

AGREEMENT REGARDING INTERIM USE OF FAIRPLEX

THIS AGREEMENT ("AGREEMENT") is entered into on August 8, 2019 ("Effective Date") by and between the CITY OF POMONA ("the CITY") and LOS ANGELES COUNTY FAIR ASSOCIATION ("FAIRPLEX"). The CITY and FAIRPLEX may be individually referred to herein as the Party and collectively as the Parties.

RECITALS

A. 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.

B. The Property has an "F" zoning designation ("F-Zone"). 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.

C. 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.

D. In lieu of amending the existing F-Zone, the City and Fairplex have discussed creating a specific plan ("Specific Plan") that would replace the F-Zone and regulate land uses on the Property.

E. The Fairplex has met with representatives of the neighborhoods surrounding the Property and has agreed to take interim measures to mitigate the noise, traffic, and public safety impacts of its use of the Property for big events while the specific planning process is underway.

F. The Parties now desire to enter into this Agreement to outline the interim mitigation efforts and memorialize the mutual commitment to undertaking the public process of preparing and considering a specific plan in accordance with the terms and conditions of this Agreement and applicable laws.

NOW THEREFORE, 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" of this Agreement shall be the latest date written on the signature page of this Agreement after it has been approved by the City Council and the Board of Directors, respectively, and executed by the Parties. Except for those provisions that expressly survive the expiration or earlier

termination of this Agreement, the "Term" of this 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. By mutual written agreement of the Parties, this Agreement may be extended for any period of time, as long as combined all extensions do not to exceed an additional three (3) years.

2. Preparation of the Specific Plan. Within one hundred eighty (180) days following the Effective Date, Fairplex, at its sole cost and expense, shall 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 complete Application must be submitted within the 180-day period described above. Note that this paragraph shall not be construed to alter in any way the requirements for a specific plan application or its preparation.

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 proposed 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, and all costs associated with the preparation and processing of the Draft EIR shall be borne by Fairplex.

4. City Conduct During Term. The City agrees that it is wasteful of public resources 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 Agreement, and so long as Fairplex is diligently pursuing the Specific Plan, the City, working in good faith and fair dealing, 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 cost 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 it 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 ("TUP") 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, with each music event lasting no longer than two (2) days and ending each night no later than 11:00 PM. Fairplex is authorized to host three 10,000-attendee Music Events, two 20,000-attendee Music Events and one 40,000-attendee Music Event. The City will issue a TUP for each Music Event; provided, however, Fairplex may process more than one TUP request at a time. The City may for the first Music Event complete an evaluation of the adequacy of the TUP conditions permitted by the Zoning Code and change or adjust such permissible conditions for future TUPs. 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 City Code, the Music Events are exempt from Chapter 18, Article VII of the City Code. Notwithstanding the immediately preceding sentence, the parties agree that the Music Events shall not generate noise levels exceeding 75 dBA over a 15-minute period, as measured from the property line of a residential property beyond the Property boundaries. This maximum noise level shall not be modified or reduced for the term of the Agreement. At Fairplex's sole cost and expense, Fairplex shall obtain all required building, electric, plumbing, fire, encroachment or other permits required by City ordinances for the issuance of a TUP for a Music Event. Each TUP shall expressly prohibit raves or cannabis-related events and Fairplex hereby agrees not to host any such events at the Property during the Term. Such Music Events and continued historical year-round Fairplex events shall herein be referred to as "Fairplex Events."

7. Establishment and Administration of the Mitigation Fund.

a. Establishment of the Mitigation Fund. 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(e) shall be conditioned on Fairplex's ability to host the Music Events described in Section 6, above. The Mitigation Fund shall be used to fund public safety measures and services to benefit the

neighborhoods surrounding Fairplex in order to manage and improve trash abatement, noise attenuation, and pedestrian and vehicular circulation related to the Music Events.

b. Establishment of Advisory Committee. The Parties agree to the creation of an Advisory Committee subject to the Brown Act (Government Code Section 54950 et seq.). The Advisory Committee shall function in an advisory capacity and be responsible for recommending to the City Council the use of the Mitigation Fund and the priority of proposed projects.

c. Composition of the Committee. The Committee shall be comprised of nine members. Each Councilmember and the Mayor shall appoint one member who is a resident of Pomona residing within the improvement area boundary depicted in Exhibit "A". The Fairplex and the Board of Supervisors of the County of Los Angeles will each appoint one member to the Advisory Committee. Bylaws must be approved by the City Council.

