



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: November 20, 2018

Title: Southwestern Fair Commission Inc. (SWFC) dba Pima County Fairgrounds

Introduction/Background:

SWFC, Inc., built the dragstrip in 1997. After construction was completed, SWFC managed and operated the dragstrip for nine years until 2006. In 2007, the SWFC Board decided the dragstrip was better suited to be managed and operated by an organization that was more familiar with the drag racing industry, so the Board contracted with several outside parties over the years. On August 29, 2017 Blue Bayou Motorsports Park, LLC was approved by the SWFC Board (after operating the dragstrip under several short term agreements) to continue the operation of the dragstrip on a more permanent basis under the attached Management Agreement for five years (11-01-2018 to 10-31-2023) with two additional five year options if there have not been any defaults during the agreement.

Discussion:

According to CTN-ED-16*136 Section 5 Assignments, Concessions and Subcontracts the SWFC is requesting approval from Pima County Board of Supervisors to approve the subcontract between the SWFC and Blue Bayou Motorsports Park, LLC to operate the Southwest International Raceway (SIR) aka Tucson Dragway. At the August 29, 2017 SWFC Board meeting, the Commission voted unanimously to approve Blue Bayou Motorsports, LLC as operator of the dragstrip and directed staff to work with legal counsel to finalize an agreement. Since that time Blue Bayou Motorsports, LLC has operated the dragstrip on short term agreements and has agreed to continue to operate and remain in full compliance with the attached Management Agreement.

Conclusion:

Approval by the Pima County Board of Supervisors will allow Southwestern Fair Commission to enter into a more permanent Management Agreement with Blue Bayou Motorsports Park, LLC for continuation of operations of Southwest International Raceway (SIR) aka Tucson Dragway.

Recommendation:

Pursuant to Lease Management Agreement (CTN-ED-16*136), the Southwestern Fair Commission, Inc., requests approval of the Management Agreement from Blue Bayou Motorsports Park, LLC for operation, management and maintenance of Southwest International Raceway (SIR) aka Tucson Dragway.

Fiscal Impact:

With an extended lease agreement the sub-lessee will be able to bring more racing to SIR. Bringing in more racers and fans from across the US, therefore increasing our tourism industry in Pima County with increased hotel room occupancy, car rentals, restaurants and commercial spending.

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ All

Department: Attractions & Tourism

Telephone: (520) 724-7355

Department Director Signature/Date: _____

Dave E. Sprad 11/6/18

Deputy County Administrator Signature/Date: _____



Deer 11/6/18

County Administrator Signature/Date: _____

C. D. Heltz 11/6/18

Memorandum

To: Chuck Huckelberry, County Administrator

Via: Jan Leshar, Chief Deputy County Administrator 
Diane Frisch, Director Attractions & Tourism 

From: Jon Baker, Executive Director, Southwestern Fair Commission (SWFC)

Date: September 7, 2018

Re: Southwestern International Raceway (SIR), AKA Tucson Dragway (dragstrip)

The following is a summary of the operations of Southwestern International Raceway (SIR).

Other motorized event venues within the 640-acre property managed by SWFC include Tucson Speedway (aka Tucson Raceway Park, TRP) and Tucson Kart Club. Pima County has agreements with other motor sport facility operators within Southeast Regional Park and they include, P-1 Kart Circuit Track and Pima Motorsports Park.

Southwestern Fair Commission, Inc. built the dragstrip in 1997. After construction was completed, SWFC managed and operated the dragstrip for nine years until 2006. In 2007, the SWFC board decided that the dragstrip was better suited to be managed and operated by an organization that was more familiar with the drag racing industry, so the board contracted with an outside party.

On March 20, 2007, Southwestern International Raceway, LLC (SIR, LLC) entered into a Management Agreement for the dragstrip, as approved by Pima County. This agreement was for an initial term of five years and included an option to extend for a second five-year term. SIR, LLC exercised its option to extend, which was documented by that Management Agreement dated January 1, 2012, and which would end on December 31, 2016 (termination date was confirmed by Correction of Scrivener's Error). SIR, LLC requested that the Agreement be assigned to International Racing Group, LLC (IRG). On August 1, 2013, SWFC approved the assignment as allowed in Section 5 of the Agreement (IRG later assigned to an affiliate in accordance with re-structuring, IRG remained responsible and therefore I am referring to those two IRG related entities as "IRG" here). IRG operated the dragstrip for more two plus years. In the summer of 2016, IRG identified Blue Bayou Motorsports as a potential new operator and assignee of the Management Agreement and began the process of seeking SWFC approval of assignment. Ultimately, however, IRG failed to comply with requirements of assignment and abandoned the dragstrip, breaching the Management Agreement. SWFC then evaluated its options to determine the best strategy for the dragstrip. SWFC determined that allowing Blue Bayou Motorsports to operate the dragstrip under a short-term agreement was the best course of action.

Blue Bayou Motorsports Park, LLC (Blue Bayou Motorsports) is operating the dragstrip on a short-term agreement basis. In fact, Blue Bayou Motorsports has operated the dragstrip under a succession of short term agreements with SWFC for more than 1 ½ years. Under the short-term agreements, Blue Bayou Motorsports has agreed to operate and remain in full compliance with the attached Management Agreement. SWFC has had an opportunity to evaluate Blue Bayou Motorsports performance during this time. Blue Bayou Motorsports has made a significant investment in the dragstrip facility, even during this period of operation on short-term agreements, and the dragstrip appears to be in good shape. Blue Bayou Motorsports has complied with SWFC's requests and has been good to work with. The principal of Blue Bayou is Jim Hughes (bio and related info. attached), a Pima County resident with a long-standing relationship with SIR. Jim's knowledge of the sport, the facility and the community has prepared him well for this long-term opportunity. SWFC conducted a due diligence review of the company and concluded that Jim and his team have the experience and financial backing to make the venture a successful one now and in the future. Based on all the above, SWFC concluded that Blue Bayou Motorsports is the best operator to manage the dragstrip facility.

Consequently, at the August 29, 2017 SWFC Board meeting, the Commission voted unanimously to approve the Blue Bayou Motorsports as operator of the dragstrip and directed staff to work with legal counsel to finalize an agreement. Since that time, Blue Bayou Motorsports continued to operate the dragstrip on short-term agreements while SWFC and Blue Bayou Motorsports worked on the terms of a new Management Agreement which has been submitted to Pima County for approval. Approval by the Pima County Board of Supervisors will allow for continuation of operations as Blue Bayou Motorsports intends to start their season immediately.

An addendum is currently in place through October 31, 2018 with a new sub-lease agreement to go before the Pima County Board of Supervisors per the Southwestern Fair Commission contract. The new agreement will be in effect November 1, 2018.

Attractions & Tourism recommends approval of this sub-lease.

Approved

C.H. Huckelberry

Not Approved

Date

9/17/18

**Management Agreement
Southwestern International Raceway at the Pima County Fairgrounds**

This Management Agreement (the "Agreement") is made effective as of NOV 1, 2018 ("Agreement Date"), by and between SOUTHWESTERN FAIR COMMISSION, INC., an Arizona nonprofit corporation ("SWFC"), and BLUE BAYOU MOTORSPORTS PARK LLC, an Arizona limited liability company ("Manager"). SWFC and Manager are sometimes individually referred to herein as a "party" and collectively as the "parties."

