



Board of Directors Agenda Report

MEETING DATE: JUNE 24, 2021 **ITEM NUMBER:** 9A

SUBJECT: Review of Current Contract for the Operation of the Equestrian Center and Vote on Direction to Staff

DATE: June 18, 2021

FROM: Michele Richards, CEO

PRESENTATION BY: Michele Richards, CEO

RECOMMENDATION

At the Board of Directors' discretion.

BACKGROUND

At the May 27, 2021 Board of Directors meeting, Doug Lofstrom presented the Equestrian Center Study as part of the Leadership Committee's report.

Chair Rubalcava-Garcia indicated that the study would be included in the Board's upcoming strategic planning process, but asked that the Board review the current rental agreement for operation of the Equestrian Center and vote on direction to staff for moving forward. The current rental agreement contains a carry-over clause which allows for continuation on a month-to-month basis.

The Board will review and discuss the agreement to provide staff direction. A copy of the rental agreement is attached.



December 26, 2012

This Letter of Understanding ("LOU"), effective March 1, 2013, is entered into between the 32nd District Agricultural Association ("District") and Equestrian Services II, Inc. ("Contractor").

The District is exercising option year five (5) of five (5) extending the original contract term for a period of one (1) year, commencing March 1, 2013 through February 28, 2014.

Equestrian Center Restated Rental Agreement Terms and Conditions Page 7, Part 11 is modified as follows: Contractor shall reimburse the District for the cost of water and electricity used based upon the cost of water and electricity for those portions of the Premises or facilities that are not individually metered by a utility service provider. Upon creation of this LOU, the monthly rate for electricity is \$2,750.00 and water is \$250.00. These rates are subject to change as usage and utility rates fluctuate. The District will provide the Contractor with a copy of the electricity or water bill(s) upon request. Contractor shall pay the full amount within five (5) days of its receipt of each bill or invoice for electricity or water, or for any other utility bill. The basis and calculation for all estimates can be reviewed by Contractor and are subject to approval by the District. Contractor is responsible for the cost of any and all phone service on the Premises in addition to reimbursement for diesel fuel, billed monthly to the Contractor at the District's cost.

Equestrian Center Restated Rental Agreement Terms and Conditions Page 10, Part 21.b. is modified as follows:

Contractor agrees the yearly rent shall be the greater of:

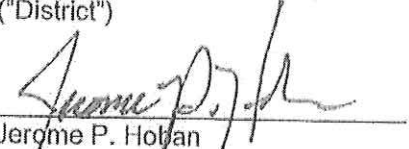
- (1) Minimum monthly installment of \$3,000.00,
- (2) Ten percent (10%) of Contractor's monthly gross revenue each month,
- (3) Payment terms will conform to subparts (c) and (d) of this Paragraph 21.

The District reserves the right to terminate any contract, at any time, by giving the Contractor notice in writing at least thirty (30) days prior to the date when such termination shall become effective. Such termination shall relieve the District of further payment, obligations, and/or performances required in the terms of the contract.

Except as otherwise expressly stated in this LOU, this LOU shall not be construed to modify, change, alter, supersede, or in any way amend the Equestrian Center Restated Rental Agreement Terms and Conditions, dated March 1, 2009 between the District and the Contractor. The Equestrian Center Restated Rental Agreement Terms and Conditions is hereby reaffirmed and republished by this LOU and incorporated into this LOU by reference.

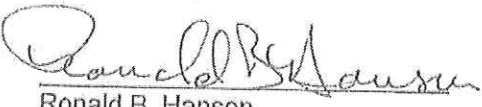
Accepted and agreed:

32nd District Agricultural Association
("District")


Jerome P. Hoffman
Chief Executive Officer

Dated: 1-7-13

Equestrian Services II, Inc.
("Contractor")


Ronald B. Hanson
President

1/4/13
Dated:

EQUESTRIAN CENTER RESTATED RENTAL AGREEMENT TERMS AND CONDITIONS

This Restated Rental Agreement ("Rental Agreement" or "Restated Rental Agreement") is entered into this 1 day of March, 2009 ("Rental Commencement Date") between the 32nd District Agricultural Association / OC Fair and Event Center ("District") and Equestrian Services II, Inc., a California Corporation ("Contractor").

1. Term

The Term is one (1) year, commencing on the Rental Commencement Date.

The District, in its sole and exclusive discretion, shall have the option to extend the Term for an additional four (4), one (1) year periods by giving the Contractor written notice of extension on or before the 90th day prior to expiration of the original Term. If Contractor wishes to extend the Term for an additional one (1) year period, subject to the sole and exclusive discretion of the District, Contractor shall give District written notice of its request to extend the Term on or before the 180th day prior to expiration of the previous Term. The District shall have the discretion to re-negotiate any and all terms in this Rental Agreement, and any written notice of extension shall also give notice of any terms subject to re-negotiation.

2. Uses

The property subject to this Rental Agreement ("the Premises") consists of approximately 7.5 acres, and is described in Exhibit "B" attached to this Rental Agreement, and incorporated by this reference. The Premises shall be used for the boarding of horses and approved related equestrian activities, and for no other purpose, unless agreed to in writing by the parties, pursuant to Section 27 (b) of this Rental Agreement. Approved related equestrian activities are as follows: lessons, training, tack storage, storage of horse trailers, equestrian clinics, horse shows and the sale of equestrian products/services.

The Equestrian Center facilities that are subject to this Rental Agreement ("facilities") are described in Exhibit "C" attached to this Rental Agreement and incorporated by this reference.

