

CLARK COUNTY
STAFF REPORT



DEPARTMENT: Fairgrounds Site Management Group (FSMG)
DATE: October 14, 2014
REQUEST: Approve the contract for renewal of the year-round operations of the Clark County Event Center

CHECK ONE: X Consent CAO

BACKGROUND: The purpose of this Contract is to provide for the operation of the Clark County Event Center (CCEC) consistent with the goals of the County. The CCEC shall be operated in the public interest. It has been developed by the County to create positive economic impact and stimulate economic growth for the region and FSMG recognizes this goal in its management of the site. The County seeks to protect the investment in the site, and requires FSMG to support this objective through high quality operation and maintenance of the Site. The County further seeks to encourage FSMG to operate the site in such a manner that makes the site operations self-supporting and significantly contribute to debt service for the site improvements.

COMMUNITY OUTREACH: This contract continues the very successful operation of the Clark County Event Center. In addition to the positive economic impact the Event Center has on the local community, it continues the current operation of the Clark County Fair for the public and this entire region. Community outreach is achieved by the 26 constituent groups represented on the Fair Board.

BUDGET AND POLICY IMPLICATIONS: This action requested falls within existing budget authority and within salaries/benefits and/or non-salary/benefits.

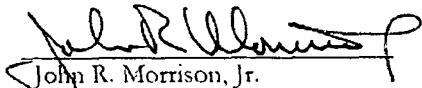
FISCAL IMPACTS

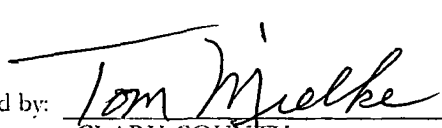
☐ Yes (see attached form) ☒ No

ACTION REQUESTED: Please approve the renewal of the contract between Clark County and the Fairgrounds Site Management Group

DISTRIBUTION

County Administrator, Mark McCauley
Prosecuting Attorney's Office, Chris Horne
Clark County Auditor's Office, Mark Gassaway


John R. Morrison, Jr.
Executive Director
Clark County Event Center

Approved by: 

CLARK COUNTY
BOARD OF COMMISSIONERS

Date: 10-14-14
SR #: 226-14



SITE MANAGEMENT CONTRACT

FG 14-49

THIS CONTRACT is made and entered into by CLARK COUNTY, hereinafter referred to as "County," and the FAIRGROUNDS SITE MANAGEMENT GROUP, a Washington not-for-profit corporation ("FSMG").

WHEREAS, the County owns and contracts for the operation and management of the Fairgrounds site located at 17402 NE Delfel Road, Ridgefield, Washington exclusive of the Clark County amphitheater (the "Site"); and

WHEREAS, the County and FSMG desire to reduce to writing their Contract concerning the management, operation and maintenance of the Site;

NOW, THEREFORE, in consideration of the mutual covenants, hereinafter specified to be kept and performed by the parties hereto;

IT IS HEREBY AGREED, by and between the County and FSMG as follows:

I. PURPOSE

The purpose of this Contract is to provide for the operation of the Site consistent with the goals of the County. The Site shall be operated in the public interest. The Site has been developed by the County to create positive economic impact and stimulate economic growth for the region and FSMG recognizes this goal in its management of the Site. The County seeks to protect the investment in the Site, and requires FSMG to support this objective through high quality operation and maintenance of the Site. The County further seeks to encourage FSMG to operate the Site in such a manner that makes the Site operations self-supporting and significantly contribute to debt service for the Site improvements.

II. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- a. "Annual Plan" shall mean a contract deliverable that includes information regarding FSMG's anticipated operations for the upcoming Operating Year, including planned operating maintenance activities, expense control initiatives, requested capital improvements and capital equipment purchases, anticipated events at the Site, anticipated advertising and promotional activities, and planned equipment and furnishings purchases.
- b. "Appropriation Deficiency Notice" shall be a notice given to the FSMG notifying them of the fact that insufficient funds or no funds have been appropriated for the Site.
- c. "Capital Expenditures" shall mean all expenditures for building additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$10,000.
- d. "FSMG" shall mean the Fairgrounds Site Management Group and shall include all employees of the FSMG.
- e. "County" shall mean Clark County, any division, section, office, unit or other entity of the County, or any of the officers or other officials lawfully representing that County.
- f. "Laws" shall mean all federal, state, local and municipal statutes, rules, laws and constitutional provisions.
- g. "Operating Expenses" shall mean any and all expenses and expenditures of whatever kind or nature incurred, directly or indirectly, by FSMG in promoting, operating, maintaining and managing the Site, including, but not limited to: supplies, material and parts costs, costs of any interns and independent contractors, advertising, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, the costs of procuring and maintaining the insurance and fidelity bond, amounts expended to procure and maintain permits and licenses, charges, taxes, excises, penalties and fees, professional fees, printing and stationery costs, event expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, repairs and maintenance costs, security expenses, utility and telephone charges, travel and entertainment expenses in accordance with FSMG's policies, the cost of employee uniforms, safety and medical expenses, exterminator and waste disposal costs, costs relating to the maintenance of signage inventory and systems, the cost of annual independent audits of the Site, the cost of compliance with laws and regulations, costs incurred under Contracts, commitments, licenses and contracts executed in FSMG's name.

