

Attachment No. 2

AGREEMENT FOR SUPPLEMENTAL POLICE PATROL SERVICES

THIS AGREEMENT ("Agreement") is effective on the 1st day of July, 2019 (the "Effective Date") by and between the CITY OF POMONA, a Municipal Corporation (the "CITY") and the DOWNTOWN POMONA OWNERS' ASSOCIATION, a Non-Profit Corporation (hereinafter referred to as the "DPOA"), collectively hereinafter referred to as the "PARTIES."

RECITALS

A. This Agreement is voluntarily entered into in consideration of the benefits and the rights and obligations of the PARTIES, on the basis of the facts cited herein, the understanding and intentions of the PARTIES, and in reliance upon the various representations and warranties contained herein.

B. The DPOA is a private nonprofit organization of property and business owners organized under the laws of the State of California, and operating pursuant to the authority granted to it under the Property and Business Improvement District Law of 1994 (Part 7 of Division 18 of the Streets and Highways Code) (the "PBID Act") to administer or implement activities and improvements specified in a management district plan under a contract with the CITY.

C. The DPOA has the power and responsibility to make all decisions regarding the implementation and expenditure of programs, activities and improvements financed by proceeds from assessments levied on properties located within that portion of the commercial business area known as Downtown Pomona within the City of Pomona, California, which comprises the Downtown Pomona Property and Business Improvement District (the "District") in a manner that is consistent with the objectives set forth in the management district plan approved by the CITY on or about June 14, 2004 (the "Management Plan"), and as such may be amended from time to time.

D. The DPOA seeks to comply with the legal requirements of the PBID Act, and in accordance with the provisions of the Management Plan, the DPOA desires to engage the CITY to provide supplemental police patrol services for the District. The DPOA represents that its principal representative is authorized to enter into this agreement on behalf of the DPOA and the DPOA is willing to perform as hereinafter defined.

E. The PARTIES are willing to enter into this Agreement on the express understanding that the ordinary public duties do not require the use or deployment of the supplemental police patrol services to be provided under this Agreement.

Supplemental police patrol services are intended to supplement basic or essential police services already being provided by the CITY to Downtown Pomona in the discharge of the CITY's governmental obligation to protect life, liberty and property and preserve the public peace and order.

F. The PARTIES further acknowledge that the enhanced police patrol services to be deployed exclusively within the District are not intended to replace or supplant the basic or essential police services already being provided by the CITY to Downtown Pomona (as further defined in Section IV below as "Baseline Services"), and as such, the CITY's deployment of instrumentalities and employees as required by this Agreement does not interfere with, nor prevent the CITY from carrying out its governmental obligation to protect life, liberty and property and preserve the public peace and order.

G. Subject only to conflicting provisions in the state constitution or to preemptive state or federal law, the CITY has plenary power under its Charter to impose reasonable regulations designed to promote the public convenience and prosperity, and the CITY through its Police Department can enforce local, state, and federal laws and regulations in carrying out its governmental obligation to preserve the public health, the public morals and the public order. Further, the CITY is willing to provide enhanced police patrol services to the District, as hereinafter defined.

H. The PARTIES expressly acknowledge that, subject to such rules and regulations the City Council may prescribe, the Chief of Police has administrative authority to determine, looking to the best interests of the City of Pomona and its residents, the basic or essential level of police services (as further defined in Section IV below as "Baseline Services") as may, in his judgment, be necessary for the proper and lawful discharge of the Police Department's public duty to protect life, liberty and property and preserve the public peace and order within the City of Pomona. Nothing in this Agreement shall be interpreted as a curtailment or infringement upon the Chief of Police's exercise of his reasonable discretion to determine the Baseline Services (as further defined in Section IV below).

I. The PARTIES agree to enter into this Agreement to provide Enhanced Police Services (as described in Section III below). The enhanced police patrol services to be provided by the CITY under the terms of this Agreement shall be in addition to the Baseline Services (as defined in Section IV below) already being provided by the CITY to Downtown Pomona in the discharge of the CITY's public duty. The enhanced police services will consist of a police patrol unit to be deployed exclusively to the District, as hereinafter-defined.

J. The enhanced police patrol services to be provided by the CITY under the terms of this Agreement are subject to a fee or charge sufficient to recover only a part of the costs reasonably borne by the CITY in providing such

police services. There is no charge for the baseline services provided by the CITY to the District.

