

Regular Council Meeting

March 30, 2023

FRESNO CITY COUNCIL



Supplement Packet

ITEM(S)

1-E (ID 23-509)

Approval of a two-year License Agreement with Activated Events LLC, to produce and hold special event concerts (dba/ Boots in the Park) at Woodward Park (Council District 6).

Contents of Supplement: License Agreement with Activated Events LLC

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

**LICENSE AGREEMENT
SPECIAL EVENT-AT WOODWARD PARK
(CITY OF FRESNO -ACTIVATED EVENTS "BOOTS IN THE PARK")**

THIS LICENSE AGREEMENT (this "Agreement") is dated this ____ day of April, 2023, and is entered into by and between the CITY OF FRESNO, a California municipal corporation organized and existing under the laws of the State of California ("City"), and ACTIVATED EVENTS, LLC., a California limited liability corporation ("Activated Events"), for use of Woodward Park ("Venue").

AGREEMENT

In consideration of the mutual promises, covenants, and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Activated Events shall, as an independent contractor, utilize Venue for up to three events annually per year ("Events") between April 1, 2023 through October 31, 2024. In such capacity, Activated Events shall have exclusive authority over the operations at the Venue (as depicted in Exhibit A) for purposes of the Events. Activated Events shall provide services consistent with the standards for performance of services in this Agreement, and where not expressed herein, in accordance with generally accepted industry standards. In no event shall Activated Events hold itself out as, act as, or be the agent of, City, without the City's express written authority to do so.

2. Any and all Fees and Costs generated from the Events, as outlined in Section 6 below, shall be provided to the City consistent with the terms of this Agreement, within ten days following each Event.

3. Activated Events shall be responsible for managing all operations and production of Events. Furthermore, Activated Events is responsible for ensuring that, by the end of each Event, the Venue is restored to the condition which it was in immediately prior to the Event in all material respects, ordinary wear and tear excepted. If the Venue is not restored to the City's reasonable satisfaction, the City shall notify Activated Events thereof and Activated Events shall use commercially reasonable efforts to restore the Venue in all material respects to its prior condition, ordinary wear and tear excepted, as promptly as reasonably practicable. Activated Events reserves the right to pursue claims against any parties responsible for damage to the Venue.

4. On event dates, Activated Events shall have access to the Venue from 6:00 a.m. to 11:59 p.m. In addition, Activated Events shall have exclusive access to the parking facilities beginning at 8:00 am to 11:59 pm. The City and Activated Events shall mutually agree upon at the time the Event is booked, a load in and load out schedule based on the Event's size of operational needs in accordance with the City's Master Fee Schedule cost.

5. Events. Activated Events shall in good faith provide notice to the City to reserve the Venue within 18 months of the date of the Event.

Dates shall be subject to availability, and Activated Events shall not have priority over previously scheduled events that may conflict with Activated Events' dates.

6. Fees and Costs. For each year of this Agreement, Activated Events shall pay to the City for the use and occupancy of the Venue, the following sums:

Rental Fee: In consideration of said use, Activated Events will pay the City a rental fee for the Event ("Reservation Fee"). The Rental Fee for each Event shall be one of the following:

A. Rental fees for the Venue and concessions for events with up to 10,000 ticketed in attendance shall be \$30,000 per day.

B. Rental fees for the Venue and concessions for events over 10,001 ticketed in attendance shall be \$50,000 per day.

Cleaning Fee: \$1,000 initial deposit plus \$200 additional each event day (\$3,600 per year).

Staff: \$15.00 per hour, with a minimum of four hours per Event. Event coordinator is provided to monitor event and address facility needs.

Stage setup & usage: \$600 per event (assessed per event if set-up required).

Power Distribution: Activated Events will be solely responsible for any electrical or other power distribution above that which is fixed within the Venue for the events.

7. Other conditions:

A. Ace Parking is under contractual agreement with the City to collect an entry fee on all vehicles entering Woodward Park according to the City of Fresno Master Fee Schedule. The City shall charge a parking fee up to \$5.00 per vehicle per Event. Woodward Park (the "Park") can accommodate up to 1,800 cars inside Venue for parking, should Activated Event require additional parking, the City may provide offsite parking if need. Activated Events will not be authorized to charge Park entrance fees to attendees entering the park as a pedestrian or on bicycles but may utilize reasonable means to charge attendees for access to the event, except as otherwise provided in this Agreement. All City of Fresno employees and City vehicles will be granted entry into any location in the Park as is consistent with normal Park operations. The City may also allow public access to portions of the Park not being used for the Event.

B. Activated Events acknowledges that the Venue is one component in a public park owned and operated by the City. During the events covered by this Agreement, the City shall have the right to use or permit the use of any portion of the Park, other than the Venue, to any person or group regardless of the nature of use. Activated Events agrees to take reasonable efforts to minimize the disturbance to the operation of and/or other uses of the Park by the City and the public. In accordance with the City's quiet hours, Activated Events acknowledges and understands that all amplified music shall end by 10:00 pm.