"Operating Expenses" shall not include amounts payable to FSMG pursuant to this Contract, as reimbursement for employee compensation which will be paid as provided in Section VII of this Contract.

h. "Operating Revenue" shall mean any and all revenues of every kind or nature derived from owning, operating, managing or promoting the Site, including, but not limited to: license, lease and concession fees and rentals, revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, parking revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, the amount of such revenues ultimately paid by the concessionaire to FSMG shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractor (however, if such revenues are collected in the first instance by and retained by such subcontractor, the amount of such revenues ultimately paid by such contractor to the Site shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate Contracts with FSMG Affiliates pertaining to the Site, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis.

i. "Operating Year" shall mean one full fiscal year period beginning January 1st and ending December 31st.

j. "Site" shall mean that property owned by the County located at 17402 NE Delfel Road, Ridgefield, Washington and all improvements thereto, excluding the Clark County amphitheater.

k. "Subcontractor" shall mean one not in the employment of the FSMG, who is performing all or part of those services under this contract under a separate contract with the FSMG.

III. TERM

The term of this Contract shall be for a period of ten (10) years from the date of its execution. Provided, that either party may terminate this Contract, without cause or penalty, by providing the other party with 180 days prior written notice of their intention to terminate. Upon the fifth anniversary of this Contract, the parties will review the performance of FSMG both from a qualitative and economic perspective. Factors considered will include FSMG's adherence to budget and performance relative to revenue projections.

IV. POSSESSION OF THE SITE

Clark County grants to FSMG the right to manage, operate and maintain the Site as provided herein as of January 1, 2015, which right shall continue until this Contract is terminated as provided herein, subject to the possessory rights conveyed to Quincunx, LLC in that lease recorded under Auditor's Recording No. 3503865 and the conditional use permit occupancy limits as related to operations of the fairgrounds site which permit is recorded under the aforementioned Auditor's Recording No. 350386.

V. SERVICES

Scope of Work

FSMG shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work. The County retains the right to review and approve marketing plans, operation plans, annual goals and objectives and any other documents that support the FSMG's services, staff and performance of work pertaining to the operation of the Site. An outline of the scope of services is set forth below:

A. Sales and Marketing Services

Within budgets approved by the County as described below, provide, or cause to be provided, sales and marketing services for, the Clark County Fair, trade shows, conferences, community events and other events as may be appropriate for the Site. Such services shall include but not limited to the following:

1. Scheduling the County Fair and other events, negotiating contracts and confirming event bookings. Work in cooperation with the Clark County Fair Association in the holding of the annual Clark County Fair.
2. Prepare an Annual Plan to be submitted to the County each November. The Annual Plan will include information regarding FSMG's anticipated operations for the upcoming Operating Year, including planned operating maintenance activities, expense control initiatives, requested capital improvements and capital equipment purchases, anticipated events at the Site, planned

equipment and furnishings purchases, marketing initiatives and anticipated advertising and promotional activities designed to maximize the revenue for existing events as well as promote the Site to potential new customers. The plan shall be subject to review, comment and approval by the County. Following review and revision by the County, FSMG shall have thirty (30) days to incorporate the County's revisions into the Annual Plan and present same to the County for final approval. Upon final approval, the Annual Plan shall constitute the operating program for FSMG for the coming Operating Year.

