

RESOLUTION NO. 19242 (N.C.S.)

**A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN
THE CITY OF SALINAS AND SIMAS-EAST MARKET LLC
FOR THE USE OF THE EXPO SITE LOCATED AT 295 SUN WAY**

WHEREAS, the City of Salinas operates parks and recreation programs for the residents of the City at various sites and locations throughout the City; and

WHEREAS, the City has used the vacant property located at 295 Sun Way, otherwise known as the Expo Site, pursuant to a lease agreement with the Rodeo Association for park and recreation program purposes; and

WHEREAS, Simas-East Market LLC acquired the Rodeo Association's interest in the Expo Site and has agreed to allow the City to continue its use of the Expo Site for park and recreation purposes pursuant to a new lease agreement; and

WHEREAS, the City desires to continue its use of the Expo Site upon the terms and conditions of a new lease agreement with Simas.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF SALINAS, that the lease agreement between the City of Salinas and Simas-East Market LLC is hereby approved and

BE IT FURTHER RESOLVED, that the Mayor is authorized, for and on behalf of the City, and as its act and deed, to execute the lease agreement between the City of Salinas and Simas-East Market LLC on the terms and conditions presented.

PASSED AND ADOPTED this 19th day of June 2007 by the following vote:

AYES: Councilmembers Barnes, Barrera, De La Rosa, Sanchez,
Villegas and Mayor Donohue

NOES: None

ABSENT: Councilmember Lutes

ABSTAIN: None


Dennis Donohue, Mayor

ATTEST:


Ann Camel, City Clerk

EXPO SITE LEASE AGREEMENT

This Lease Agreement (this "Lease Agreement") is made and entered into this 12th day of June, 2007, by and between the **CITY OF SALINAS**, a political subdivision of the State of California, hereinafter referred to as "Tenant," and **SIMAS-EAST MARKET, LLC**, a California limited liability company, hereinafter referred to as "Landlord."

RECITALS

WHEREAS, Landlord is the owner of a fee simple interest in that certain real property (the "Leased Premises"), commonly known as the Exposition Site, located at 295 Sun Way in the City of Salinas, State of California, and designated as Areas A, B, C, and D (subject to a Pacific Gas and Electric Company easement) on the site plan attached hereto as Exhibit A and incorporated herein by reference; and

WHEREAS, Tenant and Landlord's predecessor in interest, the California Rodeo Association, entered into a Lease And Agreement for Exposition Site (the "Original Lease") on June 4, 1996; and

WHEREAS, the Original Lease was terminated by action of the Salinas City Council on April 18, 2006, which termination became effective on July 24, 2006; and

WHEREAS, Landlord and Tenant now desire to enter into a new lease to re-establish the terms and conditions of the Tenant's use and occupancy of the Leased Premises.

NOW, THEREFORE, in mutual consideration of the terms, conditions, and covenants contained herein, Landlord and Tenant agree to the following.

AGREEMENTS

1. Use of Leased Premises. Tenant understands and acknowledges that Landlord and the California Rodeo Association have entered into or will enter into a license agreement pursuant to which the California Rodeo Association shall be permitted exclusive use and occupancy of the Leased Premises for an approximate three week period each year to conduct a carnival and related activities associated with the annual California Rodeo. Subject to the right of the California Rodeo Association to exclusively use and occupy the Leased Premises for a carnival and related activities for an approximate three-week period each year at a time prior to, during and immediately after the annual California Rodeo, throughout the term of this Lease Agreement, Tenant shall have the exclusive right (subject to a Pacific Gas and Electric Company easement and all other encumbrances on the title to the Leased Premises) to use the Leased Premises for all lawful purposes normally conducted by the Tenant's Parks and Recreation Department, including various park and recreational activities, such as community use of the playground facilities and apparatus, the softball and soccer fields, nighttime field rentals, and special event activities.

2. Acceptance of Leased Premises. Tenant agrees to take the Leased Premises in "As-Is" condition without any agreements, representations, understandings or obligations on the part of Landlord to perform any alteration, modification, repair or improvement thereto. Tenant acknowledges that the Leased Premises are in good and sanitary order, condition, and repair. Except during the approximate three-week period reserved for the use of the California Rodeo Association in section 1 of this Lease Agreement, Tenant shall, at its sole cost and expense, maintain and repair the Leased Premises and improvements thereon in a good state of condition and repair (however, Tenant shall have no obligation to make any capital repairs to the Leased Premises). Tenant, at its sole cost and expense, shall procure, maintain in effect and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals required for Tenant's use of the Leased Premises, and Tenant shall not use or occupy the Leased Premises or permit anything to be done in or about the Leased Premises in violation of a condition or restriction, if any, set forth in any encumbrance on the title to the Leased Premises, or in violation of any laws now in force or which may hereinafter be enacted or promulgated.

