

**MEMORANDUM  
DEPARTMENT OF FACILITY SERVICES  
COUNTY OF PLACER**

To: Honorable Board of Supervisors

Date: October 21, 2014

From: Mary Dietrich, Facility Services Director  
By: Mark Rideout, Deputy Director 

Subject: Placer County Fair Association Agreement - Fourth Amendment

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**ACTION REQUESTED:**

1. Authorize the Chair of your Board to execute the Fourth Amendment to the Operating Agreement between the County of Placer and the Placer County Fair Association to modify assignment provisions in the Operating Agreement for the Placer County Fairgrounds at 800 All America City Boulevard in Roseville, with no net County cost.
2. Approve a loan of up to \$100,000 to the Placer County Fair Association, and direct staff to return to your Board with a Funding Agreement to implement this direction, at a budgeted net County cost of up to \$100,000.

**BACKGROUND:** The Placer County Fairgrounds (Fairgrounds) supports numerous community events such as the All American Speedway, and the Placer County Fair (Fair). For many years, Placer County has utilized an Operating Agreement to contract with the Placer County Fair Association, (PCFA) a non-profit corporation, to operate the Fairgrounds and provide a Fair for residents and visitors to Placer County. The current County-PCFA Contract No. 11520 (Operating Agreement) commenced on January 1, 2002 and now continues on a year-to-year basis pursuant to prior amendments approved by your Board.

The Placer County Fairgrounds Assessment prepared by RCH Group, Inc. (RCH) describes the vision for a new multi-dimensional Event Center in the West Placer area, which could take 5-10 years to develop at a new location. To support the Fairgrounds through this interim period, and develop usage patterns that can carry forward to a new Event Center, RCH identified a number of physical and operational improvements that are required for success at the current Fairgrounds site. As directed by your Board on October 7, 2014, staff will prepare a Request for Proposals (RFP) to solicit an operator (Operator) with the resources to launch a comprehensive re-branding campaign and address the Fairgrounds' physical constraints. Staff has now commenced the solicitation for members of a new Fairgrounds Revitalization Committee (FRC), which would assist in development of the RFP and provide ongoing advice to the County.

Following the discussion with your Board on October 7, 2014, staff finalized negotiations with PCFA for a Fourth Amendment (Amendment) to the Operating Agreement, which is attached as Exhibit A. This Amendment provides the opportunity for continuous operations of the Fairgrounds by structuring a mandatory assignment of the amended Operating Agreement to the Operator. The Amendment includes provisions specifying the County shall provide 10 business-days written notice of assignment, which ensures an efficient transition to the Operator. Staff envisions PCFA will be engaged throughout the RFP solicitation and negotiations with the Operator, which will provide advance notice of when the County will provide the notice of assignment.

The Amendment has no significant operational effect upon PCFA's management of the Fairgrounds, as they retain full site control through the Operating Agreement up until the point of assignment. This includes PCFA's full authority to solicit and contract for events that occur before January 1, 2016. To address concerns raised by PCFA, the Amendment clarifies that PCFA shall plan, manage and conduct the 2015 Fair regardless of the date the Operating Agreement is assigned to the Operator. Staff will include provisions in the RFP and the Operator agreement that describe PCFA's management of the 2015 Fair. To address concerns raised by event promoters and current Fairgrounds tenants, staff confirmed all existing contracts, agreements and leases are unaffected by the Amendment, and shall be assigned to the new Operator for management.

PCFA owns a variety of personal property items that could be provided to the Operator to facilitate a smooth transition. These items include speedway speakers, livestock fencing, vehicles, tractors, and similar equipment. To provide for continuous operations of the Fairgrounds and receive best value through an RFP process, Staff recommends the County pursue purchase of items which would be valuable for use by the Operator. Should your Board concur with this approach, Staff will return with a detailed listing of essential items, their appraised value, and a recommended purchase agreement.

As discussed with your Board on October 7, 2014, PCFA requested a loan of \$100,000 from the County to address cash flow issues until the point of assignment. Staff secured the services of RCH to address questions raised by your Board, including the ability of PCFA to repay the loan, and whether or not this amount is sufficient to bridge the revenue deficiencies inherent in the slow season of early 2015. By analyzing several years of PCFA financial data, RCH developed a monthly operating budget for 2015. This budget contemplates projected event bookings, seasonal utility expenses, and other labor and material costs. The RCH findings are summarized in the PCFA Cash Flow Analysis attached as Exhibit B, and conclude an incremental loan of up to \$100,000 is sufficient to carry PCFA through 2015. RCH has also concluded that revenue from interim events and the 2015 Fair are anticipated to be sufficient to repay the full amount of this loan.

