not constitute an acceptance or surrender.

(3) TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Project Site for any lawful reason or in the event COUNTY re-enters and takes possession of the Project Site in a lawful manner.

(4) TENANT WAIVES ANY AND ALL RIGHTS OFFERED TO TENANTS OF COMMERCIAL REAL PROPERTY UNDER ANY FEDERAL, STATE OR LOCAL LAWS OR ORDINANCES, INCLUDING BUT NOT LIMITED TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1159 THROUGH AND INCLUDING 1179, ET SEQ AND MORE SPECIFICALLY SECTION 1161 ET SEQ OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

I. Disposition of Abandoned Personal Property. If TENANT abandons or quits the Project Site or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Project Site thirty (30) days after such event shall, at COUNTY's option, be deemed to have been transferred to COUNTY. COUNTY shall have the right to remove and to dispose of such property at TENANT's cost, without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefore.

SECTION 5. Project Purpose.

A. Limitations on Leasehold. This Lease and the rights and privileges granted TENANT in and to the Project Site are subject to all covenants, conditions, restrictions, and exceptions of record or apparent. Nothing contained in this Lease or in any document related hereto shall be construed to expressly grant or imply the conveyance to TENANT of rights in the Project Site which exceed those owned by COUNTY, or any representation or warranty, either

express or implied, relating to the nature or condition of the Project Site or COUNTY's interest therein.

(1) Subdivision of Project Site. Tenant shall not subdivide, by parcel map, subdivision map, or otherwise, the Project Site or any portion thereof without the prior written consent of Landlord, which Landlord may grant or withhold in the exercise of its sole and absolute discretion.

B. Permitted Use. TENANT's use of the Project Site (collectively and each the "Permitted Use") shall be limited to entitling, developing, designing, constructing, installing, maintaining, repairing, operating and managing the Project and all related buildings, structures, improvements, landscaping, parking, infrastructure (both vertical and horizontal), utilities, equipment, and facilities, including all labor and materials, on or at the Project Site in accordance with all terms and conditions of this Lease, so that Tenant may conduct the business of _____ thereon, including, repairing, operating, managing, maintaining and administering the Project for this specific purpose in accordance with all terms and conditions of this Lease. TENANT agrees not to use the Project Site for any other purpose nor to engage in or permit any other activity in, from or on the Project Site, except as set forth herein and in this Lease. TENANT agrees not to knowingly conduct or permit to be conducted any activities in, on or from the Project Site that would be considered a public or private nuisance (as defined in California Civil Code Sections 3479 and 3480).

C. Project. The "Project" is _____ INSERT (Exhibit D, Project Description). TBD.

D. Project Completion Date. The Tenant and its successors and assigns shall use the Project Site solely for Permitted Use consistent with California Government Code §25536(a) [or alternatively _____], as more particularly described in Section 5.A above. The Tenant covenants, warrants, represent and agree that it will operate the Project and carry out the Permitted Use at the Project Site continuously, without interruption, seven days a week, for a minimum of eight (8) hours per day (except as otherwise expressly allowed in writing by County) in compliance with all provisions of this Lease, commencing no later than _____ (____) days following the substantial completion of construction of the Project and continuing until the Termination Date, unless the Lease is terminated earlier by provision of this Lease. The Project shall be completed (the "Project Completion Date") by no later than _____ (____) months following commencement of construction at the Project Site. Tenant's failure to operate the Project as required for more than thirty continuous days, or for more than forty five days in any twelve-month period shall be a material default (with no right to cure) of this Lease and cause for immediate termination without Landlord cost, liability or obligation; however, at Landlord's sole election, Landlord may provide Tenant an opportunity to cure this default, without any obligation to do so.

(1) As Built Plans. Within sixty (60) days following completion of construction of any construction, changes, alteration or repair on the Project Site for which architectural drawings are required, Tenant shall deliver to Landlord three sets of final "As Built" drawings, specifications and plans for all such work. This requirement shall also apply to Alterations.

SECTION 6. Project Site Development. TBD.

A. Development of the Project. The Tenant will design, develop, construct, manage and operate the Project any all Alterations in compliance with any and all applicable federal, state, and local laws, rules and regulations and all terms, conditions, covenants, restrictions and requirements of this Lease.

B. Design. The Project, along with any future Alterations, replacements, reconstruction, or additional improvements, shall be of a first class quality nature that will enhance the reputation and image of the Landlord and be consistent with the design, development and construction plans and specifications (including all engineering and architectural drawings and plans) for the Project which must first be approved by the Landlord and, when completed, attached hereto and incorporated herein by this reference as Exhibit E (the "Project Drawings"), and any additional modifications as further approved by the Landlord. All Project Drawings will be submitted to the Landlord for comment and written approval at least ___ days before _____. The Tenant shall address the Landlord's comments and shall discuss any points of disagreement with the Landlord so that the Parties may reach mutual agreement on final design. Draft Project Drawings must be submitted to County for review by no later than ___ days from the Effective Date, and County shall ___ days from receipt to either approve or reject the draft Project Drawings. If rejected, Tenant will submit revised Project Drawings to County by ____, so the Parties may meet and review revisions and reach mutual agreement on design, development and construction plans and schedules in order to finalize all Project Drawings before submission to the appropriate entitlement and planning office or department of the City of San Jose or County of Santa Clara (as determined by County) for review and issuance of entitlements and permits.

C. Construction of the Project. Within __ () days following the Effective Date, Tenant shall enter into contracts and initiate all demolition, site preparation and clean up, grading, foundation and (vertical and horizontal) infrastructure work to prepare the Project Site for all other building and improvement construction. Within ____ () days following the Effective Date, the Tenant shall enter into contracts for building and other improvement construction of the Project and begin construction no later than _____. The Tenant will require contractors to take all measures to reduce and mitigate construction-related impacts of the Project upon, at a minimum, traffic, air quality, noise and all other potential impacts identified in the County-approved or accepted California Environmental Quality Act documentation,

including but not limited to any and all applicable Environmental Impact Reports, Negative Declarations and Mitigation, Monitoring and Reporting Programs. The Tenant shall minimize the impact of the construction, management and operation of the Project on the other uses of the Fairgrounds by the Landlord or its tenants, subtenants, contractors and general public. The same requirements shall apply to Alterations.

(1) As between the County and the Tenant, the Tenant shall be responsible, at its sole cost and expense, for completion of the Project, within the time frames set out in this Lease or as otherwise mutually agreed upon by both Parties. The Tenant agrees that all access roads and utilities comprising a portion of the Tenant's Project will be sized to accommodate the requirements of the County as well as any additional development contemplated for the Fairgrounds, and that the Tenant's Project will be designed and constructed in accordance with all building codes, building permits, entitlements and other laws applicable to such work in Santa Clara County, including landscape improvements along the perimeter of the Project Site and along the access roads that are compatible with the high quality image of the Project. Furthermore, all construction contracts shall require the contractors to pay the general prevailing rate of per diem wages (including employer payments for health and welfare, pension, vacation, travel time, subsistence pay, apprenticeship and other training programs, and similar purposes) as ascertained by the California Department of Industrial Relations or such higher amounts as are required in the County of Santa Clara, in the locality where said work is being performed, for each craft, classification or type of worker employed to perform the work. These requirements apply to the Alterations as well.

(2) All contractors, subcontractors and consultants shall comply with the County wage theft requirements set out in Section 25.Z. below and Tenant shall ensure that such terms are incorporated by reference into each contract with each contractor, subcontractor and consultant. These requirements apply to the Project and to all Alterations.

D. Project Status Meetings. The County and the Tenant shall hold progress meetings as reasonably requested by either Party ("Progress Meetings"), provided that the requesting Party shall give the other Party ____ (____) business days prior written notice ("Progress Meeting Notice"). At such Progress Meetings or at any other time during construction, the County shall have the right to request copies of and review any documents provided to the Tenant related to the construction or operation of the Project. In addition, the County shall have the right to attend any meetings which the Tenant has a right to attend, pursuant to the development agreement, management agreement and/or other material agreements entered into by the Tenant for the design, planning, construction or operation of the Project. These same requirements shall apply to construction of Alterations.

E. Liens. The Tenant covenants, warrants, represents and agrees not to suffer or permit any lien of mechanics or materialman or others to be placed against the Project Site with

respect to work or services claimed to have been performed for or materials claimed to have been furnished to the Project Site, for the Project or for any Alterations. The Tenant shall indemnify and save (for purposes of this paragraph, the “indemnifying party”) the County harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or material suppliers or others for work performed or alleged performed or materials or supplies furnished or alleged furnished to the indemnifying party or persons claiming under it. In the event any lien is recorded and is not removed or discharged within thirty (30) days, without reference to its validity, indemnifying party shall, upon demand, furnish the bond described in California Civil Code Section 3143 and 3171, or any other applicable or successor statute, which results in the removal of such lien or stop notice from the Project Site.

(1) Payment and Performance Bonds. Prior to the commencement of any construction at the Project Site for the Project or for Alterations, the Tenant, or its general contractor, shall post payment and performance bonds, each for the full value of the cost of construction and completion of the Project, assuring lien free completion to the satisfaction of County. County shall have the right, but not the obligation, to review and approve all terms and conditions in said performance and payment bonds.

F. County's Cooperation During Project Construction and Alterations. The County will, as owner of the Fairgrounds, reasonably cooperate with and assist the Tenant in the Tenant's efforts to obtain consents, approvals, permits and variances which may be required for the construction and operation of the Project. However, nothing stated herein or elsewhere in this Lease obligates or requires the County Board of Supervisors to grant any approvals or to exercise its discretion in any particular way or with respect to any particular decision.

G. Landlord Access. Landlord, its employees, agents or representatives shall have the right of reasonable access to the Project and Project Site without charges or fees, and at normal construction hours during any construction period, for the purposes of ascertaining compliance with the terms of this Lease. Landlord's access shall be reasonably exercised to minimize interference with Tenant's construction and/or operations. In any site visits, Landlord shall comply with reasonable safety rules of the contractor. The same requirements shall apply to construction of Alterations. In addition, Landlord reserves the right, but not the obligation, to inspect, or cause to be inspected, the work of anyone performing, completing, installing or constructing in whole or in part the Project, anything on the Project Site and any of the Alterations.

H. Notice of Completion. Promptly upon completion of construction of the Project or any Alteration, Tenant shall file or cause to be filed in the Official Records of the County of Santa Clara a Notice of Completion (the “Notice of Completion”) with respect to the Project or that Alteration.

I. Alterations.

(1) Tenant shall ensure that the construction and installation of all improvements, alterations or renovations (the "Alterations") are in conformance with the most recent version of the final record drawings approved by Landlord and all specifications and requirements of this Lease relating to such Alterations. Landlord may, at any time, prepare and provide to Tenant a letter or notice of any observed defects, deficiencies or deviations between the Alterations constructed or installed and the most recent version of the final record drawings approved by the Landlord, or any specification or requirement of this Lease. Within thirty (30) days of Landlord's notification, Tenant shall promptly correct or address the issue(s) or propose to Landlord a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Landlord which consent shall not be unreasonably withheld or delayed. If Tenant fails to correct or address undisputed issue(s) identified by Landlord within 20 days, Landlord shall have the right, but not the obligation to make any and all repairs, corrections, mitigation, replacements, renovation or changes Landlord deems appropriate (at its sole discretion) and Tenant shall promptly reimburse Landlord for all costs, fees and other expenses incurred in relation to such repairs, corrections, mitigation, replacements, renovations and changes and such amounts shall be due and payable as "Additional Rent" within thirty (30) days from Landlord's issuance of written notice to Tenant.

(2) During the Term, the Tenant may make such Alterations subject to the mutual written approval of both Tenant and County. Where such Alterations necessitate or require the review and/or preparation of an environmental impact report, negative declaration or mitigation monitoring and reporting program or supplement to any existing document or report under the California Environmental Quality Act (as solely determined by Landlord), then Tenant shall fully comply with such requirements and pay for all costs and expenses associated with or related to such compliance, including all litigation costs, expenses and attorneys' fees related thereto.

SECTION 7. Sustainability, Environment, Health and Safety.

A. Sustainability. In performing any work, management, administration, operations, construction, development, maintenance, repairs or improvements on the Project Site, on the Project or any portion thereof, Tenant and the Tenant Representatives will use best efforts to substantially comply with Landlord's Sustainability policies found in Board of Supervisors Policy Manual 8.1 through and including 8.4, as amended from time to time by Landlord, and Landlord's Green Cleaning Policy Administrative Guidelines, as amended from time to time by Landlord.

(1) Design and Construction. In addition, the design, development and construction of the Project and all Alterations shall comply fully with the County of Santa Clara

green building and sustainability standards, policies and ordinance code provisions as if they were County buildings and facilities, as amended from time to time, including but not limited to County Ordinance Code Sections C3-30 and C3-31; Board of Supervisors Policy Manual Section 7.10 (Energy Efficiency Standards for New Building Designs, Facility Leases, Equipment, and Exploration of Solar Energy and Other Renewable Resources); and, Board of Supervisors Policy Manual Section 7.14 (Green Building Policy for County Government Buildings); however, any reasonably equivalent green building and sustainability standards may substitute for any one or all of the County's green building and sustainability standards, provided such alternatives are first reviewed and approved by Landlord.

B. Health and Sanitation During Construction of Project and Alterations. At all times during and in relation to construction of the Project and for any Alterations, Tenant, its contractors and subcontractors must meet and comply with all federal, state and local environmental, health and safety codes, regulations, statutes and other applicable laws, and shall take any and all necessary action to immediately comply with said laws upon knowing or having reason to know of such noncompliance.

C. Consumer Safety. If any product being offered, delivered or supplied to the Tenant or used in the construction, installation, operation or maintenance of the Project, the Alterations or any other work at the Project Site is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, Tenant must provide Landlord, upon request, with a Material Safety Data Sheet ("SDS") (as amended from time to time) with delivery, shipment or use. Each SDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

D. County No-Smoking Policy. Before, during and after construction, and at all times during the Term, Tenant and the Tenant Representatives shall not smoke on, in or around the Project or Project Site or in any buildings, facilities or structures thereon.

SECTION 8. California Environmental Quality Act.

A. Compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq., is a condition precedent to Landlord's entering into this Lease and a basis for termination of the Lease without recourse, liability or obligation of either Party. Tenant shall not take any action to design, construct or install anything for or in relation to the Project on the Project Site or any Alterations until CEQA compliance has been achieved (as solely determined

by Landlord) and Landlord has issued a notice to proceed to Tenant informing Tenant that the statute of limitations for making a CEQA challenge has expired. Tenant understands and agrees that Landlord shall have no obligation or liability under this Lease if Landlord elects to terminate this Lease based on any analysis or conclusions reached in undertaking CEQA or as a result of a CEQA challenge made by any third party to a CEQA determination or findings on procedural or substantive grounds.

(1) If the construction or completion of any aspect of the Project or any Alterations constitutes a "project" under CEQA, and Landlord elects to not terminate this Lease, then Tenant shall pay for all costs associated with CEQA compliance, including but not limited to all Landlord costs associated with such compliance and liability. If CEQA applies, no work of any kind or nature, shall be initiated on the Project Site unless and until such work has been the subject of a CEQA review and approval by and through the _____ [INSERT JURISDICTION], including all noticing, documentation and other public hearing requirements (where applicable) have been met.

(2) CEQA Litigation. If any third party commences litigation objecting to or otherwise challenging any action or omission under CEQA with respect to the Project Site, the Project or any Alterations, and Landlord has not elected to terminate this Lease, then Tenant shall indemnify, hold harmless and defend Landlord (with defense counsel reasonably acceptable to Landlord) for any and all liabilities, losses, costs or expenses, including attorney fees or fees for the use of experts or consultants, incurred as a result of any such claim, litigation or challenge. No settlement shall be entered into without Landlord's full consent and approval.

SECTION 9. Hazardous Materials, Substances and Waste.

A. Definition of Hazardous Materials. "Hazardous Materials" for purposes of Lease means, but is not limited to, (a) any hazardous, toxic or regulated wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws, including but not limited to regulations pertaining to storage, labeling, handling, recordkeeping, reporting, transportation, use, disposal, handling or shipment; (b) petroleum, petroleum by products, gasoline, diesel fuel, crude oil or any fraction thereof; (c) asbestos and asbestos containing material, in any form, whether friable or nonfriable; (d) polychlorinated biphenyls; (e) radioactive materials; (f) lead and lead-containing materials; (g) any other material, waste or substance which may display toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); (h) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Project Site or any surrounding property; (i) any materials which pose or threaten to pose a hazard to the health or safety of persons on the Project Site or any surrounding property; (j) any substances, ingredients, materials or products containing or that may contain blood borne pathogens, living or dead organisms, human remains

or by-product, bio-waste or medical waste. For purposes of this Lease, "Hazardous Materials" shall not include nominal amounts of ordinary household cleaners, office supplies and janitorial supplies that are exempt from any Environmental Laws. "Environmental Laws" as referred to herein means any and all local, state and federal environmental, health, consumer safety, medical or safety-related laws, statutes, orders, standards, court' decisions, ordinances, rules or regulations, decrees, directives, guidelines, permits or permit conditions, currently existing and as amended, enacted, issued or adopted from time to time, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, et seq.) (together with the regulations promulgated thereunder, "Title III"), the Clean Water Act, as amended (33 U.S.C. Section 1321, et seq.) (together with the regulations promulgated thereunder, "CWA"), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations promulgated thereunder, "CAA") and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.) (together with the regulations promulgated thereunder, "TSCA"), and any state or local similar laws and regulations and any so-called local, state or federal "superfund" or "superlien" law. (collectively and each, the "Environmental Laws").

