

Agenda Item: ID18-0178 (4:30 P.M.#3)

Date: 2/8/18

FRESNO CITY COUNCIL



REC'D FEB 5 '18 AM 9:24
FRESNO CITY CLERK

Supplemental Information Packet

Agenda Related Item(s) – ID18-0178 (4:30 P.M.#3)

Contents of Supplement: Signed License Agreement

Agenda Item Title

Approve License Agreement Special Event – Woodward Park between IAN Group, LLC and the City of Fresno (Council District 6).

Sponsor: PARCS and City Manager's Office

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-WOODWARD PARK
(CITY OF FRESNO - IAN GROUP, LLC)**

THIS LICENSE AGREEMENT (this "Agreement") is dated this 1st day of February 2018, and is entered into by and between the CITY OF FRESNO, a municipal corporation organized and existing under the laws of the State of California ("City"), and IAN GROUP, LLC, a California limited liability company ("IAN").

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

1. GRANT OF LICENSE; TERM; PURPOSE. The City hereby grants IAN as an independent contractor, a license to manage and operate Woodward Park located at 7775 N. Friant Road, Fresno CA (the "Park") for the purpose of holding a two day music and cultural festival on May 18 and 19, 2018 (the "Event"). In such capacity, IAN will have authority over matters regarding the Event and attendees within the Park who are attending the Event. IAN shall provide such 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 IAN hold itself out as, act as, or be the agent of the City, without the City's express written authority to do so. IAN shall use the Park for the Event and no other purpose.

By its execution, IAN covenants and agrees to faithfully perform and abide by each and every term, condition, and limitation of this Agreement, each of which shall be a condition subsequent to the continuance in effect of this Agreement.

2. TIME RESTRICTIONS; SETUP AND BREAKDOWN. IAN shall have exclusive access to those areas of the Park as depicted on **Exhibit A**, beginning May 17, 2018, at 5:00 PM, and continuing until May 20, 2018, at 8:00 am. In addition, in the City shall allow IAN access to the Park prior to the Event for setup beginning May 14, 2018, at 8:00 am; and the City shall allow IAN access to the Park after the Event for breakdown and cleanup, through May 21, 2018, at 5:00 pm.

3. MANAGEMENT DURING EVENT. IAN shall be responsible for managing all operations and production of the Event, except that the City may reasonably restrict access to areas of the Park not necessary for the Event. No less than thirty days prior to the date of the Event, a meeting will be held with all IAN Event holders and the City PARCS Department Director, or designee, to finalize the details of the Event. Furthermore, IAN is responsible for ensuring that, by the end of the Event, the Park is restored to the condition which it was in immediately prior to Event in all material respects, notwithstanding IAN, shall not have an obligation to re-sod the Park. City and IAN shall conduct a joint walk-thru inspection immediately after IAN has completed its breakdown and clean up. If the Park is not timely restored to the City's



reasonable satisfaction, the City shall use its resources to restore the Park to its prior condition and will bill IAN for labor and material costs accrued restoring the park to its condition prior to the Event.

4. OPTION FOR UPCOMING EVENT. If the City in its sole discretion is satisfied with IAN's performance of this Agreement and the community reaction to the Event, the City may offer IAN the option to host another event on substantially similar terms to those of this Agreement. The City Manager shall be given the discretion to determine the City's satisfaction with the Event and shall be given sole authority to negotiate the terms and enter into an agreement for a possible additional event in the calendar years 2018-2019 on the City's behalf.

5. FEES AND COSTS. In consideration of said use, IAN will pay the City a reservation fee of \$100,000 for the two day event, no later than 30 days before the Event ("Reservation Fee"). In addition, IAN will pay the City a \$1,000 cleaning/security deposit fee ("Deposit"), no later than 60 days before the Event. The Deposit is up to 80% refundable dependent on the condition of the facility after completion of the Event. IAN will be responsible for operating the Park entrance off of Friant Road and the east Park entrance booth off of Audubon Road and may charge entry fees. IAN shall negotiated directly with SP Plus Corporation, a Delaware corporation to enter into a contract for the charging of entry fees which contract shall not interfere with any City contract with SP Plus Corporation. IAN will not be authorized to charge Park entrance fees to attendees entering the park as pedestrians 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, as depicted in the attached **Exhibit A**.

