

**Operations and Management Agreement
Between Plaza Park Raceway, LLC
and the CITY of Visalia
Regarding Plaza Park
Raceway**

This AGREEMENT made and effective January 1, 2022, by and between the CITY OF VISALIA, a Municipal Corporation and charter law city of the State of California (hereinafter "CITY"), and Morse Racing Promotions, a Limited Liability Corporation (hereinafter "VENDOR").

RECITALS

WHEREAS, CITY owns the real property and improvements located at 700 S. Plaza Drive, which is known as the Plaza Park Raceway, hereinafter "ARENA"; and

WHEREAS, the purpose of this AGREEMENT is to document the terms and conditions under which the management and operations of the ARENA will occur.

NOW, THEREFORE, based upon the terms contained herein, the parties agree as follows:

1. **PURPOSE:**

Operate, manage, and maintain ARENA and provide staff and programs, therefore.

The ARENA shall be used by the VENDOR for the purpose of providing vehicular races on the dates and times set annually and at the sole discretion of the CITY. Racing events shall be limited to 28 events per year and restricted to Fridays with the exception of up to four (4) Saturday evening races per year and two (2) Sunday evening races per year. Racing schedules must be submitted with an "Annual Operational Report" to the CITY no later than January 5th of each year and shall be approved by the Parks and Recreation Commission at their regularly scheduled meeting on the second Tuesday in January. In the event that dates must be cancelled due to natural occurrences or unforeseen circumstances, additional dates may be granted by the Community Services Director. The VENDOR is permitted to schedule practice sessions for individual racers on Wednesdays between the hours of 5:30 p.m. to 8:30 p.m. during the racing season. A practice session is defined as a non-competitive use with a single vehicle on the track at a time. The VENDOR is expressly prohibited from providing any other service or producing any other event without obtaining the prior written consent of CITY at least sixty days (60) in advance of the proposed event.

2. **HOURS OF OPERATION:**

Unless prior arrangements have been made with CITY, the VENDOR shall have the right to use said ARENA for vehicular motor racing and related activities only between the hours of 5:30 p.m. and 11:00 p.m. on scheduled race nights. This AGREEMENT does not authorize overnight camping.

3. **TERM OF AGREEMENT:**

The term of this AGREEMENT shall be one (1) year, commencing on January 1, 2022, and ending on December 31, 2022, unless earlier terminated as provided herein.

4. AUTHORIZED AGENTS:

The primary contact person on behalf of the CITY shall be the Community Services Director, City of Visalia Community Services Department, 345 N. Jacob Street, Visalia, California, 93291, (559) 713-4042. The primary contact of behalf of the VENDOR shall be Brandon Morse, Morse Racing Promotions, LLC, 939 E. LaSalle Avenue, Visalia, California, 93291, (559) 333-3234.

5. TERMINATION:

CITY shall have the right to terminate this AGREEMENT by giving VENDOR thirty (30) days prior written notice by either personal delivery or first-class mail, postage prepaid, specifying the effective date of termination.

Either party shall have the right to terminate this AGREEMENT based on the other's failure to comply with the terms, covenants and requirements contained herein. Prior to termination, the non-breaching party shall provide written notice to the other identifying the breach and providing for thirty (30) calendar days to cure. If not cured within that timeframe, the AGREEMENT shall be deemed terminated.

6. GROUND AND FACILITIES:

CITY hereby permits VENDOR to use the ARENA and grounds surrounding same in partial exchange for the operations contemplated herein and under the terms and conditions specified herein. The CITY, its officers, employees, or agents, shall have the right to enter into and upon the ARENA at all times, with CITY identification, and to protect any and all rights of the CITY. VENDOR shall supply CITY with key and alarm code to gain access for repairs and routine maintenance inspections. City shall notice VENDOR twenty-four hours in advance of scheduled inspections or access needed for maintenance purposes, emergency situations requiring immediate access exempted. To generate additional revenue and in furtherance of the purposes stated herein, VENDOR may license the use of space within the facility and receive the revenue therefore subject to CITY approval and subject to each of the terms contained herein. CITY approval shall not be unreasonably withheld. This AGREEMENT does not extend to use of the parking lot, grass areas adjacent to the ARENA or along CITY streets. All operations must be contained within the ARENA fencing.

