

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Sheriff

BOARD AGENDA # B-15

Urgent Routine

AGENDA DATE June 19, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Agreement Between the 38th Agricultural Association – Stanislaus County Fair Board and Stanislaus County for the Sheriff to Provide Security at the Fair and Adjust the Budget

STAFF RECOMMENDATIONS:

1. Approve the Agreement Between the 38th Agricultural Association - Stanislaus County Fair Board and Stanislaus County for the Sheriff to Provide Security at the Fair.
2. Authorize the Chief Executive Officer and the Sheriff to sign the agreement on behalf of the County.
3. Direct the Auditor-Controller to increase appropriations and estimated revenue by \$140,000 per the budget journal for Fiscal Year 2007-2008
4. Direct Chief Executive Office staff to work with the Sheriff's staff to review costs and workers compensation exposures as a result of this agreement.

FISCAL IMPACT:

The Sheriff's Department will provide security at the Fair for \$140,000. This amount represents approximately 3,072 hours and includes all salary and related benefits for the Sheriff personnel performing these duties. The following chart represents an estimate of the proposed assignments and may be modified by the Sheriff as needed. However, the value of assignments will not exceed the \$140,000 budget.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2007-473

On motion of Supervisor Grover , Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: Grover, Monteith, DeMartini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (Continued):

**Stanislaus County Sheriff's Department
2007 Stanislaus County Fair Security Estimates**

<u>Assignment</u>	<u>Hours</u>	<u>Rate</u>	<u>Cost</u>
Arena	392	\$46.84	\$18,361
Beer Booths	279.5	\$46.84	\$13,092
Gates	450	\$46.84	\$21,078
Grounds	840	\$46.84	\$39,346
Metal Detector	420	\$31.43	\$13,201
Mounted Unit	386	\$46.84	\$18,080
Sergeants	304	\$55.40	\$16,842
Total	3,071.5		\$139,999

Appropriations and estimated revenue to support this agreement were not included in the Sheriff's Proposed Budget request for Fiscal Year 2007-2008. There will be no additional cost to the County associated with this agreement.

DISCUSSION:

For nearly 30 years the Sheriff's Department has been providing security services for the 38th Agricultural Association – Stanislaus County Fair. Since 1985 the County had an agreement with the 38th Agricultural Association Fair whereby the Sheriff permitted the Fair to employ Deputy Sheriffs during their off duty hours pursuant to Penal Code Section 70(c). Deputies were paid in a separate payroll check issued by the State on behalf of the 38th Agricultural Association with all compensation at straight time.

The work of the deputies was directed by Sheriff's command staff and subject to all the rules, regulations and discipline of the County and the Sheriff's Department.

This year, the Deputy Sheriff's Association brought their concerns to the Sheriff that time worked at the Fair was over-time to be compensated at a rate of time and one half. They believed that minimally the County was a joint employer with the Fair Board and they were performing essentially the same work.

To further research this issue the Sheriff's Department surveyed the California State Sheriff's Association regarding Fair security and work performed under Penal Codes section 70(c). Twenty-one sheriffs responded that they do not allow any deputy to perform work for another employer under Penal Code section 70(c). Also, the City of Modesto does not allow any of their officers to perform work under this penal code section. Security for any special event is handled directly by the police department. Fair Districts up and down the State use

various methods to provide security. Some use private security, some use Sheriff's Deputies, some use local police officers.

The Sheriff's Department returned to the Fair Board and informed them that we would no longer use Penal Codes section 70(c). The Sheriff assured the Fair that he was still committed to providing an appropriate level of security to ensure public safety throughout the 10-day event.

The Sheriff's Department has developed an operational staffing plan for the Fair, which includes overtime rates for those deputies working more than 80 hours in a pay period. The Sheriff's Department met with the Fair representatives to review their financial statements and negotiate a flat rate for services of \$140,000, an increase of approximately \$19,000 from the previous year. In addition, the Fair Board will continue to indemnify the County against any general liability claims. The County will retain responsibility for worker's compensation claims that may arise because the staff providing the services will be performing the services as County employees.

At the conclusion of the Fair the Sheriff will work with the Chief Executive Office to review costs and liability exposure. It is important that this community event remain incident free, safe and fun for families in Stanislaus County.