There will be no Vendor Fees charged by the City for IAN vendors.

6. SECURITY COSTS. IAN will be required to supply all required security officers deemed necessary by the Fresno Police Department, as well as other logistical support (e.g., traffic control, other public safety services) as required by the City.

7. COMPLIANCE WITH LAWS, REGULATIONS, ETC.

A. IAN shall comply with all terms of any applicable Conditional Use Permit ("CUP"), laws, liquor licenses, City Ordinances, and written City policies in effect at the time of the Event. IAN shall be granted a permit for exception from the City's standard noise ordinance (Fresno Municipal Code 10-110) to allow the Event to operate until 12:00 a.m. each day rather than 10:00 p.m. The City shall support the issuance of such permit provided that the Fresno Police Department approves in its reasonable discretion.



B. Notwithstanding anything to the contrary in this Agreement, IAN shall ensure that all amplified sound ceases at 11:30 p.m. on each day of the Event, as reasonably determined by an on-site designee of the City utilizing an atomic clock device and a major carrier cellular phone. IAN acknowledges that the City would not have approved this Agreement without strict compliance with such amplified noise cutoff provision and that any breach of this provision would likely result in damages to the City that are difficult to ascertain as of the date of execution of this Agreement but that would escalate rapidly as the period of breach continued. Such damages would include, but not be limited to, financial damages resulting from the inability to host future events at the Park due to citizen complaints, and costs associated with emergency response to citizen noise complaints and other related compliance costs not covered by IAN in this Agreement. Accordingly, IAN agrees to the following schedule of liquidated damages for breach of this provision, which shall serve as a reasonable estimate of the damages the City would sustain in the event of a breach and not as a penalty:

- i. \$1,000.00 for each minute or fraction thereof in breach from 11:30 p.m. to 11:40 p.m.
- ii. \$10,000.00 for each minute or fraction thereof in breach from 11:40 p.m. to 12:00 a.m.
- iii. \$100,000.00 for each minute or fraction thereof in breach after 12:00 a.m.

IAN further agrees that it shall make payment of any liquidated damages incurred within 5 business days of any breach of this provision.

A handwritten signature in dark ink, appearing to be "IAN".

IAN

IAN

Atty for IAN

8. CONDITIONS PRECEDENT. As conditions precedent to the effectiveness of this Agreement, IAN shall satisfy the following conditions to the City's satisfaction:

- A) Payment of the Deposit no later than 60 days before the Event;
- B) Payment of the Reservation Fee no later than 30 days before the Event;
- C) Securing of all necessary security personnel (private security and/or contract police officers) as determined by the Fresno Police Department, no later than 14 days prior to the Event;
- D) Obtaining all necessary County Health Department permits and liquor licenses, no later than 14 days prior to the Event;
- E) Obtaining all necessary tent, stage or structure permits to be issued by the Fire Department, no later than 14 days prior to the Event;



- F) Obtaining all insurance and applicable endorsements discussed herein, and having same approved by the City, no later than 60 days prior to the Event, unless otherwise provided below; and

9. INDEMNIFICATION. To the furthest extent allowed by law, IAN 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, IAN or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement. IAN GROUP, LLC's obligations under the preceding sentence shall apply regardless of whether City of any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct of the City or any of its officers, officials, employees, agents or volunteers.

If IAN 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 Event, IAN 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.

10. INSURANCE. In consideration for the issuance of a permit or license for use of the Park, IAN 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 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. **Example of acceptable endorsements would be CG 20 12 04 13 or CG 20 26 04 13 along with CG 20 01 04 13.** 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) 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) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Contract.

