



WASHOE COUNTY

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CM/ACM	<u>JS</u>
Finance	<u>LC</u>
DA	<u>Kim</u>
Risk Mgt.	<u>DE</u>
HR	<u>NA</u>
Other	<u>NA</u>

STAFF REPORT

BOARD MEETING DATE: July 14, 2015

DATE: June 5, 2015
TO: Board of County Commissioners
FROM: Phil Condon, Sergeant, Patrol Division
 328-2895, pcondon@washoecounty.us

THROUGH: Chuck Allen, Sheriff *OS 397 Some SPENCER UNDER SHERIFF*

SUBJECT: Approve Law Enforcement Funding Agreement between Black Rock City LLC and Washoe County, on behalf of the Washoe County Sheriff's Office to provide reimbursement for extra staffing [\$105,000 estimated total reimbursement] needed in the Gerlach/Empire area during the annual Burning Man Festival for 2015. (Commission District 5)

SUMMARY

The Washoe County Sheriff's Office has been tasked with providing additional coverage in the Gerlach/Empire communities while the Burning Man Festival is taking place in the nearby Black Rock Desert. Black Rock City LLC has agreed to a contract which provides for reimbursement to the County for the cost of providing the additional manpower.

Washoe County Strategic Objective supported by this item: Safe, Secure and Healthy Communities.

PREVIOUS ACTION

The County previously accepted a contract from Black Rock City LLC in August 2014 for the additional manpower in Gerlach/Empire for the 2014 event. The Washoe County Sheriff's Office has provided additional manpower in the area for the last ten years while the event was held in nearby Pershing County.

BACKGROUND

The Burning Man Festival has been taking place in the Black Rock Desert for the last 12 years, with the event currently being held in Pershing County, approximately 8 miles from the town of Gerlach, NV. The main roads into the event are in Washoe County's jurisdiction with more than 65,000 people traveling through Gerlach and Empire to get to the event.

The Washoe County Sheriff's Office is tasked with providing additional law enforcement presence in the communities while the event is going on, which creates a financial burden to Washoe County. Washoe County is not responsible for providing a law enforcement presence inside the festival, which is being handled by the Pershing County Sheriff's Office and the Bureau of Land Management. The Burning Man organizers are aware of the financial burden to Washoe County and have agreed to offset the Sheriff's Office expenses by providing funding to the Sheriff's Office. They have agreed to pay \$105,000 for law enforcement presence.

FISCAL IMPACT

WCSO supervision will determine appropriate additional staffing levels needed during the Burning Man event and all costs in excess of the Gerlach Resident Deputies salaries will be reimbursed by Black Rock City LLC, up to \$105,000. The funds obtained will be used for salary reimbursement, lodging and per diem and vehicle expense reimbursement. Reimbursement received will be deposited to account 150200-485129 (Office of the Sheriff-Salary Reimbursement).

RECOMMENDATION

It is recommended that the Board of County Commissioners approve Law Enforcement Funding Agreement between Black Rock City LLC and Washoe County, on behalf of the Washoe County Sheriff's Office to provide reimbursement for extra staffing [\$105,000 estimated total reimbursement] needed in the Gerlach/Empire area during the annual Burning Man Festival for 2015.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be to move to approve Law Enforcement Funding Agreement between Black Rock City LLC and Washoe County, on behalf of the Washoe County Sheriff's Office to provide reimbursement for extra staffing [\$105,000 estimated total reimbursement] needed in the Gerlach/Empire area during the annual Burning Man Festival for 2015.

Law Enforcement Funding Agreement

This Law Enforcement Funding Agreement ("Agreement") is between (1) Black Rock City LLC ("BRC LLC"), NV Corp number LLC715-1999, and (2) Washoe County, on relation of the Washoe County Sheriff's Office. The purpose of the Agreement is to help fund increased law enforcement within Washoe County due to increased calls for law enforcement services resulting from people passing through Washoe County related to the 2015 Burning Man event as described and authorized in BLM Special Recreation Permit NVW 03500-12-01.