3. Compliance With All Laws

Contractor shall comply with all applicable laws, rules, and regulations and orders existing during the term of this Rental Agreement, including obtaining and maintaining all necessary permits and licenses. Contractor acknowledges and warrants that it is, or will make itself, knowledgeable of all pertinent laws, rules, ordinances, regulations, or other requirements having the force of law affecting the operation of the equestrian center, the facilities, and the Premises, including but not limited to, health and safety, hazardous materials, pest control activities, accessibility, historical preservation, environmental impacts, and building codes and regulations.

a. Hazardous Materials

Contractor shall not keep, store or sell on the Premises any goods, merchandise, or materials which are in any way explosive or hazardous.

b. Accessibility

Without limiting the obligations of Contractor for compliance with all laws, and the terms of this agreement, Contractor shall be solely responsible for complying with the requirements of the Americans With Disabilities Act of 1990, (Titles I, II and III ("ADA") (Title 42 United States Code sections 12101, *et seq.*), the Rehabilitation Act of 1973, Government Code sections 4450, *et seq.*, Government Code section 7250, *et seq.*, Civil Code sections 51, *et seq.*, and any and all successor statutes, and all related regulations, guidelines and amendments. Compliance shall be at Contractor's sole cost and expense. Contractor shall obtain the written approval of the District before commencing any work on the Premises pursuant to this subparagraph.

c. District Rules and Regulations

Contractor shall comply with all rules and regulations that are adopted by the District for the safety, care and cleanliness of the equestrian center and the preservation of good order on the Premises. The rules and regulations are listed in Exhibit A attached hereto and incorporated by this reference. District reserves the sole right to add, change, amend and/or modify any rules and regulations pertaining to the operations of the equestrian center, at any time, and from time to time, which are in the best interest of the District.

d. Use and Occupancy

Contractor 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. Contractor 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 set aside and defined by the District. Storage is restricted to those items used in general operation of the equestrian center. Storage of personal items at any time is prohibited. Contractor will not conduct or permit to be conducted on the Premises any business or any act, which is or may be contrary to, or in violation of, any Federal, State or Local law or regulation.

4. Limitations on Use

The Contractor acknowledges that the Premises are located in close proximity to civic and governmental buildings, educational institutions, and residential areas. Contractor agrees that it will not create, engage in, or permit any condition upon the Premises that the District, in its sole

and exclusive discretion, determines is inappropriate to the neighborhood in which the Premises are located.

5. Condition of the Equestrian Center

Contractor accepts the Premises and the facilities as being in good order, condition and repair, unless otherwise specified in writing, and agrees that on the last day of the Term, or sooner termination of this Rental Agreement, to surrender up to District the Premises and the facilities, together with any appurtenances or improvements, in the same or better condition as when received.

6. Improvements, Maintenance and Repairs

a. Maintenance

Contractor agrees to maintain the equestrian center in good and safe condition at all times at its sole cost and expense. Contractor shall, to the satisfaction of the District, and at Contractor's sole cost and expense, keep and maintain the equestrian center, the Premises, and the facilities, including but not limited to, the fire alarm system, plumbing, electrical and lighting installations, carpentry, masonry, painting, cleaning, and housekeeping, all landscaping, and improvements of any kind that may be erected, installed, or made thereon in good condition and in repair, making such repairs and replacements as appropriate or necessary.

The term "maintenance", for the purpose of this Rental Agreement, includes, but is not limited to: (1) all repairs to real property improvements necessary to maintain the Premises and the facilities in good condition and repair; (2) to preserve the Premises and the facilities for their intended purpose for an optimum useful life; and, (3) full compliance with all federal, state, and local statutes, laws, rules, codes, regulations and ordinances.

b. Repairs

Contractor shall perform at Contractor's sole cost and expense any and all repairs to existing facilities, whether structural or otherwise, if damaged as a result of use. Additionally, Contractor shall perform at Contractor's sole cost and expense any and all repairs to the equestrian center whether structural or otherwise, and construct and install new facilities, which are necessary to accommodate the full use and occupancy of the facilities for the purpose of operating the equestrian center.

c. Improvements; District Authorization; Title

No structures, improvements or facilities shall be constructed, erected, altered, modified, demolished, or repairs made within the occupied premises by

Contractor without prior written consent of the District, which shall be given in its sole and exclusive discretion. All improvements constructed by Contractor within the occupied premises shall be constructed and maintained in strict compliance with District standards and all applicable statutes, laws, codes, ordinances and regulations.

Approval by District of such plans and specifications, or any other approvals, shall be for scope and quality of work and shall not relieve Contractor of the obligation to construct and maintain facilities, or carry out any other obligations, in accordance with any and all applicable statutes, laws, codes, ordinances, governmental requirements, or regulations, or any other standards ordinarily applied to such work or activity.

Title to all improvements made to the Premises during the Term of this Rental Agreement shall vest in the District and Contractor shall deliver said improvements, together with all buildings, structures, and other improvements constituting the premises to District at termination of this Rental Agreement in good condition and repair at least to the level as the facilities exist at inception of this Rental Agreement, free and clear of all claims or liens to or against them by Contractor, or other parties.

d. Monthly Report

At the request of the District, Contractor shall provide to the District a monthly maintenance schedule and list of repairs completed during the preceding month.

e. Equipment Expenses

Contractor shall bear all costs and expenses for the purchase, lease, rental, or other provision of all equipment required to perform the work under this Rental Agreement, including, but not limited to, water trucks, tractors, utility vehicles, power tools and hand tools.

7. Equestrian Center Operations

Contractor shall operate and manage the equestrian center in a competent and efficient manner in accordance with equestrian industry standards and consistent with District's rules and regulations.

The following tasks must be performed by the Contractor on a daily basis:

1. Daily cleaning of all stalls, including, but not limited to removal of horse manure and management of horse urine in each stall.
2. Daily removal of horse manure from all areas of the Premises, including, but not limited to, riding arenas, turnouts, and barn aisles.
3. Daily inspection, filling, and cleaning of stall horse waterers.

4. Twice-daily feeding of horses boarded at the facility.
5. Riding arenas shall be dragged and watered at least once each day. Contractor shall drag and water the riding arenas on a more frequent basis when required for weather conditions and riding activity, or as may be reasonably required by the District.
6. Daily removal of trash from trash receptacles and placed in approved trash bin.
7. Daily cleaning and maintenance of facility restrooms. Contractor is responsible to provide restroom supplies.
8. Seal riding arenas during periods of inclement weather.

Contractor shall provide bedding for all stalls, which shall be replaced when required in accordance with equestrian industry standards.

No later than June 1, 2009, Contractor is to submit to District for review the waste removal plan for the equestrian center. Contractor shall pay all costs and expenses for removal of horse manure, bedding material and trash from the Premises. All waste removal shall be performed in strict compliance with all federal, state, and local statutes, laws, codes, ordinances, and regulations.