VENDOR shall conform to all state and/or local laws and ordinances regarding the premises without limitations, including compliance with the local sound ordinance.

VENDOR shall not make any modifications or additions to the seating area of the ARENA without the prior written authorization from CITY. VENDOR acknowledges that they are not allowed to add additional seating areas to the grandstand or around the racetrack, whether by making additional seating areas in the grandstand or creation of platforms.

7. VENDOR'S MAINTENANCE OF ARENA:

VENDOR shall be responsible for all routine maintenance and repairs of the ARENA. VENDOR shall maintain the ARENA free and clear of all trash, weeds, litter and other debris and shall power wash grandstand seating area at least once per year. VENDOR shall be responsible for the elimination of graffiti placed on any of the ARENA structures within forty-eight (48) hours of notice, including, but not limited to walls and fences.

VENDOR shall pay all expenses for preparation and maintenance of the ARENA. VENDOR must erect and/or maintain safeguards along track and grandstand area as deemed necessary by the CITY. VENDOR must replace and repair any damage to property and grounds within forty-eight (48) hours after each use to the satisfaction of the CITY.

All areas (grandstands, parking lots, grass areas) used by VENDOR, VENDOR's participants, or spectators, are to be cleaned no later than twenty-four (24) hours following each event. If areas are not cleaned to CITY standards and expectations, the CITY will clean or contract with an agency to perform clean up and will charge the direct cost plus 25% to the VENDOR.

The VENDOR shall furnish, install, operate and maintain all equipment, fixtures, vehicles and other improvements made to the ARENA in good order, condition and repair. The VENDOR shall also keep all premises, furniture, fixtures and equipment in good order, condition, and repair. When this AGREEMENT is terminated, the VENDOR will vacate the premises leaving them in good order, condition, and repair, free of any hazardous material or waste and in good condition satisfactory to the CITY.

VENDOR has reviewed the earthwork berm that the grandstand is located on with the CITY and acknowledges that if the earthwork erodes further, the CITY may terminate this AGREEMENT with VENDOR immediately without the specified thirty (30) day notice listed in Section 5 of this AGREEMENT or alternatively order VENDOR to cancel all scheduled events until CITY can arrange for repairs of the earthwork. If termination of this AGREEMENT or cancellation of any scheduled events is due to such an issue, then VENDOR agrees that it has no right or claim against CITY for any lost profits, contractual losses, or reimbursement of any expenses if termination or cancellation impacts scheduled events.

VENDOR agrees to inspect the grandstand and earthwork supporting the grandstand prior to any event or practice held at the ARENA. This inspection shall be to confirm whether any structural issues, including but not limited to cracking, holes, or other signs of erosion have appeared in these areas. If VENDOR notices any signs of damage, then VENDOR shall cancel the scheduled event and notify CITY to request additional inspection.

8. CITY'S MAINTENANCE OF ARENA:

Major maintenance and repairs to the facility shall be the responsibility of the CITY; this includes water service to the site, electricity to the site and maintenance and repairs to permanent structures and CITY owned improvements. The CITY shall make all necessary major repairs and maintenance to the extent funds are authorized and allocated for specified improvements by the City Council for CITY. Major repairs and maintenance shall be limited to structures, paving, plumbing to the facilities and electrical service up to and including the main panel and overhead arena lighting fixtures. Graffiti in the park or common areas, such as the back of the grandstand concession facility shall be the responsibility of the CITY.

CITY has reviewed the erosion of the earthwork upon which the grandstand is located on with the VENDOR. Presently CITY has concluded that the structure is currently sound but will conduct regular inspections of the grandstand and supporting earthwork during the term of this AGREEMENT. VENDOR shall cooperate with CITY in scheduling these inspections. If the erosion continues to worsen then CITY may be required to terminate this AGREEMENT without notice or

in the alternative require VENDOR to cancel all events and usage of the ARENA until repairs can be made.

