




AGENDA ITEM NO.
C-12

COUNTY OF HUMBOLDT

For the meeting of: July 23, 2013

Date: June 5, 2013

To: Board of Supervisors

From:  Thomas K. Mattson, Public Works Director

Subject: Lease Agreement with Humboldt County Fair Association and State Department of Food and Agriculture

RECOMMENDATION(S):

That the Board of Supervisors by a four-fifths vote:

1. Approve and authorize the chair to sign the attached lease with the Humboldt County Fair Association (Association) and the State Department of Food and Agriculture for the operation of the County Fair; and
2. Direct the Clerk of the Board to return two executed originals to Real Property for transmittal to the Association and State Department of Food and Agriculture.



SOURCE OF FUNDING: N/A

DISCUSSION: On June 11, 2002, the Humboldt County Board of Supervisors (Board) executed a lease, which was amended on June 15, 2004 extending the lease through August 31, 2013, with the Association to use, manage and possess the Humboldt County Fairgrounds.

A new lease with updated clauses has been signed by the Association and State Department of Food and Agriculture and is now being presented to your Board for approval. The new lease term will begin on September 1, 2013 and terminate on August 31, 2018 unless terminated by mutual consent of both parties on December 31 of each calendar year.

Prepared by _____

CAO Approval 

REVIEW:	Auditor _____	County Counsel 	Personnel _____	Risk Manager 	Other _____
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TYPE OF ITEM:



Consent

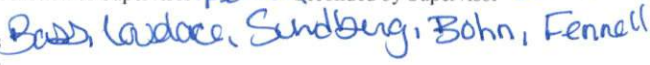
Departmental

Public Hearing

Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor  seconded by Supervisor 

Ayes 

Nays _____

Abstain _____

Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 

By: 

Kathy Hayes, Clerk of the Board

The Association has been leasing the Humboldt County Fairgrounds for many years; since approximately 1926. During this time there has been the need to update the lease clauses many times. The lease before you today has been updated to conform to minor changes in various statutes and to meet current needs of the County and the Association.

A summary of the most significant changes is as follows:

1. In Section 10, second paragraph, the proposed lease allows for the Association to hold annual itemized statements, from activities other than the annual fair, to be examined by County within 10 days, upon request of County. The current lease calls for the Association to submit the itemized statements on or before March 1, of each year. This was difficult to accomplish by the Association and County staff is satisfied that having access to the statements, when needed, will suffice to keep County informed.
2. In Section 11, the proposed lease requires the Association to forward the annual fiscal audit or review directly to the State instead of the County. The proposed change extends the deadline for the Association to do the work and also eliminates the County as middleman.
3. In Section 13, the proposed lease requires the Association to maintain copies of each meeting's minutes and, upon request by County, to submit the copies to County within 10 business days. The current lease requires the Association to submit a copy of the meeting minutes to County within 10 business days after each meeting. County staff is satisfied that having access to the minutes, when needed, will suffice to keep County informed.
4. In Section 16, the proposed lease allows the Association's Board of Directors to delegate to Association's Executive Director the authority to execute contracts, with prior approval of the Association's Board, if the contract does not involve the receipt or expenditure of more than \$10,000.00 and does not grant a license, permit, concession, or other right for a period longer than fifteen days. The current lease has a limit of \$1,000.00 and a five day period. This is impracticable in today's economic environment. The Board of Directors meets once monthly and the delay in approval for a user has caused the Fairground to lose potential business as well as having to wait for Fairground repairs that are urgently needed.
5. In Section 17, the proposed lease allows the Association to make changes or modifications to the Fairgrounds without obtaining County's written consent, up to the cost of \$10,000.00. The current lease requires County's written consent if the cost exceeds \$5,000.00.
6. Sections 32 (Notice) and 39 (Jurisdiction), of the proposed lease, have been updated to be consistent with current County lease language.

FINANCIAL IMPACT: The County and its residents receive the benefits of the Association's management, operation, maintenance and repair of the County Fairgrounds. There is no financial impact to the General Fund. This action complies with the Board's Strategic Framework by providing community-appropriate levels of service and providing for and maintaining infrastructure.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS: Not approve the lease, which would have the potential to interfere with the continuance of the annual Humboldt County Fair and use of the Fairgrounds by local residents for events throughout the year.

ATTACHMENTS:

1. Lease

ORIGINAL

LEASE/AGREEMENT FOR OPERATION OF COUNTY FAIR

This Agreement, made and entered into in triplicate this 23 day of July, 2013, by and between the COUNTY OF HUMBOLDT, a political subdivision of the State of California, hereinafter referred to as COUNTY, and the HUMBOLDT COUNTY FAIR ASSOCIATION, a non-profit corporation, hereinafter referred to as ASSOCIATION.

