

Staff Summary Report



Council Meeting Date: 11-08-07

Agenda Item Number: _____

SUBJECT: Approval of Agreement between Rock 'N' Roll Arizona Inc. (RNR) the Tempe Convention and Visitor's Bureau and the City of Tempe for the City to host the finish of the half and full RNR Marathon for a second five-year term.

DOCUMENT NAME: 20071108prtd01 **SPORTS ADMINISTRATION/POLICIES (0105-01-07)**

SUPPORTING DOCS: Yes

COMMENTS: The net fiscal impact to the City of Tempe is approximately \$150,000 (cash and in-kind City services) for the years 2009, 2010, 2011, 2012 and 2013.

PREPARED BY: Travis Dray, Deputy Parks and Recreation Manager, 480/350-5182

REVIEWED BY: Mark Richwine, Parks and Recreation Manager, 480-350-5325
Jerry Hart, Financial Services Manger, 480-350-8505

LEGAL REVIEW BY: Dave Park , Assistant City Attorney, 480-350-8907

FISCAL NOTE: The net fiscal impact to the City of Tempe is approximately \$150,000 (cash and in-kind City services).

Tempe and the TCVB will be sharing the costs associated with this agreement equally. Costs for Tempe and the TCVB are as follows:

Tempe and the TCVB agree to pay RNR the amount of One Hundred and Fifty Thousand Dollars (\$150,000). Tempe agrees to pay RNR the amount of Seventy-five Thousand Dollars, the same amount Tempe has paid in it's previous agreement.

- Fifty thousand (\$50,000) due to RNR September 1, 2008. Twenty-five thousand (\$25,000) from The City of Tempe, and Twenty-five thousand due from the CVB.
- Fifty Thousand (\$50,000) due to RNR on October 1, 2008. Twenty-five thousand (\$25,000) from The City of Tempe, and Twenty-five thousand due from the CVB.
- Fifty Thousand Dollars (\$50,000) due to RNR on December 14, 2008. Twenty-five thousand (\$25,000) from The City of Tempe, and Twenty-five thousand due from the CVB .

In addition to the direct expenditure of funds, the City will also contribute services for the event valued at approximately Seventy-five thousand dollars (\$75,000). During the 2008/09 budget process, funding for the cash contribution portion of the agreement should be added to the Parks and Recreation department budget and be included for all future years of the agreement. Funding for the cost of in kind City services provided to support the event are to be absorbed within the current budget of the participating departments.

RECOMMENDATION: Staff recommends approval of the agreement.

ADDITIONAL INFO: For the past four (4) years, The City of Tempe has hosted the finish of 30,000 plus runners from the world wide running community. With perfect running conditions and the hip musical running theme, Rock 'N' Roll Arizona is one of the largest running events in the world. This event has been estimated by the TCVB to bring over 6 million dollars (\$6,000,000) of economic impact to the City of Tempe.

ROCK 'N' ROLL ARIZONA MARATHON AND ½ MARATHON
PROMOTIONAL AGREEMENT
SECOND FIVE YEAR TERM

C2003-67F

THIS AGREEMENT ("**Agreement**") is made and entered into by and between Rock 'N' Roll Arizona, Inc. ("**RNR**"), a California corporation, the Tempe Convention & Visitors Bureau ("**TCVB**"), and the City of Tempe ("**Tempe**"), an Arizona municipal corporation.

RECITALS

- A. WHEREAS, RNR, TCVB and Tempe are finishing the first five year term of the original agreement, City Agreement No. C-2003-67; and
- B. WHEREAS, RNR, TCVB and Tempe, pursuant to Section 1 of the original agreement, wish to extend the original agreement for up to an additional five years;
- C. WHEREAS, RNR wishes to continue to hold a portion of the Rock 'N' Roll Arizona Marathon and ½ Marathon (collectively hereafter the "**Marathon**") in Tempe; and
- D. WHEREAS, the TCVB and Tempe desire to have a portion of the Marathon held in Tempe; and
- E. WHEREAS, RNR, TCVB and Tempe desire to enter into this Agreement to govern the second five year term for the holding of the Marathon.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions hereinafter set forth, and intending to be legally bound, the parties agree as follows:

A G R E E M E N T

1. **Parties.** Rock 'N' Roll Arizona, Inc. (RNR), a Californian corporation, Tempe Convention & Visitors Bureau (TCVB) and the City of Tempe (Tempe), an Arizona municipal corporation, agree to enter into this Rock 'N' Roll Arizona Marathon and ½ Marathon Promotional Agreement (Agreement).

2. **Purpose.** RNR, TCVB and Tempe want to hold the Marathon and ½ Marathon beginning with the initial Marathon on January __, 2009. The Marathon will attract runners from both within and outside Tempe and the initial Marathon will traverse through several cities. The parties agree that the Marathon covered by this Agreement will end within Tempe.

