

May 28, 2019

File Number: 61CX-269614

VIA EMAIL

Christi Hogin, Esq.
City of Pomona
City Attorney
505 S. Garey Avenue
Pomona, CA 91766
Email: christi.hogin@bbklaw.com

Re: Letter Agreement re Fairgrounds Specific Plan

Dear Ms. Hogin:

As you know, this firm represents the Los Angeles County Fair Association ("Fairplex"). This letter ("Letter Agreement") is dated for reference purposes only and shall only be effective and binding on the parties hereto upon its full execution by Fairplex and the City of Pomona ("City") following full consideration and approval of this Letter Agreement by (i) the Pomona City Council ("City Council") at a duly noticed City Council meeting and (ii) the Los Angeles County Fair Association Board of Directors ("Board of Directors").

Fairplex operates the Los Angeles Fairgrounds ("Property") located in the City subject to the terms and conditions of a long-term ground lease by and between Fairplex as lessee and the County of Los Angeles ("County") as lessor. The Property has an "F" zoning designation ("F-Zone") through a City ordinance. The F-Zone regulates land uses on the Property and is intended to permit a range of public entertainment, exhibition, commercial, conference, equine and other events and uses on a year-round basis.

As a result of noise and traffic concerns relating to Fairplex's operations, the City has undertaken an evaluation of potential changes to the F-Zone. While Fairplex is committed to working with the City to ensure its use of the Property does not have negative impacts on surrounding uses, Fairplex has objected to the City's proposed revisions to the F-Zone. And, in lieu of amending the existing F-Zone, the City and Fairplex (collectively, the "Parties" and each a "Party") have discussed establishing a specific plan ("Specific Plan") that would replace the F-Zone and regulate land uses on the Property.

The Parties now desire to enter into this Letter Agreement to outline the process for preparing and processing the Specific Plan in accordance with the terms and conditions of this Letter Agreement and applicable laws. In reliance on the mutual promises contained herein, and for other good and valuable consideration set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Effective Date; Term. The "Effective Date" shall be the latest date written on the signature page of this Letter Agreement after it has been executed by the Parties and approved

by the City Council and the Board of Directors. Except for those provisions that expressly survive the expiration or earlier termination of this Letter Agreement, the "Term" of this Letter Agreement shall commence on the Effective Date and shall continue in full force and effect (unless earlier terminated pursuant to the terms hereof) for three (3) years. This Letter Agreement may be extended for an additional three (3) years by mutual written agreement of the Parties.

2. Preparation of the Specific Plan. Within one hundred eighty (180) days following the Effective Date and written approval from the County as property owner, whichever date is later, Fairplex shall, at its sole cost and expense, prepare and submit to the City a complete application (the "Application") for the establishment of the Specific Plan that is consistent with the City's General Plan. The Application shall be prepared in accordance with the City's requirements for the establishment of specific plans and shall include all of the materials reasonably required for the City to review and process the Application. Notwithstanding the foregoing, the Parties acknowledge and agree that, after the initial submittal of the Application, the City may request additional or supplemental materials and Fairplex agrees to timely respond to such requests; provided, however, only the initial Application must be submitted within the 180-day period described above.

3. Environmental Impact Analysis. Following the City's written determination that the Application is complete, the City shall retain an environmental consultant to prepare an "Initial Study" and draft environmental impact report ("Draft EIR") pursuant to the California Environmental Quality Act ("CEQA") to evaluate the potential environmental impacts of the City's adoption and implementation of the Specific Plan. The Draft EIR shall include, at a minimum, an analysis of traffic and noise impacts as well as the evaluation of the relocation of Fairplex's Facilities Yard to the campus west of White Avenue. The Draft EIR shall be prepared in accordance with CEQA and the City's rules and procedures for complying with CEQA. The City shall be the lead agency pursuant to CEQA, but all costs associated with the preparation and processing of the Draft EIR shall be borne by Fairplex.

