

**COOPERATIVE AGREEMENT REGARDING PUBLIC SAFETY  
RELATED TO THE 2019 3M OPEN**

**THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT REGARDING PUBLIC SAFETY AND SECURITY RELATED TO THE 2019 3M OPEN** (hereinafter referred to as the “Agreement”), is made effective, except as otherwise made operationally effective as set forth in Section 5 herein, on this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between the **CITY OF BLAINE, MINNESOTA**, a municipal corporation, (hereinafter referred to as the “City”), acting through its Police Department (hereinafter referred to as the “BPD”) and \_\_\_\_\_, a [insert name of city/county/or other governmental entity acting through its \_\_\_\_\_ [insert name of law enforcement organization] (hereinafter referred to as the “Provider”). City, BPD, and each Provider may be referred to individually as a “Party” or collectively as the “Parties” to this Agreement.

**WHEREAS**, the City is the host city for the 2019 3M Open to be held on June 28, 2019 – July 7, 2019, and for related events, most of which will take place in the City (hereinafter referred to collectively as the “Event”); and

**WHEREAS**, the City is in need of procuring additional law enforcement personnel to provide the public safety and security measures required for such a large and unique Event; and

**WHEREAS**, at the request of the City, the Provider is willing to provide the services of the law enforcement personnel identified in this Agreement to the City to assist the BPD with Event security; and

**NOW THEREFORE**, pursuant to the authority contained in Minnesota Statutes Section 471.59 (“Joint Exercise of Powers”) and/or Minnesota Statutes Sections 626.76 and 626.77, and in consideration of the mutual covenants herein contained and the benefits that each party hereto shall derive hereby, the Parties agree as follows:

**1. PURPOSE OF THE AGREEMENT**

- 1.1 The purpose of this Agreement is to set forth the terms and conditions whereby the Provider will provide the City with Licensed Peace Officers to be assigned to the Event to assist the BPD to provide law enforcement and security services (“Services”) during the term of the Event.
- 1.2 Provider will exercise its best efforts to assist with Event security. The Parties acknowledge and agree that resource availability requires Provider to exercise its best judgment in prioritizing and responding to the public safety needs of its jurisdiction including, but not limited to, the Event. That prioritization decision belongs solely to Provider. The Provider may, at any time, recall the Provider’s resources when, it is considered to be in Provider’s best interest to do so.

- 1.3 Provider's resources shall be full-time, Licensed Peace Officers and each such Licensed Peace Officer must meet the following criteria as defined in Minnesota Statutes Sections 626.84, Subdivision 1(c) and 471.59, Subdivision 12, which reads:

"(1) the peace officer has successfully completed professionally recognized peace officer pre-employment education which the Minnesota Board of Peace Officer Standards and Training has found comparable to Minnesota peace officer pre-employment education; and

(2) the officer is duly licensed or certified by the peace officer licensing or certification authority of the state in which the officer's appointing authority is located."

**2. ADDITIONAL CRITERIA OF LICENSED PEACE OFFICERS; PROVIDER SCOPE OF SERVICE**

- 2.1 In addition to meeting the criteria set forth in Section 1 of this Agreement, the Provider agrees that each of the Licensed Peace Officers shall also meet the following criteria:

2.1.1. That each Licensed Peace Officer shall by reason of experience, training, and physical fitness be deemed by the Provider of being capable of performing public safety and law enforcement duties for the Event; and

2.1.2 That each Licensed Peace Officer is in good standing with the Provider. Throughout the term of this Agreement, the Provider shall promptly notify the BPD in the event that any licensed peace officer is no longer an officer in good standing with the Provider or shall recall any peace officer that is no longer in good standing; and

2.1.3 That unless otherwise provided or requested by the BPD, each Licensed Peace Officer shall be equipped and/or supplied by Provider at Provider's own expense, with a seasonally appropriate patrol uniform of the day and equipment, including but not limited to service belts with Provider radio equipment, service weapon and personal soft ballistic body armor, and traffic vest. Additionally, in Provider's discretion, personnel may be equipped with a cell phone that may be used to download a public safety application to aid in the tracking of law enforcement personnel during operational periods if allowed pursuant to Provider's policy.

- 2.2 Provider acknowledges and agrees that at any time during the term of this Agreement the City has the sole discretion to decline to accept and/or use any of Provider's Licensed Peace Officers or other law enforcement resources without cause or explanation.