3. Term. The initial term of this Lease Agreement shall commence on June 1, 2007, and shall continue in full force and effect for a period of two (2) months until July 31, 2007 (the "Initial Term"). Effective August 1, 2007, and continuing thereafter until such time as this Lease Agreement may be terminated, the term of this Lease Agreement shall be extended on a month-to-month basis (the "Extended Term"), and either party shall have the right to terminate this Lease Agreement for any reason (or no reason) by giving the other party no less than thirty (30) days advance written notice of such termination. As used in this Lease Agreement, the term "Term" shall collectively mean the Initial Term and the Extended Term.

4. Rent. In consideration for Tenant's use, maintenance and repair of the Leased Premises, rent during the Initial Term of this Lease shall be one thousand four hundred dollars (\$1,400.00). Concurrent with the execution of this Lease Agreement, Landlord shall provide Tenant with a written invoice for such one thousand four hundred dollar (\$1,400.00) amount of rent due from Tenant, and within thirty (30) days after Tenant's receipt of such written invoice, Tenant shall pay such amount of rent to Landlord.

Rent during the Extended Term of this Lease Agreement shall be two hundred fifty dollars (\$250.00) each month and shall be paid to Landlord by Tenant no later than the first day of each calendar month.

5. Alterations. During the Term, neither party shall make any alterations to the Leased Premises nor construct new buildings on the Leased Premises without the prior written consent of the other party, which written consent shall not be unreasonably withheld. Upon the expiration or termination of this Lease Agreement, Tenant shall remove any items of Tenant's fixtures, equipment and personal property from the Leased Premises. If Tenant fails to remove any such items of Tenant's fixtures, equipment or personal property from the Leased Premises designated by Landlord to be removed, then upon the expiration or termination of this Lease, and upon Tenant's vacation of the Leased Premises, all such items of Tenant's fixtures, equipment and personal property shall become the property of Landlord and Tenant shall reimburse Landlord for the cost of removal and/or storage of such items.

6. **Zoning Designation.** Upon the termination of this Lease Agreement for any reason, Tenant agrees that it will cooperate in accomplishing a change of zoning of the Leased Premises to correspond with the zoning designation of other properties in the area in order to give the Leased Premises the highest market potential possible.

7. **Indemnification and Hold Harmless.** Except for the approximate three-week period during which the Leased Premises are being used by the California Rodeo Association for a carnival and related activities as contemplated in Section 1 of this Lease Agreement, Tenant shall indemnify and hold Landlord harmless against any claim, loss, damage or expense, including attorney's fees and costs of defense reasonably incurred, which Landlord may suffer or incur arising out of any claim, action or proceeding that may be brought against Landlord to the extent caused by the use of the Leased Premises by Tenant or by its employees, agents or contractors.

8. **Insurance.** Throughout the Term of this Lease Agreement, Tenant shall keep in full force and effect a policy of commercial general liability insurance insuring Landlord and Tenant from and against all claims, demands, actions and liability for injury to or death of any persons, and for damage to property arising from or related to the use or occupancy of the Leased Premises by Tenant. Such insurance shall be written on an occurrence basis with coverage in a minimum amount of two million dollars (\$2,000,000) per occurrence for bodily injury/property damage and five million dollars (\$5,000,000) general aggregate limit. However, such limits shall not limit Tenant's liability or obligations under this Lease Agreement.

Tenant is a political subdivision of the State of California that is self-insuring for all forms of legal liability, and such insurance as is required under this Section 8, up to an amount of one million dollars (\$1,000,000), may be met through one or more policies of self-insurance. Evidence of such self-insurance to meet the requirements of this Section 8 shall be delivered to Landlord upon both parties signing this Lease Agreement. Such policies and the coverages provided thereunder shall not change or be canceled without Tenant first giving Landlord at least thirty (30) days' prior written notice.

9. **Liens.** If any lien is made or filed against the Leased Premises, Tenant shall bond against or discharge the same within ten (10) days after the filing thereof. Tenant shall indemnify, defend, protect and hold Landlord and the Leased Premises free and harmless from and against any and all liability, damage, claims, demands, suits, actions or expense (including attorneys' fees) to the extent the above arise out of any work done or material supplied on or about the Leased Premises by Tenant or at Tenant's direction, including by Tenant's employees, representatives, successors, contractors, subcontractors, materialmen, subtenants or assigns.

