

Agreement for Use of Indian River County Fairgrounds

THIS AGREEMENT (the "Agreement") is made and entered into this ____ day of January, 2017, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, 1801 21st Street, Vero Beach, FL 32960 ("County") and the INDIAN RIVER COUNTY FAIR ASSOCIATION, INC., a Florida not-for-profit corporation, 1818 Commerce Avenue, Vero Beach, FL 32960 ("Indian River Association") and VERO BEACH FIREFIGHTERS ASSOCIATION INC., a Florida not-for-profit corporation, 1818 Commerce Avenue, Vero Beach, FL 32960 ("Vero Beach Association").

BACKGROUND RECITALS

WHEREAS, the Indian River Association proposes to conduct a public fair or exposition in accordance with Chapter 616, Florida Statutes ("County Fair"), in calendar years 2017, 2018 and 2019 for the benefit and development of the educational, agricultural, horticultural, livestock, and other resources of Indian River County; and

WHEREAS, the County is willing to support the Association in operating the County Fair by allowing the Association to use the Indian River County Fairgrounds, as described on Exhibit A attached hereto ("Fairgrounds"); and

WHEREAS, the Indian River Association's use of the Fairgrounds to operate the County Fair serves a legitimate public purpose and is authorized by Florida Statutes section 616.11; and

WHEREAS, the County and the Indian River Association had entered into prior agreements to operate the County Fair; the most recent agreement was dated October 5, 2010, which was renewed on October 1, 2013; and

WHEREAS, the Indian River Association and the Vero Beach Association, (collectively referred to as the "Associations"), will jointly operate the County Fair:

NOW, THEREFORE, for and in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Associations mutually agree as follows:

1. Permit. In accordance with Florida Statutes section 616.15, the Indian River Association shall annually apply to the State of Florida, Department of Agriculture and Consumer Services, Division of Marketing and Development, Bureau of State Farmers' Markets ("State") for a fair permit to conduct an annual County Fair in calendar years 2017, 2018 and 2019 and the Association shall be responsible for all matters pertaining to such permitting.

2. Schedule. In each year during the term of this Agreement, if a permit is issued by the State to the Indian River Association, the Indian River Association shall

have priority at the Fairgrounds in scheduling the County Fair if the Indian River Association notifies the County in writing through the County's Parks Director of the proposed dates by May 30, in which case the County shall let the Indian River Association use and occupy the Fairgrounds during a period not exceeding twenty-one (21) days in March of the following year. In the event the Indian River Association fails to notify the County of the following year's County Fair dates by May 30, the County may allow the Association to operate the County Fair at the Fairgrounds in March of the following year, absent previously scheduled conflicting events.

3. Contracts/Notice to Certain Parties. It shall be the responsibility of the Associations to arrange for all contracts for amusements, entertainment, and any commercial exhibits or matters that it determines will enhance the County Fair. The Associations are also responsible to provide timely notice to the Indian River County Animal Control Division and The Humane Society of Vero Beach and Indian River County, Inc. when and if the Associations will have animals present at the County Fair that are not associated with the 4-H exhibitions, so that the required inspections may be performed before and during the County Fair.

4. Structures/Insurance of Contracting Parties. Any person or organization contracting with the Associations shall provide its own temporary structure with the approval of the Associations. The County shall have no obligation to provide such structures. Any contracting person or organizations shall have proof of liability insurance acceptable to the County and the Associations. Acceptance by the County shall not be unreasonably withheld.

5. Volunteers/Security. The Associations shall provide volunteer and other help to staff the County Fair. Any subcontract for operation or administration of the County Fair shall be subject to the County's prior review and approval. The Associations shall provide adequate security for the County Fair and shall provide sufficient volunteers or paid security guards to maintain crowd control, to the County's satisfaction, at all times while the County Fair is underway.

6. Electricity. The Associations shall provide electricity and pay all electricity cost while the County Fair is open as well as for those dates on which the County Fair is being set up and removed.

7. Accounting. The Associations shall maintain records in accordance with sound accounting practices and procedures showing all costs, expenses, as well as all receipts and proceeds from the County Fair. The Associations shall, at their sole expense, cause a state certified public accountant to conduct a review, based on sound accounting practices and procedures, of the Associations and of any person or entity that operates or administers the County Fair. The Associations shall submit copies of the reviews to the County on or before September 30 of each year that the Associations operate the County Fair. If the Associations fail to submit copies of the reviews in a timely manner, the Associations shall pay to the County an administrative charge of Ten and No/100 Dollars (\$10.00) for each calendar day after September 30 that the copies

of the reviews are not submitted. All books and records of the Associations and of any person or entity that operates or administers the County Fair shall be public records and shall be provided to the County upon the County's request. In addition to the above-stated accounting and auditing requirements, the Associations shall conduct all accounting and auditing required by law. The Associations shall maintain records, in a form acceptable to the County, of all funds received and expended in connection with the County Fair. All such records shall be provided to the County upon request. The Associations shall effectuate internal controls and procedures, subject to the County's approval, regarding the receipt and expenditure of all funds. Such internal controls and procedures shall include documentation and verification of all gate receipts and invoices and admissions and enumeration of admissions.

