City of Calistoga
STAFF REPORT

To: Honorable Mayor and City Council
From: Sheli Wright, Fairgrounds Revitalization Director
Meeting: City Council - Feb 04 2025
Subject: **Execution of the License Agreement with Hunt Motor Sports Concepts LLC for nonexclusive sprint car racing.**

DESCRIPTION:

Consider adopting a resolution to authorize the execution of the License Agreement with Hunt Motor Sports Concepts LLC for non-exclusive sprint car racing.

RECOMMENDATION:

Consider Adopting the Resolution

SUMMARY:

The City Council has prioritized fairground infrastructure projects that will generate revenue to offset general fund subsidies for the fairgrounds. One method of achieving this is longer-term facility licenses that could include licensee-funded infrastructure upgrades in place of license payments. This structure contributes to fiscal sustainability by reducing the need for city funding for projects and promoting the long-term viability of the property.

On November 19, 2024, the City Council directed staff to negotiate a short-term lease agreement with Hunt Motor Sports Concepts, LLC for non-exclusive sprint car racing, which would provide financial support and infrastructure repairs. Staff are presenting a License Agreement with Hunt Motor Sports Concepts, LLC (HMSC) for Council review.

ANALYSIS:

The two-year agreement proposes that HMSC will perform repairs to the grandstands for an estimated cost of $100,000 in lieu of payment for two seasons of sprint car racing, with one race weekend in 2025, and up to three race weekends in 2026. Racing would conclude by 10:00 pm and lights be turned off by 11:00 pm.

Under the agreement, HMSC has operational rights to concession, admission, and merchandise sales. The City retains the rights to alcohol sales and RV Parking fees. HMSC will pay a flat $300/day to cover many utilities and will additionally pay directly for other services. In addition, both parties may sell sponsorships to the track with the City holding 100 tickets per race for their sponsors.

Staff believes this agreement will be beneficial in accomplishing infrastructure improvements at the fairgrounds and contributing financial support to the fairgrounds.

FINANCIAL IMPACT:

The city is projected to generate approximately $7,500 per race in alcohol sales and $9,000 per race in RV parking fees. The contract allows for up to four race weekends, with two days of racing per weekend, resulting in the potential revenue of $115,200, based on historical race data. Additionally, Hunt Motor Sports Concepts LLC (HMSC) is obligated to undertake grandstand repairs, valued at an estimated $100,000, which will enable the venue to accommodate additional events and rentals. The total estimated financial impact of this arrangement is $215,200 in funding towards the operation of the grounds.

CEQA STATUS:

No CEQA review is required.

ATTACHMENT(S):

Resolution for HMSC LLC License Agreement

HMSC License Agreement with ZFA Report -Final - signed

APPROVAL(S):

Connie Cardenas, Admin. Services Director	Approved - Jan 02 2025
Rachel Stepp, Deputy City Manager	Approved - Jan 24 2025
Laura Snideman, City of Calistoga | City Manager	Approved - Jan 28 2025
Yudiana Galvan, City of Calistoga | City Clerk	Approved - Jan 28 2025

RESOLUTION NO. 2025-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE EXECUTION OF A LICENSE SERVICES AGREEMENT WITH HUNT MOTOR SPORTS CONCEPTS LLC.

WHEREAS, the Calistoga City Council has placed priority on the fairground infrastructure projects that will allow for revenue generation to offset general fund subsidies to the fairgrounds; and

WHEREAS, on November 19, 2024, the Calistoga City Council directed staff to negotiate a contract with Hunt Motor Sports Concepts, LLC, for two seasons of sprint car racing; and

WHEREAS, the Calistoga City Council wishes to enter into a license services agreement with Hunt Motor Sports Concepts, LLC to repair the grandstands in lieu of payment for two seasons of sprint car racing; and

NOW, THEREFORE BE IT RESOLVED that the Calistoga City Council hereby authorizes the City Manager to execute a two-year license services agreement with Hunt Motor Sports Concepts, LLC, and further authorizes the in-kind services of repair of the grandstands for two seasons of racing.

PASSED, APPROVED AND ADOPTED this **4th** day of **February 2025.**

I, **YUDIANA GALVAN, CITY CLERK OF THE CITY OF CALISTOGA**, **HEREBY CERTIFY** the foregoing resolution was introduced and passed at a regular meeting of the Calistoga City Council by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: **APPROVED:**

_____ _____

Yudiana Galvan, City Clerk **Donald Williams, Mayor**

NON-EXCLUSIVE SITE

LICENSE AGREEMENT

BY AND BETWEEN

CITY OF CALISTOGA,

a California municipal corporation
AS LICENSOR

and

HUNT MOTOR SPORTS CONCEPTS LLC

AS LICENSEE

TABLE OF CONTENTS

PAGE

1. GRANT OF LICENSE 8
2. LICENSE AREA 8
   - 2.1 License Area 8
   - 2.2 Common Area 8
   - 2.3 Ingress/Egress 8
   - 2.4 No Representations 8
   - 2.5 Licensor's Reserved Rights 9
   - (b) Revenue 9
   - 2.6 No Interest in Land Granted 9
   - 2.7 Nonexclusive Right 9
   - 2.8 Operation of License Area 9
3. TERM: 12
   - 3.1 Generally 12
   - 3.2 Early Termination 12
4. LICENSE CONSIDERATION: 13
   - 4.1 Base License Consideration 13
   - 4.2 Additional Fees 13
   - 4.3 Security Deposit 13
5. TAXES AND OPERATING EXPENSES: 13
   - 5.1 Taxes 13
   - 5.2 Operating Expenses 13
6. USE; COMPLIANCE WITH LAWS: 14
   - 6.1 Use of License Area 14
   - 6.2 Compliance with Laws 14
7. UTILITIES 14
   - 7.1 No Liability of Licensor 14
8. MAINTENANCE AND REPAIR OF LICENSE AREA 15
   - 8.1 Maintenance and Repair by Licensee 15
9. ENVIRONMENTAL PROTECTION PROVISIONS 15
   - 9.1 Hazardous Materials 15

TABLE OF CONTENTS
(CONTINUED)

PAGE

9.2 Reportable Uses Required Consent 15
9.3 Remediation Obligations 16
9.4 Licensor's Inspection Right 17
9.5 Hazardous Materials Indemnity 17
10. INDEMNITY AND WAIVER OF CLAIMS 17
10.1 Licensee Indemnification 17
10.2 Waiver of Claims 17
10.3 Survival/No Impairment 18
11. INSURANCE 18
11.1 Licensee's Insurance 18
11.2 Additional Insureds 18
11.3 Notice of Cancellation 19
11.4 Sufficiency of Insurance 19
11.5 Insurer Acceptability 19
11.6 Certificate of Insurance 19
12. PROHIBITION AGAINST TRANSFERS 19
13. SURRENDER 19
14. NONDISCRIMINATION 20
15. SUBMISSION OF NOTICES 20
16. DEFAULT 20
16.1 Events of Default 20
16.2 Remedies 21
16.3 Licensor's Right to Perform Licensee's Obligations 21
16.4 Severability 21
17. WAIVER OF RELOCATION ASSISTANCE 21
18. MISCELLANEOUS. 21
18.1 Entire Agreement 21
18.2 Amendments 21
18.3 Severability 21
18.4 Incorporation of Exhibits and Recitals 22

TABLE OF CONTENTS
(CONTINUED)

PAGE

18.5 Broker's Commissions 22
18.6 Attorneys' Fees 22
18.7 Access by Licensor 22
18.8 Emergencies 22
18.9 Asbestos Notification for Commercial Property Constructed Before 1979 22
18.10 Lead Warning Statement 23
18.11 OFAC Certification 23
18.12 Certified Access Specialist Disclosure 23
18.13 Rules and Regulations 23
18.14 Further Assurances 23
18.15 Time 23
18.16 Captions 23
18.17 Governing Law 23
18.18 Authority 24
18.19 Public Records Act.. 24
18.20 Counterparts 24

INDEX OF EXHIBITS

Exhibit

A LICENSE AREA

A-1 COMMON AREA

B RULES AND REGULATIONS

C LICENSE CONSIDERATION

C-1 ZFA STRUCTURAL ENGINEERS REPORT

NON-EXCLUSIVE LICENSE AGREEMENT

BASIC LICENSE INFORMATION

License Date:	Dated as of January 1, 2025, for reference purposes only
Licensor:	City of Calistoga, a California municipal corporation
Licensor's Address:	City of Calistoga 1232 Washington Street Calistoga, CA 94515 Tel: 707-942-2805 Attn: City Manager Notice Copy to: Fairgrounds Revitalization Director 414 Washington Street Calistoga, CA 94515
Licensee:	Hunt Motor Sports Concepts LLC DBA Hunt Promotions
Licensee's Address:	900 Riverside Ave Roseville, CA 95678
License Area:	Calistoga Speedway Track, permanent grandstands, parking, storage area, infield, ticket booths, and on Friday nights only, the Tubbs Building
Building:	the Tubbs Building
Length of Term:	Twenty-Two (22) months
Commencement Date:	January 1, 2025
Expiration Date:	October 31, 2026
License Consideration:	Licensee shall undertake, at its sole cost and expense, the work and improvements described on Exhibit C, attached hereto and incorporated herein by reference
Security Deposit:	$5,000.00
Permitted Use:	sprint car races, as described herein

Brokers:	None
Exhibits	A – License Area A-1 Common Area B – Rules and Regulations C- License Consideration C-1 ZFA Structural Engineers Report

LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into this __ day of _____, 2025 ("**Agreement**"), by and between the **CITY OF CALISTOGA**, a California municipal corporation ("**Licensor**" or "**City**") and **HMC Motor Sport LLC** ("**Licensee**").

1. GRANT OF LICENSE: In consideration of the stated conditions and agreements, Licensor hereby grants permission to Licensee to carry out the Permitted Use within the License Area as described herein below ("**License**").

