

POLICE SERVICES AGREEMENT

This Agreement ("Agreement") is made and entered into this 5th day of August, 2019, by and between the CITY OF POMONA, a Charter City (hereinafter referred to as the "CITY") and the LOS ANGELES COUNTY FAIR ASSOCIATION (hereinafter referred to as "FAIR"). CITY and FAIR are herein referred to together as the "Parties" and singularly as a "Party."

RECITALS

A. Pursuant to FAIR's ground lease and operating agreement, as executed pursuant to California Government Code 25906, by and between FAIR and the COUNTY OF LOS ANGELES, FAIR is obligated to conduct the annual Los Angeles County Fair. The 2019 Los Angeles County Fair is scheduled to commence on August 30, 2019 and conclude on September 22, 2019;

B. FAIR has elected to arrange, by contract with the City of Pomona, to provide Police security for the duration of the 2019 Los Angeles County Fair;

C. In consideration of the public's health, safety and welfare, the Chief of Police has the authority to determine the adequate level of Police services to be provided by Pomona Police Officers during the 2019 Los Angeles County Fair; and,

D. FAIR and the CITY have agreed to the rate of compensation, which has been previously approved by City Council resolution, which the Parties believe is a fair rate for such police services, and is set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals and of the covenants and agreements contained herein, it is agreed by and between the CITY and FAIR as follows:

TERMS OF AGREEMENT

1. Duration of Agreement. The duration of this Agreement shall begin on August 30, 2019, and remain in full force and effect through and including September 22, 2019.

2. Services. Subject to the terms and conditions of this Agreement, CITY shall provide Basic Police Services, as mutually agreed to by the Parties, within the fairgrounds for the nineteen days of Fair operation, and as jointly agreed to in a side letter dated August ____, 2019 to describe Police Staffing Deployment Details. The services performed by CITY pursuant to this Agreement are not intended to and shall not supplant those provided by FAIR Security, FAIR Parking Staff, and Carnival Staff. CITY shall not be liable for actions or inactions of FAIR Security, FAIR Parking Staff or Carnival Staff.

3. Consideration.

a. Police services provided by on-duty Pomona Police personnel shall be charged to FAIR at one and one-half times each officer's current hourly wage, plus Worker's Compensation and Federal Medicare Tax, when applicable, for each employee. An Administrative Fee of ten percent (10%) shall be applied to the total cost for the actual services provided, estimated to total Fifty-Two Thousand Two Hundred Thirty Six dollars (\$52,236).

b. The CITY and FAIR will mutually agree to the actual level of "Basic Police Services" to be provided by the CITY. The City's Chief of Police shall have final decision of appropriate levels to insure safety of Pomona Police Officers and the Public at any given time. "Basic Police Services" shall be those services necessary to supply police patrol services within the fairgrounds, as defined by the agreed levels and areas of coverage. Based on the information known at this time, it is estimated that for the nineteen days of Fair operation, the cost estimate for "Basic Police Services" shall be Five Hundred Twenty-Two Thousand Three Hundred Sixty dollars (\$522,360), which shall be due and payable to the CITY by FAIR on or before the Fair's conclusion on September 22, 2019. Such estimated amount assumes 5,804 hours for sworn personnel and non-sworn personnel deployed in the typical Deployment Schedule in subsection e below, officer availability, and decision of appropriate levels by the Chief of Police. If said sum is not paid on or before September 22, 2019, then interest of 10% shall be charged on the estimated amount owed. Additionally, Forty Five Thousand dollars (\$45,000) is being included based on the past (3) year average of billed overages not included in the "Basic Police Services" amount. The total contracted amount is Six Hundred Nineteen Thousand Five Hundred Ninety-Six dollars (\$619,596).

c. As further described in paragraph four (4) below, on or before the thirtieth (30th) day following the Fair's conclusion, the CITY will provide to FAIR an accounting of the costs for police equipment and services actually rendered. On or before the thirtieth (30th) day following receipt of the CITY'S accounting of such costs, FAIR shall pay to the CITY any and all amounts due for all services rendered, including those exceeding those delineated above as Basic Police Services and any additional services requested.

d. If the cost of police services provided, including the Administrative Fee, are less than the estimated cost for Basic Police Services stated above, then on or before the thirtieth (30th) day following the presentation of the CITY'S accounting of costs to FAIR, the CITY will refund the difference to FAIR.