C. Activated Events shall not make any alterations or improvements to the Venue without the prior written consent of the City, which consent may be withheld at the City's sole and absolute discretion. Any alternations or improvements of whatever nature made or placed by Activated Events to or on the Venue, except movable trade fixtures, shall, at the option of City, (i) be removed by Activated Events, at Activated Events' expense, or (ii) become the property of the City. City assumes no responsibility for any property placed in the Venue. Notwithstanding anything to the contrary, Activated Events shall be solely responsible for any losses arising out of any rigging from or to the physical structure of the facility or any fixture thereto, set-up, alterations, and/or improvements at or to the Facility necessitated by and/or performed with respect to the event.

D. Royalty payments and copyright clearance are the sole responsibility of Activated Events. Activated Events must accept all responsibility for and absolve the City from any liability or expense arising out of the use of any composition, work, or material covered by copyright.

8. Activated Events will supply all required security officers deemed necessary by the Fresno Police Department.

9. Activated Events shall comply in all material respects with all terms of the applicable Conditional Use Permit ("CUP"), laws, liquor licenses, City Ordinances, and written City policies in effect at the time of the Events. In addition, Activated Events shall apply for any building permits including stage or tents, as needed.

10. Liquor Licensing. Activated Events covenants that it will require all persons or entities selling or serving alcohol at the Venue during the Events to represent and warrant to Activated Events that such persons or entities hold all licenses and approvals required for such activity under federal, state, and local laws and regulations. Activated Events shall apply and secure a one day ABC license per Event.

11. Upon request from Activated Events, the City may provide FAX transit services on an existing line with a modified detour to the Event.

12. No less than thirty days prior to the date of the Event, a meeting will be held with Activated Events and the City Manager's Office or designee to finalize the details of the Event and discuss work City staff will be performing related to the event. Furthermore, Activated Events shall provide the City with a traffic control plan for the surrounding area and neighborhood.

13. Indemnification. To the furthest extent allowed by law, Activated Events shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, or Activated Events, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation expenses, and costs to enforce this agreement), arising or have arisen directly or indirectly out of the performance of this Agreement. Activated Events' obligations under the preceding sentence shall apply regardless of

whether City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the active negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Activated Events should subcontract all or any portion of the work to be performed under this Agreement, including, but not limited to, the operations and productions of Events, Activated Events shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

14. Insurance. Activated Events shall pay for and maintain in full force and effect all policies of insurance required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager or his/her designee at any time in his/her sole discretion. The following policies of insurance are required and shall maintain limits of liability of not less than those amounts stated below, however, the insurance limits available to the City of Fresno, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured.

- (i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 providing liability coverage arising out of your business operations. The Commercial General policy shall be written on an occurrence form and shall provide coverage for "bodily injury", "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), all vendors, exhibitors, entertainers, products and completed operations and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability of not less than the following:

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate

ANY AMUSEMENT RIDES OR DEVICES MUST BE INSURED AND SPECIFICALLY ENDORSEMENT INTO NOT EXCLUDED FROM THE GENERAL LIABILITY INSURANCE AND IF AMUSEMENT RIDE/DEVICE OWNER IS NOT THE EVENT

HOLDER, THE RIDE/DEVICE OWNER WILL NEED TO ENTER INTO A DIRECT SIDE AGREEMENT TO PROVIDE INDEMNITY AND INSURANCE PROTECTION TO THE CITY OF FRESNO. ALL AMUSTMENET RIDES AND/OR DEVICES MUST BE PREAPPROVED 30 DAYS IN ADVANCE BY RISK MANAGEMENT PRIOR TO USE.

LIQUOR LIABILITY INSURANCE limits of liability of not less than:

- (i) \$2,000,000 per occurrence;
- (ii) \$4,000,000 aggregate for bodily injury and property damage;

The responsibility for Liquor Liability Insurance may be assigned to Activated Events' concessionaire/vendor. *If Activated Events intends to sell alcohol either the Activated Events or concessionaire/vendor providing the alcohol for sale must have a valid liquor sales license and Liquor Liability Insurance covering sale of alcohol. If the liquor sales license is obtained by a concessionaire/vendor, that entity must enter into a direct Side Agreement with the City of Fresno in order to provide indemnity and insurance protection and provide the required insurance documents as identified herein.

COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of ISO Business Auto Coverage form CA 00 01 providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Commercial Automobile policy shall be written on an occurrence form and shall provide coverage for *"all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than the following:*

- (i) \$1,000,000 per accident for bodily injury and property damage

WORKERS' COMPENSAION insurance as required by the State of California and **EMPLOYERS' LIABILITY** *(Where Applicable)* insurance with limits of

\$1,000,000 each accident,
\$1,000,000 disease each employee
and \$1,000,000 disease policy limit.