B. Prohibition; Environmental Laws. Tenant shall be solely liable and responsible for ensuring that it and all Tenant Representatives comply at all times with all Environmental Laws, including those relating to any and all construction and installation activities, and all materials used or incorporated into the design of the Project, related to the Project Site or related in any way to Tenant or any of the Tenant Representatives' use of the Project or Project Site, including the Permitted Use. Tenant and all Tenant Representatives shall comply with all Environmental Laws including those relating to: generating, manufacturing, storing, handling, transporting to or from, using, disposing of, or shipping to or from, any Hazardous Materials on, in, under or about any portion of the interior or exterior of the Project Site, the Project or the Fairgrounds ("HazMat Use").

C. Tenant's Environmental Obligations. Tenant shall give to Landlord immediate verbal and follow-up written notice of any contamination, exposure, death, injury, illness, spill, release, discharge, disposal, emission, migration, removal, shipment or transportation of, from or relating to Hazardous Materials on, under or about any portion of the Project Site or Project (collectively, a "Release"), if Tenant knows or reasonably should know of such Release. Tenant, at its sole cost and expense, covenants, warrants and represents to promptly investigate, remedy, clean up, remove, decontaminate, restore, respond to, otherwise fully remediate, and resolve any and all claims relating to (including, without limitation, preparation of any feasibility studies or

reports and the performance of any and all closures) any Release of Hazardous Materials or violation of any Environmental Laws caused by, arising from or related to the acts or omissions of Tenant or any of the Tenant Representatives (the "Remediation"). Tenant shall keep Landlord informed of the status of all Remediation, including when it has begun, status of clean up and when it is completed. If Tenant fails to promptly complete the Remediation, County may, but without obligation to do so, take any and all steps necessary to rectify the same and Tenant shall promptly reimburse County, upon written demand, for all costs and expenses to County of performing the Remediation. All such Remediation, as required herein, shall be performed in such a manner so as to enable County to make full use of the Project Site and the other portions of the Fairgrounds after the satisfactory completion of such Remediation, as solely determined by County.

D. Environmental Indemnity. Excluding any claims, causes of action, risks, suits, losses, allegations, injuries, illness, death, damages and/or liabilities (including but not limited to litigation costs and attorneys' fees) (collectively and each, the "Claims") directly caused by the gross negligence or willful misconduct of Landlord or Landlord's employees, agents or assigns (collectively and each, the "Landlord Indemnitees"), Tenant shall protect, indemnify, defend (with legal counsel acceptable to County) and hold Landlord and the Landlord Indemnitees harmless from and against any and all Claims (including, without limitation, diminution in value of any portion of the Project Site and damages for the loss of or restriction on the use of rentable or usable space within the Project Site) arising at any time before, during or after the Term in connection with, resulting from or related to, directly or indirectly, any and all HazMat Use, Release, Remediation or violation of applicable Environmental Laws by Tenant or any of the Tenant Representatives arising out of, relating to or resulting from (directly or indirectly) any act or omission of Tenant or any of the Tenant Representatives.

E. Environmental Notice. Tenant shall immediately deliver to County complete copies of all written notices, demands, or other written communications in a party's possession from any governmental or quasi-governmental authority, or any insurance company or board of fire underwriters or like or similar entities, regarding any Release or Remediation on, to, about, upon, under, at, in, or from the Project Site, the Project or the Fairgrounds. Tenant shall immediately, upon receiving notice thereof, inform County in writing (and orally in the event of a Release or other emergency) of (1) any and all enforcement or Remediation, or other governmental, regulatory, or judicial acts or orders instituted, contemplated, or threatened pursuant to any Law affecting Hazardous Materials in, on, upon, over or under the Project Site, the Project or Fairgrounds; and (2) all Claims made or threatened by any third party relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual, proposed, or threatened HazMat Use, use, Remediation or Release on, in, upon, at, under, from, to, or about the Project Site, the Project or Fairgrounds.

F. Tenant's Business Plan. Prior to initiating the Permitted Use, , Tenant shall give written notification to Landlord that the business or operation on the Project Site is subject to the business plan requirements of, and will comply with, the provisions of California Health and Safety Code Section 25,500, et seq., and shall deliver to Landlord a copy of the plan(s). So long as any operations or uses on the Project Site require the establishment and implementation of a business plan concerning the handling of Hazardous Materials (pursuant to California Health and Safety Code §§ 25,500 et seq.), Tenant shall deliver to Landlord, within thirty (30) days following the filing thereof, a copy of any amendment to any such plan(s). A copy of any amendment to hazardous material inventory statements shall also be submitted to Landlord within the ten (10) days of submittal to the applicable governmental agency.

G. Underground Storage Tanks. During the Term, the Tenant shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and replace such tanks only in accordance with all applicable Laws, including Environmental Laws.

H. Integrated Pesticide Management. During the Term, Tenant and Tenant Representatives shall comply at all times with Landlord's Integrated Pesticide Management Ordinance, as amended from time to time.

I. Release of Landlord. Tenant hereby releases Landlord from all claims, liability, damages or costs, that Tenant may have at any time arising, directly or indirectly, from the presence, or alleged presence of Hazardous Material in, on or under the Project Site or the Project; provided, however, that this release excludes and shall not apply to (i) any Hazardous Material that originates from any land owned by Landlord that is adjacent to but outside of the Project Site footprint, or (ii) any Hazardous Materials that are generated by Landlord. In connection herewith, Tenant waives the provisions of Civil Code Section 1542, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

Initial of Tenant _____

J. Mandatory Waste Reduction. Tenant and the Tenant Representatives must fully comply with the Santa Clara County waste reduction programs, policies and ordinances, including Board Policy 3.13 and 3.14. Tenant must also avoid using two types of food containers: blown Expanded Poly Styrene (foam containers), and biodegradable or compostable plastics. It is recommended that Tenant use paper-based plates and bowls for all meals prepared or served on or at the Project Site. Tenant will be responsible and liable for complying with all

City of San Jose, County of Santa Clara and other local requirements for use and offering of bags and other containers and in particular County Ordinance B-11-508 et seq. and B-11-525 et seq.

SECTION 10 ADA and Other Laws.

All design, management, configurations, construction, management and operation of any and all Alterations or the Project shall at all times be in compliance with, (a) any and all applicable local, state and federal laws, rules, codes, ordinances, zoning, statutes, orders and regulations (collectively, the "Laws"), including without limitation, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. 12101 et seq., including, but not limited to Title III thereof, all regulations and guidelines related thereto and all requirements of Title 24 of the State of California (collectively, the "ADA"), (b) any and all applicable licenses, building codes, land use and permit restrictions and conditions which are at any time made by or given by a government entity relating to the Project or Project Site and/or the construction or installation (collectively, "Development Documents").

SECTION 11. Maintenance and Operation Obligations.

A. During the Term of this Lease, the Tenant shall maintain and repair the Project Site, the Project, all structures, Alterations, pavements, sidewalks, infrastructure, utilities, landscaping and other improvements thereon in good order and condition, clean and free of accumulation of dirt and rubbish, and in good operating condition, to the standards that would be adopted by a prudent owner or operator of a first class facility comparable to the Project, at the Tenant's sole cost and expense and in compliance with all Laws.

B. Protection of Project Site. TENANT shall maintain the Tenant Buildings, the Tenant Improvements and all Tenant personal property and chattel in such a manner as to protect the Property, the Project Site, the Tenant Buildings and the Tenant Improvements from damage, injury, loss, or liability arising from rainfall and other action of the elements, excepting such as may be directly caused by the active or sole gross negligence or willful misconduct of County or the County Representatives.

C. Telephone and Internet Access. Tenant shall provide its own telephone and internet access service for the Permitted Use.

D. Enforce All Regulations. Tenant will cause all persons conducting business, transacting, promoting, advertising, volunteering, working or operating within the Project Site relating to the Permitted Use to comply with all local, state and federal health, safety and environmental regulations, including any and all licensing, permitting, certification, filing, recordkeeping, reporting and training requirements.

E. Fire Code. Tenant shall at all times ensure that all activities, installations, uses, facilities, operations and conduct is fully compliant with all applicable fire codes and any and all directives or requirements of the fire marshal for Santa Clara County.

F. Payroll Taxes and Costs. Tenant shall prepare and process the payroll for its employees and shall pay all applicable federal, state and local employment taxes and payroll insurance, including any income, social security and unemployment taxes and worker compensation costs.

G. Nuisance. Tenant shall ensure that Tenant and Tenant Representatives do not conduct any activities on, in, under or about the Project Site that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights).

H. Food Operation Requirements. Tenant warrants, represents and agrees that the following material requirements shall apply to Permitted Use, including the operation of any and all food concessions, food distributors and sourcers, food service, restaurants and cafeterias on, in and around the Project or Project Site at all times:

(1) Nutritional Content and Standards. It is the County's goal to offer visitors to County property high quality nutritionally-responsible food and food service operations. It shall be the responsibility of the Tenant to provide a maximum variety of quality nutritional foods and beverages consistent with industry and County nutritional standards in comparable food service facilities at reasonable prices. Tenant shall exercise reasonable imagination, creativity, and good taste in the planning, preparation, and serving of meals and shall conscientiously strive to ascertain customer desires for food and beverages with regard to taste, appearance, nutritional value, and variety. County's nutritional standards will be used by Tenant as a baseline indicator of appropriate nutritional sources. A copy of these standards will be provided to Tenant upon request.

(2) Locally Grown, Locally Sourced. The County encourages the Tenant to buy locally grown food (within 150 miles or a distance considered a reasonable day's drive) whenever possible. Partnership with local farms and/or distributors who support local farms is also encouraged. All produce purchased should be from reputable growers and/or distributors who have demonstrated safety and sanitation practices in place including compliance with FDA standards and pesticide laws.

(3) Nutritional Content. Tenant will make nutritional content of foods and beverages per serving sizes readily available for review by potential customers and the County at all times during hours of operation; offer healthy alternatives and indicate on menus if the food or beverage item is healthy, vegan or vegetarian based on acceptable industry standards and in compliance with local, state and federal laws.

(4) Other Food Standards.

(a) All food, beverages and products sold, offered for sale or for consumption shall not be counterfeit, adulterated, misbranded, falsely or misleadingly labeled, marketed or advertised within the meaning of any applicable local, state or federal laws, rules, regulations or guidelines. All food, beverages and products sold or offered for sale or for consumption (including ingredients, price, terms and conditions of sale) shall not be in violation of any laws, ordinances, statutes, rules or regulations of the United States or any state or local government or any subdivision or agency thereof, including but not limited to: all laws and regulations relating to health, safety, environment, serial and identification numbers, labeling, toxic substances, and the requirements of California Proposition 65. All food, beverages and products sold or offered for sale or for consumption that fall within those classes, types, kind or sources of products, beverages or food that are regulated or subject to the requirements or guidelines of the United States Federal Trade Commission ("FTC"), the U.S. Food and Drug Administration ("FDA"), the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of Agriculture ("USDA"), or similar or equivalent local or state standards, rules, laws, regulations, permitting, certification or licensing requirements, shall comply at all times with these requirements, including requirements relating or applying to green, organic, environmental, nutritional, dietary, cosmetic, healthy or safe food or product claims, marketing, advertising, promotion or labeling. For example, but not limitation, the Federal Trade Commission Green Guides. All green, organic, environmental, nutritional, dietary, cosmetic, health or safe food, beverages and product claims shall be supported by sufficient documentation substantially demonstrating or evidencing the truthfulness or accuracy of such claims.

(b) No food, beverage or products, or any other items sold, offered for sale or made available to customers shall infringe upon or violate any patent, copyright, trademark, trade name, trade dress, trade secret or, without limitation, any other rights belonging to others, and all royalties owed, if any, shall be paid by the Tenant to all licensors where owed.

(c) All weights, measures, sizes, legends or descriptions printed, stamped, attached, labeled or otherwise indicated with regard to the food, beverage or products or other items sold, offered for sale or made available to customers shall be true and correct, and conform and comply with all laws, rules, regulations, ordinances, codes and/or standards of federal, state and local governments relating to said item, product, beverage or food.

I. Tenant Personnel.

(1) Tenant shall employ sufficient and suitable personnel to maintain efficient service and sanitary conditions, including a full-time manager at each cafeteria, who possesses the necessary qualifications, skills and expertise, including ServeSafe Food Protection Manager Certification at each cafeteria, to supervise the operation effectively and in compliance with all

laws. The manager and all other personnel and contractors involved in food presentation, customer service, food handling, food preparation, serving, cooking or baking of food or food products must have completed and shall maintain at all times current training, certification and testing for such activities including, by way of example but not limitation, any requirements for a Food Safety Certificate or Food Handlers Card, ServSafe Certification and/or TB testing if applicable.

(2) Tenant shall provide its employees and contractors with prevailing wages, hours, fringe benefits, and working conditions reflected in standard collective bargaining agreements for comparable hotel and restaurant work within the geographical area of Santa Clara County in accordance with the current State of California Employment Development Department's Wage Data.

(3) Tenant shall be responsible for maintaining satisfactory standards of employee and contractor competency, conduct, integrity, and personal health and cleanliness and shall be responsible for taking disciplinary action with respect to its employees and contractors as may be necessary.

(4) Tenant shall at all times be responsible for ensuring compliance with and shall comply with the (1) California Retail Food Code (Health and Safety Code Sections 113700 et seq.) where it applies to food services operations, food preparation or services.

(5) Tenant, and its employees, agents, representatives, contractors, consultants, vendors and any person conducting business within, upon or around the Project Site, shall conduct themselves in a professional, courteous and respectful manner at all times. The Tenant, not the County, shall be responsible and liable for handling, addressing and responding to any and all customer, guest and visitor concerns regarding any service, food, beverage or product matters pertaining to the food services operations including but not limited to refund requests, product complaints and/or other service matters.

J. Health and Sanitation.

(1) Tenant must meet federal, state and local health and safety codes and laws for food service operations, preparation, handling, storage and service. Tenant shall keep all equipment, food operation, preparation, storage, transport, treatment and handling facilities and materials in a clean and sanitary condition at all times and in full compliance with all laws.

(2) If Tenant is in non-compliance with any codes or laws, Tenant shall take all action necessary to immediately comply with such codes and laws.

(3) The County reserves the right to request and require environmental, health or safety inspections of any operations, trucks, equipment or facilities by the Department of

Environmental Health. If found in non-compliance of codes or laws, Tenant shall immediately rectify the situation and comply with the laws and codes.

(4) Proper food handling procedures are required, including frequent hand washing, employee hygiene, proper use of gloves when preparing and serving meals, and proper utensil handling. Hot and cold foods should always be maintained at the proper temperatures. Temperature logs shall be maintained regularly and be available for review at all times by County at County's request.

(5) Tenant must have appropriate food recall procedures in place to include effective communication to staff to ensure food safety as well as notification to the County and customers as appropriate. Tenant shall at all times comply with all local, state and federal food, beverage and product recall laws. If anything sold or offered for sale by Tenant is the subject of a recall, whether initiated by Tenant, by the County or any government entity (including the issuance of safety notices), the Tenant shall be responsible for all matters, liability and costs associated with the recall, including but not limited to:

- Consumer notification and contact;
- All expenses and losses incurred in connection with such recall (and where applicable, any other end-products with which the recalled item has been packaged, consolidated or commingled), including but not limited to refunds to customers, lost profits, transportation costs and all other costs associated therewith; and
- Initial contact and reporting of the recall to any government agency having jurisdiction over the affected item.

If a government agency initiates any inquiry or investigation relating to the item recalled or similar goods manufactured, supplied or offered for sale to consumers by Tenant, Tenant shall immediately notify County and take reasonable steps to resolve the matter without exposing the County to any liability or risk.

(6) Tenant shall be responsible for the housekeeping and sanitation of the food preparation, storage, serving, and dining areas. This will include at least twice daily: cleaning of tables and chairs in the dining area; removal of all waste to designated areas; spot dry mopping/sweeping of the floor in the dining, serving and storage areas; the washing and sanitizing of all utensils and equipment in the food preparation and serving areas. County shall clean the windows, walls above 6 feet from floor level, ceilings, lighting, ventilation systems, grease traps, and provide pest control. However, Tenant will undertake all due diligent and prudent means to prevent any infestation of rodents or vermin in the areas under its direct control and shall comply with, in connection with the foregoing, the County's Integrated Pest

Management and Pesticide Use Ordinance, Division B28 of the Santa Clara County Ordinance Code.

(7) Tenant shall transport solid waste and recyclable material to the immediate collection areas, located at the rear of the Food Services Facility. County shall be responsible for the collection and removal of the waste from the Facility. Tenant agrees to actively participate in County's recycling program as prescribed in the County Board of Supervisor's Policy 3.14, Waste Reduction and Recycling in County Facility.

K. Unfair or Deceptive Advertising or Trade Practices.

(1) Tenant warrants, represents and agrees that on the Project Site and on all promotional materials, websites and social media (i) all offers, services, products and food (collectively, the "Offers") sold or offered shall not be counterfeit, adulterated, misbranded, falsely or misleadingly labeled, marketed or advertised; (ii) all Offers (including ingredients, price, terms and conditions of Offer) shall not be in violation of any laws, ordinances, statutes, rules or regulations of the United States or any state or local government or any subdivision or agency thereof, including but not limited to: all laws and regulations relating to disclosures, misleading advertising, sweepstakes and contests, weights and measures, health, safety, environment, serial and identification numbers, labeling, toxic substances, and/or the requirements of California Proposition 65.

(2) Tenant warrants, represents and agrees that it shall not, nor shall it allow, permit or authorize anyone else, including its Tenants Representatives, to engage in, support or conduct any unfair, deceptive or misleading business practices, promotions or advertising.

