

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

DEPT: Sheriff's Department

BOARD AGENDA # *B-14

Urgent

Routine

AGENDA DATE June 30, 2009

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the 2009 Agreement Between the 38th Agricultural Association - Stanislaus County Fair Board and Stanislaus County for the Sheriff to Provide Security at the Fair

STAFF RECOMMENDATIONS:

1. Approve the 2009 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 to sign the Agreement on behalf of the County.

FISCAL IMPACT:

The amount of \$140,000 for the 2009 Agreement has already been included in the Sheriff's Department Fiscal Year 2009-2010 budget submittal which was approved by the Board of Supervisors on June 9, 2009. This amount represents approximately 3,000 hours and includes all salary and related benefits for the Sheriff personnel performing fair security duties, including assignments in the arena, free variety stage, beer booths, grounds, gates, mounted patrols and supervision by Sergeants. There is no change in the amount from the 2008 Agreement.

BOARD ACTION AS FOLLOWS:

No. 2009-457

On motion of Supervisor Grover, Seconded by Supervisor O'Brien
 and approved by the following vote,
 Ayes: Supervisors: O'Brien, Grover, Monteith, and Chairman DeMartini
 Noes: Supervisors: None
 Excused or Absent: Supervisors: None
 Abstaining: Supervisor: Chiesa

- 1) Approved as recommended
- 2) Denied
- 3) Approved as amended
- 4) Other:

MOTION: THIS ITEM WAS REMOVED FROM THE CONSENT CALENDAR AND PLACED ON NON-CONSENT FOR DISCUSSION AND CONSIDERATION

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of the 2009 Agreement Between the 38th Agricultural Association - Stanislaus County Fair Board and Stanislaus County for the Sheriff to Provide Security at the Fair

DISCUSSION:

The Sheriff's Department has been providing security services for the 38th Agricultural Association - Stanislaus County Fair for the past 30 years. Prior to 2007, Sheriff's Department personnel were employed directly by the 38th Agricultural Association Fair Board to provide security for the duration of the Fair. They were paid directly by the Fair. In 2007, the Sheriff worked with the Chief Executive Officer and County Counsel to implement a new model where the Sheriff remained the employer and paid the employee the applicable overtime rate for work at the Fair beyond the regular 80 hour two-week work period. The 2008 Fair Security Operation was a success with no major incidents.

The Sheriff's Department has developed an operational staffing plan for the Fair based on last year's experience. The Sheriff met with the Fair Board and the parties agreed to a flat rate for services of \$140,000. The Fair Board will continue to indemnify the County against any and all claims that may arise. It is important that this community event remain incident free, safe and fun for residents of Stanislaus County.

POLICY ISSUES:

Approval of this agreement supports the Board's priority 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 heritage.

STAFFING IMPACT:

There is no staffing impact associated with this agenda item.

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213 (Rev 06/03)

AGREEMENT NUMBER O-04-2009
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
38TH DISTRICT AGRICULTURAL ASSOCIATION

CONTRACTOR'S NAME
COUNTY OF STANISLAUS

2. The term of this **JULY 31, 2009** through **AUGUST 9, 2009**
 Agreement is:


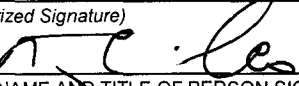
3. The maximum amount
 of this Agreement is: **\$140,000.00**

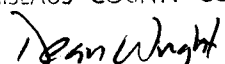
4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work & Budget Detail/Payment Provisions	On reverse side
Exhibit B – Insurance Requirements	
Contractor must provide liability insurance as outlined in Exhibit E, Insurance Requirements.	2 pages
Exhibit C* – General Terms and Conditions	2 pages
Check mark one item below as Exhibit D:	
<input type="checkbox"/> Exhibit - D Special Terms and Conditions	n/a
<input type="checkbox"/> Exhibit - D* Special Terms and Conditions	n/a

