

Revised 12/09

**14<sup>th</sup> District Agriculture Association  
Santa Cruz County Fair  
RFP #2012-01**



**HIGH SCORE**

**GROUND LEASE FOR A RETAIL OUTDOOR MARKET PLACE**

**A THREE YEAR CONTRACT WITH TWO - THREE YEAR RENEWAL  
OPTIONS**

**Contact Person: Dave Kegebein, Interim Manager  
Telephone No.: (831) 535-9429**

This person is the only authorized person designated by the Santa Cruz County Fair to distribute communication concerning this RFP.

Oral communication from fair officers and employees concerning the RFP shall not be binding on the fair, and shall in no way excuse the bidder of obligations as set forth in the RFP.

**Date Issued: February 16, 2012**

## HISTORY AND GENERAL BACKGROUND INFORMATION

### General Information

The Board of Directors of the 14<sup>th</sup> District Agricultural Association (Santa Cruz County Fair) hereby requests proposals from all competent individuals, businesses and/or non-profit agencies to create and manage a Market Place at the Santa Cruz County Fairgrounds. Said Outdoor Market Place shall be comprised of approved vendors who provide retail sales of new and/or used products, produce, and food services.

The 14<sup>th</sup> District Agricultural Association is the governing body responsible for the Santa Cruz County Fairgrounds. The Fairgrounds is a State owned and operated facility comprised of 105 acres in the heart of the beautiful Pajaro Valley. It is governed by a nine member Board of Directors directly appointed by the Governor of California.

Founded in 1941 at its current location on highway 152 at the base of Mount Madonna, the Santa Cruz Country Fair is now celebrating 127 years of rich agriculture, livestock and cultural history that has been exhibited from through Santa Cruz County.

The Fairground houses the Codiga Center at the Agricultural History Project, leases facilities for car races at the Ocean Speedway, and offers special events at the historic and lovingly restored Rodgers House that was associated with the family of famed novelist John Steinbeck.

The Fairgrounds has numerous event buildings that comprise over 100,000 square feet of exposition space, and a large amphitheater stage and lawn area. There is a regulation baseball field that is used by the Pajaro Valley Little League. There is also an arena for horse events and numerous stables/corrals to accommodate up to 400 horse, and dozens of cows, swine, sheep, goats and assorted fowls.

There are facilities for overnight RV camping and enough on-site parking to accommodate approximately 3,500 cars. Please visit our website at [www.santacruzcountyfair.com](http://www.santacruzcountyfair.com) for more information.

**PART I:**  
**DEFINITIONS**

|   |   |
|---|---|
| <b>BIDDER:</b>                              | The individual, company, or organization or business entity submitting the proposal in response to the Request for Proposal.  |
| <b>EVALUATION &amp; SLECTION COMMITTEE:</b> | Hereinafter referred to as "Committee" Committee chosen by the fair to evaluate and score proposals received.   |
| <b>F&amp;E:</b>                             | Refers to the Division of Fairs and Expositions, Department of Food and Agriculture, which is a division of the agency of the State of California overseeing the activities of the fair.<br>F&E is located at: 1010 Hurley Way, Suite 200 Sacramento, CA 95825  |
| <b>DGS:</b>                                 | Refers to the Department of General Services, State of California.<br>DGS is located at: 707 Third Street, 2 <sup>nd</sup> Floor West Sacramento, CA 95805<br>Attention: Office of Legal Services   |
| <b>PASSING BIDDER:</b>                      | The term "passing bidder" as it is used in this document refers to the bidders who are awarded at least the minimum number of points by the Committee on Tier One, the technical portion of the proposal. No bidder's financial proposal will be opened and considered if they have not received sufficient points to be deemed a passing bidder. |
| <b>RFP:</b>                                 | Request for Proposal.   |
| <b>HIGH SCORE:</b>                          | A proposal which a selection committee evaluates and scores to rank based upon objective criteria stipulated in the RFP.  |

**MARKET: California  
Business and Professions  
Code Section 21661**

(a) As used in this article, the term "outdoor market" includes a flea market or an open-air market and means an event at which two or more persons offer merchandise for sale or exchange and that meets one of the following conditions:

(1) A fee is charged for the privilege of offering or displaying merchandise for sale or exchange.

(2) A fee is charged to prospective buyers for parking or for admission to the area where merchandise is offered or displayed for sale or exchange.

(3) The event is held more than six times in any 12-month period.

(b) Notwithstanding subdivision (a), the term "outdoor market," as used in this article, includes a flea market or an open-air market and means an event, regardless of the number of persons offering or displaying personal property or the absence of fees, at which used personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12-month period.

(c) The term "outdoor market," as used in this article, is interchangeable and applicable to "flea markets", "swap meet markets", "open-air markets", or other similar terms, regardless of whether these events are held either inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(d) "Operator," as used in this article, means any person, partnership, organization or corporation that controls, manages, conducts or otherwise administers a outdoor market.

(e) "Vendor," as used in this article, means any person, partnership, organization or corporation who exchanges, sells, or offers for sale or exchange any merchandise at a outdoor market. A outdoor market vendor shall be classified according to the following categories:

(1) A "casual outdoor market vendor" means a vendor who participates in a outdoor market two times or less per year.

(2) A "regular outdoor market vendor" means a vendor who participates in a outdoor market three or more times per year.

**DISCRIMINATION:**

A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.

**PART II:**  
**GENERAL INFORMATION**

**A. REQUEST FOR PROPOSAL (RFP)**

The Board of Directors of the 14<sup>th</sup> District Agricultural Association in releasing this RFP intends to award a contract for a period of three years with two additional three-year options, to conduct a weekend Open Air Market Place at the 14<sup>th</sup> District Agricultural Association. Only the District, in its sole and exclusive discretion, may exercise the Lease Agreement renewal option. The District's exercise of the option to extend the Lease Agreement may include or require renegotiation of all or part of the Lease Agreement including the financial portion, in the District's sole and exclusive discretion.

**B. BIDDER RESPONSIBILITY**

Read the documents very carefully, as the Fair shall not be responsible for errors and omissions on the part of the bidder. Carefully review final submittal as reviewers will not make interpretations or correct detected errors in calculations.

All cost associated with the bidder completing and submitting a proposal are the sole responsibility of the bidder.

**TO BE CONSIDERED QUALIFIED, BIDDERS WERE REQUIRED TO ATEND A MANDATORY PRE-BID MEETING ON February 9, 2012, 2:00PM at the Fair's Administrative Office located at 2601 East Lake Avenue. ALL BIDDERS MUST SIGN IN AT THE MANDATORY MEETING. BIDS or PROPOSALS WILL NOT BE ACCEPTED FROM BIDDERS WHO DO NOT ATTEND THE MEETING.**

**C. DELIVERY OF PROPOSAL**

Proposals must be physically received prior to the closing time and at the place stated below, in the format specified below and as more particularly described in Part VI, Section B, Failure to submit your proposal in a timely manner shall result in an automatic rejection. Failure to meet any of the requirements may result in a rejection or a reduction in points during the scoring process. ***Unless otherwise stated, faxes are unacceptable.*** Proposals must be hand delivered on or before **March 1, 2012, 2:00PM** in sealed envelopes as spelled out in this RFP.

- Addressed as follows:

**RFP #2012-01 Market Place Proposal**

David Kegebein - **Confidential**

14<sup>th</sup> District Agricultural Association

Santa Cruz County Fair

2601 East Lake Avenue

Watsonville, CA 95076

#### D. CONTRACT AWARD

If a contract is awarded, it shall be granted to the passing responsible bidder who submits the proposal with the highest score. Prior to the Board Awarding a contract the Fair shall post a **“Notice of Proposed Award”** at the administration office for five (5) working days. In addition, a copy of the notice will be mailed to each bidder. Upon the expiration of the five-day posting period (close of business on the fifth working day), if no protest had been filed, the contract is awarded. If a protest is filed prior to the contract award, the contract shall not be awarded until the protest has been withdrawn by the bidder or rejected by the Department of General Services.

#### E. KEY DATES

|   |                                 |
|---|---------------------------------|
| MANDATORY PRE-BID MEETING   | <b>February 9, 2012; 2:00PM</b> |
| RFP Released  | <b>February 16, 2012</b>        |
| Proposal due at Fair’s Administration Office no later than 1:30PM                             | <b>March 1, 2012</b>            |
| Interview, if necessary, to clarify proposals<br>(interviews are not public, may be recorded) | <b>March 2, 2012</b>            |
| “Notice of Proposed Award” posed and mailed   | <b>March 5, 2012</b>            |
| Date award final – no protest may be filed after this time                                    | <b>March 12, 2012</b>           |
| Fairboard Approval  | <b>March 27, 2012</b>           |
| Proposed contract commences   | <b>April 1, 2012</b>            |
| Market Opens (weather permitting)   | <b>April 8, 2012</b>            |

**PART III**  
**RULES GOVERNING COMPETITION AND TECHNICAL EVALUATION**

**A. RFP REQUIREMENTS AND CONDITIONS**

**1. Errors**

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the fair shall be immediately notified of such error in writing addressed to the contact person listed on the cover page and request modification or clarification of this document.