RECITALS

- A. SWFC occupies that real property known as the Pima County Fairgrounds (the "Fairgrounds"), all of Section 14, Township 16 South, Range 15 East, G.S.R.B.&M., Pima County, Arizona, together with the buildings and structures located thereon, pursuant to a Management Agreement ("County Agreement") with Pima County ("County"). Manager desires to occupy a portion of such property and operate the facility known as the Southwestern International Raceway ("Dragstrip") and other property within the outlined area on the map attached hereto as **Exhibit "A"** and incorporated herein by reference.
- B. SWFC is an Arizona nonprofit corporation organized for the purpose of participating and joining with other similar organizations, individuals, political subdivisions, and private for-profit business entities, in the conduct of public shows, fairs, exhibitions and similar events.
- C. Manager is an Arizona limited liability company organized for the purpose of promoting drag racing and related activities.
- D. Manager has operated the Dragstrip pursuant to the Management Agreement between SWFC and Manager, dated as of March 20, 2007, as amended ("Prior Agreement").
- E. SWFC and Manager wish to enter into this Agreement providing the new terms under which Manager shall operate, manage, maintain and improve the Dragstrip.

AGREEMENT

NOW THEREFORE, SWFC and Manager, in consideration of the mutual covenants set forth herein, agree and covenant as follows:

1. Management and Occupation of Dragstrip.

Manager agrees that it shall operate, manage, maintain and improve the Dragstrip at the Fairgrounds, and manage, maintain, repair and replace all improvements located thereon under the terms and conditions set forth in this Agreement. Manager shall provide all personal property and all equipment necessary to operate the Dragstrip; provided, however, during the term of this Agreement

Manager shall be permitted to use that personal property and equipment owned by SWFC and specifically described on **Exhibit "B"** attached hereto and incorporated herein by reference. SWFC agrees that, except as described herein, Manager shall have the exclusive right to use and occupy the Dragstrip and all improvements located thereon for the term of this Agreement.

Manager acknowledges that, through its prior occupation of the Dragstrip, it is familiar and satisfied with the condition of the Dragstrip, all related improvements and all equipment described on **Exhibit "B"** ("Equipment"). Manager shall complete all documentation necessary to transfer to Manager title to any vehicles listed on **Exhibit "B"** and, upon termination of this Agreement, title to such vehicles shall be transferred back to SWFC. Manager shall ensure that the vehicles are properly insured and all use of the vehicles complies with all applicable laws and regulations. Manager further acknowledges that due to its operations under the Prior Agreement it has had and opportunity to fully inspect all improvements, facilities, infrastructure and equipment, including without limitation the surface and other portions of the track, and Manager further acknowledges and agrees that all are provided to Manager under this Agreement and are accepted in "as is" condition, without representation or warranty of any sort and that neither SWFC nor the County are obligated to make any repairs whatsoever to the Dragstrip, any Equipment or improvements. Manager shall take all reasonable actions to maintain, safeguard and replace as needed, with equal or better quality, the Equipment during the term of this Agreement. Upon the termination of this Agreement, Manager shall return to SWFC the Equipment, or items of equal or better quality purchased in replacement of the Equipment, in the same condition as on the commencement of the Prior Agreement.

2. Term and Renewal .

The term of this Agreement shall be for a term of five (5) years commencing on the Agreement Date and ending upon the date that is five (5) years thereafter ("Term"). Provided that Manager is not then in default and there have not been repeated defaults in the prior calendar year as described in **Section 20.1.7** below, Manager may elect to renew this Agreement for one (1) additional Term of five (5) years and one (1) final Term which will commence upon the end of the prior Term and end on June 30, 2031, by delivering to SWFC, in accordance with **Section 22.13**, a written notice of renewal no later than six (6) months prior to the end of the then-current Term ("Option Exercise Date"). Upon the timely delivery of such a notice, this Agreement shall continue at the Rental Fee set forth in **Section 3.1** and on the other terms set forth in this Agreement. In the event Manager does not timely elect to renew prior to the Option Exercise Date, Manager shall have no further right to renew this Agreement.

3. Considerations.

3.1 Rental Fees. In further consideration of the use and occupancy of the Dragstrip as described in this Agreement, Manager shall pay to SWFC a monthly rental fee ("Rental Fee") as follows:

3.1.1 As described in **Exhibit "C"**, attached hereto and incorporated herein by reference, for the initial five (5) year Term, the Rental Fee shall be:

3.1.1.1 One Thousand Dollars (\$1,000.00) per month for months one through twelve ("Year One") of the Term.

3.1.1.2 One Thousand Seven Hundred and Fifty Dollars (\$1,750.00) per month for months thirteen through twenty-four ("Year Two") of the Term.

3.1.1.3 Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) per month for months twenty-five through thirty-six ("Year Three") of the Term.

3.1.1.4 Two Thousand Seven Hundred and Fifty (\$2,750.00) per month for months thirty-seven through forty-eight ("Year Four") of the Term.

3.1.1.5 Three Thousand Two Hundred and Fifty Dollars (\$3,250.00) per month for months forty-nine through sixty ("Year Five") of the Term.

3.1.2 All Rental Fees shall be due on the first day of each month.

3.1.3 For the first five (5) year renewal Term, if properly exercised, the Rental Fee shall be Four Thousand Dollars (\$4,000.00) per month.

3.1.4 For the final renewal Term, if properly exercised, the Rental Fee shall be Four Thousand Five Hundred Dollars (\$4,500.00) per month.

3.2 Credit for Certain Improvements. In lieu of paying the entire amount of the Rental Fee with a monetary payment, SWFC will provide a credit to Manager equal to the amount Manager expends on "Approved Improvements and Equipment" as described at **Section 3.2.2** below. Each month, Manager must pay a minimum portion of the Rental Fee in a monetary payment ("Minimum Monthly Monetary Payment"). The Minimum Monthly Monetary Payment for the Term of the Lease is set forth in **Exhibit "C"**. Subject to SWFC's approval, as described at **Section 3.2.2** below, Manager may receive a credit for the balance of the Rental Fee owed ("Maximum Monthly Potential Improvement Credit") for Approved Improvements and Equipment previously paid by Manager. The Maximum Monthly Potential Improvement Credit for the Term of the Lease is set forth in **Exhibit "C"**.

3.2.1 Amounts expended by Manager on Approved Improvements and Equipment may be carried over for the payment of future Rental Fees until the entire credit has been exhausted. For example, in the event that Manager expends \$3,000 on Approved Improvements and

Equipment prior to month twelve of Year 1 of the Term (and assuming no prior credit for such expenditures), (i) for month twelve of Year 1, Manager would make a \$500 monetary payment to SWFC and \$500 of the credit for Approved Improvements and Equipment would be applied to Rental Fees owed for that month; (ii) for each of months one, two and three of Year 2, Manager would make a \$1,000 monetary payment to SWFC, and \$750 of the credit for Approved Improvements and Equipment would be applied to Rental Fees owed for each of those months; and (iii) for month four of Year 2, Manager would make a \$1,500 monetary payment to SWFC, and the balance of the \$250 credit for Approved Improvements and Equipment would be applied to Rental Fees owed for that month.