10. **Default.** This Lease Agreement shall be subject to early termination by either party in the event the other party defaults in the performance of any of the covenants and conditions required herein to be kept and performed, provided such default continues for a period of thirty (30) days after receipt by the defaulting party of written notice of the existence of said default. In the event of any early termination by Tenant under this Section 10 due to a default by Landlord, Tenant shall be entitled to reimbursement of any rental amount already paid for under this Lease Agreement for any period of time occurring after the effective date of termination during which

Tenant shall not use and occupy the Leased Premises. Such reimbursement shall be due and payable from Landlord without the need for a formal request from Tenant.

In the event either party defaults under or breaches this Lease Agreement, both Landlord and Tenant shall be entitled to any and all such legal remedies as may be available to them under the law, including those remedies available to Landlord under California Civil Code sections 1951.2 and 1951.4.

11. Notices. Any notices under this Lease Agreement shall be sent to the parties by United States certified Mail return receipt requested, properly addressed as provided in this Section 11, postage fully prepaid, and shall be effective upon the day following such deposit in the mail.

Written notices to Tenant hereunder shall, until further notice, be addressed to:

City Manager
ATTN: Administration
200 Lincoln Avenue
Salinas, California 93901

With a copy to

City Attorney
200 Lincoln Avenue
Salinas, California 93901

Written notices to Landlord hereunder shall, until further notice, be addressed to:

Simas-East Market, LLC
c/o SyWest Development
150 Pelican Way
San Rafael, California 94901
Attn: William Vierra

12. Successors and Assigns. The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, and assigns of all the parties hereto. However, Tenant shall have no right to sublease the Leased Premises or to assign this Lease Agreement.

13. Further Assurances. Each party agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other party may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

14. Counterparts. This Lease Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

15. Entire Agreement; Brokers. Except as otherwise provided herein, this Lease Agreement constitutes the entire agreement between Landlord and Tenant relating to the Leased Premises, and is the final expression of both with respect to the terms and conditions included herein. Landlord and Tenant acknowledge that any prior agreements, promises, negotiations, or representations not expressly set forth in this Lease Agreement are of no force and effect. Tenant and Landlord warrant that they have had no dealings with any broker or agent in connection with this Lease Agreement.

16. Rights and Obligations Under Lease Agreement. By entering into this Lease Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Lease Agreement shall not create any rights in any party not a signatory hereto.

17. Litigation Involving Lease Agreement; Attorney's Fees. In case suit shall be brought to interpret or to enforce this Lease Agreement, or because of the breach of any other covenant or provision herein contained, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees, in addition to such costs as may be allowed by the court under Code of Civil Procedure §1033.5. Tenant's attorney's fees, if awarded, shall be calculated at the market rate.

18. Compliance With Applicable Law and Jurisdiction. This Lease Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Lease Agreement shall be in the State of California, County of Monterey.

19. Modification. No amendments to or changes to this Lease Agreement may be made, except by a writing expressly authorized and signed by both parties.

20. Utilities. During the entire Term of this Lease Agreement, Tenant shall be solely responsible for and shall apply for, arrange and promptly pay directly to the utility service provider all charges for heat, hot and/or chilled water, gas, electricity, telephone, telecommunications, data, refuse and garbage removal, sewer service charges and fees, fire sprinkler, fire alarm and any other utility used, consumed or provided in, or furnished, or attributable to the Leased Premises, however supplied, at the rates charged by the supplying utility companies. All federal, state and local taxes which may from time to time be imposed upon or payable in connection with charges for utility services pursuant to this Lease Agreement shall be payable by Tenant in addition to the charges to which they relate.

21. Landlord's Access. During the Term of this Lease Agreement, Landlord shall have the right to access the Leased Premises for inspection, for any pre-construction activities, to show prospective tenants the Leased Premises, to post signs on the Leased Premises, to confirm Tenant's compliance with the provisions of this Lease Agreement, or for any other reasonable purpose, however, Landlord's right of access shall in no way interfere with or interrupt Tenant's use and occupancy of the Leased Premises. Tenant shall deliver to Landlord any keys necessary for such access by Landlord.

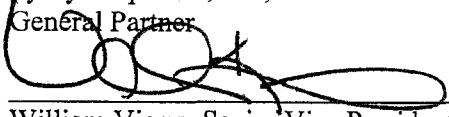
IN WITNESS WHEREOF, the undersigned, as authorized representatives of the City of Salinas and Simas-East Market, LLC have executed this Lease Agreement.