3. Conduct market research to include customer satisfaction surveys of patrons and clients and report results to the County.
4. Create promotional materials, floor plans, maps and other materials used to market the Site.
5. Develop forms, subject to the approval of the County, to contract for all Site rentals, and other event services for events as required.
6. Provide, or cause to be provided, all incidental services required in conjunction with events, for example food service, concessions, AV services, telecommunications/data services, parking services, ticketing services and other related or required services.
7. Develop as a part of the annual budget for the Site Operating Revenue projections related to rental/charge structures for the various facilities of the Site, equipment and services provided by the center and outside contractors, subject to the approval of the County.
8. Marketing the Site through the internet, including the development and maintenance of a web site designed to increase the exposure of the Site.
9. The County shall retain the rights to any Intellectual Property developed on behalf of the County (including, without limitation, the web page and the contents thereof developed for the Site and the County), in addition to any other information or data relating to the Site.
10. Negotiate and enter into, on County's behalf, contracts for the use of the Site which comply with I.R.S. regulations, if applicable, for the use of tax exempt financed public facilities.

B. Operating Services

Within budgets approved by the County, ensure that the Site is maintained in good order and repair and in a clean, safe and sanitary condition, which shall include, but not be limited to:

1. Provide ordinary maintenance services for all grounds keeping, housekeeping, custodial and other maintenance services in public areas, yards, walkways and parking lots of the Site.
2. FSMG shall require the promoters of events at the Event Center to control parking of commercial vehicles associated with their events and not permit them to park on any private property adjacent to the Site. If commercial parking occurs on private property adjacent to the Site, said vehicles shall be moved within one hours notice. Should this not occur, the promoters shall be charged a fee of one hundred dollars (\$100) for the first hour of non-compliance, three hundred dollars (\$300) for the second and third hour and five hundred dollars (\$500) per day for any time after four hours of non-compliance, per incident plus actual damages. The amounts collected shall be paid to the owner of the adjacent private property, if requested by such owner.

C. Administrative Services

Within budgets approved by the County, provide the following administrative services required in the operation of the Site:

1. Prepare all policies and procedures required for successful operation of the Site.
2. Coordinate with the Clark County Fair Association regarding the promotion, scheduling and production of the annual Clark County Fair.
3. Administer all contracts required in the ordinary course of business for, but not limited to, services, events, concessions, catering, novelties/merchandise, advertising, and equipment. All agreements related to the Exhibition Hall must comply with rules limiting the private business use of tax exempt bond financed properties, including the applicable guidelines of Rev. Proc. 97-13.
4. Ensure that insurance requirements of the County are met by rental clients.
5. Annually inform the County as to the proposed establishment of prices and policies, rates and rate schedules for space rental, leasing and booking contracts, advertising contracts, concession contracts and other conference/convention center commitments which the Executive Director will be responsible for negotiating. Rates and fees are subject to approval by the County.
6. Advise the County on new or potential changes to sources of Operating Revenue, partnerships, prices and other factors that will add to the financial success of the Facilities.
7. Provide or cause to be provided all security services required by the Site and by events.

8. Maintain an adequate staff of courteous employees on duty at the Site and provide appropriate supervision and training of such employees. Employees hired by the FSMG will be employees of the entity and not of the County. FSMG will be responsible for all personnel related matters to include compensation, labor relations with any union or association, employee training and development, contract negotiation, dispute resolution, provision of required employee uniforms and equipment, employee hiring, job assignment, performance evaluation and compliance with equal employment opportunity requirements.

9. Collect all revenues generated through the operation of the Site. All Operating Revenues collected by the FSMG from operation of the Site shall be the sole property of the County and while in FSMG possession will be held in trust by FSMG for the County for application as provided for in the budget and cash flow provisions herein. All Operating Revenues derived from operation of the Site shall be deposited by FSMG into a County account maintained at the Umpqua Bank (formerly Sterling, formerly First Independent Bank) or at a bank designated by the county treasurer in writing, as soon as practicable upon receipt (but not less often than once each business day whenever \$300.00 or more of Operating Revenue is received during the business day). The County will transfer all Operating Revenues deposited into the account to the county "Event Center Fund" (Fund 1003).

10. As consistent with the Operating Budget, make arrangements necessary for the proper management, operation, maintenance and supervision of the Site, including incurring Operating Expenses as required to operate the Site. FSMG shall submit documentation to the County Auditor to support the payment of Operating Expenses from the Event Center Fund which shall be consistent with the approved budget and in accordance with County procurement policies, where practicable. For those County Fair entertainment expenses and other Fair expenses which must be paid immediately, FSMG may make payment from a separate county revolving account as authorized by the Board of County Commissioners; provided the "other fair expenses" shall not exceed \$10,000.00 per year. Otherwise, Operating Expenses must be paid through the Auditor's office using the FMS purchasing/payables system. The specific procedures for making deposits and submitting requests for payment and reimbursement shall be established by the County.

