

**SPECIAL MEETING
ORANGE COVE CITY COUNCIL**

DATE: TUESDAY, June 2, 2015 – 7:00 P.M.

**LOCATION: Orange Cove Council Chambers
633 6th Street, Orange Cove, California 93646**

Victor P. Lopez, Mayor

**Diana Guerra Silva, Mayor Pro Tem
Minerva Pineda, Council Member**

**Gilbert Garcia, Council Member
Josie Cervantes, Council Member**

A. CALL TO ORDER/WELCOME

B. PUBLIC COMMENT

During oral communications, if you wish to address the City Council during this Special Meeting, under Government Code Section 54954.3(a), you may only address the City Council concerning any item that has been described in the notice for the Special Meeting.

C. ADMINISTRATION

City Manager

1. **SUBJECT:** Consideration of a Facilities Use Agreement between the City and Schoeppner Shows for a Carnival and Concert at the Community Center

Recommendation: Council to approve the Facilities Use Agreement between the City and Schoeppner Shows for a Carnival and Concert at the Community Center

2. **SUBJECT:** Consideration of an Agreement with Target Eight Advisory Council for the allocation and expenditure of Department of Education Reserve Funds for the Julia Lopez Day Care Center in an amount not to exceed \$30,000.00

Recommendation: Council to approve the Agreement between the City and Target Eight Advisory Council for use of the Department of Education Reserve Funds for the Julia Lopez Day Care Center in an amount not to exceed \$30,000.00.

3. **SUBJECT:** Consideration of a Construction Contract with Antonio Gonzales Construction for the installation of new flooring and wall paneling at the Julia Lopez Daycare Center in the amount of \$9,335.00

Recommendation: Award the contract to Antonio Gonzales Construction in the amount of \$9,335.00, and authorize the City Manager to approve change orders up to 10 percent of the original bid amount.

D. ADJOURNMENT:

ADA Notice: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at (559) 626-4488 ext. 214. Notification 48 hours prior to the meeting will enable the City to make arrangements to ensure accessibility to this meeting.

Documents: Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at front counter at City Hall and at the Orange Cove Library located at 815 Park Blvd., Orange Cove, CA during normal business hours. In addition, most documents are posted on City's website at cityoforangecove.com.

STATEMENT ON RULES OF DECORUM AND ENFORCEMENT

The Brown Act provides that members of the public have a right to attend public meetings, to provide public comment on action items and under the public forum section of the agenda, and to criticize the policies, procedures, or services of the city or of the acts or omissions of the city council. The Brown Act also provides that the City Council has the right to exclude all persons who willfully cause a disruption of a meeting so that it cannot be conducted in an orderly fashion.

During a meeting of the Orange Cove City Council, there is a need for civility and expedition in the carrying out of public business in order to ensure that the public has a full opportunity to be heard and that the Council has an opportunity to conduct business in an orderly manner. The following is provided to place everyone on notice of the rules of decorum and enforcement.

GENERAL RULES OF DECORUM

While any meeting of the City Council is in session, the following rules of decorum shall be observed:

1. All remarks shall be addressed to the City Council as a whole and not to any single member, unless in response to a question from a member of the City Council.
2. A person who addresses the City Council under public comment for a specific agenda item or under the Public Forum section of the agenda may not engage

in speech or conduct (i) which is likely to provoke others to violent or riotous behavior, (ii) which disturbs the peace of the meeting by loud and unreasonable noise, (iii) which is irrelevant or repetitive, or (iv) which disrupts, disturbs, or otherwise impedes the orderly conduct of any City Council meeting.

3. A person, other than members of the Council and the person who has the floor, shall not be permitted to enter into the discussion unless requested by the Mayor to speak.
4. Members of the City Council may not interrupt a person who has the floor and is making public comments. Members of the City Council shall wait until a person completes his or her public comments before asking questions or commenting. The Mayor shall then ask Councilmembers if they have comments or questions.
5. No person in the audience at a Council meeting shall engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, whistling, stamping of feet or other acts which disturb, disrupt or otherwise impede the orderly conduct of any Council meeting.