Contractor shall at all times provide and maintain a quality riding arena footing consistent with equestrian industry standards.

Contractor's hours of operations shall not commence earlier than 6:00 A.M. or conclude later than 10:00 P.M., absent prior written approval from the District.

Contractor shall operate the Premises at all times in a dignified, neat and careful manner, so that the business conducted by Contractor on the Premises equals or exceeds those standards of quality, neatness and freedom from noise, pollution, smoke and other unsightly or unsanitary conditions as is typical of the neighborhood in which the Premises are located.

8. Entry and Inspection

a. Right of Entry

District reserves the right to enter the Premises at reasonable times to carry out any facility management or business purpose in or about the Premises, to inspect the Premises to determine if the Contractor is in compliance with this Rental Agreement, and any other matters deemed appropriate by the District. Any entry by the District shall not result in any abatement of rent.

b. Entry for Disasters and Emergencies

In the event of an earthquake, flood, fire or any other natural disaster or emergency situation, the District reserves the right to enter onto the Premises at any time during the Contractor's use thereof to undertake emergency actions or to

make emergency repairs. Contractor shall take adequate precautions and plans for contingencies to meet these operating requirements.

c. Entry for Repairs

Contractor shall permit designated agents of the District to enter the Premises for the purpose of accomplishing repairs or replacements where the Contractor is obligated to make such repairs or replacements and has failed to do so after a notice given by the District in compliance with this Paragraph. No entry by, or on behalf of, the District on the Premises shall cause or constitute a termination of the Rental Agreement or be deemed to constitute an interference with the possession of the Premises by Contractor.

Should Contractor fail, neglect, or refuse to undertake and complete any required maintenance, the District shall have the right to perform such maintenance or repairs for the Contractor after giving the Contractor 10 days written notice of its intent to perform such maintenance or repairs. In this event, the Contractor shall reimburse the District for all costs incurred by the District within five days after an invoice is given to the Contractor by the District. The District shall not be obligated to make any repairs to maintain any improvements on the Premises. The Contractor hereby expressly waives the right to make repairs at the expense of the District, and the benefit of the provisions of Sections 1941 and 1942 of the Civil Code.

9. Signs

No signs, logos, names, placards, or advertising matter shall be inscribed, painted, or affixed upon the Premises, circulated, or published, without the prior written consent of the District, and only consistent with the purposes of this Rental Agreement.

Provided, however, that Contractor will be responsible to provide visible and ample information signage detailing all equestrian center rules and regulations.

10. Destruction/Condemnation

If the Premises are damaged to an extent that cannot be lawfully repaired within sixty (60) days after the date of damage as determined by the District in its sole and exclusive discretion, this Contract may be terminated by written notice of either party.

If all or any portion of the Premises is condemned by any governmental agency or authority, any party to this Rental Agreement may, upon written notice given within sixty (60) days after the taking, transfer or relocation, terminate this Rental Agreement. Any termination notice given pursuant to this Paragraph 10 shall be effective thirty (30) days after delivery in accordance with Paragraph 27(g) below.

11. Utilities

Contractor shall reimburse District for the cost of water and electricity used based upon the cost of water and electricity for those portions of the Premises or facilities that are not individually metered by a utility service provider. The District will provide the Contractor with a copy of the electricity, water, or other utility bill[s], the District's energy and water use audit used to establishing the District's calculation of electricity and water consumption by the Equestrian Center and the Premises, and a calculation of the amount due and owing from the Contractor to the District. Contractor shall pay the full amount within five (5) days of its receipt of each bill or invoice for electricity or water, or for any other utility bill. The basis and calculation for all estimates can be reviewed by Contractor and are subject to approval by the District. Contractor is responsible for the cost of any and all phone service to the Premises.

12. Licenses, Permits and Taxes

Contractor shall obtain, maintain and pay for all licenses and permits required for its business throughout the entire Term.

Contractor acknowledges that this Rental Agreement, the operation of Contractor's business, or Contractor's use of the Premises, may be subject to local (County and City) business licenses, law enforcement and fire protection fees, other public service fees, and other governmental charges and fees. Operations of the business under the Rental Agreement may also create a possessory interest tax liability. Contractor shall promptly pay all taxes, fees, assessments, and other charges. Contractor shall hold harmless and indemnify the District against and from any and all such charges, assessments and taxes.

13. Pest Control

Subject to, and in accordance with the provisions of Paragraph 3 of this Rental Agreement, Contractor shall, at its sole cost and expense, conduct all equestrian operations to minimize nuisance and health hazards from mosquitoes, rodents, flies, insects and pests. Pest control activities shall include, the following:

Contractor will provide daily fly spray abatement through the existing spray system at the equestrian center. Contractor shall establish and maintain a pest and rodent abatement program approved by the District and pay for all costs attributed to this program. All feed shall be stored in a manner that will not attract, and will minimize any impact from, rodents or pests. Contractor will not permit any standing water to accumulate on the Premises.

All pest control activities, chemical and non-chemical, shall be approved by the appropriate State agency prior to the conduct of any pest control activities by the Contractor, or the Contractor's employees or agents. Such approval shall be solely for compliance with policies of the State of California, and shall in no way relieve Contractor, or its contractors, employees, agents or representatives from compliance with all laws and regulations and/or orders concerning such activities and from carrying out its obligations in a workmanlike manner.

14. Employees/Training

Contractor shall at all times the Equestrian Center is in operation, retain qualified, competent and experienced personnel in sufficient numbers as necessary to conveniently serve the equestrian center users and public at all times, and to provide basic public information services.

Contractor shall require its employees to be properly dressed, clean, courteous, efficient and neat in appearance at all times.

Contractor shall maintain close supervision over its employees to ensure the maintenance of a high standard of service to the equestrian center and public. Any employee whose conduct is detrimental to the best interests of the equestrian center, public or District shall be replaced by the Contractor.

Contractor and its employees will participate in any and all District-sponsored employee training programs when requested by the District, including, but not limited to, CPR, first aid training, customer service training, sexual harassment training.

Contractor covenants that it will at all times be in full and complete compliance with District's "Drug Free Workplace" program. (Form GC8355, attached as Exhibit "E".)

