

CITY CLERK ORIGINAL

C-7764
08/26/2011

WESTGATE SERVICE AGREEMENT

This Westgate Service Agreement ("Agreement") effective this 26th day of August, 2011 (Effective Date), between the City of Glendale, an Arizona municipal corporation ("Glendale") and Entertainment Center Development, LLC, a Delaware limited liability company authorized to do business in Arizona ("ECD").

RECITALS

- A. The Westgate City Center property consists of the properties owned or managed by ECD.
- B. ECD requires Emergency Medical Services ("EMS") during certain scheduled events at Westgate City Center.
- C. Glendale contracts with Southwest Ambulance to provide ambulance and associated medical transportation services with the City.
- D. The Glendale Fire Department ("GFD") has experience in providing firefighters, EMT-Basic and EMT-Paramedics, and other medical personnel for such events.

AGREEMENT

1. Scope of City Services.

1.1 Special Duty Work.

- a. Glendale will provide or make available EMS, ambulance services, and other mutually agreed upon services that are required for events at Westgate ("collectively referred to as "Special Duty Work").
 - (1) Special Duty Work includes the staffing of first aid rooms with EMT-Basic and/or EMT-Paramedics or other trained staff, response teams, and ambulance transportation.
 - (2) The appropriate level of supervisory presence as determined by Glendale.
- b. Glendale will be responsible for the administration of the Special Duty Work, including:
 - (1) Scheduling of the Special Duty Work;
 - (2) Training of all Glendale employees assigned to Special Duty Work ("Staff");
 - (3) Assuring Staff performs their duties in a manner that provides event patrons a high-level of guest services while remaining consistent with their training and responsibility for the health, safety and welfare of Event Patrons and other citizens;
 - (4) Glendale will honor any ECD request that a particular employee or employees not be assigned Special Duty Work unless Glendale determines that the employee or employees have special training or

skills that will be necessary for the health, safety, or welfare of patrons at the event; and

- (5) Glendale will ensure each employee performing Special Duty Work under this Agreement has radio communication capability.

1.2. Special Duty Work Staffing.

- a. Glendale may subcontract the Special Duty Work provided the subcontract has the appropriate level of training to provide the required services.
- b. The staffing levels for these events will be determined by ECD's Director of Security or designee; provided however,
 - (1) For events in which the estimated attendance is reasonably anticipated to be less than 1,000 people per day ("Minor Event"), ECD will consult with Glendale;
 - (2) For events in which the estimated attendance is reasonably anticipated to be equal to or greater than 1,000 people per day ("Major Event"), ECD, as a condition for conducting the event, will secure the approval of Glendale with respect to the appropriate level of staffing;
 - (3) ECD will provide Glendale with staff requirements or secure its approval of staff requirements, as is required above, a minimum of two weeks prior to a Major Event and one week prior to a Minor Event; and
 - (4) Staffing changes must be submitted within 72 hours prior to the first day of a Major Event and 48 hours prior to the first day of a Minor Event.

1.3 Special Duty Work Equipment. Glendale or its subcontractors will supply the necessary equipment required for the Special Duty Work and all such equipment will remain the property of Glendale and/or its subcontractors.

2. Compensation.

2.1 Rate. Compensation will be for the actual hours Special Duty Work services are provided at the hourly rate of \$36.00 per person, which may be adjusted annually by mutual agreement of ECD and Glendale, except that within 30 days after the annual anniversary of the execution date of this Agreement, ECD and Glendale will meet and review the hourly rate of compensation for performing Special Duty work..

2.2 Minimum Hours.

- a. Special Duty Work for all events for which the estimated attendance is equal to or greater than 1,000 people ("Major Events") will consist of a minimum of four hours duration for each staff member required by Section 1.2.

- b. Special Duty Work for all events for which the estimated attendance is less than 1,000 people ("Minor Events") will consist of a minimum of two hours duration for each staff member required by Section 1.2.

2.3 Billing and Payment Procedure.

- a. ECD agrees to pay all amounts due under this Agreement to Glendale within 30 days after receiving an itemized billing for the Special Duty Work services provided.
- b. From time to time, ECD may require a bill for Special Duty Work at the time of services to settle with an ECD client ("Special Billing").
 - (1) ECD will provide the City a minimum of 48 hours prior notice prior to the event when Special Billing is needed.
 - (2) Special Billing invoices will be presented to ECD's Director of Security before the end of the event.
 - (3) Nothing within this section, however, will relieve ECD of its obligations for payment.

3. **Term.** This Agreement is effective as of the Effective Date and remains in full force and effect for a period of one year from the date of this Agreement.

4. **Termination.**

4.1 Either party may terminate this Agreement for any reason upon 30 days written notice of termination to the other party; except that the Agreement may be immediately terminated by Glendale after the initial 30-day meeting referenced in Section 2.1.

4.3 In the event of termination, ECD must pay Glendale for work performed in accordance with the Agreement prior to the termination date.

5. **Remedies.** The remedies provided to the parties under Section 4 are not exclusive and the parties are entitled to any other remedies available at law or in equity.

6. **Interpretation and Jurisdiction.**

6.1 This Agreement will be construed according to the laws of the State of Arizona.

6.2 The jurisdiction for any dispute resolution concerning this Agreement or the work performed hereunder will be the State of Arizona, Maricopa County.

7. **Indemnification.**

7.1 To the fullest extent permitted by law, ECD must defend, indemnify, and hold harmless Glendale and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense," collectively, "Demands or Expenses") asserted by a third-party (i.e., a

With a copy to: City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

If to ECD: Entertainment Center Development, LLC
6770 North Sunrise Boulevard, Suite 220
Glendale, Arizona 85305

12. **Severability.** To the extent practicable and if the intended purpose of this Agreement remains, should a provision of this Agreement be found to be illegal or unenforceable, this Agreement will remain in full force and effect and the offending provision will be stricken.
13. **Integration.** This Agreement incorporates the Recitals, contains the entire agreement between ECD and Glendale and supersedes all prior written or oral discussions or agreements.
14. **Audit of Payment.**
 - 14.1 ECD and Glendale, either directly or through a designated representative, may audit the records of the other Party concerning matters related to this Agreement at any time during the period established by Section 16.
 - 14.2 If an audit discloses a variance from the Agreement, Glendale will be either entitled to payment or will be required to reimburse ECD in order to assure payments are consistent with this Agreement.
15. **Amendments.** This Agreement may not be amended or modified except by written agreement approved and executed by ECD and Glendale.
16. **Maintenance of Records.** The parties will maintain records for three years to support its billings and payments. Either party, or its authorized representative, may inspect, audit, and copy on reasonable notice and from time to time any records of the others regarding its billings and payments under this Agreement.
17. **Force Majeure.** Neither party will be deemed to have breached this Agreement by reason of any failure to perform a substantial obligation under the Agreement if the failure arises out of causes beyond its control and without its fault or negligence; including, without limitation, any force majeure, including acts of God or the public enemy, acts of the federal or state governments or any agency or department thereof, fires, floods, epidemics, volcanic eruptions, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
18. **Non-waiver.** The parties will not be deemed to have waived any breach of this Agreement by the other, except by an express waiver in writing, which will not be deemed a waiver of any other breach not expressly identified, even though the other breach is the same nature as that waived.
19. **Foreign Prohibitions.** Both Parties certify under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that they do not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

20. Immigration.

- 20.1 ECD, and on behalf any allowable subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 20.2 Any breach of warranty under subsection 20.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 20.3 Glendale retains the legal right to inspect the papers of any ECD or subcontractor employee who performs work under this Agreement to ensure that ECD or any subcontractor is compliant with the warranty under subsection 20.1 above.
- 20.4 Glendale may conduct random inspections, and upon request of Glendale, ECD must provide copies of papers and records of ECD demonstrating continued compliance with the warranty under subsection 20.1 above. ECD agrees to keep papers and records available for inspection by Glendale during normal business hours and will cooperate with Glendale in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section.
- 20.5 ECD agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon ECD and expressly accrue those obligations directly to the benefit of Glendale. ECD also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of Glendale.
- 20.6 ECD's warranty and obligations under this section to Glendale is continuing throughout the term of this Agreement or until such time as Glendale determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 20.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

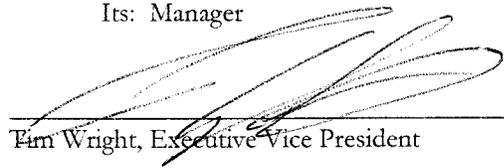
[Signatures appear on following page.]

"ECD":

**ENTERTAINMENT CENTER
DEVELOPMENT, LLC,**
a Delaware limited liability company

By: Coyote Center Development, L.L.C.,
a Delaware limited liability company
Its: Sole member

By: Ellman Management Group, L.L.C.,
an Arizona corporation
Its: Manager



Tim Wright, Executive Vice President

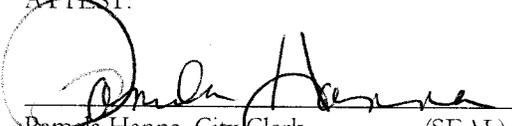
"Glendale":

CITY OF GLENDALE, an Arizona municipal
corporation



Ed Beasley, City Manager

ATTEST:



Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:



Craig Tindall, City Attorney