ENFORCEMENT OF DECORUM RULES

1. The Mayor or other presiding officer shall request that a person speaking at the podium during a public comment period or a member of the audience who is violating the rules of decorum, comply immediately with the rules of decorum.
2. The Mayor or other presiding officer shall request that a person who is breaching the rules of decorum cease such conduct. If after receiving such a warning, the person persists in breaching the rules of decorum, the Mayor or other presiding officer may order the person to leave the City Council meeting. If such person does not leave, the Mayor or presiding officer may request any law enforcement officer who is on duty at the meeting as sergeant-at-arms to remove the person from the Council Chambers. In the event there is no one from law enforcement present, the Mayor or presiding officer may direct the City Manager to contact law enforcement.

**AGREEMENT BETWEEN THE CITY OF ORANGE COVE
AND TARGET EIGHT ADVISORY COUNCIL FOR THE
USE OF CALIFORNIA DEPARTMENT OF EDUCATION
RESERVE FUNDS FOR CHILD DEVELOPMENT
SERVICES**

This Agreement is entered into on this ____ day of June, 2015, ("Effective Date") by and between the City of Orange Cove, a California municipal corporation, hereinafter referred to as the "City" and the Target Eight Advisory Council, a California corporation, herein referred to as "Target Eight".

WHEREAS, the City and Target Eight entered into an agreement relating to child development services effective June 1, 2014; and

WHEREAS, pursuant to the terms of the child development services agreement, Target Eight serves as the subcontractor for the City's contract with the California Department of Education ("CDE"), to provide child development services at the Julia Lopez Day Care Center located in the City; and

WHEREAS, under the terms of the City's agreement with the CDE, the City hold reserve funds in trust for the State of California. The reserve account is a supplemental source of state dollars available when reimburse costs exceed contract reimbursement; and

WHEREAS, the reserve funds may be expended for reasonable and necessary costs for the child development program, subject to approval by the CDE; and

WHEREAS, Target Eight has determined that the utilization of reserve funds is necessary to cover the costs associated with **materials operations, permitted under the program**; and

WHEREAS, the City desires to enter into an agreement with Target Eight to allocate the CDE reserve funds for the costs set forth above.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the City and Target Eight agree as follows:

1. TERM

The Term of this Agreement shall commence as of the Effective Date and shall terminate on June 30, 2016.

2. SUBCONTRACT FOR CHILD DEVELOPMENT SERVICES

Target Eight shall comply with all of the terms and conditions of the agreement with the City for child development services under the California Department of Education California State Preschool Program, in its performance of this Agreement. A copy of the agreement is attached hereto as Exhibit A and incorporated herein by reference.

3. **RESERVE FUNDS**

Subject to approval by the CDE, the City hereby allocates a maximum of Thirty Thousand Dollars (\$30,000.00) of CDE Reserve Funds to Target Eight for the following uses: **materials and operations, permitted under the program.** Said funds shall be utilized during the Term of this Agreement, and Target Eight shall comply with all applicable laws, rules and regulations when expending the funds, including the requirements set forth in Exhibit A. Target Eight shall maintain a detailed accounting of the expenditure of the funds.

In the event that the CDE fails to approve the use of the reserve funds, this Agreement shall be of no further force or effect, and the City does not assume any liability for the CDE's failure to approve use of reserve funds.

4. **INDEMNIFICATION AND DEFENSE**

Target Eight shall defend, indemnify and hold harmless the City and the State of California, their officers, agents, and employees from any and all actions, claims, losses or damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or any other organization arising out of the operation or maintenance or other activities of Target Eight or its agents, employees, or independent contractors under this Agreement.

5. **INSURANCE**

Target Eight shall provide and maintain in force, during the term of this Agreement, insurance as set forth in Exhibit A.

6. **NOTICES**

All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party. If mailed, postage prepaid addressed as follows:

CITY:

c/o City Manager
City of Orange Cove
633 Sixth Street
Orange Cove, California 93646

TARGET EIGHT:

Target Eight Advisory Council, Inc.
555 G Street
Attention: Maurice Castillo
Secretary-Treasurer

For the purposes of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given on the second business day after mail, if mailed to the party to whom notice is given in the manner provided in this Section. Either party may, at any time, change its address designated above by giving to the other party thirty (30) days written notice of the new address to be used for the purpose of this Section.