9. OWNERSHIP OF PROPERTY AND EQUIPMENT:

Certain existing property at the ARENA is owned by Morse Racing Promotions, LLC. This personal property includes the following: track (dirt material that comprises race surface), crash wall/rail and catch fence, scoreboard, ticket booths, storage containers, vehicles and equipment, concession appliances, equipment and inventory and raceway signage. Upon written notice, VENDOR agrees to remove all of their property, supplies, and equipment within thirty (30) days of the conclusion or termination of this AGREEMENT.

10. IMPROVEMENTS:

Throughout the original term of this AGREEMENT and any extension to the AGREEMENT, the CITY agrees that the racetrack is the personal property of the VENDOR. When the AGREEMENT is concluded, the VENDOR shall remove the racetrack at its sole expense. The ARENA must be left clean, flat, and level to its original grade. At the CITY's option, the VENDOR may leave the track and/or other facilities or items that shall become the sole, unencumbered property of the CITY.

VENDOR shall have the option, at its own expense and upon written approval from CITY, to undertake future improvements and major repairs and maintenance to the arena and its facilities. Any improvements requested by the VENDOR to ARENA must be requested in writing with necessary plans/drawings. Only upon approval by the CITY may the VENDOR alter the ARENA at its own cost. All permanent improvements made to CITY facilities shall revert to the CITY's ownership at the end of the AGREEMENT. VENDOR shall be responsible for obtaining any required building permits required by the City of Visalia.

VENDOR hereby acknowledges the title of CITY in and to the premises in the AGREEMENT, including legal property improvements erected thereon and hereby covenants and agrees never to assail, contest or resist said title with the exception of said racetrack.

11. NON-EXCLUSIVE RIGHT:

The CITY shall have the right to contract with other individuals for use of the ARENA. Specifically, CITY shall have the right to contract with an individual or entity, or otherwise authorize special events at the ARENA during the term of this AGREEMENT, so long as those special events are conducted in a manner consistent with the terms and conditions of this AGREEMENT.

VENDOR may grant others the right to promote special events. If this should occur, the VENDOR shall charge others only those fees and charges for rents, services, and deposits as previously approved, in writing, by the CITY. Said fees and charges shall be submitted and approved by the CITY a minimum of sixty (60) days in advance of the event. Secondary users must provide the CITY with insurance certificates meeting the requirements set forth in Section 24 of this Agreement for Commercial General Liability and Property Damage naming the City of Visalia as "additionally Insured." The City of Visalia shall also require Liquor Liability Insurance if the secondary vendor is proposing to sell alcohol. All secondary vendors must provide a description of proposed activities to the City at least sixty (60) days in advance of the event and shall be responsible for

meeting any additional insurance requirements requested by the City of Visalia Risk Management Division depending on the specific activities proposed by the secondary vendor.

12. USE BY THE CITY:

The CITY reserves the right to use the ARENA for other programs and events but shall not schedule motorized racing events that would compete with VENDOR's operation. The VENDOR will surrender the premises to the CITY on predetermined dates selected by the CITY giving the VENDOR a minimum of a sixty (60) day notice. At the time that the CITY uses the facility, the VENDOR shall have left the premises free of all litter, trash and other debris and with all of the fixtures and facilities in good order and repair. A mutually agreed upon utility reimbursement for CITY's use shall be credited to the VENDOR.

13. PAYMENTS TO THE CITY:

The payment to the CITY shall be nine hundred and seventy-five dollars (\$975.00) for each primary racing event for the 2022 season. The payment for practice days shall be one hundred dollars (\$100) per practice event. Secondary uses of the facility by VENDOR or a third party shall be five hundred dollars (\$500) per day. Any cancellations or modifications to the approved schedule must be reported to CITY by the last date of the month to ensure accurate billing. Utility charges shall be invoiced quarterly. All payments are due thirty (30) days from invoice by CITY.

