

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Parks and Recreation *how P*

BOARD AGENDA # \*B-7

Urgent

Routine

AGENDA DATE January 15, 2008

CEO Concur with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Enter into an Agreement with California Motorcycle Association for Exclusive Promoter Use of the La Grange Off-Highway Vehicle Park Motocross Track for a Specified Period Annually from 2008 through 2013.

STAFF RECOMMENDATIONS:

1. Approve entering into an agreement with California Motorcycle Association for exclusive promoter use of the La Grange Off-Highway Vehicle Park Motocross Track for a specified period annually from 2008 through 2013.
2. Authorize the Director of Parks and Recreation to sign the agreement with the race promoter.

FISCAL IMPACT:

The use of the La Grange Off-Highway Vehicle Park Motocross Track by California Motorcycle Association is estimated to generate revenue of \$10,000 annually.

BOARD ACTION AS FOLLOWS:

No. 2008-037

On motion of Supervisor Monteith, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini, and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**Approval to Enter into an Agreement with California Motorcycle Association for Exclusive Promoter Use of the La Grange Off-Highway Vehicle Park Motocross Track for a Specified Period Annually from 2008 through 2013.**

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**DISCUSSION:**

For several years, the AMP Racing Promotions L.L.C., California Motorcycle Association (CMA), and Mutant Motorsports have utilized the La Grange Off-Highway Vehicle Park Motocross Track for special events. In Fiscal Year 2004 – 2005, \$17,756 in revenue was generated, in Fiscal Year 2005 – 2006, \$7,495.50 in revenue was generated, and in Fiscal Year 2006 – 2007, \$5,380 in revenue was generated from similar events. A race weekend will typically draw up to 200 racers and 500 spectators. It is expected that the events scheduled for 2008 – 2013 will have similar attendance. The exclusive promoter use of the La Grange Off-Highway Vehicle Park Motocross Track by CMA is anticipated to generate up to a minimum of \$10,000 annually or 10% of the total gross revenues, including all concession revenues, whichever is greater.

The La Grange Off-Highway Vehicle Park would remain open to the public; however, CMA (Promoter) would have exclusive use of the motocross track up to 10 times per year from 2008 – 2013, during the months of October through May of each year. The exclusive use of up to 10 times per year consists of seven (7) motocross events annually, the New Years Grand Prix and up to two (2) other events per year that require the park to close. The Promoter will be required to post a 30-day notice to the public that the park will be closed or that events will be held. The Promoter shall also provide the County written notification of the event schedule 30 calendar days prior to the scheduled event(s).

The agreement includes provisions designed to ensure the safety of participants (Attachment A). Section 11 – MEDICAL SERVICES states that the Promoter will have an ambulance on-site during the entire event, solely at the Promoter's expense. Ambulance company information is to be provided to the County no later than two (2) weeks prior to the event. The event will not be allowed to start without having adequate medical personnel and a transport vehicle present. Section 17 – SAFETY STAFF states that the Promoter is responsible for supplying any safety staff necessary for the safe conduct of the event.

The agreement will hold the County harmless of liability. Section 12 – HOLD HARMLESS AGREEMENTS states that the Promoter shall execute a Hold Harmless agreement no later than seven (7) days prior to the start of the event. The Promoter is responsible for insuring that all riders shall sign Hold Harmless agreements prior to the start of the event and providing this documentation to the County.

The Promoter is also responsible to maintain the proper care of the facility, including provision of additional restrooms, garbage collection, and grading of the motocross track.

There are very few parks in the area that offer a motocross track of this size and quality. Such events make the facility more visible to the public, increase utilization of the facility, and help promote partnerships with the Stanislaus County Department of Parks and Recreation.

Approval to Enter into an Agreement with California Motorcycle Association for Exclusive Promoter Use of the La Grange Off-Highway Vehicle Park Motocross Track for a Specified Period Annually from 2008 through 2013.  
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**POLICY ISSUE:**

The Board of Supervisors should determine if approval of this agreement would be consistent with the Board priorities of striving for the efficient delivery of public services and effective partnerships.