LANDLORD

Simas-East Market, LLC, a California Limited Liability Company

By: Syufy Enterprises, LP, a California Limited Partnership
Its: Sole Managing Member

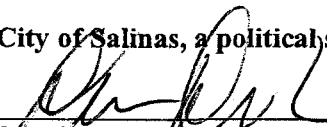
By: Syufy Properties, Inc., a California Corporation
Its: General Partner

By: 
William Viera, Senior Vice President

Date: 6/18/07

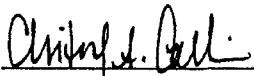
TENANT

City of Salinas, a political subdivision of the State of California


Dennis Donohue, Mayor

6-19-07
Date

APPROVED AS TO FORM:


Vanessa W. Vallarta, City Attorney
By
Christopher A. Callihan, Sr. Deputy City Attorney

19 June 2007
Date

ATTEST:

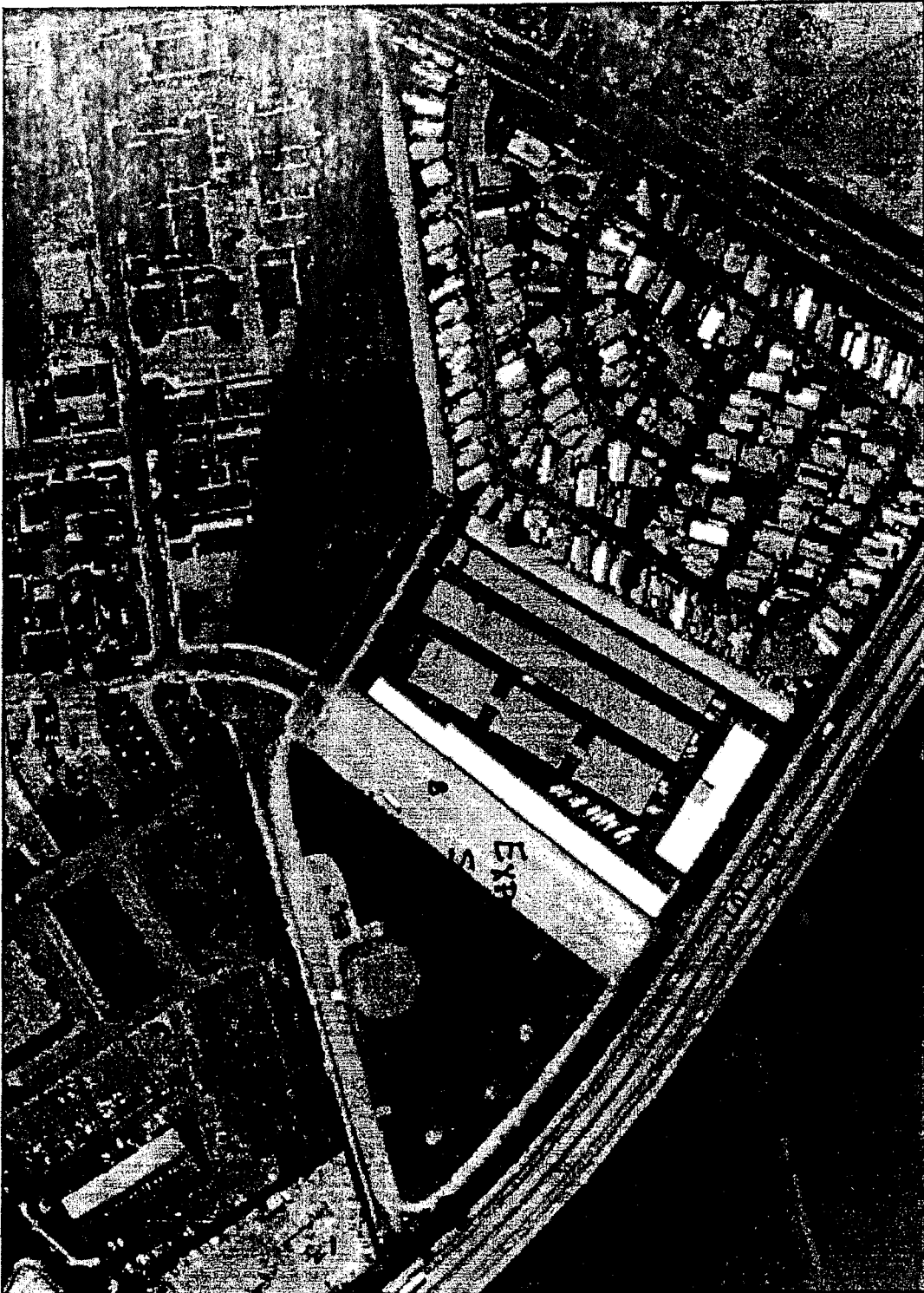

Ann Camel, City Clerk

6-19-07
Date

EXHIBIT A

[SITE PLAN ATTACHED SHOWING THE LEASED PREMISES]

EXHIBIT A



- A - Exposition Site
- B - Parking Area
- C - Street Area
- D - Post Property