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only <input type="checkbox"/> Exempt per:
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) COUNTY OF STANISLAUS		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 6/30/09	
PRINTED NAME AND TITLE OF PERSON SIGNING RICHARD W. ROBINSON, CHIEF EXECUTIVE OFFICER		
ADDRESS 1010 10th STREET, SUITE 6800, MODESTO, CALIFORNIA 95354		
STATE OF CALIFORNIA		
AGENCY NAME 38TH DISTRICT AGRICULTURAL ASSOCIATION		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 6/29/09	
PRINTED NAME AND TITLE OF PERSON SIGNING ANTHONY C. LEO, CEO		
ADDRESS 900 N. BROADWAY, TURLOCK, CA 95380		

~~APPROVED AS TO FORM~~
 STANISLAUS COUNTY COUNSEL
 BY 

EXHIBITS A & B FOR STANDARD AGREEMENT #: O-04-2009

BETWEEN: 38TH DISTRICT AGRICULTURAL ASSOCIATION

AND: COUNTY OF STANISLAUS

EXHIBIT A – SCOPE OF WORK & BUDGET DETAIL/PAYMENT PROVISIONS:

THE CONTRACTOR AGREES:

1. To provide the Stanislaus County Sheriff's Department as security for the 2009 Stanislaus County Fair in accordance with an operational and staffing plan developed by the County of Stanislaus. State may provide input into the operational plan, but the 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.
2. To retain Worker's Compensation liability insurance for this contract.
3. To provide a certificate of insurance as outlined in the attached Exhibit B, Insurance Requirements, for the term of this agreement.

THE STATE AGREES:

1. To pay Contractor the sum of One hundred forty thousand dollars (\$140,000.00) for the services provided in this contract upon the satisfactory completion of the terms of the agreement. Payment to be made not later than thirty (30) days after the end of the term of this agreement.
2. To indemnify, defend and hold harmless the County of Stanislaus, 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.

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 the State or County. 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.

EXHIBIT B
INSURANCE REQUIREMENTS
(2 pages)

I. Evidence of Coverage

The contractor/renter shall provide a signed original evidence of coverage form for the term of the agreement protecting the legal liability of the State of California, District Agricultural Associations, County Fairs, Counties in which County Fairs are located, Lessor/Sublessor if fair site is leased/subleased, Citrus Fruit Fairs, or California Exposition and State Fair, their directors, officers, agents, servants, and employees, from occurrences related to operations under the contract. This may be provided by:

- A. Insurance Certificate - The contractor/renter provides the fair with a signed original certificate of insurance (the ACORD form is acceptable), lawfully transacted, which sets forth the following:
 1. List as the Additional Insured: "That the State of California, the 38th District Agricultural Association, the Stanislaus County Fair, their directors, officers, agents, servants, and employees are made additional insured, but only insofar as the operations under this contract are concerned."
 2. Dates: The dates of inception and expiration of the insurance. **For individual events, the specific event dates must be listed, along with all set-up and tear down dates.**
 3. Coverages:
 - a. General Liability - Commercial General Liability coverage, on an occurrence basis, at least as broad as the current Insurance Service Office (ISO) policy form #CG 0001. Limits shall be not less than \$5,000,000 per occurrence for Fairtime Carnival Rides; \$3,000,000 per occurrence for Motorized Events All Types except arena or track motorcycle racing and go-cart racing; \$3,000,000 per occurrence for Rodeo Events all types **with a paid gate** and any Rough Stock events; \$2,000,000 per occurrence for Rodeo Events All Types **without a paid gate** and with any Rough Stock events; \$1,000,000 per occurrence for Rodeo Events All Types **without** any Rough Stock Events; \$2,000,000 per occurrence for Interim Carnival Rides, Fairtime Kiddie Carnival Rides of up to 6 rides, Concerts with over 5,000 attendees, Rave Type Events All Types, Mechanical Bulls, Extreme Attractions All Types, Orbitrons, Simulators, and Motorized Events of arena or track motorcycle racing and go-cart racing; \$1,000,000 per occurrence for all other contracts for which liability insurance (and liquor liability, if applicable) is required.
 - b. Automobile Liability - Commercial Automobile Liability coverage, on a per accident basis, at least as broad as the current ISO policy form # CA 0001, Symbol #1 (Any Auto) with limits of not less than \$1,000,000 combined single limits per accident for contracts involving use of contractor vehicles (autos, trucks or other licensed vehicles) on fairgrounds.
 - c. Workers' Compensation - Workers' Compensation coverage shall be maintained covering contractor/renter's employees, as required by law.
 - d. Medical Malpractice - Medical Malpractice coverage with limits of not less than \$1,000,000 per occurrence shall be maintained for contracts involving medical services.
 - e. Liquor Liability - Liquor Liability coverage with limits of not less than \$1,000,000 per occurrence shall be maintained for contracts involving the sale of alcoholic beverages.
 4. Cancellation Notice: A statement by the insurance company that it will not cancel or reduce the limits or coverages of said policy or policies without giving 30 days prior written notice to the named certificate holder.
 5. Certificate Holder:
 - For Individual Events Only - Fair, along with fair's address, is listed as the certificate holder.
 - For Master Insurance Certificates Only - California Fair Services Authority, Attn: Risk Management, 1776 Tribute Road, Suite 100, Sacramento, CA 95815 is listed as the certificate holder.