15. Equestrian Related Community Outreach and Shared Vision with OCFEC

Contractor acknowledges that the District is actively supporting, through community outreach, the development of community-based educational programming highlighting agricultural education. Contractor also acknowledges the District's mission statement and will support the District's mission statement within its operation of the Equestrian Center.

16. Emergency Disaster Plan and Management

On the Rental Commencement Date, and on or before the first day of March of each subsequent year, Contractor shall be required to create an emergency disaster plan for the equestrian center operation for review and approval by the District. The emergency disaster plan will comply with the District's emergency disaster plan, and must address identified emergencies including, but not limited to, fire, flood, earthquake, and civil disorder.

During identified emergencies, Contractor will be responsible for horse safety, horse evacuation and communication to equestrian center users. Contractor will be required to provide on-site liaison to District during identified emergencies. District will retain command of all incidents and identified emergencies occurring on District property, including the Equestrian Center.

Contractor acknowledges that the fairgrounds is an evacuation site for disasters originating outside of the fairgrounds and serves as a resource to assist the community in the event of identified emergencies. The District retains the sole and exclusive authority, during identified emergencies, to temporarily suspend business operations of the Equestrian Center and/or on the Premises.

Contractor shall provide the District with all necessary means permitting authorized personnel of the District to access the Premises, the Equestrian Center, and/or the facilities in case of an emergency or disaster.

17. Security and Safety

It is the responsibility of the Contractor to maintain a safe and secure equestrian center at all times. Contractor acknowledges that law enforcement jurisdiction is with the Orange County Sheriff Department.

Contractor will immediately report any and all emergencies, safety and safety-related incidents to District's Department of Public Safety, which will then complete and maintain a written incident report. In the case of emergencies creating threats to health or life, or posing a threat of physical injury, Contractor shall telephone 911 and report the emergency, and thereafter immediately notify the District's Department of Public Safety for additional assistance.

18. Impact of Annual Fair Operations and Year Round Events Program

Contractor acknowledges the existence of District's annual Fair operations and year round events program. In addition, Contractor recognizes the District rents fairgrounds facilities and property outside of the equestrian center for the operation of other public and private events. Contractor acknowledges these events and activities may present operational impacts to the equestrian center. Contractor agrees that during pre-fair, fair time and post fair time (approximately forty five days (45) days), approximately two (2) acres east of and including gate 9 in the north east corner of the Premises as shown on exhibit B-2, will be utilized for fair related operations. District will make every effort to minimize operational impacts in order to ensure uninterrupted operations of the equestrian center.

19. Parking

Vehicles using the Equestrian Center are to park in a designated area immediately south of the Equestrian Center office in lot G. A minimum of forty (40) parking stalls are designated for employees, agents, and customers of the Premises. Parking is on a first-come, first-served basis and must be accessed through the Equestrian Center.. Contractor, its employees, agents and customers are prohibited from using any other area or lot of the District's grounds for parking, absent prior written approval from the District.

20. Assignment and Subletting

The rights and privileges granted hereunder may not be sublet, assigned or transferred in any manner whatsoever by the Contractor without the prior written approval of the District, which shall be given in the District's sole and exclusive discretion. Any sale or transfer of the beneficial or legal ownership of Equestrian Services II, Inc. (the Contractor herein) shall be considered an assignment and/or subletting of the rights and privileges granted by this Rental Agreement. Any sale or transfer of the legal or beneficial ownership of the Contractor requires

the prior written approval of the District, which shall be given in the District's sole and exclusive discretion. In the event any sale or transfer of ownership is approved by the District, the District reserves the right to renegotiate all terms and conditions relevant to the Rental Agreement, including termination of the Rental Agreement. Any assignee or sublessee shall be required to comply with all terms and conditions of this Rental Agreement, including, but not limited to, all Rent obligations.

Contractor may house staff on the premises with written consent of the District provided the staff are full time employees working at the equestrian center on behalf of the contractor. Staff will only be housed in the existing living quarters in the shop building immediately north of the Equestrian Center Office. All living quarter conditions and improvements must conform to the California Unified Building Code, will be constructed at contractors expense, and will be considered improvements as set forth in Paragraphs 6 (c) and 24 (g) of this Agreement.

21. Rent

a. Percentage Rent

The Percentage Rent payable under this Rental Agreement shall be the Percentage Rent of all Gross Revenue per applicable Rental Month accepted in the proposal. "Gross Revenue", as used in this Rental Agreement, includes all monies paid to the Contractor in connection with its operation of the Equestrian Center and/or its occupation and use of the Premises and facilities, including, but not limited to, receipts for horse shows, horse boarding stall rent, storage rental fees, facility rent, miscellaneous rent or income, sponsorship or advertising fees collected by the Contractor, pay phone commissions, vending machine and ATM revenues, lessons, training, tack storage, storage of horse trailers, equestrian clinics, and the sale of equestrian products/services. Gross revenue will exclude revenues from de-worming program, sales tax collected and late fees.

b. Minimum Guaranteed Rent

Contractor agrees the yearly rent shall be the **greater** of:

(1) Minimum monthly installments of \$3,000.00 with the exception that when equestrian center facilities are used for fair related operations, the minimum monthly installment shall be reduced by 75%, to \$750.00, for the months of July and August.

(2) Ten percent (10%) of Contractor's monthly gross revenue each month, with the exception that when equestrian center facilities are used for fair related operations, the percentage rent shall be reduced by 75% to two and one half percent (2.5%) for the months of July and August.

(3) Payment terms will conform to subparts (c) and (d) of this Paragraph 21.

c. Payment

Percentage Rent of Gross Revenue will be calculated on all money received by Contractor from any business carried on or upon said Premises, or any portion thereof, or from any other approved use of said Premises or any portion thereof without any

deduction or deductions. The term "Gross Revenue" shall not include any sales taxes imposed by any governmental entity and collected by Contractor. Rent shall be paid on or before the tenth day of each month. . "Gross Revenue", shall also include contractor's accounts receivables for stall rental if services are rendered regardless if of whether the contractor collects the receivable.

d. Late Charges and Fees

If rent, or any other money due, is not paid in full on or before the due date, Contractor shall pay a late charge of \$300 per month. A past due amount balance of more than \$900 in late charges may result in the District's issuance of a notice of default.