7. MISCELLANEOUS PROVISIONS.

7.1 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

7.2 The waiver by City or Target Eight of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Target Eight unless in writing.

7.3 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any Party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such Party of any of all of such other rights, powers or remedies.

7.4 If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled. The venue for any litigation shall be Fresno County, California or in the United States District Court for the Eastern District of California.

7.5 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

7.6 This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

7.7 The Parties represent and warrant that they have had advice of counsel of their own choosing in the negotiations for and the preparation of this Agreement, and that they have read this Agreement, or had the same read to them by counsel, and that they have had this Agreement fully

explained to them by their counsel, and they are fully aware of the Agreement's legal effect. This Agreement is to be construed fairly and not in favor of or against any Party, regardless of which Party or Parties drafted or participated in the drafting of its terms.

7.8 This instrument contains the entire Agreement between the City and Target Eight with respect to the transactions contemplated herein. No other prior oral or written agreement(s) are binding upon the Parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Target Eight.

7.9 The terms of this Agreement shall bind and inure to the benefit of each of the Parties, and each of their respective agents, officers, directors, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, transferees, representatives, employees, heirs, devisees, legatees and assigns, as applicable.

7.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

7.11 Each person executing this Agreement hereby represents and warrants (i) their authority to do so, and (ii) that such authority has been duly and validly conferred.

City of Orange Cove

Target Eight Advisory Council

Samuel Escobar, City Manager

Mario Villarreal, Member

ATTEST:

June Bracamontes, City Clerk

APPROVED AS TO FORM:

Bianca Sparks, City Attorney

CITY OF ORANGE COVE FACILITIES USE AGREEMENT

THIS FACILITIES USE AGREEMENT (“Agreement”) is entered into on this ___ day of June, 2015 (“Effective Date”), by and between the City of Orange Cove, a California municipal corporation (the “City”) and Schoeppner Shows, a sole proprietorship, owned by Chad Schoeppner, an individual (the “Organizer”). The City and the Organizer are collectively referred to as “Parties.”

RECITALS

WHEREAS, the City is the owner of the Orange Cove Community Center, located at 1705 Anchor Avenue, Orange Cove, California (hereinafter the “Community Center”); and

WHEREAS, Organizer desires to organize and operate a carnival at the Community Center from June 11th through June 14, 2015 (“Carnival”) and a concert featuring various artists at the Community Center on June 13 and 14, 2015 (“Concert”) (the Carnival and Concert are hereinafter collectively referred to as the “Event”); and

WHEREAS, the City finds a public benefit in allowing Organizer to organize and operate the Event in the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the Parties hereto agree as follows:

SECTION 1. USE OF CITY COMMUNITY CENTER; GENERAL CONDITIONS

(A) Term.

The term of this Agreement shall commence on the Effective Date and shall terminate on **June 16, 2015**, unless sooner terminated by the City, as provided in this Agreement.

(B) Event.

(1) For the purpose of the Event, Organizer shall have the right to use the Community Center and its facilities and outdoor areas, as identified in Exhibit A, attached hereto and incorporated herein by this reference (“Community Center Facilities”).

(2) Organizer shall provide all carnival rides, entertainment, carnival posters, and the ticket box necessary to operate the Event. Organizer shall provide, or cause to be provided, all equipment necessary for the Concert. While the Organizer may provide concession stands, Organizer shall permit Orange Cove businesses and non-profit organizations to offer concessions. All concession stands shall comply with the provisions set forth in Sections 6 and 7 of Exhibit B.

(3) Subject to the requirements of this Agreement and Exhibit B, Organizer shall operate the Carnival on the dates and times as follows:

June 11, 2015: 6:00 p.m.-10:p.m.

June 12-14, 2015: 6:00 p.m.-11 p.m.

Subject to the requirements of this Agreement and Exhibit B, Organizer shall operate the Concert on the dates and times as follows:

June 13 and June 14, 2015 from 8pm-1am:

(4) Notwithstanding the foregoing, Organizer may use the Community Center and Community Center Facilities for the purposes of setting up for the Event from 7:00 a.m. commencing on June 8, 2015.