Each payment is due to CITY 30 days from the invoice date. All payments not received by the due date shall be subject to a two percent (2%) late fee penalty of the full amount due.

VENDOR shall pay all expenses associated with operation of premises, including utility fees, all necessary staff, offices, security, personnel, tools, supplies and equipment for the safe and efficient operation of the Raceway program. VENDOR will provide all necessary personnel, equipment, supplies and concession operations to serve the general public as well as participants in the pit area of the facility, ensuring that the areas meet applicable codes and regulations pertaining to their operation.

14. DESTRUCTION OF THE FACILITIES:

If the ARENA shall be wholly destroyed by fire or other casualty, the CITY may elect not to rebuild the same and may terminate this AGREEMENT by delivering written notice of such election to VENDOR within six (6) months of the occurrence of such destruction. The City shall not be responsible for any property owned by the VENDOR. If any of said ARENA shall be partly or completely destroyed or damaged by fire or other casualty, the CITY shall not be required to repair the same.

15. SURRENDER:

Upon the termination of this AGREEMENT, VENDOR shall surrender possession of the ARENA to the CITY and shall, at the time of surrender, leave the facility in as good order and condition as said facility was at the inception of this AGREEMENT, ordinary wear and tear, and damage by the elements, fire, earthquake, flood, act of God, or public calamity, excepted. Upon written notice, the VENDOR agrees to remove all of their property, supplies and equipment within thirty (30) days of the conclusion or termination of this AGREEMENT.

16. QUIET ENJOYMENT:

VENDOR shall not cause or permit any act or thing to occur on the premises which shall constitute a nuisance, an unlawful act, or a disturbance to the quiet enjoyment of the CITY or any tenant of the CITY on adjacent or neighboring properties. The VENDOR must abate or otherwise said nuisance to be eradicated within SEVENTY-TWO (72) hours from receiving a written notice from the CITY that a nuisance exists.

In the event that the VENDOR has not either (a) taken corrective action within seventy-two (72) hours, or (b) filed an appeal with the CITY within seventy-two (72) hours, the CITY may enter and abate said nuisance to the expense of the VENDOR without any liability whatsoever to the CITY for monetary loss or anticipated profits of the VENDOR or others. Said appeal to the CITY shall be made in writing and be received by the CITY within seventy-two (72) hours after the VENDOR received notice of said nuisance.

17. UTILITIES AND SERVICES:

VENDOR shall be responsible for the payment of utility charges including electrical, telephone and internet service, natural gas, trash collection and alarm system. CITY shall read electrical meters, calculate utility charges and invoice VENDOR for actual use on a quarterly basis. Electricity charges will be paid by VENDOR upon invoice from the CITY.

18. FOOD, BEVERAGE AND MERCHANDISE OPERATION:

VENDOR agrees that they will operate and manage the services and facilities in a reasonable business manner during the entire term of this AGREEMENT. Where such facilities are provided, VENDOR agrees that they will furnish and dispense foods and beverages of the best quality and shall maintain a high standard of service at least equal to or exceeding that of other similar establishments and consistent with prevailing industry standards.

VENDOR must obtain and maintain all necessary permits required for the operation of a concession facility, including Health Department Permits, business license, alcohol beverage control licenses and others as applicable.

VENDOR shall be responsible for any and all controlled substances brought onto the premises by VENDOR or by VENDOR's authorization. VENDOR shall comply with all federal, state and local regulations regarding the use and storage of controlled substances.

CITY reserves the right to prohibit the sale or rental of any item that it deems objectionable or beyond the scope of merchandise deemed necessary for proper services.

19. CODE OF CONDUCT:

VENDOR shall develop rules and regulations for the governing of race events entitled "Code of Conduct," that shall be approved by the CITY and enforced by the VENDOR. Such rules and regulations were set forth in RFP No. 10-11-43 and incorporated by reference as though fully set forth herein and shall be changed only with the written consent of the CITY.