POLICY ISSUES:

Approval of this agreement supports the Board priorities of a safe community and effective partnerships. In addition the 38th Agricultural Association – Stanislaus County Fair directly supports the Board priority of a strong agricultural economy/heritage.

STAFFING IMPACT:

There is no request to increase staffing associated with this agenda item. The Sheriff will assign existing staff to work at the fair, consistent with the terms of the agreement.

**County of Stanislaus: Auditor-Controller
Legal Budget Journal**

Database
Set of Books

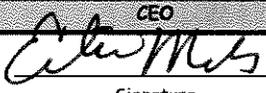
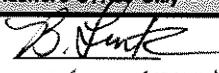
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County of Stanislaus

Balance Type		Budget
Category	* List - Text	Budget - Upload
Source	* List - Text	SO DRW
Currency	* List - Text	USD
Budget Name	List - Text	LEGAL BUDGET
Batch Name	Text	
Journal Name	Text	
Journal Description	Text	0708 Fair Journal
Organization	List - Text	Stanislaus Budget Or

Upl	Fund	Org	Acc't	GL Proj	Loc	Misc	Other	Debit		Credit		Period	Line Description
								incr appropriations decr est revenue (format > number > general)		decr appropriations incr est revenue			
4	7	5	7	6	6	5							Text
01	0100	0028210	50010	0000000	000000	000000	00000	140,000.00				JUL-07	Increase Patrol OT for Fair
01	0100	0028210	32806	0000000	000000	000000	00000			140,000.00		JUL-07	Increase Revenue Law Enforce Serv-Fair
Totals:								140,000.00		140,000.00			

Totals: 140,000.00 140,000.00

Explanation: Increase appropriations for contract with Fair Board

Requesting Department	CEO	Data Entry	Auditors Office Only
Dan Wirtz			
Signature	Signature	Keyed by	Prepared By
6/12/2007	June 15, 2007	Date	6/15/07
Date	Date	Date	Approved By
			Date

**AGREEMENT BETWEEN THE COUNTY OF STANISLAUS AND
THE 38TH DISTRICT AGRICULTURAL ASSOCIATION
FOR SECURITY FOR THE FAIR OF 2007**

This Agreement is made and entered into this ____ day of June, 2007 between the County of Stanislaus (COUNTY, herein) and the Stanislaus County Sheriff's Department, (COUNTY, herein), a political subdivision of the State of California, and the 38th District Agricultural Association, an independent public agency and institution of the State of California, (DISTRICT, herein).

WHEREAS, DISTRICT governs and operates the Stanislaus County Fair; and

WHEREAS, COUNTY has provided security for the Fair through the Sheriff's Office for nearly 30 years; and

WHEREAS, DISTRICT has an on-going need for adequate security during the 10-day Fair; and

WHEREAS, COUNTY has received a request from the DISTRICT to provide security; and

WHEREAS, COUNTY, through the Sheriff's Office, is willing to provide security to provide for public safety,

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties agree as follows:

1. TERM AND TERMINATION. The term of this agreement shall be for the period from

July 27, 2007, through the completion of the performance of the provisions of this Agreement; provided however, the provisions of paragraph "5." concerning "INDEMNIFICATION" shall remain in full force and effect through and including August 5, 2008.

2. SCOPE OF SERVICES. COUNTY agrees to provide security for the Fair in accordance with an operational and staffing plan developed by COUNTY. DISTRICT may provide input into the operational plan, but COUNTY shall retain sole discretion to determine the number of personnel and assignments needed to provide an adequate level of security to ensure public safety during the Fair.

3. COMPENSATION. DISTRICT agrees to pay COUNTY total sum of \$140,000.00 for the services to be provided by COUNTY pursuant to this Agreement.

4. PAYMENT. Payment for the security services to be provided pursuant to this Agreement shall be made not later than thirty (30) days from the mailing of a billing statement to DISTRICT.

5. INDEMNIFICATION. DISTRICT agrees to indemnify, defend and hold harmless COUNTY, its officers, agents, employees or volunteers from and against any and all claims, judgments, administrative actions, losses, liabilities, expenses, damages and other costs, including reasonable litigation costs, expert witness and attorney fees, from every cause, including, but not limited to any actual or alleged personal injury, death, damage or

destruction of property including the loss of its use arising directly or indirectly out of, resulting from, or in connection with performance of this Agreement.

