

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

Regional Parks Department

Department Contract Representative	Beahta R. Davis
Telephone Number	909-387-2340
Contractor	Live Nation
Contractor Representative	John Piehuta
Telephone Number	909-495-3605
Contract Term	September 13-16, 2019
Original Contract Amount	N/A
Amendment Amount	N/A
Total Contract Amount	N/A
Cost Center	6522311000

IT IS HEREBY AGREED AS FOLLOWS:

(Use space below and additional bond sheets. Set forth service to be rendered, amount to be paid, manner of payment, time for performance or completion, determination of satisfactory performance and cause for termination, other terms and conditions, and attach plans, specifications, and addenda, if any.)

This Use Permit is for a period of four days, Friday, September 13, 2019 through Monday, September 16, 2019 for the exclusive use of Glen Helen Regional Park for the Nocturnal Wonderland Event. The County will receive revenue in the amount of \$49,953.45 for this use.

**SAN BERNARDINO COUNTY
REGIONAL PARKS DEPARTMENT
GLEN HELEN REGIONAL PARK
INTERIM USE PERMIT**

I. PARTIES

The County of San Bernardino, hereinafter referred to as COUNTY, hereby permits Live Nation, hereinafter referred to as PERMITTEE to utilize the entire Glen Helen Regional Park ("Park"), located at 2555 Glen Helen Parkway in the City of San Bernardino, California for the Nocturnal Wonderland ("Event") and related activities.

II. USE AREA

PERMITTEE shall have the exclusive right to use the Park as depicted in **Exhibit "A"** Use Area, attached hereto and by this reference made a part hereof.

III. TERM

The term of this permit shall be for a four (4) day event, commencing **Friday, September 13, 2019** through **Monday, September 16, 2019**. Related set-up will occur Friday, September 13, 2019 and tear-down will occur Monday, September 16, 2019. PERMITTEE's activities at the Use Area are limited to staging and activities related to this event. Neither the Use Area, the Park nor any part thereof may be used by PERMITTEE for any other purpose.

IV. USE FEES

A. Event Contract Preparation Fee in the amount of **two hundred dollars (\$200) to be paid by 3:00 PM Friday, August 23, 2019.**

B. Area Use:

PERMITTEE shall pay a:

1. Use Fee of **forty-nine thousand, seven hundred and fifty-three dollars and forty-five cents (\$49,753.45)** for the use of the Park as designated on **Exhibit "A" to be paid by 3:00 PM Friday, August 23, 2019.** The Use Fee is broken down as follows:

- a. A fee of forty-eight thousand dollars **(\$48,000)** for full park closure for four days at a rate of twelve thousand dollars per day.
- b. A fee of one-thousand and forty-two dollars and seventy-seven cents **(\$1,042.77)** for pool maintenance from September 14, 2019 through September 15, 2019.
- c. A fee of five hundred eighty-four dollars and eighty-four cents **(\$584.84)** for staff time for pool maintenance from September 14, 2019 through September 15, 2019.
- d. A fee of one-hundred twenty-five dollars and eighty-four cents **(\$125.84)** for utilities and water charges from September 14, 2019 through September 15, 2019.

2. Vendor Fees: (if applicable)

- a. **Fifty dollars (\$50)** per food vendor. All Food Vendors must have all necessary Public Health Department permits. A list of food vendors and their permits must be delivered Regional Park Administration office by **3:00 p.m., Friday, August 23, 2019.**
- b. **Twenty-five dollars (\$25)** per non-food vendor. A list of vendors must be delivered to Regional Park Administration office by **3:00 p.m., Friday, August 23, 2019.**

C. Fee Adjustments:

All COUNTY fees shall be adjusted without individual notice to PERMITTEE by enactment of future Board-approved revisions to the Regional Parks' Fee Ordinance.

D. Damage/Cleanup:

PERMITTEE is responsible to pay for damages incurred by the County due to the use of the Park by PERMITTEE, or persons allowed at the Park by PERMITTEE, including PERMITTEE's members, employees, volunteers and invitees or the EVENT or additional event attendees, participants, spectators, guests, employees or volunteers (collectively included and referred to herein as "PERMITTEE's guests".

The Park Superintendent and On Site Coordinator for PERMITTEE shall inspect the Use Area and Park both before and after the Event to determine the extent of any damages incurred. The COUNTY will invoice for any damages identified following final walk through.

E. **All payments shall be made by money order, certified cashier's check, or credit card payable to San Bernardino County Regional Parks and delivered to Regional Parks Administrative Offices, located at 777 East Rialto Avenue, San Bernardino, CA 92415-0763. THIS PAYMENT WILL NOT BE ACCEPTED AT THE PARK.**

F. Failure to Pay:

PERMITTEE agrees to pay all use and deposit payments when due and payable, or postmarked when due and payable **and** received within five (5) calendar days thereafter. For any payment not received PERMITTEE must pay to COUNTY an additional thirty-five dollars (\$35.00) for each late payment as an administrative processing charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that COUNTY will incur by reason of late payment by PERMITTEE. Acceptance of a late charge will not constitute a waiver of PERMITTEE's default with respect to the overdue amount nor prevent COUNTY from exercising any of the other rights and remedies available to COUNTY. Use fees not paid when due will bear simple interest from the date due until paid in full at the rate of 0.05% per day.

V. PERMITTEE'S RESPONSIBILITIES

- A. PERMITTEE agrees to provide State Certified Lifeguard staff for the swim facility. A list of staff and copies of their current lifeguard certifications must be submitted to Regional Parks Administration office no later than **September 6, 2019**.
- B. PERMITTEE must submit a copy of their Lifeguard Plan for the swim facility to Regional Parks Administration office no later than **September 6, 2019**.
- C. PERMITTEE will be required to implement safety measures for the swim facility during the event to include:
 - a. Increasing the number of lifeguards per swim patrons to a one lifeguard for every 50 patrons. (During Regional Parks regular operation of the swim facility one lifeguard for every 75 patrons is provided).
 - b. Providing security inside the swim complex and at the entry gates.
 - c. Prohibiting alcohol within the swim facility.
 - d. Denying access to the swim facility to intoxicated patrons.
 - e. Venue security with K9s thoroughly searching, all camping cars and patrons.
 - i. San Bernardino County Sheriff's must be present for all searches.

- D. PERMITTEE agrees to operate the swim complex only during normal swim facility operation hours of 10 a.m. to 5 p.m. due to a lack of lighting in the lagoon.
- E. PERMITTEE agrees that all concert performances and amplified music will end at 12:00 am.
- F. PERMITTEE agrees to provide staffing for the Event including but not limited to Parking Staff and Event Staff.
- B. PERMITTEE agrees to provide portable restrooms in compliance with the Department of Environmental Health Special Event Portable Toilet Recommendations (Exhibit B).
- G. PERMITTEE agrees to provide tables, chairs, and trash receptacles including assuming the responsibility for trash collection and bin removal.
- H. PERMITTEE agrees to provide one (1) 40-cubic yard roll-away dumpster for every 500 people attending the event.
- I. PERMITTEE agrees to maintain restrooms after taking control over the Park – including at their own expense the supplies for stocking the restrooms.
- J. PERMITTEE agrees to provide any necessary lighting, if it is not available at the park.
- K. PERMITTEE agrees to adhere to Exhibit C-Health and Safety Measures.

VI. REGIONAL PARKS BOOTH

PERMITTEE allows Regional Parks to operate, at no charge, an information/public relation's booth during the Event and allows the sale of non-event pins, shirts, and other Regional Parks event tickets for the general public in the areas of the other booths. The location of the booth will be as agreed upon by PERMITTEE and Park Superintendent.

VII. EVENT PLAN

PERMITTEE shall submit its Event Plan ("Plan") to the Regional Park Administration office by **3:00 PM, Friday, September 6, 2019** and shall, at the request of the COUNTY review the Plan with representatives of the COUNTY, including the Regional Parks. The Plan must outline specific security, parking, set up, and clean up, signage, advertisement, gate ingress, egress, sanitation, food, and vendor operations. PERMITTEE shall not be allowed to nor shall PERMITTEE allow the sale or distribution of alcoholic beverages at the EVENT without prior COUNTY approval and required licenses as applicable. The Plan shall include persons responsible, name of company, if applicable, times, electrical requirements, site plans, etc.

VIII. PARK RULES

PERMITTEE shall conform to and abide by all Park rules and regulations relating to the operation herein authorized and shall conform at all times to applicable rules, regulations, resolutions, ordinances, and statutes of the COUNTY OF SAN BERNARDINO, State of California, the federal government, and all other governmental agencies where applicable; and where permits are required for such operations, the same must first be had and obtained from the regulating body having jurisdiction thereof, before such operation is undertaken.

IX. PERMITS AND APPROVALS

PERMITTEE shall obtain and maintain throughout the Event all necessary permits, licenses, and approvals from applicable federal, state and local agencies, including, but not limited to, San Bernardino County Sheriff's Department (security), San Bernardino County Environmental Health Services (sanitation, food/drink), California Highway Patrol (traffic), Caltrans (freeway access), San Bernardino County Transportation (roadways), and the California Division of Forestry; as required for any use allowed by COUNTY.

X. NO DISCRIMINATION

During the term of the Contract, PERMITTEE shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. PERMITTEE shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

XI. NO SEGREGATION

PERMITTEE must not discriminate against or cause the segregation of any person or group of persons on account of race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in the occupancy, use, tenure or enjoyment of the Use Area used for the EVENT, nor may PERMITTEE or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of or by any person within the Use Area used for the EVENT.

XII. SECURITY

PERMITTEE understands and agrees that the COUNTY shall not be required to provide, nor shall COUNTY provide, any security for the personal property and/or the person of PERMITTEE or any of PERMITTEE's members, guests or invitees. Any loss, damage and injury to any property or person of PERMITTEE or PERMITTEE's members, guests, or invitees shall be at the sole cost, expense, and responsibility of PERMITTEE.

XIII. INDEMNIFICATION AND INSURANCE CLAUSE

- A. Indemnification - PERMITTEE agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. PERMITTEE's indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
- B. Additional Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the County and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.

- C. Waiver of Subrogation Rights - PERMITTEE shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit PERMITTEE and PERMITTEE's employees or agents from waiving the right of subrogation prior to a loss or claim. PERMITTEE hereby waives all rights of subrogation against the COUNTY.
- D. Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.
- E. Severability of Interests – PERMITTEE agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between PERMITTEE and the County or between the County and any other insured or additional insured under the policy.
- F. Proof of Coverage - The PERMITTEE shall furnish Certificates of Insurance to the Regional Parks Department Administration (777 East Rialto Ave, San Bernardino, CA 92415), administering the contract evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and PERMITTEE shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- G. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- H. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- I. Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the COUNTY has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the COUNTY will be promptly reimbursed by PERMITTEE or COUNTY payments to PERMITTEE will be reduced to pay for COUNTY purchased insurance.
- J. Insurance Review - Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. PERMITTEE agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County

XIV. INSURANCE SPECIFICATIONS

PERMITTEE agrees to provide insurance set forth in accordance with the requirements herein. If PERMITTEE uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, PERMITTEE agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, PERMITTEE shall secure and maintain throughout the contract term the following types of insurance with limits as show:

- A. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of PERMITTEE and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- B. Commercial/General Liability Insurance – PERMITTEE shall carry General Liability Insurance covering all operations performed by or on behalf of PERMITTEE providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (**\$1,000,000**), **per occurrence**. The policy coverage shall include:

1. Premises operation and mobile equipment.
2. Products and completed operations.
3. Broad form property damage (including completed operations).
4. Explosion, collapse and underground hazards.
5. Personal injury.
6. Contractual liability.
7. **\$2,000,000 general aggregate** limit.

- C. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If PERMITTEE is transporting one or more non-employee passengers, in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If PERMITTEE owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- D. Special Event Liability Insurance – The County has a program to provide Special Event Liability Insurance to individuals and groups utilizing County facilities for activities not sponsored by the County, its Departments or Districts. This coverage provides one million (**\$1,000,000**) limits of liability for bodily injury and property damage and includes liquor liability coverage. It effectively transfers the liability from the County and its taxpayers to the agency/individual scheduling the activity or program. The coverage provides affordable rates to all non-County groups and individuals on a

standard basis and still transfers the risk to an insurance company. Annual rates for ongoing activities are also available. **For additional information on this coverage contact local Parks office.**

- E. **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

XV. NO ASSIGNMENT

No assignment of this Permit or any interest therein and no subpermit for any purpose shall be granted by PERMITTEE.

XVI. NOTICE

Any notice, demand request, consent, approval or communication that either party desires or is required to give to the other party or permitted to be given under this permit including notices under the California Unlawful Detainer Statutes, shall be given to the respective parties in writing either served personally or sent by United States first class mail, postage prepaid, registered or certified mail, postage return receipt requested. Any notice, demand, request, consent approval or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed delivered and effective upon the earlier of (i) actual receipt or (ii) the date of delivery or refusal of the addressed to accept delivery if notice is sent by United States Mail, postage prepaid, certified or registered, return receipt requested.

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| A. | If to COUNTY: | San Bernardino County
Department of Regional Parks
777 East Rialto Avenue
San Bernardino, CA 92415-0763 |
| B. | If to PERMITTEE: | Live Nation
2575 Glen Helen Parkway
San Bernardino, Ca 92407
Attn: John Piehuta |

Or at such other address or to such other persons as either of the parties may from time to time designate by written notice given as herein provided.

XVII. ATTORNEYS' FEES AND COSTS

If any legal action is instituted to enforce or declare any party's rights hereunder, each party, regardless of which party is the prevailing party, must bear its own costs and reasonable attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph 13, INSURANCE AND INDEMNIFICATION CLAUSE.

XVIII. VENUE

The parties acknowledge and agree that this Permit was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Permit will be the San Bernardino County. Each party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Permit is brought by any third party, the parties agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

XIX. APPLICABLE LAW

This permit shall be interpreted and construed according to the laws of the State of California.

XX. FORCE MAJEURE

PERMITTEE and COUNTY shall not be deemed in violation of this permit if it is prevented from performing its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of God, acts of public enemy, acts of superior governmental authority, weather conditions, riots, rebellions, or any other circumstances for which it is not responsible or which are not within its control.

XXI. PUBLIC RECORDS DISCLOSURE OF INFORMATION

All information received by the COUNTY from any source concerning this Permit, including the Permit itself, may be treated by the COUNTY as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). PERMITTEE understands that although all materials received by the COUNTY in connection with this Permit are intended for the exclusive use of the COUNTY, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which a PERMITTEE has requested COUNTY to hold in confidence is made to the COUNTY, the COUNTY shall notify PERMITTEE of the request and shall thereafter disclose the requested information unless PERMITTEE, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides COUNTY a legally sound basis for nondisclosure, and agrees to indemnify, defend with counsel approved by COUNTY, and hold the COUNTY harmless in any/all actions brought to require disclosure. PERMITTEE waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event COUNTY fails to notify PERMITTEE of any such disclosure request and/or releases any information received concerning the Permit received from PERMITTEE.

XXII. TAXES

- A. PERMITTEE recognizes and understands that this Permit may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of property taxes levied on such interest.
- B. PERMITTEE covenants and agrees to pay all taxes, including possessory interest tax, and assessments upon all improvements, fixtures, furniture, and other property owned by PERMITTEE and used in the exercise of PERMITTEE's rights under this Permit or levied by reason of PERMITTEE's operations pursuant to this Permit.

XXIII. NO ESTATE

PERMITTEE agrees that it does not and shall not claim at any time an interest or estate of any kind or extent whatsoever in the Use Area or Park, by virtue of this Permit or occupancy or use hereunder.

XXIV. TERMINATION

- A. DEFAULT: In the event that either party violates any of the terms and conditions of this permit, the aggrieved party shall give written notice of specific violation and demand for corrections.
- B. TERMINATION FOR DEFAULT: If, within one (1) day after written notice and demand, the violating party has not completely corrected this violation or shown acceptable cause therefore, the aggrieved party has the right to immediately terminate this Permit and pursue any and all remedies provided by law.

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IN WITNESS WHEREOF, the parties hereto have caused their respective names to be subscribed by their respective proper officers hereto duly authorized.

COUNTY OF SAN BERNARDINO

►
Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

Live Nation

(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name John Piehuta

(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address 2575 Glen Helen Parkway

San Bernardino, Ca 92407

FOR COUNTY USE ONLY

Approved as to Legal Form
►
Dawn Martin, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
►
Patrick Scalzitti, Finance and Operations Chief
Date _____

Reviewed/Approved by Department
►
Beahta R. Davis, Director, Regional Parks
Department
Date _____