2. LICENSE AREA:

2.1 License Area/Premise. Subject to the terms and conditions of this Agreement, Licensee may occupy those areas as specified in the Basic License Information, as depicted on **Exhibit A** attached hereto and incorporated herein ("**License Area**"), for the purposes of sprint car racing.

2.2 Common Area. In addition to the License Area, and subject to the rules and regulations attached hereto as Exhibit A-1, Licensee shall have the non-exclusive right, in common with any other occupants of the Fairgrounds Property to use the common areas ("**Common Area**"). The use of the Common Area shall be for the non-exclusive use of Licensee and Licensee's employees, agents, suppliers, customers and patrons, in common with Licensor and all other occupants of the Calistoga Fairgrounds and such other persons to whom Licensor has previously granted, or may hereinafter grant, rights of usage. Licensee shall not be entitled to use the Common Area for storage of goods, vehicles, refuse or any other items. Licensor reserves the right to alter, modify, enlarge, diminish, reduce or eliminate the Common Areas from time to time in its sole discretion. If Licensee shall use any of the Common Area for storage of any items, Licensee shall pay all fines and other charges imposed upon either Licensor or Licensee by any fire, building or other regulatory body, and Licensee shall pay all costs incurred by Licensor to clear that portion of the Common Area so used by Licensee and dispose of such items.

2.3 Ingress/Egress. Ingress to and egress from the License Area for attendees of race events or the general public shall only be through the general parking and ticket booth behind the main lawn, or the main ticket booth off N. Oak Street. Licensor reserves the right to change such ingress and egress from time-to-time.

2.4 No Representations. Licensee accepts the License Area in "AS-IS" condition "WITH ALL FAULTS" without any representations or warranties by Licensor, and with no obligation of Licensor to make alterations, repairs or improvements to the License Area. Licensee acknowledges that neither Licensor nor any agent of Licensor has made any representation or warranty with respect to the suitability of the License Areas for the conduct of Licensee's business. Licensor shall not be liable for any latent or patent defects in the License Area. Licensee acknowledges that there are needed improvements and deferred maintenance conditions on and about the License Area. Accordingly, Licensor expressly disclaims any warranty of fitness or merchantability of the Licensed Area for Licensee's intended use. Licensee acknowledges that Licensee has had ample opportunity to view, inspect and use the Licensed Area, and has performed such inspection as Licensee deems necessary, and therefore, is willing to accept the License Area in its AS-Is condition, with all faults and without any warranty whatsoever, express or implied.

2.5 Licensor's Reserved Rights.

(a) Generally. Licensor hereby reserves the right, and at any time and from time to time, without the same constituting an actual or constructive eviction, to make alterations, additions, repairs, improvements to or in all or any part of the Building, and Common Area within and around the Building and to change the arrangement and/or location of entrances or passageways, ingress, egress, doors and doorways, corridors, elevators, stairs, toilets and other public parts of the Building and parking areas, drive isles, landscaping, curb cuts and paved and unpaved portions of the exterior Common Area. Without limiting the foregoing, Licensor reserves the right from time to time to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires, meters and equipment for services to the License Area or other part of the Building which are above the ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building which are located within the License Area or located elsewhere in the Building. In connection with any of the foregoing activities, Licensor shall use reasonable efforts to minimize any interference with Licensee's use of the License Area and shall not, without the prior written approval of Licensee, (a) materially change the location, size or configuration of the License Area; or (b) do anything which would have a material and adverse effect on access to the License Area, or ingress and egress to the License Area. No rights to any view or to light or air over any property, whether belonging to Licensor or any other person, are granted to Licensee by this License.

(b) Revenue. Licensor also reserves the exclusive rights to the allow occupancy of and collect revenue for overnight stays, RV Parking, tent camping and alcohol sales within the Common Area.

2.6 No Interest in Land Granted. Nothing herein shall be deemed to grant to Licensee any fee interest, leasehold, or other possessory interest in the property which the Licensee occupies, or any portion thereof, or any exclusive right or special status to negotiate or purchase. This Agreement grants a limited revocable license upon specified terms and no more.

2.7 Nonexclusive Right. The rights granted to Licensee herein are nonexclusive and shall in no way prohibit Licensor from having access to or use of the License Area for any reason whatsoever, except that Licensor agrees it shall not utilize the License Area during racing events approved by Licensor and set out on the Race Schedule (defined in Section 3.3), to the extent such would materially interfere with the race event. Licensee acknowledges that there are other long term leases, licenses and/or occupancy agreements on or about the License Area that utilize the License Area and the Common Area. Nothing herein contained shall prevent Licensor from granting, modifying or extending other or similar leases, license or occupancy agreements to any other person or entity, provided that such do not involve sprint car racing.

2.8 Operation of License Area. During and in connection with race events approved by Licensor and calendared on the Race Schedule, the following shall apply and Licensee shall perform the following:

(a) Race Schedule. Prior to Licensee's use of the License Area during each year of the Term and no later than February 1, 2025 for the first year of the Term and January 1, 2026 for the second year of the Term, Licensee shall deliver to Licensor for approval by Licensor in its sole discretion, a proposed race schedule ("**Race Schedule**"). If the Race Schedule is not approved by Licensor, it shall be modified by Licensee and

resubmitted to Licensor; this process shall continue until the Race Schedule is approved by Licensor.

(b) Race Events. The Race Schedule may reflect no more than one (1) weekend of racing in 2025, and three (3) weekends of racing during calendar year 2026, including no more than nine (9) race days during calendar year 2026 from April 1st through October 31 of each race season. Licensee and Licensor shall coordinate regarding a schedule for access to the License Area for race preparation and set-up to ensure that such early access does not interfere with other events and users of the facilities and License Area.

(c) Hours of Operation. Hours of operation for race events on the Race Schedule are 9:00 a.m. until 10:00 p.m., unless otherwise agreed in advance and in writing by Licensor. Licensee shall turn off all lighting and secure the License Area by not later than 11:00 p.m. following each race event on the Race Schedule.

(d) Revenue. Licensee shall be entitled to revenue from: (i) all admissions, general parking, food and merchandise concessions, (ii) the Friday night prerace event known as the “Calistoga Speedway Hall of Fame Dinner”, and (iii) alcohol sales at the “Vermeil Wine and Beer Tasting”.

(e) Concessionaires. All sub-contracted concessionaires hired by Licensee must: (i) be in good standing with Licensor, (ii) maintain a commercially reasonable amount and quality of insurance (as determined by Licensor), including naming Licensor as an additional insured, (iii) hold a current City business license, (iv) have obtained all required permits and (v) comply with Environmental Health, City ordinances and AB1499 in reporting tangible sales on a state designated fairground on their sales and use tax return. Within ten (10) days after executing each concessionaire agreement, Licensee shall provide to Licensor, a fully executed copy of the agreement evidencing compliance with each of the above requirements. Licensee shall ensure that all such concessionaires utilize a purchase of service sales system and provide to Lessee and Lessor daily sales totals for all concession sales upon the grounds.

(f) Tickets. Licensee shall obtain sequentially numbered tickets for admission to each event at any gate from a bonded ticket distributing or printing firm. This includes any and all paid, complimentary, season or other forms of admissions.

(g) Licensor Vouchers. Licensee shall provide one hundred (100) attendance vouchers for each race event to Licensor to be used at its discretion in connection with marketing, sponsorship or sales for the fairgrounds. Licensee acknowledges that Licensor may host events for sponsors during race events and/or may sell sponsorship banners during events.

(h) Ticket Manifest. Licensee shall delivery to Licensor prior to each event on the Race Schedule a **"ticket manifest"** or similar document certifying the following: (i) the type of tickets sold or issued by Licensee, such as parking, admissions, pit, race entry, etc., (ii) the quantity sold and price for each ticket, and (iii) the numbering sequence of such tickets. Electronic tickets and reporting are encouraged. If requested by Licensor and if electronic ticketing is not used, Licensee shall provide to Licensor, any and all ticket stubs collected from admissions, including complimentary and paid admissions.

(i) Walk-Through/Inspection. Licensor and Licensee shall conduct a pre and post event walk through and inspection to determine the condition of the facilities before and after each race event. As further described in Article 8, Licensee shall, at its sole cost and expense, keep the facilities, including all exterior, interior, structural and mechanical components thereof, in good, clean, safe condition and repair for the public.

(j) Restoration. Licensee shall, within forty-eight (48) hours after the end of each race event, clean, provide janitorial service, repair, maintain as needed, and restore (collectively, "**Restore**") the License Area to its condition prior to the race event, including removal all decorations and signage for the event, all to the satisfaction of Licensor. However, if Licensor notifies Licensee in writing that another event will occur within forty-eight (48) hours after the end of a race event, Licensee shall so clean the License Area within twenty-four (24) hours after the end of such race event. If the License Area is not Restored to its original condition to the satisfaction of Licensor, Licensee, shall undertake all necessary Restoration work on behalf of Licensee's at a cost of $65.00 per person per hour, with a two-hour minimum; Licensee shall pay such additional charges to Licensor within seven (7) days after each race event.

(k) Hazardous Activity Waiver. Licensee shall (i) cause to be completed and maintain an annual hazardous activity waiver form (the form and substance of which shall be acceptable to Licensor) for all employees, volunteers, and pit and race entry participants, (ii) maintain an alphabetized binder with waivers available, and (iii) submit an annual waiver binder to Licensor upon the close of each race season with a list of entrants in each race class.