20. SECURITY AND EMERGENCY PERSONNEL:

VENDOR shall provide a minimum of four (4) security guards for each racing event or

one security guard for every one hundred and fifty (150) people in attendance, whichever is greater. The CITY has the sole discretion to require the VENDOR to provide more security guards for other types of events.

VENDOR must have appropriate emergency response system for injury and fire including all applicable personnel.

21. INSTALLATION OF SIGNS:

VENDOR may install, operate and maintain non-illuminating advertising signs facing the inside of the premises occupied by the VENDOR, and at such other places(s) in the ARENA area as may be mutually agreed upon by the CITY and the VENDOR. Any sign installed, operated and maintained by the VENDOR will be the VENDOR's total financial responsibility. No signage may be placed in a position so that it faces outside of the ARENA without the written authorization of the CITY. Prior to installation of any signs, the VENDOR shall obtain the written approval of the CITY as to the sign's size, design and location, and the VENDOR shall obtain any and all necessary permits from the Planning Division in compliance with City of Visalia ordinance.

22. NEGATION OF PARTNERSHIP

The CITY shall not become or be deemed to be a partner or joint venture with the VENDOR other than the relationship of a landlord or a tenant. The VENDOR shall not be considered an agent, an officer, or an employee of the CITY.

23. STANDARD OF SERVICE:

The VENDOR shall be responsible for the following standards of service:

- a. All employees and other personnel who perform work for the VENDOR shall be neat and clean in appearance and courteous to all persons. The VENDOR shall be neat and clean in appearance and courteous to all persons. The VENDOR shall not permit any of their employees to conduct business in an offensive or objectionable manner.
- b. The VENDOR shall be required to follow all reasonable rules and regulations of the CITY concerning the management, operation or use of the ARENA, including, but not limited to, the "Code of Conduct".

24. INSURANCE:

- a. Required Policies: VENDOR agrees to immediately secure and maintain during the term of this AGREEMENT, and prior to commencement of any special event or work hereunder, insurance coverage as follows:
 - i Worker's Compensation: Worker's Compensation Insurance with statutory limits and Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per incident. Such insurance shall comply with all applicable state laws.
 - ii Commercial General Liability and Property Damage: Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include products/completed operations liability, owner's and agency's protective, blanket contractual liability, personal injury liability, and broad form property damage coverage.
 - iii Commercial Automobile Public Liability and Property Damage:

Automobile Public Liability and Property Damage Insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

- iv. Liquor Liability Insurance with a limit of not less than One Million Dollars (\$1,000,000) per occurrence.
- b. Additional Insured: The General Liability/Property Damage & Automobile Liability/Property Damage policies shall:
 - i. Name CITY, its appointed and elected officials, officers, employees and agents as additional insureds;
 - ii. Be primary with respect to any insurance or self-insurance programs maintained by CITY;
 - iii. Shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of the insurer's liability;
 - iv. Contain standard cross-liability provisions.
- c. No Material Change, Termination or Expiration without Notification: Each required policy shall provide that such insurance shall not be materially changed, terminated or allowed to expire except on thirty (30) days prior written notice to CITY.
- d. No Subrogation: Each required policy shall be endorsed to include a waiver of subrogation against the CITY, its officers, officials, agents and employees.
- e. Duration: This insurance shall be maintained during the Term of this Agreement until the Term expires, if an occurrence policy form is used. If a claims-made policy is used, coverage shall be maintained during the AGREEMENT Term period. VENDOR shall replace such certificates for policies expiring prior to the expiration of the Term of this AGREEMENT and shall continue to furnish certificates on an annual basis, when utilizing claims-made form(s).
- f. Failure to Maintain Insurance: If VENDOR for any reason fails to maintain insurance coverage which is required pursuant to this AGREEMENT; the same shall be deemed a material breach of this AGREEMENT. CITY, at its sole discretion, may terminate this AGREEMENT and obtain damages from VENDOR resulting from said breach. Alternatively, CITY may purchase such required insurance coverage, and without further notice to VENDOR, may deduct from monies agreed to be provided to VENDOR hereunder any premium costs advanced by CITY for such insurance.