AGREEMENT

NOW, THEREFORE, on the basis of the foregoing recitals and in consideration of the mutual covenants and promises of the PARTIES herein contained, the PARTIES agree as follows:

I. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICE.

The representatives of the parties who are primarily responsible for the administration of the AGREEMENT, and to whom formal notice, demands and communications shall be given, are as follows:

- A. The principal representative of the DPOA shall be:

Carolyn Hemming, President
119 W. Second St.
Pomona, CA. 91766
(909) 261-5004

- B. The principal representative of the CITY shall be:

Chief Michael Olivieri
City of Pomona
505 S. Garey Ave.
Pomona, CA. 91766
(909) 620-2141

- C. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and may be delivered by personal service or by mail.

- D. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of said changes.

II. RETENTION. The DPOA retains and employs the CITY to provide enhanced police services for the DPOA on the terms and conditions herein stated.

III. ENHANCED POLICE SERVICES.

- A. The CITY shall continue to provide the District with Baseline Services and will provide enhanced police patrol services comprising of a special police patrol unit to be deployed exclusively to the Downtown area (the "Downtown Patrol Unit") to deliver police presence to the area and coordinate its efforts with private security personnel hired by the DPOA resulting in twenty-four (24) hour police and private security coverage for the District. The Downtown Patrol Unit shall consist of (2) sworn Police Officers who shall be exclusively assigned to the unit with a one-year commitment. All such officers shall be full-time sworn police officers of the Pomona Police Department administratively assigned under the supervision of a Sergeant.
- B. Except in those instances when an officer makes an arrest and transports a prisoner, when booking an arrestee, when a circumstance arises where an officer requires immediate assistance from another officer, or when an officer is attending a court appearance or similar police matter, in normal circumstances the CITY will staff the Downtown Patrol Unit and will supervise the Downtown Patrol Unit, as needed. The Downtown Patrol Unit will coordinate with private security officers hired by the DPOA and assigned to patrol the District. Police presence and/or deployment of the Downtown Patrol Unit will conform to the schedule described in the Deployment Schedule (Exhibit "A") attached hereto. The location of enhanced police services to be performed under this agreement will be provided within the zone (see Exhibit A) at the discretion of the officers assigned at that time, and in consultation with supervisory personnel, and in consideration for events, activities, and public safety issues such personnel are aware of at that time. Notwithstanding the foregoing, the Deployment Schedule may be modified as needed provided that such modification is agreed to in writing by the Parties.
- C. The CITY shall be responsible for providing police personnel in conjunction with private security personnel hired by the DPOA for the purpose of maintaining 24-hour security coverage for the Downtown area seven days of the week, as indicated in the Deployment Schedule, attached hereto as Exhibit A. The CITY shall not be responsible for supervision, instruction, training, or staffing of any private security personnel hired by the DPOA.
- D. In order to promote the Officers' familiarity with District's population and needs, the Police Department shall make every reasonable effort to assign officers to the Downtown Patrol Unit for a period of one-year. In the event that the CITY does not assign officer(s) or perform services described herein, allocation of costs associated with such officer and/or services which are not provided shall not be

charged to DPOA. Notwithstanding the foregoing, the salary and all related costs (described as "Actual Costs" in Section V, Paragraph B) for such assigned officers shall be based on normal salaried position, not on a per-hour basis. No deduction of an allocated amount for such assigned officer shall be made if such officer is attending to duties outside of the DPOA area related to Supplemental Services, for example transporting an arrestee, booking an arrestee, departmental circumstances requiring immediate assistance, or attending a court appearance or similar police matter.

- E. The Officers assigned to the Downtown Patrol Unit shall be responsible for communicating with the DPOA with respect to coordinating police coverage for special events, meeting with the Downtown property and business owners, and providing regular monthly reports to the DPOA regarding the activities of the Downtown Unit. The reports shall include an accounting of the costs of the Downtown Unit for the prior quarter. The DPOA shall designate a contact person to communicate with the Downtown Patrol Unit Officers regarding special events and other DPOA needs.