L. Food/Beverage Operation Audits. In relation to any food or beverage operations, County reserves the right to audit, and Tenant shall provide reasonable access to, any and all operating statements, financial records, employee records, and environmental, health or safety records, reports, filings, notices, inspection records, and information relating to any notices of violation or agency action. By way of example, but not limitation, the County may audit Tenant's operations and records in relation to any of the following health concerns:

- Improper holding temperatures of potentially hazardous foods.
- Improper cooling of potentially hazardous foods.
- Inadequate cooking of potentially hazardous foods.
- Poor personal hygiene of food employees.
- Contaminated equipment.
- Food from unapproved sources.

- Weights and Measures compliance.
- Consumer misrepresentations or unfair or deceptive trade practices.

(1) Some factors the County may, at its option, consider in determining compliance with this Lease include, but are not limited to: wage levels, pay ranges, benefits for all positions and job classifications, medical insurance for employees, annual rate of staff turnover, number of hours of training for each position in subject areas directly related to the Lease or performance or quality of performance under the Lease, number of legal complaints issued by an enforcement agency against the Tenant for alleged violations of applicable federal, state or local rules, regulations or laws and the number of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws related to treatment of employees or the Tenant's fiscal condition, and any collective bargaining agreements or personnel policies covering the Tenant's employees.

(2) The County may designate an auditor to evaluate all areas of Tenant's operations on a periodic basis, at Tenant's sole cost and expense. Tenant shall allow the designated County auditor access to all areas of operations during regular business hours, with or without County prior notice.

(3) The County-designated auditor reserves the right to take pictures or videotape in any operation include any transport truck, obtain a photocopy of any records, and interview employees and customers. Tenant will receive a copy of the audit along with details of missed points. After completion of the audit, the County will provide Tenant with a list of required corrective actions, along with the audit details. Tenant must address all audit findings and take all requested corrective action within the time frame required of the auditor.

(4) Anyone, including Tenant employees or customers, may communicate or report known or suspected violations of law, policy or procedure by Tenant to the County-designated auditor or law enforcement. The County will investigate any potential violations and if such violations are found, a violation citation may be issued. Such violations include, but are not limited to, the following:

- Operational violation (e.g. no manager or shift leader on duty);
- Café hours violation;
- Health code violation; and/or
- Safety violation.

(5) Such violation citations will provide a required course of action and date of resolution. Continual violation citations may result in a letter of default and termination of the

County Lease. However, the County reserves the right, at its sole and absolute discretion, to cancel the Lease with a Tenant for any reason, even if based on one instance of violation citation or any report or allegation of violation even if no citation is issued.

M. Other County Audit Rights. Upon service of a written notice to Tenant, County and persons authorized by County, have the right at any reasonable time and place to examine, audit, and make copies of books, compliance records, records, documents, financial records, financial audits, accounting procedures and practices of Tenant, and of any of the Tenant Representatives affecting or relating to the performance or administration of any provision of this Lease or any of the Permitted Uses, including but not limited to reasonable access to facilities, financial and employee records that are related to the Permitted Use or compliance with any provision of this Lease. Such records may include, but are not limited to: wage levels of workers on the Project or involving the Permitted Use, pay ranges for workers on the Project or involving the Permitted Use, benefits for all positions and job classifications working directly on or in the Project or Project Site, medical insurance for employees, annual rate of staff turnover, number of hours of training for each position in subject areas directly related to this Lease or the Project, number of complaints, citations or violations issued by any enforcement agencies for alleged violations of applicable federal, state or local rules, regulations or laws and the number of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws related to treatment of employees or fiscal conditions, and any collective bargaining agreements or personnel policies covering persons working on the Project or relating to the Permitted Use where ever found.

SECTION 12. Intellectual Property and Signage.

A. Naming Rights and Sponsorships. Tenant shall not sell or offer to sell any advertising, naming rights or sponsorships of any nature or kind or under any duration with respect to or on the Project Site without the advance written consent of the County Board of Supervisors in each instance.

B. Use of Landlord's Name for Commercial Purposes. Tenant and any of the Tenants Representatives may not use the name of the Landlord or reference any endorsement from the Landlord in any fashion for any purpose, without the prior express written consent of the County Board of Supervisors.

C. Monument, Readerboard and Informational Signage. The Tenant shall have the exclusive right to install and construct signage on or off-site to advertise, promote and market the Project in compliance with all applicable laws, and all County-required approvals and permits. The location, size, materials, display and utility of such signage shall in each instance require advance written approval from Landlord, including whether or not such signage is electronic, digital or involves any other form of media or transmission capacity.

D. Landlord Intellectual Property. “Landlord Intellectual Property” means, for purposes of this Lease, all County confidential, trade secret or proprietary information, all County customer information, all County licensing rights; County trade names, trade dress, patents, patents pending, copyrights, copyrighted materials and goodwill; and, all County-generated information, invention, software, metadata, system, hardware, design, device, material or program. Tenant warrants, represents and agrees that it has not and that it will not grant or give permission or license to use Landlord Intellectual Property, nor allow others to do so, for advertising or for any purpose without Landlord’s prior written consent. Tenant acknowledges and agrees that (1) Landlord is and shall remain the sole and exclusive owner of all right, title and interest in and to Landlord Intellectual Property, including the right to grant permission to use Landlord’s Intellectual Property; (2) Tenant’s use of the Landlord Intellectual Property, and all goodwill associated with the Landlord Intellectual Property shall inure to the sole and exclusive benefit of Landlord; and, (3) nothing in this Lease or any related agreement, instrument or document shall be construed to give Tenant or any of the Tenant Representatives any legal or beneficial ownership interest in or title to the Landlord Intellectual Property. Notwithstanding the foregoing, in the event that Tenant is deemed to own any rights in the Landlord Intellectual Property, Tenant hereby permanently and unconditionally assigns all such rights to Landlord. Tenant represents, warrants and agrees for itself and for each of the Tenant Representatives that it has not and that it shall not change or modify the Landlord Intellectual Property other than in connection with the performance of its obligations under this Lease, or create any design variation of the Landlord Intellectual Property, without the prior written consent of Landlord; Tenant SHALL NOT join any name, mark or logo with any of the Landlord Intellectual Property so as to form a composite trade name or mark, without obtaining the prior written consent of Landlord; Tenant shall refrain from using any other name or mark that is confusingly similar to the Landlord Intellectual Property; and, Tenant will not directly or indirectly do anything to compromise Landlord’s Intellectual Property. Tenant agrees to notify Landlord promptly if it becomes aware of any actual, suspected or threatened infringement, misuse, imitation, dilution, misappropriation or other unauthorized use, access or conduct in derogation of the Landlord Intellectual Property. Landlord shall have the sole right to bring any action to remedy the foregoing, and Tenant and Tenant Representatives shall cooperate with Landlord in exercising such right. Any and all recoveries resulting from such actions initiated by Landlord shall be retained by Landlord. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, LANDLORD DISCLAIMS ALL WARRANTIES REGARDING THE LANDLORD INTELLECTUAL PROPERTY AND ANY OTHER INFORMATION OR ASSISTANCE PROVIDED INCLUDING WARRANTIES OF NON-INFRINGEMENT. IN NO EVENT SHALL LANDLORD BE LIABLE TO TENANT OR OTHERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COLLATERAL OR PUNITIVE DAMAGES OR LOST PROFITS OR FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, ARISING FROM, OUT OF OR RELATED TO THIS LEASE, TENANT’S USE OF OR RELIANCE ON THE LANDLORD

INTELLECTUAL PROPERTY OR ANY INFORMATION OR ASSISTANCE PROVIDED TO LANDLORD BY OR ON BEHALF OF LANDLORD.

E. Third Party Intellectual Property. Tenant warrants, represents and agrees to save, defend, hold harmless and indemnify the Landlord and Landlord's employees, agents, contractors, subcontractors, representatives, assigns, directors and Board of Supervisors (collectively and each the "Landlord Representatives") from, for and against any and all claims, fees, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, and/or exposure, however caused, for or on account of any software, metadata, system, hardware, design, device, material, program, trademark, trade name, trade dress, copyright, patented or unpatented invention, process or article (collectively and each the "Third Party Intellectual Property") manufactured, supplied, or used by or on behalf of Tenant in connection with the design, construction or installation of the Building and (2) use of any and all monitoring, electrical or other technology, equipment or capabilities. If Tenant uses or relies upon any such Third Party Intellectual Property covered by, subject to or claimed to be the intellectual property of another, it is mutually agreed and understood, without exception, that all royalties and fees (including licensing and maintenance fees) owed or claimed for the use of such intellectual property shall be solely and exclusively paid by Tenant and not Landlord.

SECTION 13 PCI Compliance.

A. Tenant represents, warrants and agrees to comply with and adhere to, at all times, and to ensure all Tenant Representatives comply at all times with, the most current version of Payment Card Industry Data Security Standards (PCI DSS) promulgated by the PCI Security Standards Council, where applicable. PCI DSS is applicable if Tenant or any of the Tenant Representatives processes, transmits and/or stores any cardholder data in the performance of or provision of services at or in relation to fulfilling the terms or conditions of this Lease. Where PCI DSS applies, Tenant represents, warrants and agrees, on behalf of itself and each of the Tenant Representatives that:

(1) Tenant and the Tenant Representatives are each (jointly and severally) responsible and liable for the security of cardholder data where (1) the Tenant or any of the Tenant Representatives obtain, access or possess or otherwise store, process or transmit on behalf of the customer any cardholder data or (2) where the security of the customer's cardholder data could be impacted.

(2) Tenant attests that, prior to and during any and all access, possession, storage, processing or transmitting of cardholder data by Tenant or any of the Tenant Representatives, Tenant will be in compliance with all applicable requirements of the PCI DSS, and will have successfully performed all necessary steps to validate compliance with the PCI DSS.

(3) During the Term of this Lease, Tenant agrees to promptly supply to County, upon County request in each instance, the current status of Tenant's PCI DSS compliance, and evidence of its most recent validation of compliance. In addition, Tenant must supply to County an attestation of compliance (on behalf of itself and that of each of the Tenant Representatives) at least annually.

(4) Tenant will immediately notify County if Tenant learns that Tenant or any of the Tenant Representatives is no longer PCI DSS compliant and will immediately provide County the steps being taken to remediate the non-compliance status. In no event shall Tenant's notification to County be later than seven (7) calendar days after Tenant learns Tenant or any of Tenant Representatives is no longer PCI DSS compliant.

(5) Tenant and each Tenant Representative shall acknowledge in writing to all customers that they are responsible for the security of cardholder data that the Tenant or any of the Tenant Representatives possess, obtain or access, or otherwise store, process, or transmit, or to the extent that they could impact the security of the customer's cardholder data environment.

(6) Tenant will create and maintain detailed, complete and accurate documentation describing the systems, processes, network segments, security controls, and dataflow used to receive, transmit, store and secure customer cardholder data and such documentation must fulfill the most current version of PCI DSS.

(7) Tenant will apply best efforts, including but not limited to, physical, software, and network security measures, employee screening, training, and supervision and appropriate written agreements with Tenant Representatives, to comply with PCI DSS.

(8) Tenant will, at least annually, test and evaluate the effectiveness of such measures.

(9) All records, data and files relating to cardholder data, stored, handled or transmitted by Tenant or any of the Tenant Representatives, including the media on which they are stored, are the sole and exclusive property of the cardholder.

(10) With respect to any software used by Tenant or any of the Tenant Representatives in relation to cardholder data, such software must meet the most current version of Payment Application Data Security Standard ("PA-DSS"), and Tenant or any of the Tenant Representatives must be able to deploy and maintain the software in accordance with PCI DSS.

(11) Tenant will provide a patch release or security updates within 24 hours of discovery of suspect or actual security vulnerability, and will properly deploy the patch or security update promptly.

(12) Tenant acknowledges that any indemnification provided or required to be provided to Landlord by Tenant or any of the Tenant Representatives under the terms of this Lease or any other agreement with County also applies to the failure (in whole or in part) of the Tenant or any of the Tenant Representatives to be and to remain PCI DSS compliant.

(13) Tenant will, upon execution of this Lease, establish security procedures to protect cardholder data and comply with PCI DSS. Tenant may find details of the PCI DSS at https://www.pcisecuritystandards.org/security_standards/pci_dss.shtml.

(14) Tenant and the Tenant Representatives will comply with all applicable laws that require the notification of individuals in the event of unauthorized release of cardholder data. In the event of a data breach or a failure to comply with any PCI DSS standard or other event requiring notification under applicable law, Tenant will assume responsibility for informing all cardholders, credit card companies, government agencies and banks in accordance with applicable law and will indemnify, hold harmless and defend County and the County Board of Supervisors, officers, employees, agents and representatives (collectively and each the "County Representatives") from and against any and all claims, damages, or other harm related to such data breach or failure to comply in whole or in part.

(15) Upon County request, Tenant will complete the SCCGov Cloud Service Provider Checklist and provide this to County promptly. Such checklist may be evaluated by County to assist County in evaluating whether Tenant is or has the ability to comply with PCI DSS and to determine whether additional safeguards or warranties are needed from Tenant to ensure PCI DSS compliance.

(16) County shall have the right but not the obligation, at any time, to audit the performance, software, applications, hardware, records and operations of Tenant and any of the Tenant Representatives to verify compliance with PCI DSS, and may do so annually or more frequently, if County deems it necessary. Tenant and Tenant Representatives shall fully cooperate with County and the County Representatives on all audits.

(17) A failure to comply with any of the provisions of this Section is a material breach (default) of this Lease.

SECTION 14. Insurance and Indemnity.

A. Indemnity. Tenant covenants, warrants, represent and agree that:

(1) Tenant shall be liable, and shall reimburse County, for all expenses incurred by County for any and all work, repairs, maintenance and replacement of property (both real and personal) that results from Tenant's use of the Project Site in violation of this Lease, and from the negligent, willful or intentional actions or inactions of Tenant, its guests, visitors,

invitees, agents, contractors, subcontractors, vendors, employees, affiliates, members, representatives or others, excluding any damage or injury solely caused by the gross negligence or willful misconduct of County, its agents, employees, representatives or other contractors.

(2) Excluding Claims solely resulting from the gross negligence or willful misconduct of the County or the Indemnified Parties, Tenant shall indemnify, defend, save and hold harmless County and each of County's Board of Supervisors, employees, officers, attorneys, agents, representatives, affiliates, contractors and subcontractors (collectively, the "Indemnified Parties") from, for and against any and all claims, causes of action, risks, suits, losses, allegations, injuries, illness, death, damages and liabilities (including but not limited to litigation costs and attorneys' fees) (collectively, the "Claims") occasioned by, relating to, or resulting from, wholly or in part, directly or indirectly, (1) any breach of this Lease by Tenant, and/or (2) the acts or omissions of Tenant, its agents, contractors, subcontractors, representatives, officers, employees, guests, members, participants, patrons or any person or persons admitted to or using the Project Site.

(3) Excluding Claims solely caused by County's or the Indemnified Parties' gross negligence or willful misconduct, Tenant hereby forever releases County and all Indemnified Parties from responsibility and liability for, waives Tenant's entire claim of recovery for, and assumes all risk of: (i) Claims; (2) damage to property or injury to persons (including death) in, at or on the Project Site during Tenant's use of the Project Site. No defense, indemnification or hold harmless obligations hereunder shall relieve any insurance carrier of its obligations under any insurance policies carried by either Party pursuant to this Lease.

(4) Tenant accepts and acknowledges that Tenant may have rights under California Civil Code § 1542 which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in [his/her] favor at the time of executing the release, which if known by [him/her] must have materially affected [his/her] settlement with the debtor.

_____ Tenant Initials.

Tenant certifies, declares, represents and acknowledges that Tenant expressly waives any rights conferred under Civil Code section 1542, as well as any similar law of any local, state or territory of the United States.

(5) Tenant will also indemnify County and provide insurance as set forth in "Exhibit F" attached hereto and fully incorporated herein.

(6) These indemnification obligations shall survive the expiration, termination or cancellation of this Lease. The County shall be entitled to recover its reasonable attorney's fees and court costs incurred in enforcing these indemnification obligations.

B. Insurance. At all times during the Term of this Lease, the Tenant shall maintain, at a minimum, the insurance requirements described in Exhibit F attached hereto. In addition, the Tenant shall require any or all of the Tenant Representatives to carry such levels of insurance as reasonably requested or approved by the County and, in connection with such policies, shall name the County as additional insured.

(1) The Tenant shall furnish the County with certificates of insurance and with original endorsements effecting coverage as required by Exhibit F and Section _____ at the Commencement Date and annually thereafter.

(2) The Tenant agrees that all worker's compensation, fire, casualty and other property insurance policies carried by Tenant relating to the Project or Project Site will contain a full waiver of subrogation by the insurer against Landlord and Landlord's assigns.

SECTION 15. Subordination; Estoppel Certificate; and Related.

A. Subordination.

(1) To the fullest extent permitted by law, this Lease, the rights of Tenant under this Lease and Tenant's Leasehold interest shall be subject and subordinate at all times to: (i) all ownership interest in or to the Project Site, and all ground leases or underlying leases which may now exist or hereafter be executed affecting the Project Site, and (ii) the lien of any mortgage or deed of trust which may now or hereafter exist for which the Project Site or County's interest or estate therein is specified as security. Notwithstanding the foregoing, County or any such property owner, ground lessor, mortgagee, or any beneficiary shall have the right to require that this Lease be superior to any such ground leases or underlying leases or any such liens, mortgage or deed of trust. If any ground Lease or underlying Lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to and become the Tenant of the successor in interest to County, provided such successor in interest will not disturb Tenant's use, occupancy or quiet enjoyment of the Project Site if Tenant is not in material default of this Lease beyond any applicable notice and cure period. Tenant covenants and agrees to execute (and acknowledge if required by County, any lender or ground lessor) and deliver, within twenty (20) days of receiving a written demand or request by County and in the form reasonably requested by County and reasonably acceptable to ground lessor, mortgagee or beneficiary, any additional documents evidencing the priority or subordination of this Lease with respect to any such ground leases or underlying leases or the lien of any such mortgage or deed of trust.