WITNESSETH:

WHEREAS, COUNTY owns the County Fairgrounds located in the City of Ferndale (hereinafter referred to as "FAIRGROUNDS"); and

WHEREAS, pursuant to Government Code Section 25536, the Board of Supervisors, by a four-fifth's vote, may enter into a lease of the FAIRGROUNDS without competitive bidding; and

WHEREAS, Government Code Section 25906 authorizes COUNTY to contract with a non-profit corporation to conduct an agricultural fair in the county for such period and under such conditions as COUNTY may determine; and

WHEREAS, COUNTY desires to hold and conduct an annual County Fair in said county at the FAIRGROUNDS and has designated the fair as the Humboldt County Fair (hereinafter referred to as "FAIR"); and

WHEREAS, the State of California has appropriated certain monies for the encouragement of county fairs, and such monies are apportioned to such FAIR by the Department of Food and Agriculture; and

WHEREAS, ASSOCIATION has the experience necessary to promote agriculture and industrial and recreational interests of the people of Humboldt County; and

WHEREAS, COUNTY wishes to contract with ASSOCIATION, pursuant to the provisions of Government Code Section 25906, for the purpose of having ASSOCIATION hold and conduct the FAIR and use, manage, and possess the FAIRGROUNDS for the period of this agreement,

NOW, THEREFORE, it is agreed to as follows:

1. PREMISES

COUNTY leases to ASSOCIATION and ASSOCIATION leases from COUNTY the following described premises located in Ferndale, County of Humboldt, State of California:

APN'S 30-011-03, 30-021-03, 30-071-01, 30-081-06, 30-112-17, 30-112-20, and 100-181-03, most commonly known as the County Fairgrounds. Leased premises are approximately 65 acres. The location of these premises is more particularly shown on Exhibit A, which is attached

hereto and incorporated herein.

2. CONSIDERATION

The consideration for the Agreement of FAIRGROUNDS is the benefit received by COUNTY and its residents from the management and operation of the County Fair by ASSOCIATION and the maintenance and repair of the leased premises by ASSOCIATION.

3. CONDUCT OF COUNTY FAIR AND MANAGEMENT OF FAIRGROUNDS

A. ASSOCIATION shall annually hold and conduct an agricultural fair at the FAIRGROUNDS. The FAIR shall be held and conducted by ASSOCIATION once each year during the term of this Agreement, on such dates and at such times as ASSOCIATION may select. ASSOCIATION shall use, possess, and manage the FAIRGROUNDS for the purpose of conducting the FAIR. ASSOCIATION may also use the FAIRGROUNDS for purposes not inconsistent with the terms of this Agreement or with the conduct and operation of the FAIR. To the extent permitted by law, ASSOCIATION may conduct horse races on the FAIRGROUNDS as part of FAIR activities.

B. Notwithstanding the foregoing and upon COUNTY'S advising ASSOCIATION of its intended use, COUNTY may use the FAIRGROUNDS for any lawful COUNTY purposes including, but not limited to, a polling place, disaster care center, and/or community emergency coordinating center. Any such use shall be at no charge to COUNTY.

ASSOCIATION shall require any group using and/or renting FAIRGROUNDS to relinquish the premises in the event of a disaster or emergency pursuant to this paragraph.

4. TERM

The term of this Agreement shall be for five (5) years, commencing when:

A. Both COUNTY and ASSOCIATION have signed the Agreement, and

B. COUNTY has received written notice from the California Department of Food and Agriculture that it has approved the Agreement, and terminating on August 31, 2018, unless terminated prior thereto as hereafter provided. Agreement may be terminated on December 31 of each year during the term of this Agreement by written notice and by mutual consent of both COUNTY and ASSOCIATION. Such notice of termination shall be effective if submitted not less than ninety (90) days prior to December 31 of the year when such termination becomes effective.

5. PREPARATION AND SUBMISSION OF BUDGET TO COUNTY AND DEPARTMENT OF FOOD AND AGRICULTURE

Upon the execution of this Agreement, and annually thereafter during the term hereof, ASSOCIATION shall submit to COUNTY a budget showing the estimated revenues and the

proposed expenditures from all sources during the ensuing calendar year. Upon approval of said budget by COUNTY'S Board of Supervisors, ASSOCIATION shall submit said approved budget to the California Department of Food and Agriculture. The approved budget and its submittal to the California Department of Food and Agriculture shall constitute an application to COUNTY for an apportionment to COUNTY of funds from the Fairs and Expositions Fund of the State of California (FEF).

The budget and application provided for in this paragraph shall request and provide for the maximum allocation allowed by law. The budget provided for by this paragraph shall comply with all requirements of the California Department of Food and Agriculture, the State Department of Finance, and other concerned State agencies, and provisions of the Food and Agricultural Code, and Business and Professions Code which apply to fairs, and ASSOCIATION shall prepare and submit all information and do all things necessary to qualify COUNTY for the maximum allocation permissible from the FEF.

6. STATEMENT OF OPERATIONS

Within ninety (90) days of the end of each fiscal year during the term of this Agreement, ASSOCIATION shall file with the California Department of Food and Agriculture a detailed statement of ASSOCIATION'S operations in the previous fiscal year. The statement shall comply with provisions of Section 4505 of the Food and Agricultural Code and other applicable laws.

7. DEPOSIT AND EXPENDITURE OF FAIRS AND EXPOSITIONS FUND

Funds received by COUNTY from the FEF shall be deposited as provided in Section 4481 of the Food and Agricultural Code. Funds so received and deposited may be expended by ASSOCIATION only for the purposes authorized by Section 4481 of the Food and Agricultural Code and only for the purposes specified in the budget submitted by ASSOCIATION and approved by COUNTY pursuant to provisions of paragraph 5 of this Agreement.