(5) By no later than 11:00 p.m. on Monday, June 15, 2015, Organizer shall ensure the Community Center and Community Center Facilities are cleared, cleaned-up, maintained and all areas of the Community Center and Community Center Facilities are restored to the condition they were found.

(D) Use Restrictions.

The following activities or items are prohibited at the Community Center and Community Center Facilities as part of the Event:

- (1) Live animals, except for service animals and horses/ponies;
- (2) Pyrotechnics;
- (3) Candles, lanterns, incense or open flames;
- (4) Decorations or other items that will damage building surfaces, such as use of nails, tacks, fasteners, staples, scotch tape, putty, glue or other adhesives;
- (5) Mylar or plastic confetti; and
- (6) "Silly String"

(E) Organizer Responsibilities.

(1) Organizer is responsible for the conduct of all participants, and any damages that may occur at or to the Community Center and Community Center Facilities, or as a result of conducting or operating the Event.

(2) Organizer agrees on its behalf, to fully comply with the City's regulations, requirements and policies, as well as applicable state and federal regulations. Organizer further agrees to fully and promptly obey and comply with any and all lawful orders given by City staff and/or the Orange Cove Police Department and any Fire Departments.

(3) If law enforcement's assistance is required, the City is authorized to terminate the Event immediately, as determined by the City's Chief of Police.

(4) Organizer shall ensure that all entertainment acts, including the band participating in the Concert, and vendors, (“Event Participants”) execute and submit to the City the “General Release, Hold Harmless and Indemnity Form,” as provided by the City and attached hereto as Exhibit C, at least three (3) days prior to commencement of the Event.

(F) Non City-Owned Property.

The City reserves the right to remove any remaining items from the Community Center and Community Center Facilities and have them stored at Organizer’s expense upon expiration of the Term of this Agreement. If such items, equipment or supplies are not claimed within six (6) months, the City reserves the right to dispose of such material in any manner it deems appropriate. Organizer shall be responsible for any costs of storage and disposal incurred by the City for such equipment or supplies. The City is not responsible for any damage or theft of any items left by Organizer, Event Participants, or any other party attending the Event.

(G) Additional Guidelines.

Organizer shall comply with the Additional Guidelines, attached hereto as Exhibit B, and incorporated herein by reference.

(H) City Responsibilities.

City shall provide the following:

- (1) Two three-yard containers for all trash from the Event, and 10 trash cans which shall be located throughout the Event area.
- (2) Two 10’x20’ tents. In the event that Organizer requests more than two tents, City shall charge Organizer a fee of Sixty Dollars (\$60.00) per tent.
- (3) City shall cease watering the grass at the Community Center in the location where the carnival will operate, at least one week prior to the Event.

SECTION 2. RELEASE, HOLD HARMLESS AND INDEMNIFICATION

(A) Organizer shall defend, indemnify, and hold harmless City, its elected and appointed officers, officials, agents, contractors, consultants, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys’ fees, arising out of or in connection with Organizer’s use of the Community Center and/or Community Center Facilities or its negligent failure to comply with any of its obligations contained in this Agreement (collectively “Claims”), except such loss or damage which was caused by the sole negligence, or willful misconduct of City. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Organizer from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any Claims whether or not such insurance policies shall have been determined to apply.

(B) Organizer releases the City, its officers, officials, agents, and employees of any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation

court costs and reasonable attorney's fees, arising out of or in connection with Organizer's use of the Community Center and/or Community Center Facilities under this Agreement.

Organizer acknowledges and expressly waives the benefit of California Civil Code Section 1542, which is set forth below, and specifically agrees that the release contained in this Agreement shall extend to all claims arising out of transactions which the Parties do not know or expect to exist in their favor at this time, and which rise out of or are connected to the Event. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City's Initials

Organizer's Initials

The Organizer acknowledges that the facts and law in relation to this matter and the claims released by the terms of this Agreement may turn out to be different from or in addition to the facts or law as now known to each Party or its counsel. The Organizer therefore expressly agrees that the release so given shall be and remain in effect as a full and complete release of the persons and entities released thereby notwithstanding any possibility of new or different facts or law.