25. INDEMNIFICATION:

VENDOR agrees to indemnify and save harmless CITY and its officers, appointed and elected officials, agents, employees and assigns from and against any and all claims, demands, suits, loss, damage, injury and liability, including cost and expenses incurred in connection therewith, resulting from, arising out of, or in any way connected with the performance of this AGREEMENT, including but not limited to delivery and unloading of supplies and equipment and the use of the ARENA by VENDOR or invitees of VENDOR such as spectators and persons participating in events, regardless of the passive, concurrent negligence on the part of the CITY or anyone acting under its direction or control or on its behalf. It is further the intent

of the parties that this indemnification requirement is not intended to relieve the CITY from liability for the active negligence of the CITY, its officers, appointed and elected officials, agents, and employees. This hold harmless clause is in no way an admission of liability on the part of the CITY, or any of its officers, officials, agents, or employees.

This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

26. INDEPENDENT CONTRACTOR:

VENDOR represents it is a limited liability corporation and agrees that all employees, agents, subcontractors, independent contractors hired in furtherance of the programs and activities of VENDOR are hired by VENDOR and not by CITY and are not employees, agents, or subcontractors of CITY.

27. NON-DISCRIMINATION:

VENDOR shall not discriminate in employment practices or provision of services hereunder on the basis of race, color, national origin, ancestry, gender, religion, disability, or political affiliation.

The VENDOR shall furnish its accommodations and/or services on a fair, equal and just basis to all public users without unjust discrimination on the basis of race, creed, color, age, sex and/or national origin and comply with public accommodation and access laws. The VENDOR shall charge fair and reasonable prices for each unit of service. The VENDOR may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

28. RECORDS:

Promptly after executing all documents, including, but not limited to leases, subleases, concessions, occupancy agreements, any amendments or modifications to the amount of payments, the VENDOR shall keep and retain as a record in full, true and exact copy of every document, receipt, and or bill which in any way pertains to or reflects "gross receipts" and "public expenses and charges for and accounting period."

On the 15th day of each month during the term of this AGREEMENT, VENDOR shall furnish to CITY a verified statement of its cumulative total gross receipts. VENDOR shall at the same time, also furnish to CITY a year-to-date total of gross total receipts.

The VENDOR shall keep true and accurate records of attendance for each event, including paid and unpaid admissions and race car count by class.

29. NOTICES:

Any notice, demand, or communication required or permitted to be given by the terms of this AGREEMENT, or by any law, may be given by either party by depositing said notice, demand, or communication in the U.S. Mail, postage prepaid, addressed to the other at the party's address or any new address provided by such party in writing to the other. Service of said notice, demand, or communication shall be complete five (5) calendar days after deposit of said notice, demand, or communication in the mail.

Notices and communication concerning this AGREEMENT shall be sent to the following addresses:

CITY

City of Visalia
707 W. Acequia
Visalia, CA 93291
Attn: City Clerk

VENDOR

Morse Racing Promotions, LLC
939 E. La Salle Avenue
Visalia, CA 93291
Attn: Brandon Morse

Either party may, by notice to the other party, change the address specified above. Service of notice of change of address shall be complete when received at the designated address.