Contractor shall pay all bank charges incurred by District, plus fifty dollars (\$50) handling fee, for a bank dishonored check.

e. Recordkeeping

Contractor shall keep true, accurate, full, and complete business and financial records of its operations in a form and substance satisfactory to the District. The business and financial records shall accurately reflect all of Contractor's business transactions arising out of, or in any way connected with, the operation of the Equestrian Center, Contractor's use and occupation of the Premises, and/or Contractor's rental obligations to the District. The books and records shall conform to District standards and practices for businesses of the type conducted on the Premises, and will be in accordance with generally accepted accounting principles.

Contractor shall submit to the District a monthly Gross Revenue report. Contractor shall provide financial records to the District upon demand listing all revenue listed by source including a breakdown of all individual stall rentals, storage rentals, facility use fees, product sales and any other financial information requested by the District. District has the right to audit the Financial Records at the discretion of the District at any time and from time to time.

Contractor shall maintain all business and financial records required under this Rental Agreement for at least five (5) years after the final payment of Rent under this Rental Agreement or longer as directed by the District, and shall make Financial Records available for inspection or audit within two (2) weeks as requested by the District.

District shall have the right from time to time, and at any time, upon reasonable notice, to conduct audits as it deems necessary and to examine and copy Contractor's books and records including all tax records. Contractor shall make all such records, books and tax returns available to District upon District's request. Contractor acknowledges that any information obtained by the District pursuant to any inspection or audit shall be considered a public document, unless otherwise exempt, and subject to disclosure according to the Public Records Act.

f. Security Deposit

Upon execution of this Rental Agreement, Contractor shall pay District a security deposit of five thousand dollars (\$5,000).

Upon the default by Contractor, District may, but will not be required to, apply the security deposit to satisfy Contractor's obligations under this Rental Agreement, provided that this application shall not cure the default. Within five (5) days of any application of the security deposit to satisfy Contractor's obligations, the Contractor shall reimburse the District for all amounts applied in satisfaction of the Contractor's obligations. Failure to reimburse the District within the five (5) day period shall be deemed a separate and distinct default by Contractor.

At the conclusion of the Term of the Rental Agreement, including, but not limited to any extensions of the Term, the security deposit may be applied by the District for the repair of any damages or alterations made to the property by the Contractor, reasonable wear and tear excepted. District will not unreasonably withhold the security deposit upon termination of the Rental Agreement, but will apply all or portion of the deposit to outstanding payments or fees owed to the District or for damages or alterations made to the property by Contractor. District agrees that at the end of the Term, District will refund any portion not applied as provided by this Paragraph 21.

22. Insurance

a. Worker's Compensation

The Contractor shall secure and maintain, at its own expense, during the Term all Worker's Compensation insurance required by California law for all employees and shall require the same coverage for any subcontractors, subsidiaries, agents, and employees.

b. Automobile Insurance

The Contractor shall secure and maintain, at its own expense, during the Term Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (any auto) with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Contractor vehicles (autos, trucks, or other licensed vehicles) on the Premises or any portion of the fairgrounds.

c. Individual Boarding Agreements and Special Event Insurance

All individuals boarding horses on the Premises, and any person, firm, or entity staging any special event using the Premises must provide the Contractor evidence of insurance coverage in the amount of a minimum one million dollars (\$1,000,000.00) combined single-limit commercial general liability insurance covering the Contractor and District, and naming the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and

State Fair, and their agents, directors, officers, servants, and employees as additional insureds. Contractor agrees to obtain copies of these additional insured endorsements from each individual boarding horse[s] on the Premises, and from each person, firm, or entity staging any special event using the Premises. Contractor acknowledges and agrees that special events may require general liability insurance limits in an amount higher than one million dollars (\$1,000,000.00), as determined by the State of California and/or the California Fair Services Authority. Contractor agrees to comply with any additional general liability insurance limits for special events that may be imposed by the State of California and/or the California Fair Services Authority.

d. Commercial General Liability Insurance

The Contractor shall secure and maintain, at its own expense, during the Term a minimum of three million dollars (\$3,000,000) combined single-limit commercial general liability insurance covering the Contractor, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage and personal injury.

Coverage shall include blanket contractual insurance and such coverage shall make express reference to the Contractor's additional insured provision described in this Paragraph 22.

The Contractor agrees that the general liability insurance, workers compensation, and the automobile 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, Contractor agrees to provide the District at least consistent with the provisions of this Paragraph 22, prior to said expiration date, a new certificate of insurance, and additional insured endorsement, evidencing insurance coverage as provided for herein for not less than the remainder of the Term, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of the State of California, California Fair Services Authority, and Contractor agrees that no work or services shall be performed prior the giving of such approval. In the event the Contractor 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 Rental Agreement.

The following statement regarding additional insured must be included on all insurance certificates: **"That the State of California, the District Agricultural Association, County Fair, the County in which the County Fair is located, Citrus Fair, or California Exposition and State Fair, and their agents, directors, officers, servants, and employees are made additional insured but only insofar as the operations under this contract are concerned."** Each certificate of insurance must include a statement by the insurance company that it will not cancel or reduce the limits or coverages of said policy or policies without giving 30 days prior written notice to the names certificate holder.

In addition to the foregoing, Contractor shall provide a certified copy of an additional insured endorsement to the District, Forms ISO CG 2005, 2012, 2024, showing the State of California, the District Agricultural Association, County Fair, the County in which the

County Fair is located, Citrus Fair, or California Exposition and State Fair, and their agents, directors, officers, servants, and employees are made additional insured's on the Contractor's general liability insurance policy and automobile liability policy.

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

Nothing in this Paragraph 22 shall be construed as limiting in any way the extent to which the Contractor may be held responsible for damages resulting from Contractor's operations, acts, omissions, and/or negligence. Insurance coverage obtained in compliance with this Paragraph 22 shall not relieve the Contractor 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 Contractor's indemnity obligations.

Upon request by the District, the Contractor shall immediately furnish a complete copy of any policy required hereunder, certified by the insurance company issuing the policy to be a true and correct copy of the original policy.