3. **Term.** The initial term of this Agreement shall begin when all parties have signed this Agreement and shall end on March 21, 2009. Upon mutual consent, the parties may enter into four (4) options to extend this Agreement, with each such extension covering one (1) additional year for the holding of the Marathon. It is agreed that the date for the holding of each additional Marathon, the route to be used and the terms and conditions for each extension shall be mutually agreed upon by the parties.

4. **Payments.** For the Marathon to be held on January __, 2009, the TCVB agrees to pay RNR Seventy-five Thousand Dollars (\$75,000.00) as follows: Twenty-five Thousand Dollars (\$25,000.00) by September 1, 2008, Twenty-five Thousand Dollars (\$25,000.00) on or before October 1, 2008 and the final Twenty-five Thousand Dollars (\$25,000.00) on or before December 14, 2008. For the Marathon to be held on January __, 2009, Tempe agrees to pay RNR Seventy-five Thousand Dollars (\$75,000.00) as follows: Twenty-five Thousand Dollars (\$25,000.00) by September 1, 2008, Twenty-five Thousand Dollars (\$25,000.00) on or before October 1, 2008 and the final Twenty-five Thousand Dollars (\$25,000.00) on or before December 14, 2008. For the running of the Marathon on January __, 2009, RNR guarantees that it will have a minimum of twenty-nine thousand (29,000) entrants in the marathon and ½ marathon. For each entrant less than twenty-nine thousand (29,000), RNR agrees to pay Tempe Seven Dollars and Fifty Cents (\$7.50). RNR will make this total payment, if necessary, on or before February 1, 2009. After the Marathon on January __, 2009, the parties will negotiate in good faith the payment amounts and schedules for any extension of this Agreement.

5. **RNR'S Obligations.** RNR shall:

a. Assure millions of positive media impressions and national television exposure for Tempe and TCVB.

b. Permit Tempe and TCVB the right to use the Rock 'N' Roll Arizona name and logo in all of their promotional and advertising materials and images for the Marathon, subject to RNR's review, comment upon and approval, which approval will not be unreasonably withheld, prior to such use.

c. Feature Tempe name and/or logo in all of RNR's promotional and advertising materials and images for the Marathon.

d. Ensure Tempe will receive national television exposure on the one-hour FOX Sports Net national telecast (or a network offering the equivalent number of homes).

e. Guarantee Tempe a total of two (2) thirty (30) second commercials, each of which will air at least two (2) times on the national telecast of the Marathon.

f. Guarantee two (2) background advertising billboards on both the local and national telecasts of the race.

g. Place the Tempe name and/or logo on all paid and media sponsored print advertising, which advertising RNR warrants will have a value of over Five Hundred Thousand Dollars (\$500,000.00), and will include six (6) full-page ads in either Runner's World magazine or similar magazines, as well as full-page ads in regional running publications, local print advertising, local television advertising and radio advertising.

h. Produce over Five Hundred Thousand (500,000) full color promotional brochures displaying the Tempe name and/or logo and web site address. The brochures will be distributed by RNR through direct mail, sporting goods retailers, athletic clubs, grocery stores and at major race expos throughout the United States.

i. Feature all Tempe hotels that participate in the room block for the Marathon on the Marathon web site and on the official RNR hotel website.

j. Feature the Tempe name and/or logo in the Official Rock 'N' Roll Arizona Marathon and ½ Marathon Spectator and Entertainment Guide which RNR estimates will be distributed to Seventy-Five Thousand (75,000) participants, volunteers, tourists and spectators.

k. Affix the Tempe name and/or logo on all confirmation letters and final instructions mailed to all event participants.

l. Feature the Tempe name and/or logo on official course maps to be distributed by RNR to the media, runners, spectators and volunteers and post them on the Rock 'N' Roll Arizona web site.

m. Prominently feature the Tempe name and/or logo on Two thousand Five Hundred (2,500) full-color race posters to be distributed by RNR for display at sporting goods stores, athletic clubs and additional locations throughout the United States.

n. Place the Tempe name and/or logo on Thirty to Thirty-five Thousand (30,000 to 35,000) Marathon T-shirts to be worn by race participants and volunteers.

o. Provide Tempe full-page advertisements featuring the Tempe name and/or logo in the Official Rock 'N' Roll Arizona Race Program, Media Guide and Souvenir Results Book.

p. Furnish Start/Finish Line Banners featuring the Tempe name and/or logo.

q. Provide preferred banner opportunities at the Marathon (visual on the telecast) for Tempe. Tempe will be allowed to have eight (8) banners at the Start Line and eight (8) banners at the Finish Line. Provide title to one (1) entertainment stage, along the Marathon route, in Tempe, including two (2) banners.

r. Provide Tempe with a complimentary Ten foot by Ten foot (10' x 10') booth space at the Two (2) day Health and Fitness Expo to be held at the Phoenix Civic Plaza Convention Center, to be attended by an estimated One hundred thousand (100,000) participants, visitors, tourists and spectators.