- 2.3 The Provider agrees as follows:
- 2.3.1 As requested by BPD, Provider shall list information on each of Provider's Licensed Peace Officers no later than forty-five (45) days before the Event that includes, but is not limited to, name, rank, agency, badge number, photo, cell phone number, and emergency contact information. Said information shall be used strictly for law enforcement purposes related to the Event and each Party will hold the data in the same classification as the other does under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 ("MGDPA"); and
  - 2.3.2. That each Licensed Peace Officer shall be assigned by the BPD, as determined and required by the BPD, to any Event-related assignment based on the Licensed Peace Officer's skill-set and known duty assignment as well as the needs of the operation; including, but not limited to, foot patrol, motorized patrol, static posts at outdoor perimeters, general security inside or outside venues, and traffic control; and
- 2.4 Provider acknowledges and agrees that at all times during any required training session or during the Event each of Provider's Licensed Peace Officers or other law enforcement resources and employees, regardless of rank or job title held as an employee of the Provider, shall be subject to a structure of supervision, command and control coordinated by BPD.
- 2.5 The Provider agrees to exercise reasonable efforts to cooperate and provide the City, with any other information reasonably requested by the City that the City deems necessary to facilitate and enable compliance with the terms and conditions contained in this Agreement.
- 2.6 Event staffing levels will be determined by the BPD as the lead law enforcement agency, regardless of the location of the Event.
- 2.7 The Provider will comply with the statutes and rules requiring the preservation of evidence including, but not limited to, Minnesota Statutes, Section 590.10 and Section 626.04. Each Provider must preserve all handwritten notes, photographs, incident reports, video recordings, statements, audio recordings, personal notes, interview audio, text messages, cell phone videos, removable electronic media, squad car videos, any other video recordings, emails, voice mails, computer files and all Work Product, Supporting Documentation and Business Records.
- 2.8 The BPD, as the lead law enforcement agency, will maintain a list of Licensed Peace Officers (LPOs) assigned to the Event.

### **3. CITY RESPONSIBILITIES**

- 3.1 The City and the 3M OPEN FUND will prepare and enter into an “Event Support and Funding Agreement for the 2019 3M Open” (the “Support Agreement”). The Support Agreement will be the source of funding for the Event including the source of payment for the Services to be provided pursuant to this Joint Exercise of Powers Agreement (“Agreement”) and for the policy of insurance that will pay for the defense and indemnification of claims filed against the City and each Provider during the term of the Event.
- 3.2 City agrees that it will provide or facilitate any necessary training to prepare for providing Event security. The substance of the training, if necessary; including the locations, dates, and times, shall be detailed in a separate writing provided from the BPD to the Provider.
- 3.3 The person responsible on behalf of the BPD for the daily operation, coordination and implementation of this Agreement, which responsibilities shall include, but not limited to, determining the assignments of the Provider’s law enforcement resources, shall be Blaine Police Department Captain Dan Pelkey (hereinafter referred to as the “Coordinator”). Except as otherwise provided in this Agreement, all contacts or inquiries made by the Provider with regard to this Agreement shall be made directly to the Coordinator or the Coordinator’s designee.
- 3.4 The City will develop and provide to each Provider an adequate supply of the standard incident report form to be used by the City and Providers that provide Services at the Event.

### **4. COMPENSATION AND PAYMENT PROCESS**

- 4.1 The sole source of funds to reimburse each Provider performing under this Agreement shall be funds provided by the 3M Open Fund pursuant to the Support Agreement.
- 4.2 For and in consideration of the Provider performing under this Agreement, the Provider will be reimbursed for said Services at Provider’s current hourly rates, not to exceed \$235 per hour.
- 4.3 The BPD shall furnish the Provider with a statement which describes all applicable hours performed by the Provider during the term of the Agreement. The Provider shall submit the Payment Reimbursement Form to the BPD for all undisputed amounts within thirty-five (35) days after receipt of the statement of hours.

4.4 For any disputed amounts, the Provider shall provide the BPD with written notice of the dispute, including the date, amount, and reasons for dispute within fifteen (15) days after receipt of the statement of hours. The BPD and Provider shall memorialize the resolution of the dispute in writing and follow the dispute resolution procedure in Section 12 of this Agreement.

## 5. TERM OF AGREEMENT

5.1 This Agreement shall be effective as of the date indicated on the first page so that the Parties can undertake planning for all Event-related activity and shall expire on July 8, 2019, or the date to which law enforcement resources or Services are extended, whichever is later, unless terminated earlier in accordance with the provisions in Section 6.

