

ITEM 4.8

CITY MANAGER'S REPORT APRIL 10, 2023 CITY COUNCIL REGULAR MEETING

ITEM: APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BUTLER AMUSEMENTS, INC. TO PROVIDE LAW ENFORCEMENT SERVICES FOR ANNUAL CARNIVAL EVENT ON APRIL 20, 2023 THROUGH APRIL 23, 2023

RECOMMENDATION: Adopt Resolution Approving Professional Services Agreement with Butler Amusement, Inc. to Provide Law Enforcement Services for their Annual Carnival Event on April 20, 2023 through April 23, 2023

SUMMARY:

Butler Amusements, Inc. (Butler) is holding its annual carnival for 2023 at 1401 River Islands Parkway (APN 213-310-40). The event is scheduled to be held from April 20, 2023 through April 23, 2023. Set up for the event will begin on April 17, 2023 and teardown will be on April 24, 2023. Butler is contracting with a private security firm to provide security for the duration of the event. In addition, Butler has requested law enforcement services from the City of Lathrop Police Department (LPD) for their event for additional security. The Lathrop Police Department is requiring two (2) officers for the peak hours of the event as detailed in the table below:

Date	No. of Officers	Hours	Total Hours
Friday, April 21	2	5PM – 9PM (4 hours)	8 Hours
Saturday, April 22	2	5PM – 9PM (4 hours)	8 Hours
Sunday, April 23	2	5PM – 9PM (4 hours)	8 Hours

The total hours required for the duration of the event is twenty-four (24) overtime hours. LPD is able to provide the required overtime hours for the carnival. Butler has further agreed to pay the cost of additional law enforcement services should circumstances require additional hours or mutual aid from other agencies to restore or secure public safety at the event.

Staff recommends City Council approve the agreement to authorize LPD to provide law enforcement services for Butler Amusement's annual carnival event.

BACKGROUND:

Butler holds an annual carnival event during the month of April that attracts thousands of local attendees from the City of Lathrop and the surrounding areas. In previous years, Butler has contracted with the San Joaquin County Sheriff's Office to provide law enforcement services. On June 29, 2022, the Lathrop Police Department took over law enforcement services from the Sheriff's Office for the City of Lathrop.

APRIL 10, 2023 CITY COUNCIL REGULAR MEETING**APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BUTLER AMUSEMENTS, INC. TO PROVIDE LAW ENFORCEMENT SERVICES FOR ANNUAL CARNIVAL EVENT ON APRIL 20, 2023 THROUGH APRIL 23, 2023**

Butler has requested LPD to provide law enforcement services for their annual carnival this year, and LPD is able to provide the requested hours for the carnival.

The carnival event is scheduled from April 20, 2023 through April 23, 2023 and will be held at 1401 River Islands Parkway, near the Welcome Center in River Islands. The carnival will consist of nineteen (19) amusement rides, approximately eleven (11) game concessions and two (2) food concessions. Lathrop Police Department is requiring a total of twenty-four (24) hours for the duration of the event. Lathrop Police Officers will work the hours below:

Date	No. of Officers	Hours	Total Hours	Est. OT Hourly Rate	Estimated Total Cost
Friday, April 21	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68
Saturday, April 22	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68
Sunday, April 23	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68

LPD officers will work on a voluntary and rotational basis, and officers working the event will do so outside of their regularly assigned work schedule.

The total estimated cost for the 24 overtime hours requested is \$2,508. Butler further agrees to pay the cost of additional law enforcement services should circumstances require a mutual aid request from other City, County, or State agencies in order to restore or secure public safety at the event.

REASON FOR RECOMMENDATION:

In previous years, the Sheriff's Department has provided law enforcement services to Butler for their annual carnival event. LPD is able to provide the services requested and Butler has agreed to pay the overtime rate to cover the costs of sworn personnel. Staff recommends Council approve the agreement to allow LPD to provide law enforcement services for Butler's annual carnival.

FISCAL IMPACT:

Overtime for the event is estimated at \$2,508. At the conclusion of the event, the City will invoice Butler for the actual cost of providing law enforcement services. Should circumstances arise requiring more hours than what was scheduled or mutual aid from other agencies was needed, Butler will be responsible for reimbursement of the actual hours worked and costs for mutual aid.