Umbrella or Excess Liability In the event Activated Events purchases an Umbrella or Excess Liability insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES/SELF-INSURED RETENTIONS - Activated Events shall be responsible for payment of any deductibles contained in any insurance policies required herein and Activated Events shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retention as respects City, its officers, officials, employees, agents and volunteers; or
- (i) Activated Events shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

ENDORSEMENTS: All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker.

- (ii) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar day written notice by certified mail, return receipt requested, has been given to the City. Activated Events is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal or reduction in coverage or in limits, Activated Events shall furnish the City with a new certificate and applicable endorsements for such policy(ies). **In the event any policy is due to expire during the special event, Activated Events shall provide a new Certificate and applicable endorsements evidencing renewal of such policy(ies) not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.**
- (iii) The Commercial General, Commercial Automobile and Liquor Liability (if applicable) insurance policies shall name the City of Fresno, its officers, officials, agents, employees and volunteers as additional insureds.
- (iv) All policies of insurance shall be endorsed to be primary and non-contributory with respect to the City of Fresno, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City of Fresno, its officers, officials, employees, agents and volunteers shall be in excess of the Activated Events' insurance and not contribute with it.
- (v) Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City of Fresno, its officers, officials, agents,

employees and volunteers.

PROVIDING OF DOCUMENTS: Upon request of City, Activated Events shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all pages to the policy requested including the Declarations page, the Forms and Endorsements page, all Endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive the expiration or termination of the Permit.

MAINTENANCE OF COVERAGE: If at any time during the Special Event or the Use of City Grounds and Facilities, Activated Events fails to maintain the required insurance in full force and effect, the Permit providing permission for such use shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City.

SUBCONTRACTORS: If Activated Events should subcontract all or any portion of the work to be performed under this Agreement, Activated Events shall require, at the discretion of the Risk Manager or designee, subcontractor(s) to enter into a side agreement with the city to provide required indemnification and insurance protection. Any required side agreement and associated insurance documents for the subcontractor must be reviewed and preapproved by the City Risk Manager or designee. If no side agreement is required, Activated Events is solely responsible for ensuring that each subcontractor indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and authorized volunteers as described above in order to provide insurance protection in favor of City and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section.

The fact that insurance is obtained by Activated Events shall not be deemed to release or diminish the liability of Activated Events, including, without limitation, liability under the indemnification provisions of this Agreement. The duty to indemnify City and its officials, officers, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Activated Events. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Activated Events or any subcontractors.

Activated Events is required to cover all parts of the event. If any part of the event is excluded by the insurance provided, Activated Events is required to purchase coverage for these exposures. The exposures include but are not limited to; Liquor, Amusement Devices, Vendors, Exhibitors, DJs, Live Performers and Bands.

15. Authority and Approval. All parties hereto have the requisite power and authority to execute, deliver and perform this Agreement, and all actions of each such party, necessary for such execution, delivery and performance have been duly taken.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original, and all such counterparts shall together constitute but one document.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and wholly performed in the State of California by California residents. Venue for purpose of filing any action for the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County.

18. Attorney's Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorney's fees, costs and expenses incurred in the action or proceeding by the prevailing party.

19. Termination. This Agreement shall terminate immediately at the scheduled conclusion of the last event. This Agreement shall be subject to termination by a non-breaching party should the other party fail to comply with the terms of this Agreement, and such failure is not cured within 15 days of notice from the non-breaching party to the breaching party. Section 13 of this Agreement shall survive the termination or expiration of this Agreement.

20. Amendment. This Agreement may not be amended or modified except in writing signed by each of the parties to this Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

21. Assignment. Activated Events may not assign its rights under this Agreement without the written consent of City, which consent may be withheld at City's sole and absolute discretion.

22. Prior Agreements. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and agreements and understandings concerning the subject matter hereof.

23. The City will make every effort to provide adequate lighting at the Venue and in the parking lot to ensure the safety of participants, performers, and guests.

24. The City will maintain banner holders on the light poles inside the Venue.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, to be effective as of the date first written above.

CITY OF FRESNO,
a California municipal corporation

ACTIVATED EVENTS, LLC,
a California limited liability corporation

By: _____
Georgeanne A. White
City Manager

DocuSigned by:
By: Steve Thacher
E51F8A516D744F0...
Name: Steve Thacher

APPROVED AS TO FORM
ANDREW JANZ
City Attorney

Title: President
(If corporation or LLC, Board Chair, Pres.
or Vice Pres.)

DocuSigned by:
By: Angela M. Karst 3/24/2023
0A8F88F889DD447...
Angela M. Karst Date
Deputy City Attorney

DocuSigned by:
By: Steve Thacher
E51F8A516D744F0...
Name: Steve Thacher

Title: President
(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary.)

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

Exhibit A – Venue Map