- 3.2.2 As used in this Agreement, "Approved Improvements and Equipment" shall mean: capital improvements as defined in accordance with Generally Accepted Accounting Principles, and other improvements to the Dragstrip or personal property and equipment purchased by Manager and used at the Dragstrip. Manager shall submit in writing details related to items for which Manager is requesting credit as Approved Improvements and Equipment. In the event that SWFC determines the item is acceptable for credit as Approved Improvements and Equipment, and following Manager's submittal of the Improvement Documentation described at Section 3.2.3 below, Manager will receive a credit in the amount expended for subsequent monthly Rental Fees due under this Agreement, with the Maximum Monthly Potential Improvement Credit as described at Section 3.2.1. In no event will personal property or equipment be included as a credit on Rental Fees due under this Agreement unless the property or equipment is approved by Manager as described in this Agreement.
- 3.2.3 Manager shall obtain advance approval from SWFC of all proposed improvements and otherwise comply with requirements for Alterations as described at Section 6 below. Manager shall ensure that all improvements to and maintenance of the Dragstrip are consistent with all terms of this Agreement. The ownership of those improvements made pursuant to this Section shall be handled as described at Section 6.6; provided, however, Manager shall be permitted to use the improvements for the terms of this Agreement. Additionally, it is expressly acknowledged and agreed by Manager, that the ownership of all equipment accepted by SWFC as Approved Improvements and Equipment and included in the credit on Rental Fees as described at Section 3.2.1 above shall revert to SWFC upon expiration or earlier termination of this Agreement.
- 3.2.4 Manager shall deliver to SWFC copies of receipts and other documentation ("Improvement Documentation") evidencing all costs of Alterations and Approved Improvements and Equipment

completed by Manager, including substantiation for in-kind goods or services acceptable to Generally Accepted Accounting Standards. Manager shall deliver all Improvement Documentation within 30 days of completion of the applicable improvement and, by July 31 of each year, Manager shall deliver to SWFC all Improvement Documentation for Alterations and Approved Improvements and Equipment completed during the prior July 1 through June 30 period and not previously delivered to SWFC.

4. Permitted and Required Activities.

- 4.1 Operation of the Dragstrip.** Manager shall use the Dragstrip for the sole purpose of conducting motorized and drag racing related events, or allow others to conduct such events, as well as activities reasonably related thereto, under the terms set forth herein, all for the benefit of the public. No other use of the Dragstrip is permitted without advance written notice and consent of SWFC. Manager shall not conduct any racing or other noise producing events at the Dragstrip after 2:00 a.m. or any such earlier time as may be mandated by the County or any court or agency with jurisdiction over the Dragstrip. SWFC and its invitees shall be permitted access across the Dragstrip track at its current crossing location each year during the annual Pima County Fair, and the three (3) days prior to and three (3) days after the Pima County Fair. From time to time, SWFC may make additional requests to use some portion of the Dragstrip. Manager shall not unreasonably deny such a request, provided that the facility is available.
- 4.2 Conduct of Dragstrip by Manager.** Manager shall actively conduct motor sport operations at the Dragstrip in a manner that meets the reasonable needs of the Pima County motor sports community. Manager shall conduct its activities, and shall ensure that its employees, contractors, and all permissible users of the Dragstrip conduct their activities, in a safe and professional manner and in compliance with all applicable laws.
- 4.3 Access and Parking.** Manager and its invitees shall be permitted to use the Dawn Road entrances on the Fairgrounds in order to access the Dragstrip. Manager also shall be entitled to non-exclusive use of certain parking areas on the Fairgrounds subject to availability; provided, however, Manager must notify SWFC in advance of the intended use. Manager and its invitees and permitted users shall follow all applicable traffic and parking regulations.
- 4.4 Right of Public to Access Dragstrip.** The Dragstrip shall be open to the general public during public events, but may be closed to members of the general public for events that are scheduled for private use ("Special Event"). All utilization of the Dragstrip by third parties shall be scheduled and directed by and through the Manager. When the Dragstrip is open to the public, Manager shall provide suitable staffing for the specific event.

4.5 Fees. Manager may charge fees for the Dragstrip, Special Events and use of the Dragstrip. All fees will be retained by Manager for its use in connection with the use, operation and improvement of the Dragstrip. Fees may be subject to approval by County pursuant to the County Agreement.

4.6 Alcohol. Manager may serve and sell alcoholic beverages for consumption at the Dragstrip provided Manager complies with applicable liquor laws, including all requirements to obtain and maintain a liquor license, and provides SWFC and County with the required insurance set forth herein.

4.7 Signs. Manager may affix and maintain upon the Dragstrip such signs relating to the events held at the Dragstrip as Manager deems appropriate; provided, however, that all signs utilized by Manager on or about the Dragstrip, whether visible outside the Dragstrip or not, shall at all times comply with applicable provisions of the Pima County Sign Code and shall be installed and maintained at Manager's sole cost. Any and all advertising signs placed by Manager at the Dragstrip shall be immediately removed by Manager upon termination of this Agreement for any reason, and any damage resulting from such removal shall be repaired immediately by Manager at its sole cost. Manager shall not remove any operational or safety signage from the Fairgrounds or the Dragstrip. Manager shall pay for all costs of construction, erection, installation, maintenance and repair of any sign either currently in existence or to be erected or installed or otherwise placed at the Dragstrip. Manager shall, through coordination with SWFC, discuss any signs to be located on Fairgrounds property outside of the Dragstrip such as directional signs, and will not install without approval from SWFC.

4.8 SIR Name. SWFC has used the names "Southwestern International Raceway" and "SIR" (collectively, "Tradenames") as unregistered tradenames with respect to activities at the Dragstrip and has previously granted such use to others. During the term of this Agreement, Manager shall be entitled to use the Tradenames in connection with its activities at the Dragstrip. Upon the termination of this Agreement or in the event that Manager otherwise ceases operation at the Dragstrip, Manager shall immediately cease any use of the Tradenames and cause to file with any applicable governmental agency any documents necessary or convenient to indicate it is no longer using the Tradenames. Manager acknowledges and agrees that SWFC grants the rights to use the Tradenames without representation or warranty of any sort whatsoever. Manager may, at its option, elect to use such other names for the Dragstrip as Manager may deem appropriate subject to the reasonable advance approval of SWFC

5. Assignment, Concessions, and Subcontractors.

Except as permitted in this Agreement, Manager shall not, either voluntarily or by operation of law, assign or transfer this Agreement or any interest therein, or allow any other person (the employees, agents, servants and invitees of Manager

excepted) to occupy or use the Dragstrip, or any portion thereof, without first obtaining the written consent of SWFC, which consent shall not be unreasonably withheld. In the event that Manager desires to assign all of its rights to operate the Dragstrip (and not temporary or other rights as described in the succeeding paragraph), Manager shall reimburse SWFC for all legal, accounting and other fees incurred by SWFC in considering such an assignment. Manager's obligation to reimburse SWFC for such fees shall not be conditioned upon any approval of the assignment by SWFC or, if required, County.