**STAFFING IMPACT:**

There are no staffing impacts associated with this item.



**STANISLAUS COUNTY  
DEPARTMENT OF PARKS AND RECREATION  
MOTORCROSS CONTRACTUAL AGREEMENT**

This Motocross Contractual Agreement ("Agreement") is made and entered into by and between the **County of Stanislaus** ("County") and **California Motorcycle Association** ("Promoter") on 1/31/08.

**Recitals**

WHEREAS, County is the owner of La Grange Off-Road Vehicle Park; and

WHEREAS, there is a motocross track at the La Grange Off-Road Vehicle Park; and

WHEREAS, Promoter desires to be the exclusive promoter of motocross events at La Grange Off-Road Vehicle Park motocross track on the dates set forth below for the purpose of conducting motorcycle races;

WHEREAS, the County's La Grange Off-Road Vehicle Park motocross track will remain available for public use on the days Promoter is not scheduled to conduct motocross events;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

- 1. EVENT DATES:** County grants to the Promoter the right of exclusive Promoter use of the motocross track at the La Grange Off-Road Vehicle Park for up to seven (7) motocross events annually, and New Years Gran Prix and up to two (2) other events per year that require the park to close and require the Promoter to post a 30 day notice to the public that the park will be closed or that events will be held. The Promoter will utilize the park up to 10 times per year for five (5) years, from October through May of each year, for the motocross. Promoter shall provide the County written notification of the event schedule 30 calendar days prior to the scheduled event(s). In the event of rain, a mutually agreeable date for a makeup event will be scheduled under the same terms and conditions as set forth in this Agreement. Should a scheduled event be cancelled and no makeup event be scheduled, Promoter shall notify the parties identified in Section 22 -Notice of this Agreement that the event will not be made-up.
- 2. TERM OF THIS AGREEMENT:** The term of this Agreement shall be from January 9, 2008 through January 8, 2013.
- 3. ANTICIPATED ATTENDANCE:** It is anticipated that 200 riders will participate in each event and that approximately 500 spectators will attend each weekend.
- 4. FEES TO BE COLLECTED BY PROMOTER:** Practice day fees for riders will be \$20-\$25 per rider. Race fees for riders will be \$20-\$35 per rider. Spectator charges will be \$10-\$15 per person per day. Actual event/spectator fees and estimated gross revenues to be provided to the County at the below address, no later than thirty (30) days prior to the event.

Remit to:  
Stanislaus County  
Department of Parks and Recreation  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

Camping fees of \$10.00 per vehicle, per day, and \$10,000 annual minimum or 10% of the actual gross revenues (including concession revenues), whichever is greater, shall be remitted to the County at the above address along

with the "Special Event Accounting Worksheet" in **Exhibit A**, attached hereto and made a part of this Agreement, no later than 7 (seven) calendar days from the end of the event.

5. **METHOD FOR PROMOTER TO COLLECT FEES:** Promoter to staff entrance gate.
6. **ESTIMATED GROSS RECEIPTS:** Ten Thousand Dollars (\$10,000) per weekend average.
7. **CONCESSIONS:** Food and novelties.
8. **GUARANTEED MINIMUM FEES AND/OR PERCENTAGE TO BE PAID TO COUNTY:** County will receive ten percent (10%) of the gross revenues, including all concessions revenues or a minimum of \$10,000 per year whichever is greater. Ten percent (10%) of the gross revenues, including all concessions revenues shall be paid to the County within 7 (seven) working days from the end of the event. If not paid within 7 (seven) working days from the end of the event, Promoter shall be assessed a \$200.00 late fee. After 45 calendar days from the end of the event, an additional five percent (5%) will be assessed on the total remaining balance owed to County. If not paid within 45 calendar days of the end of the event, all future events are subject to cancellation until paid in full. A breakdown of income shall accompany payment of the fees within 7 (seven) working days of the event (see Exhibit A.) Promoter shall remit Fees and/or percentage of gross revenues to the remit to address referenced in section 3 of this Agreement.