6. Insurance Company: The company providing insurance coverage must be acceptable to the California Department of Insurance.
7. Insured: The contractor/renter must be specifically listed as the Insured.

OR

- B. CFSA Special Events Program - The contractor/renter obtains liability protection through the California Fair Services Authority (CFSA) Special Events Program, when applicable.

OR

- C. Master Certificates - A current master certificate of insurance for the contractor/renter has been approved by and is on file with California Fair Services Authority (CFSA).

OR

- D. Self-Insurance - The contractor/renter is self-insured and acceptable evidence of self-insurance has been approved by California Fair Services Authority (CFSA).

II. General Provisions

1. Maintenance of Coverage - The contractor/renter agrees that the commercial general liability (and automobile liability, workers' compensation, medical malpractice and/or liquor liability, if applicable) insurance coverage herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires or is cancelled at any time or times prior to or during the term of this contract, contractor/renter agrees to provide the fair, prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of California Fair Services Authority, and contractor/renter agrees that no work or services shall be performed prior to the giving of such approval. In the event the contractor/renter fails to keep in effect at all times insurance coverage as herein provided, the fair may, in addition to any other remedies it may have, take any of the following actions: (1) declare a material breach by contractor/renter and terminate this contract; (2) withhold all payments due to contractor/renter until notice is received that such insurance coverage is in effect; and (3) obtain such insurance coverage and deduct premiums for same from any sums due or which become due to contractor/renter under the terms of this contract.
2. Primary Coverage - The contractor/renter's insurance coverage shall be primary and any separate coverage or protection available to the fair or any other additional insured shall be secondary.
3. Contractor's Responsibility - Nothing herein shall be construed as limiting in any way the extent to which contractor/renter may be held responsible for damages resulting from contractor/renter's operations, acts, omissions or negligence. Insurance coverage obtained in the minimum amounts specified above shall not relieve contractor/renter of liability in excess of such minimum coverage, nor shall it preclude the fair from taking other actions available to it under contract documents or by law, including, but not limited to, actions pursuant to contractor/renter's indemnity obligations.
4. Certified Copies of Policies - Upon request by fair, contractor/renter shall immediately furnish a complete copy of any policy required hereunder, with said copy certified by the underwriter to be a true and correct copy of the original policy. Fairtime Carnival Ride contractors must submit copies of actual liability insurance policies, certified by an underwriter, to California Fair Services Authority (CFSA).

III. Participant Waivers

For hazardous participant events, the contractor/renter agrees to obtain a properly executed release and waiver of liability agreement (Form required by contractor/renter's insurance company or CFSA Release and Waiver Form) from each participant prior to his/her participation in the events sponsored by contractor/renter. Hazardous participant events include but are not limited to any event within the following broad categories: Athletic Team Events; Equestrian-related Events; Motorized Events; Rodeo Events; and Wheeled Events, including bicycle, skates, skateboard, or scooter. Contact California Fair Services Authority at (916) 921-2213 for further information.

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.

2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.

7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.