(2) County will not subordinate to Tenant or Tenant's lenders any of its interest in the Project Site.

B. Estoppel. Tenant shall execute (and acknowledge if required by any lender or ground lessor) and deliver to County, within twenty (20) days after County provides such to Tenant, a statement in writing certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification), the date to which the Rent and other charges are paid in advance, if any, acknowledging that there are not, to the best of Tenant's knowledge, any uncured defaults on the part of County hereunder or specifying such defaults as are claimed, and such other matters as County may reasonably require. Any such statement may be conclusively relied upon by County and any prospective purchaser or encumbrancers of the Project Site. Tenant's failure to deliver such statement within such time shall be conclusive upon the Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by County; (b) there are no uncured defaults in County's performance; and (c) not more than one month's Rent has been paid in advance. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of Landlord's interest in the Project Site. Tenant's failure to deliver such statement within such time shall be conclusive upon the Tenant that this Lease is in full force and effect without modification, except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance.

C. Transfer of County's Interest. Tenant acknowledges that County has the right to transfer all or any portion of its interest in the Project Site and this Lease. Tenant expressly agrees that in the event of any such transfer, County shall automatically be entirely released from all liability under this Lease and Tenant agrees to look solely to such transferee for the performance of County's obligations hereunder after the date of such transfer. Tenant agrees to attorn to such new owner provided such new owner does not disturb Tenant's Permitted Use of the Project Site so long as Tenant is not in violation of any term or condition of this Lease.

D. County Exculpation. The liability of County to Tenant for any default by County under the terms of this Lease shall be limited to the actual interest of County in the Project Site (including all rents, issues, profits and proceeds therefrom), and Tenant agrees to look solely to County's interest in the Project Site for satisfaction of any liability and shall not look to other assets of County nor seek any recourse against the assets of the County of Santa Clara or its Board of Supervisors, officers, directors, attorneys, employees, representatives, agents, contractors, affiliates or assigns, including without limitation, any property management company of County (collectively, the "County Parties"). It is the Parties' intention that County and the County Parties shall not in any event or circumstance be personally liable, in any manner whatsoever, for any judgment or deficiency hereunder or with respect to this Lease. The liability of County under this Lease is limited to its actual period of ownership of title to the Project Site. Notwithstanding the foregoing, if County is adjudged or ordered to pay Tenant a money judgment because of County's default under the Lease, then Tenant's sole remedy to satisfy the

money judgment shall be limited to County's interest in the Project Site including the rental income and proceeds from sale and any insurance or condemnation proceeds received because of damage or condemnation to, or of, the improvements on the Project Site or the land upon which the Project Site exists that are available for use by County. Tenant's remedies shall be limited to money judgments.

SECTION 16. Tenant Assignments and Subleases.

A. Concessionaires to Carry Out Project. Tenant may grant licenses with respect to portions of the Project Site to concessionaires or licensees providing goods, services or merchandise in fulfillment of or in carrying out the Project provided such licensees and concessionaires comply fully with all terms and conditions of this Lease and such requirement is expressly stated in all Tenant contracts and agreements with such licensees and concessionaires. The Tenant shall not be relieved of further liability hereunder in connection with any such license.

B. Consent by Landlord. Tenant may not voluntarily, involuntarily or by operation of law, assign, sell or otherwise transfer all or any part of Tenant's interest in this Lease or in the Project or Project Site, cause or permit any part of the Project or Project Site to be sublet, occupied or used by anyone other than Tenant, or permit any person to succeed to any interest in this Lease, the Project or the Project Site (all of the foregoing being a "Transfer") without the express written consent of Landlord, except as otherwise allowed in Section 15.A above. In the event Tenant desires to effectuate a Transfer, Tenant shall deliver to Landlord (i) executed counterparts of any agreement and of all ancillary agreements relating to the Transfer with the proposed transferee, (ii) current financial statements of the transferee covering the preceding three years, (iii) the nature of the proposed transferee's business to be carried on in the Project Site, (iv) a statement outlining all consideration to be given on account of the Transfer, and (v) a current financial statement of Tenant. Landlord may condition its approval of any Transfer on receipt of a certification from both Tenant and the proposed transferee of all consideration to be paid to Tenant in connection with such Transfer. At Landlord's request, Tenant shall also provide additional information reasonably required by Landlord to determine whether it will consent to the proposed Transfer. Landlord shall have a thirty (30) day period following receipt of all the foregoing within which to notify Tenant in writing that Landlord elects to: (i) permit Tenant to Transfer such space to the named transferee on the terms and conditions set forth in the notice; or (ii) refuse consent. Landlord's consent to the proposed Transfer shall not be unreasonably withheld, provided and upon the condition that: (i) the proposed transferee is engaged in a business that is limited to the use expressly permitted under this Lease; (ii) the proposed transferee is a company with sufficient qualifications, financial worth and management ability and expertise to undertake the financial obligation of this Lease, to perform and satisfy all requirements and provisions of this Lease throughout the Term and Landlord has been furnished with reasonable proof thereof; (iii) the proposed transfer agreement

is in a form and content reasonably satisfactory to Landlord; and (iv) Tenant reimburses Landlord on demand for any actual reasonable costs that may be incurred by Landlord in connection with said Transfer, including the costs of making investigations as to the acceptability of the proposed transferee and legal costs incurred in connection with the granting or denial of any requested consent. In the event all or any one of the foregoing conditions are not satisfied (without limiting other factors that may be considered or conditions that may be imposed by Landlord in connection with a requested Transfer), Landlord shall be considered to have acted reasonably if it withholds its consent.

(1) Leasehold Mortgage/Security Interest. Tenant shall not grant any security interests in, or otherwise cause or permit any liens or encumbrances to be created against County's fee title or interest in the Project Site, in whole or in part. Without, in each instance, the advance written consent of County, Tenant may not grant security interests in its interest under or to this Lease, or in its interest in or to the buildings, structures, Alterations, infrastructure or other improvements constructed or to be constructed on, in, under or upon the Project Site, including those to secure any loan or financing (collectively, the "Mortgage") made or provided by any third party ("Mortgagee"). To be clear, Tenant shall not hypothecate, mortgage, pledge or otherwise encumber Tenant's interest in this Lease or the Project Site or otherwise use the Lease as a security device in any manner without the consent of Landlord, (all of the foregoing being an "Hypothecation") which consent Landlord may withhold in its sole and absolute discretion. Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred by Landlord in connection with a Hypothecation, including legal costs incurred in connection with the granting or denial of any requested consent. Landlord's consent to one or more Transfers or Hypothecations shall not operate to waive Tenant's obligation to obtain Landlord's consent to other Transfers or Hypothecations nor constitute consent to an assignment or other Transfer following foreclosure of any permitted lien, mortgage or other encumbrance.

(2) If Tenant is a corporation, limited liability company, unincorporated association, partnership or other legal entity, the sale, assignment, transfer or hypothecation of any stock, membership or other ownership interest in such entity (whether occurring at one time or over a period of time) in the aggregate of more than fifty percent (50%) (determined cumulatively) shall be deemed an assignment of this Lease; in the case of a partnership, any withdrawal or substitution (whether occurring at one time or over a period of time) of any partners owning fifty percent (50%) or more (cumulatively) of the partnership, or the dissolution of the partnership shall be deemed an assignment of this Lease; provided that, subject to Section ____ below, the foregoing provisions of this sentence shall not apply to a transfer of stock in a corporation whose stock is publicly traded on a public stock exchange. If Tenant is an entity, any sale of all or substantially all of its assets shall be deemed an assignment of this Lease. If Tenant is a corporation whose stock is not publicly traded on a public stock exchange, any dissolution, merger, consolidation or reorganization of Tenant shall be deemed a Transfer. Tenant

acknowledges and agrees that the provision of this Section ____ are not unreasonable standards or conditions for purposes of Section 1951.4 of the California Civil Code, as amended from time to time, under bankruptcy laws, or for any other purpose.

(3) Assignment or Subletting Consideration. Notwithstanding the provisions of Section ____ above, Landlord and Tenant hereby agree that fifty percent (50%) of any rent or other economic consideration paid to Tenant through any assignment or sublet of the Project Site (including without limitation, payments for trade fixtures and personal property in excess of the fair market value thereof, stock, warrants, and options) in excess of the Base Monthly Rent payable hereunder (after deducting therefrom Reasonable Transfer Costs (defined below)) realized by Tenant in connection with any Transfer by Tenant, including any amounts received by Tenant from any subtenants or assignees of a subtenant, shall be paid by Tenant to Landlord promptly after such amounts are paid to Tenant. As used in this Section, "Reasonable Transfer Costs" shall mean the following costs, to the extent actually incurred in connection with the Transfer in question: (i) advertising costs, attorneys' fees and brokerage commissions payable to unaffiliated third parties, and (ii) Tenant's costs of County-authorized alterations incurred solely in connection with such Transfer. In the case of a Transfer other than an assignment of Tenant's entire interest in the Lease and Project Site, Reasonable Transfer Costs shall be amortized on a straight line basis, without interest, over the initial term of the Transfer. Tenant's obligation to pay over Landlord's portion of the consideration constitutes an obligation for Additional Rent under this Lease. The above provisions relating to Landlord's right to terminate the Lease and relating to the allocation of excess rent are independently negotiated terms of the Lease which constitute a material inducement for the Landlord to enter into the Lease, and are agreed by the Parties to be commercially reasonable. No Transfer by Tenant shall relieve it of any obligation under this Lease. Any Transfer which conflicts with the provisions of this Lease are void.

C. No Release. Any Transfer shall be made only if and shall not be effective until the transferee shall execute, acknowledge, and deliver to Landlord an agreement, in form and substance satisfactory to Landlord, whereby the transferee shall assume all the obligations of this Lease on the part of Tenant to be performed or observed to the extent of the interest being transferred and shall be subject to all the covenants, agreements, terms, provisions and conditions in this Lease to the extent applicable to the interest being transferred. Notwithstanding any Transfer and the acceptance of rent or other sums by Landlord from any transferee, Tenant and any guarantor shall remain fully liable for the payment of Base Monthly Rent and all additional rent due, and to become due hereunder, for the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed and for all acts and omissions of any transferee or any other person claiming under or through any transferee that shall be in violation of any of the terms and conditions of this Lease, and any such violation shall be deemed a violation by Tenant. Tenant shall indemnify, defend with counsel reasonably acceptable to Landlord and hold Landlord and the Landlord Related Parties

harmless from and against all claims, liabilities, obligations, penalties, fines, actions, losses, damages, costs or expenses (including without limitation reasonable attorneys' fees) resulting from any claims that may be made against Landlord by the proposed transferee or by any real estate brokers or other persons claiming compensation in connection with the proposed Transfer.

D. Reorganization of Tenant. Notwithstanding any other provision of this Lease, the following provisions shall apply if Tenant is a publicly-held corporation and: (i) there is a dissolution, merger, consolidation, or other reorganization of or affecting Tenant, where Tenant is not the surviving corporation, or there is a sale of all or substantially all of the assets of Tenant, or (ii) there is a sale or transfer of stock possessing more than fifty percent (50%) of the total combined voting power of all classes of Tenant's capital stock issued, outstanding and entitled to vote for the election of directors, or there is any merger, consolidation or other reorganization of or affecting Tenant, whether the foregoing occurs in a single transaction or in multiple steps, and after any one or more of such events Tenant's stock is no longer publicly traded. In a transaction under clause (i) of this Section herein above, the surviving or acquiring corporation or entity ("Surviving Entity") shall promptly execute and deliver to Landlord an agreement in a form and content satisfactory to Landlord under which the Surviving Entity assumes all the obligations of Tenant under this Lease. In a transaction or series of transactions under clause (ii) of this Section herein above, the entities which as a result of such transaction(s) own a greater than fifty percent (50%) interest in Tenant (including, without limitation as a result of a reverse triangular merger or a triangular merger) (collectively the "Acquiring Entity") shall promptly execute and deliver to Landlord a guaranty of lease in a form and content satisfactory to Landlord under which the Acquiring Entity guarantees the full payment and performance of the obligations of Tenant under the Lease ("Lease Guaranty"). The foregoing notwithstanding, in the event the Surviving Entity or Acquiring Entity is itself not a publicly-traded corporation, but is instead the subsidiary of a publicly-traded corporation (or a subsidiary of a subsidiary of a publicly-traded corporation, or a subsidiary in a chain of entities in which one or more parent corporations are publicly traded), then each publicly-traded parent corporation in such chain shall be required to execute and deliver to Landlord the Lease Guaranty. In addition, in the event that after such acquisition Tenant no longer prepares audited financial statements, then in addition to the financial statements required to be delivered by Tenant hereunder, the entity required to execute the Lease Guaranty shall provide Landlord its audited financial statements at the times and in the manner required of Tenant hereunder. It is the intent of the parties that after such any transaction or series of transactions described in this Section herein above, Landlord shall be entitled to rely on the creditworthiness of publicly-traded corporations and to receive audited financial information from publicly-traded corporations.

E. Waiver of Liability. Failure by Landlord to perform any defined services required of Landlord under this Lease, or any cessation thereof, when such failure is caused by accident, breakage, repairs, strikes, lockout or other labor disturbances or labor disputes of any character

or by any other cause beyond Landlord's reasonable control and excepting any failure due to Landlord's gross negligence or willful misconduct or breach by Landlord of its obligations under this Lease, shall not render Landlord liable to Tenant in any respect, including damages to either person or property, nor be construed as an eviction of Tenant, nor cause an abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Should any equipment or machinery utilized in supplying the services listed herein as being Landlord's obligation break down or for any cause cease to function properly, upon receipt of written notice from Tenant of any deficiency or failure of any services, Landlord shall use reasonable diligence to repair the same promptly, but Tenant shall have no right to terminate this Lease and shall have no claim for rebate of rent or damages on account of any interruptions in service occasioned thereby or resulting therefrom except as specifically provided herein. Tenant waives the provisions of California Civil Code Sections 1941 and 1942 concerning the Landlord's obligation of tenantability and Tenant's right to make repairs and deduct the cost of such repairs from the rent, and any similar Law now or hereafter in effect. Landlord shall not be liable for a loss of or injury to person or property, however occurring, through or in connection with or incidental to furnishing, or its failure to furnish, any of the foregoing.

SECTION 17. Conveyance by Landlord.

In the event of any transfer of Landlord's interest in this Lease, the Landlord herein named (and in case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all liability for the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; provided, however, that any funds in the hands of Landlord or the then transferor at the time of such transfer, in which Tenant has an interest shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferor under any provision of this Lease shall be paid to Tenant; and provided, further, that upon any such transfer, the transferee shall be deemed to have assumed, subject to the limitations of this Section _____ all of the agreements, covenants and conditions in this Lease to be performed from and after the transfer on the part of Landlord, it being intended hereby that the covenants and obligations contained in this Lease to be performed on the part of Landlord shall, subject as aforesaid, be binding on each Landlord, its successors and assigns, only during its period of ownership.

SECTION 18. Right of Entry; Easements.

Upon at least one days' prior notice to Tenant (except in case of emergency, where no prior notice shall be required) and subject to Tenant's reasonable security regulations, Tenant shall permit Landlord and Landlord's agents to enter into and upon the Project Site and structures at all reasonable times, and without any rent abatement or reduction or any liability to Tenant for any loss of occupation or quiet enjoyment of the Project Site thereby occasioned,

except as set forth herein, for the following purposes: (i) inspecting and maintaining the Project Site; (ii) making repairs, alterations or additions to the Project Site; (iii) erecting additional building(s) and improvements on the land where the Project Site or Project is situated or on adjacent land owned by Landlord; (iv) performing any obligations of Landlord under the Lease including remediation of Hazardous Materials if determined to be the responsibility of Landlord, (v) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair thereof, as required or permitted by any law, and (vi) placing "For Sale" signs, and showing the Project Site to Landlord's existing or potential successors, purchasers, lenders and tenants (except that Landlord may only show the Project Site to potential tenants during the last 12 months of the Lease Term). Tenant shall permit Landlord and Landlord's agents, at any time within eighteen (18) months prior to the Expiration Date (or at any time during the Lease Term if Tenant is in default hereunder), to place upon the Project Site "For Lease" signs, and exhibit the Project Site to real estate brokers and prospective tenants at reasonable hours. Landlord shall use reasonable efforts to minimize any disruption of Tenant's legal use of and access to the Project Site as a result of any entry. Tenant shall have the right to have a representative present during any entry by Landlord. Notwithstanding any provision of the use to the contrary, if Landlord's entry materially and substantially interferes with Tenant's use of the Project Site for more than ten consecutive days, then Tenant shall be entitled to an abatement of the Base Monthly Rental for the portion of the Project Site so affected.

SECTION 19. Financial Reports; Distributions.

A. Financial Statements. During the Term of this Lease, the Tenant, upon request, shall immediately provide the County, without advance notice from County required, a copy of the audited financial statements of Tenant and each of its subtenants, concessionaires, operators, management companies and contractors associated with the use of the Project Site or the Project within ninety (90) days after the end of each fiscal year.

B. Audit Rights under State Law. Pursuant to California Government Code Section 8546.7, the Parties acknowledge and agree that this Lease represents a County contract involving an expenditure of public funds in excess of \$10,000 and therefore shall be subject to audit by the State Auditor. Tenant and the Tenant Representatives are subject to such audits and shall comply with such audits requirements.