If the annual cumulative total of monies (e.g., 10% of the gross revenues, including all concessions revenues) paid by the Promoter to the County, excluding camping fees or late fees, is less than \$10,000 per year, the Promoter shall pay the County the difference between the annual minimum of \$10,000.00 and the annual cumulative total of monies (e.g., 10% of the gross revenues, including all concessions revenues) within 7 (seven) working days from the end of the year. This payment of the difference shall account for the remaining balance of the annual minimum (\$10,000.00) due the County. If not paid within 7 (seven) working days from the end of the year, Promoter shall be assessed a \$200.00 late fee. After 45 calendar days from the end of the event, an additional five percent (5%) will be assessed on the total remaining balance owed to County. If not paid within 45 calendar days of the end of the event, all future events are subject to cancellation until paid in full.

**ADDITIONAL FEES CHARGED BY COUNTY:** Camping fees of \$10 per vehicle, per day, shall be collected by the Promoter on behalf of Stanislaus County and remitted to the County along with payment and the transaction ticket stub.

9. **GARBAGE COLLECTION AND DISPOSAL:** Promoter is responsible for picking up all trash, signs and markers within 24 hours following the event. Garbage will be deposited in the appropriate refuse containers.
10. **PORTABLE TOILETS:** Portable toilets will be provided by Promoter. Service and cost for the portable toilets are the responsibility of Promoter. There shall be at least one adequately maintained chemical toilet for every seventy-five (75) people in attendance. Promoter is responsible for insuring that ADA requirements are met.
11. **MEDICAL SERVICES:** Promoter will have an ambulance on-site during the entire event, solely at Promoter's expense. Ambulance company information to be provided to the County no later than two (2) weeks prior to the event. The event will not be allowed to start without adequate medical personnel and transport vehicle present.
12. **HOLD HARMLESS AGREEMENTS:** Promoter shall execute a Hold Harmless agreement no later than seven (7) days prior to the start of the event. Promoter is responsible for insuring that all riders shall sign Hold Harmless agreements prior to the start of the event and providing this documentation to the County.
13. **TRACK PREPARATION:** Promoter is responsible for any track preparations during the term of this Agreement. The track must also be cleaned after the event and after general use.
14. **CHANGES TO TRACK:** Any changes to the motocross track, other than minor changes, must be approved in advance by County Parks personnel.
15. **STARTING GATES:** Promoter must supply its own starting gates, if needed.
16. **FIRE PROTECTION:** Promoter must comply with any fire control measures and to provide, at Promoter's cost, additional fire fighting equipment required by County.

**17. SAFETY STAFF:** Promoter is responsible for supplying any safety staff necessary for the safe conduct of the event.

**18. VENDOR REQUIREMENTS:** Promoter is responsible for insuring that all concessions selling or giving away products or services at the event are covered by product liability insurance in the amount of not less than one million dollars (\$1,000,000). All vendors shall meet all local and State license and health requirements, including the possession of any necessary permits.

**19. INSURANCE**

**19.1** Promoter shall take out, and maintain during the event, insurance policies with coverage at least as broad as follows:

**19.1.1 General Liability.** Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by **PROMOTER** under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

**19.1.2 Automobile Liability Insurance.** If the Promoter or the Promoter's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

**19.1.3 Workers' Compensation Insurance.** Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Promoter certifies under section 1861 of the Labor Code that the Promoter is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Promoter will comply with such provisions before commencing the performance of the work of this Agreement.

**19.2** The Promoter shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Promoter, and automobiles owned, leased, hired or borrowed by the Promoter. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

**19.3** The Promoter's insurance coverage shall be primary insurance regarding the County and its officers, officials and employees. Any insurance or self-insurance maintained by the County or its officers, officials and employees shall be excess of the Promoter's insurance and shall not contribute with Promoter's insurance.