30. MISCELLANEOUS PROVISIONS:

- a. Authority: CITY and VENDOR and its respective signatories represent that the signatory holds the position set forth below their signature and that the signatory is authorized to execute this AGREEMENT and to bind said party hereto.
- b. Assignment: Neither this AGREEMENT nor any of the rights hereunder may be assigned without prior written consent of CITY.
- c. Interpretation/Headings: The headings/captions are for convenience and reference only and are not intended to define or limit the scope of any provision and shall have no effect on the AGREEMENT's interpretation. When required by the context of this AGREEMENT, the singular shall include the plural.
- d. Integration/Amendment: This AGREEMENT represents the complete and entire understanding between the parties as to those matters contained herein. This AGREEMENT may only be modified or amended in writing and signed by both parties.
- e. Severability: If any term, condition, covenant, provision or part thereof of this AGREEMENT is, or is declared, invalid, void or unenforceable for any reason, the remainder of the AGREEMENT shall continue in full force and effect.
- f. Governing Law: The laws of the State of California shall govern the interpretation and enforcement of this AGREEMENT and any legal actions arising out of the terms of this AGREEMENT shall be brought in Tulare County.
- g. Attorney's Fees/Costs: In the event of legal action arising from this AGREEMENT, the non-prevailing party agrees to pay the prevailing party reasonable attorney's fees and costs.
- h. Contract Enforcement: The City Manager of CITY shall be responsible for the enforcement of this AGREEMENT on behalf of CITY and shall be assisted therein by those officers and employees of City having duties in connection with the administration thereof.
- i. Cumulative Rights and Remedies: Except as otherwise expressly stated in this AGREEMENT, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies.

31. Airport contract language:

- a. REGULATIONS - VENDOR shall not conduct, or allow to be conducted upon the Demised Premises, any dangerous or hazardous activities, or any activities considered to be a nuisance to the airport or its tenants and neighbors, and VENDOR agrees to abide by all applicable F.A.A. and U.S. Government rules and regulations, including, but not limited to the following:
 - i. The VENDOR for himself/herself, their heirs, personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Demised Premises described herein for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the VENDOR shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said Regulations may be amended.
 - ii. The VENDOR for himself/herself, their personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
 - A. No person on the grounds of race, color, sex, age, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; and
 - B. That in the construction of any improvements on, over or under such land and the furnishing or services thereon, no person on the grounds of race, color, sex, age, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and
 - C. That the VENDOR shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted programs of the Department of Transportation and as said Regulations may be amended.
 - iii. It is understood and agreed that nothing contained herein shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.
 - iv. VENDOR agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service, provided, that VENDOR may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
 - v. The CITY reserves the right (but shall not be obligated to VENDOR to maintain and keep in repair the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of the VENDOR in this regard.
 - vi. The CITY reserves the right to further develop or improve the landing area and all publicly owned air navigation facilities of the airport as it sees fit,

regardless of the desires or views of the VENDOR, and without interference or hindrance.

- vii. The CITY reserves the right to take any action it considers necessary to protect aerial approaches of the airport against obstructions, together with the right to prevent VENDOR from erecting, or permitting to be erected, any building or other structure on the airport which in the opinion of the CITY would limit the usefulness of the airport or constitute a hazard to aircraft.
 - viii. During the time of war or national emergency the CITY shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly owned air navigation facilities and/or other areas or facilities of the airport. If any such agreement is executed, the provisions of this Lease, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.
 - ix. It is understood and agreed that the rights granted by this Lease will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the airport.
 - x. There is hereby reserved to the CITY, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for passage of aircraft in the airspace above the surface of the Demised Premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from, or operating on or about the airport.
 - xi. The Lease shall become subordinate to provisions of any existing or future agreement between the CITY and the United States of America, or any agency thereof relative to the operation, development, or maintenance of the airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the airport.
- b. **CURRENT AND FUTURE AIRPORT REGULATIONS** - This Lease and all rights conferred thereby shall at all times be subject to current and future regulations governing any and all activities at the Visalia Municipal Airport to the same extent that such current and future regulations govern the activities of all persons using the facilities of the Visalia Municipal Airport and occupying structures thereon.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the date first written above.

CITY OF VISALIA

MORSE RACING PROMOTIONS, LLC

By: _____
Leslie Caviglia, City Manager

Brandon Morse, Owner

CONTRACT MANAGER

By: _____
Jeremy Rogers, Community Services Director

ATTEST

APPROVED AS TO FORM

City Clerk

Attorney for City