4. City Conduct During Term. The City acknowledges and agrees that it is not in the public interest to consider and adopt amendments to the F-Zone while simultaneously processing the Specific Plan that would replace the F-Zone in its entirety. As such, subject to the terms of this Letter Agreement, and so long as Fairplex is diligently pursuing the Specific Plan, the City agrees to postpone consideration of any proposed amendments to the F-Zone. As used in this Section 4, "diligently pursuing the Specific Plan" means that Fairplex is using commercially reasonable efforts to (i) timely respond to requests for information by the City, (ii) provide information and pay the actual costs necessary for the City to prepare and process the Draft EIR and (iii) attend community and City meetings. If the Application is withdrawn by Fairplex, then the City may reconsider amendments to the F-Zone in lieu of the Specific Plan.

5. City's Processing of the Specific Plan; Reserved Powers. The City agrees to accept the Application and expeditiously review and process the same in accordance with its policies and procedures for adopting specific plans. The City agrees to cooperate in good faith with Fairplex in its pursuit of the Specific Plan, including timely responses to requests by

Fairplex, its attorneys and consultants. Notwithstanding the foregoing, nothing herein shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of any ordinances, notices, orders, rules, regulations or requirements (now or hereafter enacted or adopted and/or as amended from time to time) of the City, its departments, commissions, agencies and boards and their officers, including, without limitation, any general plan or zoning ordinances, or any of the City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City in furtherance of the public health, welfare and safety of the inhabitants thereof, including, without limitation, the right under law to make and implement independent judgments decisions and/or acts with respect to planning and development matters (including, without limitation, approval or disapproval of the Specific Plan and/or issuance or withholding of any permits).

6. Additional Music Events. Subject to the City issuing an administrative temporary use permit ("Use Permit") pursuant to Section .583 of the Zoning Code, Fairplex may have up to six (6) music events (the "Music Events") on the Property during the Term ranging from 10,000 to 40,000 attendees per day, with each music event lasting no longer than two (2) days and ending each night no later than 11:00 PM. Fairplex's application for a Use Permit shall specify if the requested Use Permit is for a single Music Event or for multiple Music Events to be authorized by a single Use Permit. Fairplex agrees to provide not less than two (2) months' prior written notice to the City and surrounding neighbors of any Music Event with an estimated attendance to exceed 10,000 attendees. In accordance with Section 18-305(1) of the Pomona Municipal Code (the "Municipal Code"), the Music Events shall be exempt from Part A, Chapter 18, Article VII of the Municipal Code. Notwithstanding the immediately preceding sentence, the Music Events shall not generate noise levels exceeding 75 dBA over a 15-minute period, as measured from an off-site public-right-of way at least 500 feet from the nearest Fairplex property line. Fairplex, at Fairplex's sole cost and expense, shall obtain all required building, electric, plumbing, fire, encroachment or other permits required by City ordinances for the issuance of a Use Permit for the Music Events. By executing this Agreement, the City Council finds that the Music Events (a) will be located, operated, and maintained in a manner consistent with the policies of the General Plan and the other provisions of the Zoning Code, (b) issuing the Use Permit(s) for the Music Events will not be detrimental to property or improvements in the surrounding area or the public health, safety or general welfare, (c) the Music Events comply with the provisions of Section .583 of the Zoning Code. The issuance of the Use Permit(s) shall be a ministerial action and the Community Development Director shall review and process each Use Permit application in the context of, and in accordance with, this Agreement; provided, however, the Community Development Director may impose reasonable conditions and limitations on each Use Permit not inconsistent with this Agreement to minimize detrimental effects of the Music Events on surrounding properties. Each Use Permit shall expressly prohibit raves or cannabis-related events and Fairplex hereby agrees not to host any such events at the Property during the Term.