8. DEPOSITS AND EXPENDITURES

ASSOCIATION shall retain and use all monies received by it from the conduction of said FAIR and from the use, possession, and management of FAIRGROUNDS and shall pay therefrom all expenses incurred in connection with both. ASSOCIATION shall comply with and carry out all provisions of law relating to county fairs. ASSOCIATION agrees that all net proceeds received by ASSOCIATION, from whatever source, shall be deposited by it within sixty (60) days after the conclusion of any FAIR in a County Fair Fund that shall be established in the COUNTY'S treasury for that purpose. No funds shall be expended by ASSOCIATION except pursuant to the budget submitted and approved as provided in paragraph 5 of this Agreement.

9. AWARDS AND PREMIUMS

ASSOCIATION shall pay all premiums awarded by the judges at FAIR, subject to the prior approval of the premium list by the California Department of Food and Agriculture and the necessary apportionment and disbursement of the required funds by the State of California to COUNTY, provided that:

A. All premium awards are made in accordance with a published premium list approved by the California Department of Food and Agriculture, as aforesaid, and applicable rules and regulations of the California Department of Food and Agriculture;

B. Certification of the awards of said premiums by said judges has been duly and regularly made and presented to ASSOCIATION; and

C. State of California, Department of Food and Agriculture, Division of Fairs and Expositions, its officers, agents, employees, and servants shall not be liable for premiums paid or not paid or awards made or not made.

10. RECORDS AND ACCOUNTS

ASSOCIATION will accurately make and keep all records and procedures as stated in the Accounting Procedures Manual distributed by the California Department of Food and Agriculture, Division of Fairs and Expositions, and all subsequent revisions, of all its transactions hereunder and will, among other things, require and procure serially numbered receipts in duplicate (or triplicate) for any and all money received, detailed itemized invoices, or other supporting documents for any and all money disbursed or expended by ASSOCIATION in connection with its management and control of FAIR and FAIRGROUNDS, and at the conclusion of said FAIR will submit to and file with COUNTY a complete itemized statement of all receipts and disbursements and other financial documents pertaining to FAIR.

In addition, on or before March 1 of each fiscal year, ASSOCIATION will complete an itemized statement of all receipts and disbursements resulting from activities, other than the annual FAIR, conducted by ASSOCIATION on FAIRGROUNDS or elsewhere with COUNTY OR OTHER PUBLIC FUNDS. ASSOCIATION hereby agrees that all books, records, and documents pertaining to said management and control shall be subject to examination by COUNTY, the California Department of Food and Agriculture, and the State Department of Finance, and that all such books, records, and documents shall be preserved by ASSOCIATION and be and remain public records. All said relevant accounts and records of ASSOCIATION shall be made available at a location in Humboldt County within ten (10) days of a request by COUNTY.

11. AUDIT

ASSOCIATION shall cause to be conducted an independent annual fiscal audit or fiscal review as requested by the California Department of Food and Agriculture. ASSOCIATION shall

forward the annual fiscal audit or fiscal review, no later than June 1, of each year, to the Department of Food and Agriculture, Division of Fairs and Expositions, and certify the financial viability of ASSOCIATION and the fair it conducts. Pursuant to Business and Professions Code Section 19638, the books and records of ASSOCIATION shall be subject to audit by the Department of Finance, at the discretion of the Department of Finance.

12. ADDITIONAL APPROPRIATIONS UNDER SECTION 19630 OF THE BUSINESS AND PROFESSIONS CODE

ASSOCIATION and COUNTY agree that, with respect to the commitment or expenditure of any funds allocated by an executive order of the State Director of Food and Agriculture pursuant to Section 19630 of Business and Professions Code or by any other authority, procedures applicable to COUNTY with respect to purchases and contracts shall be followed.

13. MINUTES OF ASSOCIATION MEETINGS

ASSOCIATION agrees to maintain a copy of the minutes of each meeting of the Board of Directors of ASSOCIATION and, within ten (10) business days of request by COUNTY, to submit a certified copy of the minutes of each meeting to the Clerk of the Board of Supervisors of COUNTY.

14. LIMITATION OF CONDUCT OF OTHER FAIRS

During the period of this Agreement, ASSOCIATION, during the period of said FAIR, will not engage in the conduct or operation in said County of any other fair, exposition, or contest.

15. ASSOCIATION/ INDEPENDENT CONTRACTOR

In the performance of this Agreement and in the use, possession, management, and control of FAIR and FAIRGROUNDS, ASSOCIATION is acting as an independent contractor and not an agent of COUNTY or State of California.

16. CONTRACTS ENTERED INTO BY ASSOCIATION

ASSOCIATION agrees that all contracts which it executes including, but not limited to, exhibit space, concession services, non-fair usage, or for construction, shall have the approval of a quorum of the Board of Directors of ASSOCIATION and shall be recorded into the minutes of the meetings; provided, however, that the Board of Directors may delegate to ASSOCIATION'S Executive Director the authority to execute any such contract with prior approval of the Board if the contract does not involve the receipt or expenditure of more than \$10,000.00, and if such contract does not grant a license, permit, concession, or other right for a period longer than fifteen (15) days, including any extensions or additional contracts.

17. MODIFICATIONS

ASSOCIATION shall not make any changes or modifications to FAIRGROUNDS or structures without obtaining COUNTY'S prior written consent, except that ASSOCIATION may make modifications which do not cost more than \$10,000.00 without obtaining COUNTY'S prior consent. Any changes or modifications made by ASSOCIATION shall be at ASSOCIATION'S sole expense, except for funds received by ASSOCIATION from other sources. Any construction or repair work on FAIRGROUNDS shall be subject to provisions of Section 22030 et seq. of the Public Contract Code (public works contracts and bidding requirements).