4. Los Angeles County Fair Operation Restrictions. Subparagraphs a. through g. below establish specific duties, responsibilities and obligations which are expected of FAIR during the term of the 2019 Los Angeles County Fair, and upon which have formed the basis for cost and service levels described herein:

- a. The portion of the Los Angeles County Fairgrounds commonly referenced, as the "Park" shall open to the public at 12:00p.m. daily, Wednesday through Friday, and 10:00 a.m. Saturday, Sunday and the first Monday. The Park shall close to the public at 10:00 p.m. Sundays (September 2 excepted), Wednesdays and the first Monday; at 10:00 p.m. Thursdays at 11:00 pm; and at 12:00 a.m. Friday, Saturday and Sunday, September 2.
- b. All buildings and exhibits shall close to the public at 10:00 p.m. daily Sundays (September 2 excepted), Wednesdays, Thursdays and the first Monday; and at 11:00 p.m. daily Friday, Saturday and the first Sunday, September 2.
- c. The area of the Los Angeles Fairgrounds commonly identified as the "Carnival" (also known as the Fun Zone) shall open at the same time as the Park for each given day, and shall close to the public daily no later than 2 hours after closing.
- d. FAIR Security and Carnival Staff shall be responsible for and shall ensure that all members of the public have left all areas of the Los Angeles County Fairgrounds in conformance with and before the closing times established by this Agreement.
- e. FAIR Security or FAIR Parking Staff shall provide for the orderly and efficient control of vehicles and/or pedestrians exiting the Los Angeles County Fairgrounds property.
- f. FAIR Security shall ensure that all FAIR exhibitors and concessionaires and their personnel are limited to their specifically assigned areas upon nightly closure of the Fairgrounds. FAIR shall provide all authorized personnel with personnel rules and regulations, designations of authorized locations and identification badges. The CITY Police or FAIR Security may confiscate the identification badge of any Fair personnel determined to be in violation of established restrictions, including those stated just above. Such confiscated Identification badges shall be delivered to the FAIR Security Office.

The CITY Police shall be scheduled in conformance with the hours set forth in subsections a, b and c above. Any non-scheduled or additional police services necessary to handle incidents or remove those FAIR attendees, remaining after the above stated closing times, shall result in extra charges to FAIR, above and beyond the cost estimate for Basic Police Services in accordance with the Deployment Schedule.

5. Accounting of the Police Service. At the conclusion of the 2019 Los Angeles County Fair, the Police Chief, or designee, shall provide to FAIR a written accounting including daily staffing reports. Further, the CITY shall provide FAIR a summary report stating the type and number of incidents requiring police response during the 2019 Los Angeles County Fair.

6. Assignment. No assignment of this Agreement or of any part or obligation of performance hereunder shall be made, either in whole or in part, by FAIR without the prior written consent of the CITY.

7. 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.

8. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any lawsuit or claim arising out of or related to this Agreement shall be the County of Los Angeles.

9. Attorneys' Fees. In the event any legal proceeding is instituted to enforce any term or provision of this Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

10. Indemnity and Hold Harmless. FAIR and all of their agents and employees, jointly and severally expressly agree to indemnify, protect, defend and hold harmless the CITY and its officers, agencies and employees from and against any and all rights, claims, debts, charges, demands, acts, agreements, liabilities, obligations, damages, costs, fees, expenses, judgments, actions or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the CITY and its officers, agencies and employees arising out of or related in any way whatsoever to the services rendered in this Agreement that is caused by any act, omission or negligence of the FAIR, its officers, agents or employees.

The CITY and all of their agents and employees, jointly and severally expressly agree to indemnify, protect, defend and hold harmless FAIR and its officers, agencies and employees from and against any and all rights, claims, debts, charges, demands, acts agreements, liabilities, obligations, damages, costs, fees, expenses, judgments, actions or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against FAIR and its officers, agencies and employees arising out of or related in any way whatsoever to the services rendered in this Agreement that is caused by the recklessness, or intentional misconduct of the CITY, its officers, agents or employees.

The CITY and FAIR will each provide the certificate(s) of insurance applicable to this Agreement the following person(s) are responsible at the CITY and FAIR for handling any tenders of defense and indemnity:

For the CITY:
Chris Millard, Risk Manager

For the FAIR:
Dwight Richards, VP of Operations

11. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

12. Severability. If one or more of the provisions of this Agreement are hereafter declared invalid or unenforceable by judicial, legislative or administrative authority of competent jurisdiction, then the Parties hereto agree that the invalidity or unenforceability of any of the provisions shall not in any way affect the validity or enforceability of any other provisions of this Agreement.

13. Modification. Any modification of this Agreement shall be effective only if it is in writing and signed by all parties.

14. Entire Agreement. This Agreement supersedes any and all other agreements either oral or in writing between the Parties with respect to the subject matter herein. Each party of 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 be valid and binding.

15. Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the Parties hereto.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

17. Force Majeure. The respective duties and obligations of the parties hereunder shall be suspended in whole or in part while and so long as performance hereto is prevented or impeded by strikes, disturbances, riots, fire, severe weather, 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. A Party to this Agreement wishing to invoke this Section shall notify in writing the other Party to this Agreement of that intention as soon as practical under the circumstances from the time which it knew or should have known of the commencement of any such cause for delay and shall, at that time, specify the reason therefore. The failure to so notify the other Party within the period described herein as to the cause for delay shall constitute a waiver of any right to later rely upon this Section with respect to this clause.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first stated herein.

ATTEST:

CITY OF POMONA:

Rosalinda Butler, City Clerk

Linda Lowry, City Manager

Date _____

APPROVED AS TO FORM:

_____ for
Christi Hogin, City Attorney

LOS ANGELES COUNTY FAIR
ASSOCIATION

Dwight Richards, VP of Operations

Date 7/10/19