C. Other Audits and Inspections. The provisions of this Section 18 are in addition to, and not a replacement for, any and all other audit rights or provisions found elsewhere in this Lease.

SECTION 20. Default.

A. Tenant Default. In the event the Tenant is in default in the performance of any term, condition, provision or obligation of this Lease, which default continues for _____ ()

days following notice and demand for correction thereof to the Tenant, the County may exercise the remedies provided in this Section 19 herein below.

B. County Cure Rights. All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense. If Tenant fails to perform any of its obligations under this Lease, within a reasonable time after such performance is required hereunder, Landlord may, but shall not be obligated to, after reasonable prior notice to Tenant, make any such payment or perform any such act on the Tenant's part without waiving any of its other rights or remedies in connection with such default. All amounts expended by Landlord shall be reimbursed to Landlord by Tenant within ten (10) days after written demand from Landlord, with interest at the lesser of (a) the rate of two percent (2%) per annum in excess of the "prime rate" announced from time to time in the Western Edition of the Wall Street Journal, or (b) the maximum amount allowed by law, from the date such amount was incurred by the non-defaulting party until the date of payment.

C. COUNTY Remedies.

(1) In the event of any default by TENANT, then, in addition to any other remedies available to COUNTY under this Lease, at law or in equity, COUNTY may exercise any of the following remedies:

(a) COUNTY may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that COUNTY shall so elect to terminate this Lease, then COUNTY may recover from TENANT:

(i) The worth at the time of award of the unpaid Rent and other charges (including all attorneys' fees), which had been earned as of the date of the termination hereof and any earned thereafter per the terms of this Lease;

(ii) The worth at the time of award of the amount by which the unpaid Rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid Rent and other charges for the balance of the Term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;

(vi) Any other amount necessary to compensate COUNTY for all the detriment, harm or damages directly or indirectly caused by TENANT's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of all or any portion of

the Project Site, expenses of reletting, including necessary repair, renovation and alteration of the Project Site, all attorneys' fees, expert witness costs, and any other related costs; and,

(vii) Any other amount which COUNTY may by law hereafter be permitted to recover from TENANT to compensate COUNTY for the detriment, harm or damages directly or indirectly caused by TENANT's default.

(b) Continue this Lease in effect without terminating TENANT's right to possession even though TENANT has breached this Lease and abandoned the Project Site and continue to enforce all of COUNTY's rights and remedies under this Lease, at law and in equity, including the right to recover the Rent (and all penalties and Additional Rent) as it becomes due under this Lease; provided, however, that COUNTY may at any time thereafter elect to terminate this Lease for such default by notifying TENANT in writing that TENANT's right to possession of the Project Site has been terminated.

(c) In addition to any other rights of re-entry stated in this Lease, COUNTY shall have the right, following a termination of this Lease and TENANT's rights of possession of the Project Site, to re-enter the Project Site and to remove TENANT's personal property from the Project Site. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of TENANT.

(2) Nothing in this Section shall be deemed to affect Tenant's indemnity of COUNTY or Tenant's liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

(3) No delay or omission of COUNTY to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by TENANT hereunder. The acceptance by COUNTY of Rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by TENANT of any provision thereof, regardless of COUNTY's knowledge of such preceding breach or default at the time of acceptance of such Rent or sum, or (b) waiver of COUNTY's right to exercise any remedy available to COUNTY by virtue of such breach or default. No act or thing done by COUNTY or COUNTY's agents during the Term of this Lease shall be deemed an acceptance of a surrender of the Project Site, and no agreement to accept a surrender shall be valid unless in writing and signed by COUNTY.

(4) All covenants and agreements to be performed by TENANT under any of the terms or conditions of this Lease shall be performed by TENANT at TENANT's sole cost, liability and expense and without any abatement of Rent or other amounts owed or to be owed. If TENANT shall fail to pay any sum of money required to be paid by it or shall fail to perform any act on its part to be performed by it, or shall fail to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein,

COUNTY may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT's part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by COUNTY on TENANT's behalf shall not give rise to any responsibility of COUNTY to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by COUNTY resulting from, caused by, relating to or in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by COUNTY, shall be deemed to be Additional Rent and shall be paid by TENANT within ten (10) days of written notice thereof specifying the payment and enclosing copies of any invoices therefor, and any failure to do so shall constitute a material breach (material default) of the covenants and conditions of this Lease.

D. COUNTY Default. COUNTY shall not be considered to be in default under this Lease unless and until TENANT has given COUNTY written notice specifying the default, and either (i) as to monetary defaults, COUNTY has failed to cure the same within ____ (____) business days after written notice from TENANT, or (ii) as to nonmonetary defaults, COUNTY has failed to cure the same within ____ (____) days after written notice from TENANT, or if the nature of TENANT's nonmonetary default is such that more than ____ (____) days are reasonably required for its cure, then such ____ (____) period shall be extended automatically so long as COUNTY commences a cure within such ____ (____) day period and thereafter diligently pursues such cure to completion. TENANT shall have no right to offset or abate alleged amounts owed or owing by COUNTY under this Lease against Rent, Additional Rent or other amounts owing by TENANT under this Lease.

(1) Limitation of County Liability. UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE TO TENANT OR ANY OF ITS EMPLOYEES, OFFICERS, AGENTS, GUESTS, VISITORS, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUBLICENSEES, SUBTENANTS, AFFILIATES, AGENTS, REPRESENTATIVES OR CONSULTANTS FOR ANY CONSEQUENTIAL, INCIDENTAL, COLLATERAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, LOST PROFITS, OR FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES OR LOSS IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT OR NEGLIGENCE (EXCLUDING DAMAGES OR LOSS DIRECTLY AND SOLELY CAUSED BY COUNTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT), EVEN IF COUNTY OR TENANT OR OTHERS HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. FURTHERMORE, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, COUNTY DISCLAIMS ALL WARRANTIES REGARDING ANY INFORMATION OR ASSISTANCE PROVIDED TO TENANT OR ANYONE.

E. Remedies Cumulative. All rights and remedies of COUNTY contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and COUNTY shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

SECTION 21. Destruction of Project Site.

A. Tenant's Obligation to Restore. A. In the event of damage to or destruction of the Project or Project Site during the Lease Term (other than those parts of the Project or Alterations for which Landlord's consent was not obtained), Tenant shall repair the same to a similar condition to that which existed prior to such damage or destruction, to the extent legally allowed, subject to this Section 21 below. Such damage or destruction shall not annul or void this Lease; however, Tenant shall be entitled to a proportionate reduction of Base Monthly Rent while repairs are being made, such proportionate reduction to be based upon the extent to which the repairs interfere with Tenant's business in the Project Site, as reasonably determined by Landlord. In no event shall Landlord be required to replace or restore any part of the Project or the Alterations.

B. Limitations on Tenant's Restoration Obligation. Notwithstanding the provisions of Section 21.A above, Tenant shall have no obligation to repair or restore the Project, the Project Site or any Alterations if any of the following occur: (i) if Tenant reasonably estimates the repairs cannot be made in _____ (____) days from the date of receipt of all governmental approvals necessary under applicable Laws, (ii) if the holder of the first deed of trust or mortgage encumbering the Project elects not to permit the insurance proceeds payable upon damage or destruction to be used for such repair or restoration, (iii) the damage or destruction is not at least 75 percent [____] covered by the insurance maintained or required to be maintained by Tenant or _____ (excluding deductible amounts) or (iv) the material damage or destruction occurs in the last eighteen (18) months of the Lease Term unless Tenant has exercised, or promptly exercises an option to extend the Lease Term. In any such event Landlord may elect either to (i) complete the repair or restoration, or (ii) terminate this Lease by providing Tenant written notice of its election within sixty (60) days following the damage or destruction. If Landlord elects to repair or restore, this Lease shall continue in full force and effect and all cost of restoration or repair shall be reimbursed to Landlord by Tenant payable as Additional Rent. Tenant, with Landlord's consent, may terminate this Lease in the event of either (i) through (iv) above, provided Tenant make such request in writing within sixty (60) days following the damage or destruction. Tenant hereby waives the benefits and rights provided to Tenant by the provisions of Civil Code Sections 1932 and 1933, or any similar Law now or hereafter in effect.

SECTION 22. Condemnation.

If any part of the Project Site shall be taken for any public or quasi-public use (other than by County), under any statute or by right of eminent domain or private purchase in lieu thereof, and only a part thereof remains which is susceptible of occupation hereunder, this Lease shall, as to the part so taken, terminate as of the day before title vests in the condemnor or purchaser (“Vesting Date”) and Base Monthly Rent payable hereunder shall be adjusted so that Tenant is required to pay for the remainder of the Lease Term only such portion of Base Monthly Rent as the value of the part remaining after such taking bears to the value of the entire Project Site prior to such taking, as reasonably determined by Landlord. In the event of such partial taking, Landlord shall have the option to terminate this Lease as of the Vesting Date. If all of the Project Site or such part thereof be taken so that there does not remain a portion susceptible for occupation hereunder, this Lease shall terminate on the Vesting Date. If part or all of the Project Site be taken, all compensation awarded upon such taking shall go to Landlord, and Tenant shall have no claim thereto except for the reimbursement actual costs incurred for completion of the Project and Landlord-authorized Alterations, along with Tenant’s reasonable moving out-of-pocket costs. If there is a taking of any parking areas within the Project Site, and substitute parking cannot be provided within the Project Site by means of restriping the remaining existing parking areas within the Project Site, then the parking allocated to Tenant under this Lease shall be proportionately reduced. Tenant hereby waives the provisions of California Code of Civil Procedures Section 1265.130 and any similar Law now or hereafter in effect, and the provisions of this Section 17 shall govern in the case of a taking.

SECTION 23. Brokers.

Landlord and Tenant each represent to the other that it has not utilized or contacted a real estate broker or finder with respect to this Lease and Landlord and Tenant each agree to indemnify, defend and hold the other harmless against any claim, cost, liability or cause of action asserted by a broker or finder claiming through such party.

SECTION 24. Force Majeure Events.

A. Excuse. Except as expressly set forth herein, neither Party shall be considered in default under this Lease for any delay or failure in its performance under this Lease (except for payment of Rent) if such delay or failure is directly caused by a Force Majeure Event, but only to the extent that:

- (1) such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;
- (2) such Force Majeure Event is caused by factors beyond that Party’s reasonable control; and

(3) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

B. "Force Majeure Event" may include:

(1) acts of Nature such as storms, floods, lightning, volcanoes, earthquakes, range or forest fires and objects striking the earth from space (such as meteorites);

(2) theft, vandalism, sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Lease;

(3) Utility Distribution System outage or failure not caused (indirectly or directly) by Landlord or Landlord's actions or inactions; and/or

(4) war, riot, acts of a public enemy or other civil disturbance;

(5) epidemics or quarantines.

C. Exclusion. "Force Majeure Event" does not include the following:

(1) economic hardship of either Party;

(2) a power outage, except if caused directly by an event or circumstance that meets the requirements of a Force Majeure Event defined herein above; or

(3) failure or delay in the granting of permits or other government agency approvals.

D. In addition to the conditions set forth herein above for claiming a Force Majeure Event, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:

(1) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Lease;

(2) exercises all reasonable efforts to continue to perform its obligations under this Lease;

(3) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem;

(4) exercises all reasonable efforts to mitigate or limit damages to the other Party; and

(5) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

E. **Termination Due To Force Majeure Event.** If a Party is prevented from performing its material obligations under this Lease for a period ninety (90) days or more within any twelve month period (whether full or partial days), or if the Parties mutually determine that a Force Majeure Event could reasonably be expected to prevent a Party from performing its material obligations for a period of ninety (90) days or more, then the Party not claiming Force Majeure may terminate this Lease, without liability of either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure Event.

SECTION 25. Miscellaneous.

A. **No Presumption Against Drafter.** Landlord and Tenant understand, agree and acknowledge that this Lease has been freely negotiated by both Parties; and that in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Lease or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Lease or any portion thereof.

B. **Quiet Enjoyment.** The Tenant at all times during the Term, shall peaceably and quietly have, hold and enjoy all of the Project Site so long as Tenant full complies at all times with all terms, conditions and provisions of this Lease and applicable laws.

C. **Representations.** Tenant acknowledges that neither Landlord nor any of its employees or agents have made any agreements, representations, warranties or promises with respect to the Project Site or Project or with respect to present or future rents, expenses, operations, tenancies or any other matter. Except as herein expressly set forth herein, Tenant relied on no statement of Landlord or its employees or agents for that purpose.

D. **Submission of Lease.** Submission of this document for examination or signature by the Parties does not constitute an option or offer to lease the Project Site on the terms in this document or a reservation of the Project Site in favor of Tenant. This document is not effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

E. **General.** The captions and section headings of this Lease are for convenience of reference only, and shall not be used to limit, extend or interpret the meaning of any part of this Lease. This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signatures and

initials to this Lease created by the signer by electronic means and/or transmitted by telecopy or other electronic transmission shall be valid and effective to bind such signing party. Each party agrees to promptly deliver an execution original to this Lease with its actual signature and initials to the other party, but a failure to do so shall not affect the enforceability of this Lease, it being expressly agreed that each party to this Lease shall be bound by its own electronically created and/or telecopied or electronically transmitted signature and initials and shall accept the electronically created and/or telecopied or electronically transmitted signature and initials of the other party to this Lease. All agreements by Tenant contained in this Lease, whether expressed as covenants or conditions, shall be construed to be both covenants and conditions, conferring upon Landlord, in the event of a breach thereof, the right to terminate this Lease.

F. Additional Tenant's Representations, Warranties and Covenants. Tenant represents, warrants and covenants to Landlord that as of the date of execution of this Lease and for the duration of the Term:

(1) Tenant is duly organized and validly existing as a limited liability company under the laws of the State of _____, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Lease and Tenant is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

(2) Tenant has the legal power and authority to make and carry out this Lease and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;

(3) This Lease has been duly and validly executed and delivered by Tenant and, as of the Effective Date, constitutes a legal, valid and binding obligation of Tenant, enforceable in accordance with its terms against Tenant, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

(4) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Tenant, threatened in writing against Tenant, at law or in equity before any government agency, department, municipality, jurisdiction or authority ("Governmental Authority"), which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Tenant, or to result in any impairment of Tenant's ability to perform its obligations under this Lease;

(5) The execution, delivery and performance of this Lease by Tenant will not conflict with its governing documents, any all applicable laws, or any covenant, agreement, understanding, decree or order to which Tenant is a party or by which it is bound or affected;

(6) All of Tenant's operating and maintenance personnel, including such personnel as contracted for by Tenant, shall be adequately qualified and trained throughout the term of the Lease;

(7) All designs, construction, maintenance, operation, management, goods, products, supplies and materials supplied, used or installed in connection with this Lease by or on behalf of Tenant shall be new, suitable for the use intended, of the grade and quality specified, free from all defects, in conformance with manufacturers specifications and warranties, and in compliance with applicable federal, state and local laws and where they are not they shall be replaced at Tenant's sole cost and expense;

(8) Tenant shall post notices of Landlord non-responsibility or no liability for work then in progress in, on, or about the Project Site, Project and Fairgrounds; and,

(9) Any Landlord design, specifications, review, authorization or approval of any aspect of the Project, Alterations, signage or any other work contemplated shall not relieve Tenant of the responsibility for faulty or defective materials, products, structures, construction, workmanship or construction oversight or management. At Tenant's sole cost, liability and expense, Tenant shall repair and replace all defective work, materials, products or construction together with any other work affected by the repair or replacement of any aspect of the Project or the Alterations prior to Lease termination or Landlord use but no later than one (1) year of discovery of such defects. Tenant shall insure that any and all transferable warranties are transferred to Landlord prior to Lease termination, where such warranties still exist.

G. Non-Waiver of Rights. Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of Landlord to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. The failure of Landlord to insist upon the strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that the Landlord may have, and shall not be deemed a waiver of its right to require strict performance of all terms, and conditions thereafter, nor a waiver of any remedy for the subsequent breach of any of the terms, covenants, or conditions.

H. Headings. All titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Lease.

I. No Third Party Beneficiary. This Lease shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Lease or any duty, obligation or undertaking established herein.

J. Governing Law and Venue. This Lease, all the rights and duties of the Parties, and all claims by any third parties including any of the Tenants Representatives arising from or relating in any way to the subject matter of this Lease, the Project, the Project Site or the transaction(s) contemplated by it, shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding, including arbitration or mediation proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

K. Nature of Relationship.

(1) This Lease shall not be interpreted or construed to create an association, joint venture, employer-employee relationship, fiduciary relationship, lender-borrower relationship or partnership between Landlord and the Tenant or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party. Tenant shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. No person performing any services and/or supplying any goods on behalf of Tenant or in relation to the Project shall be considered an officer, agent, servant, or employee of Landlord, nor shall any such person be entitled to any benefits available or granted to employees of the Landlord.

(2) Tenant shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Tenant's performing services and work, or any agent or employee of Tenant providing same.

(3) Any terms in this Lease referring to direction from Landlord shall be construed as providing for direction as to policy and the result of Tenant's work only, and not as to the means by which such a result is obtained. Landlord does not retain the right to control the means or the method by which Tenant performs work under this Lease.

(4) Tenant shall timely (and without delay) hire, pay and supervise, as employees of Tenant, all persons necessary to carry out Tenant's responsibilities and duties hereunder. Tenant shall have the sole responsibility for all matters relating to such employees and shall fully comply with applicable laws and regulations affecting such employees, including, without limitation, laws and regulations regarding wages, over time, working conditions, payroll withholding, worker's compensation, Social Security, unemployment insurance, hours of labor,

and shall maintain worker's compensation insurance in the amount of any statutory requirements. Under no circumstances shall employees of Tenant be considered or deemed employees of County.