(l) Track Maintenance. In addition to the maintenance obligations set out in Article 8, Licensee shall maintain the level of dirt on the track so that no portion of the crash wall footing is exposed. Any dirt or clay used or removed from the track shall be subject to Licensors' prior written approval. Licensee shall maintain safety fencing and crash wall, and paint as needed. Licensee shall make repairs to the crash wall or wheel fence immediately upon damage, and in no case, shall a race event be allowed to resume if any hazard to any patron exists due to damage to the fence or wall. Licensee shall ensure that racetrack and grounds condition meet all safety requirements as well as any applicable codes and regulations or racing association rules. Licensee shall be solely responsible for any penalties or sanctions imposed for any violation. All safety orders of the Division of Industrial Safety, Department of Industrial Relations, must be strictly observed.

(m) Noise Limitations. Licensee shall strictly observe the following regarding sound level, including but not limited to, a 10:00 P.M. noise curfew for racing and a maximum noise level of 95 DBA at 100 feet from the source. Any fines, penalties, or sanctions assessed for violating these rules shall be solely the responsibility of Licensee. All testing will be conducted using an ANSI type 1 or 2 Sound Level Meter capable of recording the necessary parameters. Ancillary recording instrumentation, such as a NIOSH Sound Meter App is permitted. Sound meter equipment will be calibrated by Licensee each measurement day, and the value recorded and documented electronically, or a daily data sheet. This information shall be store for audit purposes by Licensee for three (3) years. All vehicles used on the License Area shall be equipped with mufflers. Failure to pass a certification test(s) means a racer shall be prohibited to race until a repair is made. Retesting will be permitted as many times as desired until certification testing is closed. Any racer found to be in violation of the procedures or found to have tampered with the vehicle muffler system

after the certification shall be immediately suspended from racing and will not be permitted to return during the same event.

(n) The following, noise curfews, shall apply:

1. 95 DBA at 100 feet LEQ will be the maximum allowed with pre-race certification.
2. No racing shall start after 9:45 P.M. and all racing shall be concluded by 10:00 P.M.

Violation of the above shall result in the following fines payable to the City:

1.	First offense in a race season	$500.00
2.	Second offense in a race season	$1,000.00
3.	Third offense in a race season	$1,500.00

This section is a material term of this Agreement, breach of which may result in the termination of this Agreement, as determined by Licensor.

(o) Racing Program Manager. Licensee shall provide a representative to be present on the License Area and available by cell during all race events and act as the "**Racing Program Manager**" with authority to provide information and make decisions on behalf of Licensee. Licensee shall hire, train, supervise and control qualified employees for operations. Licensee's employees shall maintain a neat and tidy appearance, and shall wear uniforms and name tags for positions requiring contact with the public. Courteous professional treatment of the public and participants and responsible behavior on the fairgrounds is required.

(p) SWMP. Licensee shall prepare and maintain a Storm Water Maintenance Plan (SWMP) approved by the Licensor. Licensee shall provide a copy of the SWMP to Licensor.

3. TERM:

3.1 Generally. Unless otherwise earlier terminated, the term of this License (the "**Term**") shall commence on January 1, 2025 ("**Commencement Date**") and terminate on October 31, 2026 ("**Expiration Date**").

3.2 Early Termination. At any time during the Term Licensor or Licensee may terminate the License by the giving of not less than thirty (30) days' prior written notice to the other in accordance with Article 15. Upon such early termination, the rights and obligations of the parties hereunder shall terminate, except for those obligations which, by their terms, survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, in the event of a natural disaster, war, pandemic, epidemic, civil disobedience or other activity where the License Area and/or Common Area or any part of either are required by any governmental agency to be closed or made unavailable to the public, Licensor shall immediately abide by such governmental order and shall not be liable to Licensee or any other party for any loss or expenses that may incur to Licensee or its clients, customers, patrons or other invitees as a result of such closure.

4. LICENSE CONSIDERATION:

4.1 Base License Consideration. The consideration to be paid by Licensee for use of the License Area during the Term shall be as specified in the Basic License Information. Any monetary portion of the License Consideration shall be paid without prior notice or demand. The License Consideration shall be paid to the Licensor at 1232 Washington Street, Calistoga, CA 94515, or such other place as Licensor shall direct.

4.2 Additional Fees. As used in this License, the term "**Additional Fees**" shall mean all sums of money that are due and payable by Licensee under the terms of this Agreement, other than the base License Consideration. The term "**Fees**," as used herein, shall mean the License Consideration and Additional Fees and all other amounts payable hereunder from Licensee to Licensor. Unless otherwise specified herein, all Fees shall be due and payable by Licensee on or before the date that is thirty (30) days after billing by Licensor.

4.3 Security Deposit. Upon execution of this License, Licensee shall pay to Licensor a security deposit for the faithful performance of Licensee's obligations under this License in the amount specified in the Basic License Information. If Licensee fails to pay any charges due hereunder, or otherwise defaults under this License, Licensor may use, apply or retain all or a portion of the Security Deposit to compensate Licensor for the amount due by Licensee (including reasonable attorneys' fees) under this License. The balance of the Security Deposit not applied or used by Licensor as permitted in this Paragraph shall be refunded to Licensee thirty (30) days after the later of (i) expiration or other termination of this License, or (ii) the date Licensee vacates the License Area.

5. TAXES AND OPERATING EXPENSES:

5.1 Taxes

(a) Personal Property and Possessory Interest Taxes. Licensor shall pay all Taxes (as hereinafter defined) levied or imposed against the License Area or Licensee's personal property or trade fixtures placed by Licensee in or about the License Areas during the Term ("Personal Property Taxes"). In addition, if the interest created by this Licensee is subject to property taxation under the laws of the State of California, the party in whom the possessory interest is vested shall be subject to the payment of the taxes levied on such interest. This notice is included in this License pursuant to the requirements of Section 107.6 (a) of the Revenue and Taxation Code of the State of California.

(b) Payment. Licensee shall pay the Personal Property Taxes or possessory interest taxes in accordance with the instructions of the taxing entity. Licensee shall pay the Personal Property Taxes, if any, originally imposed upon Licensor, upon Licensor's election, either (a) annually within thirty (30) days after the date Licensor provides Licensee with a statement setting forth in reasonable detail such Taxes, or (b) monthly in advance based on estimates provided by Licensor based upon the previous year's tax bill. All Personal Property Taxes originally imposed upon Licensor and payable by Licensee with respect to the License Area shall be prorated on a per diem basis for any partial tax year included in the Term. Licensee's obligation to pay Taxes during the last year of the Term shall survive the expiration or termination of this License.

5.2 Operating Expenses. Subject to Licensee's obligation to perform the Work (as described in Exhibit C), as Licensee's License Consideration, all costs of management,

operation, maintenance, insuring and repair of the (i) structural elements of the Building (including the roof); (ii) Common Area maintenance; and (iii) Licensor's property insurance, if any, are "**Operating Expenses**". During the Term, Licensor shall not assess Licensee any such Operating Expenses, unless the same were incurred as a result of the actions or inactions of Licensee, Licensee's invitees or anyone in the employ of Licensee, in which event such costs may be charged to Licensee as Additional Fees.

6. USE; COMPLIANCE WITH LAWS:

6.1 Use of License Area. Licensee may use the License Area for sprint car races on the dates set out on the Race Schedule ("**Permitted Use**") and for no other purposes without the express written consent of Licensor. Licensee acknowledges that neither Licensor nor any agent of Licensor, has made any representation or warranty with respect to the suitability or fitness of the License Area for the conduct of Licensee's business.

6.2 Compliance with Laws. Licensee shall comply with all laws, ordinances, rules, regulations and codes, of all municipal, county, state and federal authorities, including the Americans With Disabilities Act, as amended (42 U.S.C. Section 1201 et seq. [the "**ADA**"]) (collectively, "**Laws**") pertaining to Licensee's use and occupancy of the License Area and its Permitted Use. Licensee shall not commit, or suffer to be committed, any waste upon the License Area, or any public or private nuisance, or other act or thing that disturbs the quiet enjoyment of any other occupants or surrounding neighborhoods.

7. UTILITIES:

7.1 Utility Cost. Licensee shall reimburse Licensor for the cost of utilities, including only water, sewer and electricity, at a rate of $300.00 per day, including race days and set-up days. In addition, Licensee shall reimburse Licensor for use of the track lights at $37.50 per hour with a Three (3) hour minimum. Licensee shall contract directly with the providers of, and shall pay all other utility charges for, among other things, Wi-Fi, gas, telephone, refuse collection, janitorial, pest control, security and monitoring services furnished to the License Area, together with all related installation or connection charges or deposits.

No Liability of Licensor. Except in the case of Licensor's gross negligence or willful misconduct, in no event shall Licensor be liable or responsible for any loss, damage, expense or liability, including, without limitation, loss of business or any consequential damages, arising from any failure or inadequacy of any service or utility provided to the License Area, whether resulting from any change, failure, interference, disruption or defect in supply or character of the service or utility provided to the License Area, or arising from the partial or total unavailability of the service or utility to the License Area, from any cause whatsoever, or otherwise, nor shall any such failure, inadequacy, change, interference, disruption, defect or unavailability constitute an actual or constructive eviction of Licensee, or entitled Licensee to any abatement or diminution of License Consideration or otherwise relieve Licensee from its obligations under this License.

8. MAINTENANCE AND REPAIR OF LICENSE AREA:

8.1 Maintenance and Repair by Licensee

8.1.1 Licensee Maintenance. In addition to Licensee's obligations set out in Section 2.8, Licensee shall, at its sole costs and expense, maintain the License Area in good repair and in neat and clean condition (ordinary wear and tear, casualty and condemnation excepted) including making all necessary repairs of grandstands, track and facility upgrades to Licensed Area to ensure safe operating condition of the grounds during use.

8.1.2 Licensee Repair. In addition to Licensee's obligations set out in Section 2.8, Licensee shall further, at its own costs and expense, repair or restore any damage or injury ordinary wear and tear excepted to all or any part of the of the License Area and utility lines exclusively servicing the License Area caused by Licensee or Licensee's agents, employees, invitees, Licensees, visitors or contractors, including but not limited to repairs or replacements necessitated by (i) Licensee's use of the License Area, and (ii) the moving of any property into or out of the License Area.