There is no fiscal impact to the City for this agreement, however, the budget adjustment below is required to reflect the increase in revenue for staff time:

Increase Revenue: 1010-40-30-341-01-01 (Current Service Charges) \$2,508

Increase Expense: 1010-40-30-410-13-00 (Overtime) \$2,508

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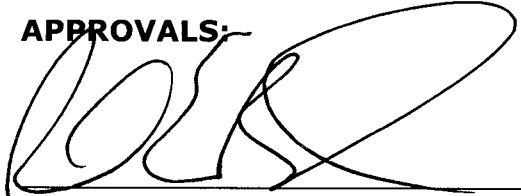
APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH BUTLER AMUSEMENTS, INC. TO PROVIDE LAW ENFORCEMENT SERVICES FOR ANNUAL CARNIVAL EVENT ON APRIL 20, 2023 THROUGH APRIL 23, 2023

ATTACHMENTS:

- A. Resolution Approving Professional Services Agreement with Butler Amusements, Inc. to Provide Law Enforcement Services for Annual Carnival Event on April 20, 2023 through April 23, 2023
- B. Professional Services Agreement with Butler Amusements, Inc. to Provide Law Enforcement Services for Annual Carnival Event on April 20, 2023 through April 23, 2023


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APPROVALS:



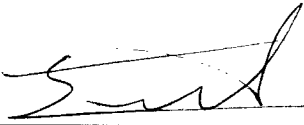
Raymond Bechler
Chief of Police

3/23/23
Date



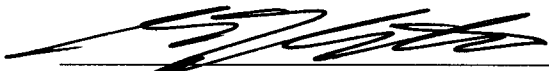
Cari James
Finance Director

3/30/2023
Date



Salvador Navarrete
City Attorney

3-27-2023
Date



Stephen J. Salvatore
City Manager

3.30.23
Date

RESOLUTION NO. 23 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING PROFESSIONAL SERVICES AGREEMENT WITH BUTLER AMUSEMENTS, INC. TO PROVIDE LAW ENFORCEMENT SERVICES FOR ANNUAL CARNIVAL EVENT ON APRIL 20, 2023 THROUGH APRIL 23, 2023

WHEREAS, Butler Amusements, Inc. (Butler) is holding its annual carnival at 1401 River Islands Parkway (APN 213-310-40); and

WHEREAS, the event is scheduled to be held from April 20, 2023 through April 23, 2023, with set up for the event to begin on April 17, 2023 and teardown will be on April 24, 2023; and

WHEREAS, the carnival will consist of nineteen (19) amusement rides, approximately eleven (11) game concessions and two (2) food concessions; and

WHEREAS, Butler is contracting with a private security firm to provide security for the duration of the event; and

WHEREAS, in previous years, Butler has contracted with the San Joaquin County Sheriff’s Office to provide additional law enforcement services; and

WHEREAS, on June 29, 2022, the Lathrop Police Department took over law enforcement services from the Sheriff’s Office for the City of Lathrop; and

WHEREAS, Butler has requested LPD provide law enforcement services for their annual event this year, and LPD is able to provide the requested hours; and

WHEREAS, Government Code 53069.8 allows the legislative body of any city to contract with private entities to preserve the peace at special events or occurrences and provide supplemental law enforcement services; and

WHEREAS, the Lathrop Police Department is requiring two (2) officers for the peak hours of the event as detailed in the table below; and

Date	No. of Officers	Hours	Total Hours
Friday, April 21	2	5PM – 9PM (4 hours)	8 Hours
Saturday, April 22	2	5PM – 9PM (4 hours)	8 Hours
Sunday, April 23	2	5PM – 9PM (4 hours)	8 Hours

WHEREAS, the total hours required for the duration of the event is twenty-four (24) overtime hours.

WHEREAS, officers will work on a voluntary and rotational basis, and officers working the event will do so outside of their regularly assigned work schedule; and

WHEREAS, Butler further agrees to pay the cost of additional law enforcement services should circumstances require a mutual aid request from other City, County, or State agencies in order to restore or secure public safety at the event; and

WHEREAS, overtime for the event is estimated at \$2,508.

WHEREAS, there is no fiscal impact to the City for this agreement, however, the budget adjustment below is required to reflect the increase in revenue for staff time:

Increase Revenue: 1010-4030-341-0101 (Current Service Charges) \$2,508

Increase Expense: 1010-4030-410-13-00 (Overtime) \$2,508

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop does hereby approve the agreement with Butler Amusements, Inc. to provide law enforcement services for the annual carnival event on April 20, 2023 through April 23, 2023.