ANY AMUSEMENT RIDES OR DEVICES MUST BE INSURED AND SPECIFICALLY ENDORSED INTO 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 SIDE AGREEMENT TO PROVIDE INDEMNITY AND INSURANCE PROTECTION TO THE CITY OF FRESNO. ALL AMUSEMENT RIDES AND/OR DEVICES MUST BE PREAPPROVED 2 WEEKS IN ADVANCE OF THE EVENT BY RISK MANAGEMENT PRIOR TO USE.

LIQUOR LIABILITY INSURANCE: If alcoholic beverages are to be sold*, served or furnished, Liquor Liability coverage is required with 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 IAN GROUP, LLC's concessionaire/vendor. *If IAN intends to sell alcohol either IAN 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 indemnification agreement with the City of Fresno in order to secure 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' COMPENSATION 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. (Only required if IAN has employees.)

Umbrella or Excess Liability In the event IAN 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 - IAN shall be responsible for payment of any deductibles contained in any insurance policies required herein and IAN shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or 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
- (ii) IAN shall provide a financial guarantee, satisfactory to City's Risk Manager or 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. IAN shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance sixty (60) days prior to the use of the Park.

- (i) 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.



IAN 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, IAN 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 Event, IAN 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.**

- (ii) 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.
- (iii) All policies of insurance shall be endorsed to be primary 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 excess of IAN's insurance and not contribute with it.
- (iv) 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, IAN shall immediately furnish City with a complete copy of any insurance policy required under this 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 the expiration or termination of this Agreement and any license granted herein.

MAINTENANCE OF COVERAGE: If at any time during its use of the Park, IAN fails to maintain the required insurance in full force and effect, the use of the Park 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 IAN subcontracts any or all of the services to be performed under this Agreement, IAN shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate side agreement with the City to provide required indemnification and insurance protection. Any required side agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee two weeks prior to the commencement of work or event. If no side agreement is required, IAN shall require and verify that subcontractors maintain



insurance meeting all the requirements stated herein and IAN shall ensure that CITY, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be approved and on file with IAN and CITY, two weeks prior to commencement of any work by the subcontractor. It is understood by the Parties that there may be situations whereby vendors must be substituted with little to zero notice, and without ample time to provide the information requested in this paragraph. In those situations the CITY shall work in good faith to accommodate those substitutions.

11. 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.

12. 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.

13. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be Fresno County.

14. TERMINATION. This Agreement shall terminate immediately at the scheduled conclusion of the Event. This Agreement shall also be immediately terminated should IAN fail to comply with the terms of this Agreement. Sections 4, 8 and 9 of this Agreement shall survive the termination or expiration of this Agreement.

15. 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.

16. ASSIGNMENT. IAN 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. Notwithstanding, IAN may enter into subcontracts whose purposes are to perform those obligations under this Agreement that are necessary to promote, host and organize the Event so long as IAN remains responsible for all obligations owed to the City under this Agreement.

17. 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.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT to be effective as of the date first above written.



[Signatures follow on next page]



CITY:
CITY OF FRESNO,
a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

IAN GROUP, LLC,
a California corporation

By: _____

Name: Aren Hekimzian

Title: CEO

Date: 2/1/18

ATTEST:
YVONNE SPENCE MMC
City Clerk

By: _____

Date: _____

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: _____

John W. Hastrup
Deputy City Attorney

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM
MCCORMICK, BARSTOW, LLP

By: _____

David L. Emerzian
Attorney for Ian Group, LLC

Date: _____

Attachment: Exhibit A



EXHIBIT A



CITY:
CITY OF FRESNO,
a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

IAN GROUP, LLC,
a California corporation

By: _____

Name: _____

Title: _____

Date: _____

ATTEST:
YVONNE SPENCE MMC
City Clerk

By: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM
DOUGLAS T. SLOAN
City Attorney

By: _____

John W. Hastrup
Deputy City Attorney

Date: 2-1-18

APPROVED AS TO FORM
MCCORMICK, BARSTOW, LLP

By: _____

David L. Emerzian
Attorney for Ian Group, LLC

Date: 2/1/18

Attachment: Exhibit A