18. SUBCONTRACTORS

Should ASSOCIATION subcontract any portion of the work to be performed under this Agreement, said SUBCONTRACTORS shall be required by ASSOCIATION to:

A. Enter into a written contract with ASSOCIATION acknowledging that no employee/employer relationship exists between ASSOCIATION and SUBCONTRACTOR and that no Workers' Compensation, unemployment benefits, or other personnel benefits are required by or available to SUBCONTRACTOR through ASSOCIATION or COUNTY.

B. Hold harmless and to indemnify, defend, and save harmless ASSOCIATION and COUNTY, its Board of Supervisors, officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation who may be injured or damaged by SUBCONTRACTOR in the performance of this Agreement.

19. PREVAILING WAGES

ASSOCIATION acknowledges and agrees that all work on physical modifications required to be performed as a condition precedent to the commencement of the term of this Agreement or any such future work performed by ASSOCIATION at the request of COUNTY shall be governed by, and performed in accordance with, the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (Sections 1770 et seq.). These provisions are not applicable to modifications costing not more than \$1,000.00.

Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Humboldt County Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality applicable to this Agreement for each craft, classification, or type of workman needed to execute the aforesaid structural modifications from the director of the State Department of Industrial Relations. ASSOCIATION herein agrees that ASSOCIATION shall post, or cause to be posted, a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. Copies of said prevailing wage rates may be obtained from COUNTY'S Department of Public Works.

Except as expressly set forth in this Agreement, nothing herein is intended to grant authority for ASSOCIATION to perform construction work on space currently leased by COUNTY or for which COUNTY has entered into an agreement or amendment to the agreement.

20. BUILDING STANDARDS AND COMPLIANCE WITH LAWS

A. ASSOCIATION covenants and warrants that any remodeling will be done in accordance with all local, state, and federal laws and regulations, including but not limited to, the Americans With Disabilities Act. ASSOCIATION further agrees to comply with any federal, state, or local licensing standards, any applicable accrediting standards, and any other applicable standards or criteria established locally or by the state or federal governments.

B. ASSOCIATION shall also comply with applicable laws and regulations relating to the conduct of county fairs or relating to any operations or activities conducted on FAIRGROUNDS by ASSOCIATION; or conducted by others with ASSOCIATION'S permission, express or implied; and ASSOCIATION shall obtain all licenses or permits and pay all fees which may be required in order to conduct any such operation or activity.

C. COUNTY shall have the right to terminate this Agreement upon reasonable notice, as determined by COUNTY, if any of the above mentioned applicable laws, standards, or criteria are not complied with.

21. SMOKING

Pursuant to Humboldt County Code §971-1 et seq., COUNTY owned or leased premises are smoke free. ASSOCIATION shall comply with said provision.

22. MAINTENANCE AND REPAIR OF FAIRGROUNDS

ASSOCIATION agrees to maintain FAIRGROUNDS and all facilities and improvements located thereon in a good state of repair and to make all necessary repairs to such FAIRGROUNDS, facilities, and improvements, and agrees to bear, assume, pay, and discharge all expenses and obligations incurred by it in connection with said FAIR and FAIRGROUNDS facilities and improvements. All such expenses and obligations shall be paid by ASSOCIATION from its own funds, except that ASSOCIATION may use the following funds to pay and discharge such expenses and obligations:

A. Such sum as COUNTY may allocate for work in advance of holding FAIR and other purposes incidental to the plans and preparation of FAIR;

B. Such sums as may be appropriated by COUNTY to be used for the general conduct of FAIR;

C. Such sums as have been approved for disbursement by the Board of Supervisors of

COUNTY;

D. Such sums as have been or may be appropriated by the California Department of Food and Agriculture to COUNTY from the FEF, which said Board of Supervisors, with the consent of the California Department of Food and Agriculture, may determine to use for the purpose of said FAIR.

23. HOLD HARMLESS INDEMNIFICATION

COUNTY agrees to indemnify and hold harmless, and at its own risk, cost, and expense defend the State of California, Department of Food and Agriculture, Division of Fairs and Expositions, its officers, agents, employees, and servants and ASSOCIATION from and against any and all liability expense, including defense costs, legal fees, and claims for damages arising from COUNTY'S negligence, intentional acts, or breaches of this Agreement. Indemnification with respect to defense costs shall be made at the time ASSOCIATION and/or the State of California, Department of Food and Agriculture, Division of Fairs and Expositions incur such costs.

ASSOCIATION agrees to indemnify and hold harmless, and at its own risk, cost, and expense defend the State of California, Department of Food and Agriculture, Division of Fairs and Expositions, its officers, agents, employees, and servants and COUNTY, its Board of Supervisors, officers, agents, and employees from and against any and all liability expense, including defense costs, legal fees, and claims for damages arising from ASSOCIATION'S negligence, intentional acts, or breaches of this Agreement. Indemnification with respect to defense costs shall be made at the time COUNTY and/or the State of California, Department of Food and Agriculture, Division of Fairs and Expositions incur such costs.

24. INSURANCE

ASSOCIATION shall, at its own expense and for the life of this Agreement, obtain and maintain policies of insurance for:

A. Comprehensive General Liability Insurance (broad form endorsement), including public liability, premises operation, contractual liability, with minimum limits of \$5,000,000.00 combined single limit (CSL - any one incident/any one occurrence), covering all bodily injury and property damage, including any legal fees, arising out of its operation under this Agreement.