6. WORKER'S COMPENSATION. Worker's compensation liability is retained by the COUNTY.

7. ENTIRETY OF AGREEMENT. This Agreement between the parties is the embodiment of and constitutes the entirety of the Agreement between the parties.

8. EXCLUSIVE STATEMENT OF TERMS. This Agreement is a complete and exclusive statement of all of the terms and representations of the Agreement between COUNTY and DISTRICT with respect to the subject matter of this Agreement. This Agreement shall not be varied, supplemented or interpreted by any prior course of dealing between the parties. This Agreement may only be amended by written Agreement executed by the parties.

9. WRITTEN MODIFICATION. Any modification of this Agreement shall be in writing and executed by both parties and shall not affect any unmodified portion of this Agreement executed by the parties.

10. SEVERABILITY OF AGREEMENT. If any term or provision of this Agreement, is found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such offending term or provision shall be deemed stricken. This Agreement shall be construed in accordance with the laws of the State of California and

according to its fair meaning and not strictly for or against COUNTY or DISTRICT. In the event of litigation to enforce the performance of this Agreement, the prevailing party in litigation shall be entitled to reasonable costs, including attorneys fees as fixed by the court.

COUNTY OF STANISLAUS

STATE OF CALIFORNIA, 38TH DISTRICT
AGRICULTURAL ASSOCIATION

By: 
Richard W. Robinson
Chief Executive Officer

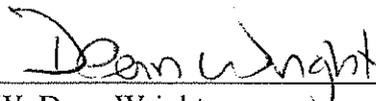
By: 
Anthony Leo
Chief Executive Officer

APPROVED AS TO CONTENT:

By: 
Adam Christianson
Sheriff

APPROVED AS TO FORM:

Michael H. Krausnick, County Counsel

By: 
W. Dean Wright
Deputy County Counsel

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June 19, 2007

William O'Brien, Chairman
Board of Supervisors, Stanislaus County
1010 Tenth Street
Modesto, CA 95354

Dear Chairman O'Brien,

Please be advised that the Board of Directors of the Stanislaus County Fair at their meeting of June 18, 2007, reviewed and approved the proposed *Agreement Between the County of Stanislaus and the 38th District Agricultural Association for Security for the Fair of 2007.*

While our Board understands that the traditional methods of employment of Sheriff's Deputies is not available for us to utilize this year, we do believe that this agreement continues to provide the level of security that we have been pleased with in the past, making for a safe Fair.

We encourage the Board of Supervisors to enter into this agreement and thank them for consideration of our request.

Sincerely,

Anthony C. Leo
Chief Executive Officer

Bill Mattos
Board Member

AKL/cb

cc: Rick Robinson, County CEO

BOARD OF SUPERVISORS
2007 JUN 19 P 3:45



Paul C. Goyette
Gary G. Goyette
Tawni O. Parr
Stephen V. Palazzo
Heather R. Messenger

Mark R. Swertz
Of Counsel
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Labor Representatives:
Steve Allen
Paul Kinsdorf
Luciano Beltran
Kim Gillingham
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June 15, 2007

Stanislaus County Sheriff's Department
Attention: Adam Christensen
Sheriff
P.O. Box 3288
Modesto, CA 95353

Re: Demand for Overtime Pay for
Deputies Jointly Employed by
County Fair and the Sheriff's Department

Dear Sheriff Christensen:

This letter is submitted on behalf of members of the Stanislaus County Deputy Sheriff's Association (SCDSA) who may work at the upcoming County Fair in August in conjunction with their work for the Stanislaus County Sheriff's Department. This letter constitutes a demand for overtime pay for the work performed by such deputies at the County Fair based on the fact that the County Fair and the Sheriff's Department are joint employers under the applicable Fair Labor Standards Act (FLSA).

FACTUAL SUMMARY

As you know, Stanislaus County Sheriff's Department deputies have in the past performed supplemental work on patrol at the County Fair which occurs in August. Deputies who have performed such work have been technically employed by the fair, and have received pay checks from the fair as the employer. As you also know, however, deputies working patrol shifts at the fair has done so only in conjunction with and in relation to their work as deputies for the County.