8. Insurance. The Associations shall purchase liability insurance coverage in an amount of not less than \$1,000,000 per individual injury and \$5,000,000 per occurrence during the term of the County Fair. On all insurance policies the County shall be named as additional insured on the policy and copies of the policy or a certificate of insurance shall be submitted to the County at least two weeks prior to the start of the County Fair. The insurance company must be licensed to issue insurance policies in the state of Florida, and must be rated at least A-VII per Best's Key Rating Guide. The policy must be "occurrence" and not "claims made," and the certificate of insurance must provide that the County be given a thirty (30) day written notice of insurance company's intent to cancel or terminate the policy of insurance. In addition, the Associations must provide proof of insurance from the amusement/midway company in the amount of \$1,000,000 per occurrence/\$5,000,000 aggregate, adding County as an additional insured and subject to all above insurance requirements necessary for the Associations.

9. Release/Indemnification. The Associations hereby release and agree to defend, hold harmless and indemnify the County, and the County's commissioners, officers, employees, and agents (collectively, for the purposes of this paragraph, "County"), from and against any and all claims for damages, costs, third party liabilities, judgments, and expenses (including reasonable attorneys' fees) for personal injury, wrongful death or property damage, arising out of or relating to the County Fair (collectively "Claims"), except that the Associations' obligation to defend, hold harmless and indemnify the County shall not apply to Claims which are judicially determined to have been caused by County's negligence or intentional misconduct.

10. Expenses/Payment of Fee to County. Associations shall be responsible for the payment and approval of all expenses arising from and related to the promotion and operation of the County Fair, and shall defend, hold harmless and indemnify the County from and against any such expenses, including reasonable attorneys' fees. The County shall have no liability for such expenses. Associations shall pay to County on or before September 30 of each year during the term of this Agreement that the Associations operate the County Fair, ten percent of the gross revenue from the County Fair as a fee for the use of the Fairgrounds, to be held by the County in a separate account, which the County shall use for future Fairgrounds improvements. The Indian

River County Board of County Commissioners may waive or defer the fee or a portion thereof described in this section in the event of extenuating circumstances which result in an aggregate net loss for the County Fair for that year.

11. Trash/Traffic Control Devices. The County will provide trash containers and garbage collection. The Associations will pay for water service and sewage pickup for the County Fair. The County may provide up to thirty (30) traffic barricades and up to thirty (30) traffic cones with four (4) lighting trees for the Associations' use exclusively in connection with the County Fair if, in the County's Public Works Director's sole discretion, such traffic barriers and traffic cones and lighting trees are available for such use. If the County's Public Works Director provides such traffic barricades, traffic cones and lighting trees for use in connection with the County Fair, the Associations shall retrieve them from the County's storage location, and then return them to the same storage location or where the County's Public Works Director otherwise directs, within five (5) days following conclusion of such year's County Fair. The Associations shall replace, at the Associations' expense, within thirty (30) days following conclusion of such year's County Fair, any of the County's lighting trees, traffic barricades and traffic cones that are damaged, lost, or stolen while in the Associations' custody.

12. Sanitation. The Associations shall provide sanitation and adequate restroom facilities, in accordance with all applicable laws and regulations and to the County's satisfaction, for persons attending the County Fair.

13. Staffing. The Associations shall endeavor in good faith to procure a midway and provide staff to operate the County Fair. However, in the event that the Associations fail to enter into a contract to provide a midway or if the Associations determine that the Associations cannot adequately staff the County Fair, then Associations shall provide written notice to County at least sixty (60) days before the County Fair is to open that it will not manage the County Fair, in which case the County may take whatever steps it deems appropriate.

14. First Amendment Activities. The Associations agree to provide reasonable accommodation for any activities which are protected by the First Amendment of the United States Constitution. Such accommodation may be in accordance with existing Fair rules, provided that such rules are consistent with the First Amendment and applicable law.

15. Termination. Any party may terminate this Agreement or propose amending this Agreement by providing written notice to the other party by November 1 of the year preceding the following year's County Fair. The term of this Agreement shall be from January __, 2017 through October 31, 2019, unless sooner terminated as provided herein.

16. Governing Law/Venue/Liability. This Agreement shall be governed by the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River

County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida. The Associations liability under this Agreement shall be joint and several, and the compromise of any claim arising under this Agreement with, or the release of, either of the Associations shall not constitute a compromise with, or a release of, the other Borrower.

17. Background Recitals. The Background Recitals set forth above are true and correct and form a material part of this Agreement.

18. Presuit Mediation. In the event of a dispute between the parties, prior to the filing of any lawsuit, the parties shall (i) select a mutually acceptable certified mediator, and (ii) participate in good faith in mediation to attempt to resolve the dispute. Only if mediation proceeds to impasse without resolution of the dispute, may either party file a lawsuit relating to the dispute.

IN WITNESS WHEREOF, the proper officials of County and Association have executed this Agreement, effective on the date first written above.

**INDIAN RIVER COUNTY
Board OF COUNTY COMMISSIONERS**

INDIAN RIVER COUNTY FAIR ASSOCIATION

By: _____
Joseph E. Flescher, Chairman

By: _____
Print name: _____
Title: _____

Approved _____

VERO BEACH FIREFIGHTERS ASSOCIATION, INC.

ATTEST:

Jeffrey R. Smith Clerk of Court and
Comptroller

By: _____
Print name: _____
Title: _____

By: _____

Deputy Clerk

APPROVED BY:

Jason E. Brown. County Administrator

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY

Dylan Reingold, County Attorney