7. Establishment and Administration of the Mitigation Fund.

a. Establishment of the Mitigation Fund. Subject to City Council approval (if applicable), the City shall establish a special account separate from all other City accounts (the "Mitigation Fund") to be funded by Fairplex in accordance with this Section 7. Fairplex's obligation to contribute funds to the Mitigation Fund as set forth in Section 7(d) shall be conditioned on Fairplex's ability to host the Music Events described in Section 6, above. The purpose of the Mitigation Fund is to fund the construction of public safety measures and related street and sidewalk improvement projects at and around the Property as more fully described below.

b. Establishment of Advisory Committee. The Parties shall create an Advisory Committee comprised of local stakeholders and Fairplex representatives and subject to the Brown Act (Government Code Section 54950 et seq.). The Advisory Committee shall be responsible for administering the Mitigation Fund. The Parties shall invite a representative or representatives of the County to participate on the Advisory Committee such that the County, as the primary landowner of the Property, has a fair representation on the Advisory Committee. The use of any funds in the Mitigation Fund shall be subject to the approval of the Advisory Committee and such approval must be in accordance with Section 8(c), below.

c. Use of Funds in held in Mitigation Fund.

i. The Advisory Committee shall only approve expenditures from the Mitigation Fund for improvement projects listed on Exhibit "A", attached hereto, and that are located in the City within the improvement area boundary described and depicted on Exhibit "B". Additionally, to the extent a mitigation monitoring and reporting program ("MMRP") is adopted by the City in connection with the Specific Plan, the Advisory Committee may authorize the expenditure of funds in the Mitigation Fund to implement the mitigation measures identified in the MMRP. The Advisory Committee shall only approve expenditures from the Mitigation Fund that improve Fairplex's operations on the Property, enhance the guest experience, and mitigate impacts on surrounding properties.

ii. The Advisory Committee shall be authorized to approve the expenditure of funds in the Mitigation Fund for a period of twenty-four (24) months following the expiration or earlier termination of this Letter Agreement. All funds remaining in the Mitigation Fund after such twenty-four (24) month period shall be returned to Fairplex.

d. Contribution of Funds to the Mitigation Fund. Subject to applicable laws, Fairplex shall fund the Mitigation Fund for a period of three (3) years following the Effective Date by implementing the revenue generating measures set forth in this Section 7(d); provided, however, that such measures shall not cause Fairplex to violate any existing laws or its governing documents or to be in default under any existing agreements with third parties, including with the County. Fairplex represents that such revenue generation measures set forth in this Section 7(d) do not violate any existing requirements or obligations of Fairplex. To the extent implementation of any of the following measures requires Fairplex to amend any existing agreements, Fairplex agrees to use commercially reasonable efforts to amend such third-party agreements in order to authorize the implementation of these revenue generating measures.

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Additionally, the implementation of the following measures shall be subject to approval by the Board of Directors.

i. Fairplex shall increase the percentage of parking revenues by 1% each year until the maximum of 5% of parking revenues is reached. Because the current parking revenue percentage paid to the City is at 2%, the increases in parking revenues above the 2% base shall be deposited into the Mitigation Fund.

ii. For new music events (excluding music events during the Los Angeles County Fair) with 10,000 or more anticipated attendees per day, Fairplex shall add up to a five-dollar (\$5.00) fee to the ticket price. The additional fee shall be deposited into the Mitigation Fund.

iii. Fairplex shall assess a one-dollar and fifty cents (\$1.50) City fee for every full price adult fair ticket sold, which fee shall be deposited into the Mitigation Fund.

e. Survival. Except for Fairplex's obligation to contribute funds to the Mitigation Fund as set forth in Section 7(d), the provisions of this Section 7 shall survive the expiration or earlier termination of this Letter Agreement until the earlier of (1) all of the funds in the Mitigation Fund have been spent, or (2) twenty-four (24) months.