- s. Allow Tempe and the TCVB to insert promotional items or literature into the Thirty to Thirty-five Thousand (30,000 to 35,000) “goodie bags” that RNR will distribute to every participant and volunteer.
- t. Identify Tempe as a Host Sponsor on the Rock ‘N’ Roll Arizona web site and provide links from this web site to the Tempe web site.
- u. Provide Tempe and the TCVB the opportunity to run sales promotions in conjunction with Rock ‘N’ Roll Arizona.
- v. Assure that Tempe will receive verbal mentions, the content of which will be supplied by Tempe, by television announcers throughout the Marathon.
- w. Introduce Tempe as Host Sponsors during media press conferences held leading up to the Marathon.
- x. Provide TCVB with corporate entertainment and hospitality opportunities at the Marathon including Sixteen (16) free entries into the Rock ‘N’ Roll Arizona Marathon for selected employees and clients.
- y. Provide the TCVB invitations to private parties, hospitality areas at the start and finish and VIP passes to the concert at a quantity to be mutually agreed upon..
- z. Work closely with Tempe and the TCVB to create additional promotional opportunities.
- aa. Follow all requirements as stipulated by the Tempe Special Events Task Force including the insurance requirements for the Marathon and any related events.
- bb. Afford Tempe and the TCVB the opportunity to sell corporate sponsorships for the Marathon and receive ten percent (10%) of the monies generated by the sales, provided the accounts have prior approval from RNR. Should little or no progress be made with these accounts after sixty (60) days, RNR may remove the account or list of accounts from Tempe or the TCVB and pursue the sponsorship independently.
- cc. Guarantee to designate a minimum of five (5) Tempe hotels as headquarter hotels for the Marathon (so long as at least five agree to do so), and use its best efforts to encourage charity groups associated with the Marathon to stay at Tempe hotels.
- dd. Guarantee to sell at least three thousand (3000) room nights in Tempe, plus or minus ten percent (10%).
- ee. Promote Tempe and the Marathon in select key markets.
- ff. Hold one press conference, or other event, in Tempe (exact location to be determined).

6. **Tempe’s obligations.** Tempe shall:

- a. Make the payments as described in Section 4 of this Agreement.
- b. Agrees to provide City services for the Marathon, ½ Marathon and the finish line festival in Tempe on January __, 2009. These City services are limited to those routinely provided by employees of Tempe and include police, fire, sanitation, and custodial employees, who will implement road closures,

enforce road closures, use road closure equipment, and provide water utilities, public water and emergency medical services, along all portions of the two routes that run in Tempe. Tempe does not provide ambulance services. Sanitation services include clean-up, dumpsters and trash receptacles for all portions of both courses that run on Tempe property.

7. **Additional Obligations.** Tempe will continue to be the exclusive venue for the Post Event Concert (Concert) to be produced by RNR after the running of each Marathon and ½ Marathon. Tempe agrees to provide City services for the Concert in Tempe in January 2009, 2010, 2011, 2012, and 2013. These City services are limited to those services routinely provided by employees of Tempe and include police, fire, sanitation, park maintenance and custodial employees. Tempe does not provide ambulance services.

8. **Special Events Application.** RNR shall comply with the standard permit requirements as set forth in the application for a special event permit, the permit itself and as decided at the Special Event Task Force meeting.

9. **Indemnification.** RNR agrees to indemnify, defend and hold harmless Tempe and/or the TCVB from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') alleging bodily injury of any person (including death) or property damage during the events described in this Agreement, which said claims allegedly may result in vicarious/derivative liability to Tempe and/or the TCVB and/or are caused by the act, omission, negligence, misconduct or other fault of RNR, its officers, officials, agents, employees, contractors and/or volunteers. The amount and type of insurance coverage of the parties shall not limit the scope of the indemnity provisions of this clause. This clause shall continue to be in effect after the termination of this Agreement.

Tempe and/or TCVB agree to indemnify, defend and hold harmless RNR from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') alleging bodily injury of any person (including death) or property damages which occur inside the Tempe city limits during the events described in this Agreement, which said claims allegedly may result in vicarious/derivative liability to RNR and/or are caused by the act, omission, negligence, misconduct or other fault of Tempe and/or TCVB, their officers, officials, agents, employees, contractors and/or volunteers. The amount and type of insurance coverage of the parties shall not limit the scope of the indemnity provisions of this clause. This clause shall continue to be in effect after the termination of this Agreement.

10. **Conflict of Interest.** This Agreement is subject to cancellation under the provisions of Arizona Revised Statutes, Section 38-511.