**Modifications**, if any, will be made in writing by way of an addendum issued pursuant to paragraph 2 below.

**Clarification by the Fair**, if issued, will be given by written notice to all parties to whom the Fair has sent notice of the RFP and to persons or entities who have requested to be given notice of any modification or notices.

**2. Addendum**

If necessary, the Fair will modify the RFP prior to the date set for submission of final proposals, by issuance of an addendum to all parties who have been furnished notice of the RFP for bidding purposes.

**All bidders should inquire from the contact person listed on the cover sheet whether any addendum has been issued prior to submitting a proposal in response to the RFP.**

**3. Definitions**

The use of “shall”, “must” or “will” indicates a **mandatory** requirement or condition in this RFP. Failure to include such mandatory requirements or conditions will result in the disqualification of a proposal.

The words “should” or “may” indicate a **desirable** attribute or condition, but are permissive in nature and may affect the score the proposal receives.

**4. Grounds for Rejection of the Proposal**

A proposal **may** be rejected if:

- It is received at anytime after the exact time and date set for receipt of bids.
- It contains false or misleading statements or references which do no support attributes or conditions contended by the bidder (The proposal shall be rejected if, in the opinion of the fair, such information was intended to mislead the fair in its evaluation of the proposal and the attribute, condition or capability of requirements of this RFP).
- **It is unsigned.**

**5. Right to Reject Any or All Proposals**

It is the policy of the fair not to solicit proposals unless there is a bona fide intention to award a contract. However, the fair reserves the right to reject any or all proposals or to cancel the RFP at anytime during the process.

**6. Protests**

A bidder may file a protest against the awarding of the contract.

A written protest must be filed with the Fair:

Santa Cruz County Fair  
2601 East Lake Ave.  
Watsonville, CA 95076  
Attention: Dave Kegebein

The protest *must* be received prior to the expiration of five (5) working days from notice of the proposed award being posted and, in no event, later than 5:00 p.m. on the fifth working day after notice of proposed award was posted in a public place at the Fair's Administration Office. Upon the expiration of this posting period, if no protest is filed, the contract is awarded.

**IN ADDITION**, within five (5) calendar days after filing the protest, the protesting bidder shall file with the Fair and DGS Legal Office a fully detailed and complete written statement specifying the grounds for the protest.

**PLEASE NOTE:** *Failure to file (i) notice of protest by the conclusion of the fifth working day after notice of intention to award a contract has been posted and (ii) a complete detailed written statement within five (5) calendar days filing the protest stating grounds for protest will result in the protestor's protest being deemed untimely and grounds for protest waived. Protests shall be limited to the grounds contained in Public Contract Code, Section 10345.*

**B. OTHER INFORMATION**

**1. Disposition of Proposals**

All materials submitted in response to this RFP would become the property of the Fair. All proposals, evaluations and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process and announcement of intent to award. If an individual requests copies of these documents, the Fair will assess a fee to cover duplicating costs. Documents may be returned only at the fair's option and at the bidder's expense. One copy of each bidder's proposal shall be retained for official Fair files.

**2. Confidentiality of Proposals**



The Fair will hold the contents of all proposals in confidence until issuance of the "Notice of the Proposed Award"; once issued and posted, no proposal will be treated as confidential.

**3. Modification or Withdrawal of Proposals**

Any proposal, which is received by the fair before the time and date set for receipt of proposals may be withdrawn or modified by written request of the bidder. However, in order to be considered, the modified proposal must be received by the time and date set for the receipt of proposals in Part II.

A bidder cannot withdraw or modify a proposal after the due date and time for the receipt of proposals and, further, a bidder cannot be "timed" to expire on a specific date. For example, a statement similar to "This proposal and the cost estimate are valid for 60 days" is non-responsive to the RFP, and shall on that basis be rejected.

**PART IV**  
**STATEMENT OF WORK TO BE PERFORMED**  
**AND CONTRACT TERMS AND CONDITIONS**

Business and Professional Code Section 21669 and 21669.1 establish minimum requirements for bidders. The proposed outdoor market place operations and the outdoor market place bidder must meet the requirements outlined below and each bidder will be required to certify, in writing, that it is in compliance with the Business and Professions Code section 21669 and 21669.1 (forms, section IX). Any bidder who cannot satisfy the requirements of Sections 21669 and 21669.1 shall be disqualified.

Business and Professions Code sections 21669 and 21669.1 state:

**Our Planned Operation –**

**Section 21669: Swap Meets Conducted on Government Premises; Procedures; Operations by Government Entities for Profit.**

- (a) All swap meets which are conducted two or more times per business year on any premises or property owned or leased by any city, county, city and county, state, or any other local governmental agency, entity, or board, shall comply with all of the following procedures:
  - (1) The swap meet operator shall have a valid business license.
  - (2) The swap meet operator shall have a valid California seller's permit number (State Board of Equalization sales tax number), if applicable.
  - (3) The swap meet operator shall provide the state or local governmental entities described in this subdivision upon whose property the swap meet is being held, a certificate of insurance certifying that the swap meet lessee maintains public liability and property damage insurance for the operation of the swap meet of at least one million (\$1,000,000), and that the policy names that governmental entity as an additional insured under the policy.
  - (4) The swap meet operator shall provide the state or local governmental entity a hold harmless and indemnification agreement for his or her operation of the swap meet and activities and acts arising from that swap meet.
  - (5) The swap meet operators shall comply with all other provisions of this article relating to swap meets.
- (b) State or local governmental entities shall not operate or manage a swap meet for profit in direct competition to a private enterprise, unless they comply with subdivision (a) of Section 21662.

**FYI – Potential Future Growth**

**Section 21669.1: Swap Meets on Government Property; Average Daily Attendance 10,000 or more; Requirements**

- (a) In addition to the requirements specified in subdivision (a) of Section 21669, all swap meets conducted on the premises or property of the state or local governmental entity which has or expects to have an average day attendance of 10,000 or more persons shall provide all of the following:
- (1) A statement of ownership, including the identity of individuals holding a financial interest of five percent or more.
  - (2) A sworn statement that no individuals who have a financial interest of five percent or more in the swap meet have been convicted of any crimes involving dishonesty or moral turpitude.
  - (3) A financial statement showing operator's financial capability to operate a major swap meet and to meet any financial obligations to the Lessor under the terms of the Swap Meet Lease Agreement, the operator's creditors, independent contractors, subcontractors, and vendors.
  - (4) A statement that the operator is not knowingly delinquent in any payments owed to a state or local government entity and that he or she is not knowingly in violation of any state or local law or ordinance related to public health or safety standards.
  - (5) Evidence that the operator has a minimum of five years experience in the management and operation of a swap meet for profit with an average daily attendance of 5,000 per California State Business and Professions Code, Section 21669.1.
  - (6) A plan for operations including security, crowd control, sanitation and emergency medical response.

**PART V**  
**SUBMISSION REQUIREMENTS**

**If the bidder has a current swap meet they may submit information regarding:**

**1. Current Operation and Evidence of Experience**

- (1) Describe current customer services and conveniences, policies and practices:
  - Pedestrian access, traffic flow
  - Rest areas, restrooms or other customer conveniences
  - Promotions, special events
  - Access to information
  - Other practices, programs, and/or policies that add to a quality customer experience at the swap meet.
  
- (2) Describe vendor programs, practices, policies and management of vendors:
  - Vendor solicitation, election, contracting, and cultivation of productive vendor relations
  - Policies and practices related to vendor layout and space pricing
  - Existing policies and practices governing vendor sales
  - Other practices, programs, and/or policies that contribute to high standards of vendors.
  
- (3) Describe administrative systems and functions in the current operation of the swap meet:
  - Revenue collection, record keeping and internal audit controls admissions operation
  - Practices that issue company compliances with applicable local, State and Federal law
  - Practices that insure vendor compliance with applicable local, State and Federal law
  - Other practices, systems, operations, programs that contribute to quality administrative operations of the swap meet.
  
- (4) Describe operations and presentation of the current swap meet:
  - Parking and traffic control operations
  - Vendor load-in, set up, load-out and tear down procedures
  - Waste management and cleanliness of operation
  - Public safety and security operation
  - Crowd control measures
  - Emergency response measures
  - Other practices, operations, programs that contribute to a quality operation, aesthetics, and presentation of the current swap meet.