The General Liability Insurance coverage must also include liquor legal liability.

B. Comprehensive Automobile Insurance for all owned, non-owned, and hired vehicles covering all bodily injury and property liability incurred during the performance of this Agreement with minimum coverage of \$1,000,000.00 any one occurrence.

C. Workers' Compensation Insurance as required by law covering all its employees and volunteers.

D. ASSOCIATION shall, throughout the period of this Agreement, maintain any other

insurance, permits, or surety bonding that may be required by applicable local, state, or federal laws and regulations.

The above insurance shall be underwritten by insurance companies authorized to do business in the State of California and certificates, referred to above, must include thirty (30) days prior written notice of any material change or cancellation.

E. COUNTY reserves the right to obtain complete copies of the original insurance policies, if the County Risk Manager desires to do so.

F. If ASSOCIATION does not keep the above mentioned insurance in full force and effect during the life of this Agreement, COUNTY, at ASSOCIATION'S expense, may elect to purchase the necessary insurance, and ASSOCIATION agrees to pay the cost of said insurance or, in the alternative, COUNTY may elect to treat the failure to maintain requisite insurance as a breach of contract and terminate the Agreement as provided herein.

G. This Agreement shall not be executed by COUNTY until certificates or other sufficient proof that these insurance provisions have been complied with are filed with the Clerk of the Humboldt County Board of Supervisors.

25. USER/CONCESSIONAIRE INSURANCE

ASSOCIATION shall require any USER/CONCESSIONAIRE using FAIRGROUNDS to provide the following insurance, as applicable to their use, at their own expense and for the term of their use:

A. Comprehensive General Liability Insurance (broad form endorsement) including public liability, products liability, premises operation, contractual liability, liquor legal liability or host liquor liability, fire legal liability, with a minimum of \$1,000,000.00 combined single limit.

B. Comprehensive Auto Liability for all owned, non-owned and hired vehicles covering all bodily injury and property damage incurred during the performance of their use of FAIRGROUNDS with the minimum coverage of \$1,000,000.00 per accident combined single limit.

C. Workers' Compensation Insurance, as required by law, covering all contractors, employees, and volunteers.

The above insurance shall be underwritten by insurance companies authorized to do business in the State of California and certificates referred to above must include the following:

1. Name COUNTY and ASSOCIATION as "additional insured".
2. Shall constitute primary insurance as to the COUNTY, its Board of Supervisors, officers, agents, and employees and ASSOCIATION so that any other policies held by COUNTY or

ASSOCIATION shall not contribute to any loss under said insurance policies.

3. USER/CONCESSIONAIRE is not entitled to any rights unless Certificates of Insurance or other sufficient proof that the above mentioned insurance is in effect and the provisions complied with. Such certificate(s) or other proof shall be on file with ASSOCIATION.

26. NUCLEAR FREE CLAUSE

ASSOCIATION certifies by its signature below that ASSOCIATION is not a nuclear weapons contractor, in that ASSOCIATION is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. ASSOCIATION agrees to notify COUNTY immediately if it becomes a nuclear weapons contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if ASSOCIATION becomes a nuclear weapons contractor.

27. ASSOCIATION'S DEFAULT

ASSOCIATION shall be in default of this Agreement if it fails or refuses to perform any provision of this Agreement that it is obligated to perform if the failure to perform is not cured within thirty (30) days after written notice of the default has been given by COUNTY to ASSOCIATION.

If the default cannot reasonably be cured within thirty (30) days, ASSOCIATION shall not be in default of this Agreement if ASSOCIATION commences to cure the default within the 30-day period and diligently and in good faith continues to cure the default.

COUNTY, at any time after ASSOCIATION commits a default can cure the default at ASSOCIATION'S cost. If COUNTY at any time, by reason of ASSOCIATION'S default, pays any sum or does any act that requires the payment of any sum, the sum paid by COUNTY shall be due immediately from ASSOCIATION to COUNTY at the time the sum is paid, and if paid at a later date, shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by COUNTY until COUNTY is reimbursed by ASSOCIATION.

If ASSOCIATION fails to cure the default, COUNTY shall have the right to terminate this Agreement.

28. TERMINATION

Except as otherwise provided, COUNTY reserves the right to terminate this Agreement, upon seven (7) days written notice, for any cause or reason provided by the Agreement itself, or by law, or upon the happening of one or more of the following:

- A. The making of ASSOCIATION of any general assignment for the benefit of creditors.

B. The failure of ASSOCIATION to pay promptly when due all charges, fees, or other payments in accordance with this Agreement.

C. The failure of ASSOCIATION to remedy any default, breach, or violation of county, municipal, federal and/or state laws or regulations by ASSOCIATION or its employees.

D. The violation of any of the provisions of this Agreement.

E. The building(s) becomes damaged due to fire, flood, earthquake, or any other natural disaster.

F. Intentionally supplying COUNTY with false or misleading information or misrepresenting any material fact on its application or documents or in its statement to or before COUNTY, or intentional failure to make full disclosure on its financial statement or other documents.

29. DESTRUCTION OF PREMISES

In the event the FAIRGROUNDS premises, facilities, or improvements are destroyed in whole or in part by fire or other casualty to the extent that they are substantially unusable, ASSOCIATION reserves the right to forthwith terminate this Agreement upon written notice seven (7) days following the date of loss.

In the event that the FAIRGROUNDS premises, facilities, or improvements are destroyed in whole or in part by fire or other casualty, COUNTY shall have the option to rebuild or to terminate this Agreement. Such option shall be exercised by COUNTY by notice in writing to ASSOCIATION within seven (7) days following the date of loss. COUNTY'S option to rebuild shall not constitute a waiver of ASSOCIATION'S right to terminate this Agreement, as provided in this paragraph (29).

30. SURRENDER OF PREMISES

At the termination of this Agreement, ASSOCIATION shall surrender the leased Premises to COUNTY in good condition and repair, except for normal wear and tear.

31. POSSESSORY INTEREST

This Agreement may create a possessory interest, as described in Section 107 et seq. of the Revenue and Taxation Code of the State of California in tax exempt property. If such an interest is created, it may be subject to property taxation and the party in whom the possessory interest is vested may be subject to the payment of taxes on such interest.

32. NOTICE

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served

personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

ASSOCIATION:
Humboldt County Fair Association
1250 5th Street
Ferndale CA 95536

Division of Fairs and Expositions, Attention: Director
California Department of Food and Agriculture
1010 Hurley Way, Suite 200
Sacramento CA 95825

COUNTY:
County of Humboldt
Public Works Department
1106 Second Street
Eureka CA 95501

All insurance notices shall also be addressed to:

County of Humboldt
Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

33. ASSIGNMENT

This Agreement shall not be assigned by either party without the written consent of the other party.

34. AGREEMENT MODIFICATION

This Agreement may be modified only by subsequent written agreement signed by COUNTY and ASSOCIATION.

35. ATTORNEYS' FEES

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees (including reasonable value of services rendered by County Counsel) to be fixed by the court, and such recovery shall include court costs and attorneys' fees (including reasonable value of services rendered by

County Counsel) on appeal, if any. As used herein, "the party prevailing" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

36. WAIVER OF BREACH

The waiver by COUNTY of any breach of any provisions of this Agreement shall not constitute a continuing waiver of any subsequent breach of the same or a different provision of this Agreement.

37. REMEDY FOR BREACH

In the event of breach of this Agreement by ASSOCIATION, COUNTY shall have all rights and remedies provided by law, including those set forth in California Civil Code Section 1951.2.

38. BINDING EFFECT

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, successors, and assigns.

39. JURISDICTION AND APPLICABLE LAWS

This Agreement shall be construed under the laws of the State of California. Any dispute arising hereunder or relating to this Lease shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by Court order pursuant to Code of Civil Procedure §§394 and 395.

40. ADA COMPLIANCE

ASSOCIATION agrees to make all necessary repairs and remodeling to FAIRGROUNDS to bring it into compliance with the Americans With Disabilities Act (ADA). ASSOCIATION agrees to bear, assume, pay and discharge all expenses and obligations incurred by it in connection with said FAIRGROUNDS facilities ADA compliance.

41. PROVISIONS REQUIRED BY LAW

Each and every provision of law or clause required to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If for any reason any such provision is not inserted, or if not correctly stated, then upon application of either party, the Agreement shall forthwith be physically amended to make such insertion or correction.

42. STATE DEPARTMENT OF FOOD AND AGRICULTURE

It is understood and agreed that this Agreement shall not go into effect unless it is approved by the California Department of Food and Agriculture, Division of Fairs and Expositions.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto upon the date first above written.

(SEAL)
ATTEST:
CLERK OF THE BOARD

By *Tracy [Signature]*

HUMBOLDT COUNTY
FAIR ASSOCIATION

BY *Richard Conway*
TITLE *Interim General Manager*

BY *Jeffrey Farley*
TITLE *2nd V.P.*

APPROVED AS TO FORM:
COUNTY COUNSEL

By *Joyce Stigter*
DEPUTY

STATE DEPARTMENT OF FOOD
AND AGRICULTURE

BY *W. J. Dehoo*
TITLE *Deputy Secretary*

INSURANCE CERTIFICATES
REVIEWED AND APPROVED:

BY _____
RISK MANAGER

COUNTY OF HUMBOLDT

BY *Raymond Swilling*
CHAIRPERSON
BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT
STATE OF CALIFORNIA

CITY OF FERNDALE

VAN NESS

AVE.

127' FERNDALE CITY LIMITS

COUNTY OF HUMBOLDT

FAIR GROUNDS

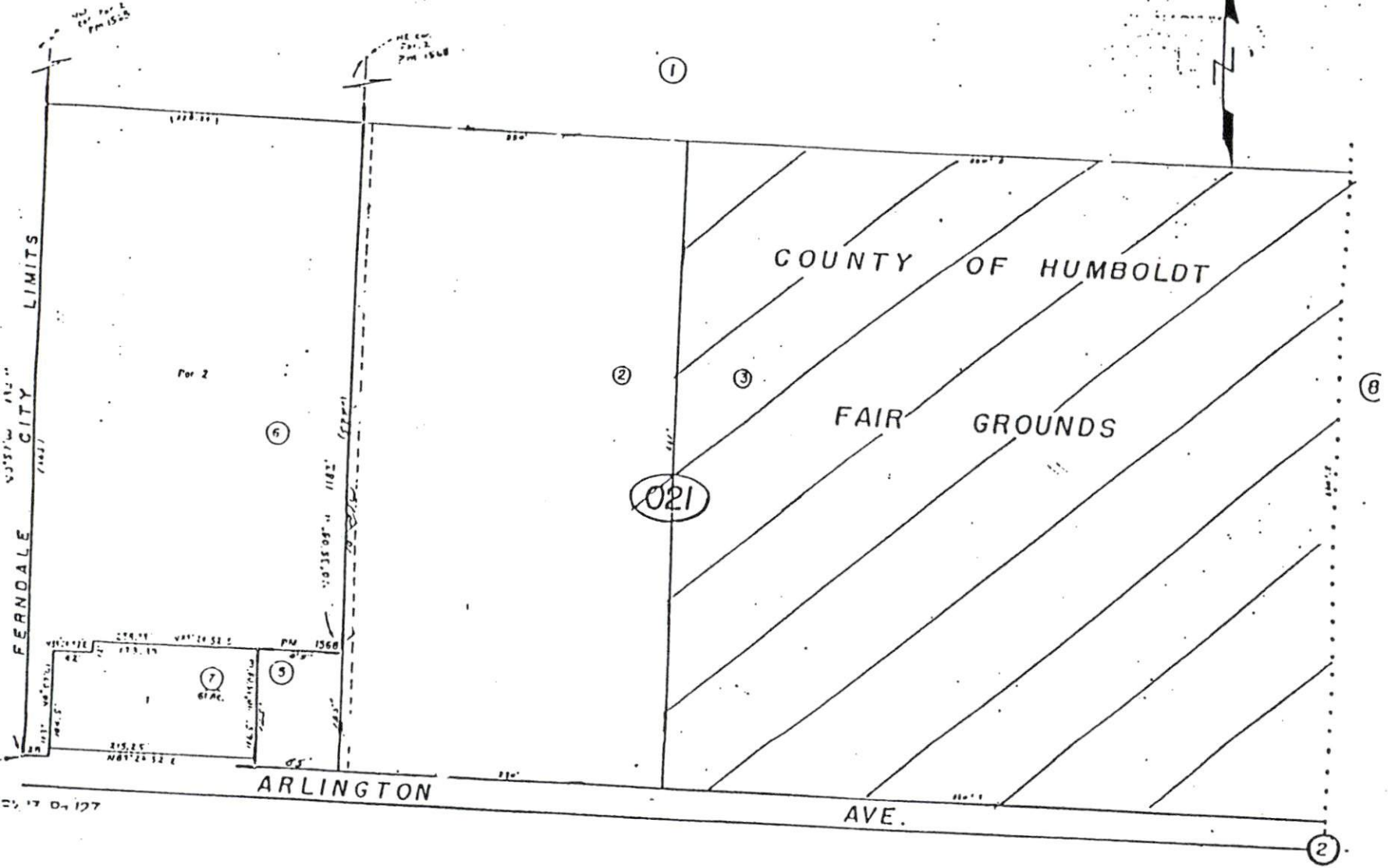
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CITY OF FERNDALE



CITY OF FERNDALE

LIMITS

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FERNDALE

CITY

VAN NESS

AVE.

COUNTY OF HUMBOLDT

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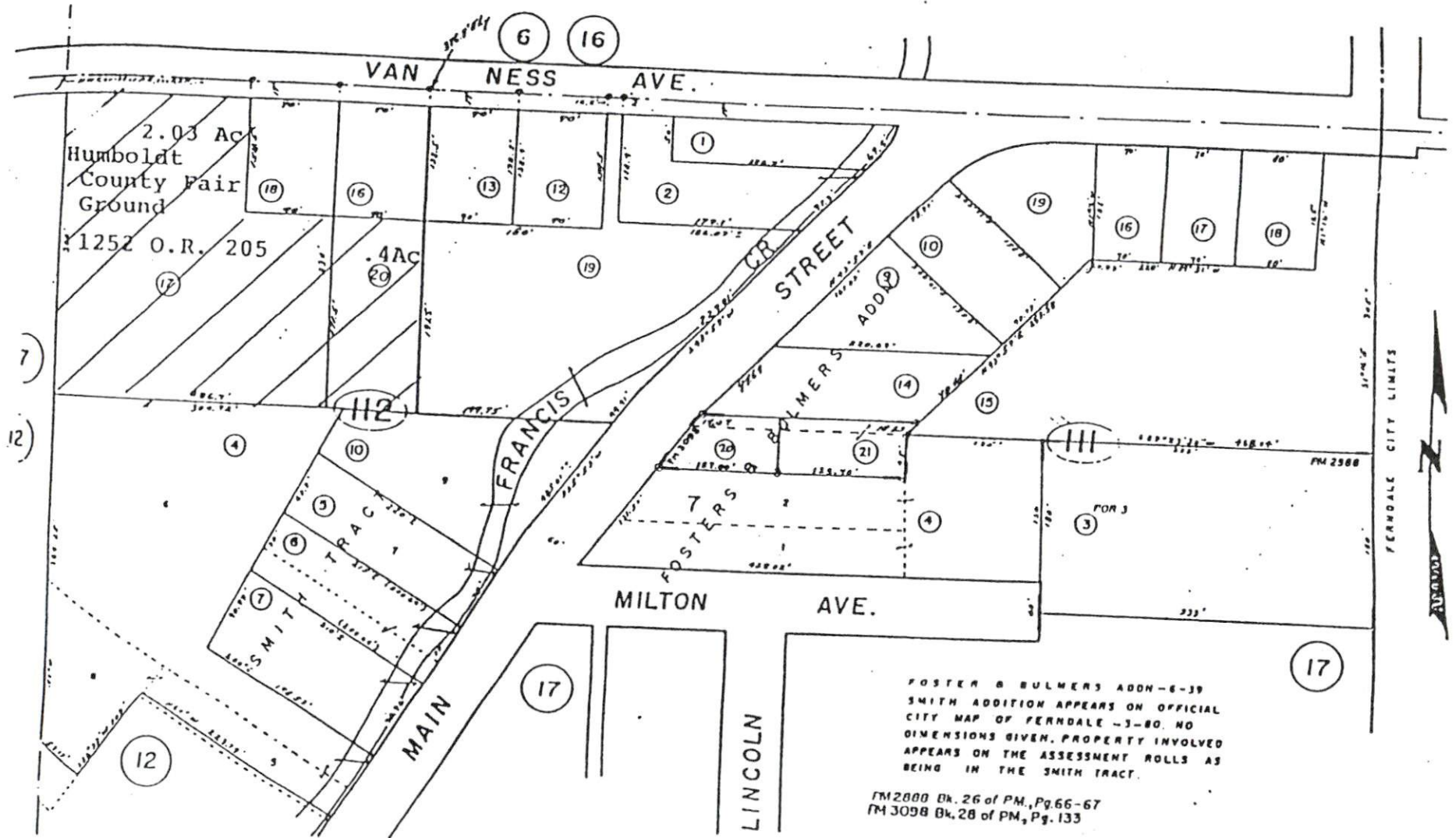
FAIR GROUNDS