8. Annual Reporting. The Parties shall meet and confer annually during the Term to review each Party's obligations hereunder and to ensure that the mutual goals and purpose of this Letter Agreement are being implemented and to confirm that the revenues described in Section 7 are being collected by Fairplex and being deposited into the Mitigation Fund. An annual report documenting the status of the Mitigation Fund (including an audited report describing the list of expenses, if any), the Parties' obligations, and implementation of other identified goals shall be prepared by Fairplex and provided to the City and County.

9. No Project Approval Under CEQA. The City's approval of this Letter Agreement does not constitute a project approval under CEQA. The Parties acknowledge that the contents of the Specific Plan at this time are speculative and this Letter Agreement in no way commits the City to any definite course of action with respect to the Specific Plan and the City retains full discretion to approve or not approve the Specific Plan.

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10. Notices. Any notice that may or must be given by either party under this Letter Agreement shall be delivered (a) personally, (b) by certified mail, return receipt requested, (c) overnight by a nationally recognized overnight courier, addressed to the party to whom it is intended or (d) by email, provided that a hard copy is subsequently delivered pursuant to one of the delivery methods described above. A notice sent pursuant to the terms of this Section 11 shall be deemed delivered when delivery is actually received or refused.

CITY

City of Pomona
City Manager
505 S. Garey Avenue
Pomona, CA 91766
Attn: City Manager

with a copy of all notices to:

City of Pomona
City Attorney
505 S. Garey Avenue
Pomona, CA 91766
Attn: Christi Hogin, Esq.
Email: christi.hogin@bbklaw.com

FAIRPLEX

Los Angeles County Fair Association
1101 W. McKinley Avenue
Pomona, California 91768
Attn: Miguel A. Santana, President & CEO
Email: santana@fairplex.com

with a copy of all notices to:

Sheppard, Mullin, Richter and Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, California 90071
Attn: Alfred Fraijo Jr., Esq.
Email: afraijo@sheppardmullin.com

11. Default; Cure; Remedies.

a. Default and Cure. Any Party shall be in default hereunder if such Party fails to perform or comply with any covenant, agreement or condition contained in this Letter Agreement and does not cure that failure within the period of ten (10) business days after written notice of default, or if such default is of a nature which cannot reasonably be cured within ten (10) business days, then if such Party does not cure such failure within such longer period of time as is reasonably required to cure such default, but not to exceed ninety (90) days in the aggregate, provided that the defaulting Party undertakes diligently and in good faith to commence such cure within not more than ten (10) business days after notice of default and is diligently and in good faith pursuing such cure to completion.

b. Remedies. If any Party is in default hereunder beyond any applicable cure periods, the other Party may exercise any right or remedy which they may have under this Letter Agreement or otherwise available at law or in equity or by statute, including specific performance or termination of this Letter Agreement. All rights and remedies of any Party shall be cumulative and non-exclusive and shall survive the expiration or termination of this Letter Agreement, subject to applicable statutes of limitation. Notwithstanding the foregoing, the Parties hereby waive any rights to seek monetary damages of any type from the other Party.

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12. Early Right to Terminate. Notwithstanding anything to the contrary herein, the City Council, by majority vote, or Fairplex, by vote of the Board of Directors, shall have the right to terminate this Agreement at any time during the Term and for any reason by providing ten (10) days' notice of such termination to the other Party. If the City exercises its right to terminate this Agreement pursuant to this Section 12, all funds remaining in the Mitigation Fund as of the time the notice of termination is delivered to Fairplex shall be immediately returned to Fairplex without restriction on use. If Fairplex exercises its right to terminate this Agreement pursuant to this Section 12, all funds remaining in the Mitigation Fund as of the time the notice of termination is delivered to the City shall remain in the Mitigation Fund and shall be expended in accordance with the provisions of Section 7.

13. Due Authority. Each Party hereby represents to the other Party that the person signing this Letter Agreement on behalf of said Party has the authority, including obtaining all necessary board or City Council approval to execute this Letter Agreement and make the promises, covenants, and agreements contained herein.