It is expressly acknowledged by the parties that Manager shall be permitted to enter into agreements with third parties related to use of portions of, or facilities located at, the Dragstrip on a temporary basis, with such use not to exceed ten (10) days in length. Such agreements may include, without limitation, third party uses and operations for food and beverage operations, and other activities related to the Dragstrip. Manager also may hire third parties to perform services such as maintenance, construction and landscaping at the Dragstrip. Notwithstanding the above, Manager shall not delegate its overall responsibility for operations at the Dragstrip, and no delegation of duties or hiring of contractors shall in any way relieve Manager of its responsibilities hereunder.

All agreements entered into by Manager with respect to use of the TRP Facility shall require the user to carry liability insurance, with coverage at least as broad as ISO form CG 20 10, naming the County and SWFC as additional insureds, with limits of no less than Five Million Dollars (\$5,000,000.00); provided, however, limits on such coverage may be in a minimum amount of One Million Dollars (\$1,000,000.00) for strictly passive uses such as sponsorships, small strictly passive meetings and non-motor sport events, food and non-alcoholic beverage concessions, novelty and auto parts sales.

6. Alterations.

- 6.1 Approval Required.** Manager may not make any improvements, alterations, additions, or changes (collectively, "Alterations") to the Dragstrip or any improvements currently located thereon, without first obtaining the written consent of SWFC.
- 6.2 Process for Approval.** Manager shall provide SWFC with written notice of any proposed Alterations, and plans and specifications for the Alterations, not less than sixty (60) days before such Alterations are commenced. SWFC shall have the right to object to the plans and specifications within forty-five (45) days of receipt of Manager's notice. Failure to object in writing within the forty-five (45) day period shall be deemed approval.
- 6.3 Reasons for Disapproval.** SWFC shall not unreasonably withhold consent to proposed Alterations; provided, however, it shall be reasonable for SWFC to withhold consent if, among other reasons the proposed Alterations:

- 6.3.1 adversely affect the integrity of any structural, mechanical, or electrical system of any portion of the Dragstrip or affect the integrity of the Dragstrip or the Dragstrip features or its infrastructure;
 - 6.3.2 result in SWFC being required to perform any work that SWFC could otherwise avoid or defer;
 - 6.3.3 result in an increase in the premiums for any hazard or liability insurance carried by SWFC or result in an increased risk of liability or pose a safety hazard;
 - 6.3.4 result in an increase in the demand for utilities or services that SWFC provides to the Dragstrip; or
 - 6.3.5 are not approved by County pursuant to the County Agreement.
- 6.4 Purpose of Review of Plans and Specifications.** SWFC's review of the plans and specifications shall be solely for SWFC purposes and shall not imply SWFC's review for quality, design, legal compliance or other like matters. Accordingly, notwithstanding that any construction drawings are reviewed by SWFC or its architects, engineers, or consultants, SWFC shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in any construction drawings, and Manager's indemnity set forth in Section 15 of this Agreement shall specifically apply to the construction drawings. SWFC's review shall be to determine that the proposed Alterations are consistent with the purposes of this Agreement of providing motorized recreational opportunities for the benefit of the people of Pima County.
- 6.5 Construction Standards; Permits.** All work relating to any Alterations or other improvements or buildings shall be completed in a good and workmanlike manner, in conformance with industry standards, using new materials, and shall be diligently prosecuted to completion. Manager shall comply with applicable building codes, fire codes, zoning codes, and other laws, regulations and orders for any construction, whether of a permanent Alteration or a temporary structure, and shall obtain all applicable permits from regulatory agencies, including but not limited to the Pima County Development Services Department, the Pima County Flood Control District, and the State Fire Marshall.
- 6.6 Ownership of Alterations.** Manager agrees that, upon construction or installation, any building, structure or system at the Dragstrip which is considered a fixture or part of the real property, regardless of whether constructed or installed by Manager, shall be the property of the County pursuant to the County Agreement. Upon termination of this Agreement, SWFC shall be deemed the owner of any Alterations which are considered personal property. During the term of this Agreement, however, Manager shall have all rights to use Alterations of any type located at the Dragstrip unless otherwise noted or identified.

7. Repairs and Maintenance.

Manager shall, at Manager's sole cost and expense, keep the Dragstrip, including all buildings, improvements, and landscaping located thereon, and all exterior, interior, structural and mechanical components thereof, in good, clean, safe condition and repair except that Manager shall not be obligated to perform repairs or maintenance to the extent that such repairs or maintenance are required as a result of the negligence or intentional misconduct of the SWFC, its agents, employees, or contractors, which repairs and maintenance SWFC shall complete at SWFC's sole expense. Manager shall, at Manager's expense, make all repairs to the Dragstrip necessary by reason of the negligence or intentional misconduct of Manager, its employees, licensees, invitees, subcontractors, managers, servants or agents. Manager shall be responsible for proper disposal of all waste generated at the Dragstrip. Repairs to mechanical systems, such as HVAC, shall be performed promptly in order to minimize any waste of utilities or water.

8. Obligation to Reconstruct.

During the term of this Agreement, Manager shall maintain fire and casualty insurance on all improvements located on the Dragstrip and all of Manager's personal property. In the event the Dragstrip or any portion thereof is damaged by fire or other perils, Manager shall forthwith repair the damage, restoring the Dragstrip to the condition which existed prior to the casualty and this Agreement shall remain in full force and effect; provided, however, if SWFC and Manager agree that repair of the damage is not prudent in light of the existing use of the Dragstrip, Manager shall use any insurance funds received by Manager for another purpose related to the Dragstrip as agreed to by the parties. In the event of any such casualty which damages Manager's furniture, fixtures and/or equipment at the Dragstrip, Manager shall proceed with reasonable diligence to restore, repair or replace all of its personal property to the same condition which existed prior to the casualty. Manager shall continue the operation of the Dragstrip to the extent practicable during any period of reconstruction or restoration.

9. Liens and Encumbrances.

Manager shall keep the Dragstrip free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Manager.

10. SWFC's Option to Perform Maintenance and Repairs at Manager's Cost.

If Manager is in default hereunder (after the expiration of the cure period set forth in **Section 20.1.6** below) because it fails to perform its maintenance or repair obligations hereunder, in addition to the remedies set forth in **Section 20**, SWFC, without notice, may, but shall not be obligated to, perform Manager's obligations. All reasonable costs and expenses reasonably suffered or incurred by SWFC in performing these obligations, which shall accrue interest at a per annum rate of eight percent (8%), shall be considered additional Rent or Rental Fees and shall be paid by Manager to SWFC within thirty (30) days of notice thereof. Any such default by Manager shall not be considered cured until Manager has fully

reimbursed SWFC for the costs incurred in performing Manager's obligation hereunder plus interest.

11. Prohibited Activities.

11.1 Activities Outside the Permitted Activities. Manager shall not do or permit anything to be done on or about the Dragstrip nor bring or keep anything therein which is not within the permitted use of the Dragstrip as set forth in Section 4 above.

11.2 Activities not Insured or that Affect Insurance. Manager shall not conduct any activity or permit any activity to be conducted at the Dragstrip which is not covered by the insurance policies provided pursuant to Section 16 herein without first obtaining the written consent of SWFC and without providing additional insurance covering the activity or event and with coverage limits and carriers acceptable to SWFC. Manager shall not do or permit anything to be done in or about the Dragstrip nor bring or keep anything therein which will in any way increase the existing rate of or affect any fire or other insurance upon the Dragstrip or any of its contents or cause a cancellation of any insurance policy covering the Dragstrip or any part thereof or any of its contents.