11. Assist the County in developing and implementing rules, regulations, policies and procedures, which may impact the use of the Site.

12. Provide insurance coverage as specifically defined herein.

D. Operating Budgets

1. *Establishments of Biannual Operating Budgets.*

a. FSMG agrees it will prepare and submit to the County, at such times as directed by the County in order to be reviewed and approved as a part of the County budget cycle, a biennial budget (in a form acceptable to the County) for the operation of the Site (the "Operating Budget"). Currently, department budgets must be submitted in July. Because the County Fair occurs in the first week of August, it is anticipated that FSMG's budget will be submitted by a date mutually agreeable to the County and FSMG. Adjustments to the budget can be made during the allowed opportunities in the readopt and supplemental processes. Each biennial Operating Budget shall include a projection of Operating Revenues and Operating Expenses, presented on an annual basis, and the projected Net Operating Loss or Profit for such Operating Year. The County agrees to take reasonable commercial steps to provide FSMG, subject to any limitations of applicable law, with all information in its possession which the County reasonably believes is necessary to enable FSMG to prepare the Operating Budgets.

b. The Operating Expenses in each annual Operating Budget shall be payable by the county auditor with funds from the Event Center Fund, or from funds otherwise provided by the County, pursuant to the terms hereof.

2. *Approval of Operating Budget.*

a. The County and FSMG will use reasonable efforts to cooperate with each other in the preparation of the Operating Budgets. In the event of any disagreement regarding expenses or the aggregate amounts included in a proposed Operating Budget, or any proposed amendment thereto, the County and FSMG shall engage in discussions and use reasonable efforts to attempt to resolve such matter to the mutual satisfaction of the parties, provided, that such discussions shall not obligate the parties to resolve such matter, nor affect the County's right to approve the Operating Budgets or any amendments thereto in its sole discretion, as provided below.

b. Notwithstanding the terms of paragraph (a) above, each biennial Operating Budget shall be subject to the final review and approval of the County, which approval may be withheld or granted in its sole discretion. In the event a proposed Operating Budget has not been approved prior to the first day of the period to which it relates, the Operating Budget shall be the budget designated by the County, provided that FSMG shall have ten (10) days after the County designates such Operating Budget within which to issue a termination notice if, in its good faith reasonable judgment, it determines that the monies allocated to such Operating Budget will be insufficient for FSMG to perform its obligations under this Contract. Any such termination notice must provide ninety (90) days notice in advance of the effective date of the termination.

A failure by FSMG to perform its obligations under this Contract shall not be a breach of or default under this Contract if such breach or default is solely and directly caused by the County's failure to appropriate sufficient funds for the management, operation and promotion of the Site. In order for the County to fully evaluate and analyze such budget or any other request by FSMG relating to income and expense, FSMG agrees to provide to the County such reasonable financial information relating to the Site as may be requested by the County from time to time.

c. If extraordinary events occur during any Operating Year which could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, FSMG may submit an amendment to such budget for review and approval by the County, which approval may be withheld or granted in its sole discretion. Any amendment shall only apply prospectively.

d. In the event that it appears reasonably likely, in any Operating Year during the Term, that the actual net operating income for an Operating Year will be less than projected in the Operating Budget for that Operating Year, the County may either prepare an amended Operating Budget that will be adopted and prospectively adhered to by FSMG or request that FSMG prepare a plan for reducing Operating Expenses to a level specified by the County. FSMG shall forthwith comply with any such expense reduction requested by the County and the approved budgets for such Operating Year shall be modified accordingly, provided that FSMG shall have ten (10) days after the County designates such Operating Budget within which to issue a termination notice if, in its good faith reasonable judgment, it determines that the monies allocated to such Operating Budget will be insufficient for FSMG to perform its obligations under this Contract. Any such termination notice must provide ninety (90) days notice in advance of the effective date of the termination. FSMG shall not be construed to have breached its obligations under this Contract if the alleged breach is solely and directly caused by the limitations of an amended Operating Budget as set forth in this paragraph.

e. If required by bond counsel to the County or counsel to the underwriters, FSMG agrees to make modifications to this Contract so that the same is, in the opinion of such counsel, a qualified management contract for purposes of Revenue Procedure 97-13 promulgated by the Internal Revenue Service. In the event such modifications shall materially increase FSMG's obligations hereunder or materially decrease FSMG's rights or economic benefits hereunder, FSMG and the County will cooperate with each other in good faith for a period of fifteen (15) days in an effort to amend the Contract and preserve the economic benefits of both parties hereunder in a manner that is satisfactory to FSMG, County and the County's bond counsel, each acting in their sole discretion. To the extent the parties do not amend this Contract within such fifteen (15) day period, FSMG shall have the right to terminate this Contract upon not less than ninety (90) days prior written notice to the County, which right may be exercised by FSMG

providing such termination notice to the County within ten (10) business days after expiration of the fifteen (15) day negotiation period. If FSMG timely exercises its right of termination under this paragraph, FSMG shall continue to perform its obligations hereunder through the date of termination and the County shall continue to pay FSMG through the date of termination in accordance with this Contract.

3. *Adherence to Operating Budget.*

FSMG shall manage and operate the Site in accordance with the Operating Budget. Without the prior consent of the County, FSMG shall not exceed, commit or contract to expend any sums in excess of the amounts allowed in the Operating Budget or otherwise approved by the County, except (i) for Operating Expenses for services provided to the Site by third parties, the cost of which is not within the reasonable control of FSMG, such as the costs of utilities and insurance; (ii) approved Emergency Repairs; (iii) increased costs resulting from the scheduling by FSMG of additional revenue producing events or activities at the Site, so long as prior to the scheduling or such events or activities, FSMG had a good faith belief that the projected net operating income for the Operating Year as set forth in the applicable Operating Budget would be increased as a result of such additional events or activities. Unless previously approved by the County, if FSMG incurs any Operating Expenses in excess of an Operating Budget in violation of this Section, the County may terminate this Contract by giving thirty days prior written notice of its intent to do so.

E. Capital Expenditures

As discussed above, FSMG shall identify capital needs. FSMG shall annually, at the time of submission of the annual Operating Budget to the County, provide to the County for its approval, which may be granted or withheld in its sole discretion, a budget of anticipated capital improvements necessary at the Facilities and requiring a Capital Expenditure (as defined below) in the coming budget cycle. Such budget shall also contain an annual five (5) and ten (10) year Capital Expenditure forecast for the purpose of allowing the County to consider for inclusion of such forecasts in its future Capital Expenditures budgets and/or for establishment of a capital reserve account. The County shall be solely responsible for all Capital Expenditures at the Site; provided, however, that the County shall be under no obligation to make such Capital Expenditures. FSMG shall have no authority to make any material alterations or any capital

improvements to the Site, unless otherwise requested by the County in writing and subject to the County making the necessary funds available therefore in the Capital Expenditures budget.

F. Non-Funding

1. Notwithstanding anything contained herein to the contrary, the County shall have no obligation to provide funds for the payment of Operating Expenses incurred or committed for after the date FSMG receives written notice (an "Appropriation Deficiency Notice") of the fact that insufficient funds or no funds have been appropriated for the Facilities, except for Operating Expenses that were contracted, incurred or committed for prior to FSMG's receipt of the Appropriation Deficiency Notice.

2. If the Appropriation Deficiency Notice is of insufficient funds, the County shall pay all Operating Expenses incurred or committed for after such dates that are within the aggregate level of appropriated funds specified in the Appropriations Deficiency Notice. The County shall pay all Operating Expenses incurred or committed for prior to the date FSMG receives the Appropriation Deficiency Notice. Any failure by the County to provide funds (beyond the aggregate level of appropriated funds) for the payment of Operating Expenses incurred or committed for after FSMG receives an Appropriations Deficiency Notice shall not be a breach of or default under this Contract by the County. Except for Operating Expenses that are incurred or committed for after the date FSMG receives the Appropriations Deficiency Notice, any failure by FSMG to perform its obligations under this Contract shall not be a breach of or default under this Contract if such breach or default is directly caused by the County's failure to appropriate sufficient funds for the management, operation and promotion of the Facilities.

3. If the County appropriates funds at (or reduces appropriated funds to) a level that, in FSMG's good faith reasonable judgment, renders the management of the Facilities as contemplated in the Contract not feasible, FSMG and the County shall meet as necessary to formulate a plan to continue management of the Facilities at a reduced level of services consistent with anticipated Operating Revenues and available funding. If the parties are unable to agree on such plan in fifteen (15) days after commencing such discussions, either party may terminate this Contract without liability or penalty by providing sixty (60) days prior written notice.

G. Reporting/Audit Requirements

FSMG shall carry out the following reporting and audit activities:

1. Prepare monthly reports for the FSMG Board regarding the use and operation of the Facilities. These reports must include information on the activities associated with the operation, management, supervision and maintenance of the Site as well as financial analysis of how the Site is operating, a list of upcoming events, a discussion of operating and maintenance issues or concerns, anticipated changes in management, operations or maintenance activities and other information as appropriate or as requested by the County. The reports shall identify and explain any expenses which exceed budgeted expenses for such category by ten (10%) percent or the aggregate budgeted Operating Expenses in the Operating Budget (including any amendments thereto, if any) by five percent (5%) without the prior written approval of the County. FSMG shall immediately report in writing to the County any anticipated expenditures that may exceed the aggregate budgeted Operating Expenses in the Operating Budget. The report shall also identify and explain any shortfalls in revenue that exceed the projected revenues identified in the biannual budget by ten (10%) percent, the reports must account for expenses and revenues that are attributable to the operation of the Exhibition Hall separately from the remainder of the Site. The auditor or his representatives shall have reasonable access to information supporting expenses and revenues including all books, records or other documents of FSMG.

2. Prepare a separate Fair Report each year after the annual Fair that details the operation of the Fair, its activities to include attendance, revenues, expenses and projected profit/loss estimates. This report will be presented to the Fair Board, the FSMG Board and the Board of County Commissioners at their discretion.

3. On an annual basis conduct revenue and expense testing performed by an independent agent/agency. By prior mutual agreement, this testing may be accomplished by the Clark County Auditor's Office. The revenue testing shall consist of a sampling of fifteen days of operation as specified by the Clark County Auditor's office. If the testing is accomplished by an agent/agency other than the Clark County Auditor's Office and is not done in a timely manner or to the County's reasonable satisfaction, the County may contract this service and bill FSMG. If the required testing reveals significant departures from the procedures called for in this Contract, the County may, at FSMG expense, require additional testing.

4. The County shall have the right at reasonable times to examine and inspect books and records of FSMG bearing upon or connected with the business conducted upon the Site to determine compliance with the provisions of this Contract. If FSMG conducts business operations at a location outside the Site, FSMG shall adopt an accounting system to accurately reflect the gross receipts derived from the Site. FSMG shall be provided by the County Auditor's office an annual financial statement for each calendar year prior to April 1st of each year.

VI. COUNTY'S RESPONSIBILITIES

During the term of this Contract, the County's responsibilities shall be as follows:

1. The County shall permit FSMG to occupy the Site and cooperate with FSMG to enable them to accomplish the tasks set forth in this contract;
2. The County shall:
 - a. Monitor and evaluate FSMG performance for compliance with terms of this Contract;
 - b. Make payments due to FSMG in a timely manner;
 - c. Periodically inspect the Site to determine if custodial functions are adequate;
 - d. Establish a schedule of preventative maintenance and renovation to maintain the Site in superior condition;
 - e. Carry out painting and structural maintenance and repair work on the Site, including maintenance and repair of roofs, ceiling, doors, windows, floors and walls (both interior and exterior);
 - f. The County retains the responsibility for the maintenance and repair by competent and qualified employees of all HVAC, mechanical, telephone, computer, electrical and plumbing systems.
 - g. Maintain property insurance on the improvements located on the Site in accordance with County policies.
 - h. The County will make transfers from the Fairgrounds Fund to other appropriate County funds to cover the cost of fulfilling its responsibilities with respect to the Site.

VII. PAYMENTS TO FSMG

The County will, on a per pay period basis, transfer into the FSMG payroll account the salaries, wages and payroll taxes of FSMG employees up to the actual amount due that pay period. The payments shall be made from the Event Center Fund. At the end of each year, the actual paid salaries, wages and taxes shall be reconciled to the budget amounts. The salaries,

wages and benefits set forth above shall be inclusive of any and all taxes, FICA, Medicare, workers compensation and employment security contributions which FSMG may incur as a result of the operation and maintenance of the Site. FSMG shall pay any and all such taxes and fees as they become due and shall hold the County harmless there from. All salaries and wages shall be in amounts not more than the fair market value for such services and in no case shall salaries be based on a share of net profits.

VIII. KEY PERSONS

The FSMG Executive Director/Fair Manager/CEO is key to the successful operation of the Site and the Clark County Fair. The County acknowledges the importance of having that position filled by an individual that is acceptable to both the FSMG Board of Directors and the Clark County Fair Board.

Therefore, upon an opening, the FSMG Board of Directors shall conduct an interview and hiring process of candidates for the Executive Director/Fair Manager/CEO position.

IX. BYLAWS

FSMG shall not amend its bylaws as they relate to the appointment of the members of its Board of Directors without the prior written consent of the County.