(5) Tenant shall ensure that its employees performing work under this Lease are paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat 948; 62 Stat 740; 63 Stat 108; title 18 U.S.C.A., Section 874; and title 40 U.S.C.A., Section 276c). Tenant shall comply with all applicable "Anti- Kickback" regulations and shall insert appropriate provisions in all subcontracts covering provision of services under this Lease including to insure compliance with such regulations, and shall be responsible for the submission of required affidavits except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements.

(6) Prevailing Wages. Tenant acknowledges and agrees that work performed under this Lease may be considered a public work within the meaning of California Labor Code Section 1720 and that the requirements of Section 1771, et. seq. apply to such public work. Tenant is solely responsible and liable for ensuring that it and its contractors and subcontractors comply with applicable prevailing wage laws. The Tenant agrees that the Tenant's construction contract with its general contractor for the development of the Project and any replacement improvements or any material alterations or new construction on the Project Site shall require the general contractor and all subcontractors to pay the then general prevailing rate of per diem wages, in the locality where said work is being performed, as ascertained by the California Department of Industrial Relations or such greater amount as otherwise agreed by the County, for each craft, classification or type of worker employed to perform the work. Tenant, contractors and subcontractors shall also comply with County's wage theft requirements set out in Section 25.Z. herein below.

L. Good Faith & Fair Dealing. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Lease. Unless expressly provided otherwise in this Lease: (i) wherever the Lease requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Lease gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

M. Severability. Should any provision of this Lease be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Lease shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with

legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

N. Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Lease. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Lease.

O. Time is of the Essence. Time is of the essence in performance by the Tenant.

P. Construction. The Parties acknowledge that this Lease was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Q. Entire Lease, Integration/Merger Clause. This Lease, together with all exhibits attached hereto and those documents incorporated by reference into this Lease, constitutes the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

R. Non-Discrimination. Tenant shall, and shall cause the Tenant employees, agents, representatives, contractors, subcontractors and assigns (collectively and each the “Tenant Representatives”) to, comply with all applicable Federal, State, and local laws and regulations including Santa Clara County’s policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Tenant shall not, and shall cause the Tenant Representatives to not, discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Tenant discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Any breach of any part of this Section 13.19 shall

be deemed a material breach (ie., a Tenant Default) of this Lease and cause for termination without Landlord cost, liability or obligation.

S. Conflict of Interest. Tenant shall comply, and shall require the Tenant Representatives to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so will constitute a material breach of this Lease and is grounds for immediate termination of this Lease by the Landlord.

(1) In accepting this Lease, Tenant covenants, warrants, represents and agrees that it and each of the Tenant Representatives presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Lease. Tenant further covenants that, in the performance of this Lease, it and each of the Tenant Representatives will not employ any consultant or person having such an interest. Tenant and each of the Tenant Representatives may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Lease, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

(2) If the disclosure provisions of the Political Reform Act are applicable to any individual employed or engaged by Tenant providing service or deliverables under this Lease, Tenant and each of the Tenant Representatives shall ensure that such individual understands that he or she is subject to the Act and shall conform to all requirements of the Act and other applicable laws and regulations including, as required, filing of Statements of Economic Interests within 30 days of commencing any work pursuant to this Lease, annually by April 1, and within 30 days of their termination or cessation of work pursuant to this Lease.

(3) Tenant and each of the Tenant Representatives shall disclose to Landlord any financial or other interests, whether adverse or otherwise, which Tenant may have or propose to have in any company, organization, individual, asset or activity which may have a bearing on the subject matter of this Lease.

(4) Tenant shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, offer or allow others to offer any gratuity or special favor to any individual, organization, government representative at the local, state or federal level, or any County Supervisor of the County Board of Supervisors, any

commissioner, committee member, employee, agent, representative or contractor of County, or anyone with whom Landlord is doing business or proposing to do business. Neither Tenant, nor its manager, affiliates, officers, partners, employees, agents, representatives or contractors, shall offer gifts, gratuity, favors, or entertainment, directly or indirectly to any County Supervisor of the County Board of Supervisors, any commissioner, committee member, employee, agent, representative or contractor of County.

T. Debarment. Tenant represents and warrants that it and the Tenant Representatives are not and have not been suspended, debarred, excluded, or ineligible for participation in any federal or state funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration (collectively and each referred to herein as “Debarment”). Tenant must within thirty (30) calendar days advise the Landlord if, during the Term of this Lease, Tenant or any of the Tenants Representatives becomes or may become suspended, debarred, excluded or ineligible for participation in any federal or state funded program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Tenant and each of the Tenants Representatives shall defend, indemnify, and hold the Landlord harmless for and from any and all loss, liability or damage resulting from the conviction, Debarment, exclusion or ineligibility of Tenant or any of the Tenants Representatives. Without cost, penalty or obligation of Landlord, Landlord may, at its sole discretion, terminate this Lease immediately upon becoming aware of any such Debarment. Landlord shall not be liable or responsible to Tenant or to any of the Tenants Representatives if Landlord exercises its right to terminate this Lease as provided for herein. Any breach of any part of this Section 13.27 shall be deemed a material breach (ie., a Tenant Default) of this Lease and cause for immediate termination without Landlord cost, liability or obligation.

U. California Public Records Act. All documents and records provided to or made available to Tenant under this Lease become subject to the disclosure requirements of the California Public Records Act (“CPRA”). If proprietary information is contained in documents or information submitted to Landlord, and Tenant expressly claims that such information or documents fall within one or more CPRA exemptions, Tenant must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the confidential information. In the event of a request for such information, the Landlord will make reasonable efforts to provide notice to Tenant prior to such disclosure. If Tenant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the Landlord deadline to respond to the CPRA request. If Tenant fails to

obtain such a remedy before Landlord responds to the CPRA request, Landlord will disclose the requested information and shall not be liable or responsible for such disclosure.

(1) Tenant agrees that it shall defend, indemnify and hold Landlord harmless for, from and against each and every loss, damage (whether general, punitive or otherwise), liability, action, administrative proceedings, claim, demand, lawsuit, cause of action, judgment, settlement amount, mediation cost, attorneys' fees, court cost, litigation, injury, allegation and penalties (the "CPRA Claims") that may or do result from denial by Landlord of a CPRA request for any information arising from any representation, or any action (or inaction), by Tenant or the Tenant Representatives.

V. OFAC. Tenant represents and warrants to Landlord that: (i) Tenant and the Tenant Representatives (which include all Tenant affiliates, financing partners and entities, employees, agents, representatives, contractors, subcontractors, parent and subsidiary companies, officers, directors and managers) are not acting, and shall not act, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (ii) Tenant and its Tenant Representatives are not engaged in activities under this Lease or entering into this Lease, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation. Any breach of any part of this Section 13.36 shall be deemed a material breach (ie., a Tenant default) of this Lease and cause for immediate termination without Landlord cost, liability or obligation.

W. Modification. This Lease may only be modified or amended in writing by mutual agreement of both Parties.

X. Submission of Lease. Submission of this instrument for examination or signature by either Party does not constitute a reservation of or an option for lease, and it is not effective as a lease or otherwise until execution and delivery by both County and Tenant.

Y. County's Enforcement Authority. By entering into this Lease, County does not waive and has not waived its right(s) to act in its regulatory or enforcement capacity as a governmental or regulatory body, including but not limited to its ability, obligation or right (discretionary or otherwise) to seek enforcement of, or take any other action pertaining to, any applicable laws in relation to any party to this Lease.

Z. Wage Theft Prevention. These provisions are in relation to any work performed by Tenant or its contractors, subcontractors, employees, agents or representatives (collectively and each the "Tenant Representatives") under the terms or conditions of the Lease only.

(1) Compliance with Wage and Hour Laws. Tenant and the Tenant Representatives who are involved in the work must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

(2) Final Judgments, Decisions, and Orders. For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

(3) Prior Judgments. BY SIGNING THIS LEASE, TENANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS LEASE—THAT TENANT OR ANY OF THE TENANT REPRESENTATIVES HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS.

(4) TENANT FURTHER AFFIRMS THAT IT AND/OR THE TENANT REPRESENTATIVES HAVE SATISFIED AND COMPLIED WITH—OR HAS REACHED LEASE WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

(5) Judgments During Term of Lease. If at any time during the Term of this Lease, a court or investigatory government agency issues a final judgment, decision, or order finding that Tenant or any contractor it uses to perform work under this Lease has violated any applicable wage and hour law, or Tenant learns of such a judgment, decision, or order that was not previously disclosed, Tenant must inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM), no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Tenant and its contractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-OCCM with documentary evidence of compliance with the final judgment, decision, or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Tenant to enter into an agreement with the County regarding the manner in which any such final judgment, decision, or order will be satisfied.

(6) County’s Right to Withhold Payment. Where Tenant or any contractor it employs to perform work under this Lease has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County

reserves the right to withhold payment to Tenant until such judgment, decision, or order has been satisfied in full.

(7) Material Breach. Failure to comply with any part of this Section constitutes a material breach of the Lease. Such breach may serve as a basis for termination of this Lease and/or any other remedies available under this Lease and/or law.

(8) Notice to County Related to Wage Theft Prevention. Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—OCCM; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Lease and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

AA. Dispute Resolution. Tenant and Tenant shall negotiate in good faith in event of any dispute during the performance of this Lease. If the dispute cannot be resolved between the Tenant's Project Manager and a member of Landlord's Project Management Team after two (2) days of negotiations, at either the Landlord's or Tenant's option, the matter may be promptly escalated to the next level of command within each Party's organization. If the dispute or problem cannot be resolved within five (5) additional business days, the matter shall be promptly escalated to the County executive level of the Landlord and director of the Landlord who shall attempt to resolve the dispute within five (5) business days. Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either party to seek any judicial remedy.

BB. Notices. All notices which are required to be given hereunder, or which either party may wish to give, shall be in writing and shall be served either by personal delivery or by certified or registered mail, postage prepaid, addressed as follows:

To County:

_____TBD

or to such other place as County may designate by written notice.

To ____: TBD

or to such other place as Tenant may designate by written notice.

CC. Counterparts. This Lease may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall

have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both Parties.

DD. Survival. Those provisions which by their nature should survive termination, cancellation or expiration of this Lease, shall so survive, including but not limited to Sections _____ - and _____ inclusive.

EE. Signing Warranty. By signing below, signatory warrants and represents that he/she executed this Lease in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Lease, the entity on behalf of which he/she acted, executed this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the dates set forth below, effective as of the last date signed by all the Parties below (the "Effective Date").

INSERT SIGNATURES HERE.

EXHIBIT A

Description of Fairgrounds

[To be Inserted by Landlord]

EXHIBIT B

Description of Project Site

[To be inserted by Tenant, subject to Landlord approval]

EXHIBIT C

Preliminary Title Report

[To be paid for by Tenant, subject to approval by Landlord]

EXHIBIT D

Project Description

[To be inserted by Tenant, subject to approval by Landlord]

EXHIBIT E

Project Drawings

[To be inserted by Tenant, subject to approval by Landlord]

EXHIBIT F

Insurance Requirements Applicable to Tenant

[To Be Inserted by Landlord]

APPENDIX C:
Pro Forma Template

**Appendix C, Table 1
Business Operator and Land Use Assumptions
Santa Clara County Fairgrounds Master Use Plan**

Name of Lead Respondent _____

Reference Number	Business Operator Name [1]	Type of Business and Name [2]	Annual Visitors (Estimated Attendance)	Daily Visitors (Estimated Peak Daily Attendance)	Land (Acres)	Buildings (Sq.Ft.)	Parking (Spaces)
1							
2							
3							
4							
5							
6							
7							
8							
9							

add/delete rows as necessary

[1] Separate entries should be made for each Business Operator, and if a Business Operator has multiple lines of business there should be separate entries for each. Add additional lines as necessary. Add supplemental pages as needed to explain or elaborate on any line entry by entering the left margin Reference number on the attached page. [2] Enter the type of business operation and the business name as it would be known.

Appendix C, Table 2
Financial Pro Forma: Capital Sources and Uses [1]
Santa Clara County Fairgrounds Master Use Plan

Name of Lead Respondent

Business Operator Name	Notes/Instructions	Year 0 <i>(Site and Business Improvements)</i>
-------------------------------	---------------------------	--

Sources of Funds

		\$0
Source 1 (Please Describe)	Could be construction or business loan financing, donations, savings, etc.	
Source 2 (Please Describe)		\$0
Source 3 (Please Describe)		\$0
Total Sources of Funds		\$0

Uses of Funds, Upfront (Year 0) Capital Investment Expenditures
--

Site-Specific Improvements		
Site Development Costs	Include cost of parking.	\$0
Building Development Costs		\$0
Subtotal, Site-Specific Improvements		\$0
Public Benefits		
Based on Team's land use plan, please indicate amount the Team expects to be able to contribute to the project's public benefits.		
Open Space		\$0
Event Center		\$0
Subtotal, Public Benefits		\$0
Subtotal, Working Capital		\$0

Total Uses of Funds Pre-opening	\$0
--	------------

[1] Separate entries should be made for each Business Operator on a separate Table 2. Add additional lines as necessary. Add supplemental pages as needed to explain or elaborate on any line entry. Total Sources of Funds should be equal to or greater than Total Uses of Funds.

Appendix C, Table 3

Financial Pro Forma: Net Operating Revenues by Business Operator
 Santa Clara County Fairgrounds Master Use Plan

Name of Lead Respondent:

Item	Notes/Instructions	Operating Year (add/delete columns as necessary)									
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Annual Net Operating Revenues [1]											
Business Operator #1											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #2											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #3											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #4											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #5											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
If Response includes an Event Center Management Entity, please complete the following rows:											
Event Center Management Entity											
Annual Gross Operating Revenues		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Annual Operating Expenditures		<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Net Operating Revenue		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

[1] Separate entries should be made for each Business Operator, and if a Business Operator has multiple lines of business there should be separate entries for each. Add additional lines as necessary. Add supplemental pages as needed to explain or elaborate on any line entry by entering the left margin Reference number on the attached page, which should correspond to the same numbers on Table 1.

Appendix C, Table 4
 Financial Pro Forma: Summary of Annual Revenues to County
 Santa Clara County Fairgrounds Master Use Plan

Name of Lead Respondent:

Item	Notes/Instructions	Year 0 Site Improvements	Operating Year (add/delete columns as necessary)									
			Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Annual Revenues to County [1]												
Annual Ground Lease	Actual lease terms to be negotiated.											
Business Operator #1			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #2			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #3			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #4			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #5			<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Annual Ground Lease			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<i>add/delete rows as necessary</i>												
Common Area Maintenance (CAM)	Assume a flat fee per acre.											
Business Operator #1			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #2			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #3			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #4			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Business Operator #5			<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Annual CAM Charge			\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<i>add/delete rows as necessary</i>												
Other Annual Revenues to County	Could be revenue participation or County Fair guarantee, etc.											
Source 1												
Source 2												
Total Annual Other Revenues												
<i>add/delete rows as necessary</i>												

[1] Separate entries should be made for each Business Operator, and if a Business Operator has multiple lines of business there should be separate entries for each. Add additional lines as necessary. Add supplemental pages as needed to explain or elaborate on any line entry by entering the left margin Reference number on the attached page which should correspond to the same numbers on Table 1.

APPENDIX D:
About the Fairgrounds

APPENDIX D: ABOUT THE FAIRGROUNDS

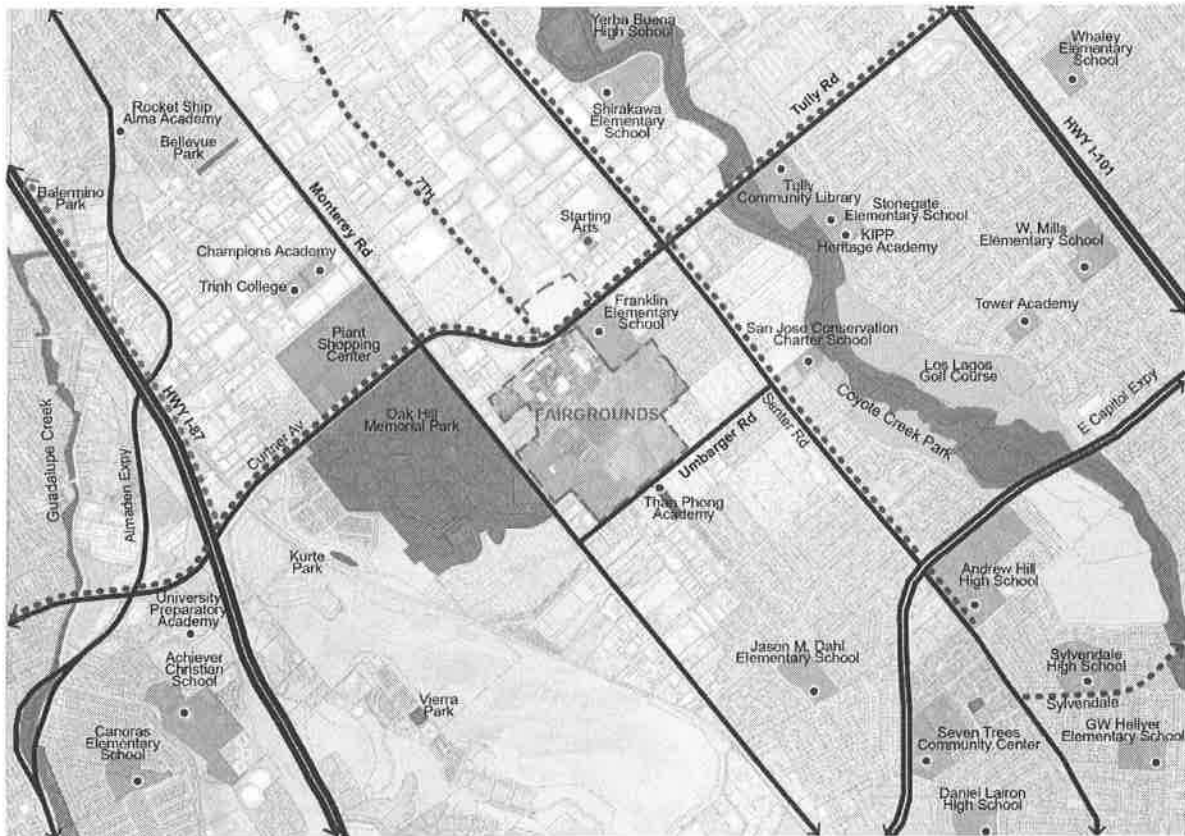
About the Fairgrounds

The approximately 150-acre Fairgrounds site is located in the relative geographic center of the City of San Jose, south of downtown San Jose and immediately south of the Tully Road/Monterey Road intersection. The Fairgrounds comprises approximately 150 acres of land, consisting of approximately 136 acres of unincorporated land located at 344 Tully Road (APN 497-38-001) and an additional 14 acres across Tully Road, known as the North Parking Lot A (APN 477-21-089), which is incorporated within the City of San Jose.

Figure 1 Location and Regional Context of Santa Clara County Fairgrounds



Figure 2 Community Context



As evident on **Figure 2**, the Fairgrounds is one of the larger contiguous sites in Silicon Valley. As described below, in recognition of its value and its generally underutilized condition, the County has attempted several efforts to improve the property over the last 20 years.

History

The initial 97 acres of the current Santa Clara County Fairgrounds was acquired from the Macomber family in October 1940. The first County Fair was held there in 1941, and additional parcels were acquired over time.

At its peak, the Fairgrounds consisted of almost two hundred acres. Today, it consists of approximately 150 acres, 136 of which are located on the south side of Tully Road and the remainder to the north. Other acreage has been repurposed over time, most recently for affordable residential housing for both families and seniors. As a result of previous attempts to redevelop all or parts of the property, many of the earlier Fairgrounds structures were demolished, and much of the land is currently unused or used for short-term, temporary uses, as a way to earn revenue for the site's operation and upkeep.

At the height of its popularity as a central County site for hosting public and private events in the 1970s, over 1.4 million people per year passed through the Fairgrounds' front gates. With competition from other venues and a deterioration of the Fairgrounds infrastructure and funding base, these figures declined throughout the 1990s, and in 2003 attendance had dropped to slightly over 850,000. The Fairgrounds declined throughout the 1980s and 1990s in its physical

infrastructure, causing a reduction in its revenues from events. In 1994, the financial condition deteriorated to the point where the Fair Association filed for bankruptcy. In 1995, the Board of Supervisors formed a new governance structure for the Fairgrounds, the Fairgrounds Management Corporation (FMC). The FMC is a nonprofit, public benefit corporation, legally separate from the County. The *Fairgrounds Heritage Foundation of Santa Clara County* was recently formed to support fundraising efforts for the Fairgrounds.

Revitalization Projects

In 1997, the Board acknowledged the need for significant revitalization of the Fairgrounds, and the County began planning a revitalization project. The FMC issued an RFP for consultants and selected the A&M Group to prepare the Fairgrounds Revitalization Plan. The Santa Clara County Revitalization Plan, dated May 1998 and accepted by the Board in June 1998, called for a Fairgrounds Theater (or concert venue), a new Expo Center, a community recreation facility, infrastructure improvements, and future disposition of the Tully Road parking lot.

The County Board of Supervisors formally adopted the Final Environmental Impact Report (EIR) by Resolution on April 18, 2000 and approved the Revitalization Project, including the Fairgrounds Theater Project. The Board also approved a long-term ground lease between the County and the House of Blues Concerts, Inc. for the development and operation of the new theater. A downturn in the economy and a lawsuit filed by the City of San Jose, however, undermined the financial viability of the project, causing the Board to cancel the project in August 2006 rather than provide the necessary \$15 million of additional County General Funds.

On May 22, 2007, the Board directed the administration to issue a RFQ/RFP for national and local developer teams to propose scenarios for the Fairgrounds property. The selected team, led by Catellus Development, entered into an Exclusive Negotiating Agreement (ENA) with the County in December 2008. By April 2009, however, the economy had deteriorated and Catellus withdrew from the ENA.

2014/2015 Vision Process

In March 2013, the Finance and Government Operations Committee (FGOC) of the Board of Supervisors directed the Administration to suggest a process for examining ways to improve the use of the Fairgrounds. On April 29, 2014, the Board authorized the release of an RFP for consulting services and subsequently embarked on a multi-phase, community-based planning effort to develop a vision for the future of the 150-acre Santa Clara County Fairgrounds. This initial visioning phase of the planning effort included three key work components:

1. A consolidation of existing background information on the Fairgrounds property, including an overview of current land uses and the County Fair and Fairgrounds operations, along with existing economic and demographic conditions, natural features, and transport and infrastructure facilities.
2. An inclusionary, multi-layered process for community input and involvement engaging the local community, stakeholders, businesses, and government partners, and
3. A market study addressing possibilities for expanded existing and new uses at the Fairgrounds, including both event-related and other real estate opportunities.

Findings from Community Outreach

Between October 2014 and June 2015, Group 4 Architecture, Research + Planning (Group 4) conducted outreach and engagement with Santa Clara County residents and users of the County Fairgrounds. Ten event kiosks at various local and county markets, meetings, and festivals, and an online questionnaire accessed at the Santa Clara County website, prompted over 5,500 people to express their personal favorite uses of the Fairgrounds and their aspirations for a renovated Fairgrounds site, future uses and neighborhood amenities.

Community-focused kiosks solicited feedback by prompting passersby to place stickers on their preferences from among a menu of concept and event images. The demountable structures were present at ten events throughout the County, in each of the County's five Supervisorial districts. At each event, Group 4 staff was on hand to guide participation and raise awareness of the study. The kiosks captured a robust cross-section of Santa Clara County residents, couples, and families, young and old, and from many ethnic backgrounds.

An online Fairgrounds Vision planning questionnaire completed by self-selected respondents asked 12 questions relating to use and vision for the Fairgrounds, preferences of activities, other fairgrounds visited, and basic demographic information (age, zip code), including a free response option for most questions. The questionnaire was accessed from the County website, and available in English, Spanish, and Vietnamese. As of April 2016, 3,044 people had responded; each County district was well-represented, as were residents from surrounding counties stretching from Santa Cruz to Sacramento.

The most popular preferences for future use of underutilized Fairgrounds land, netting over 1,500 votes each, were Play spaces, Passive Use Park space, and Active Park space (Trails). Active Park space (Sports) and Community Centers logged around 950 and 850 responses, respectively; Neighborhood Retail, Housing, and Café each netted more than 500 responses. The four most popular choices were all park and recreation oriented, from among a dozen categories including Community, Residential Housing, Office, Industrial, and Retail themes.

The most popular desired Fairgrounds activity was the County Fair, collecting about 2,100 responses – followed by Concerts/Entertainment with 1,500 responses, Farmers Market /Community Garden with 1,350 responses, and Paintball and Motocross both with over 1,000 responses. Animal Shows, Education Events, Special Events, Trade Shows, and Rodeo/Equestrian uses made it into the Top 5 Event Preferences lists of each of the five Supervisorial Districts.

Current Property and Land Use Considerations

Zoning

The main Fairgrounds property, south of Tully Road is an unincorporated area of land, owned by the County of Santa Clara, zoned for Public use. As such, public uses of the site are under the jurisdiction of the County. The City of San Jose General Plan designates the main Fairgrounds property as OHPS- Open Space, Parklands, and Habitat. The 14-acre parcel north of Tully Road, although owned by the County, is incorporated in the City of San Jose and is zoned Light Industrial.

Existing Facilities

The core of the Fairgrounds facilities consists of approximately 167,000 square feet of indoor building space, 20 acres of lawn and paved outdoor spaces, and 40 acres of parking (see **Figure 3**). The primary Fairgrounds venues, including the concert arena and a complex of six event halls, are concentrated in the northern portion of the site adjacent to Tully Road. Main entrances to the Fairgrounds (Gates A, B, and C) are likewise located along Tully Road. Gate D provides access from Monterey Road into the Paintball, RV Lot, Auto Auction, and other destinations within the middle portion of the site, while Gates E and F provide access from Umbarger Road into the southern areas.

Figure 3 Map of the Core Fairgrounds Facilities



In general, the building facilities at the Fairgrounds are in a deteriorated condition. Outdated building designs, including insufficient size and awkward shape, as well as inefficient site layout, limit the current potential for competing with other trade and convention venues or attracting large crowds and customers.

Figure 4 Fairgrounds Buildings

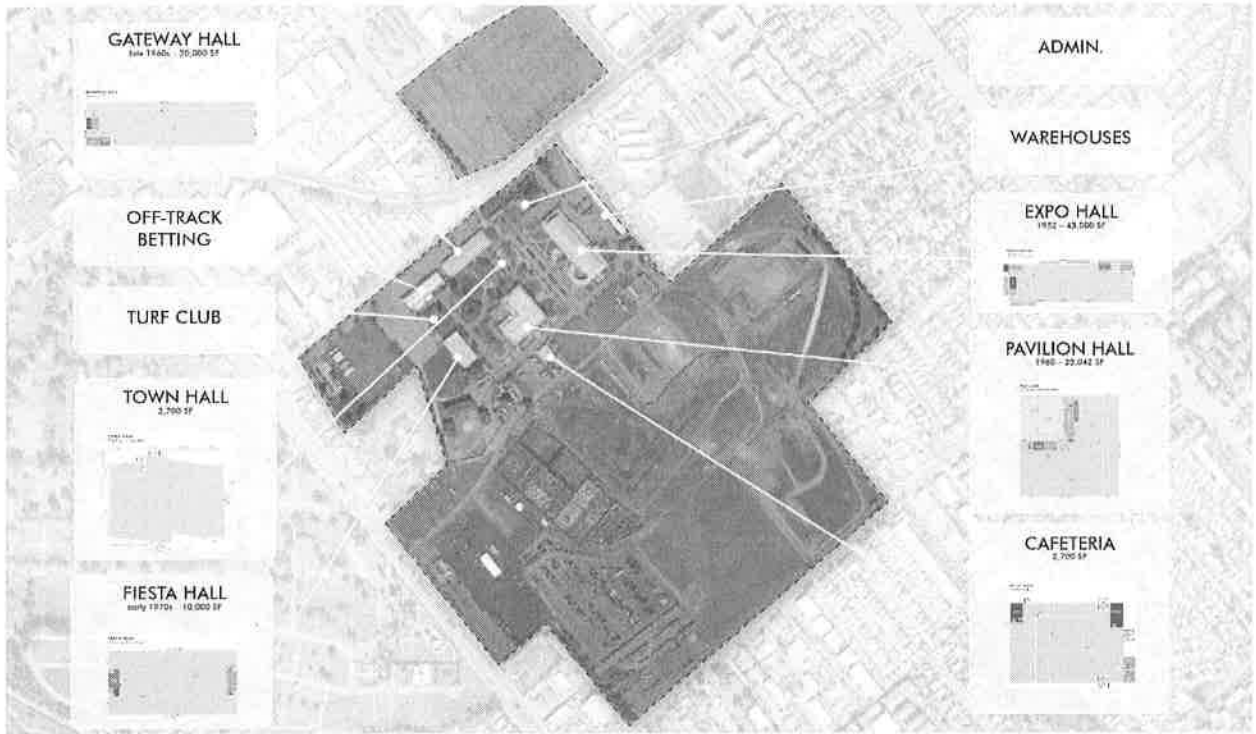


Table 1 Summary of Existing Buildings

Santa Clara County Fairgrounds Summary of Existing Facilities				
	Size (SF)	Capacity (# of Persons)		
		Reception	Banquet	Sports/ Entertainment
Events Facilities				
Exposition Hall	45,000	4,850	3,000	-
Pavilion Hall	33,042	2,200	3,000	-
Gateway Hall	20,000	2,100	1,258	-
Fiesta Hall	10,000	1,000	424	-
Cafeteria	2,700	150	100	-
Town Hall	2,700	150	100	-
Arena	-	-	-	5,500
Additional Facilities				

Fair Downs Off Track Betting (OTB) and Turf Club

Source: Santa Clara County Fairgrounds, Johnson Consulting

- **Exposition Hall** is 45,000 square feet and has a maximum capacity of 4,850, or 3,000 dining. The ceiling height is 29.5 feet. In addition to the main room, the building has office space, green rooms, and a sports bar. Recommended uses for this facility include trade and home shows, concerts and performances, and large public and private gatherings.
- **Pavilion Hall** is 33,042 square feet and has a maximum capacity of 3,000, or 2,200 dining. The ceiling height is 18 feet. In addition to the main room, the building has office space, a 60 foot x 80 foot dance floor and a 10,000 square foot patio. Recommended uses for this facility include trade and home shows, concerts and performances, pet shows, collectible shows, sales, and retirement parties.
- **Gateway Hall** is 20,000 square feet and has a maximum capacity of 2,100 or 1,258 dining. The ceiling height is 12 feet. In addition to the main room, the building has office space and a box office ticket window. Recommended uses for this facility include corporate and group meetings, educational and training classes, and large parties.
- **Fiesta Hall** is 10,000 square feet and has a maximum capacity of 1,000, or 424 in a dining setup. The ceiling height is 18 feet. Recommended uses for this facility include quinceañeras, receptions, and bridal showers.
- The **Cafeteria** is 2,700 square feet and has a maximum capacity of 150, or 100 dining. The ceiling height is 9 ½ feet. In addition to the main room, this building has a 470 square foot patio. Recommended uses for this facility include small family parties, and Christenings.
- **Town Hall** is 2,700 square feet and has a maximum capacity of 150, or 100 dining. The ceiling height is 11 feet. In addition to the main room, this building has a 470 square foot patio. Recommended uses for this facility include bridal showers and birthday parties.
- The **Arena** is an outdoor venue with seating for 5,500 people and includes a 3,000 square foot event floor. The Arena is adjacent to the Fairgrounds parking area and also has ticket booths. Recommended uses for the Arena include concerts, rodeos, motorsport events, religious gatherings and revivals, equestrian events, and graduations.

Outdoor Facilities

In addition to the buildings described above, the Fairgrounds includes outdoor event-related facilities including the outdoor arena referenced above and an animal storage area in the central eastern portion of the site. Current tenant facilities include a motocross course in the approximate center of the site, and a paintball/laser tag facility in the central western portion of the site. The site also has open areas not designated for a specific use.

Most of the landscaping on the Fairgrounds property, including 70 mature landscaping trees, is located in the northern portion of the site in the areas surrounding the event halls.

Three main axes provide orientation and circulation within the Fairgrounds. The north-south Esplanade serves as the main processional route, while Fiesta Lane and the Promenade serve for east-west circulation. A well-maintained but aging tree grove behind the Pavilion Hall provides shade and biodiversity. A lawn area between the Fiesta Hall and the Arena is used for youth performances.

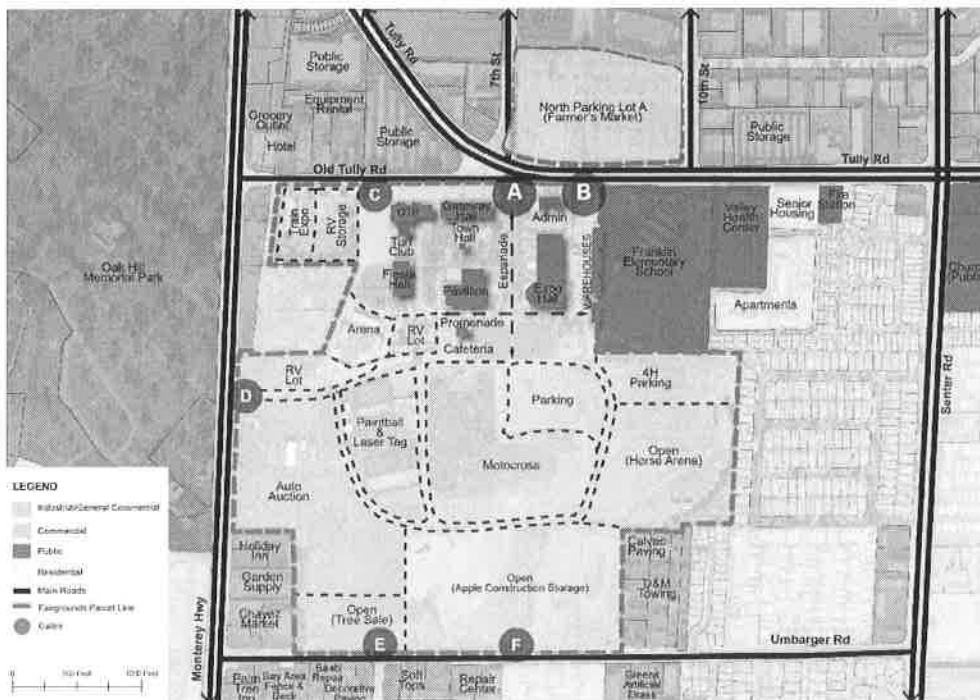
Current/Long-Standing Uses and Tenants

The Fairgrounds has been called home to several user groups that provide income to the FMC on a continuing basis, as follows:

- Farmers Market: Year-round on Wednesdays, Fridays and Sundays; average of 150 total stalls.
- Dog Training: Over 50 years of year-round, dog training classes held on a weekly basis.
- Santa Clara Paintball and Laser Tag: Utilizes 10 acres at the Fairgrounds and looking to invest in new facilities to grow their business.
- 408 MX: Regular motocross and BMX practice and racing events.
- Brashers San Jose Auto Auction: Held year-round, every Thursday at the Fairgrounds.
- RV and Boat Storage.
- Temporary staging for area construction projects.
- RV Park.
- Off-Track Betting.