**19.4** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

**19.5** The Promoter's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**19.6** Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Promoter shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

**19.7** Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

**19.8** At least ten (10) days prior to the date of the event the Promoter shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

**19.9** The limits of insurance described herein shall not limit the liability of the Promoter or Promoter's officers, employees, agents, or representatives.

**20. DEFENSE AND INDEMNIFICATION**

**20.1** To the fullest extent permitted by law, Promoter shall indemnify, hold harmless and defend the County and its agent, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Promoter or Promoter's officers, employees, agents or representatives resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

**20.2** Promoter's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Promoter to procure and maintain a policy of insurance.

**21. WAIVER OF DEFAULT:** Waiver of any default by any party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

**22. NOTICE:** Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

**To The County:**

Stanislaus County  
DER – Parks and Recreation  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Attn: Susan M. Garcia, C.P.M.

**To Permittee:**

California Motorcycle Association  
500 South "D" Street  
Madera, CA 93638  
Contacts: Aaron Pipes/Dana Lennemann  
(559) 673-4825 Fax  
(559) 673-8080 Office  
(559) 363-3157 or (559) 363-3156 Cellular

Web site [www.cmaracing.com](http://www.cmaracing.com)  
E-mail: [dana@cmaracing.com](mailto:dana@cmaracing.com)

**23. SEVERABILITY:** If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

**24. AMENDMENT:** This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

**25. ENTIRE AGREEMENT:** This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

**26. ADVICE OF ATTORNEY:** Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

**27. CONSTRUCTION:** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

**28. GOVERNING LAW AND VENUE:** This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

**IN WITNESS WHEREOF,** the parties hereto have caused this Agreement to be executed the day and year first above written.

**COUNTY OF STANISLAUS  
Department of Parks and Recreation**

  
\_\_\_\_\_  
Sonya K. Harrigfield  
Director

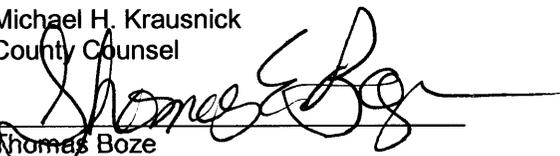
1/31/08  
\_\_\_\_\_  
Date

**PERMITTEE  
California Motorcycle Association**

  
\_\_\_\_\_  
REPRESENTATIVE  
California Motorcycle Association

1/28/08  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

Michael H. Krausnick  
County Counsel  
  
\_\_\_\_\_  
Thomas Boze  
Deputy County Counsel

\_\_\_\_\_  
Date

**EXHIBIT A  
SPECIAL EVENT ACCOUNTABILITY WORKSHEET**

Promoter/Club Name: \_\_\_\_\_ Date of Event: \_\_\_\_\_

**Race Entry Fees:**

Number of Racers	Fee Per Racer	Extended Total
<b>Total Gross Income</b>		

**Spectator Fees:**

Number of Spectators	Fee Per Person	Extended Total
<b>Total Gross Income</b>		

**Practice Day Fees:**

Number of Riders	Fee Per Rider	Extended Total
<b>Total Gross Income</b>		

**Grand Total Gross Income \$ \_\_\_\_\_ X 10% = Amount Due to County \$ \_\_\_\_\_**

**Exclusive Use Fee:**

Number of Days	Fee Per Day	Extended Total
<b>Total Fee Due to County</b>		

**Camping Fee: (Attach transaction ticket stub and payment)**

Date	Number of Vehicles	Fee Per Vehicle	Extended Total
	<b>Total Fee Due to County</b>		

**Concession Revenue : (Attach copies of all invoices and receipts of concession activity with the County 10% share.)**

Total Revenue	10% Due to County

**Summary:**

Description	Amount Due to County
10% of Gross Income due County	
10% of Concession Revenue due County	
Exclusive Use Fee Total	
Camping Fee Total	
<b>TOTAL DUE TO COUNTY</b>	