11.3 Storage. Manager shall not store within the Dragstrip equipment, supplies, or scrap items, including without limitation tires, other than that to be used at the Dragstrip, or used in connection with activities described at Section 4 or the operation of Manager's business at the Dragstrip. Manager shall not store waste oil at the Dragstrip, and Manager shall ensure that waste oil is routinely removed from the Dragstrip and disposed of in compliance with all applicable laws.

11.4 Unlawful Activities. Manager shall not use the Dragstrip, or permit anything to be done in, on, or about the Dragstrip, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated (herein referred to as a "Law" or collectively as "Laws").

12. Books, Records, and Reports.

Manager shall keep and maintain proper and complete books, records and accounts of all its operations conducted pursuant to this Agreement, in a manner approved by SWFC, which shall be open for inspection and audit by the County, SWFC, or auditors of each of them, and the Arizona Auditor General, at all reasonable times. Each year, Manager shall submit to SWFC a complete copy of its filed tax return and an annual financial statement showing all income and expenses and a balance sheet within one hundred twenty (120) days of the close of Manager's fiscal year. Manager will assist in the preparation of a written inventory of all buildings, equipment and items of value at the Dragstrip belonging to or insured by the County, by June 30 or each year of the Term.

13. Security and Safety.

Manager shall be responsible for all security and safety relating to the Dragstrip and shall provide such security personnel and security and safety features sufficient to adequately protect the Dragstrip and persons at the Dragstrip from property damage or bodily injury.

14. Compliance with Laws.

Manager shall, at its sole cost and expense, promptly comply with all Laws in connection with Manager's use of the Dragstrip. Any changes in the governing laws, rules and regulations during the terms of this Agreement shall apply without the necessity of an amendment. The judgment of any court of competent jurisdiction or the admission of Manager in any action against Manager, whether SWFC be a party thereto or not, that Manager has violated any Law, shall be conclusive of that fact as between SWFC and Manager.

15. Indemnification.

To the fullest extent permitted by law, Manager shall indemnify, defend, and hold harmless SWFC and County, their respective officers, officials, volunteers, invitees, employees and agents from and against any and all losses, costs, or expenses (including reasonable attorney fees) incurred or suffered by SWFC or County as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of or related to any act, omission, fault or negligence by Manager, its agents, employees, invitees or anyone under its direction or control or acting on its behalf, or anyone permitted by Manager to conduct any activity at the Dragstrip, or in connection with any use or occupancy of the Dragstrip under the terms of this Agreement.

To the fullest extent permitted by law, SWFC shall indemnify, defend, and hold harmless Manager, its officers, employees and agents from and against any and all losses, costs or expenses (including reasonable attorney fees) incurred or suffered by Manager as a result of any damages to property or injuries to persons (including death), or any suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, but only to the extent that such losses, costs or expenses result in vicarious/derivative liability to Manager arising out of any act, omission, negligence, misconduct, or other fault of SWFC, its officers, officials, agents, employees, volunteers, or in connection with SWFC's or such person's or entity's use or occupancy of the Dragstrip.

16. Insurance.

16.1 Insurance Required. Manager shall, at Manager's sole cost and expense, obtain and maintain, during the term of this Agreement and any renewals thereof, the following insurance policies:

- 16.1.1 Commercial General Liability insurance with coverage at least as broad as ISO form CG 00 01 in an amount not less than Five Million Dollars (\$5,000,000.00) covering the Dragstrip furnished to the Manager for exclusive use, endorsed to include SWFC and Pima County and its Districts as additional insureds with coverage at least as broad as ISO form CG 20 10, and covering all activities carried out at the Dragstrip. Manager may require that this insurance be carried by those users of the Dragstrip who actually carry out the activities being insured, but this shall not relieve Manager of any responsibility for ensuring that the proper coverage is in place, and Manager shall be liable to SWFC and County for any failure by such third party to furnish the required insurance. Subject to the breadth and limitations of coverage described above, this insurance policy shall cover activities conducted at the Dragstrip to the extent that they are not covered by insurance policies of users of the Dragstrip. All policies shall include bodily injury, property damage, broad form contractual liability and completed operations coverage.
- 16.1.2 Commercial Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 in an amount not less than One Million Dollars (\$1,000,000.00) for vehicles used in the operations at the Dragstrip.
- 16.1.3 Workers' Compensation insurance with statutory limits, with Employers' Liability coverage in an amount not less than One Million Dollars (\$1,000,000.00) per injury, illness, or disease.
- 16.1.4 Commercial Property, and Boiler and Machinery insurance with coverage at least as broad as ISO forms CP 00 01 and BM 00 20, covering selected items of SWFC's personal property located at the Dragstrip, and Manager's personal property which ownership is scheduled to revert to SWFC upon the termination of the lease.
- 16.1.5 Liquor Liability insurance is required if Manager serves, a third party user of the Dragstrip serves, or Manager sub-contracts with a third party to serve, alcoholic beverages at the TRP Facility. Such insurance shall be in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, endorsed to include SWFC and County as additional insureds.
- 16.1.5.1 The insurance coverage required by this Section can be provided by either an endorsement to the General Liability policy or by a separate Liquor Liability policy.

16.1.5.2 If Manager serves alcohol, Manager shall require all servers to obtain the BASIC Title 4 training Certificate of Completion prior to serving alcohol at the Dragstrip.

16.1.5.3 If Manager contracts with a third party to serve alcohol, Manager shall require that the third party have in place the insurance required by this **Section 16.1.5.** and Manager shall obtain Host Liquor Liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, endorsed to include SWFC and County as additional insureds. This insurance shall be in place prior to any service of alcohol at the Dragstrip.

16.1.6 Special Events insurance in an amount acceptable to SWFC for any event held at the Dragstrip not covered by other insurance provided as required above. SWFC reserves the right to increase the limits on coverage for unique or high risk Special Events.

16.2 Other Required Provisions.

16.2.1 All policies, excluding the Workers' Compensation policy, shall be endorsed to include County and SWFC as additional insureds with the following additional insured language: "Pima County and Southwestern Fair Commission, Inc., each are named as additional insureds with respect to liability arising out of the activities performed by or on behalf of Manager."

16.2.2 On insurance policies where County and SWFC are named as additional insureds, County and SWFC each shall be additional insureds to the full limits of liability of the policy even if those limits of liability are in excess of those required by this Agreement.

16.2.3 Insurance coverage obtained by Manager shall not be limited to the liability assumed by Manager under the indemnification provisions of this Agreement.