9. ENVIRONMENTAL PROTECTION PROVISIONS:

9.1 Hazardous Materials. "**Hazardous Materials**" shall mean any material, substance or waste that is or has the characteristic of being hazardous, toxic, ignitable, reactive, flammable, explosive, radioactive or corrosive, including, without limitation, petroleum, solvents, lead, acids, pesticides, paints, printing ink, PCBs, asbestos, materials commonly known to cause cancer or reproductive problems, and those materials, substances and/or wastes, including wastes which are or later become regulated by any local governmental authority in the state in which the License Area is located or the United States Government, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act; all environmental laws of the state where the Station is located, and any other environmental law, regulation or ordinance now existing or hereinafter enacted. "**Hazardous Materials Laws**" shall mean all present and future federal, state and local laws, ordinances and regulations, prudent industry practices, requirements of governmental entities and manufacturer's instructions relating to industrial hygiene, environmental protection or the use, analysis, generation, manufacture, storage, presence, disposal or transportation of any Hazardous Materials, including without limitation the laws, regulations and ordinances referred to in the preceding sentence.

9.2 Reportable Uses Required Consent. Except as permitted in this Section 9, Licensee hereby agrees that Licensee and Licensee's officers, employees, representatives, agents, contractors, subcontractors, successors, assigns, vendors, concessionaires, invitees and any other occupants of the License Area (for purposes of this Section 9, referred to collectively herein as "**Licensee's Representatives**") shall not cause or permit any Hazardous Materials to be used, generated, manufactured, refined, produced, processed, stored or disposed of, on, under or about the License Area or transport to or from the License Area without the express prior written consent of Licensor, which consent may be limited in scope and predicated on strict compliance by Licensee of all applicable Hazardous Materials Laws and such other reasonable rules, regulations and safeguards as may be required by Licensor (or any insurance carrier, environmental consultant or lender of Licensor, or environmental consultant retained by any lender of Licensor) in connection with using, generating, manufacturing, refining, producing,

processing, storing or disposing of Hazardous Materials on, under or about the License Area. In connection therewith, Licensee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for the storage or use by Licensee or any of Licensee's Representatives of Hazardous Materials on the License Area, including without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving the License Area. The foregoing notwithstanding, Licensee may use ordinary and customary materials reasonably required to be used in the course of the Permitted Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.), common household cleaning materials and gasoline and oil in vehicle tanks, so long as such use is in compliance with all Hazardous Materials Laws and does not expose the License Area or neighboring property to any meaningful risk of contamination or damage or expose Licensor to any liability therefor.

9.3 Remediation Obligations. If at any time during the Term, any contamination of the License Area by Hazardous Materials shall occur where such contamination is caused by the act or omission of Licensee or Licensee's Representatives ("**Licensee's Contamination**"), then Licensee, at Licensee's sole cost and expense, shall promptly and diligently remove such Hazardous Materials from the License Area or the groundwater underlying the License Area to the extent required to comply with applicable Hazardous Materials Laws. Licensee shall not take any required remedial action in response to any Licensee's Contamination in or about the License Area or enter into any settlement agreement, consent, decree or other compromise in respect to any claim relating to any Licensee's Contamination without first obtaining the prior written consent of Licensor, which may be subject to conditions imposed by Licensor as determined in Licensor's sole discretion. Such prior written consent shall not be required to the extent the delay caused by the requirement to obtain consent may increase the damage to the License Area or the risk of harm to human health, safety or security caused by the Licensee Contamination. Licensor and Licensee shall jointly prepare a remediation plan in compliance with all Hazardous Materials Laws and the provisions of this License. In addition to all other rights and remedies of Licensor hereunder, if Licensee does not promptly and diligently take all steps to prepare and obtain all necessary approvals of a remediation plan for any Licensee's Contamination, and thereafter commence the required remediation of any Hazardous Materials released or discharged in connection with Licensee's Contamination within thirty (30) days after all necessary approvals and consents have been obtained, and thereafter continue to prosecute such remediation to completion in accordance with the approved remediation plan, then Licensor, at its sole discretion, shall have the right, but not the obligation, to cause such remediation to be accomplished, and Licensee shall reimburse Licensor within fifteen (15) business days of Licensor's demand for reimbursement of all amounts reasonably paid by Licensor (together with interest on such amounts at the highest lawful rate until paid), when such demand is accompanied by proof of payment by Licensor of the amounts demanded. Licensee shall promptly deliver to Licensor copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Materials removed from the License Area as part of Licensee's remediation of any Licensee's Contamination. The foregoing notwithstanding, "Licensee's Contamination" shall not refer to or include any Hazardous Materials that were not clearly introduced to the License Area by Licensee or Licensee's Representatives. As an example, if lead dust or asbestos is found on the License Area, unless there is clear evidence that Licensee introduced those Hazardous Materials to the License Area, those Hazardous Materials shall not be considered "Licensee's Contamination," and it shall not be Licensee's responsibility to take remedial action relating to such Hazardous Materials. Moreover, Licensee shall not be responsible for any Hazardous Materials that were present in, on, or below the License Area before Licensee occupied the License Area.

9.4 Licensor's Inspection Right. Licensor shall have the right to inspect the License Area for compliance with environmental, safety, and occupational health laws and regulations, regardless of whether Licensor is responsible for enforcing or complying with them. Licensee shall have no claim against Licensor, or any officer, agent, employee, contractor or subcontractor of Licensor by reason of entrance of such Licensor officer, agent, employee, contractor or subcontractor onto the License Area, provided such inspection is undertaken as reasonably as possible so as not to disrupt or interfere with the Permitted Use. Except in the event of an emergency, Licensor shall provide Licensee with reasonable prior notice and an opportunity to have a representative present at any inspection.

9.5 Hazardous Materials Indemnity. In addition to any other provisions of this License, Licensee shall, and does hereby agree, to indemnify and hold harmless Licensor from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal resulting from Licensee's Contamination, giving rise to liability, civil or criminal, or any other action by Licensee or its contractors, employees, agents, or assigns giving rise to responsibility under any Hazardous Materials Laws. Licensee's obligations hereunder shall apply whenever Licensor incurs costs or liabilities for Licensee's Contamination as provided hereunder. This provision shall survive the expiration or termination of this License.

10. INDEMNITY AND WAIVER OF CLAIMS:

10.1 Licensee Indemnification. Licensee shall indemnify, defend and hold Licensor and Licensor Related Parties (as defined herein) harmless against and from all third party liabilities, obligations, damages, penalties, claims, actions, costs, charges, judgment and expenses (including reasonable attorneys' fees, costs and disbursements) (collectively referred to as "**Losse**s"), arising from (a) the use of, or any activity done, permitted or suffered in or about the License Area by Licensee (including, but not limited to, injuries suffered by Licensee's agents or employees), (b) any activity done, permitted or suffered by Licensee or Licensee's agents or employees in or about the License Area during Licensee's possession and use of the License Area, (c) any act, neglect, fault, willful misconduct of Licensee or Licensee's agents or employees in or about the License Area during Licensee's possession and use thereof, or (d) from any breach or default in the terms of this Agreement by Licensee or Licensee's agents or employees, except to the extent such claims arise out of or relate to the gross negligence or willful misconduct of Licensor or another Licensor Related Party. If any action or proceeding is brought against Licensor by reason of any such claim, upon notice from Licensor, Licensee shall defend the same at Licensee's expense by Licensor's Office of the City Attorney or, at Licensor's election, other counsel reasonably satisfactory to Licensor. As a material part of the consideration to Licensor, Licensee releases Licensor and its trustees, members, principles, beneficiaries, partners, officers, directors, employees, and property managers ("**Licensor Related Parties**") from responsibility for, waives its entire claim of recovery for, and assumes all risks of (i) damage to property or injury to person in or about the License Area from any cause whatsoever except to the extent caused by the gross negligence or willful misconduct of Licensor or Licensor Related Parties, or (ii) loss resulting from business interruption or loss of income at the License Area.

10.2 Waiver of Claims. Except in the event of Licensor's or Licensor Related Parties' own gross negligence or willful misconduct Licensor shall not be liable to Licensee and Licensee waives all claims against Licensor and Licensor Related Parties for any injury or damage to any person or property occurring or incurred in connection with or in any way relating to the License Area from any cause. Without limiting the foregoing, neither Licensor nor any Licensor Related Party shall be liable for and there shall be no abatement of Fees or relief of Licensee from its obligation to undertake the Work with respect to (a) any damage to Licensee's property

stored with or entrusted to any Licensor Related Party, (b) loss of or damage to any property by theft or any other wrongful or illegal act, or (c) any injury or damage to person or property resulting from fire, explosion, water or rain that may blow onto the License Area from the streets or other surfaces or from any other place or resulting from dampness or any other cause whatsoever or from the acts or omissions of other occupants or other visitors to the License Area or from any other cause whatsoever, (d) any diminution or shutting off of light, air or view by any structure that may be erected on lands adjacent to the License Area or (e) any latent or other defects in the License Area. Licensee agrees that in no case shall Licensor or any Licensor Related Party or Licensee be responsible or liable to the other on any theory for any injury to such parties' business, loss of profits, loss of income or any other form of consequential, punitive or incidental damage, except as otherwise provided in Section 13.

10.3 Survival/No Impairment. The obligations of Licensee under this Section 10 shall survive any termination of this License. The foregoing indemnity obligations shall not relieve any insurance carrier of its obligations under any policies required to be carried by either party pursuant to this License, to the extent that such policies cover the peril or currents that results in the claims that is subject to the foregoing indemnity.