RECITALS

- A. BRC LLC has held the annual Burning Man event in the Black Rock Desert, on federal land managed by the Bureau of Land Management ("BLM"), around the Labor Day weekend each year since 1991. The Black Rock Desert is located within Pershing, Humboldt and Washoe Counties, in Nevada, although the event is typically held entirely within Pershing County.
- B. Since BLM and Pershing County have conducted the substantial majority of law enforcement activities related to the Burning Man event, Washoe County has not historically enforced state or local laws at the Burning Man event itself, which is located outside of Washoe County.
- C. The number of private vehicles traveling on Washoe County roads is higher than average around the Labor Day holiday. A portion of this additional traffic results from Burning Man event participants traveling to and from the Black Rock Desert.
- D. Neither BRC LLC nor Washoe County is aware of any statute or ordinance that requires private event organizers to pay money to Washoe County to fund the increased levels of law enforcement in Washoe County associated with their private events outside of Washoe County, though BRC LLC has voluntarily paid a portion of the law enforcement costs associated with increased traffic by participants in the Burning Man event in previous years. However, because Burning Man event participants collectively spend substantial amounts of money in, and thereby provide a source of tax revenue for Washoe County, up until 2007 Washoe County directly funded most of the law enforcement activity related to traffic associated with the event that passes through Washoe County.
- E. Unlike in years prior to 2007, Washoe County has adopted a policy of not directly funding increased levels of law enforcement relating to traffic and calls for service to and from private events and is urging large-scale private event organizers to fund all increased Washoe County law enforcement related to their events.
- F. BRC LLC recognizes that, although neither BRC LLC nor Washoe County is aware of any statute or ordinance that creates any obligation by BRC LLC to fund Washoe County law enforcement costs, increased traffic and calls for service associated with the Burning Man event has been requiring an increased response of Washoe County's resources. BRC LLC agreed in Stipulations with the BLM that BRC LLC would complete a formal agreement with Washoe County Sheriff's Office which addresses concerns and impacts associated with law enforcement services around the time of the Burning Man event. Finally, BRC LLC recognizes and values the spirit of cooperation that has existed between it and Washoe County over the years.

G. BRC LLC and Washoe County have agreed on an amount that will compensate Washoe County for all costs Washoe County is expected to incur in association with providing increased levels of law enforcement due to the number of participants that attend the Burning Man event that pass through Washoe County.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, BRC LLC and Washoe County agree as follows:

AGREEMENT

1. Law Enforcement Activities.

(a). Washoe County, through the Washoe County Sheriff's Office, shall endeavor to maintain a law enforcement presence at a level sufficient to account for the presence of all Burning Man event participants within Washoe County's jurisdictional boundaries during the 2015 Burning Man event and for a week before and after the event. Nothing herein shall be construed to be a warranty, guarantee, or promise by Washoe County or the Washoe County Sheriff's Office that, by increasing law enforcement in response to the Burning Man event, it will prevent any injuries to persons or damages to property arising out of or related to the Burning Man event.

(b). Subject to the sheriff's discretion, the law enforcement provided by Washoe County shall consist of shifts and numbers of patrol-trained officers assigned to Gerlach which Washoe County believes is reasonable for the amount of activity anticipated for the Burning Man event as described in and authorized under Special Recreation Permit NVW 03500-12-01. Washoe County also believes that the level of law enforcement is adequate to cover most circumstances that are affected by the presence of Burning Man event participants in Washoe County. Notwithstanding any other provision in this Agreement, however, the parties acknowledge that decisions regarding utilization of Sheriff's Office resources in connection with this Agreement, including decisions about levels of staffing and operations, necessarily entail a great deal of discretion on the part of the sheriff, and that exact determinations about what will or will not be adequate in terms of resource allocation to a particular event is not possible in advance.

(c). Subject to the sheriff's discretion, and except to the extent that the Nevada Highway Patrol or another law enforcement agency has primary jurisdiction, Washoe County shall endeavor to focus the increased law enforcement activities funded under this Agreement on safety and traffic flow enforcement in and around the Cities of Gerlach and Empire, including Nevada Highway 447 and County Road 34, in order to minimize traffic congestion and vehicle backup.

(d). Unless prohibited by law, Washoe County shall provide BRC LLC a detailed report ("After Action Report") within thirty days of the conclusion of each Burning Man event. For all incidents that Washoe County officers identify as having a connection with Burning Man event participants, the After Action Report shall identify the number of arrests made and number of citations issued by Washoe County officers according to each type of violation (e.g., the number of vehicle assists, number of speeding citations, number of calls for service, etc.). The

purpose of the After Action Report is for BRC LLC to educate Burning Man event participants regarding applicable laws in order to lessen similar occurrences in the future.

2. Payment. For 2015, BRC LLC shall make payments to Washoe County as follows:

(a). BRC LLC shall pay Washoe County the total of \$105,000 for all of its law enforcement activities related to the 2015 Burning Man Event.

(b). If Washoe County receives payment from BLM or any other federal or state agency or its agent for the purpose of covering part or all of Washoe County's costs of providing adequate law enforcement for increased traffic or calls for service resulting from the Burning Man Event, the BRC LLC payment shall be reduced by an amount equal to the amount of money Washoe County receives from said federal or state agency or agencies or agent. Washoe County is not prohibited from having its personnel work additional hours under a traffic safety grant, provided those costs are not passed onto BRC LLC.