X. COMPLIANCE WITH LAWS

FSMG shall comply with all applicable federal or state laws and County ordinances and with applicable directions, rules and regulations of public officials and departments in the enforcement of County ordinances and with directions, rules and regulations from the State of Washington or from the United States with respect to any portion of the Site.

XI. FEES FOR USE OF SITE

The fees to be charged for the use of the Site shall be determined by FSMG with the approval of the FSMG Board of Directors. The fee schedule shall address the use of the various components of the Site. FSMG shall propose fees in writing to the County by June 1st for the

next year. The County will review the fee proposal with FSMG. FSMG may develop promotional fees schedules which it shall submit to the County for approval. On any ongoing promotion, the County shall review such schedules within fifteen (15) days of their receipt. On any promotion which will last less than one week, the County shall review the schedules within forty-eight (48) hours. Approval shall not be unreasonably withheld. The failure to respond to a proposed promotion within fifteen days shall constitute approval.

XII. LOGO AND NAME

FSMG shall obtain County approval prior to using any logo or name associated with the Site.

XIII. ADDRESSES FOR NOTICES

Unless otherwise directed in writing, notices shall be made to the County at the following address:

Clark County
Department of General Services
P.O. Box 5000
Vancouver, WA 98666-5000

to FSMG at the following address:

FSMG
17402 NE Delfel Rd
Ridgefield, WA

Notices sent by mail shall be deemed given on the date of the postmark affixed by the United States Post Office.

XIV. ASSIGNMENT OF CONTRACT

FSMG shall not assign or transfer this Contract nor otherwise convey any right or privilege granted hereunder or any part of the Site without first obtaining the written consent of the County. Neither this Contract nor any right, privilege or interest herein shall be transferable by operation of law or by any process or proceeding of any court.

XV. EQUALITY OF TREATMENT

1. FSMG shall conduct its business in such a manner which assures fair, equal and nondiscriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age, sexual orientation, or national origin. No person shall be refused service, be given discretionary treatment, or be denied any privilege, use of facilities, or participation in activities on the Site on account of race, color, religion, sex, age, sexual orientation, or national origin.
2. The parties recognize the need to provide a safe, family-oriented facility for use by the public in a safe atmosphere where the public feels free to enter and leave the facility unmolested, therefore FSMG is authorized to take actions necessary to achieve these goals.

XVI. LIENS AND ENCUMBRANCES

FSMG shall keep the Site free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Site. At the County's request, FSMG shall furnish the County written proof of payment of any item which would or might constitute the basis for such a lien on the Site, if not paid.

XVII. TERMINATION

Upon termination of this Contract, FSMG shall release, transfer, assign, and quitclaim all of the assets of the Site and personal property used on the Site provided any claim FSMG may have for compensation for services will survive such transfer. Additionally, FSMG shall endeavor to transfer any assets that are in the name of the Clark County Fair Association to the County.

1. *Assets to be Transferred.* Said assets shall include, but shall not be limited to, all of FSMG right, title and interest, if any, to any of the following arising out of activities of the Site, advances from the County, or revenues of the Site (other than insurance proceeds relating to liabilities not required to be assumed by the County). Such assets include but are not limited to the following:

- a. Cash and cash equivalents, including the Gross Revenue Fund;
- b. Accounts receivable;
- c. Other receivables;
- d. All equipment, furniture, fixtures, inventory and supplies;
- e. Pre-pays and deposits;
- f. Contract rights;
- g. Trade names;
- h. Phone numbers used for Site operations;
- i. Books and records; and
- j. Goodwill.

2. *Closing.* The transfer of assets and payment of any sums due FSMG shall occur on or within ninety (90) days following the date on which this Contract is terminated.

XVIII. INDEMNITY

FSMG is not an agent or employee of the County and all activities relating to the Site shall be in its capacity as an independent FSMG to the County.

FSMG agrees to indemnify, hold harmless and defend the County, its officers, agents and employees, from and against all liability for any and all claims, liens, suits, demands or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's fees and other reasonable costs arising out of or resulting from FSMG negligence or intentional acts.

The County agrees to indemnify, hold harmless and defend FSMG, its officers, agents and employees, from and against all liabilities for any and all claims, liens, suits, demands or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorney's and other reasonable costs arising out of or resulting from the negligence or intentional acts of the County or its officers or employees. FSMG and the County will provide each other with prompt and timely notice of any event covered by the indemnity section of this Contract and in the event a claim or action is filed, each

party may employ attorneys of its own choosing to appear and defend the claim or action on its behalf.