(C) By execution of this Agreement, Organizer acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

(D) If, for any reason such as, but not limited to, earthquake, flood water damage, explosion or other calamity of circumstance, it shall become necessary to close the Community Center and/or Community Center Facilities, no liability shall occur against City for damage due to loss of business, loss of revenue or additional costs insured by Organizer.

SECTION 3. INSURANCE

During the term of this Agreement, Organizer shall, at its sole costs and expense, carry, maintain, and keep in full force and effect insurance of the types and in the amounts as set forth in the attached Exhibit D, incorporated herein by this reference. Organizer shall cause any bands participating in the Concert and the operator of the beer garden to maintain and keep in full force and effect the insurance of the types and in the amounts as set forth in the attached Exhibit D.

SECTION 4. COMPLIANCE WITH LAWS

Organizer represents and warrants to City that Organizer, its officers, agents, employees and volunteers, and Event Participants have all licenses, permits, qualifications, and approvals of

whatever nature which are legally required for Organizer, its officers, agents, employees and volunteers to provide the services, programs and activities contemplated by this Agreement, and that it shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities, federal, state, county and city, relating to its actions under this Agreement whether such statutes, ordinances, regulations and requirements are now in force or hereinafter enacted.

SECTION 5. GENERAL PROVISIONS

(A) Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

(B) If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to Organizer's use of the Community Center and/or Community Center Facilities under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled. The venue for any litigation shall be Fresno County, California or in the United States District Court for Eastern District of California.

(C) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(D) Organizer and City shall be excused from performance of the terms set forth herein during the time and to the extent that they are prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, vandalism, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, plants, or facilities of government.

(E) This Agreement shall be governed and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

(F) All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

(G) This instrument contains the entire Agreement between the City and Organizer with respect to the transactions contemplated herein. No other prior oral or written agreement(s) are binding upon the Parties. Amendments hereto or deviations here from shall be effective and binding only if made in writing and executed by City and Organizer.

(H) This Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

“CITY”
City of Orange Cove

“ORGANIZER”
Schoeppner Shows

By _____
Sam Escobar, City Manager

By _____
Chad Schoeppner, Owner

ATTEST

By _____
June Bracamontes, City Clerk

APPROVED AS TO FORM

By _____
Bianca Sparks, City Attorney

Exhibit A

Description of Community Center and Community Center Facilities

Organizer may only use the conference room inside the Community Center. All other Event activities shall occur outside.

INSERT THE EXACT LOCATION THAT THEY'RE PERMITTED TO USE AND ANY FACILITIES THEY CAN USE AS PART OF THE EVENT

Exhibit B

Additional Operational Requirements

Security Deposit: Organizer shall deposit \$1,000.00 (One Thousand Dollars) with the City by June 8, 2015 to cover potential damage to the Community Center and/or Community Center Facilities (the "Deposit"). The Deposit will be used to cover any costs associated with damage to the Community Center and/or Community Center Facilities caused by the Event and/or if the City incurs additional maintenance costs related to cleaning the Community Center and/or Community Center Facilities as a result of the Event. The Security Deposit in no way limits Organizer's responsibility with respect to damage at the Community Center and/or Community Center Facilities. If no damage occurs and the Community Center and Community Center Facilities are left in a clean condition, the Deposit will be refunded to the Organizer within fifteen (15) days after the conclusion of the Event.

Guidelines: To receive approval of the Event, a list of guidelines has been set forth by the City. The Organizer shall complete the guidelines listed below through the City Planning Department and Police Department for approval.