- (5) Average daily attendance, total annual attendance and gross annual revenue.
- (6) Evidence of the experience of current swap meet management team and staff.
- (7) Community outreach efforts and programs that involve the swap meet with the community and/or charitable promotions.
- (8) Programs, practices, operations that add to the aesthetic presentation of the current swap meet, specifically signs, flags, banners, décor and other measures.
- (9) This is an opportunity to submit information not already presented in another category, that provides evidence of creative management techniques, practices, and/or programs that have led to an increase in revenue, increase in market share, and/or have contributed to creating and maintaining high standards of the swap meet operation.

**2. Proposed Plan for outdoor market at the Santa Cruz County Fair**

- (a) Each bidder must detail its proposed operations for the outdoor market at the Santa Cruz County Fair. This information must include but is not limited to:
  - (1) Proposed customer related policies and practices.
  - (2) Proposed vendor related policies and practices.
  - (3) Proposed public safety, security, traffic flow, parking and crowd control policies and practices.
  - (4) Pro forma business plans for the three year lease with two - three year options to renew terms, including anticipated attendance, including all proposed dates of operation.
  - (5) Proposed policies, practices, and programs that address the administrative functions and overall operations of the outdoor market.

**PART VI**  
**EVALUATION, SELECTION AND SCORING PROCESS**

Each proposal shall be evaluated for responsiveness to the Fair's needs as described in this RFP. This part describes the process the Fair will follow when evaluating and scoring proposals and awarding the contract, if any is awarded, and contains the exact scoring criteria to be used. During the evaluation and selection process, the Committee may wish to interview a bidder for clarification purposes only. The bidder will not be allowed to ask questions concerning other bidders, but only to respond to clarification questions from the Committee. The bidder cannot change proposals after the time and date designated for receipt.

**A. EVALUATION AND SELECTION PROCESS**

1. The Scoring Committee will be made of management team and designated representatives. Unless otherwise required by law, the names of those serving on the Scoring Committee and any independent third party consultant[s] that may be retained by the Scoring Committee, will be kept confidential until after the posting of the award of contract.

2. Technical proposals that meet the submittal format requirements, as stated in the previous paragraph, will be submitted to the Committee for:

- Review of the technical proposal,
- Confirmation the information is presented in the format required by the RFP, and
- All required documentation is included and correct.

Proposals that do not present the information in the format required may be rejected as non-responsive.

**This is not a public review.**

3. The DAA reserves the right to verify any financial institution reference, references, and employment experiences and to verify any other information referenced or disclosed in the proposal or to ascertain the accuracy of information presented. Misinformation or inaccuracies are grounds for disqualification, or receipt of a lower score.
4. The committee will evaluate each proposal that meets the format requirements of preceding paragraph two, and assign points for the technical proposal.

**This is not a public review.**

5. The committee may request interviews of the bidder for clarification of proposals. Following any interviews, the proposals may be re-scored.

**This is not a public review.**

6. In order to obtain the average score for each bidder, the total points of each reviewer will be added up for each bidder and the result divided by the number of people on the committee.
7. All bidders will be notified of the results.

**This is not a public review.**

8. At the conclusion of the scoring and selection process the committee will post all of the proposals for review during the five (5) day protest window.

**B. SCORING PROCESS, CRITERIA AND ITEMS SCORED**

1. The maximum possible score for each proposal is one hundred (100) points. The scoring categories and maximum possible score for each category follow:

| <b>Category</b>  | <b>Maximum Points</b> |
|--|-----------------------|
| <b>a. Experience and Previous Performance.....</b>   | <b><u>20</u></b>      |
| 1. Evaluation and scoring of outdoor market experience and previous performance as demonstrated as follows:  |                       |
| a. Average daily attendance, total annual attendance and annual gross revenue for the past five years.   |                       |
| b. Experience of the current outdoor market management team and staff.   |                       |
| c. Experience in community outreach efforts, involvement with the community and/or charitable promotions.  |                       |
| d. Previous performance with outdoor market aesthetics, décor, and cleanliness.  |                       |
| e. Evidence of creative management that leads to increased revenue, increased market share and/or policies and practices that create and maintain high standards of outdoor market operations. |                       |
| <b>b. Financial stability; ability to meet obligations of the proposed lease to Lessor and subcontractors .....</b>  | <b><u>20</u></b>      |
| 1. Ability of bidder to meet obligations of the proposed lease to Lessor and meet its obligations to its creditors and subcontractors.   |                       |
| a. Net Worth.  |                       |
| b. Financial ability to implement proposed outdoor market.   |                       |
| c. Debt ratio/coverage.  |                       |
| d. Liability/contingent liabilities/litigation.  |                       |
| e. Payment/Credit History.   |                       |
| <b>c. Proposed Plan for the Outdoor market at the Santa Cruz County Fair .....</b>   | <b><u>20</u></b>      |
| 1. Evaluation and scoring of bidder's proposed plan for the outdoor market at the Santa Cruz County Fair as follows:   |                       |
| a. Proposed customer related policies and practices.   |                       |
| b. Proposed vendor related policies and practices.   |                       |
| c. Proposed public safety, security, traffic flow, parking and crowd control plans.  |                       |
| d. Proposed pro-forma business plan for the one year lease with four one year options for renewal.   |                       |
| e. Proposed management of administration and operations of outdoor market.   |                       |

**d. Financial Proposal .....40**

Suggested Format –

% based with minimum guarantee

\$1000 / week minimum – 52 weeks

% of space rental

% of attendance / parking

% of sales if space rental is % based

No outside alcohol vendors. Fair retains right to vend alcohol



**PART VII**  
**OUTDOOR MARKET LEASE AGREEMENT TERMS AND CONDITIONS**

The following outdoor market Lease Agreement Terms and Conditions will be incorporated and made a part of the Outdoor market Lease Agreement.

**A. Premises**

The premises to be utilized for this Outdoor market Lease Agreement consist of an approximate 12 acres space known as the Main Parking Lot of the Santa Cruz County Fair ("fairgrounds"), and identified on Exhibit "D" attached to this Lease Agreement ("Premises").

Market will open in the Crosetti Building parking lot and move to Main Parking lot when appropriate restroom facilities are installed based on projected attendance of accepted bidder prior to market moving.

There are no permanent or temporary facilities (except restrooms) available for use included in the Premises. Any facilities constructed, installed, or added by the Lessee, unless otherwise agreed to in writing by the District, are to be temporary in nature and must meet the standards outlined by the District.

**B. Term**

The term of this Agreement is three years with two - three year renewal options, beginning April 1, 2012 (the "Lease Commencement Date"), unless sooner terminated as provided for in this Lease Agreement.

**C. Uses**

The premises shall be used for the purpose of conducting an outdoor market business and for no other purpose without prior written consent of the District. "Outdoor Market" is defined as the sale of goods and/or services on the Premises. Goods and services sold are to be of a nature that is appropriate for a family atmosphere in a public place and in accordance with all local and State health and safety laws.

Any other use must be requested through the District's Administrative Office in written form 60 days prior to the desired use or event. In the event the District agrees to an alternative use for the premises, such use will be subject to a separate written agreement that must be agreed to and signed by the parties prior to the event or alternative use of the premises. The Terms and Conditions of the Lease Agreement shall follow the approved policies and procedures of the District's event program.

**Any noise generated by the activities at this outdoor event must comply with current or future noise policies of the 14<sup>th</sup> District Agricultural Association.**

**D. Dates and Hours of Operation**

Lessee shall keep the Premises open for business and in full operation every Sunday of each month from 7:00AM to 4:00PM with the following exceptions:

1. The Saturday and Sunday of the annual Santa Cruz County Fair, with the dates to be determined in the District's sole and exclusive discretion. The Fair will consider expanding the market to operate on Saturdays when appropriate.
2. Inclement weather

Set up for the outdoor market may not commence earlier than one (1) day prior to an operational day. Tear down must be completed by one (1) day following an operational day, including all clean up. Lessee acknowledges and agrees that the time permitted for set and tear down may be restricted or limited because of other events taking place on the fairgrounds. Set up and tear down must be limited to the Premises.

**Lessee shall ensure that all seller equipment is removed from the Premises at the conclusion of each operating weekend.**

The foregoing dates and times of operation and other restrictions may be changed, modified, altered or canceled only with the prior written consent of the District.