11. **Compliance with Laws.** RNR in the performance of its activities under this Agreement shall comply with all applicable laws, statutes, ordinances, permits, rules and regulations relating to those activities.

12. **Dispute Resolution.** In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If such a meeting fails to resolve the dispute, then the parties agree that such dispute may be resolved through mediation, if mediation is agreed to by the disputing parties. The disputing parties shall mutually agree upon the services of One (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

13. **Default.** In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If such a meeting fails to resolve the dispute, then the parties agree that such dispute may be resolved through mediation, if mediation is agreed to by the disputing parties. The disputing parties shall mutually agree upon the services of One (1) mediator whose fees and expenses shall be borne equally by the disputing parties. If the dispute is not resolved within a reasonable time, the disputing parties shall be free to use other remedies available to them to resolve the dispute.

If any party or parties should default in the performance of their respective obligations under this Agreement, the party or parties in default shall have a reasonable time, the amount of which shall be mutually agreed to by the affected parties, in which to cure the default. If a cure is not made, the party or parties not in default shall be entitled to remedy the default using any right or remedy at law or equity which would otherwise be available to such party or parties not in default, including bringing any suit or proceeding to enforce the provisions of this Agreement. The prevailing party or parties shall be entitled to their reasonable attorney fees and costs incurred with such an action.

14. **Termination.** Any party may terminate this Agreement in whole or in part upon mutual agreement of the parties. Unless mutually terminated as provided for in this Agreement, any party or parties may terminate this Agreement by written notice to the other parties within sixty (60) days after the initial Marathon of January 11, 2004 or within sixty (60) days after the holding of the Marathon in any subsequent years.

15. **Binding Agreement; Assignment.** This Agreement shall be binding upon the successors and assigns of the parties. However, no party shall have the right to assign this Agreement or any interest in this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

16. **Notices.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, return receipt requested, pre-paid to the party as specified below:

If to Rock 'N' Roll Arizona, Inc.: RNR
5452 Oberlin Drive, Suite B
San Diego, Ca 92121

If to Tempe Convention & Visitors Bureau: TCVB
51 West Third Street, Suite 105
Tempe, AZ 85281

If to the City of Tempe: Tempe
Parks & Recreation
Manager
3500 S. Rural Road
Tempe, AZ 85282

17. **Force Majeure.** In the event the Marathon cannot be held due to calamity, Acts of God, national or local emergency or other events beyond the control of the parties, then the parties may terminate this Agreement by written notice to the other parties at no charge or liability to any party. In such an event, payments which have been made pursuant to this Agreement, shall be returned to the parties making such payments, unless the parties mutually agree otherwise.

18. **Governing Law.** This Agreement shall be governed by the laws of the State of Arizona and any litigation between the parties regarding the Agreement or the performance of any of the obligations contained in this Agreement shall be initiated in Maricopa County, Arizona.

19. **Severability.** If any provision of this Agreement is unenforceable, the remainder of the Agreement shall remain in effect.

20. **Waiver.** No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the party to be bound thereby.

21. **Entire Agreement; Merger.** This Agreement constitutes the entire agreement and understanding of RNR, Tempe and TCVB concerning the Marathon. Any previous understandings between the parties concerning the subject matters referred to in this Agreement are hereby merged into this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless it is in writing and duly signed by the parties.

22. **No Partnership or Joint Venture.** Under no circumstances shall the parties hereto be considered partners or joint venturers. No party shall have the authority to bind or obligate any of the other parties other than as specifically provided in this Agreement.

23. **Cooperation of the Parties.** The parties agree to cooperate in good faith to reasonably complete the obligations set forth in this Agreement.

24. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and such counterparts together shall constitute one and the same document.

25. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of the parties signing it and does not create nor shall it be construed to create rights in other parties. No parties outside of this Agreement may enforce the terms and conditions of this Agreement.

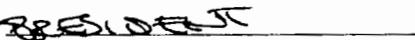
26. **Adoption by Mayor and Council; Authority to Execute Minor Amendments.** This Agreement is subject to adoption by Tempe's Mayor and Council. Upon execution of this Agreement, the Mayor and Council authorize the Parks and Recreation Manager of Tempe to sign other documents or amendments of this Agreement as may be necessary to effectuate this Agreement and further authorize the Manager to act upon any other matters not presently contemplated but which may arise and require Tempe's action in order to effectuate the purpose of this Agreement.

27. **Captions.** The captions and headings of the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of the respective sections.

DATED this ____ day of _____, 2007.

ROCK 'N' ROLL ARIZONA, INC.

By: 

Its: 

TEMPE CONVENTION AND VISITORS
BUREAU

By: Stephanie Nowak
Its: President & CEO

CITY OF TEMPE, an Arizona municipal
corporation

By: _____
Hugh Hallman,
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney