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## ***BOARD OF DIRECTORS AGENDA REPORT***

MEETING DATE: **DECEMBER 15, 2022** ITEM: **8B**

SUBJECT: **Presentation of Amended MOU with Centennial Farm Foundation and Vote on Whether or Not to Approve**

DATE: December 9, 2022

FROM: Michel Richards, CEO

PRESENTATION BY: Michel Richards, CEO

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### *Action Item*

### **BACKGROUND**

The current MOU between the District and the Centennial Farm Foundation is set to expire on December 16, 2022. The Foundation sent a letter to the District on October 5, 2022 expressing its desire to renew the MOU at the \$25,000 per year contribution level.

Staff worked with legal counsel to draft the new MOU which included the following amendments:

- Change the effective date of the MOU to December 17, 2022
- Change the signee for the Foundation to Glen Johnson, current President of the Centennial Farm Foundation
- Add the requirement for the Foundation to comply with the Bagley-Keene Open Meeting Act
- Add clarification that District Board members who serve on the Foundation Board are non-voting members

The draft MOU is attached with amendments indicated.

### **RECOMMENDATION**

Approve the MOU as amended.

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** ("MOU") is made and entered into on December ~~16, 2021~~ 17, 2022 by and between the 32<sup>nd</sup> District Agricultural Association, a state institution, *aka* Orange County Fair & Event Center ("District") and Centennial Farm Foundation, a 501(c)(3) California nonprofit public benefit corporation, ("Foundation"). District and Foundation are sometimes collectively referred to in this MOU as the "Parties".

### Recitals

- A. District is a district agricultural association formed under the California Food and Agricultural Code as a state institution for the purposes of holding fairs, exhibitions, community-based programs and services, and constructing, maintaining, and operating recreational and cultural facilities of general public interest.
- B. Foundation is a California nonprofit public benefit corporation, with Articles of Incorporation filed April 4, 1991 with the California Secretary of State and qualified as a 501(c)(3) tax exempt organization pursuant to the Internal Revenue Service and the California Franchise Tax Board. Foundation was formed for the purpose of the solicitation, accumulation and disbursement of funds for the operation of Centennial Farm and other agriculturally and youth related education programs and exhibits of District.
- C. District and Foundation are separate and distinct legal entities; each with its own tax identification number and purpose.
- D. The Parties desire to enter into this MOU to define the relationship between the Foundation and District. The Parties, while working together towards accomplishing common goals, objectives, and purposes, will be managed and operated independently of the other party.

### Agreement

In consideration of the mutual promises set forth in this MOU, the Parties agree to the following:

- 1. Term: This term of this MOU shall be for a one (1) year period, commencing on December ~~16, 2021~~ 17, 2022 (the "Initial Term"), unless terminated earlier by either Party in accordance with the terms of this MOU. At the end of the Renewal Term, the Parties may extend the term of this MOU by the mutual written consent of the Parties.
- 2. Independent Legal Entities: Each Party acknowledges and agrees that the other Party is a separate and distinct legal entity and will act accordingly in its ongoing relationship and business dealings with the other Party.
- 3. Joint Obligations of the Parties: The Parties agree to the following:
  - a. To collaborate in good faith and to develop and implement a strategic plan (the "Plan") that is designed to fulfill mutually agreed-upon fundraising goals and priorities of

District and the Foundation for the benefit of Centennial Farm. Further, the Parties agree to meet on an annual basis to review the Plan and make mutually agreed upon amendments to the Plan if appropriate.

b. To share relevant information regarding, grants, advertising and donations sought, solicited, and secured by each of the Parties for Centennial Farm with the intent of working collaboratively to streamline solicitations and to ensure no duplication of fund raising tasks or efforts.

4. Individual Obligations of each Party: In furtherance of Paragraph 3 of this MOU, the Parties agree as follows:

a. District's Obligations:

i. Each year, District shall communicate District's priorities and long term plans for Centennial Farm to the Foundation.

ii. While District may seek input from the Foundation for District's strategic plan for Centennial Farm, District shall be exclusively and solely responsible for the administration, management and operation of Centennial Farm; and direction of Centennial Farm staff. This includes, but is not limited to all matters related to exhibit procurement and management, facilities management and repairs, capital improvements, and community education and volunteer program development and administration.

iii. District will have the exclusive right to secure sponsorships for Centennial Farm. All sponsorship activities and opportunities related to Centennial Farm must be referred to and coordinated by District.

iv. The Foundation will comply with the California Non-Profit Integrity Act. It will provide the District with a copy of its annual Form 990 each year when no independent audit is required.

v. District grants the Foundation a limited non-exclusive revocable license to use District's name, logo(s), or other identifying marks solely for the purpose of promotion and marketing provided the promotion and/or marketing is in furtherance of the contributions of Centennial Farm and youth related education programs and exhibits of District.

vi. In exchange for the Foundation's efforts in promoting and facilitating the Parties' objectives set forth in this MOU, and consistent with California law, including but not limited to the Political Reform Act of 1974 (Government Code §§ 81000, et seq.), the applicable regulations promulgated by the Fair Political Practices Commission, and all other applicable laws and regulations, and District's Ticket Distribution Policy, attached as Exhibit A to this MOU and incorporated as part of the MOU by this reference, District, at its sole discretion, may provide to each active Foundation Board member one (1) complimentary pass to District's annual county fair, which pass will may include an F Lot parking hang tag. The type and quantity of additional complimentary passes will

be assessed by the District on an annual basis and shall comply with California law and District's Ticket Distribution Policy. The distribution of passes under this section accomplishes the state public purpose of supporting programs or services rendered by non-profit organizations benefiting Orange County residents.

vii. District will remit to the Foundation all cash and check contributions donated to the Foundation by guests, students, schools and visitors to the Centennial Farm.

viii. District will provide Foundation with the following:

- logo placement on District's Website with link to Foundation website;
- Foundation presence in a mutually agreed location during District's annual county fair;
- space to conduct monthly Foundation meetings in the Silo Building located at District's Centennial Farm or another appropriate location on District's grounds. The Foundation's use of meeting space owned by District shall serve a public purpose, including promoting the mission of District in celebrating the communities, interests, agriculture and heritage of Orange County;
- reasonable space to store Foundation archives and records.

b. Foundation's Obligations:

i. District CEO or other designated member of District management team will serve as liaison to the Foundation Board of Directors. If a District Board member is appointed by the District Board Chair to serve as liaison, that Board member shall not be a voting member of the Foundation Board of Directors.

ii. The purpose and objectives of the Centennial Farm Foundation shall be solicitation, accumulation and disbursement of funds for the operation of Centennial Farm and other agriculturally and youth related educational programs and exhibits of the OC Fair & Event Center. The Foundation will strive to create an environment conducive to maintaining and increasing levels of private support for the mission and priorities of the Foundations purpose. Foundation agrees to consider periodic and/or annual financial contributions of a minimum \$25,000 per year for operational expenses of Centennial Farm including, but not limited to, educational materials, farm supplies, and exhibit components.

iii. Pursuant to the Foundation's purpose, the Foundation will solicit grants, donations and other private contributions and resources for support of Centennial Farm; acknowledge and steward such contributions in accordance with the donor's intent and the Foundation's fiduciary responsibilities. Foundation will make fundraising for the financing and maintenance of Centennial Farm its primary objective. Notwithstanding the foregoing, District acknowledges that the Foundation may raise funds and engage in other activities to increase Foundation's revenue with no direct connection to a specific District purpose or objective, such as Foundation's operational and administrative costs, Foundation

programs such as scholarships, and other activities that support the Foundation's mission.

iv. When distributing gift funds to District, Foundation will disclose, if applicable, any terms, conditions, or limitations imposed by the donor or legal determination of the gift. If such terms, conditions, or limitations are acceptable and approved by District then District will accept such gift funds and agree to abide by such terms, conditions, or limitations.

v. The Foundation shall maintain and abide by the terms of its Articles of Incorporation and current by-laws, copies of which are attached to this MOU as Exhibit B. Should the Foundation revise its Articles of Incorporation or its by-laws, it shall immediately provide the revised Articles of Incorporation and by-laws to District.

vi. The Foundation shall abide by the California Non-Profit Integrity Act.

vii. The Foundation shall comply with the Bagley-Keene Open Meeting Act.

viii. Foundation grants to District the revocable and limited right to use Foundation's name, logo(s), or other identifying marks in the promotion of Centennial Farm and the objectives of the parties as described in this MOU.