16.2.4 Manager's insurance shall be primary insurance and non-contributory with respect to all other available sources

16.3 Insurance Certificates and Copies of Policies. Manager shall provide SWFC with current certificates of insurance which shall show SWFC and County as additional insureds where required. All certificates of insurance must provide for guaranteed thirty (30) days written notice of cancellation, non-renewal or material change. Manager shall cause certified copies of

its insurance policies and the policies of third parties using the Dragstrip, to be delivered to SWFC upon written request

- 16.4 Waiver of Subrogation.** Each party waives its claims and subrogation rights against the other for losses covered by property insurance coverage.
- 16.5 Changes to Insurance Requirements.** SWFC reserves the right to increase the limits or types of coverage from time to time as determined to be in the best interests of SWFC by SWFC or of County by the Pima County Risk Manager.
- 16.6 Injury Reports.** Manager shall provide notice to SWFC, on a form approved by SWFC, of any significant injury, defined as any injury likely to result in head or spinal injury, loss of a limb or organ, or serious burns or scarring, within one (1) business day of Manager becoming aware of such injury. SWFC may reasonably redefine the reporting requirement by written notification to Manager. Manager shall retain records related to significant injuries for not less than seven (7) years and shall fully cooperate in any investigation of injuries or damage by SWFC or Pima County Risk Management or its insurers, agents or contractors. Nothing in this Section shall be construed as a request by SWFC or County, or a requirement, that Manager provide any information in contravention of the Health Insurance Portability and Accountability Act.

17. Environmental Compliance.

- 17.1 Hazardous Materials Prohibited; Clean Air Act.** Manager shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, or used in or about the Dragstrip or the Fairgrounds by Manager, its agents, employees, contractors or invitees, without the prior written consent of SWFC other than such Hazardous Materials which are necessary or useful to Manager's business and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Materials. Manager's operations at the Dragstrip shall comply with applicable provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* and Arizona Revised Statutes, Title 49, Chapter 3.
- 17.2 Indemnity.** If (i) Manager breaches the obligations stated in **Section 17.1**, (ii) the presence (whether consented to by SWFC or otherwise) of Hazardous Material at the Dragstrip, the Fairgrounds or on or in the soil or ground water under or adjacent to the Dragstrip or the Fairgrounds is caused or permitted by Manager, its agents, employees, contractors or invitees results in contamination of the Dragstrip, the Fairgrounds or such soil or ground water, (iii) contamination of the Dragstrip, the Fairgrounds or such soil or ground water by Hazardous Material otherwise occurs for which Manager is legally liable to SWFC or County for damage resulting therefrom, or (iv) contamination occurs elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Dragstrip or the Fairgrounds, then Manager shall indemnify, protect, defend and hold

SWFC and County harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities or losses (including, without limitation, diminution in value of the Dragstrip, the Fairgrounds or any part thereof, damages for the loss or restriction on use of usable space or of any amenity of the Dragstrip, the Fairgrounds or any part thereof, damages arising from any adverse impact on marketing of space with respect to the Dragstrip, the Fairgrounds or any part thereof, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arose or arises during or after the term of this Agreement as a result of such contamination. The foregoing obligation of Manager to indemnify, protect, defend and hold SWFC and County harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, restoration or other response work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present, as a result of any action or inaction on the part of Manager, its agents, employees, contractors or invitees, at the Dragstrip, the Fairgrounds or the soil or ground water on, under or adjacent to the Dragstrip, the Fairgrounds or elsewhere in connection with the transportation by Manager of Hazardous Material to or from the Dragstrip or the Fairgrounds.

- 17.3 Clean-Up.** Without limiting the foregoing, if the presence of any Hazardous Material on or at the Dragstrip, the Fairgrounds or the soil or ground water under or adjacent to the Dragstrip or the Fairgrounds caused or permitted by Manager, or its agents, employees, contractors or invitees results in any suspected contamination of the Dragstrip, the Fairgrounds the soil or ground water under or adjacent to the Dragstrip or the Fairgrounds, Manager shall promptly notify SWFC in writing and take all actions, at Manager's sole cost and expense, as are necessary to return the Dragstrip, the Fairgrounds or such soil or ground water to the condition existing prior to the introduction of any such Hazardous Material to the Dragstrip, the Fairgrounds or to such soil or ground water; provided that SWFC's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect of the Dragstrip or the Fairgrounds.
- 17.4 Pre-existing Contamination.** SWFC agrees that any Hazardous Materials contaminating the Dragstrip prior to possession of the Dragstrip or the Fairgrounds by Manager, which possession commenced under the Prior Agreement, shall not result in liability for Manager under this **Section 17** except to the extent such contamination is aggravated by the action or inaction of Manager.
- 17.5 Notices Regarding Environmental Conditions.** Manager shall, within five (5) business days following receipt thereof, provide SWFC with a copy of (i) any notice from any local, state or federal governmental authority of any violation or administrative or judicial order or complaint having been filed or

about to be filed against Manager or the Dragstrip alleging any violation of any local, state or federal environmental law or regulation or requiring Manager to take any action with respect to any release on or at the Dragstrip or the soil or ground water under or adjacent to the Dragstrip of Hazardous Material, or (ii) any notices from a federal, state or local governmental agency or private party alleging that Manager may be liable or responsible for cleanup, remedial, removal, restoration or other response costs in connection with Hazardous Material on or at the Dragstrip, the Fairgrounds or the soil or ground water under or adjacent to the Dragstrip, the Fairgrounds or any damages caused by such release.

17.6 Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Arizona or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous waste" under NRS 459.400 *et. seq.*, (ii) petroleum, (iii) asbestos, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et. seq.* (42 U.S.C. 6903), (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et. seq.* (42 U.S.C. 9601) or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. 6991 *et seq.*

17.7 Survival. Manager's and SWFC's obligations under this **Section 17** shall survive the expiration or earlier termination of this Agreement and vacation of the Dragstrip.

18. Utilities, Services and Taxes.

18.1 Manager Responsible for Utilities. Manager shall be responsible to pay for all gas, heat, light, power, water, sewer charges, telephone service, garbage removal, pest and termite service, security services and all other services and utilities (collectively "Utilities") supplied to the Dragstrip and any buildings located within the Dragstrip, together with any taxes thereon. Manager acknowledges that notwithstanding that Manager may not currently, or may not at any point in the future, be charged for any or all of the Utilities as of the Agreement Date, SWFC reserves the right to charge for all Utilities at any point and with advance notice to Manager. In the event Manager is charged for any Utilities, Manager shall promptly pay all reasonable charges for the Utilities.

18.2 Interruption of Services. SWFC or Pima County shall not be liable to Manager if any utilities or services, whether or not furnished by SWFC hereunder, are interrupted or terminated because of necessary repairs,

installation or improvements, or any other cause beyond SWFC's reasonable control, nor shall any such termination relieve Manager of any of its obligations under this Agreement. SWFC shall have no liability to Manager if any utility service is interrupted by the utility provider or otherwise.

- 18.3 Taxes.** Manager shall be responsible for payment of all taxes, whether real property taxes or assessments, personal property taxes, income taxes, or any other taxes, if any, that are or may be assessed relating to the Dragstrip or any use of the Dragstrip by Manager.

19. Entry by SWFC and County.

SWFC and County may enter the Dragstrip upon reasonable advance notice to Manager to inspect the same. SWFC and County shall use reasonable efforts to not interrupt Manager's business at the Dragstrip. SWFC and County at any and all times shall have the right to use any and all means which SWFC and County may deem proper to open gates or doors in an emergency in order to obtain entry to the Dragstrip, without liability to Manager, except for any failure to exercise due care for Manager's property or personnel. Manager will provide SWFC and County with twelve (12) annual credentials for use by SWFC Board and staff for access during all events conducted at the Dragstrip.

