

MEMORANDUM OF UNDERSTANDING

Fresno Food Expo

THIS MEMORANDUM OF UNDERSTANDING ("Agreement") is made and entered into on this 24th day of September, 2015, by and between the City of Fresno, a municipal corporation, hereinafter referred to as the ("City"), and Fresno Food Exposition, Inc., a California non-profit corporation, hereinafter referred to as ("Corporation"). The City and Corporation are sometimes collectively referred to herein as the "Parties" and individually, as a "Party."

RECITALS

WHEREAS, the City owns the Fresno Convention & Entertainment Center ("Facility"); and

WHEREAS, the Facility is managed by SMG, a Pennsylvania general partnership ("SMG") pursuant to a Management Agreement between City and SMG dated December 17, 2008, ("Management Agreement"); and,

WHEREAS, City is permitted to use the Facility in exchange for a credit as Operating Revenue for the published rental rate pursuant to Section 11.2(a) of the Management Agreement, but City is required to pay SMG directly for direct out-of-pocket expenses incurred in connection with the City's use of the Facility; and

WHEREAS, the Fresno Food Expo event provides a benefit to the City and the City desires to provide ongoing support for the event; and

WHEREAS, the City desires to assign certain of its rights under the Management Agreement to Corporation.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. ASSIGNMENT OF RENT CREDIT

City hereby assigns to Corporation its right to use the Facility in exchange for a credit as Operating Revenue pursuant to Section 11.2(a) of the Management Agreement for the limited purpose of hosting the Fresno Food Expo ("Rent Credit"). The amount of the Rent Credit shall not exceed \$60,000. Use of the Rent Credit is conditioned upon approval by SMG. In no event shall City be responsible for any direct cost, including, without limitation, the cost of the rent if the Rent Credit is not approved. All direct out-of-pocket expenses shall be paid by Corporation.

2. TERM

This Agreement shall be in effect for a term of five years from the date hereof. Notwithstanding the foregoing, the Corporation and City shall have the right to terminate this Agreement upon twelve months' advance written notice.

3. INDEMNIFICATION

To the furthest extent allowed by law, Corporation shall indemnify, hold harmless and defend 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Corporation, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If Corporation should subcontract all or any portion of the services to be performed under this Agreement, Corporation shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

4. INSURANCE

Throughout the life of this Agreement, Corporation shall pay for and maintain in full force and effect all policy(ies) of insurance required hereunder with (an) insurance company(ies) either (1) 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 (2) authorized by the City's Risk Manager. The following policies of insurance are required:

A. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office ("ISO") form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability with limits of liability of not less than \$1,000,000 per occurrence for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury, \$2,000,000 aggregate for products and completed operations, and \$2,000,000 general aggregate.

B. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of ISO form CA 00 01 and shall include coverage for "any auto" with limits of liability of not less than \$1,000,000 per accident for bodily and property damage. Only required if automobiles are to be operated on City property.

C. WORKERS' COMPENSATION insurance as required under the California Labor Code.

D. EMPLOYERS' LIABILITY insurance with minimum limits of \$1,000,000 each accident, \$1,000,000 disease each employee and \$1,000,000 disease policy limit.

In the event Corporation purchases an umbrella or excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Corporation shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Corporation shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, 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 retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Corporation 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.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty day written notice in favor of the City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten day written notice of such cancellation, change or reduction of coverage. In the event any policies are due to expire during the term of this Agreement, a new certificate evidencing renewal of such policy shall be provided not less than fifteen days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Corporation shall file with the City a certified copy of the new or renewal policy and certificates for such policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name the City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Corporation's insurance shall be primary and no contribution shall be required of the City. The Crime insurance policy shall name the City as a joint loss payee. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to the City and each of its officers, officials, employees, agents and volunteers. Corporation shall furnish the City with the certificate(s) and applicable endorsements for all required insurance prior to the City's execution of this Agreement.

If at any time during the life of this Agreement or any extension, Corporation fails to maintain any required insurance in full force and effect, all of Corporation's activities under this Agreement shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Corporation of its responsibilities under this Agreement.

Upon request of City, Corporation shall immediately furnish City with a complete copy of any insurance policy required under Agreement, including all endorsements,

with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Corporation shall not be deemed to release or diminish the liability of Corporation, 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 Corporation. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Corporation or any of its officers, board members, employees, agents, volunteers, invitees, caterers, concessionaires, suppliers, vendors, consultants, contractors or subcontractors.

If Corporation should subcontract all or any portion of the services to be performed under this Agreement, Corporation shall require each subcontractor 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, except that any required certificates and applicable endorsements shall be on file with Corporation and City prior to the commencement of any services by the subcontractor.

5. NOTICES

Any notice required or intended to be given to a party under the terms of this Agreement shall be in writing and shall be deemed to be duly delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) the date of receipt by facsimile to the City or the Corporation, or (c) three (3) business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other.

6. BINDING

Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives. The terms and conditions of this MOU, express or implied, exist only for the benefit of the parties to this Agreement and their respective successors and assigns. No other person or entity will be deemed to be a third party beneficiary of this MOU.

7. ASSIGNMENT

There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

8. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno, California.

9. ENTIRE MOU

It is mutually understood and agreed that the foregoing constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.

SIGNATURES APPEAR ON NEXT PAGE

WHEREFORE, the Parties have entered into this agreement on the date and year first above referenced in Fresno, California.

CITY OF FRESNO,
a municipal corporation

FRESNO FOOD EXPOSITION, INC., a
California non-profit corporation

By: _____
Bruce A. Rudd, City Manager

By: _____

ATTEST:

YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: 
Laurie Avedisian-Favini
Supervising Deputy City Attorney

LAF:ns [68911ns/laf]