#### **E. Security Deposit**

1. Deposit – Lessee shall deposit with Lessor the sum of \$5,000.00 or 5% of projected annual rent. At a point during the term of the lease when annual rental income to the Fair meets or exceeds \$100,000.00, the security deposit shall increase to \$10,000.00 or 10% of projected rental. Receipt of which is hereby acknowledged by Lessor, as security for the full and faithful performance by Lessee of the terms, conditions and covenants of this Lease Agreement.
2. Deductions for Rent – If at any time during the term of this Lease Agreement Lessee defaults in the payments of rent, or any portion of rent, under this Lease Agreement, Lessor shall (or may) appropriate and apply any portion of the security deposit reasonably necessary to remedy any such default in the payment of rent.
3. Deduction of Repairs – If at any time during the term of this Lease Agreement Lessee, Lessee's subcontractors, independent contractors, vendors, agents or employees damage the premises through want of ordinary care or any greater degree of culpability, then Lessor shall appropriate and apply any portion of the security deposit reasonably necessary to fund the necessary repair.
4. Deduction at Termination of Lease – If, upon termination of this tenancy, Lessee fails to leave the premises in a condition comparable to the condition of the premises at the time Lessor delivered possession to Lessee at the commencement of this lease, ordinary wear and tear excepted, then Lessor shall be entitled to appropriate and apply all or any portion of the security deposit reasonably necessary to put the premises in the condition comparable to the condition of the premises at the time of delivery.
5. Replenishment and Increase of Deposit – If all or any portion of Lessee's security deposit is properly applied by the Lessor during the term of this outdoor market Lease Agreement for any purpose authorized by this outdoor market place Lease Agreement, Lessor will provide Lessee with written

notification, and this written notification shall include an itemized statement describing the disposition of the security. Upon receipt of written notification, Lessee shall have ten business days to replenish this amount. Lessee's failure to replenish the security deposit within ten days from receipt of written notification shall constitute a material breach of this outdoor market Lease Agreement.

6. Return of Deposit at Termination of Lease – Lessor shall return to Lessee the portion of the security deposit remaining after any deductions authorized by this outdoor market Lease Agreement or otherwise authorized by law, if any, in the following manner. If a deduction has been made only for the nonpayment of rent, the remaining portion, if any, shall be returned not later than two weeks after the date Lessor receives possession of the premises. If a deduction has been made for any other reason authorized by this outdoor market Lease Agreement or otherwise authorized by law, the remaining portion, if any, shall be returned no later 30 days from the date Lessor receives possession of the premises. Lessee shall not be entitled to any interest on any portion of the security deposit.

## **F. Rent**

1. Payment:

Rent shall be paid by the close of business on Thursday of each week.

2. Force Majeure:

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, judicial orders, enemy or hostile government action, civil commotion, fire or other casualty or other causes (except financial) beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused, except for Lessee's payment of the Minimum Guaranteed Rent, for a period of such cause for failure to perform. Provided, however, that if Lessee is unable to perform such cause beyond its reasonable control (exception financial) for a period excess of thirty (30) days, then either party may terminate this outdoor market lease upon thirty (30) days written notice to the other party without further liability.

3. Documentation and Procedures:

The Lessee shall record all sales and shall maintain, for at least three (3) years after the expiration of each lease, full, true and accurate books of account and records, conforming to generally accepted accounting principles, showing all gross sales, including tax reports, bank deposit records and other supporting data (all collectively called "Financial Records"). The Lessee shall furnish the Lessor with a statement, herein called the "Weekly Report", of gross revenue from admissions, sellers' spaces, reservations, etc. during the preceding week. Such statement shall agree with the Financial Records. Lessee shall submit to the District daily gross receipts reports including a listing of all daily attendance figures (paid, discount, complimentary), all revenue listed by source including a breakdown of all individual seller fees for seller space; fees for all seller space acquired by bid; food and beverage sales report; sponsorship and advertising revenue; admission revenue; parking revenue and any other financial information reasonably requested by the District.

The following reporting documentation and procedures should be implemented and produced by the Lessee:

**a. Reservations**

If the Lessee decides to charge vendors a reservation fee, the Lessee should utilize receipts. These receipts should be pre-numbered in sequential order and contain the name of the vendor, reservation period, the amount paid and signature of the vendor and the Lessee. A copy of the pre-numbered receipt should be given to the vendor for presenting at the outdoor market gate and the original should be kept on file for five years.

On a weekly basis the Lessee should report to the District the number of reservations sold, rate per reservation, total reservation revenue and the first and the last sequence number of the reservation receipts issued.

**b. Flyers**

The Lessee should distribute and post flyers or poster signs with the rate breakdown. The sign on the flyer should ask a vendor to contact the Lessee management and the Fair management if he or she is charged a higher than listed rate by an employee. This practice will prevent employees from overcharging vendors and not delivering the amount charged to management.

**c. Tickets**

Publisher and Sequence

All tickets should be purchased from a District-approved publisher. Tickets for each revenue type (ex. Parking, vendor space, food vendor space) should be sequentially pre-numbered, have a unique color, size and related description. Every time the publisher sells tickets to the Lessee for the Outdoor Market operation, the publisher should inform the District of the first and the last ticket numbers in the sequence sold. The sequence should not be repeated during the three (3) years under contract.

Tickets distributed to the gate employees

Every time a gate employee receives a new stack of tickets, a new gate report needs to be completed. First, the gate employee should review the sequence and recount the tickets in the stack. Second, the first and the last ticket numbers in the sequence should be written in the gate report. The gate employee should write his/her initials next to these numbers.

Sales of the tickets

Under this contract, only tickets purchased from the District authorized publisher should be sold in the Outdoor Market operation.

Lessee should give out tickets to all vendors and parking customers regardless of whether they pay or not. A ticket that was issued for free should be marked for subsequent reconciliation and reporting to the District. An employee who does not sell tickets should monitor the parking lot and vendors to ensure that all cars and vendors have tickets. At the end of the day, the employee

responsible for a stack of tickets should document the number of free, paid and unsold tickets on the gate report. The gate employee should write his/her initials next to these numbers.

#### Unused tickets

Tickets that were not used by the gate employee should be returned to the Lessee management. These tickets should be kept with the related gate report for the duration of the three years while under contract. The District reserves the right to inspect these tickets at any time.

#### **d. Gate Report**

A gate report should be completed and submitted to the District for each day of operation and for each gate. See exhibit A for a template of a gate report.

A gate report should include:

- Lessee name
- The date of the operation
- The name of the gate (ex. Main Entrance)
- The name of the gate employee
- Types and number of tickets sold
- Types and numbers of free tickets
- Copy of the first and the last ticket stub sold
- Cash pick up amount, time and initials of the gate employee and the manager who collected cash
- Signature of the gate employee
- Signature of the Outdoor Market manager who reviewed and accepted the gate report.

A gate report should be completed by the gate employee:

- When tickets are received from the manager by gate employee, he/she should document on the gate report the first and last ticket received. These numbers should be initialed by the gate employee.
- When the Lessee management picks up cash during the gate operation, the gate employee should write the amount picked up by the manager and the time of the pick up. Both the gate employee and the manager should initial this entry.
- At the end of the day, the gate employee should complete the gate report. The gate employee should document the number of tickets sold for each revenue type (ex. Vendor, food vendor or parking).
- The gate employee should calculate the total revenue based on the information on the gate report.
- The gate employee should copy the first and the last ticket stubs sold, sign off on the copy and attach the copy of the report.

- The gate employee should reconcile revenue collected to the gate report. Discrepancies should be documented.
- The gate employee should sign the gate report testifying that the information on the gate report is complete and accurate.

The gate report should be reviewed and signed by the Outdoor Market manager. His/her signature will represent that he/she agrees with the information on the gate report and has accepted the revenue on the gate report.

**e. Weekly Report**

A weekly report should be completed by the manager and submitted to the District for each week the Outdoor Market is in operation. See Exhibit B for a template of a weekly report.

Weekly report should include:

- Lessee name
- Dates of the weekend
- Number of tickets sold during the weekend for each revenue type
- Tickets sequenced used during the weekend for each gate and for each revenue type
- Total revenue for the weekend
- Reconciliation between revenue reported on gate reports and total weekly revenue
- Signature of the Outdoor Market manager

Weekly report should be prepared by the Lessee management.

Weekly report will be reviewed by the Lessee. The review will include tracing information on the weekly report to the gate report. The Lessee should sign the weekly report representing that he/she agrees with the information on the weekly report and has accepted the revenue reported on the weekly report.

**4. Audits:**

District has the right to audit the Financial Records at any time at the sole discretion of the District. If the District conducts an audit, Lessee shall make all Financial Records available for inspection or audit within fourteen (14) days following any request by the District that the Financial Records be made available for an audit. The District shall pay the cost of all audits provided, however, that if the audit determines that an amount in excess of \$5,000.00 is due and owing the Lessee to the District, Lessee shall pay all costs associated with the audit within fourteen (14) days after written demand by the District.