Specifically, deputies must receive permission from the County Sheriff's Department to work extra patrol shifts at the fair so that these extra shifts do not interfere with their regularly scheduled work for the Sheriff's Department. In addition, these deputies work at a pay rate which has typically been negotiated with the fair by the County Sheriff's Department. Further, such deputies are supervised by a lieutenant from the County Sheriff's Department when working patrol at the fair. Further still, such deputies are subject to all the policies, procedures, and standards of work imposed by the Sheriff's Department, up to and including discipline for failing to adhere to all policies and work standards set by the Sheriff's Department. Accordingly, while

Sheriff Christensen
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deputies working extra patrol shifts at the fair are technically paid by the fair, their work is intertwined with, associated with, and even controlled by the Stanislaus County Sheriff's Department, making the employment with the fair 'joint employment' between the fair and the Sheriff's Department. As argued below, such joint employment under the FLSA mandates that all time worked during extra patrol shifts at the fair be considered together with all work performed by the County Sheriff's Department for purposes of calculating overtime pay.

LEGAL BASIS

The FLSA associated regulations governing 'joint employment' is set forth at 29 CFR § 791.2; this regulation clearly states that two employers are 'joint employers' if "employment by one employer is *not completely disassociated* from employment by the other employer(s)...." 29 CFR § 791.2 (Emphasis Added). This regulation has been specifically interpreted by the Ninth Circuit Federal Court in 1983, when the Court held that four factors should be considered and evaluated to determine whether two employers are 'joint employers' under the FLSA. The Court held that whether two employers are joint employers depends on "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervise and control the employee work schedules or conditions of employment, (3) determine the rate and method of payment, and (4) maintain employment records." *Bonnette v. California Health and Welfare Agency* (1983) 704 F.2d 1465, 1470.

Based on this specific regulation, as interpreted and clarified by the Ninth Circuit Court, the analysis on whether two employers are 'joint employers' as opposed to truly qualifying as separate and independent employers is relatively straightforward. The facts applicable to an individual's employment under each of the employers should be analyzed under the four factors set forth by the *Bonnette* court to determine if the employers are joint or separate. Applying this analysis to the Stanislaus County Sheriff's Department deputies who work additional patrol shifts at the fair, the result is straightforward. Since the Stanislaus County Sheriff's Department clearly supervises and controls deputies work schedules and conditions of employment while the deputies work extra patrol shifts at the fair, the Sheriff's Department and the fair must be seen as 'joint employers' under the FLSA. In addition, the Sheriff's Department helps negotiate the rate of pay for the deputies working at the fair, and therefore, at least in part, determines the rate of payment for such work. Under the prevailing FLSA law, the Stanislaus County Sheriff's Department and the County Fair are joint employers under the FLSA.

DEMAND FOR OVERTIME PAY

Based on the joint employment by the fair and the Stanislaus County Sheriff's Department, all hours worked by deputies who work extra work shifts at the fair must be considered in conjunction with their regular work hours for the Sheriff's Department. Since the extra patrol shifts at the fair are consistently shifts worked above and beyond each deputy's regular work schedule, all such hours worked at the fair should qualify for overtime pay at one and one half (1.5) times the deputy's regular rate of pay.

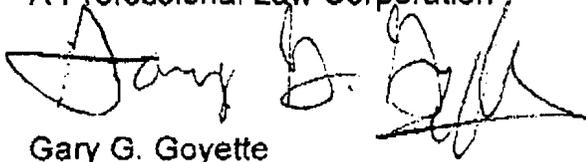
Therefore, our office on behalf of SCDSA deputies who will work at the upcoming County Fair, demand that all such work be paid as overtime pay. If the actual payment for such work is provided by the County Fair, the Sheriff's Department must demand to the fair and ensure that such pay is made at the overtime pay rate

Sheriff Christensen
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June 15, 2007

applicable to each deputy. Failure to demand and ensure such pay by the Sheriff's Department constitutes a violation of the FLSA *by the Sheriff's Department*, since the County and the fair are joint employers under the FLSA.

Please respond to this letter at your earliest convenience. Obviously, the work at the fair will occur in the near future, and we should resolve this matter as soon as possible. If you have any questions call me at (916) 851-1900.

Very truly yours,
Goyette & Associates, Inc.
A Professional Law Corporation

A handwritten signature in black ink, appearing to read "Gary G. Goyette", written over a horizontal line.

Gary G. Goyette