11. INSURANCE:

11.1 Licensee's Insurance. On or before the commencement of the Term of this License, Licensee shall procure and maintain, for the duration of this License, insurance against claims for injuries to persons or damages to property which may arise from or in connection with Licensee's operation and use of the License Area. The cost of such insurance shall be borne by Licensee. Licensee shall maintain the following types of insurance with limits no less than the following as set forth below.

11.1.1 Commercial General Liability Coverage: *$5,000,000 per occurrence for bodily injury, personal injury and property damage (which* amount can be met by both Licensee's underlying policy and umbrella policy). The policy shall provide coverage for Fire Legal Liability or Damage to Rented License Area coverage, as well as for Products and Completed Operations.

11.1.2 Automobile Liability Coverage: Coverage for owned, hired, leased and rented vehicles, with limits of $1,000,000 for combined bodily injury and property damage, on a per occurrence basis.

11.1.3 Property Insurance Coverage: Licensee shall maintain in full force and effect on all of its personal property, furniture, furnishings, vehicles, fixtures and equipment, either owned by Licensee or its agents, vendors, or clients, which may from time to time be located in, on or upon the License Area ("**Licensee's Property**") in an amount not less than their full replacement value from time to time during the Term, providing protection against all perils, included within the standard form of "all-risk" (i.e., "Special Cause or Loss") fire and casualty insurance policy.

11.1.4 Workers Compensation Coverage: As required by law, with Employer's Liability coverage with limits of not less than $1,000,000.

11.2 Additional Insureds: The City of Calistoga shall be included as an additional insured under all liability insurance coverages, except on worker's compensation and professional liability insurance policies. The naming of an additional insured shall not affect any recovery to

which such additional insured would be entitled under this policy if not included as such additional insured. An additional insured included herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

11.3 Notice of Cancellation. Licensee's third party insurance policies shall be endorsed to require the insurer to provide Licensor with at least thirty (30) days' written Notice of Cancellation; provided, however, that if Licensee's insurers are unwilling to issue such an endorsement, then Licensee agrees as follows: if Licensee is notified by any insurer of the insurance coverage required under this Section 11 that the insurer is cancelling any required policy, Licensee shall immediately provide Licensor with written notice of having received such notice from its insurer and shall take all reasonable action to either preserve the existing policy/policies or replace the cancelled insurance with other policy/policies of insurance meeting the requirements of this Section 11 before the effective date of the cancellation.

11.4 Sufficiency of Insurance. The insurance limits required by the Licensor are not represented as being sufficient to protect Licensee. Licensee is advised to consult Licensee's insurance broker to determine adequate coverage for Licensee. Licensee's insurance policy shall be endorsed stipulating that Licensee's insurance is primary with respect to claims assumed by Licensee under the terms of this License, and that the Licensor's self-insurance program and excess insurance policies shall not be called upon to contribute to a loss that should otherwise be paid by Licensee's insurer.

11.5 Insurer Acceptability. Licensee's insurers must be domiciled in the United States of America. They must meet a minimum A.M. Best & Co. rating of A: VII and a Standard and Poor's Rating (if rated) of at least BBB. In the event that a proposed insurance company is not rated by A.M. Best & Co. or Standard and Poor's, said insurance carrier must be domiciled in the State of California and approved by Licensor.

11.6 Certificate of Insurance. On or before Licensee takes possession of the License Area, Licensee shall furnish to Licensor new certificate(s) of insurance reflecting that the insurance required by this Section for the License Area is in force, accompanied by an endorsement(s) showing the required additional insured reasonably satisfactory to Licensor.

12. PROHIBITION AGAINST TRANSFERS: Licensee shall not assign, sublicense, hypothecate, or transfer this License or any interest therein directly or indirectly, by operation of law or otherwise. Any attempt to do so shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. The forgoing notwithstanding, Licensee may Transfer, with notice but without Licensor's consent, to an entity (i) that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Licensee; (ii) in connection with a merger, consolidation, non-bankruptcy reorganization or government action; or (iii) in connection with the acquisition or transfer of all or substantially all of Licensee's stock or assets (each a "**Permitted Transfer**").

13. SURRENDER: Upon the expiration or earlier termination of the License, Licensee shall surrender the License Area clean, free of debris and, in substantially the same condition as at the commencement of the Term, reasonable wear and tear excepted, and clear of all liens and encumbrances created by any action or inaction of Licensee. Licensor shall not be responsible for the value, preservation or safekeeping of Licensee's property that is not removed by Licensee

from the License Area. Licensee shall pay Licensor, upon demand, the expenses and storage charges incurred for any such property. If Licensee fails to remove Licensee's property from the License Area, upon the expiration or earlier termination of the License, Licensor may deem all or any part of Licensee's property to be abandoned and, at Licensor's option, title to Licensee's property shall vest in Licensor or Licensor may dispose of Licensee's property in any manner Licensor deems appropriate.

14. NONDISCRIMINATION. Consistent with Licensor's policy that harassment and discrimination are unacceptable conduct, Licensee agrees that harassment or discrimination directed toward a City employee, or contractor, or employees, or Licensee's employee or contractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Licensee agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

15. SUBMISSION OF NOTICES. All notices, demands, requests, consents, or approvals which may or are required to be given by either party to the other shall be in writing and shall be deemed given upon (i) personal delivery or transmission by facsimile or electronic mail (unless delivery occurs on a Sunday or holiday, in which case notice will be deemed given on the next-succeeding business day), or (ii) refusal of delivery during normal business hours when sent by United States Certified or Registered Mail, postage prepaid, or (iii) one business day after deposit with a reputable overnight delivery service at the party's respective Notice Address(es) set forth in the Basic License Information. Notwithstanding the addresses provided in subsection 15.1 of this section, any party may from time to time designate an alternate and/or additional address by notice.

16. DEFAULT.

16.1 Events of Default. The occurrence of any of the following shall constitute a "**Default**" by Licensee:

(i) Licensee fails to make any payment of Fees when due, if payment in full is not received by Licensor within five (5) days after written notice that it is past due.

(ii) Licensee violates the restrictions on Transfer set forth in Article 12.

(iii) Licensee ceases doing business as a going concern (provided, however, that Licensee may be open and operating for business with the general public on the days and during the times as the needs of Licensee's business dictates, in Licensee's sole discretion); makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Licensee's assets are subject to judicial seizure or attachment and are not released within sixty (60) days, or Licensee consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Licensee or for all or any substantial part of Licensee's assets.

(iv) Licensee fails to perform or comply with any provision of this Agreement other than those described in (i) through (iii) above, and does not fully cure such failure within five (5) business days after notice to Licensee or, if such failure cannot be cured within

such five (5) business-day period, Licensee fails within such five (5) business-day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within sixty (60) days of such notice.

16.2 Remedies. Upon Default by Licensee, Licensor shall, without further notice or demand of any kind to Licensee or to any other person, in addition to any other remedy Licensor may have under this License and at law or in equity, have the ability to immediately terminate the License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall vacate and discontinue its use of the License Area and Licensor may take any and all actions to enforce Licensee's obligations.

16.3 Licensor's Right to Perform Licensee's Obligations. If Licensee is in Default of any of its non-monetary obligations under this Agreement, in addition to the other rights and remedies of Licensor provided herein, then Licensor may at Licensor's option, but without any obligation to do so and without further notice to Licensee, perform any such term, provision, covenant or condition or make any such payment and, except in the case of its gross negligence or willful misconduct, Licensor by reason of doing so shall not be liable or responsible for any loss or damage thereby sustained by Licensee. If Licensor performs any of Licensee's obligations hereunder in accordance with this Section 16.3, the reasonable costs and expense incurred or the payments so made shall be immediately be owed by Licensee to Licensor, and Licensee shall promptly pay to Licensor upon demand, as Additional Fees, the full amount thereof with interest thereon from the day of payment by Licensor the lower of ten percent (10%) per annum, or the highest rate permitted by applicable law.

16.4 Severability. This Article 16 shall be enforceable to the maximum extent such enforcement is not prohibited by applicable Law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion.

17. WAIVER OF RELOCATION ASSISTANCE. Except in the event of a taking of the License Area by or under the threat of eminent domain, Licensee acknowledges that upon the expiration or earlier termination of the Term it will not be a displaced person or business and therefore waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code Sections 7260 et seq. or under any similar state or federal law, statute or ordinance now or hereinafter in effect.

18. MISCELLANEOUS.

18.1 Entire Agreement. This Agreement, including all exhibits hereto, constitutes all of the covenants, conditions and agreements between and among the parties and shall supersede all prior correspondents, agreements and understandings, both verbal and written.

18.2 Amendments. This Agreement may be amended or modified only by a written instrument executed by Licensor and Licensee.

18.3 Severability. If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances

or would frustrate the fundamental purposes of this Agreement. Without limiting the forgoing, if any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend, or suspend this Agreement, or any portions of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement before such conflict with federal or state law.

18.4 Incorporation of Exhibits and Recitals. The exhibits and recitals to this Agreement are incorporated into this Agreement by this reference.

18.5 Broker's Commissions. Licensor and Licensee each represents and warrants to the other that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this License. Each party agrees to indemnify and hold harmless the other from any claim or claims, and costs and expenses, including attorneys' fees, incurred by the indemnified party in conjunction with any such claim or claims of any other broker or brokers to a commission in connection with this License as a result of the actions of the indemnifying party.

18.6 Attorneys' Fees. In the event either party to this Agreement institutes an action, arbitration or proceeding to interpret or enforce any of the terms hereof, or to obtain money damages the prevailing party shall be entitled to recover from the other, in addition to costs and judgment as ordered by the court, its reasonable attorneys' fees, together with out-of-pocket expenses.