Lessee shall maintain all Financial Records for at least three (3) years after the final payment of Rental under this Lease Agreement and extension of this Lease Agreement, or longer as directed by District.

Any information obtained by the District pursuant to any inspection or audit shall be considered public documents, unless otherwise exempt, and subject to disclosure according to Public Records Act.

**G. Operation and Management of Outdoor Market**

Operation, management and maintenance of the outdoor market will be at the Lessee's sole expense, including, but not limited to:

1. Coordinating reservations and renting spaces for sellers
2. Establishment and collection of admission fees and all other revenue
3. Advertising, marketing and promotion, which shall be in compliance with all applicable statutes, regulations and ordinances, and subject to the prior written approval of the District, which will not be unreasonably withheld
4. Staffing with all necessary personnel including supervisory personnel
5. Providing management, administrative and security personnel and controls at any time the outdoor market vendors are on the premises.
6. Providing food and beverage service and operate from food service facilities that are clean and sanitary in accordance and consistent with all applicable rules, demands and requirements of law, pertinent health and sanitary codes and requirements of duly authorized health authority of Santa Cruz County and other health department having jurisdiction.
7. Keeping and providing all financial records required by the District.
8. Filing and implementing an annual operating plan for an outdoor market business which addresses seller space configuration, subject to approval by the District.
9. Maintaining the premises in a good, clean and safe condition. Lessee shall prepare and submit to the District for the District's approval a plan for maintenance of the premises, facility clean up, waste removal, waste recycling and trash.
10. Develop and submit to the District for the District's approval a parking plan for the outdoor market visitors, seller and employees.
11. Provide appropriate levels of security and crowd control measures for the operation
12. Provide a system for emergency medical response during hours of operation.
13. Compliance with SB198 health and safety requirements
14. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to environmental issues including but not limited to the Air Quality Board, Regional Water Quality Control Board regulations. Lessee shall at all times conduct its Water Quality Act, and California Environmental Quality Act, the National Environmental Protection Act and all comparable related and successor statutes, laws, ordinances and regulations.
15. Develop and submit to the District for the District's approval a program to maintain a drug-free workplace at the outdoor market.
16. Effective January 1, 2008, Lessee covenants that it will fully comply with Public Contract Code section 10295.3 with regard to benefits for domestic partners.
17. Compliance with all federal, state and local statutes, laws, ordinances and regulations relating to equal employment, disability access and non-discrimination, including, but no limited to, the Unruh Act, Americans with Disabilities Act, Occupational Safety and Health Act, California Civil Code sections 51-54.6, inclusive and all comparable, related and successor statutes, laws, ordinances and regulations.

Lessee further agrees to use reasonable care in its use and occupancy of the premises and, at all times during the Term, to keep and maintain the premises in good, clean and safe condition and to prevent

waste upon, or damage to, the premises. Lessee will maintain all of its equipment, inventories and other tangible property in a well maintained, neat, orderly and careful manner at all times. All storage will be in an area designated by the District. Storage is restricted to those items used in general operation of the Outdoor Market. Storage of personal items is prohibited.

Maintenance, including equipment and facilities repairs, must be confined to the premises and may not occur on any other part of the fairgrounds.

**H. Limitations on Use**

Lessee will not conduct, or permit to be conducted on the premises any business or act, which is or may be contrary to, or in violation of, any federal, state or local statute, law, regulation or ordinance. Lessee shall not engage in or knowingly or negligently permit any condition upon the premises inappropriate to the neighborhood in which the fairgrounds is located, which includes the governmental buildings and residential neighborhoods.

**I. Right to Enter**

The District reserves the right to enter onto the premises at any time for any purpose, including emergencies. Lessee shall permit designated agents of the District to make periodic inspections of the premises to determine whether the Lessee has complied with, and is complying with, the Terms and Conditions of the Lease Agreement. Lessee shall also permit designated agents of the District to enter the premises for the purpose of accomplishing repairs or replacements where the Lessee is obligated to make such repairs or replacements and has failed to do so after reasonable notice period determined by the District. The notice period shall depend upon the nature and extent of repair or replacement required and the impact of the defect on the safety and profitability of the outdoor market. No such entry by, or on behalf of, the District on the premises shall cause or constitute a termination of the Lease Agreement or be deemed to constitute an interference with the possession of the premises by Lessee.

Lessee shall be responsible for any costs for repairs made to premises or facilities by District staff or any other contracted service. Lessee shall be responsible for rental of any equipment needed to make repairs, including District equipment.

**J. Licenses, Permits and Taxes**

Lessee shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire term of the Lease Agreement and any extensions, including, but not limited to, holdover periods, if any.

Lessee is aware and agrees that the Lease Agreement, or Lessee's use of the Premises, may be subject to federal, state or local charges, taxes or fees. All personal property taxes, income taxes, possessory interest taxes, general and special assessments, and other charges of every description levied on or assessed against the operation of the outdoor market, shall be paid promptly by Lessee direct to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for nonpayment. Lessee shall hold the District harmless and indemnify the District against and from any and all charges, fee, assessments and taxes imposed under this paragraph.



**K. Consent to Improvement or Modification of Premises**

Lessee shall make no improvement or modification of the premises for any reason without the prior written consent of the District. The District may grant or withhold its consent for any improvement or modification of the premises in its sole and exclusive discretion. No improvement or modification made by Lessee during the term of this Lease may be subsequently modified, altered or removed without the prior written consent of the District.

Any improvement, alteration or modification of the premises made by Lessee shall be at the sole cost and expense of the Lessee. All improvements, alterations or modifications made by the Lessee shall be in strict compliance with any and all conditions specified by the District, and with all codes, statutes, ordinances and regulations by any governmental agency having jurisdiction. Lessee shall defend and indemnify the District against all liability and loss of any type, including but not limited to, all expenses, liens, mechanics liens, claims, charges or damages to property or any other person, arising out of work performed on the premises by Lessee, together with reasonable attorneys fees and all costs and expenses which might arise by reason of the making of repairs, improvements or modifications; excepting only the sole negligence or willful misconduct of the District.

**L. Title to Improvements**

At the sole and exclusive discretion and option of the District:

1. All improvements on the premises at the expiration of the term or sooner termination of this lease shall, without compensation to the Lessee, then become the District's property free and clear of all claims to or against them by Lessee or any third person, and lessee shall defend and indemnify the District against all liability and loss arising from such claims or from Lessor's exercise of the rights conferred by this Paragraph (L)(1).
2. At the expiration or sooner termination of the term, the District may, at the District's election, demand the removal from the premises of all fixtures and improvements or of certain fixtures or improvements or both, at Lessee's sole cost and expense. Removal of fixtures and improvements requires that Lessee restore the premises to their original condition, ordinary wear and tear excepted.

**M. Food and Beverage Service**

Lessee will provide food and beverage service within the operation of the swap meet. Food and beverage are to be prepared and served from concession stands that are approved by the Santa Cruz County Health Department.

**N. Assignment and Subletting**

The rights and privileges granted hereunder shall not be assigned or transferred in any manner whatsoever by the Lessee without the prior written approval of the District. For the purpose of this paragraph, an assignment or transfer includes the sale of all, or a majority of all the legal and/or equitable interest in Lessee. In the event of a sale or transfer of ownership that is approved by the District, the District reserves the right to negotiate all terms and conditions relevant to the Agreement, including termination of the Agreement.

The Lessee shall not sublet any rights or privileges granted hereunder without the prior written approval of the District. In the event of a sublet that is approved by the District, the District shall receive the percentage rent designated in the Lease Agreement of Gross Revenues based upon the gross revenue from the operation of the sublease.

**O. Insurance**

1. **Worker's Compensation:**

The Lessee shall secure and maintain, at its own expense, during the Term all Workers's Compensation insurance required by California law for all Lessee's employees.

2. **Automobile Insurance:**

Lessee shall secure and maintain at its own expense during the Term Commercial Automobile Liability coverage, on a per accident basis, with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Lessee's vehicles (auto, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.

3. **Commercial General Liability Insurance:**

The Lessee shall secure and maintain at its own expense during the Term a minimum of One Million Dollars (\$1,000,000) combined single-limit commercial general liability insurance covering the Lessee, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage, personal injury, liquor liability, automobile and maintenance vehicle liability insurance.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Lessee's hold-harmless provision in Section P below. The liability insurance shall include coverage for products.