IV. LEVEL OF POLICE SERVICES. The District consists of the Consolidated Zone (effective January 1, 2010, within Police Beats 1 & 4). During the term of this Agreement, the CITY will provide to such Zone the same level of police service ("Baseline Services") extended to persons and property within the City of Pomona, which will include, but not be limited to, the following:

- A. Patrol services, with random patrolling of all residential, business and public property areas during all shifts;
- B. Direct police presence within the boundaries of the District, subject only to the exceptions noted in Section III and as indicated within the Deployment Schedule;
- C. Enforcement of all ordinances of the City of Pomona, which are intended to be enforced by police officers, with special attention being given to nuisance ordinances;
- D. Criminal investigations and follow-up on reported crimes with the person(s) who reported the crime, including routine notification by telephone or mail as to the status of the investigation;
- E. Responses to medical emergencies, fires and other emergencies;
- F. License inspections, background investigations and permit and license enforcement services as called for under applicable state law or city ordinances;

- G. Traffic and patrol services; and
- H. Reports on police services and activities within the District, including monthly, quarterly and annual written reports. Special notification shall be given by CITY to DPOA when budgeting amounts for Special Events staffing.

V. COMPENSATION FOR ENHANCED POLICE PATROL SERVICES. In consideration of the enhanced police patrol services to be provided under this Agreement, the DPOA agrees to pay the CITY a fee of **\$160,000** (the "Fee") for the term of this Agreement based upon the budget of estimated costs included as Exhibit B hereto.

A. **PAYMENT SCHEDULE.** Payment of the Fee shall be remitted by the DPOA on a monthly basis, in twelve (12) payments of exactly Thirteen Thousand Three Hundred Thirty Three and 33/100 dollars or the total sum of \$160,000 the first business day following the signing of this Agreement or as otherwise agreed by the parties. Such monies representing the Fee shall be applied first to officer salaries for Enhanced Police Services, then to other costs under this agreement as set forth in Exhibit B.

B. **CITY COSTS.** The Fee covers only a portion of the actual costs reasonably associated in providing the supplemental police patrol services and special events staffing. Actual costs include salaries, wages, fringe benefits, training, and other program-related miscellaneous costs ("Actual Costs"). Within 90-days following the expiration of this contract, the CITY will provide the DPOA an accounting of Actual Costs encountered in providing Supplemental Police Services. The CITY shall provide up to \$202,623.00 ("City Contribution") during Fiscal Year 2019/2020 to be applied to such Actual Costs. In the event that Actual Costs are greater than the sum of the Fee and the City Contribution, the DPOA shall reimburse the CITY for the remainder of the Actual Costs encountered. The DPOA shall not be responsible to pay for the essential police services already being provided by the CITY to Downtown Pomona as Baseline Services.

An illustration of the costs for the enhanced police patrol services borne by the CITY in carrying out the Enhanced Police Services described under this Agreement is set forth as Exhibit "B" attached hereto. With the exception of amounts indicated for Annual Salary (Base Salary and Benefits) line item budgeted amount within such illustration is for rough budgeting purposes only, and actual amounts incurred for each line item may be allocated among and within the total budgeted amount in conformity with City of Pomona Department of Finance guidelines and practices.

C. SPECIAL EVENT STAFFING.

- 1) The level of Police staffing required for special events shall be determined by the Police Department in consideration of the circumstances surrounding such event.
- 2) In the event the funding budgeted for special events is insufficient to meet the staffing needs for special events held during the term of the contract, the DPOA agrees to pay the CITY the actual per hour cost (Overtime Rate) for the assigned police personnel for such event, plus 9.25% for "non-salary personnel costs" (Unemployment Insurance, Social Security/FICA and Workers Compensation Insurance), and a 20% Administrative Overhead charge (applied to the above total personnel costs). Should such amount be beyond the amount budgeted for special events, then such sum shall be paid directly by the DPOA to the City, after deduction of any unused budgeted line item amount in the annual budget.

VI. DPOA SECURITY SERVICES. The DPOA shall be solely responsible for the hiring and supervision of private unarmed security officers licensed by the California State Department of Consumer Affairs Bureau of Security and Investigative Services. Such security officers must be fingerprinted and photographed by the California State Department of Public Safety.

VII. TERM. The initial term of this Agreement commences on July 1, 2019 and will continue in effect until **June 30, 2020**. If by October 15, 2019, or by October 15 of the subsequent year upon extension of this agreement, the DPOA has requested to change the deployment schedule (i.e., time and days of deployment of Downtown Patrol Unit officer as described in exhibit A), the department shall reasonably attempt to accommodate such request. At the option of the DPOA, this Agreement may be extended for an additional one-year term to run through June 30, 2021 on the same terms and conditions, subject to an increase of five percent (5%) to the amount of compensation specified in paragraph V for Annual Salary, and subject to the then Overtime Rate. In the event that a police salary survey is completed prior to such time which results in a salary increase of less than 5% percent for Pomona Police Officers, then DPOA shall be entitled to a set-off of the difference between 5% percent and the actual percentage increase pursuant to such survey. Such set-off, if any, shall be applied to officer salaries first, then to other costs under this agreement as set forth in Exhibit B. In the event that such salary survey results in a salary decrease, such set off shall not be applied in such a way to decrease the salary below the current salary level. Regardless of any increase or decrease resulting from action taken in response to a police salary

survey, the Overtime Rate described in paragraph V.C shall be the overtime rate for such officer(s) in effect on the date of the event.