18.7 Access by Licensor. In addition to access provided by this License, Licensor shall be allowed access to the License Area at all reasonable times throughout the term of this License, for any reasonable purpose upon prior written notice to Licensee. Licensor will normally give Licensee a minimum of twenty-four (24) hours prior notice of an intention to enter the License Area, unless entry is reasonably required on an emergency basis for safety, environmental, operations or security purposes. Licensee shall ensure that a telephone roster is maintained at all times for on-call persons representing Licensee who will be available on short notice, 24 hours a day, 365 days per year, and have authority to use all keys necessary to gain access to the License Area to facilitate entry in time of emergency. Licensee shall ensure that Licensor has a current roster of such on-call personnel and their phone numbers. Licensee shall not change any existing locks, or attach any additional locks or similar devices to any door or window, without providing to Licensor one set of keys therefor. All keys must be returned to Licensor at the expiration or termination of this License. Licensee shall have no claim against Licensor for exercise of its rights of access hereunder.

18.8 Emergencies. Licensor shall not be liable to Licensee in the event of an emergency that requires Licensor to cancel or delay races due to a natural disaster or other unforeseen emergency declared by local, state or federal government or agency. Thereafter, if Licensee requests make up race dates, Licensor will use reasonable efforts to accommodate such requests. If during an emergency event the parties are unable through no fault of their own to carry out either of their respective duties and obligations under this Agreement for thirty (30) continuous days, such duties and obligations may be suspended until the disaster is declared ended by a government entity or agency. This Agreement may then be extended in a mutually agreed upon writing signed by the parties for the period of time it was suspended.

18.9 Asbestos Notification for Commercial Property Constructed Before 1979. Licensee acknowledges that Licensor has advised Licensee that, because of its age, the premise

may contain asbestos-containing materials ("**ACMs**"). If Licensee undertakes any Alterations as may be permitted by Article 10, Licensee shall, in addition to complying with the requirements of Article 10, undertake the Alterations in a manner that avoids disturbing ACMs present in the premise. If ACMs are likely to be disturbed in the course of such work, Licensee shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable Environmental Laws, including giving all notices required by California Health & Safety Code Sections 25915-25919.7.

18.10 Lead Warning Statement. Licensee acknowledges that Licensor has advised Licensee that buildings or structures built before 1978 may contain lead-based paints ("**LBP**"). Lead from paint, paint chips and dust can pose health hazards if not managed properly. Subject to Article 10 of this License, Licensee may at its sole cost and expense, have a state certified LBP Inspector complete an LBP inspection and abatement and provide an abatement certification to Licensor. Licensor has no specific knowledge of the presence of lead-based paint in the License Area.

18.11 OFAC Certification. Licensee represents, warrants and covenants that: (a) Licensee and its principals are not acting, and will 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 and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (b) Licensee acknowledges that the breach of this representation, warranty and covenant by Licensee shall be an immediate Default under the Lease.

18.12 Certified Access Specialist Disclosure. In accordance with Civil Code Section 1938, Licensor hereby discloses that the License Area has not undergone inspection by a Certified Access Specialist for purposes of determining whether the property has or does not meet all applicable construction related accessibility standards pursuant to Civil Code Section 55.53.

18.13 Rules and Regulations. Licensee shall faithfully observe and comply with the non-discriminatory rules and regulations attached hereto as **Exhibit B** and incorporated herein by this reference, as the same may be modified from time to time by Licensor. Any additions or modifications to those rules shall be binding upon Licensee upon Licensor's delivery of a copy to Licensee.

18.14 Further Assurances. All parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

18.15 Time. Time is of essence of every provision herein contained in this Agreement.

18.16 Captions. All captions and headings in this Agreement are for the purpose of reference and convenience and shall not limit or expand the provisions of this Agreement.

18.17 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. All actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of Napa, State of California.

18.18 Authority. If Licensee is a corporation, partnership, trust, association or other entity, Licensee and each person executing this License on behalf of Licensee does hereby covenant and warrant that (a) Licensee is duly incorporated or otherwise established or formed and validly existing under the laws of its state of incorporation, establishment or formation, (b) Licensee has and is duly qualified to do business in California, (c) Licensee has full corporate, partnership, trust, association or other power and authority to enter into this License and to perform all Licensee's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this License on behalf of Licensee is duly and validly authorized to do so. Upon execution hereof and at Licensor's request, Licensee shall provide Licensor with written evidence substantiating the authority of the person(s) executing this Agreement on behalf of Licensee to bind Licensee to this Agreement.

18.19 Public Records Act. Licensee is aware that this Agreement and any documents provided to Licensor may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of Licensee to clearly identify information in those documents it considers to be confidential under the California Public Records Act. To the extent that Licensor agrees with that designation, such information will be held confidently whenever possible. All other information will be considered public.

18.20 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Licensor and Licensee have respectively signed and sealed this License as of the day and year first above written.

Licensee:

Hunt Motor Sports LLC, DBA Hunt Promotions., a limited liability company

By: Tommy Hunt
Tommy Hunt (Jan 24, 2025 17:15 PST)
Tommy Hunt
President & Operator

By: Tommy Hunt
Name:
Title: President

Licensor:

CITY OF CALISTOGA, a California municipal corporation

By: _____
Laura Snideman
City Manager

Date: _____

Approved as to form:

By: _____
Michelle Marchetta Kenyon
City Attorney

EXHIBIT A

LICENSE AREA

City of Calistoga Fairgrounds Property, 1435 N. Oak Street Calistoga, CA 94515



EXHIBIT A-2

COMMON AREA

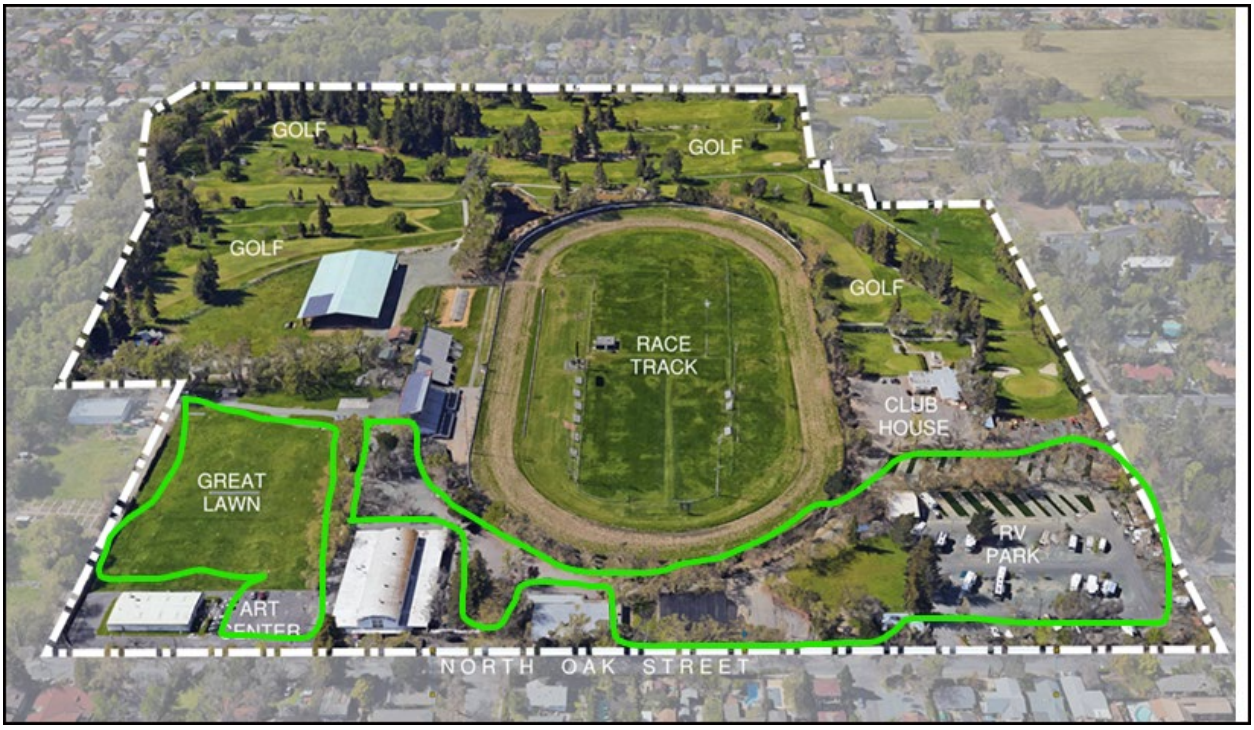


EXHIBIT B

RULES AND REGULATIONS

Licensee shall faithfully observe and comply with the following Rules and Regulations. Licensor shall not be responsible to Licensee for the non-performance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other Licensees or occupants of the premise. In the event of any conflicts between the Rules and Regulations and other provisions of this License, the latter shall control.

1. Licensor shall have the right to control and operate the public portions of the License Area and the public facilities, as well as facilities furnished for the common use of the Licensee, in such a manner as it deems best for the benefit of the Licensees generally.

2. No advertisements, pictures or signs of any sort shall be displayed on or outside the License Area or Building without the prior written consent of Licensor. This prohibition shall include any portable signs or vehicles placed within the parking lot, common areas or on streets adjacent thereto for the purpose of advertising or display. Licensor have the right to remove any such unapproved item without notice and at Licensee's expense.

3. Storage of forklift propane tanks, whether interior or exterior, shall be in secured and protected storage and enclosure approved by the local fire department and, if exterior, shall be located in areas specifically designated by Licensor. Licensee shall protect electrical panels and building mechanical equipment from damage from forklift trucks.

4. Machinery, equipment and apparatus belonging to Licensee which causes noise or vibration that may be transmitted to the structure of the Building to such a degree as to be objectionable to Licensor or other Licensees or to cause harm to the Building, shall be placed and maintained by Licensee, at Licensee's expense, on vibration eliminators or other devices sufficient to eliminate the transmission of such noise and vibration. Licensee shall cease using any such machinery which causes objectionable noise and vibrations which cannot be sufficiently mitigated.

5. All goods, including materials used to store goods, delivered to the License Area shall be immediately moved into the License Area and shall not be left in parking or exterior loading areas overnight.