The Lessee agrees that the general liability insurance herein provided for shall be in effect at all times during the Term. In the event said insurance coverage expires at any time or times prior to or during the Term, Lessee agrees to provide the District at least consistent with provisions of this Lease Agreement, prior to any expiration date, a new certificate of insurance evidencing insurance coverage as provided for in this Lease Agreement for a term not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance and additional insured endorsements are subject to the approval of the District, the State of California and the California Fair Services Authority, and Lessee agrees that no work or services shall be performed, and no outdoor market shall be conducted, prior to the giving of such approval.

In the event the Lessee fails to keep in effect at all times insurance coverage as herein provided, the District may, in addition to any other remedies it may have, terminate this Lease Agreement.

The following statement regarding additional insured must be included on all insurance certificates: **"That the State of California, the 14<sup>th</sup> District Agricultural Association doing business as the Santa Cruz County Fair, Santa Cruz County and their respective agents, directors, officers, servants and employees are made additional insured, but only insofar as the operations under this contract are concerned."**

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2010, 2012, 2024 showing the State of California, the 14<sup>th</sup> District Agricultural Association, the Santa Cruz County Fair, Santa Cruz County and their agents, directors, officers, servants and employees are made additional insured on Lessee's general liability insurance policy and automobile liability policy.

1. Provisions relating to all insurance required by this Lease Agreement.

The insurance coverage provided by Lessee shall be primary and any separate coverage or protection available to the District or any other additional insured shall be secondary.

Nothing in the insurance requirements shall be construed as limited in any way the extent to which the Lessee may be held responsible for damages resulting from Lessee's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this contract shall not relieve the Lessee of liability in excess of such minimum coverage, nor shall it preclude the District from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to Lessee's indemnity obligations.

Upon request by the District, the Lessee shall immediately furnish a complete copy of any policy required by the Paragraph, including all endorsements, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

**P. Indemnity**

To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the District and its agents, directors and employees from and against all claims, damages, losses and expenses of every kind, nature and description (including, but not limited to, attorneys fees, expert fees and costs of suit), directly, or indirectly, arising from, or in any way related to the performance or nonperformance of this Lease Agreement, regardless of responsibility of negligence; by reason of death, injury, property damage, or any claim arising from the alleged violation of any state or federal accessibility law, statute or regulation, (including but not limited to, the Americans With Disabilities Act, and/or any state, local, successor or comparable provision of law) however caused or alleged to have been caused, and even though claimed to be due to the negligence of the District. Provided, however, that in no event shall Lessee be obligated to defend or indemnify the District with respect to the sole negligence or willful misconduct of the District, its employees, or agents (excluding the Lessee herein, or any of its employees or agents.)

**Q. Notice**

Lessee shall, within three (3) business days, report in writing to the District any incident that might reasonably be expected to result in any claim under any of the indemnity or insurance provision of this Agreement. The Lessee also agrees to provide the District with information as to the disposition of any claims within thirty (30) days following said disposition.

**R. Surrender of Premises and Holding Over**

1. Surrender of Premises during the Annual Fair:  
No Outdoor Market on Fair weekend.
2. Surrender of Premises:  
District shall not be required to give notice to quit possession at the expiration of the Term. Lessee covenants and agrees that on expiration of the Term, or on an earlier termination as hereinafter provided, it will peacefully surrender possession of the Premises in good condition, reasonable wear and tear expected, and District shall have the unconditional right to possession of the Premises.
3. Holding Over:  
No holding over permitted.

**S. Default and Termination of Agreement**

1. Notification of Default:  
In the event Lessee shall default in the performance of the terms or conditions of this Lease Agreement, the District may notify the Lessee of such default in writing. Failure on the part of the District to notify Lessee of default in accordance with this Section shall not be deemed a waiver by the District of District's rights on default of the Lessee or such default at a subsequent time and such notice will have the same effect as if promptly made.
2. Correction of Default:  
Within five (5) days of receipt of written notice of default from the District, Lessee shall correct such default if the default is with respect to any payment required to be made by the Lessee or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Lessee fails to correct the default to the satisfaction of the District within the time specified, or such greater period as the District may consent to by prior writing, the District shall have all rights accorded by law, or to terminate this Lease Agreement. The Lessee shall pay all costs and attorney's fees incurred by the District in the enforcement of any of the provisions in this Paragraph or in this Lease Agreement.
3. Labor Dispute  
In the event the Lessee cannot perform its obligations under this Agreement because of a labor dispute, such nonperformance will not be considered a default, provided, however, that in the event Lessee cannot perform said obligations because of a labor dispute, the District may provide for the continuation of a outdoor market, similar in operation to the outdoor market, until the labor dispute is settled. In the event the Lessee cannot perform said obligations for more than sixty (60) business days because of a labor dispute, the District shall have the option to terminate this Lease Agreement upon thirty (30) days notice.
4. Insolvency of Lessee:  
In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Lessee bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Lessee under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Lessee's affairs; or (d) appointing a receiver or a

liquidator or a trustee in bankruptcy or insolvency proceedings against it, or shall file a petition or seek reorganization under any state insolvency law, or shall admit in writing its inability to pay its debts generally as they become due, or take any action in furtherance of any of the aforesaid purposes, or shall abandon this Lease Agreement, then District may terminate this Lease Agreement. In the event of such termination, the Lessee shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.

5. Acceptance of Rental:

The acceptance of a rental agreement with a third party to operate the outdoor market shall not constitute a waiver or estoppel of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Lease Agreement.

**T. Destruction of Premises/Condemnation**

1. Destruction:

If all or any portion of the leased premises, is damaged or destroyed by any cause whatsoever [or by any cause for which Lessee is required under this Lease Agreement to carry insurance], Lessee shall at its own cost and expense promptly repair the damage and restore the leased premises to at least the same condition that existed before that damage or destruction, regardless of whether any insurance proceeds paid for the damage or destruction are sufficient to cover the entire cost of repair or restoration. During repair and restoration this Lease Agreement shall remain in full force and effect and the rent payable under this Lease Agreement shall not be abated in any way or to any extent. The proceeds of any insurance purchased by Lessee covering the damage or destruction shall be made available to Lessee for the repair or restoration required under this section.

2. Condemnation:

If all or any part of Premises is taken by any public or quasi-public agency or entity under the power of eminent domain during the term of this Lease Agreement (I) Either District or Lessee may terminate this Lease Agreement by giving the other ninety days written notice of termination; provided, however, that Lessee cannot terminate this Lease Agreement unless the portion of Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the uses permitted by this Lease Agreement and District is unable or unwilling to provide a substantially equivalent amount of space in lieu to the Premises sold or taken. Any and all damages and compensation awarded or paid because of a taking of the Leased Space or the Building shall belong to District, and Lessee shall have to claim against District or the entity exercising eminent domain power for the value of the unexpired term of this Lease Agreement or any other right arising from this Lease Agreement.

**U. General Conditions**

1. Contract Documents:

The Request for Proposals (RFP) and the entire proposal submitted by the Lessee in response to RFP Number 2012-01 are accepted by the District and incorporated into this Lease Agreement as contract documents. However, any conflict or discrepancy between the contract documents shall

be resolved in accordance with the following order of precedence: (1) this outdoor market Lease Agreement; (2) the RFP; and (3) the Lessee's submitted proposal.

2. Amendment or Modification of Agreement:

No agreement to modify, or modification of, this Agreement shall be binding on the District unless the same is reduced to writing, approved by the Board of Directors of the District, and executed by the District and approved by the appropriate State agencies.

3. Advertising, On-site Signage and Sponsorship:

All advertising shall be subject to the prior approval of District Staff, which approval will not be unreasonably withheld. Lessee shall not advertise in any manner or form on or about the Premises except by means of such signage or forms of mass media advertising approved by the District. Such approval must be in writing prior to display or mass media circulation. Advertising signage as well as operational signs are to be temporary in nature, placed only in the defined outdoor market premises and must be professionally made.

Lessee shall obtain prior written approval of District Staff prior to entering into any sponsorship agreement. The District will not unreasonably withhold its approval.

4. Storage:

There are no storage facilities located on the grounds of the District. Therefore, any storage required must be obtained and paid for at the sole expense of the operator at a facility located off grounds.

5. Emergency/Disaster Plan:

Lessee shall be required to create an emergency disaster plan for the outdoor market operation to be submitted for review and approval annually by the District. The emergency disaster plan requires the prior written approval of the District.

Lessee shall provide the District an "emergency key" in order to access all of the Lessee's facilities in case of an emergency or disaster.

The fairground is considered an Emergency Disaster Center and in the event of a declared emergency the district may reduce the size or scope or relocate the outdoor market.

6. Fencing:

The fencing surrounding the premises is permanent and is the property of the District, If the Lessee requires additional, temporary fencing to be installed, it will be at the sole cost and expense of the Lessee. Prior to installation of any fencing, written plans for fencing must be provided to the District for its written approval. Temporary fencing shall be removed at the conclusion of each outdoor market weekend and stored. It may not remain in place throughout the week.