~~viii~~ix. If Foundation maintains a physical address, that physical address shall be separate and apart from the physical address maintained by the District. Foundation shall maintain its own web site, separate and apart from the Centennial Farm web site maintained by the District.

~~ix~~x. Foundation shall maintain insurance coverage as provided in this Section 4(b)(ix). The insurance coverage provided by Foundation under this section shall be primary and any separate coverage or protection available to District or any other additional insured shall be secondary.

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

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

a) Worker's Compensation. Foundation shall secure and maintain (if it maintains employees), at its own expense, during the Initial Term and any

subsequent Renewal Term, Worker's Compensation insurance as required by California law for all of Foundation's employees and shall require the same coverage for any subsidiaries, agents, if any, and its employees, and shall carry a minimum of five million dollars (\$5,000,000) employers insurance coverage as part of the Worker's Compensation insurance.

b) Automobile Insurance. Foundation shall secure and maintain at its own expense during the Initial Term and any subsequent Renewal 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), or any successor ISO policy form, with limits of not less than \$1,000,000 combined single limit per accident for contracts involving the use of Foundation's vehicles on the premises of District.

c) Commercial General Liability Insurance. Foundation shall secure and maintain at its own expense during the Initial Term and any subsequent Renewal Term of this Agreement a minimum of two million dollars (\$2,000,000) per occurrence combined single-limit commercial general liability insurance covering Foundation, its employees, agents and subsidiaries, for claims for damages for bodily injury, property damage, personal injury, liquor liability, automobile and maintenance vehicle liability insurance.

Foundation agrees that the general liability insurance required under this Section shall be in effect at all times during the Initial Term and any and all Renewal Terms. In the event Foundation's insurance coverage under this MOU expires at any time or times prior to or during the Initial Term or any Renewal Term, Foundation agrees to provide District at least consistent with the provision of this MOU, prior to any expiration date, a new certificate of insurance evidencing insurance coverage as provided for in this MOU for a term not less than the remainder of the Initial Term of the then-current Renewal Term, or for a period of not less than one (1) year. New certificates of insurance and additional insured endorsements are subject to the approval of District, the State of California, and California Fair Services Authority, and Foundation agrees that no work or services shall be performed prior the giving of such approval. In the event Foundation fails to keep in effect at all times insurance coverage as required under this section, District may, in addition to any other remedies it may have, terminate the MOU.

The following statement regarding additional insured must be included on all insurance certificates:

"That the State of California, the 32nd District Agricultural Association, the OC Fair & Event Center, and their respective agents, directors, officers, servants, and employees are made additional insureds but only insofar as the operations under this MOU are concerned."

In addition to the foregoing, Foundation shall provide a certified copy of an additional insured endorsement to District, Forms ISO CG 2005, 2010, 2012,

2024, showing the State of California, the 32nd District Agricultural Association, the OC Fair & Event Center, and their agents, directors, officers, servants, and employees are made additional insureds on Foundation's general liability insurance policy and automobile liability policy.

5. Capital Improvements and Equipment: Foundation may recommend that District make certain capital improvements or purchase certain equipment for the benefit of District and Centennial Farm, the cost of which may be covered by donations procured by Foundation under the terms of this MOU. District shall maintain sole and exclusive authority to accept or reject any capital improvement or equipment purchase recommendation made by Foundation under this MOU. District may provide Foundation with requests to fund capital contributions or purchase certain equipment for District in furtherance of this MOU. All capital improvements and equipment purchased by the Foundation for the benefit of District and/or Centennial Farm shall remain the property of District.