6. Tractor trailers which must be unhooked or parked with dolly wheels beyond the concrete loading areas must uses steel plates or wood blocks of sufficient size to prevent damage to the asphalt paving surfaces. No parking or storage of such trailers will be permitted in the auto parking areas adjacent to the License Area or on streets adjacent thereto.

7. Licensee is responsible for the safe storage and removal of all pallets. Pallets shall be stored behind screen enclosures at locations approved by Licensor.

8. Licensee shall not store or permit the storage of merchandise in or around the common areas surrounding the License Area. No displays or sales of merchandise shall be allowed in the parking lots.

9. Licensee is responsible for the storage and removal of all trash, recycling and refuse. All such trash, refuse and recyclables shall be contained in suitable receptacles stored

behind screen enclosures at locations approved by Licensor. Licensee and any subcontracts shall follow the Calistoga Reusable Foodware and Waste Reduction Ordinance.

10. Licensee shall be responsible for providing adequate portable restrooms and wash stations for their event guests in an area agreeable to the Licensor. Licensor shall use a standard porta potty and wash station calculator for estimation (https://starportapottyrental.com/calculator/).

11. Licensee shall cooperate fully with Licensor to ensure the effective operation of the building's air conditioning systems. If Licensee shall so use the License Area that noxious or objectionable fumes, vapors and/or odors are created, then Licensee shall provide proper ventilation equipment for the discharge of such fumes, vapors and odors so that they shall not enter into the air conditioning system or be discharged into other vents or flues of the building or annoy any of the other Licensees of the Building or adjacent property. The design, location and installation of such equipment shall be subject to the Licensor's approval.

12. All-coverings installed by Licensee and visible from the outside of a building require the prior written approval of Licensor. Tents may need Fire Marshal approval.

13. The sashes, sash doors, skylights, windows and doors that reflect or admit light or air into the halls, passageways or other public places in a building shall not be covered or obstructed by Licensee.

14. Licensee shall not overload the floor of the License Area.

15. Licensee shall not permit any animals, including, but not limited to, household pets (but excluding service animals, which are permitted), to be brought or kept in or about the License Area or Building or any of the common areas.

16. Licensee hereby assumes all responsibility for the protection of Licensee and its agents, employees, contractors, invitees and guests, and the property thereof, from acts of third parties, including keeping doors locked and other means of entry to the License Area closed. Licensee shall have an approved "Event Safety Plan" with-in 30 days of any event signed by the Calistoga Police Chief and the Calistoga Fire Marshall for security and emergency services event needs which must address maintenance of access for ambulance and medical personnel and prevention of spectator and pit crew interference with access.

17. No auction, liquidation, fire sale, going out of business or bankruptcy sale shall be conducted in or about the License Area without the prior written consent of Licensor.

18. No Licensee shall use or permit the use of any portion of the License Area for living quarters, sleeping apartments or lodging rooms. All overnight accommodation, including RV site requests, is the sole property of the Licensor.

19. Licensee, Licensee's agents, employees, contractors, Licensees, or visitors shall not park any vehicles in driveways, service entrances, common areas, or areas posted as no parking. A 20' egress must be maintained for emergency services.

20. If the License Area becomes infested with vermin as a result of the use or any misuse or neglect of the License Area by Licensee, its agents, employees, contractors, visitors or Licensees, Licensee shall forthwith, at Licensee's expenses, cause the same to be exterminated

from time to time to the satisfaction of Licensor and shall employ such licensed exterminators as shall be approved in writing in advance by Licensor.

21. Licensee shall not use the name of the premise for any purpose other than as the address of the business to be conducted by Licensee in the License Area, nor shall Licensee use any picture of the premise in its advertising, stationary or in any other manner without the prior written permission of Licensor. Licensor expressly reserves the right at any time to change said name without in any manner being liable to Licensee therefor. Additionally, the name "*Calistoga Speedway*" is the sole property of the Licensor but may be used in advertising or merchandise by Licensee for the duration of this contract.

22. Licensee, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any common areas of the building for the purpose of smoking tobacco products or for any other purposes, nor in any way obstruct such areas, and shall use them only as a mean of ingress and egress from the License Area.

23. Licensor reserves the right to exclude from the premise or the Common Areas any person who, in the judgment of Licensor, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of these Rules and Regulations.

24. Licensor reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Licensors judgment may from time to time be necessary for the management, safety, care and cleanliness of the License Area, common areas of the premise and building utilized, and for the preservation of good order therein, as well as for the convenience of other occupants and Licensees thereof. Licensor may waive any one or more of these Rules and Regulations for the benefit of any particular Licensee, but no such waiver by Licensor shall be construed as a waiver of such Rules and Regulations in favor of any other Licensee, nor prevent Licensor from thereafter enforcing any such Rules and Regulations against any or all Licensees of the Building. Licensee shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition for its use of the License Area.

EXHIBIT C

LICENSE CONSIDERATION

1. **License Consideration.** In lieu of a monetary a license fee for the 2025 and 2026 race seasons, Licensee agrees to perform and Complete (as defined below), to the satisfaction of Licensor and by no later than August 1, 2025 ("**Work Completion Date**"), the work described in the ZFA Structural Engineers Report dated May 20, 2024 ("**Report**") attached hereto as Exhibit C-1 and incorporated herein by reference, which work is specifically applicable to the Main Grandstand and Ancillary Grandstand (collectively, "**Work**"). The Work has an estimated cost to Complete of approximately $100,000; provided that Licensee shall be responsible for Completing the Work irrespective of the actual cost thereof. The Work shall include, but is not limited to, all necessary facility upgrades, electrical service upgrades, compliance with the ADA (defined in Section 6) and any other requirements required by any governmental agency.

2. **Approval of Work**. At the conclusion of the Work, Licensee shall (a) deliver to Licensor a certification from a licensed structural engineer that the Work has been performed as required by the Report and is fully completed and satisfactory in all respects, and (b) request an inspection from and obtain a Certificate of Occupancy from the City of Calistoga ("**Work Approvals**"). The Work shall not be considered "**Complete**" until both of the foregoing Work Approvals are obtained.

3. **Skilled Services**. In performing the Work, Licensee shall use skilled and licensed personnel and shall cause the Work to be overseen by experienced project managers.

4. **Employee Wages; Records; Apprentices**. Licensee shall cause all of its contractor(s), subcontractors and consultants (collectively, "**Contractors**") to pay prevailing wages to its employees on any contract in excess of $1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker, as determined by the Director of the State of California Department of Industrial Relations, are on file at the City's Public Works Department and may be obtained from the California Department of Industrial Relations website [http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm]. All of Licensee's Contractors shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Licensee and all Contractors shall keep and maintain accurate employee payroll records for the Work. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Licensee shall ensure that all Contractors comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. Licensee shall also comply with Public Contract Code § 2601 with regard to reporting requirements.

5. **Mandatory Consultant and Subconsultant Registration**. Pursuant to Labor Code Section 1771(a), Licensee represents that it and all of its Contractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Licensee covenants that any additional or substitute Contractors will be similarly registered and qualified.

6. **Construction Performance Bond; Construction Labor and Materials Payment Bond.** If requested by Licensor or any governmental agency, Licensee shall provide a

performance bond and a labor and materials bond, both of which shall be in a form and substance approved by Licensor, to secure its performance of all of the Work. Contractors may not substitute cash in lieu of any required bond(s).

7. **Required Provisions on Contract Claim Resolution.** Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than $375,000. Those statutes constitute a part of this Amendment No. 1 and the Original Agreement. In the event any other Original Agreement provision violates such statutes, the applicable statute controls.

EXHIBIT C-1

THE REPORT

[see attached]

ZFA STRUCTURAL ENGINEERS



Conditions Assessment

Calistoga Fairgrounds Grandstands and Concessions Building

1435 N Oak St, Calistoga, CA 94515
ZFA Project: 24212

May 20, 2024

Prepared For:
City of Calistoga
414 Washington Street
Calistoga, CA 94515

Prepared By:
Chris Meade, SE, Senior Associate
Chris Jonas, SE, Principal

General Overview:

At the City of Calistoga's request, ZFA Structural Engineers performed a conditions assessment of the Main Grandstand, Ancillary Grandstand, and Concessions Building structures located at the Calistoga Fairgrounds, 1435 N. Oak St., Calistoga. Since the existing construction drawings are not available for review, the assessment is based on observations that were plainly visible during a site visit by a ZFA representative on March 29, 2024. No calculations or analysis were performed to evaluate the adequacy of the structure to meet the gravity or lateral requirements of the California Building Code. This report summarizes ZFA's observations and recommendations.

Main Grandstand:

The Main Grandstand structure consists of a combination of structural and cold-formed steel framing, aluminum floor panels and benches, and is laterally supported by a combination of steel rod and double-angle diagonal braces. A partial roof constructed from a combination of structural steel and corrugated metal roofing covers the top of the seating area. The exterior walls consist of corrugated metal siding, attached to light-gauge steel girts spanning between the steel columns. The walkway at the front of the grandstand is constructed of a concrete slab and concrete masonry unit (CMU) walls. Below the grandstand are utility rooms, bathrooms, and storage rooms. See Photographs 1 through 23.

Observations and Recommendations:

1. The protective primer or paint coating of the structural steel and cold formed steel beams, columns, and braces has deteriorated, leaving much of it exposed to weather and susceptible to corrosion. See Photographs 2 through 14. ZFA recommends that a new coating be applied to the structural steel members to protect them from further corrosion.
2. Mild corrosion is present on most of the structural steel members, with several locations with more severe corrosion including pitting and delamination, indicating a reduction in the structural strength. See Photographs 6 through 14. ZFA recommends that these locations be fully documented and either evaluated for their reduced capacities and repaired or replaced.
3. The small free-standing wood-framed structures under the grandstands are constructed from unconventional construction methods and without a weather resistive barrier on the walls, causing severe dry rot of the roof and wall framing. ZFA recommends that these small structures be demolished and replaced as needed with structures that meet current code requirements. See Photographs 14 through 18.
4. Large cracks and concrete spalls occur at the bottom of several guardrail posts. This appears to have been exacerbated by the corrosion of the post blockout sleeves and lack of concrete reinforcing around the posts. ZFA recommends replacing the corroded sleeves and repairing the concrete cracks and spalls. See Photographs 22 and 23.