1. Provide a site plan that illustrates the arrangement of Event, to the Planning Department.
2. Submit a security plan for the Event, which shall include security guards in an amount set forth by the Police Department, to the City's Police Department for review and approval.
3. Provide proof of insurance with the City of Orange Cove named as additional insured as required by the Agreement.
4. Provide a complete list of vendors and entertainment acts including company names, and provide the following for each vendor:
 - a. Business License Applications must be filed for each with the Business License Officer.
5. Obtain Livescan fingerprinting of the person on the business permit and all ride operators.
6. Organizer and Event Participants shall execute the General Release, Hold Harmless and Indemnity Form (attached to the Agreement as Exhibit C), releasing the City of any liability that may arise during the event. This form also includes an indemnity provision.
7. Organizer shall cause vendors to comply with all requirements of the Fresno County Public Health Department, or any other department for the sale of food.
8. Organizer shall not charge admission to enter the Event. Notwithstanding the foregoing, Organizer may charge an admission fee on June 13 and 14, 2015.
9. Organizer shall provide City with a list of all local businesses selling tickets for the Carnival. Organizer shall cause the businesses selling tickets to remit the proceeds to the City on a daily basis. Organizer shall further cause any business selling tickets to issue a receipt for each sale. Organizer shall sell tickets in advance of the Event and during the Event. City shall segregate all ticket proceeds from any City funds.
10. No later than June 16, 2015, both Organizer and City shall conduct an accounting of the Carnival tickets sold. City shall retain twenty percent (20%) of the proceeds from the advance Carnival ticket sales, and remit the balance to Organizer. Organizer shall remit twenty percent (20%) of the proceeds from the advance Carnival ticket sales, fifteen

percent (15%) of the tickets sold at the Event, and ten percent (10%) of all beer garden revenue to the City.

11. Organizer shall provide a minimum of six portable restrooms for the Event.
12. The beer garden shall be located per Exhibit A, shall be a maximum of 1000 square feet in size, and shall be delineated in a manner that limits entrance and/or exit to one location. Said beer garden shall be operated by a party that has received all necessary permits from the California Department of Alcoholic Beverage Control. Organizer shall cause the beer garden operator to control the tickets and sales for the beer garden. Organizer shall cause the beer garden operator to station an individual at the entrance of the beer garden at all times to check identification. Organizer shall cause beer garden operator to deny entry to the beer garden to anyone under 21 years of age. No alcoholic beverages may be served outside of the beer garden or removed from the beer garden area. The beer garden shall only operate on June 13 and 14, 2015, during the Concert. Organizer shall cause the beer garden operator to cease the sale and service of alcoholic beverages one (1) hour prior to the end of the Concert.

Organizer shall further cause the beer garden operator to maintain insurance as required under Exhibit D of this Agreement.

Exhibit D

INSURANCE REQUIREMENTS

Insurance Policies

Without limiting Organizer's indemnification of the CITY, Organizer shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with no less than the delineated minimum coverage.

I. Coverages:

- a. General Liability: Organizer shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, five million dollars (\$5,000,000) general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
- b. Automobile Liability: Organizer shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Organizer arising out of or in connection with the Event and Event related activities covered by this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit for each accident.
- c. Worker's Compensation: Organizer shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least one million dollars (\$1,000,000)).

2. Duration of Coverage. Organizer shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the EVENT. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by Organizer or CITY will withhold amounts sufficient to pay premium from Organizer payments. In the alternative, CITY may cancel this Agreement.

3. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY.

4. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Organizer or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Organizer hereby waives its own right of recovery against CITY, and

shall require similar written express waivers and insurance clauses from each of its subconsultants.

5. **Enforcement of Contract Provisions (non estoppel).** Organizer acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform Organizer of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