Absent this loan, RCH projects PCFA will not have cash available at the beginning of 2015, thus staff recommends your Board approve this loan as a bridge to ensure continuous operations and provision of the 2015 Fair. As a condition of this loan, all costs associated with PCFA employees shall be paid by PCFA using monies derived from its operating revenues. If your Board is amenable to this concept, staff recommends preparation of a County/PCFA Funding Agreement, which could require PCFA to submit financial documentation with each request for incremental funding. Staff is prepared to present such a Funding Agreement to your Board for approval at an upcoming meeting.

To accomplish this transition to a new Operator, staff recommends your Board authorize the Chair to execute the Fourth Amendment to the Operating Agreement, which includes the assignment provisions described above. Further, staff requests your Board approve a loan of up to \$100,000 to PCFA, and direct Facility Services to return with a Funding Agreement for your execution.

**ENVIRONMENTAL CLEARANCE:** The Fourth Amendment to the Operating Agreement is Categorically Exempt from review pursuant to Section 15301 of the California Environmental Quality Act. This section provides for activities, including leasing of existing facilities, where there is no expansion of use beyond that previously existing.

**FISCAL IMPACT:** There is no fiscal impact associated with the change to assignment provisions of the Operating Agreement. Funding for up to \$100,000 associated with a loan to PCFA is available in the Community and Agency Support Appropriation at no new net County cost. Upon approval of the recommended action staff will return to your Board with a Funding Agreement at a future Board meeting.

AVAILABLE FOR REVIEW AT THE CLERK OF THE BOARD'S OFFICE:  
OPERATING AGREEMENT, CONTRACT NUMBER 11520  
FIRST AMENDMENT TO OPERATING AGREEMENT  
SECOND AMENDMENT TO OPERATING AGREEMENT  
THIRD AMENDMENT TO OPERATING AGREEMENT

ATTACHMENT: EXHIBIT A - FOURTH AMENDMENT TO OPERATING AGREEMENT  
EXHIBIT B - PCFA CASH FLOW ANALYSIS

CC: COUNTY EXECUTIVE OFFICE

MD/MR/KT

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**Contract Number: 11520**

**Administering Agency: County of Placer, Facility Services Department  
Property Management Division**

**Contract Description: FOURTH AMENDMENT TO OPERATING AGREEMENT  
BETWEEN THE COUNTY OF PLACER AND THE PLACER  
COUNTY FAIR ASSOCIATION**

This Fourth Amendment to Operating Agreement ("Fourth Amendment") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 (the "Effective Date") by and between the County of Placer, a political subdivision of the State of California, (hereinafter "County"), and the Placer County Fair Association, a non-profit corporation (hereinafter "Association").

#### **RECITALS**

WHEREAS, County and Association entered into that certain "Agreement Between the County of Placer and the Placer County Fair Association" ("Original Agreement") dated January 1, 2002 covering operations of the Placer County Fairgrounds, located at 850 All America City Boulevard in Roseville ("Fairgrounds"), the annual Placer County Fair ("Fair"), and related activities including operation of motorized racing events; and,

WHEREAS, the Original Agreement contains in Section 4 an annual renewal provision stating that the agreement remains in effect unless either party serves a notice of non-renewal on or before February 15 of each year; and,

WHEREAS, County and Association entered into that certain "First Amendment to Operating Agreement Between the County of Placer and the Placer County Fair Association" ("First Amendment") dated April 24, 2012, which changed the notice of non-renewal date to July 15 of each year; and,

WHEREAS, County and Association entered into that certain "Second Amendment to Operating Agreement Between the County of Placer and the Placer County Fair Association" ("Second Amendment") dated June 17, 2014, which changed the notice of non-renewal date to August 15 or September 15 of each year; and,

WHEREAS, County and Association entered into that certain "Third Amendment to Operating Agreement Between the County of Placer and the Placer County Fair Association" ("Third Amendment") dated September 9, 2014, which changed the notice of non-renewal date to October 24 of each year; and,

WHEREAS, County conducted an assessment of the Fair and Fairgrounds, which recommends solicitation for a new operator to manage and invest in the Fairgrounds ("New Operator"), and such New Operator may be under contract with County following an evaluation of qualifications and selection by the Placer County of Board of Supervisors; and,

WHEREAS, Association recognizes that the solicitation for a New Operator will rely in part on the prompt and efficient assignment of Association's Fairgrounds operations and agreement rights, as amended, to the New Operator, and Association further recognizes its responsibility to monitor and remain informed of the status of the solicitation.

WHEREAS, County and Association desire to provide the opportunity for continuous operations of the Fairgrounds until the effective date of a County contract with the New Operator, by structuring a mandatory assignment of Association's Fairgrounds operations and agreement rights, as amended, to the New Operator.

WHEREAS, County and Association desire to structure the mandatory assignment in such a way that the Association is able to plan for, manage and conduct the 2015 Placer County Fair scheduled for June 25, 2015 through June 28, 2015.

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

### AGREEMENT

1. Section 23 is hereby added to the Original Agreement, which Section 23 shall read in its entirety as follows:

Section 23 Assignment – Subject to Section 23(h) herein, Association hereby agrees to assign, transfer, and pledge all of Association's rights and obligations under the Original Agreement, as amended, including any and all contracts and/or agreements entered into pursuant thereto, (collectively, the "Assignment") to a New Operator as designated by the County. Association shall take all actions necessary to complete Assignment to New Operator within ten (10) business days following written notice by County ("Assignment Notice Date"). The Assignment shall be made in accordance with Assignment documents provided by the County. Any refusal by Association to conclude such Assignment in the timeframe provided shall constitute a material breach of the Original Agreement, as amended. The Assignment shall be conclusively considered provided by Association to New Operator if Assignment documents are not executed by Association and delivered to County within eleven (11) business days of the Assignment Notice Date.

- a. **Employees:** Nothing in the Operating Agreement, as amended, or the Assignment shall affect the employment status of any employee(s) of Association ("Association Employees"). All such Association Employees shall remain employees of the Association following Assignment. No Association Employees shall be transferred to or otherwise assumed by the County and/or New Operator due to the Assignment. No obligations to any Association Employee shall transfer to the County and/or New Operator through Assignment.
- b. **Records Production:** Association shall provide to County, within five (5) business days of the Effective Date of this Fourth Amendment, complete and legible copies of all agreements and contracts associated with the Fairgrounds, Fair, racing events, and/or otherwise associated in any way with the Operating Agreement, as amended, including, without limitation: services agreements, event agreements, vendor agreements, licenses, short and long term rental contracts, use agreements, recreational vehicle bookings, contracts with employees and any other similar documents (collectively, "Association Contracts"). Association shall continue to provide such Association Contracts, including any modifications thereto, to County on a weekly basis each Monday until and including the date of Assignment. The Association's obligation to deliver Association Contracts applies to all such Association Contracts in effect at any time from January 1, 2014 until the date of Assignment.

- c. Contracting Authority: The Association shall not enter into any contracts, leases, licenses or other agreements which extend beyond December 31, 2015, without prior written consent of County.
- d. County Oversight: During the period following Effective Date until Assignment, and in addition to any other document production obligations it may have, Association shall immediately produce any and all contracts, correspondence, financial records or other materials requested by County. The parties agree that delivery of such information is a material consideration of this Fourth Amendment.
- e. Agreement Forms: From and after the Effective Date, Association shall use only County-provided forms ("Forms") to enter into any and all contracts, agreements, licenses and/or other Association Contracts. Such Forms shall be provided by County to Association prior to the Effective Date of this Fourth Amendment. County reserves the right to modify such Forms thereafter.
- f. Association Liabilities: Association shall retain sole liability for any and all debts, loans, and employee liabilities including, without limitation, all wages, salary, benefits, accrued vacation pay-out and/or other costs incidental to employment by the Association.
- g. Personal Property: The parties agree that certain articles of personal property owned by Association may be useful to New Operator in management and operation of the Fairgrounds, including items such as vehicles, equipment, furnishings, electronic equipment, livestock fencing, and other durable items (the "Association Property"). County shall have the right, but not the obligation, to purchase any or all Association Property from Association in County's sole discretion. To establish the monetary value of Association Property, the County shall contract with a professional appraiser who is experienced in valuing such property and who shall complete an appraisal of its value. County shall then identify what Association Property it desires to purchase from Association ("Purchase Property"), and submit documentation of the value for such items to Association. The Parties shall enter into a separate agreement for County acquisition of the Purchase Property (the "Purchase Agreement"). Title to all such Purchase Property shall transfer to County on the Assignment Date, unless otherwise specified in the Purchase Agreement.
- h. The parties agree that the Association shall be allowed to, and shall, plan for, manage and conduct the 2015 Placer County Fair, scheduled for June 25, 2015 through June 28, 2015, regardless of the Assignment Notice Date."