The Contractor agrees to obtain a properly executed Release and Waiver of Liability Agreement (CFSA Form "Release Lib", Exhibit "F") from each individual using the rental facilities prior to any agreement between such individual and the Contractor. Contact California Fair Services Authority at (916) 921-2213 for further information.

23. Indemnity

To the fullest extent permitted by law, the Contractor 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 Rental 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) 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 the Contractor be obligated to defend or indemnify the District with respect to the sole negligence of willful misconduct of the District, its employees, or agents (excluding the Contractor herein, or any of its employees or agents.)

24. Notice

Contractor shall, within three (3) calendar days, report in writing to the District any incident that might reasonably be expected to result in any claim under any indemnity or insurance provision of this Agreement. The Contractor also agrees to provide the District with information as to the

resolution, settlement, or other disposition of any claim(s) covered by this Paragraph within thirty (30) days following any resolution, settlement, or other disposition.

25. Surrender of Premises and Holding Over

a. Surrender of Premises

District shall not be required to give notice to quit possession at the expiration of the Term. Contractor 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, pursuant to Paragraph 6 of this Rental Agreement, and District shall have the unconditional right to possession of the Premises.

b. Holding Over

In the event that the Contractor should hold over and remain in possession of the Premises after the expiration of the Term, or sooner termination, such holding over shall be deemed not to operate as a renewal or extension of the Term and such holdover may be terminated by the District. If Contractor, with District's consent, which may be given or denied by the District in its sole discretion without limitation, remains in possession after expiration of the Term, such holding over shall be deemed to be a month-to-month tenancy on the terms and conditions set forth in this Rental Agreement; provided, however, that such month-to-month tenancy may be terminated at any time on thirty (30) days prior written notice to the other party.

26. Default and Termination of Agreement

a. Notification of Default

In the event Contractor shall default in the performance of the terms or conditions of this Rental Agreement, the District may notify the Contractor of such default in writing. Written notice referred to in this Section shall be as set forth in Section 27(g) below. Failure on the part of the District to notify Contractor of default in accordance with this Section shall not be deemed a waiver by the District of District's rights on default of the Contractor or such default at a subsequent time and such notice will have the same effect as if promptly made.

b. Correction of Default

Within five (5) days of receipt of written notice of default from the District, Contractor shall correct such default if the default is with respect to any payment required to be made by the Contractor or within ten (10) days of receipt of the written notice of default if it is of any other nature. In the event Contractor 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, including the right to terminate this Rental Agreement. The Contractor shall pay all costs and attorney's fees incurred by the District in the enforcement of any provisions herein or within this Rental Agreement.

c. **Labor Dispute**

In the event the Contractor cannot perform its obligations under this Rental Agreement because of a labor dispute, such nonperformance will not be considered a default; provided, however, that the District may provide for the continuation of an equestrian center, similar in operation to the equestrian center, until the labor dispute is settled. In the event the Contractor cannot perform said obligations for more than sixty (60) calendar days because of a labor dispute, the District shall have the option to terminate this Rental Agreement upon thirty (30) days notice.

d. **Insolvency of Contractor**

In the event a decree or order by a court having jurisdiction shall be issued (a) adjudging the Contractor bankrupt or insolvent; or (b) approving as properly filed a petition seeking reorganization of the Contractor under any section of the national Bankruptcy Act, as amended, or (c) ordering or approving the winding up or liquidation of the Contractor'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 Rental Agreement, then the District may terminate this Rental Agreement. In the event of such termination, the Contractor shall be liable, without limitation, for all payments required to be made to the District up to and including said date of termination.

e. **Acceptance of Rental**

The acceptance of Rental shall not constitute a waiver or estoppels of the District's right to exercise its remedies for the breach of any of the terms or conditions of this Rental Agreement.

f. **Termination Upon Notice**

Notwithstanding any other portion of this Rental Agreement, District reserves the right to terminate this Rental Agreement for any reason whatsoever upon one hundred eighty (180) days written notice.

g. **Right to Improvements**

Upon termination of this Rental Agreement for any reason, the District shall have at its sole discretion the option to require the Contractor to remove all improvements made during the Term of the Rental Agreement and restore Premises to its condition at the time of execution of the Rental Agreement or to take title to the improvements according to any agreement entered into between the parties regarding the construction and title to improvements.

27. General Conditions

a. **Contract Documents**

The March 1, 2004 Rental Agreement between the Parties, the Request for Bid Proposals (RFP) and the entire proposal submitted by the Contractor in response to the RFP are

accepted by the District and incorporated into this Restated Rental 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) the Rental Agreement; (2) the RFP; and (3) the Contractor's submitted proposal.

b. Amendment or Modification of Agreement

No agreement to modify, or modification of, this Rental 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.

c. Advertising, On-site Signage, Sponsorship

Contractor shall not advertise in any manner or form on or about the Premises except by means of such signage approved by the District, in accordance with Paragraph 9 of this Rental Agreement.

Contractor is prohibited from entering into any sponsorship agreement on behalf of or in any way related to the equestrian center operations, without the District's prior written agreement, which will be given in its sole and exclusive discretion.

d. Equestrian Center Improvements by District

The District shall give the Contractor at least thirty (30) days notice prior to making any improvements to the Premises. The District will make reasonable attempts to implement any construction, repairs or improvements without substantial negative impact to the equestrian center and its operations. Emergency repairs are excluded from this notice requirement.

e. Security and Law Enforcement

All security and law enforcement costs and expenses incurred or in connection with the operation of the equestrian center shall be the sole responsibility of the Contractor.

f. Prohibition of Liens

Contractor shall not suffer or permit to be placed against the Premises, or any part thereof, any mechanic's, material men'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 Contractor shall pay, cause to be paid, or bond against, all of said liens, claims or demands before any action is brought to enforce the same against the Premises; and Contractor 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 all costs and expenses in connection therewith.

g. Notices

Any and all notices given under this Rental Agreement or otherwise may be served by enclosing the same in a sealed envelope addressed to the party intended to receive the same at its address, and sent by certified or registered mail with postage prepaid or personal delivery. When so given, such notices shall be effective five days after the date of the mailing of the same. For the purposes thereof, unless otherwise provided in writing to the parties thereto, the address of the District and the proper party to receive such notices in its behalf is:

32nd District Agricultural Association
88 Fair Drive
Costa Mesa, CA 92626

Attn: Chief Executive Officer and President

And the address of the Contractor is:

Equestrian Services II, Inc.
26282 Oso Road
San Juan Capistrano, CA 92675

Attn: Ronald B. Hanson, President

h. 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 Contractor.

i. Time is of the Essence

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

j. Independent Contractor

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

k. Applicable Law

This Rental 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.

l. Entire Agreement

This Rental Agreement, together with all Exhibits attached hereto, constitutes the entire Rental Agreement between the parties hereto. All other representations or statements heretofore made, verbal or written are merged herein.

m. Headings

The headings of this Rental Agreement are inserted only as a matter of convenience and reference and do not define or limit the scope or intent of any provisions of this Rental Agreement and shall not be construed to affect in any manner the terms and provision hereof or the interpretation or construction thereof.

n. Acceptance of Rental Agreement Terms and Conditions

Contractor accepts and agrees to the Rental Agreement Terms and Conditions set forth in Part VIII, Forms Section, C, which are incorporated herein.

o. Severability

If any covenant, term, condition or provision of this Rental Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Rental Agreement shall be valid and enforceable to the fullest extent permitted by law unless that covenant, term, condition or provision declared to be invalid is so material that its invalidity deprives either party of the basic benefit of their bargain or renders the remainder of this Rental Agreement meaningless.

p. Conflict of Interest

Contractor warrants and covenants that no official, employee in the state civil service, or other appointed state official, or any person associated with same by blood, adoption, marriage, cohabitation, and/or business relationship: (a) has been employed or retained to solicit or aid in the procuring of this Rental Agreement (b) will be employed in the performance of this Rental Agreement without the immediate disclosure of such a fact to the District.

q. Recordation

This Rental Agreement shall not be recorded.

r. Authority

Contractor warrants and covenants that each individual executing this Rental Agreement on its behalf is duly authorized. Contractor agrees to provide upon the execution of this Rental Agreement a corporate resolution authorizing its execution of this Rental Agreement.

Dated:

32nd District Agricultural Association/
OC Fair & Event Center
("District")

By:


Steve Beazley
Chief Executive Officer and President

Dated:

Equestrian Services II, Inc.
("Contractor")

By:

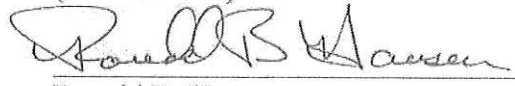

Ronald B. Hanson
President

Exhibit A

Equestrian Center Rules and Regulations

The following rules and regulations are approved by the District and shall be adopted as practice by the contractor for any person using the equestrian center. District reserves the right to add, delete, change, amend and/or modify any rules and regulations in the best interest of the equestrian center and District.

- Equestrian Center Hours – open daily (including holidays) from 6:00 A.M. until 10:00P.M.
- Use of the equestrian center different from the posted hours requires prior District approval.
- The possession and consumption of alcohol is not permitted in the equestrian center
- Smoking is permitted in smoking areas only.
- Dogs must be on a leash and under immediate control of a person at all times. Contractor and/or District reserve the right to prohibit dogs from the equestrian center at any time.
- When not in use, tack and equipment shall be kept in tack rooms or under proper storage.
- Horses may only be tied to cross ties.
- Minors shall have adult supervision at all times.
- Riders under the age of eighteen (18) must wear an equestrian helmet that meets or exceeds industry standards for use when riding horses.
- Parking is permitted in designated areas only.
- Abuse, neglect or inhumane activity of horse or person is not permitted at any time. Actions of this nature are grounds for removal from the equestrian center.