Ancillary Grandstand:

The Ancillary Grandstand structure consists of a combination of galvanized structural steel framing with aluminum floor panels and benches, laterally supported by diagonal pipe bracing. There is a small wood-framed booth at the top of the grandstand. Six runs of stairs connect the grandstands to the ground level, with pipe guardrails attached to the stringers. See Photographs 24 through 31.

Observations and Recommendations:

1. The rafter tails, fascia, exterior siding, and floor planks of the booth are weathered and have signs of dry rot, reducing the strength of the members. ZFA recommends that the booth framing be thoroughly investigated and all members with dry rot be repaired or replaced. See Photographs 28 through 30.
2. The wood panel finishes at the interior of the booth show signs of prolonged water exposure, indicating possible dry rot of the internal wall framing. See Photograph 31. ZFA recommends that the wood paneling be removed so framing can be inspected. The gaps between the guardrail pipes at the edge of walkways, grandstand seating, and stairs have openings that are greater than allowed by California Building Code (CBC) section 1015.4. See Photographs 24 and 25. This item is non-structural, but ZFA recommends that these conditions be modified to conform to CBC requirements.

Concessions Building:

The Concessions Building is a single-story wood-framed structure with a concrete slab-on-grade floor. ZFA did not have safe access into the attic to review the roof framing.

Observations and Recommendations:

1. The structure is in a state of severe deterioration, with signs of water intrusion and dry rot throughout the building. To reuse the structure ZFA recommends that finishes are removed to allow thorough review of the framing and that all deteriorated framing is replaced. If it is discovered that the extent of damage and dry rot is prolific, it may be more cost effective to demolish and reconstruct the building to current code requirements. The visible damage observed is as follows:
    a. At multiple locations where the roof sheathing and rafters are visible at the eaves, severe dry rot is present, and several rafters and fascia's have completely deteriorated. See Photographs 34 and 38.
    b. The roofing membrane appears to have failed in many locations with signs of water intrusions throughout the interior of the building, including ceiling and wall water staining, bowed and collapsed ceilings, and puddles of water on the floor slab. See Photographs 29 through 46.
    c. Dry rot is present at the bottom of the exterior wood siding. The siding is more susceptible to dry rot due to the lack of the 8-inch vertical clear distance between the soil and wood framing, as required by CBC code section 2304.12.1.2. See Photograph 36.
    d. The exterior siding appears to be a T1-11 type of wood paneling. These panels are often installed without structural plywood sheathing backing, allowed by code

if adequately nailed, but the siding on the building does not appear to be nailed for conformance with code shear wall requirements.

Closing:

The items discussed in this memorandum are subject to revision or conformation should more information become available. ZFA understands you may have questions regarding this report and are available for comment and explanations.

ZFA STRUCTURAL ENGINEERS



Chris Meade, SE
Senior Associate



Photograph 1: Main Grandstand Front



Photograph 2: Main Grandstand Interior



Photograph 3: Main Grandstand Interior



Photograph 4: Main Grandstand Interior



Photograph 5: Main Grandstand Interior



Photograph 6: Main Grandstand Interior



Photograph 7: Main Grandstand Interior



Photograph 8: Main Grandstand Corrosion



Photograph 9: Main Grandstand Corrosion Pitting



Photograph 10: Main Grandstand Corrosion Delamination



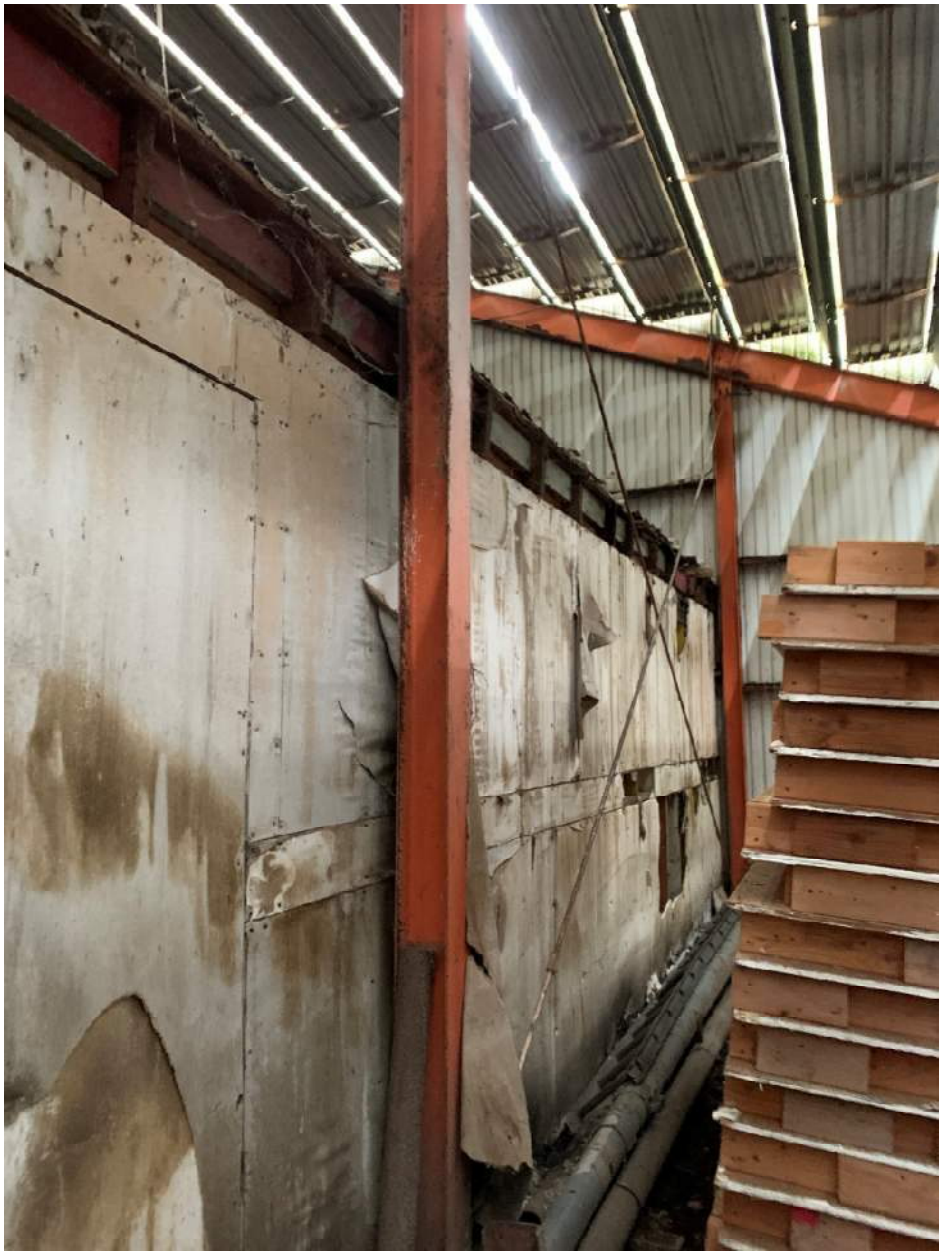
Photograph 11: Main Grandstand Corrosion Delamination



Photograph 12: Main Grandstand Severe Corrosion Delamination



Photograph 13: Main Grandstand Column Corrosion



Photograph 14: Main Grandstand Wood-Framed Structure



Photograph 15: Main Grandstand Wood-Framed Structure Dry Rot



Photograph 16: Main Grandstand Interior Wood-Framed Structure



Photograph 17: Main Grandstand Interior Wood-Framed Structure Termite Damage



Photograph 18: Main Grandstand Interior Wood-Framed Structure



Photograph 19: Main Grandstand Roof



Photograph 20: Main Grandstand Roof Corrosion



Photograph 21: Main Grandstand Roof Corrosion



Photograph 22: Main Grandstand Guardrail Post Concrete Spalling



Photograph 23: Main Grandstand Guardrail Post Concrete Spalling



Photograph 24: Ancillary Grandstand



Photograph 25: Ancillary Grandstand Stairs & Guardrails



Photograph 26: Ancillary Grandstand



Photograph 27: Ancillary Grandstand



Photograph 28: Ancillary Grandstand Booth



Photograph 29: Ancillary Grandstand Booth Fascia Deterioration



Photograph 30: Ancillary Grandstand Booth Fascia Deterioration



Photograph 31: Ancillary Grandstand Booth Interior



Photograph 32: Concessions Building



Photograph 33: Concessions Building



Photograph 34: Concessions Building Damaged Roof and Walls



Photograph 35: Concessions Building



Photograph 36: Concessions Building Siding Dry Rot



Photograph 37: Concessions Building Interior



Photograph 38: Concessions Building Severely Damaged Roof



Photograph 39: Concessions Building Ceiling Water Damage



Photograph 40: Concessions Building Ceiling Water Staining



Photograph 41: Concessions Building Water Damaged Wall and Collapsed Ceiling



Photograph 42: Concessions Building Water Damaged Ceiling



Photograph 43: Concessions Building Collapsed Ceiling



Photograph 44: Concessions Building Interior Water Puddle



Photograph 45: Concessions Building Interior Water Puddle



Photograph 46: Concessions Building Water Damaged Ceiling and Wall

HMSC License Agreement with ZFA Report - Final

Final Audit Report 2025-01-25

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