14. No Third-Party Beneficiaries. This Letter Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Letter Agreement.

15. No Assignment. This Letter Agreement is personal to Fairplex and cannot be assigned except with the express written consent of the City, which consent shall be in the City's sole discretion.

16. Severability. If any term or provision of this Letter Agreement is deemed to be invalid or unenforceable to any extent, the remainder of this Letter Agreement shall not be affected thereby, and each remaining term and provision of this Letter Agreement shall be valid and be enforced to the fullest extent permitted by law; provided, however, if such unenforceability or invalidity alters the substance of this Letter Agreement (taken as a whole) so as to deny either Party, in a material way, the realization of the intended benefit of its bargain, such Party may terminate this Letter Agreement by providing written notice of termination to the other Party.

17. Governing Law; Jurisdiction. This Letter Agreement shall be governed and interpreted under the laws of the State of California without giving effect to any choice of law principles. Any judicial action with respect to this Letter Agreement shall be filed exclusively in the federal or state courts located in Los Angeles County, California, each Party irrevocably consents and submits to the personal jurisdiction and venue of the federal and state courts located in such county and irrevocably waives any and all claims and defenses which such Party might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense.

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18. Entire Agreement. This Letter Agreement constitutes the entire contract between the Parties hereto with respect to the subject matter hereof and may not be modified except by an instrument in writing signed by both parties.

19. Counterparts. This Letter Agreement may be signed in two or more counterparts (and by electronic means), any one of which need not contain the signature of more than one Party, but all such counterparts taken together shall constitute one and the same agreement.

20. Construction. This Letter Agreement has been prepared by both Parties and their respective professional advisers, is the product of all of their efforts, shall not be interpreted in favor of or against either Party, and the principle of law that contracts are construed against the drafter shall not apply.

21. Time of the Essence. Time limits in this Letter Agreement are to be strictly observed. Time is of the essence in the performance of each and every obligation and covenant of the Parties hereto.

22. Relationship of the Parties. Nothing contained in this Letter Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, or of partnership or of joint venture, or of any association between the City and the Fairplex, and nothing in this Agreement shall be construed, except as expressly provided, to authorize either to act as agent for the other.

Should you have any questions, comments or concerns, please contact the undersigned at 213-617-5567, or contact Miguel A. Santana with Fairplex at 909-865-4201. We thank you for your cooperation and look forward to working with you, as needed, to finalize and execute this Letter Agreement.

Sincerely,



Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4838-8209-7557.19

cc: Hon. Timothy Sandoval, Mayor (BY EMAIL)
Ms. Linda Lowry, City Manager (BY EMAIL)
Mr. Miguel A. Santana and Ms. Cielo Castro, Fairplex (BY EMAIL)
Thomas Faughnan, Esq., Senior Assistant County Counsel (BY EMAIL)

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IN WITNESS WHEREOF, the Parties hereby agree to the terms and conditions set forth in this Letter Agreement.

CITY OF POMONA

**LOS ANGELES COUNTY FAIR
ASSOCIATION**

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____, 2019

Date: _____, 2019

APPROVED AS TO FORM:

By: _____

Name: _____

Its: City Attorney

Date: _____, 2019

CITY CLERK SEAL

Date: _____, 2019

EXHIBIT "A"

QUALIFIED EXPENDITURES FROM MITIGATION FUND

1. Sidewalk repairs and improvements
2. Repairs and improvements to roadways
3. Wayfinding and directional signage
4. Enhanced lighting
5. Increased security and public safety measures for events
6. Crowd control initiatives for events
7. Public restrooms and accessibility improvements for events
8. Mitigation measures identified in the MMRP to the extent an MMRP is adopted by the City in connection with the Specific Plan

EXHIBIT "B"

MITIGATION FUND BOUNDARY

The area within the City of Pomona depicted on the map below and generally located (1) north of the 10 freeway, (2) east of Fairplex Drive, (3) south of Arrow Highway and (4) west of N. Garey Avenue.