7. Parking:

Lessee will manage all outdoor market parking operations pursuant to a plan to be approved annually by the District, in writing. All parking operations must be maintained in strict compliance

with the Americans with Disabilities Act, and/or any state, local, successor or comparable provision of law. Lessee shall have no right to operate parking for any interim events unless requested in writing to do so by the Lessor.

8. Refuse and Waste Removal:

All refuse and waste material created by the Lessee's operations in all areas of the premises and fairgrounds, including surrounding fence lines, parking areas and streets, shall be promptly collected and disposed of after each outdoor market day. Lessee shall be responsible for employing the necessary personnel, including supervisors, before, during and after hours of each operating day to comply with these provisions; providing sufficient waste receptacles and equipment at each location and making certain they are kept clean and properly serviced during and after each operating day, to the satisfaction of the District.

Wet refuse must be stored in water-tight containers pending removal from the premises. Grease and waste food shall be kept in closed metal containers until removed from the premises.

All equipment utilized by the Lessee for refuse and waste removal shall only be staged in the outdoor market premises or in designated storage area. Equipment is to be staged only one day prior to the outdoor market selling day and one day following the outdoor market selling days.

9. Lot Improvements:

The District shall give the Lessee at least thirty (30) days notice prior to making any improvements to the lot such as patching, striping, sewer repair or installations. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the outdoor market operation.

10. Other Events:

Lessee acknowledges that the District rents fairgrounds facilities and property outside of the premises for the operation of other public and private events. Lessee agrees to cooperate with District staff and to make necessary adjustments in the operation of the outdoor market to accommodate periods of increased or large event use on the fairgrounds.

11. Security and Law Enforcement

Lessee will develop and submit to the District for its written approval a security plan for the outdoor market operation. All expenses for implementation and operation of the security plan shall be the sole responsibility of the Lessee, Any and all law enforcement costs incurred or in connection with the operation of the outdoor market shall be the sole responsibility of the Lessee.

12. Prohibition of Liens:

Lessee shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, materialmen's, contractor's or subcontractor's liens arising from any claim for damages growing out of the work of construction repair, restoration, replacement or improvement on the premises or any other claim or demand howsoever the same may arise, but Lessee shall pay, cause to be paid or bond against the premises; and Lessee shall indemnify and hold District

and said premises free and harmless from all liability for any and all such liens, claims and demands, together with the attorney fees, costs and expenses in connection therewith.

13. ATM Service

The District has the exclusive right to provide ATM services on the premises and the fairgrounds. The District will coordinate with the Lessee to determine the need for and placement of ATM's within the premises, if ATM service is desired. The District shall have exclusive right to any and all revenues for ATM service.

**V. Notices**

Any and all notice given under this Lease Agreement or otherwise may be served by enclosing the notice in a sealed envelope addressed to the other party and sent by certified or registered mail with postage prepaid; or, by personal delivery. Notice shall be deemed given on the day of personal delivery, or five days after mailing. Notice shall be given as follows:

To the District:                   14<sup>th</sup> District Agricultural Association  
Santa Cruz County Fair  
2601 East Lake Ave.  
Santa Cruz, CA 95076  
Attention: Interim Manager

To the Lessee:                    ABC Company  
111XYZ Street  
XYZ City, CA 9XXXX

**W. Other Miscellaneous Provisions**

1. Successors:

Each and all of the terms and conditions herein contained shall be binding upon and shall inure to the benefit of the successors in the interest of the District and, subject to the provisions as to assignment, any successors in interest of the Lessee.

2. Time is of the Essence:

Time is of the essence in the performance of this Lease Agreement.

3. Independent Contractor:

Lessee is not an employee or agent of the District by reason of this Lease Agreement or otherwise. Lessee is an independent contractor and as between the District and the Lessee, the Lessee shall be solely responsible for its acts or omissions arising from, or relating to this Lease Agreement.

4. Applicable Law and Venue:

This Lease Agreement shall be interpreted and enforced in accordance with the laws of the State of California and shall be deemed to have been made, and shall be performed, in the State of California. In the event of litigation the parties acknowledge and agree that venue shall be in the superior court for the County of Santa Cruz.



5. Entire Agreement:  
This Lease Agreement, together with all Exhibits attached hereto, constitutes the entire Agreement between the parties. No promise, representation, warranty or covenant not included in this lease has been or is relied on by either party.
6. Headings:  
The headings of this Lease Agreement are inserted only as a matter of convenience and reference and do not define or limit to the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
7. Acceptance of Standard Contract Terms and Conditions:  
Lessee accepts and agrees to the Standard Contract Terms and Conditions set forth in Part IX (c), which are incorporated by this reference.
8. Severability:  
If any covenant, term, condition or provision of this Lease Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.
9. Successors:  
Subject to the provisions of this Lease Agreement regarding assignment and subletting, each and all of the covenants and conditions of this Lease Agreement shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.
10. Attorneys Fees and Costs:  
If either party brings any action or proceeding arising out of, or in any way related to this Lease Agreement, or any right or remedy under this Lease Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
11. Space Fees:  
Lessee shall furnish the District with a list of all sales prices for spaces, parking and any other charges of any kind whatsoever to be charged by the Lessee. If prices change at any point during the term of this contract, new pricing must be submitted to Lessee prior to the price change taking affect.

**PART IX  
FORMS SECTION**

**B. FORMS TO BE COMPLETED AND SUBMITTED BY BIDDER**

- Declaration of Compliance: Business & Professional Code Sections 21669 and 21669.1 (mandatory)
- Bidder/Contractor Status Form, completed and signed (mandatory)
- Financial Proposal Bid Form, completed and signed (mandatory)

**B. DOCUMENTS TO BE COMPLETED BY DISTRICT**

- Notice of Proposed Award, after proposed awardee is determined

**C. DOCUMENTS THAT ARE PART OF THE CONTRACT TO BE AWARDED**

- Outdoor Market Lease Terms and Conditions
- CFSA's Insurance Requirements, Revised 6/01/06
- RFP Number 2012-01
- Successful Bidder's Proposal to RFP Number 2012-01

**DECLARATION OF COMPLIANCE**  
**Business and Professional Code Sections 21669 and 21669.1**

**Page I of 2**

By my signature below, I, \_\_\_\_\_, verify that I am  
authorized to sign this declaration indicating \_\_\_\_\_  
(company name)

meets all of the minimum qualifications and requirements as specified in Business and Professional Code Sections 21669 and 21669.1.

- A.** I verify that as the outdoor market operator
1. I have a valid business license
  2. I have a valid California seller's permit number
  3. I can meet the insurance requirements as outlined in RFP #2012-01
  4. I agree to the hold harmless and indemnification agreement as outlined in RFP #2012-01, Section VII, P, "Indemnity"
- B.** The following is the list of individuals holding a 5% interest or more in the outdoor market operations company:  
(list name, address and phone number)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- C.** I certify that none of the individuals listed above have been convicted of any crime involving dishonesty or moral turpitude.
- D.** I certify that I have not knowingly been delinquent in any payments owed to a state or local entity and that I have not knowingly been in violation of any state or local law or ordinance related to public health or safety standards.

**DECLARATION OF COMPLIANCE**  
**Business and Professional Code Sections 21669 and 21669.1**  
**RFP NUMBER 2012-01**  
**Page 2 of 2**

Signed:

---

(name)

---

(title)

---

(company name)

---

(address)

---

(city, state, zip)

---

(phone number)

---

(date)

**BIDDER/CONTRACTOR STATUS FORM**

**RFP NUMBER 2012-01**

**Page 1 of 2**

Contractor's Name \_\_\_\_\_ County \_\_\_\_\_  
(full business name)

Address \_\_\_\_\_ Federal Employer ID # \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

(Principal place of business)

**STATUS OF CONTRACTOR PROPOSING TO DO BUSINESS** (PLEASE CHECK ONE)

- Individual
- Partnership
- Corporation

**Individual** (Please check one)      \_\_\_\_ Resident      \_\_\_\_ Non-Resident

If a sole proprietorship, state the true full name of sole proprietor:  
(i.e., John Roe Smith; not J. Roe Smith or not John R. Smith)

---

**Partnership** (Please check one)      \_\_\_\_ General Partnership      \_\_\_\_ Limited Partnership

if a partnership, list each partner identifying whether limited partner(s), stating their true full name and their interest in the partnership:

---

---

---

**Corporation**

Place and date of Incorporation

---

if not a California corporation in good standing, please state the date the corporation was authorized to do business in California: \_\_\_\_\_

**CURRENT OFFICERS:**

President: \_\_\_\_\_ Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_ Treasurer: \_\_\_\_\_

**BIDDER/CONTRACTOR STATUS FORM**

**RFP NUMBER 2012-01**

**Page 2 of 2**

**Fictitious Name**

If contractor is doing business under a fictitious business name and will be performing under the fictitious name, please attach a clearly legible copy of the current fictitious filing.