6. Concessions or Other Events: The Parties agree that any concession or event, including but not limited to the sale of alcohol at District events, that is to be conducted on the premises of District by the Foundation or as a co-produced event by District and the Foundation shall require a separate written agreement with substantially the same terms and conditions applicable to written contracts for interim events conducted by independent contractors on District premises. District, in its sole and absolute discretion, and with the prior approval of the District's Board of Directors at a public meeting, may provide the Foundation with discounted facility rental rates and auxiliary costs in order to accomplish the state public purpose of supporting programs or services rendered by non-profit organizations benefiting Orange County residents and promoting the mission of District in celebrating the communities, interests, agriculture and heritage of Orange County. Proceeds from the event conducted on District's premises by the Foundation or jointly by District and Foundation must be provided to District following the event to cover all contracted facility rental fees and auxiliary costs associated with the event.

7. Default: Either Party shall be in default under this MOU should it fail to perform or observe any of its obligations under this MOU, and such failure continues for a period of thirty (30) days following written notice by the non-defaulting Party specifying the default. If the default is of such nature that it cannot reasonably be remedied within the thirty (30) days, such Party will not be in default so long as it commences to remedy the default within the thirty (30) days and continues diligently until the default is corrected. In the event of an uncured default, this MOU may be terminated immediately by the non-defaulting party by providing written notice to the defaulting Party.

8. Termination: This MOU may be terminated by either Party at any time without cause upon thirty (30) days written notice.

9. Modification/Amendments: This MOU may be renegotiated, amended, or modified at any time by mutual agreement of the Parties. No modification or amendment of this MOU will be of any force or effect unless made in writing and executed by both parties.

10. Dissolution of the Foundation: In the event the Foundation should cease to function and terminate its operations for any reason the Foundation shall dissolve in accordance with its Articles of Incorporation and California law, and the Foundation shall distribute any remaining assets to one or more exempt 501(c)(3) organizations at its discretion in accordance with the

Foundation's Articles of Incorporation and the California Non Profit Integrity Act or then applicable governing law.

11. Counterparts: This MOU may be executed in any number of counterparts and delivered by facsimile or other means of electronic transmission, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same MOU.

12. Applicable Law: It is specifically stipulated that this MOU will be interpreted and construed according to the laws of the State of California. Venue for any dispute arising under this MOU shall be in the Superior Court of the State of California for the County of Orange.

13. Successors and Assigns: This MOU shall inure to the benefit of and be binding upon the District and Foundation and their respective legal representatives, successors and assigns. Notwithstanding the foregoing, this MOU may not be assigned by either party without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.

14. Severability: If any one or more of the provisions contained in this MOU are held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof.

15. Headings: All headings in this MOU are inserted only for convenience and ease of reference, and are not to be considered in the construction or interpretation of any provision of this MOU.

16. Notices: Any notice required or permitted to be given under this MOU shall be in writing and shall be deemed duly given (i) if delivered personally, when received; (ii) if transmitted by electronic means, upon electronic confirmation that the notice has been successfully transmitted; (iii) if sent by recognized courier service, on the business day following the date of deposit with such courier service, or (iv) if sent by registered mail, postage prepaid, return receipt requested, on the third business day following the date of deposit in the United States mail. All such notices shall be addressed to a party at its address as set forth below, or to such other address or facsimile number as a party shall notify the other of in accordance with this MOU.

17. Representation by Legal Counsel: Each party acknowledges that it has been represented by legal counsel in connection with this MOU.

18. Interpretation: The Parties agree that this Agreement shall be interpreted in a manner which reflects that both parties participated equally in its drafting. Further, the provisions of this MOU shall be interpreted in a reasonable manner to effectuate the intent of the Parties.

19. Entire Agreement: This MOU constitutes the entire agreement between the Parties. No prior written or prior, contemporaneous, or subsequent oral promise or representation shall be binding.

20. Authority: Each individual executing this MOU on behalf of a party hereto, by his or her signature, represents that he or she maintains full authority on behalf of the applicable party to execute this MOU and thereby bind the applicable party to all covenants, duties, and obligations contained herein.





**IN WITNESS WHEREOF**, the Parties have executed this MOU on the date(s) shown below.

Centennial Farm Foundation

32nd District Agricultural Association

By: \_\_\_\_\_  
~~Marc Van Eden~~Glen Johnson, President

By: \_\_\_\_\_  
Michele Richards, CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_