## 6. TERMINATION

6.1 Termination by the City-The City may terminate this Agreement upon providing to the Provider not less than forty-five (45) days advance written notice for any of the reasons stated below:

6.1.1 Cancellation of the 2019 3M Open;

6.1.2 City and 3M Open Fund fail to enter into the Support Agreement;

6.1.3 Failure by the Provider to perform any material term under this Agreement and failure to cure the default within the time requested by the City.

6.2 Termination by the Provider- the Provider may terminate this Agreement upon providing to the City not less than forty-five (45) days advance written notice for any of the reasons stated below:

6.2.1 Cancellation of the 2019 3M Open;

6.2.2 Without cause forty-five (45) prior to the Event;

6.2.3 City and 3M Open Fund fail to enter into the Support Agreement;

6.3 In the event of a termination, each Party shall fully discharge all obligations owed to the other Party accruing prior to the date of such termination, and, except as otherwise provided herein, each Party shall be released from all obligations, which would otherwise accrue subsequent to the date of termination.

## 7. AGREEMENT MANAGEMENT

7.1 The Provider has identified the following person[s] as persons to contact only with regard to the following matters regarding the Agreement:

*(List names)*

*(List responsibilities)*

**8. INSURANCE; LIABILITY; MUTUAL RESPONSIBILITY; NO WAIVER OF IMMUNITIES**

8.1 Insurance Coverage for Event. The 3M Open Fund has purchased a law enforcement liability insurance policy (the "Policy"). The insurance carrier is Gallagher (the "Insurer"). The Policy will provide primary coverage for claims that each Provider becomes legally obligated to pay as damages due to "bodily injury", "property damage", or "personal injury" suffered by third parties. The Policy will require the insurer to have the right and duty to defend and indemnify each Provider against any claim or lawsuit due to Provider acts that occur within the territory of the Event and during the period in which the Policy is in effect. Each Provider's Law Enforcement Officers will be covered under the Policy by virtue of the Provider being named an "insured" under the Policy.

8.1.1 The limits of liability for all occurrences (claims) during the coverage period is \$10,000,000.00. The limit of liability for any third party claim for damage to or loss of personal property is \$2,000,000.00.

8.1.2. The Policy shall be primary insurance and non-contributory to any other valid and collectible insurance available to a Party with respect to any claim arising out of a Party's performance under this Agreement.

8.1.3 The cost to hire and pay for legal representation to defend the City and any Provider ("defense costs") are not subject to the limit of the Policy.

8.1.4 The Policy is not subject to the payment of a deductible by the City or by any other Provider.

8.1.5. Each Provider agrees to be bound by the terms and conditions contained in the Policy.

8.1.6 Each Provider agrees that it will cooperate with the insurer and with the City by reasonably and timely responding to the insurer's request for information or to appear at meetings or judicially mandated hearings.

8.2 Insurance as Sole Source for Liability and Indemnity. Each Provider hereto agrees that it will only seek recovery for any liability incurred in carrying out the terms of this Agreement from the insurance to be procured by the 3M Open Fund.

8.2.1 If a Party's liability is not subject to recovery through the Policy, then each Party agrees that it will otherwise be responsible for its own acts and/or omissions and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside of the jurisdiction or geographic limits of the City of Blaine, and the results thereof to the extent authorized by

law and shall not be responsible for the acts and/or omissions of the other Party and the results thereof.

8.2.2 In the unlikely event that the aggregate amount of any one or all claims exceeds the limits of the policies described in paragraph 8.1.1, then each Party agrees that it will otherwise be responsible for its own acts and/or omissions and those of its officials, employees, representatives and agents in carrying out the terms of this Agreement, whether those acts or omissions occur within or outside the of the jurisdiction or geographic limits of the City of Blaine, and the results thereof to the extent authorized by law and shall not be responsible for the acts and/or omissions of the other Parties and the results thereof.