VIII. EMPLOYEES OF THE CITY. Police Officers assigned to the Downtown Patrol Unit will at all times be employees of the CITY. All administrative and fiscal obligations with regard to workers' compensation, PERS, withholding tax, insurance and similar personnel and employment matters will be the obligation of the CITY. The DPOA will not be required to furnish any fringe benefits outside of the budgeted amounts indicated in Exhibit B or assume any other liability of employment to any officer assigned to duty within the District.

IX. INDEPENDENT CONTRACTOR. The PARTIES hereto agree that each party is an independent contractor under this Agreement, and shall not be construed for any purpose to be employees of such other party hereto.

X. PERS INDEMNITY. DPOA Security Officers assigned to duty within the District will at all times be agents of the DPOA. In the event that the DPOA or any employee, agent, or subcontractor of the DPOA providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of CITY, the DPOA shall indemnify, defend, and hold harmless CITY for the payment of any employee and/or employer contributions for PERS benefits on behalf of the DPOA or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, DPOA and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by the CITY, including but not limited to eligibility to enroll in PERS as an employee of the CITY and entitlement to any contribution to be paid by the CITY for employer contribution and/or employee contributions for PERS benefits.

DPOA is solely responsible for compliance with PERS restrictions applicable to any of DPOA's employees, agents, or subcontractors.

XI. INSURANCE AND INDEMNITY.

- A. **INSURANCE.** The DPOA shall procure and maintain, and demonstrate the procurement and maintenance at all times during the term of this Agreement of insurance coverage for the DPOA security personnel as set forth in the Proof of Insurance requirements (Exhibit "C") attached hereto.

B. **INDEMNITY.** DPOA hereby agrees to protect, indemnify and hold CITY and its employees, officers and servants free and harmless from any and all losses, claims, liens, demands and causes of action of every kind and character including, but not limited to, the amounts of judgment, interests, court costs, legal fees and other expenses incurred by the CITY to the maximum extent allowed by law arising in favor of any party, including claims, liens, debts, personal injuries, including employees of the CITY, death or damages to property (including property of the CITY) and without limitation by enumeration, all other claims or demands of every character occurring or arising directly out of or as a consequence of the performance of the work performed hereunder, except only such injury to persons or damage to property **due or claimed to be due to the sole negligence of the CITY, including officers assigned to the Downtown Patrol Unit as defined in paragraph III.A.** This provision is not intended to create any cause of action in favor of any third party against DPOA, its agents, or the CITY or to enlarge in any way the DPOA'S liability but is intended solely to provide for indemnification of the CITY for liability for damages or injuries to third persons or property arising from DPOA'S negligent performance hereunder.

X. TERMINATION. Either the CITY or the DPOA may terminate this Agreement without cause by giving thirty (30) calendar days written notice to the other of such termination prior to the expiration of the agreement. In such situation, the DPOA shall only be responsible for payment of services rendered through date of termination and CITY shall only be responsible for providing Enhanced Police Services through date of termination.

XI. ASSIGNMENT AND SUBCONTRACTING. Neither party shall assign or subcontract the rights or responsibilities under this agreement without the express, written consent of the other party, which may be withheld for any reason, or for no reason.

XII. RESOLUTION OF DISPUTES.

A. Disputes regarding the interpretation or application of any provisions of this Agreement shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

B. If any action, at law or in equity, is brought to enforce or to interpret any provisions of this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

XIII. FORCE MAJEURE. The respective duties and obligations of the parties hereunder shall be suspended while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather,

government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the party from whom the affected performance was due.

XIV. SEVERABILITY. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions nevertheless will continue in full force and effect without being impaired or invalidated in any way.

XV. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.

XVI. ENTIRE AGREEMENT. This AGREEMENT, together with Exhibits A, B, and C supersede any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representation by any party, which is not embodied herein, nor any other agreement; statement or promise not contained in this Agreement shall not be valid or binding. Any modification of the Agreement shall be effective only if it is in writing and signed by all parties.