Exhibit B

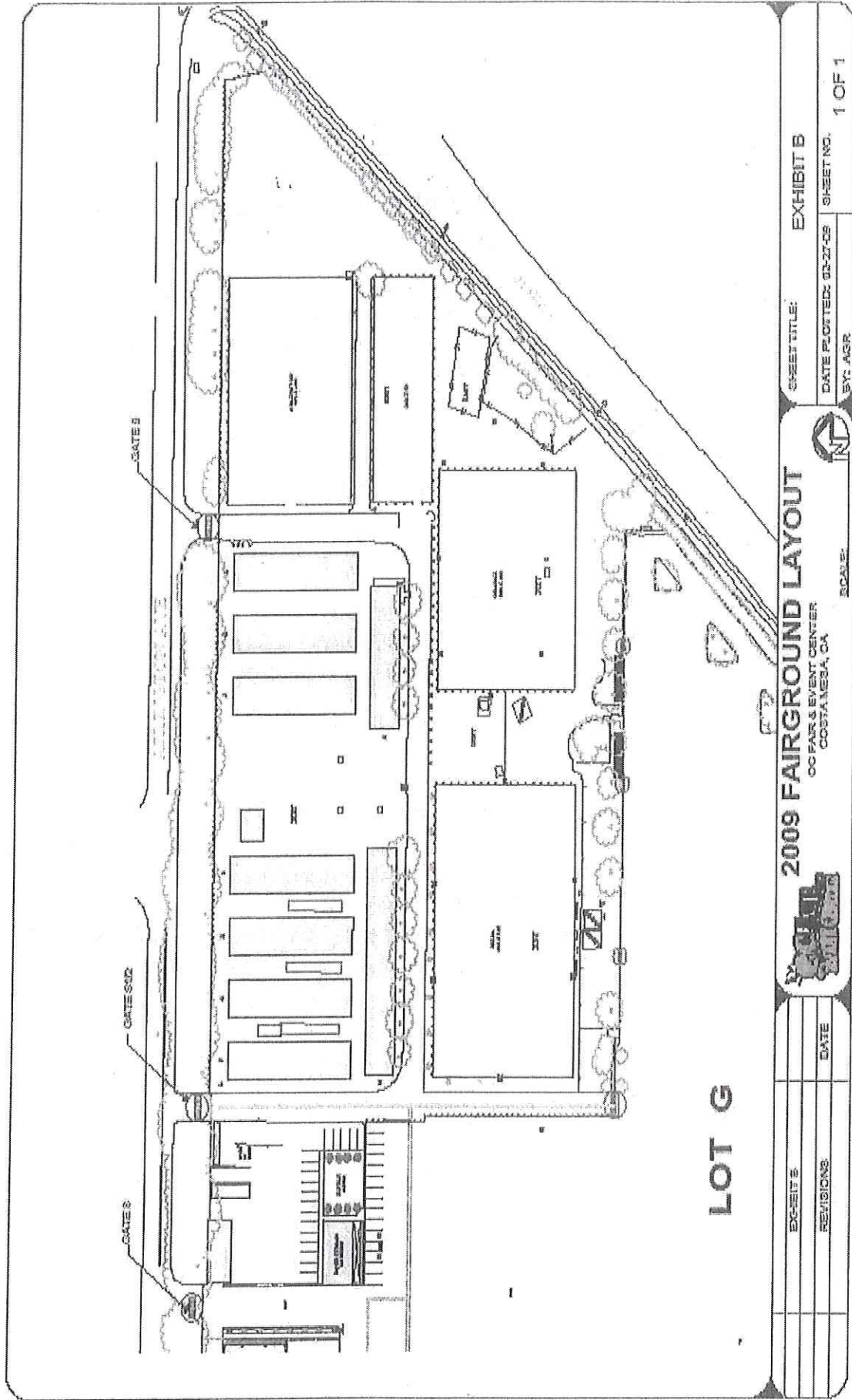


Exhibit B-2

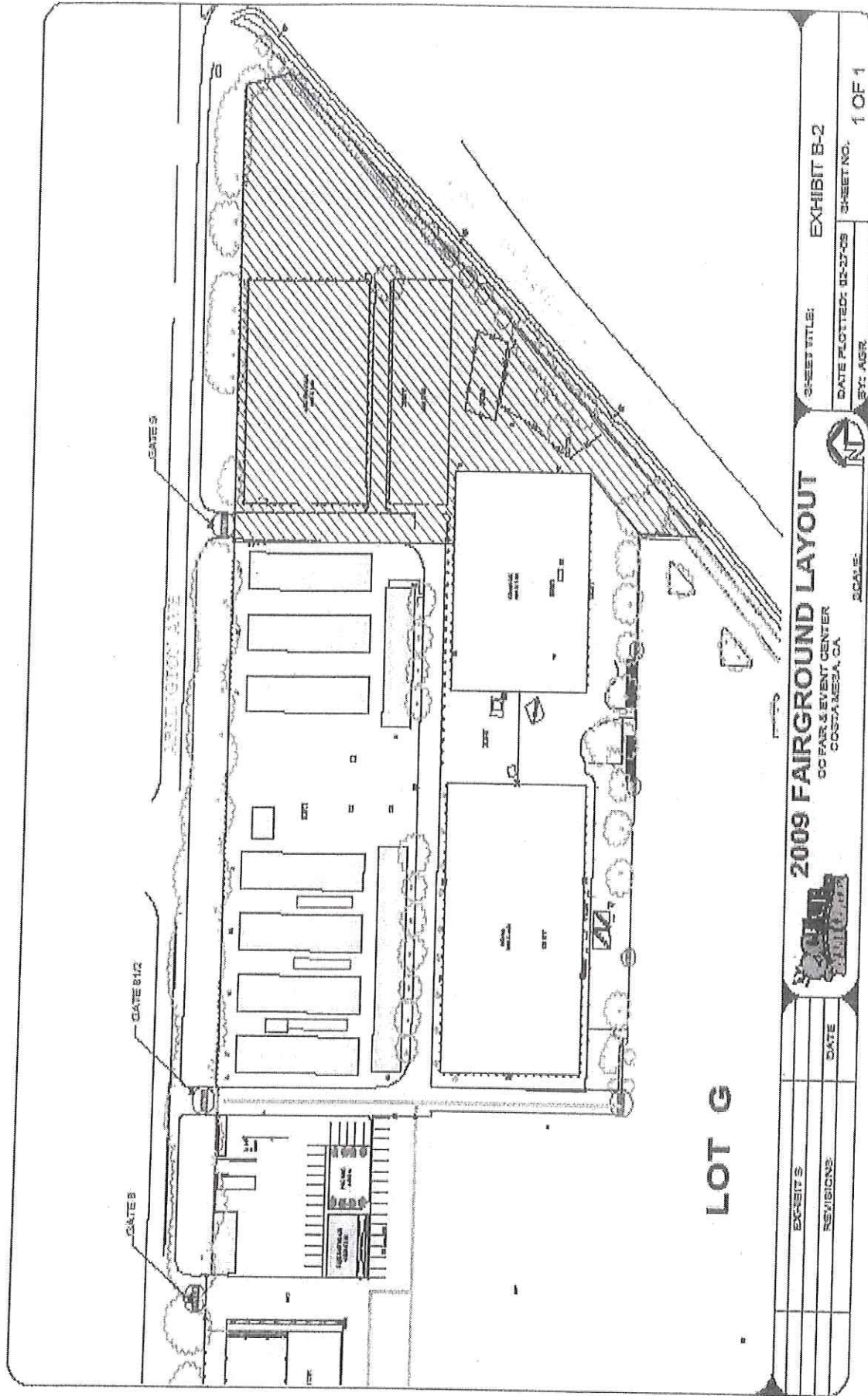


Exhibit C

Equestrian Center List of Facilities

(9) Barns:

Each barn has (2) tack room/offices

Barns represent 188 (12'X12') box stalls

Current configuration has 14 stalls used as additional tack rooms

Equestrian Center Office with restrooms/showers

Maintenance/Operations Shop and staff quarters

Covered Feed Area

Covered Storage Area

Shavings/Manure Pit

Equipment Storage Area

(4) Riding Arenas:

Mesa 255 x 160 (lighted)

Orange 200 x 160 (lighted)

Arlington 200 x 140

Small Arena 200 x 70

(1) Round Pen

(3) Hot Walkers

(2) Turnouts

(1) Wash rack (10 horse capacity)

(1) Covered Ferrier Area

(1) Storage Unit (14 individual units)

(1) Picnic Area