(c). If a catastrophic event within the perimeter of the Burning Man Event such as an earthquake, flashflood, riot or terrorist attack requires Washoe County to assist BLM or the Pershing County Sheriff's Office with safeguarding and/or policing Burning Man event participants within the jurisdictional boundaries of Pershing County at a level that requires a demonstrably greater commitment of resources than is provided under this contract, then BRC LLC shall make a reasonable contribution toward that expenditure.

(d). BRC LLC shall make two installment payments to Washoe County. The first installment, for one half of the amount due for each year, shall be paid to Washoe County on September 1, 2015. The second installment, for the remainder of the amount due, shall be paid to Washoe County on November 1, 2015.

(e). Except as otherwise prohibited by law, Washoe County shall submit to BRC LLC copies of all invoices, receipts, and other documentation for all expenses so incurred during the performance of its duties under this Agreement. The documentation will show salaries, vehicle costs and other expenses incurred by Washoe County due to the increased staffing for the event. This documentation shall be provided by October 28, 2015 before the second installment is due. Prior to the same date, Washoe County shall also provide a detailed summary breakdown of all costs incurred.

3. Termination.

(a). Except as otherwise provided herein, this Agreement shall naturally terminate after the Parties fulfill their respective responsibilities following the conclusion of the Burning Man event, but in no event later than six weeks after the final day of the Burning Man event in 2015.

(b). BRC LLC has the right to prematurely terminate this Agreement in the event that the Burning Man event is cancelled due to weather, action by the BLM, or for any other reason. Likewise, the sheriff has the right to terminate this Agreement at any time that he deems his office incapable of continuing to provide the resources contemplated hereunder. No such premature termination shall relieve BRC LLC of its liability to pay for law enforcement services

actually rendered pursuant to this Agreement up to the time of termination.

5. General Provisions.

(a). This Agreement shall be governed by and interpreted under the laws of the State of Nevada irrespective of conflict of laws principles.

(b). This Agreement constitutes the entire agreement by the Parties with respect to all of the matters discussed herein, and supersedes all prior or contemporaneous discussion, communication, or agreements, expressed or implied, written or oral, by or between the Parties.

(c). The Parties agree that this Agreement shall not be amended, unless that amendment is made in writing and signed by each Party.

(d). The Parties acknowledge that their respective attorneys have reviewed and revised this Agreement, and that therefore the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

(e). The Effective Date of this Agreement is the date that the last Party to this Agreement executes this Agreement. This Agreement shall be effective only if executed by all the Parties hereto.

(f). This Agreement may be executed in counterparts, and authentic facsimile signatures shall be deemed to be original signatures for all purposes.

(g). This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third-party beneficiary.

(h). The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.

(i). Each Party represents and warrants that the person signing this Agreement is authorized to execute this Agreement on its behalf and to bind it to the terms of this Agreement.

(j). In the event that the governing body appropriating funds for Washoe County fails to obligate the funds necessary to make any expenditures hereunder beyond Washoe County's then current fiscal period, this Agreement shall be terminated without charge, penalty, or sanction, and all costs paid-to-date shall be returned to BRC LLC.

(k). BRC LLC shall hold Washoe County harmless and indemnify the county, its officers, agents and employees, from and against all claims, causes of action, liabilities, expenses and costs, including reasonable attorney's fees, for injury or death of any person or damage to property arising out of or connected with work performed under this Agreement to the extent that the injury, death or damage actually results from any acts or omissions, whether negligent or otherwise, of BRC LLC, its officers, agents, subcontractors or employees.

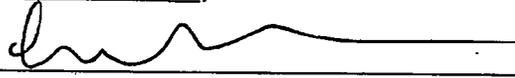
(l) Washoe County shall hold BRC LLC harmless and indemnify the BRC LLC, its officers, agents, subcontractors and employees, from and against all claims, causes of action, liabilities, expenses and costs, including reasonable attorney's fees, for injury or death of any person or damage to property arising out of or connected with work performed under this Agreement which results from any acts or omissions, whether negligent or otherwise, of Washoe County, its officers, agents, or employees.

(m) Washoe County does not waive, and hereby intends to assert, any available immunities, including NRS chapter 41 immunities, in all cases.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the date specified below.

Agreed:

Dated: 6/15/, 2015



Charlie Dolman, Black Rock City, LLC

Agreed:

Dated: 6/17/, 2015



Chuck Allen, Washoe County Sheriff

WASHOE COUNTY BOARD OF COMMISSIONERS

BY:.....
MARSHA BERKBIGLER, CHAIR

ATTEST:.....
WASHOE COUNTY CLERK