[End of Agreement. Signature page follows.]

IN WITNESS WHEREOF this Agreement is signed by the parties hereto as stated below and is entered into on the date of the last party to sign.

ATTEST:

THE CITY OF POMONA

Rosalia Butler
City Clerk

By: _____
Linda Lowry,
City Manager

Date: _____

APPROVED AS TO FORM:

DOWNTOWN POMONA OWNERS'
ASSOCIATION ("DPOA")

Christi Hogin,
City Attorney

By: _____
Carolyn Hemming,
Chairman/President

Date: _____

Approved by City Council on _____

EXHIBIT A

DEPLOYMENT SCHEDULE

Hours	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
0320-1600	DPOA Security	DPOA Security	DPOA Security	DPOA Security	DPOA Security	DPOA Security	DPOA Security
1600-0320	DPOA Security	DPOA Security	DPOA Security	2 Officers	2 Officers	2 Officers	2 Officers

Special events such as "Art Walk," "Farmer's Market," entertainment venues or other anticipated or non-anticipated events with large crowds or anticipated large crowds in the downtown area will be staffed with additional officers paid from the "Special Events budget." Special enforcement details to prevent criminal activity may also be paid from the "Special Events Budget" or as otherwise required under Section V.C. 2. Special enforcement details to prevent criminal activity may also be paid from the "Special Events budget."

Special event staffing will be determined on a case by case basis depending on several factors including but not limited to; type of venue, expected number of people, number of events occurring the same night and availability of alcohol.

Description of Zones

1. Consolidated Zone (Effective From January 1, 2010)

[See Attached Map]

Exhibit "B"

ILLUSTRATION OF COSTS
FOR ENHANCED POLICE PATROL SERVICES
7/1/19 – 6/30/20

BUDGET

DPOA Funds	\$160,000
City Supplemental Funding	<u>\$202,623</u>
Total	\$362,623

Top Step Officer Annual Salaries (2 Officers)

Base Salary and Benefits (per 19-20 budget)	<u>\$362,623</u>
Total	\$362,623

Total Annual Costs	\$362,623
<u>Less City's Cost</u>	<u>\$202,623</u>

DPOA Funds	\$160,000
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EXHIBIT C

The DPOA shall maintain throughout the duration of the term of the Agreement, liability insurance covering the DPOA and designating CITY including its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants, as additional insured against any and all claims resulting in injury or damage to persons or property (both real and personal) caused by any aspect of the actions by the DPOA or its contractors, including security personnel, in amounts no less than the following and with such deductibles as are ordinary and reasonable in keeping with industry standards. It shall be stated, in the Additional Insured Endorsement, that the DPOA's insurance policies shall be primary as respects any claims related to or as the result of the DPOA's actions. Any insurance, pooled coverage, or self-insurance maintained by the CITY, its elected or appointed officials, directors, officers, agents, employees, volunteers, or DPOA's officers, agents or employees shall be non-contributory.

General Liability:

a.	General Aggregate	\$2,000,000
b.	Products Comp/Op Aggregate	\$2,000,000
c.	Personal & Advertising Injury	\$1,000,000
d.	Each Occurrence	\$1,000,000
e.	Fire Damage (any one fire)	\$ 50,000
f.	Medical Expense (any one person)	\$ 5,000

Workers' Compensation:

a.	Workers' Compensation	Statutory Limits
b.	EL Each Accident	\$1,000,000
c.	EL Disease - Policy Limit	\$1,000,000
d.	EL Disease - Each Employee	\$1,000,000

Automobile Liability

a.	Any vehicle, combined single limit	\$1,000,000
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The DPOA shall provide thirty (30) days advance notice to CITY in the event of material changes or cancellation of any coverage. Certificates of insurance and additional insured endorsements shall be furnished to CITY thirty (30) days prior to the effective date of this Agreement. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, CITY shall have the right but not the duty to obtain replacement insurance and to charge the DPOA for any premium due for such coverage. CITY has the option to invoice the DPOA for any such premium paid to be reimbursed to CITY.

Insurance is to be placed with insurers authorized and admitted to write insurance in California and with a current A.M. Best's rating of A-:VII or better. Acceptance of insurance from a carrier with a rating lower than A-:VII is subject to approval by CITY's Risk Manager. The DPOA shall immediately advise CITY of any litigation that may affect the DPOA's insurance policies.