2. Exhibit A to the Operating Agreement is hereby replaced in its entirety with the following:

**"EXHIBIT A"**  
**INSURANCE REQUIREMENTS**

ASSOCIATION shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A-:VII showing.

- 1. HOLD HARMLESS AND INDEMNIFICATION AGREEMENT  
The ASSOCIATION hereby agrees to protect, defend, indemnify, and hold PLACER COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by

PLACER COUNTY arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the COUNTY) and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the contract or agreement. ASSOCIATION agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the ASSOCIATION. ASSOCIATION also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against ASSOCIATION or the COUNTY or to enlarge in any way the ASSOCIATION'S liability but is intended solely to provide for indemnification of PLACER COUNTY from liability for damages or injuries to third persons or property arising from ASSOCIATION'S performance pursuant to this contract or agreement.

As used above, the term PLACER COUNTY means Placer County or its officers, agents, employees, and volunteers.

2. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to ASSOCIATION'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the ASSOCIATION.

CONTRACTOR shall require all SUBCONTRACTORS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

3. GENERAL LIABILITY INSURANCE:

A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of ASSOCIATION, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by ASSOCIATION in this Agreement.

- B. One of the following forms is required:
- (1) Comprehensive General Liability;
  - (2) Commercial General Liability (Occurrence); or
  - (3) Commercial General Liability (Claims Made).
- C. If ASSOCIATION carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
- Five million dollars (\$5,000,000) each occurrence
  - Five million dollars (\$5,000,000) aggregate
- D. If ASSOCIATION carries a Commercial General Liability (Occurrence) policy:
- (1) The limits of liability shall not be less than:
    - Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage)
    - Five million dollars (\$5,000,000) for Products-Completed Operations
    - Five million dollars (\$5,000,000) General Aggregate
  - (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be five million dollars (\$5,000,000).
- E. Special Claims Made Policy Form Provisions:  
ASSOCIATION shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:
- (1) The limits of liability shall not be less than:
    - Five million dollars (\$5,000,000) each occurrence (combined single limit for bodily injury and property damage)
    - Five million dollars (\$5,000,000) aggregate for Products Completed Operations
    - Five million dollars (\$5,000,000) General Aggregate
  - (2) The insurance coverage provided by ASSOCIATION shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of policies be different.

4. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the ASSOCIATION, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"
5. **AUTOMOBILE LIABILITY INSURANCE:**  
Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.  
  
Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.
6. **POLLUTION LIABILITY:**  
Contractor shall purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of one million dollars (\$1,000,000) covering liability arising from the sudden and accidental release of pollution on the Facility Site.
7. **LIQUOR LIABILITY:**  
Liquor Liability Coverage shall be in an amount not less than one million dollars (\$1,000,000).
8. **ADDITIONAL REQUIREMENTS:**  
**Premium Payments** - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.  
  
**Policy Deductibles** - The ASSOCIATION shall be responsible for all deductibles in all of the ASSOCIATION's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.  
  
**ASSOCIATION's Obligations** - ASSOCIATION's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.  
  
**Verification of Coverage** - ASSOCIATION shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ASSOCIATION's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**Material Breach** - Failure of the ASSOCIATION to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.”

3. In all other respects not directly addressed by this Fourth Amendment, the Original Agreement, as amended, remains in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Fourth Amendment on the dates set forth below.

**COUNTY OF PLACER**

By: \_\_\_\_\_  
Chair  
Placer County Board of Supervisors

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
COUNTY COUNSEL

Date: \_\_\_\_\_

**PLACER COUNTY FAIR ASSOCIATION**

By: \_\_\_\_\_  
Carrie Wimer  
General Manager, Placer County Fair Association

Date: \_\_\_\_\_

2015	January	February	March	April	May	June	July	August	September	October	November	December
Beginning Cash	-	(29,300)	(36,100)	(19,400)	200	(17,800)	156,900	107,600	86,700	91,600	82,300	57,700
Revenue	46,300	43,300	67,000	140,100	159,500	351,500	86,200	88,200	107,800	112,800	34,900	29,800
Expense	(75,600)	(50,100)	(50,300)	(120,500)	(177,500)	(176,800)	(135,500)	(109,100)	(102,900)	(122,100)	(59,500)	(39,300)
Ending Cash	(29,300)	(36,100)	(19,400)	200	(17,800)	156,900	107,600	86,700	91,600	82,300	57,700	48,200