XIX. INSURANCE

FSMG agrees to obtain public liability insurance naming the County as additional insured of the types and of the amounts set forth below. FSMG shall furnish to the County certificates of insurance or copies of the policies evidencing the required insurance on the effective date of this Contract and shall thereafter furnish new certificates thirty days (30) prior to the expiration date of the previous certificates.

The type and amount of insurance to be obtained is as follows:

1. Commercial General Liability Insurance: FSMG shall maintain general liability (CGL) insurance with a limit of not less than \$1,000,000 per person and not less than \$5,000,000 per each occurrence and in the aggregate. CGL insurance shall be written on ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including contract liability), and contain separation of insured (cross liability) condition. This coverage is to be paid through the County Risk Management budget.
2. Fidelity Insurance covering all employees and officers having access to moneys collected - \$125,000.00.
3. D & O Insurance - FSMG shall obtain a policy of D & O insurance in amounts of not less than \$1,000,000.00.
4. Tenant Users Liability Insurance Policy (TULIP) in the same limits as specified in para 1 above.
5. Fire insurance on the structures at the Site is furnished as part of the County insurance plan.

Additionally, the FSMG is responsible for ensuring that any Subcontractor provide adequate insurance coverage for the activities arising out of subcontracts.

To the extent that any of the foregoing insurance is provided on a claims-made basis, FSMG shall purchase a "tail" to insure that such coverage will survive the termination of this Contract for at least three (3) years following the date of termination.

A. Additional Provisions.

Above insurance policy shall include the following provisions:

1. Additional Insured. The County shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies as their interests may appear. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the County.

Additionally, the FSMG is responsible for ensuring that any Subcontractor or vendor provide adequate insurance coverage for the activities arising out of such subcontract or vending Contract, and provide evidence of no less than \$1,000,000 General Liability Limits for such subcontract or Contract and the County is to be added as Additional Insured.

2. Cancellation. The County shall be provided written notice before cancellation or nonrenewal of any insurance referred to therein, in accord with the following specifications: The insurer shall give the County 30 days advance notice of cancellation or non-renewal.

3. All insurance and bonds should be issued by companies admitted to do business within the State of Washington and have a rating of A, Class X or better in the most recently published edition of AM Best's Reports. Any exception shall be reviewed and approved by County's Risk Manager before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapter 48.15 RCW and 284-15 WAC. The County shall have the right to demand replacement insurance if the rating of FSMG's insurance rating falls below A in the most recently published edition of AM Best's Reports.

XX. ADDITIONAL REMEDIES

In addition to any remedies set forth in this Contract, in the event of a default of the terms of the Contract, the County may notify FSMG of its failure to perform, setting forth the specific nature of the failure and giving FSMG an opportunity to cure the failure within a reasonable time which shall be stated in the notice. In the event that FSMG fails to cure the default within the

time stated in the notice, the County may assess a non-performance penalty against FSMG in the amount of \$100.00 per failure per day. The County may deduct any penalties assessed from the payments due and owing to FSMG.

XXI. JURISDICTION AND VENUE

Any action related to this Contract shall be brought in the Clark County, Washington Superior Court.

XXII. ATTORNEY FEES

In the event that any action is filed related to this Contract, each party shall be responsible for its own attorney' fees and costs.

XXIII. ENTIRE CONTRACT

This Contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

Nothing contained in this Contract shall be deemed to give any third party any claim or right of action against the County or the FSMG which does not otherwise exist without regard to

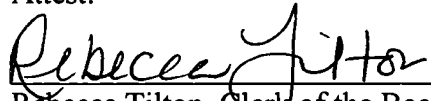
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this Contract.

IN WITNESS WHEREOF this Contract has been entered into as of the date first written above.

ADOPTED this 14th day of October, 2014.
~~December~~

Attest:


Rebecca Tilton, Clerk of the Board

FAIRGROUNDS SITE MANAGEMENT GROUP

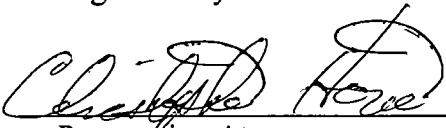
By: _____

Name: _____


Its: _____

Approved as to Form Only

ANTHONY GOLIK
Prosecuting Attorney

By: 
Deputy Prosecuting Attorney

BOARD OF COUNTY COMMISSIONERS
FOR CLARK COUNTY, WASHINGTON

By: 
Tom Mielke, Chair