**Pending Litigation or Hearings**

Are any civil or criminal litigation or administrative hearings currently pending against the bidder's organization, owners, officers or employees? \_\_\_\_ Yes \_\_\_\_ No

If yes, please state the case number, number, agency or court where pending and status of litigation or hearing:

---

The DAA reserves the right to verify the information provided on this form by the bidder during the bid process.

I declare under penalty of perjury that the above information is true and correct and that I am authorized to sign this status form on behalf of the bidder/contractor.

---

(Print Name)

---

(Signature)

---

(Date)

**FINANCIAL PROPOSAL BID FORM**  
**Ground Lease for an Outdoor Market Operation**  
**REP NUMBER 20012-01**  
**Page 1 of 2**

This Financial Proposal Form must be completed by each Bidder and submitted within a sealed envelope entitled "RFP #2012-01, Ground Lease for an Outdoor Market Operation." The envelope is to be submitted to the 14<sup>th</sup> District Agricultural Association.

**PROPOSED FINANCIAL TERMS**

- A. The undersigned agrees to execute a Lease Agreement with the 14<sup>th</sup> District Agricultural Association to operate an outdoor market as set forth in this document.
- B. The undersigned agrees to the percentage rate with minimum guarantee per Lease Year. Any additional years will be negotiated upon exercising of options.

Lease Year 1: \$1000 / week minimum (52 weeks)

|                                       |       |
|---------------------------------------|-------|
| % of space rental                     | _____ |
| % of attendance / parking             | _____ |
| % of sales if space rental is % based | _____ |

Lease Year 2: \$1000 / week minimum (52 weeks)

|                                       |       |
|---------------------------------------|-------|
| % of space rental                     | _____ |
| % of attendance / parking             | _____ |
| % of sales if space rental is % based | _____ |

Lease Year 3: \$1000 / week minimum (52 weeks)

|                                       |       |
|---------------------------------------|-------|
| % of space rental                     | _____ |
| % of attendance / parking             | _____ |
| % of sales if space rental is % based | _____ |

- C. If selected as Lessee for the 14<sup>th</sup> District Agricultural Association, I/we agree to abide by all the terms and conditions outlined in the RFP#2012-01, and Addenda issued by the District and the Lease Agreement.
- D. I/we certify that I/we will attempt to commence operations of the Lease for the outdoor market no later than April 16, 2012 and must begin full operation by May 6, 2012.

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Firm or Company Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Taxpayer ID Number \_\_\_\_\_  
Signature Date \_\_\_\_\_

**EXHIBIT A  
GATE REPORT TEMPLATE**

| <b>Vendor Ticket Numbers</b>           |      |               |                    |               |              |               | <b>Gate Employee (initials)</b> |
|--|------|---------------|--------------------|---------------|--------------|---------------|---------------------------------|
| <b>START #</b>                         |      | <b>END #</b>  |                    | <b>Number</b> | <b>Rate</b>  | <b>Amount</b> |                                 |
| Total Tickets Received in the Stack    |      |               |                    |               |              |               |                                 |
| Tickets Sold                           |      |               |                    |               |              |               |                                 |
| Free Tickets                           |      |               |                    |               |              |               |                                 |
| Unsold Tickets Returned to the Manager |      |               |                    |               |              |               |                                 |
| Total Tickets                          |      |               |                    |               |              |               |                                 |
| Last Used Ticket Number                |      |               |                    |               |              |               |                                 |
|  |      |               |                    |               |              |               |                                 |
| <b>Food Vendor Ticket Numbers</b>      |      |               |                    |               |              |               |                                 |
| <b>START #</b>                         |      | <b>END #</b>  |                    |               |              |               |                                 |
| Total Tickets Received in the Stack    |      |               |                    |               |              |               |                                 |
| Tickets Sold                           |      |               |                    |               |              |               |                                 |
| Free Tickets                           |      |               |                    |               |              |               |                                 |
| Unsold Tickets Returned to the Manager |      |               |                    |               |              |               |                                 |
| Total Tickets                          |      |               |                    |               |              |               |                                 |
| Last Used Ticket Number                |      |               |                    |               |              |               |                                 |
|  |      |               |                    |               |              |               |                                 |
| <b>Parking Ticket Numbers</b>          |      |               |                    |               |              |               |                                 |
| <b>START #</b>                         |      | <b>END #</b>  |                    |               |              |               |                                 |
| Total Tickets Received in the Stack    |      |               |                    |               |              |               |                                 |
| Tickets Sold                           |      |               |                    |               |              |               |                                 |
| Free Tickets                           |      |               |                    |               |              |               |                                 |
| Unsold Tickets Returned to the Manager |      |               |                    |               |              |               |                                 |
| Total Tickets                          |      |               |                    |               |              |               |                                 |
| Last Used Ticket Number                |      |               |                    |               |              |               |                                 |
|  |      |               |                    |               |              |               |                                 |
|  |      |               |                    |               | <b>TOTAL</b> |               |                                 |
| Cash Pickups                           | Time | Gate Employee | Manager (initials) |               |              |               |                                 |
| 1. \$                                  |      |               |                    |               |              |               |                                 |
| 2. \$                                  |      |               |                    |               |              |               |                                 |
| 3. \$                                  |      |               |                    |               |              |               |                                 |
| 4. \$                                  |      |               |                    |               |              |               |                                 |
|  |      | <b>TOTAL</b>  |                    |               |              |               |                                 |

Gate Employee: \_\_\_\_\_  
Print

Manager Name: \_\_\_\_\_  
Print

Gate Employee: \_\_\_\_\_  
Signature

Manager Name: \_\_\_\_\_  
Signature



**EXHIBIT B  
WEEKLY REPORT TEMPLATE  
Page 1 of 2**

**Vendor Tickets**

| Rate | Sequence     |             | Number of Tickets |      |      |         | Dollars |
|------|--------------|-------------|-------------------|------|------|---------|---------|
|      | First Ticket | Last Ticket | Total             | Sold | Free | On file |         |
| 1    |              |             |                   |      |      |         |         |
| 2    |              |             |                   |      |      |         |         |
| 3    |              |             |                   |      |      |         |         |

**Subtotal** \_\_\_\_\_

**Food Vendor Tickets**

| Rate | Sequence     |             | Number of Tickets |      |      |         | Dollars |
|------|--------------|-------------|-------------------|------|------|---------|---------|
|      | First Ticket | Last Ticket | Total             | Sold | Free | On file |         |
| 1    |              |             |                   |      |      |         |         |
| 2    |              |             |                   |      |      |         |         |
| 3    |              |             |                   |      |      |         |         |

**Subtotal** \_\_\_\_\_

**Parking Tickets**

| Rate | Sequence     |             | Number of Tickets |      |      |         | Dollars |
|------|--------------|-------------|-------------------|------|------|---------|---------|
|      | First Ticket | Last Ticket | Total             | Sold | Free | On file |         |
| 1    |              |             |                   |      |      |         |         |
| 2    |              |             |                   |      |      |         |         |
| 3    |              |             |                   |      |      |         |         |

**Subtotal** \_\_\_\_\_

**Other Revenue**

| Rate | Sequence     |             | Number of Tickets |      |      |         | Dollars |
|------|--------------|-------------|-------------------|------|------|---------|---------|
|      | First Ticket | Last Ticket | Total             | Sold | Free | On file |         |
| 1    |              |             |                   |      |      |         |         |
| 2    |              |             |                   |      |      |         |         |
| 3    |              |             |                   |      |      |         |         |

**Subtotal** \_\_\_\_\_

**Total Weekly Revenue**

**EXHIBIT B  
WEEKLY REPORT TEMPLATE  
Page 2 of 2**

**Reconciliation of the Total Revenue to the Gate Reports**

| Information per Gate Report |           |               |               |
|-----------------------------|-----------|---------------|---------------|
| Date                        | Gate Name | Gate Employee | Total Revenue |
|                             |           |               |               |
|                             |           |               |               |
|                             |           |               |               |

**Total Revenue** \_\_\_\_\_

**Difference** \_\_\_\_\_

**Manager Name** \_\_\_\_\_

**Manager Signature** \_\_\_\_\_

**Lessee Name** \_\_\_\_\_

**Lessee Signature** \_\_\_\_\_

EXHIBIT D  
Premises Map