20. Default and Remedies.

- 20.1 Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by Manager:

20.1.1 Operation of the Dragstrip. The vacating or abandonment of the Dragstrip, or any portion thereof, by Manager, where such failure shall continue for a period of ten (10) days after notice of such default is sent by SWFC to Manager.

20.1.2 Insurance. The failure by Manager to maintain insurance policies as set forth above for any time; in which event Manager must immediately cease all operations at the Dragstrip until such insurance is obtained. In the event of such a default, SWFC may, but shall not be obligated to, obtain the required insurance coverage, in which event Manager shall within ten (10) days of demand, reimburse and pay to SWFC the full amount of any costs and premiums expended by SWFC to obtain such coverage, including any deductible or losses within a self-insurance retention.

20.1.3 Rental Fees. The failure by Manager to timely pay the Rental Fee, where such failure shall continue for a period of ten (10) days after notice of such default is sent by SWFC to Manager.

- 20.1.4 **Maintenance and Repair.** The failure by Manager to maintain and repair the Dragstrip and all improvements as described in this Agreement.
- 20.1.5 **Gross Negligence.** Manager or any employee or agent of Manager acts in a grossly negligent or intentionally wrongful manner and such results in significant injury to any person, as described at Section 16.6 above, or substantial damage to any improvements at the Dragstrip.
- 20.1.6 **Other Covenants.** The failure by Manager to observe or perform any other of the covenants, conditions or provisions of this Agreement to be observed or performed by Manager, where such failure shall continue for a period of thirty (30) days after written notice thereof by SWFC to Manager; provided, however, that if the nature of Manager's default is such that more than thirty (30) days are reasonably required for its cure, then Manager shall not be deemed to be in default if Manager commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion provided such cure is completed within sixty (60) days of the notice by SWFC.
- 20.1.7 **Repeated Defaults.** More than two (2) defaults by Manager, as set forth in Sections 20.1.1 to 20.1.6 above, in any calendar year, even if Manager cures the defaults within the applicable grace periods set forth above, shall be deemed a "repeated default".
- 20.2 **Remedies.** Either party may pursue any remedies provided by law and in equity for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement, including without limitation, the right to recover all future Rental Fees, subject to the duty to mitigate.
21. **County Agreement.** Manager acknowledges that SWFC's rights to the use and occupation of the Fairgrounds, including the Dragstrip, are created by and as reflected in the County Agreement. Manager acknowledges and agrees that if SWFC's rights to occupy the Fairgrounds terminate for any reason whatsoever, Manager's rights to occupy the Dragstrip and this Agreement shall simultaneously terminate, and the parties shall have no further rights or obligations hereunder except those rights or obligations which are intended to survive the termination of the Agreement. Manager further acknowledges and agrees that the County has certain rights with respect to the Dragstrip as described in the County Agreement and Manager agrees to comply with all requests of County or SWFC which are consistent with County's rights under the County Agreement.

22. General Provisions.

- 22.1 Waiver.** The waiver by SWFC or Manager of any term, covenant or condition herein shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein. The subsequent acceptance of Rental Fees hereunder by SWFC shall not be deemed to be a waiver of any preceding default by Manager of any term, covenant or condition of this Agreement, other than the failure of Manager to pay the particular Rental Fees so accepted regardless of SWFC's knowledge of such preceding default at the time of the acceptance of such Rental Fees. Failure of SWFC or Manager to insist upon strict performance of any provision or to exercise any remedy hereunder shall not be deemed to be a waiver by such party of any breach relating to such provision or giving rise to such remedy. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party against whom such waiver is sought to be enforced. Nothing herein shall require or obligate SWFC to accept any partial payment of the then current and owed Rental Fees due or partial performance of obligations under this Agreement. SWFC may, in its sole discretion, accept partial payments of amounts due or partial performance of obligations hereunder, such acceptance of partial payments of Rental Fees due or partial performance of obligations hereunder shall in no way be considered or constitute a waiver by SWFC of any failure on the part of Manager to timely pay Rental Fees due or perform the obligations hereunder nor shall such acceptance be considered an accordance satisfaction of the Rental Fees then due under this Agreement.
- 22.2 Marginal Headings.** The marginal headings and Section titles to the Sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.
- 22.3 Time.** Time is of the essence for this Agreement and each and all of its provisions in which performance is a factor.
- 22.4 Days.** All references in this Agreement to "days" shall be construed as calendar days unless there is a specific reference to business days.
- 22.5 Successors and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the successors and permitted assigns of the parties hereto.
- 22.6 Assignment.** Subject to Section 5 above, Manager may only assign its rights under this Agreement with the approval of SWFC and, if applicable, the County, which approval may not be unreasonably withheld. An assignment shall be deemed to include a transfer of the majority control of Manager (transfer of the majority of interests if Manager is a limited liability company or a majority of the shares if Manager is a corporation) or Jim Hughes ceasing to act as a manager of Manager.

- 22.7 Recordation.** A short form memorandum of this Agreement may be recorded by either party; such party shall give the other party a copy of the memorandum.
- 22.8 Prior Agreements, Amendments, and Modifications.** This Agreement constitutes the entire agreement between the parties and contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior or contemporaneous agreements or understanding pertaining to any such matters, shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by both parties hereto.
- 22.9 Partial Invalidity.** Any provision of this Agreement which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect unless an essential purpose of this Agreement would be defeated by loss of the invalid, void, or illegal provision.
- 22.10 Choice of Law and Venue.** This Agreement shall be governed by the laws of the State of Arizona and the venue for any action in regard hereto shall be the Pima County Superior Court.
- 22.11 Attorneys' Fees.** In the event of any action or proceeding brought by either party against the other under this Agreement the prevailing party shall be entitled to recover its expenses and costs, including its attorneys' fees and expert witness fees, in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable.
- 22.12 Approvals.** Unless otherwise provided herein, whenever the approval of a party is required by this Agreement, such approval shall be given within thirty (30) days, in writing. If such written approval is not given with such time period, the request shall be deemed disapproved and denied. Unless otherwise noted herein, when the approval or consent of SWFC is required hereunder, it shall mean the written consent of the SWFC Executive Director or his designee. Except in the case of Manager's right to extend this Agreement as described at **Section 2** above, the approval of the SWFC Board shall be required for any extension or amendment of this Agreement. The approval of the Board of Supervisors of Pima County shall be required for extension, renewal or amendment of the Agreement except for extensions permissible under **Section 2** of this Agreement or for any other extension, renewal or amendment that is for no more than three (3) years.
- 22.13 Notices.** Wherever this Agreement requires or permits notice or demand to be given by either party to the other, such notice or demand shall be in writing and given or served either personally or by either regular mail, certified mail (return receipt requested), or by commercial delivery service such as Federal Express or United Parcel Service, addressed to the parties

at the addresses specified below and to the following individuals. Notice shall be deemed effective upon personal delivery, three (3) days after deposit, postage prepaid, in the U.S. mail, or one (1) day after overnight delivery *via* commercial delivery service. Either party may change such address by written notice to the other as herein provided.