The foregoing resolution was passed and adopted this 10th day of April 2023, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:


ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

CITY OF LATHROP

PROFESSIONAL SERVICES AGREEMENT WITH BUTLER AMUSEMENTS, INC. TO PROVIDE LAW ENFORCEMENT SERVICES FOR ANNUAL CARNIVAL EVENT ON APRIL 20, 2023 THROUGH APRIL 23, 2023

THIS AGREEMENT for law enforcement services to BUTLER AMUSEMENTS, INC. for the ANNUAL CARNIVAL event (hereinafter “EVENT”), dated for convenience this ____ day of April 2023 is by and between **BUTLER AMUSEMENTS, INC.**, a separate and distinct entity (hereinafter “BUTLER”) and the **City of Lathrop**, a California municipal corporation (hereinafter “CITY”). The CITY and BUTLER may be referred to herein as “Party” or collectively as “Parties”.

RECITALS:

WHEREAS, BUTLER requests the CITY to provide law enforcement security services for its EVENT; and

WHEREAS, the CITY desires to accommodate BUTLER’S request and has no objections to providing law enforcement security services for the EVENT as allowed by Government Code 53069.8 and reserves the right to terminate EVENT for the purposes of public safety; and

WHEREAS, any costs associated with work hours pursuant to this AGREEMENT wherein Officers worked at the EVENT shall be paid for by BUTLER at the rate indicated in the estimated cost schedule below.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions in this Agreement, BUTLER and the CITY agree as follows:

AGREEMENT

(1) Scope of Service

CITY's assigned police officers shall provide law enforcement security services to BUTLER’S ANNUAL CARNIVAL EVENT located at 1401 River Islands Parkway, Lathrop, CA 95330 in accordance with the terms and conditions contained in this Agreement.

- A. Each police officer shall be the CITY's employee and shall be subject to the CITY's administration, supervision, and control.
- B. BUTLER agrees to the estimated costs for law enforcement security provided by the Lathrop Police Department.
- C. The estimated costs is based on the understanding that CITY shall assign Police Officers to cover the EVENT on each requested day on a rotational basis. Police Officer(s) will work from a schedule with a total of 24 hours for the duration of the EVENT as detailed in Section 2 Compensation below.
- D. The CITY shall be entitled to a reimbursement should circumstances arise requiring more hours/and or personnel and the estimated cost would be adjusted accordingly.

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- E. BUTLER shall be entitled to a reduction for less hours worked should circumstances (such as rain and wind) cause the EVENT to be closed or impacted. Additionally, event hours are estimates. If the EVENT closes early, officers may work less hours.
- F. BUTLER agrees to pay the CITY for all costs associated with providing law enforcement services for the EVENT. In addition, if further resources are needed to provide adequate security at the EVENT, including mutual aid from other agencies, those cost will be the responsibility of BUTLER. Hourly rates for the additional resources that are not included in the estimated cost schedule may vary.

(2) Compensation

BUTLER hereby agrees to the estimated cost for law enforcement services as detailed in the schedule below:

Date	No. of Officers	Hours	Total Hours	Est. OT Hourly Rate	Estimated Total Cost
4/21/23	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68
4/22/23	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68
4/23/23	2	5PM – 9PM (4 hours)	8 Hours	\$104.46	\$835.68
Total Estimated Cost					\$2,507.04

CITY will invoice BUTLER for law enforcement services for actual hours of CITY personnel and any additional resource costs incurred for the EVENT. Hourly rates for additional resources that may be needed to provide adequate security at the EVENT that are not included in the estimated cost schedule above may vary.

(3) Effective Date and Term

The effective date of this Agreement shall be from the date of its full execution through **April 23, 2023**, unless terminated earlier by either party providing seven (7) days’ written notice.

(4) Employment of Officer(s) and Assignments

CITY shall retain control over supervision, wages, and other terms and conditions of employment of the officers providing the services under this Agreement. The parties acknowledge that such officers are held to the requirements of the law and CITY policies and procedures. BUTLER shall immediately notify the CITY of any concerns regarding the performance of the assigned officers, including, but not limited to, adherence to quality of services as detailed in this agreement.

CITY shall assign Police Officers to cover the EVENT on each requested day on a rotational basis. Police Officer(s) will work from a schedule as detailed in Section 2 Compensation of the Agreement, unless otherwise adjusted due to circumstantial events as referenced in the Agreement.

(5) Billings

CITY shall submit one invoice at the conclusion of the EVENT for actual law enforcement services incurred and any additional resource costs incurred for the EVENT. BUTLER shall remit payment to the CITY within thirty (30) days of receipt of invoice.