For information about the financials of FMC and the revenues associated with the user groups identified above, please see the Existing Conditions Report. The Existing Conditions Report, historical background, the RFQ, a summary of the RFQ responses, this RFP and other supporting documents are available on the Fairground project website: www.fairgroundsvision.net.

Figure 5 Current Site Uses

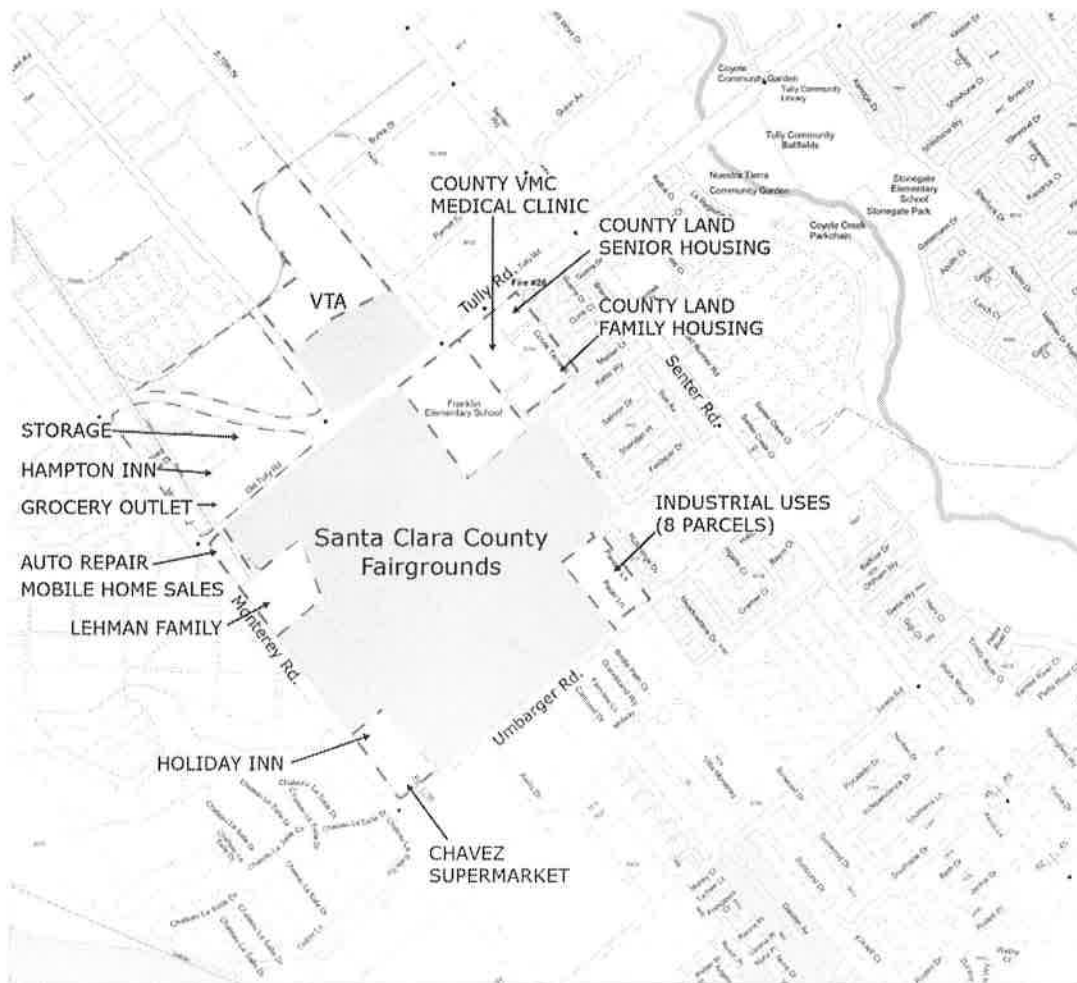


Neighboring Property Considerations

Properties surrounding the property include a diverse mix of uses as shown in **Figure 6**. Parcels to the north, along Tully Road, are primarily occupied by commercial and industrial development. Franklin McKinley Elementary School is located adjacent to the northeastern corner of the Fairgrounds property. Residential neighborhoods occupy most of the lands immediately east of the Fairgrounds, with the Coyote Creek Park corridor beyond. A mix of residential, light industrial, and commercial development lies to the south. Commercial development borders much of Monterey Road, with the Oak Hill Memorial Park cemetery and additional residential development further to the west.

Community destinations and services include the Plant Shopping Center at the northwest intersection of Curtner Avenue and Monterey Road, the Coyote Creek Park that runs north-south to the east of the Fairgrounds, and numerous public and charter schools. The Fairgrounds is surrounded by a fence and does not currently act as public community open space, nor does it provide connectivity between land uses in the area.

Figure 6 Adjacent Uses



ATTACHMENTS

ATTACHMENT 1

REQUEST FOR PROPOSALS

Fairgrounds Development

Preliminary Notice of Intention to Respond

SHOULD YOU INTEND TO SUBMIT A RESPONSE TO THIS RFP, YOU MUST RETURN THIS ACKNOWLEDGEMENT PROMPTLY UPON RECEIPT.

The contact information provided below will be used to transmit information and updates from the County as may be required or needed during the proposal process. You acknowledge, accept and understand that all transmittals from County to you (including any and all Addenda) will be provided electronically at the email address you provide below or on the County's online bidsync service. County will have no obligation to provide materials to you by any other means.

You must return this form by mail to the County of Santa Clara, ATTN: Megan Doyle, Clerk of the Board, County of Santa Clara, 70 W. Hedding Street, 10th Floor, San Jose, California 95110, **AND** you must also return a signed copy of this form, by email, to: Glen Williams, Asset Development Manager, at glen.williams@ceo.sccgov.org.

Name

Company

Address

Phone AND Fax Numbers

Email Address

ATTACHMENT 2

NONDISCLOSURE AGREEMENT

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA") by and between ---- ("Receiving Party") and the County of Santa Clara (referred to interchangeably as "County" or "Owner") relates to the disclosure of certain confidential information. In consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which are acknowledged, the parties agree as follows:

1. This NDA will commence following execution by Receiving Party and will continue in full force and effect until the conclusion of the relationship between the County and the Receiving Party, or for a period of one year following execution of this NDA, whichever is longer. The Receiving Party's obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.

2. The Receiving Party will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.

3. "Confidential Information" means any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County or its consultants and not generally available to third parties. Confidential Information includes, without limitation, any and all real property appraisals, diagrams, schematics, documentation, maps, address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs. Confidential Information also includes all County Property as defined below. All Confidential Information is County Property.

(a) All "County Property" is Confidential Information, and as used in this NDA, means and includes, collectively and singularly, all of the following County property: information, appraisals, data or materials provided to or accessible by Receiving Party; Customer Data and PII (as defined below); County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; copyrights, trade names, trade dress, domain names, patents, trade secrets, moral rights, termination rights, ownership rights, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by, developed for, developed by or on behalf of County and all derivative work thereto; and, all County rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.

(b) Personally Identifiable Information and Customer Data (collectively the "Customer Data and PII") includes but is not limited to any and all information pertaining to or about persons and/or entities receiving County services, accessing County links or websites (including but not limited links and websites developed for the benefit of County), or participating in any County held or sponsored activities, regardless of whether County provided these links, websites, services, contests or games directly. Customer Data and PII also includes but is not limited to any and all names, addresses, emails, phone numbers, social security numbers, bank account or credit card information, driver license numbers, age, sex, religion, physical descriptions and website or internet use data or metadata. All Customer Data and PII is exclusively and solely County Property. All Customer Data and PII is always County Confidential Information, except as otherwise determined solely by the County in writing.

(c) Should Confidential Information be divulged to unauthorized third parties, Receiving Party shall comply with all applicable federal and state laws and regulations, including but not limited to

California Civil Code Sections 1798.29 and 1798.82 at Receiving Party's sole expense (if applicable). Receiving Party shall not charge the County for any expenses associated with Receiving Party's compliance with the obligations set forth in this section.

4. Receiving Party shall review and maintain the Confidential Information in accordance with the following terms and conditions:

(a) Receiving Party agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Receiving Party shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.

(b) No copies of the Confidential Information shall be made, unless agreed to in writing by the County.

(c) All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to insure that unauthorized persons do not have access to the Confidential Information and shall not leave County property unless authorized in advance by County. Receiving Party shall, at all times, keep the County informed in writing of the location of the Confidential Information.

(d) The Receiving Party will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.

(e) The Confidential Information shall be used solely by Receiving Party for the limited purpose expressly authorized by County or as stated in this NDA.

(f) Any oral discussions between the County and Receiving Party that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.

(g) Upon the request of the County or after the termination of this NDA, Receiving Party shall promptly return all of the Confidential Information including all work products of Receiving Party containing Confidential Information to the County. Receiving Party shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.

(h) Receiving Party shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.

(i) Receiving Party, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.

5. Confidential Information will not include any information that the Receiving Party can demonstrate that, absent breach of this NDA, was/is:

(a) Publicly known at the time of disclosure by the Disclosing Party, or becomes publicly known through no fault of the Receiving Party;

(b) Rightfully received from a third party without a duty of confidentiality;

(c) Already known to the Receiving Party at the time of receiving such Confidential Information or is independently developed by the Receiving Party without reference to the Confidential Information;

(d) Permitted to be disclosed by written consent of the County; or;

(e) Required to be disclosed by law or by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that the Receiving Party provides the County with prompt notice of such requirement, so that the County may seek an appropriate protective order and/or waive compliance with this NDA.

6. Disclosure by the County of the Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by the Receiving Party. Confidential Information is provided "AS IS". COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of any Confidential Information or documentation.

7. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Receiving Party. Termination under this provision shall not relieve Receiving Party of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.

8. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes and photographs thereof, will, at the County's option, be returned or destroyed by the Receiving Party. The return of any Confidential Information will not relieve the Receiving Party of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.

9. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information, and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.

10. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.

11. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect. All sections of this NDA shall survive termination, cancellation and expiration of this NDA regardless of the reason for termination, cancellation or expiration.

12. Receiving Party shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this NDA due to the negligence, recklessness, or willful misconduct of Receiving Party and/or its agents, employees or sub-contractors, excepting only to the extent such loss, injury or damage is directly caused by the actual gross negligence, recklessness or willful misconduct of personnel employed by the County. It is the intent of the parties to this NDA to provide the broadest possible coverage for the County.

13. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.

14. No delay or failure to require performance of any provision of the NDA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

15. Receiving Party shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment

or transfer shall be null and void and shall constitute grounds for immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.

16. Each party acknowledges that it has read and understands this NDA and agrees to be bound by its terms. By signing below, signatory warrants and represents that he/she executed this NDA in his/her authorized capacity and that by his/her signature on this NDA, he/she or the entity upon behalf of which he/she acted, executed this NDA.

County of Santa Clara:

(Receiving Party):

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT 3

NON-COLLUSION DECLARATION

I, _____, _____, on behalf of
(Print Name) (Position/Title)

_____, the Respondent making the proposal, affirmatively state the following to be true and correct: the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Respondent or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Respondent has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Respondent or any other Respondent, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Respondent, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Respondent has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The undersigned declares that he or she is an official/agent of responding firm, company or individual and is empowered to represent, bind, and execute contracts on behalf of the firm, company or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Declaration and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

COMPANY NAME:

AUTHORIZED SIGNATURE:

PRINT NAME:

DATE: _____

ATTACHMENT 4

DECLARATION OF LOCAL BUSINESS

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.6.5.2. A bidder or offeror has the option of qualifying for the preference by self-declaring its qualification as a "local business." By signing below, the bidder or offeror is certifying its qualification as a "local business" for purposes of application of Santa Clara County's policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Provide the complete physical address of your business with meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means the term "production capability" means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a "Local Business." If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Please Indicate Business Organization (Check One):

Individual Proprietorship

Corporation

Partnership

Other

By filling this form, bidder/offeror declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.6.5.2.

The undersigned declares that he or she is an official/agent of responding firm, company or individual and is empowered to represent, bind, and execute contracts on behalf of the firm, company or individual.

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The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Declaration and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

Signature

Title

Name

Date

Business License Number (if applicable)

ATTACHMENT 5

REFERENCES

Provide no less than Five Business References (County reserves the right but not the obligation to contact any one or all of the references provided at any time)

For Each Reference, Provide:

Name of Company: _____

Address of Company: _____

The Type and Date of Relationship (e.g., contract, partnership):

Describe how is/are these Project(s) similar to Respondent's proposed project at the County Fairgrounds:

Description of Project(s) and Reasons for Success:

Name of Point of Contact(s): _____

Phone Number: _____

Email Address: _____

ATTACHMENT 6

DECLARATION OF COMPLIANCE WITH WAGE THEFT PREVENTION POLICY

The County of Santa Clara does not tolerate wage theft. Accordingly, Santa Clara County Board of Supervisors' Policy Manual, Section 5.5.5.4, includes the following:

Wage Theft Prevention

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

Please complete the certification below, by checking the appropriate response:

_____ Respondent has no violations to disclose pursuant to Board Policy Manual § 5.5.5.4.

_____ Respondent has been found by a court or final administrative action of an investigatory government agency to have violated federal, state, or local wage and hour laws within the last five (5) years.

_____ Respondent has included in the proposal response the following for each violation: (1) a copy of the court order and judgment and/or final administrative decision; and (2) documents demonstrating either that the order/judgment has been satisfied, or, if the order/judgment has not been fully satisfied, a written and signed description of offeror's efforts to date to satisfy the order/judgment.

The undersigned declares that he or she is an official/agent of responding firm, company or individual and is empowered to represent, bind, and execute contracts on behalf of the firm, company or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Declaration and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response

may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

Signature _____ Title _____

Printed Name _____ Date _____

Company Name _____ Company Address _____

ATTACHMENT 7

RESPONDENT'S PROPOSED BID FORM TERMS AND CONDITIONS

TO: The County of Santa Clara
Bruce Knopf, Director, Asset & Economic Development
70 West Hedding Street, 10th Floor
San Jose, California 95110

Below, please initial next to the appropriate statement. Failure to initial shall default to the first response, acceptance of the County's terms and conditions as is.

_____ Respondent accepts all Ground Lease Template terms and conditions.

_____ Respondent accepts all Ground Lease Template terms and conditions and proposes additional business terms as attached to the proposal as Exhibit _____.

_____ Respondent objects to some of the Ground Lease Template terms and conditions and proposes replacement terms and conditions, as well as additional business terms as attached to the proposal as Exhibit ____.

_____ Respondent objects to a Ground Lease Template and proposes a different business relationship (other than by lease). The contents of said agreement is attached as Exhibit ____.

The County may or may not accept, in whole or in part, the alternatives presented by the Respondent. General references to the Respondent's terms and conditions or attempts at complete substitutions may not acceptable to the County and the County may disqualify the response in its entirety, at its sole discretion.

ATTACHMENT 8

FINANCIAL PROPOSAL SUMMARY FORM FOR LEASE OF PROPERTY

Santa Clara County Fairgrounds, San Jose, California

TO: The County of Santa Clara
Bruce Knopf, Director, Asset & Economic Development
70 West Hedding Street, 11th Floor
San Jose, California 95110

Respondent acknowledges, agrees and understands that the pro forma information (Appendix C) and the proposed rent and compensation outlined herein below, although important, will not be the sole basis for County's selection of a successful response. Therefore, pursuant to and in compliance with the Request for Proposals for Lease of the Project Site at the Fairgrounds, San Jose, California ("RFP Documents"), the undersigned Respondent having become thoroughly familiar with the terms and conditions of the RFP Documents, with conditions affecting the value of the Project Site, and having fully inspected the Project Site, hereby proposes to lease all or portions of the Project Site and agrees to execute the form of ground lease substantially similar to the form and content attached as **Appendix B** to the RFP (or such other form as approved by the Office of County Counsel) subject to negotiations. To that end, in addition to (and consistent with) Respondent's submittal of the completed Appendix C, Respondent also submits this summarized outline of its Financial Proposal, as follows:

1. Annual Ground Lease Rent for all or portions of the Project Site in the amount of \$_____ per year (\$_____ per acre per year) Total acres to be leased _____ for a Term of ____ years, with an increase of ____% every _____ years for the Term.
2. Percentage Rent (if included) _____% First full year estimate: _\$_____
3. Common area maintenance charge of \$_____ per year.
4. Capital contribution of \$_____ to the Project's public benefits, such as the Event Center and open space.
5. Other financial consideration: \$_____. Please describe in detail.

NAME OF COMPANY _____

TYPE OF ORGANIZATION _____

NAME AND TITLE OF PERSON SIGNING _____

SIGNATURE _____ DATE _____

ATTACHMENT 9

ACKNOWLEDGEMENT OF RECEIPT

RFP ADDENDUM # _____

Upon receipt of any and all Addenda to this RFP, each Respondent must return (via email to Glen Williams at glen.williams@ceo.sccgov.org), this signed Acknowledgement.

By Checking the Box Below and Signing this Acknowledgement,

Respondent represents, certifies, acknowledges and agrees that Respondent has received the following Addendum to the Request for Proposal:

Addendum # _____ sent by County on _____, by electronic means, facsimile or email:

Title of Addendum: _____.

SIGNATURE

Respondent's or Authorized Representative Signature: _____

Respondent's Name & Title (Print): _____

Date Signed: _____

//END OF DOCUMENT//