- 8.3 Further Limitation On Provider Liability. It is understood and agreed that the liability of each Provider that is a municipality, county or similar political subdivision shall be limited by the provisions of Minnesota Statutes Chapter 466 (Tort Liability, Political Subdivisions) and the liability of the State of Minnesota as a Provider shall be limited by the provisions of Minnesota Statutes, Section 3.736 and by other applicable law. Nothing contained in this Agreement shall waive or amend, nor shall be construed to waive or amend any defense or immunity that either Party, its respective officials and employees, may have under said Chapter 466, Section 471.59 subd. 1a, and any common-law immunity or limitation of liability, all of which are hereby reserved by the Parties that have entered into this Agreement.
- 8.4 Provider Workers' Compensation Insurance Required. Except as expressly provided herein, each Party shall be responsible for injuries or death of its own personnel. Each Party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are providing assistance pursuant to this Agreement. Except as expressly provided herein, each Party waives the right to sue any other Party for any workers' compensation benefits paid to its own employee or volunteer or their dependents.
- 8.5 Provider Responsible for Own Equipment. Except as expressly provided herein, each Party shall be responsible for damages to or loss of its own equipment. Except as expressly provided herein, each Party waives the right to sue any other Party for any damages to, or loss of its equipment.
- 8.6 Provider Rendering First Aid. Except for immediate first aid rendered by a Provider at the scene of an accident or occurrence, no other medical assistance, expenses or aid is covered under the Policy.

## 9. INDEPENDENT CONTRACTORS

Each Provider in its relationship with the City under this Agreement is an independent contractor. No Provider, its Licensed Peace Officers or other law

enforcement resources shall be considered an employee of the City. The City, its Licensed Peace Officers or other law enforcement resources shall not be considered employees of the Provider.

**10. SUBCONTRACTING**

The City and Provider agree that no Services will be subcontracted and agree not to enter into any subcontracts to provide any Services under this Agreement.

**11. ASSIGNMENT**

Neither the City nor the Provider will assign or transfer any interest in this Agreement without the consent of the other Party.

**12. DISPUTE RESOLUTION**

The City and the Provider each agree to cooperate and negotiate in good faith to resolve any disputes that arise regarding the terms of this Agreement and the performance of the Services. If good faith negotiations fail to resolve a dispute, then the Parties will use mediation services to attempt to resolve the dispute. The City and Provider will equally share the expense of the mediator.

The Parties will select a mediator by each submitting three names in rank order of preference to the other Party. If there is no common name on each Party's list, then a neutral, third party, law enforcement representative that is not a party to this Agreement will select a mediator for the Parties. If mediation fails to resolve a dispute between Parties, then the Parties will resolve the dispute through litigation.

**13. AMENDMENT OR CHANGES TO AGREEMENT**

13.1 Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the Parties hereto; after all appropriate and necessary authority has been acquired by each such Party.

13.2 Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

**14. NOTICES**

Except as otherwise stated in this Agreement, all notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail,

Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To City:

To Provider:

Dan Pelkey  
10801 Town Square Drive  
Blaine, MN 55449  
dpelkey@ci.blaine.mn.us

**15. INTERPRETATION OF AGREEMENT**

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota.

**16. ENTIRE AGREEMENT**

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties hereto relating to the subject matters herein. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

The matters set forth in the "WHEREAS" clauses at the beginning of this Agreement are by this reference incorporated into and made a part of this Agreement.

**17. MISCELLANEOUS PROVISIONS**

17.1 The Parties intend that, with respect to the defense and indemnification provisions in Section 8 hereof, this Agreement may benefit or create rights or causes of action in or on behalf of any other agency providing services for the Event under a similar but separate agreement. Except for the foregoing, the Parties intend that this Agreement will not benefit or create any right or cause of action in or on behalf of any person or entity other than the Parties.

17.2 The Parties shall cooperate in achieving the objectives of this Agreement pursuant to Minnesota Statutes, Sections 15.51 through 15.57.

17.3 The Parties shall comply with all applicable federal, state, and local statutes, regulations, rules and ordinances currently in force or later enacted including but not limited to the MGDPA, Minnesota Statutes Section 471.425, subd. 4a, and as applicable, non-discrimination and affirmative action laws and policies.

17.4 If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability will not affect any other provision, and this

Agreement will be construed and enforced as if such invalid or unenforceable provision had not been included.

17.5 Failure of a Party to enforce any provision of this Agreement does not affect the rights of the Parties to enforce such provision in another circumstance. Failure to enforce a provision does not affect the rights of the Parties to enforce any other provision of the Agreement at any time.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

CITY OF BLAINE

STATE/CITY/COUNTY OF

By: Clark Arneson  
Clark Arneson  
Its: City Manager

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

Date: April 15, 2019

Date: \_\_\_\_\_

By: Tom Ryan  
Tom Ryan  
Its: Mayor

Date: April 15, 2019