If notice is to SWFC:

Southwestern Fair Commission, Inc.
Attn: Executive Director
11300 S. Houghton Road
Tucson, Arizona 85747
Email: _____

If notice is to Manager:

Blue Bayou Motorsports Park LLC
Attention: Manager
11300 S. Houghton Road
Tucson, Arizona 85747
Email: _____

Additionally, each party shall provide to the other party a duplicate copy of the notice by email, which duplicate emailed copy is intended as a courtesy and shall not serve as the official notice for purposes of this Section.

22.14 Authority of Manager. Each individual executing this Agreement on behalf of Manager represents and warrants that he or she has full authority to do so and that this Agreement binds the company. If any court or administrative agency determines that SWFC does not have authority to enter into this Agreement, SWFC shall not be liable to Manager or any third party by reason of such determination or by reason of this Agreement.

22.15 Books and Records. Manager shall retain, and shall include in any written agreements with subcontractors or other parties performing services at Dragstrip, a provision requiring that all such parties retain, for inspection and audit by the County and the Arizona Auditor General, all books, accounts, reports, files and other records relating to performance of the Agreement for a period of five (5) years after its completion or if later, until any related proceedings initiated during the five (5) year period are completed. Upon request by SWFC or its' auditors, a legible copy or the original of all such records shall be produced by the Manager at the administrative office of SWFC.

22.16 Compliance with ADA. Manager shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including

28 CFR Parts 35 and 36, at any time Manager remodels, renovates, or has new construction.

22.17 Non-Discrimination in Employment. Manager shall not unlawfully discriminate against any employee or applicant for employment because of that person's age, race, color, religion, sex, disability, national origin or any other status or basis protected by law in the course of carrying out Manager's duties pursuant to this Agreement. Manager shall comply with the provisions of Arizona Executive Orders 75-5, as amended by Executive Order 99-4, which are incorporated into this Agreement by reference as if set forth in full herein.

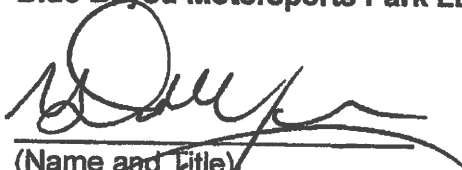
22.18 Non-Appropriation. Notwithstanding any other provision in this Agreement, if there are not sufficient appropriated and available monies for the purpose of maintaining SWFC's obligations under this Agreement, SWFC shall have no further obligation to Manager; provided, however, Manager may continue to occupy Dragstrip if Manager performs all of Manager's obligations under this Agreement.

22.19 Independent Contractor. The status of the Manager shall be that of an independent contractor. Neither Manager, nor Manager's officers, agents or employees shall be considered an employee of SWFC or be entitled to receive any employment-related compensation and fringe benefits through SWFC. Manager shall be responsible for payment of all federal, state and local taxes associated with Manager's activities and shall indemnify and hold SWFC and County harmless from any and all liability which SWFC and County may incur because of Manager's failure to pay such taxes. Manager shall be solely responsible for program development and operation.


IN WITNESS WHEREOF, the parties hereto duly authorized have executed this Agreement.

Blue Bayou Motorsports Park LLC

Southwestern Fair Commission, Inc.


(Name and Title)
Date: 8/7/18

Mike DeLong
Track manager


Jon Baker, Executive Director
Date: 8/7/18

Attest:

EXHIBIT A

Map



Exhibit B (as of 3-26-17)

Tower - First Floor

- 1 Craftsman Rollaway Tool Box
- 1 Gas Hand Held Leaf Blower
- 2 Billy Goat Blowers - Gas
- 1 Jig Saw
- 1 Skill Saw
- 1 Small Air Compressor

Tower - Second Floor

- 1 Tall Black File Cabinet
- 2 Drawer Hutch
- 1 Small Monitor Miracle
- 1 HP Laser Printer #3104JB1969
- 1 Johnson UAF Radio
- 1 Printer Okidata #903B0129232
- 1 APS Power Backup
- 1 Compulink Computer
- 1 Fm Stereo Transmitter
- 1 RCA 5 Disc CD Changer
- 3 Peavey Power Amplifier
- 1 Stand for PA Equipment
- 2 Fixed Microphones with 4-10' Cord
- 1 ICOM Radio (12 Channel) with Charger

EMS Medical Equipment

- 2 Extrication Boards
- 4 Ambulance Gurneys

Track Office

- 1 Metal Desk
- 2 2 Drawer File Cabinet
- 1 4 Drawer Black File Cabinet

Ticket Booth

- 1 Black Telephone
- 3 3 Drawer Plastic Storage Bins
- 8 Small Plastic Bins
- 7 Cash Drawers
- 1 Small Microwave

ET Booth:

- 1 Avery Weigh Tronix Scale
- 1 Star Tan Printer
- 1 Citizen Tan Printer
- 1 Citizen Black Printer

Headset & Hand Mic

- 2 Motorola - HMN9021A Dual Head Set with Mic
- 2 OTTO Dual Head Set with Mic
- 1 Painless Dual Head Set with Mic
- 2 Racing Electronic Dual Head Set with Mic

Exhibit B (as of 3-26-17)

Starting Line & Track Prep

- 2 Large Propane Tanks with Hand Trucks
- 2 Compulink Starter Trees
- 2 Shield (Blinders) For Starter Tree
- 1 Dial-In Box
- 1 Starter Switch
- 2 Starter Tree Cables (one in ground, one as back up)
- 1 Hand Cart for Tree, Brooms & Mops
- 1 Starting Line Calibration Tool (Roll Out Wheel)

Novelty Booth

- 2 Glass Display Counters
- 2 Clothing Racks

Vehicles & Heavy Equipment

- 1 Small Hyster Fork Lift
- 1 Ford New Holland 3930 45HP Diesel Tractor
- 1 Sweepster Hydraulic Broom
- 1 1991 Ford F350 Fire Truck
- 1 1984 Ford "Box" Rescue Van
- 1 1989 Ford Rescue Van

Moveable Structures and Other Items

- 1 Musco Lighting System
- 2 Scoreboards
- 1 Scale
- 1 Restroom Trailer
- 5 Sets Of Aluminum Bleachers
- 1 Office Trailer
- 1 Ticket Booth
- 1 ET Booth
- 1 Tower
- 2 Beer Stands

EXHIBIT C

| Lease Year or Term | Monthly Rental Fee | Minimum Monthly Monetary Payment | Maximum Monthly Potential Improvement Credit |
|---------------------------------|--------------------|----------------------------------|--|
| Year 1 of initial Term | \$1,000.00 | \$500.00 | \$500.00 |
| Year 2 of initial Term | \$1,750.00 | \$1,000.00 | \$750.00 |
| Year 3 of initial Term | \$2,250.00 | \$1,250.00 | \$1,000.00 |
| Year 4 of initial Term | \$2,750.00 | \$1,500.00 | \$1,250.00 |
| Year 5 of initial Term | \$3,250.00 | \$1,750.00 | \$1,500.00 |
| Each Year of First Renewal Term | \$4,000.00 | \$2,000.00 | \$2,000.00 |
| Each Year of Final Renewal Term | \$4,500.00 | \$2,500.00 | \$2,000.00 |