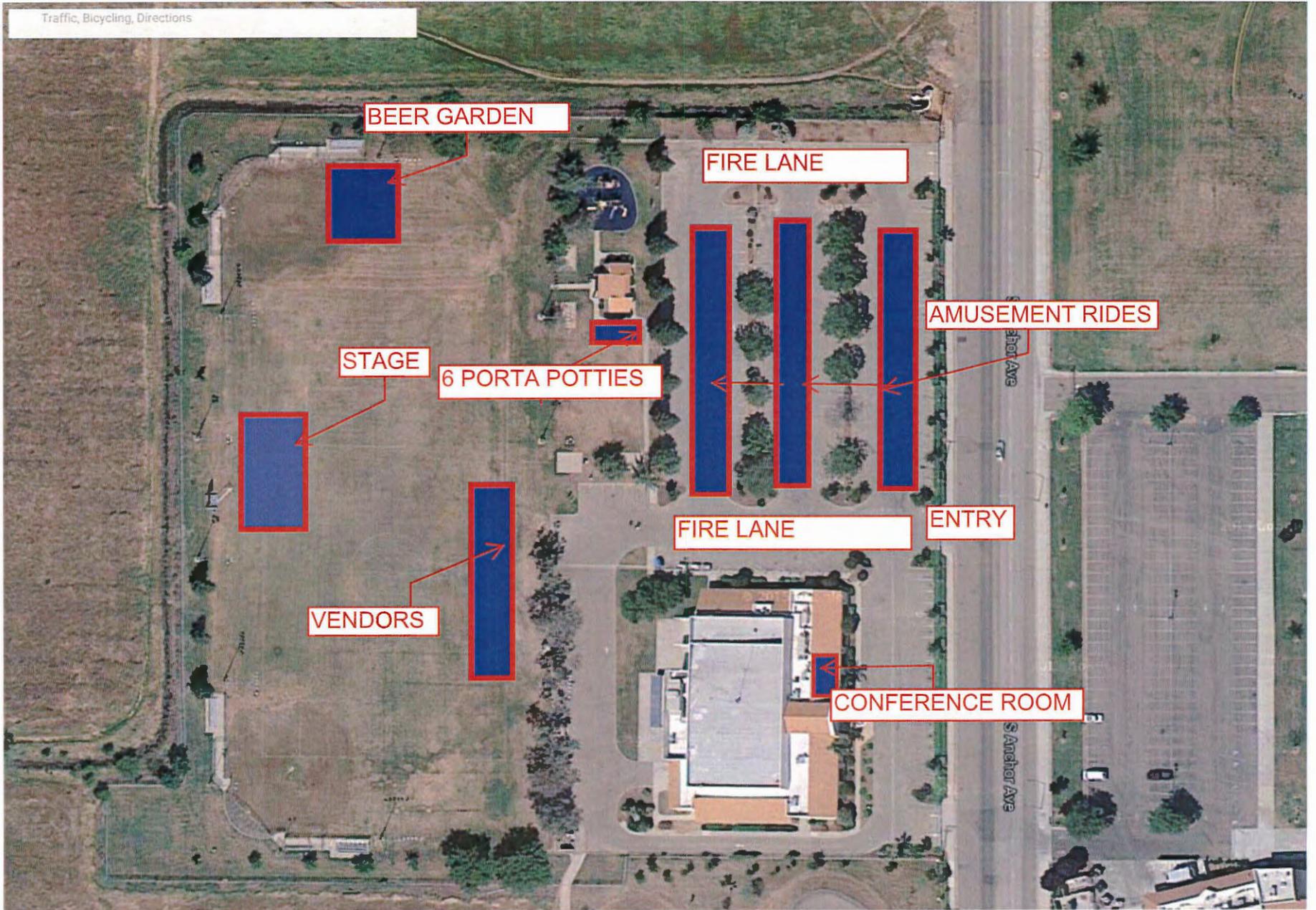
6. **Specifications not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

7. **Notice of Cancellation.** The policy shall be endorsed to state that coverage shall not be cancelled or modified without thirty (30) days (except for nonpayment for which ten (10) days' notice is required) prior written notice by certified mail to the City of Orange Cove.

8. **Additional Insured Status.** An Additional Insured Endorsement must be provided that includes the following language: "That the City of Orange Cove, its officers, employees, officials and volunteers are covered as insureds with respect to liability arising out of the Schoeppner Shows Carnival and Concert held at the Orange Cove Community Center from June 8-15, 2015, said event shall consist of a carnival and concert at the Orange Cove Community Center. This provision shall also apply to any excess liability policies.

9. **Self-insured Retentions.** Any self-insured retentions must be declared to and approved by CITY. At the option of the CITY, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the entity, its officers, officials, employees and volunteers or (b) the Organizer shall provide a financial guarantee satisfactory to the City of Orange Cove guaranteeing payment of losses and related investigations, claim administration or defense expenses. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

10. **Certificate Holder:** City of Orange Cove, 633 6th Street, Orange Cove, CA 93646
ATTN: June Bracamontes, City Clerk.



SCHOEPNER SHOWS CARNIVAL AND CONCERT SITE PLAN