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(6) **Supplies & Equipment**

CITY shall provide each officer with the following equipment:

- A. **Police Vehicles: City shall,**
 - 1. Provide a standard patrol vehicle for each officer.
 - 2. Maintain the motor vehicles assigned to each officer.
 - 3. Purchase gasoline, oil, replacement tires, and other expenses associated with the operation of each motor vehicle.
 - 4. Maintain comprehensive general auto liability insurance on each motor vehicle in an amount as is currently provided through the Central San Joaquin Valley Risk Management Authority.
- B. **Weapons and Ammunition**
 - 1. CITY shall provide the standard issued weapons (handgun, shotgun, and rifle) and rounds of ammunition for each officer.
- C. **Office Supplies**
 - 1. CITY shall provide each officer with the usual and customary office supplies and forms required in the performance of their duties.

(7) **Compliance With the Laws**

The Parties shall keep themselves informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the Services or those engaged to perform Services under this Agreement.

(8) **Insurance**

- A. BUTLER shall maintain commercial general liability insurance coverage at least as broad as Insurance Services Office (ISO) form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. BUTLER general liability policies shall be primary and shall not seek contribution from the CITY's coverage, and be endorsed using ISO form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. For construction projects, an endorsement providing completed operations coverage for the additional insured, ISO form CG 20 37 (or equivalent) is also required.
- B. Any failure to comply with reporting provisions of the policies by BUTLER shall not affect coverage provided the CITY.
- C. Coverage shall state that BUTLER insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- D. Coverage shall contain a waiver of subrogation in favor of the CITY.

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(9) Indemnification

- A. BUTLER shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers (hereafter collectively City Personnel) from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the any services provided by the City or any City Personnel or their performance of work or any failure to comply with any of the City’s duties contained in the Agreement, except such loss or damage which was caused by the gross or willful misconduct of City Personnel.
- B. In the event of concurrent negligence on the part of BUTLER or any of its officers, directors, trustees, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law equity for such losses, fines, penalties, forfeiture, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.
- C. If BUTLER rejects a tender of defense by the City or City Personnel under this Agreement, and it is later determined that the City and City Personnel breached no duty of care and/or were immune from liability, BUTLER shall reimburse the City and/or City Personnel for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or City Personnel settles a liability claim, with or without participation by BUTLER.
- D. The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or City Personnel that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or City Personnel and the absence of City Personnel is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor City Personnel intend to waive any immunities to which they would be entitled in the absence of the Agreement.

(10) Integration of Prior Terms and Conditions

This Agreement, including all recitals, constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized agent of each Party. An authorized agent of the City shall be a person specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager or City Attorney or equivalent. The indemnity sections shall survive termination or expiration of this agreement.

(11) Termination

Either Party to this Agreement may for any reason terminate this Agreement at any time by giving

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seven (7) days' written notice to the other party. Upon termination of this Agreement as herein provided, BUTLER shall have no obligation to compensate of pay the CITY except for services provided prior to termination.

(12) Notices

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party (1) personally served, (2) sent by the United States mail, postage prepaid, by certified mail (3) sent by private express delivery service and addressed as follows:

To City: City of Lathrop
City Clerk
390 Towne Centre
Lathrop, CA 95330

Copy to: City of Lathrop
Lathrop Police Department
940 River Islands Parkway
Lathrop, CA 95330

To BUTLER: Butler Amusements, Inc.
Attn: Andrea Stillwell
P.O. Box 2210
Fairfield, CA 94533

(13) Miscellaneous

- A. Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- B. Contract Terms Prevail. All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and attached exhibits, the terms of this Agreement shall prevail.
- C. Non-Discrimination. No party shall employ any discriminatory practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical and mental disability.
- D. Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- E. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- F. Headings. The paragraph headings are not a part of this Agreement and shall have no effect

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upon the construction or interpretation of any part of this Agreement.

- G. **Incorporation of Documents.** All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- H. **Integration.** This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- I. **Modification of Agreement.** This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- J. **Provision.** Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- K. **Severability.** The invalidity in whole or part of any provision of this Agreement shall not void or affect the validity of any other provision of this agreement. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- L. **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- M. **Venue.** In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- N. **Recovery of Costs.** The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party

(14) Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of BUTLER and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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In Witness Whereof, each Party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners, and successors, to be fully bound by all terms and conditions of this Agreement.

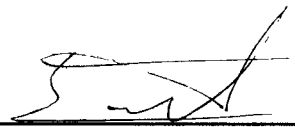
City of Lathrop:

Butler Amusements, Inc.:

Stephen J. Salvatore Date
City Manager

Andrea Stillwell Date
Butler Amusements, Inc.

Approved as to Form:

 3.27.2023

Salvador Navarrete Date
City Attorney

Attest:

Teresa Vargas Date
City Clerk