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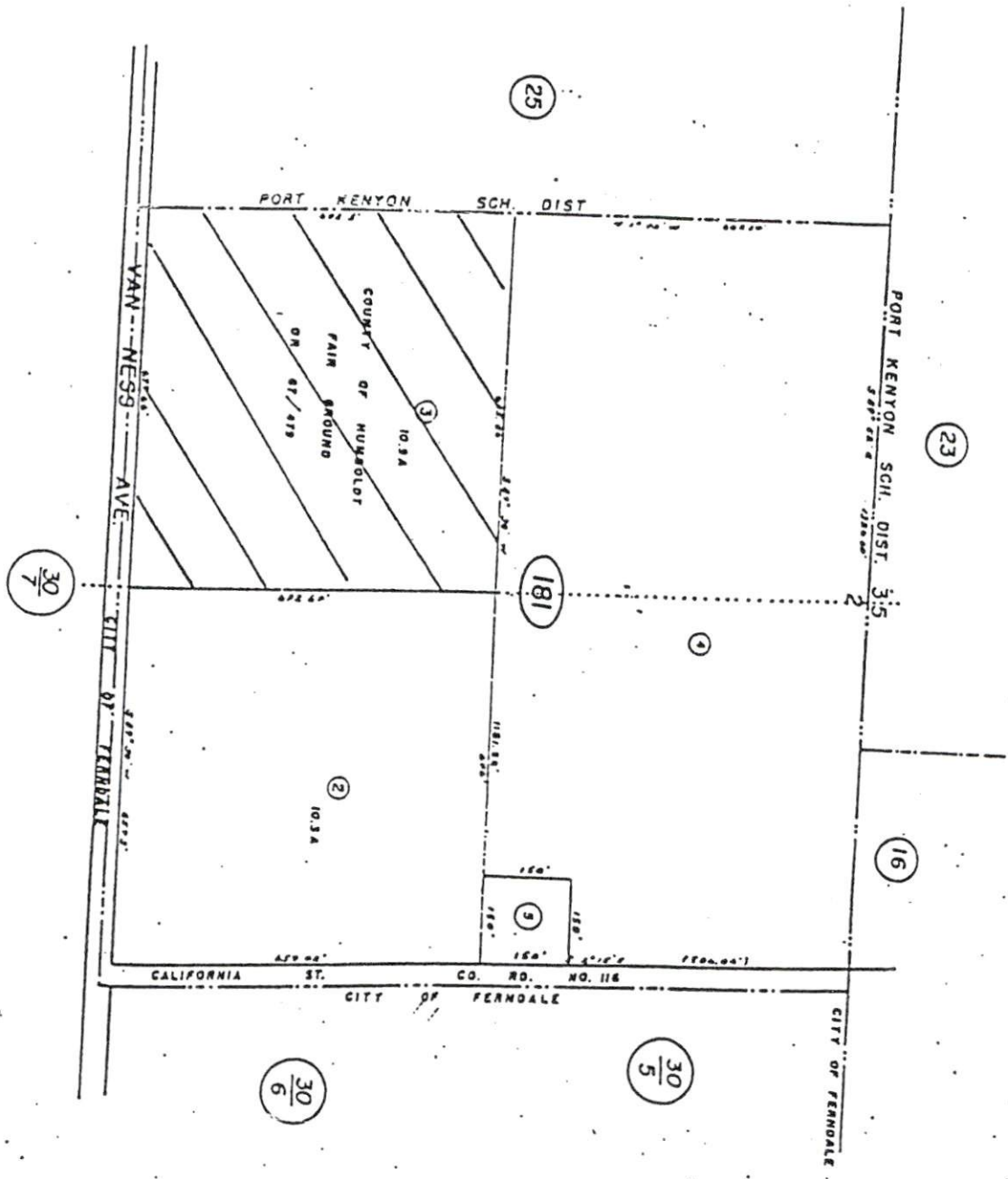
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