d. Use of Funds held in Mitigation Fund.

i. The Advisory Committee may recommend expenditures from the Mitigation Fund for improvement projects that are located in the City within the improvement area boundary described and depicted on Exhibit "A". The Advisory Committee's recommendations for expenditures from the Mitigation Fund must be to improve negative impacts of Fairplex's operations or to install improvements calculated to mitigate adverse impacts on surrounding properties from Fairplex Events. In no event shall Mitigation Funds be used by the City to meet the City's general fund obligations unrelated to mitigating an impact of the Fairplex Events, including without limitation the funding of standard maintenance and repair activities and basic public services. The Mitigation Fund collected in accordance with this Agreement shall not be used to pay or credit any obligation of Fairplex to the City.

ii. The Advisory Committee may make recommendations on the expenditure of funds in the Mitigation Fund for a period of twenty-four (24) months following the expiration or earlier termination of this Agreement. All funds remaining in the Mitigation Fund after such twenty-four (24) month period shall be returned to Fairplex prior to the expiration of the City's fiscal year.

e. 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(e). Fairplex represents that such revenue generation measures set forth in this Section 7(e) do not violate any existing requirements or obligations of Fairplex.

i. Commencing on the Effective Date, Fairplex shall increase the percentage of parking revenues paid to the City by 1%. Fairplex shall again increase the revenues paid to the City an additional 1% every 12 months 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. This amount is 1% in the first year of the Term, 2% in the second year of the Term, and 3% in the final year of the Term.

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 a three-dollar (\$3.00) fee to the ticket price for all tickets priced under \$75.00 and a five-dollar (\$5.00) fee to the ticket price for all tickets priced \$75.00 and above. The additional fee shall be paid to the City and 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 paid to the City and deposited into the Mitigation Fund.

f. Survival. Except for Fairplex's obligation to contribute funds to the Mitigation Fund as set forth in Section 7(e), the provisions of this Section 7 shall survive the expiration or earlier termination of this 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 and Right to Audit. 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 Agreement are being implemented. The Parties shall 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. In addition, either Party, at any time with five (5) days written notice, may inspect the books and records of the other Party that document compliance with this Agreement.

9. No Project Approval Under CEQA. The City's approval of this 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 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.

10. Notices. Any notice that may or must be given by either party under this 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 10 shall be deemed delivered when delivery is actually received or refused.

CITY

City of Pomona
City Manager
505 S. Garey Avenue

FAIRPLEX

Los Angeles County Fair Association
1101 W. McKinley Avenue
Pomona, California 91768

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

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 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 Agreement or otherwise available at law or in equity or by statute, including specific performance or termination of this Agreement. All rights and remedies of any Party shall be cumulative and non-exclusive and shall survive the expiration or termination of this Agreement, subject to applicable statutes of limitation. Notwithstanding the foregoing, the Fairplex hereby waives any rights to seek monetary damages of any type from the City.

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 unencumbered 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 payable, i.e., collected by Fairplex and not yet remitted, and all unencumbered 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 Agreement on behalf of said Party has the authority, including obtaining all necessary board or City Council approval to execute this Agreement and make the promises, covenants, and agreements contained herein.

14. No Third-Party Beneficiaries. This 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 Agreement.

15. No Assignment. This 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 Agreement is deemed to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this 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 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 Agreement by providing written notice of termination to the other Party.

17. Governing Law; Jurisdiction. This 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 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.

18. Entire Agreement. This 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 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 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 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 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.

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


CITY OF POMONA

**LOS ANGELES COUNTY FAIR
ASSOCIATION**

By: _____


Tim Sandoval, Mayor

By: _____



Name: _____

Miguel A. Santana

Its: _____

President and CEO


Date: _____

Aug 20, 2019

Date: _____

August 8, 2019

ATTEST:


Rosalia Butler
City Clerk (SEAL)

APPROVED AS TO FORM:

By: _____


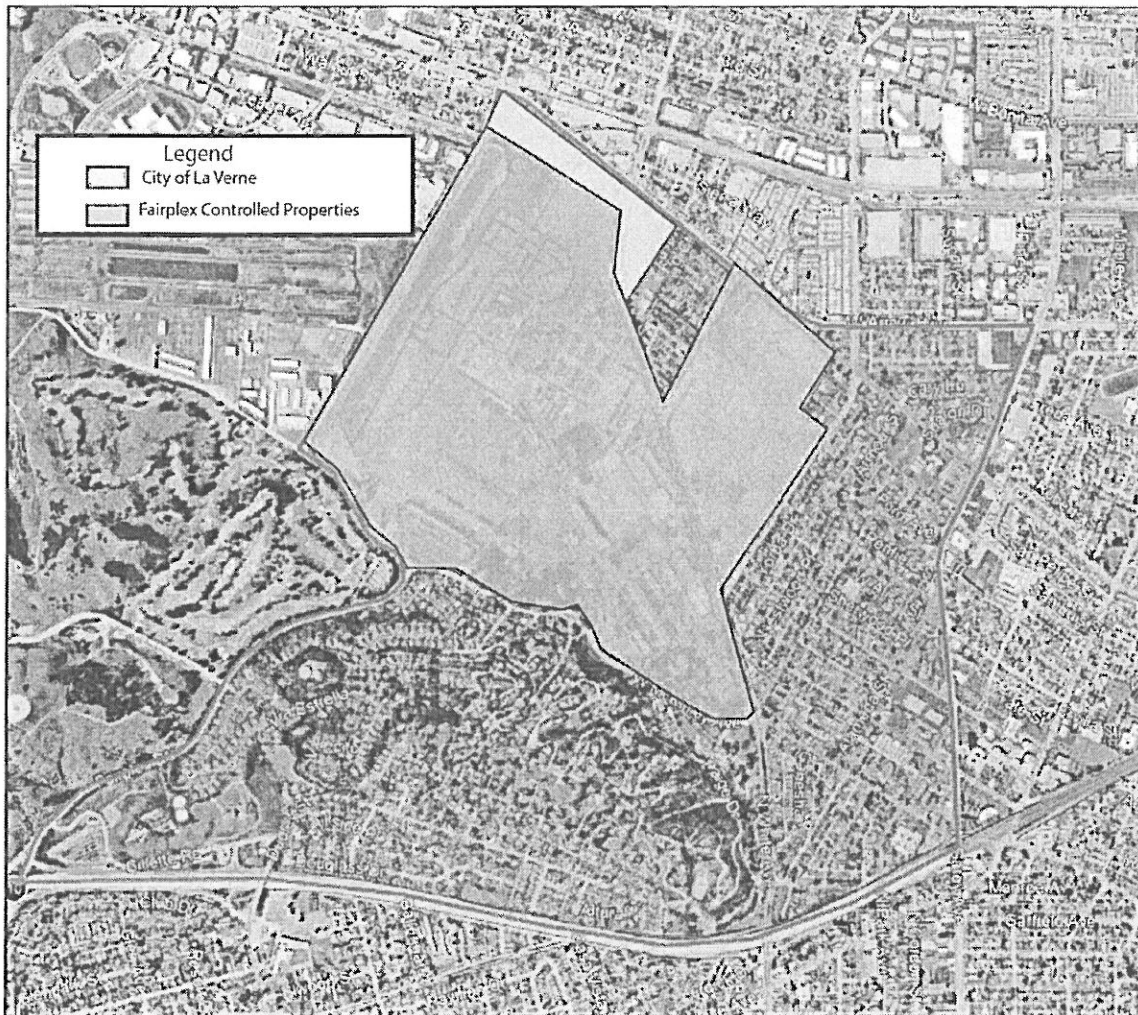

City Attorney

Exhibit A
MITIGATION FUND BOUNDARY

The area within the City of Pomona depicted on the map below, excluding property in the City of La Verne and Fairplex-controlled property, 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.



August 14, 2019

213.617.4101 direct
jmahramas@sheppardmullin.com

File Number: 61CX-269614

VIA FEDEX

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

Re: Agreement Between City of Pomona and Los Angeles County Fair Association

Attn: City Manager

Enclosed please find the Agreement Regarding Interim Use Of Fairplex requiring signatures from Mayor Tim Sandoval and the City Attorney. Please sign and return the original document to the below address at your earliest convenience. Please do not hesitate to contact me if you have any questions.

Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422
Attn: Alfred Fraijo, Jr.

Very truly yours,



Justin J. Mahramas

SMRH:4833-0056-7712.1
Enc.