

ARF-52256

Discussion Item

REGULAR SESSION AGENDA

Purchasing

Meeting Date: 07/26/2022

TITLE: Agreement with Stonehenge for RFQ 22-071

Submitted By: Jaime Kovar, Purchasing

Originals for signature: Yes Require Form 1295: Y

Rush Item:

Date Approved by County Attorney: 07/20/2022 County Attorney Initials: MS

Information

SUMMARY OF ITEM:

Take all appropriate action on Asset Management Agreement between Fort Bend County and Stonehenge Asset Management, LLC, pursuant to RFQ 22-071, Facilities Operations and Management Services for the EpiCenter Project, in an amount not to exceed \$25,545,115.00 effective July 26, 2022 through July 25, 2032. (Fund: EpiCenter Enterprise Fund)

NAME OF FUND SOURCE:

Accounting Unit, Project or Grant Name;
Account Name;

SPECIAL HANDLING/DOCUMENT PROCESSING INSTRUCTIONS:

N/A

Attachments

Agreement

ASSET MANAGEMENT AGREEMENT

THIS ASSET MANAGEMENT AGREEMENT (the “Agreement”) is made and entered into as of the ___ day of _____, 2022 (the “Effective Date”), by and among Fort Bend County, Texas, a body politic and political subdivision of the State of Texas (the “County”), Stonehenge Holdings Asset Management, LLC, a Texas limited liability company (together with its permitted successors and assigns, the “Asset Manager”). Each of the foregoing entities may individually be referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

Whereas, the County is the owner of certain real property (the “Property”) located in the City of Rosenberg, in Fort Bend County, Texas, described on Exhibit “A” attached hereto; and

Whereas, the County has leased the Property to CFC-Epicenter Properties LLC, an Arizona limited liability company (the “Borrower”) pursuant to a ground lease dated as of June 21, 2021 (the “Ground Lease”) for the purpose of developing, constructing, financing, owning, and operating a multi-purpose convention and special events facility thereon (the “Project”); and

Whereas, the Project has been financed by the proceeds of certain revenue bonds issued by Greater Texas Cultural Education Facilities Finance Corporation (the “Issuer”), designated its “Greater Texas Cultural Education Facilities Finance Corporation Lease Revenue Bonds (Epicenter Multipurpose Facilities Project) Series 2021A and Greater Texas Cultural Education Facilities Finance Corporation Lease Revenue Bonds (Epicenter Multipurpose Facilities Project) Taxable Series 2021B” (the “Bonds”); and

Whereas, the Bonds were issued pursuant to a Trust Indenture dated as of June 21, 2021 (the “Trust Indenture”) between the Issuer and Amegy Bank of Texas, as Trustee (the “Trustee”), and the proceeds thereof loaned to the Borrower pursuant to a loan agreement between the Issuer and Borrower (the “Loan Agreement”) dated June 21, 2021; and

Whereas, the Borrower has entered into a lease agreement with the County dated June 21, 2021 (the “Facilities Lease”), whereby the Borrower leases the Property and the completed Project to the County to use and operate the Project; and

Whereas, the County desires to engage the services of Asset Manager to assist the County in the operation and management of the Project pursuant to RFQ 22-071, and the Asset Manager has agreed to provide such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereto hereby agree as follows:

Section 1. Scope of Work.

1.1 Engagement of Asset Manager. County hereby engages Asset Manager to perform the scope of asset management services described herein (the “Services”), which Services are more particularly described in Exhibit “B” attached hereto and incorporated by reference for all purposes. Asset Manager hereby accepts such engagement subject to and in accordance with the terms and conditions herein specified. Asset Manager will perform the Services in accordance with applicable professional standards and in compliance with all applicable federal and state laws, in each case, in all material respects. Asset Manager will not intentionally or negligently do any act that would damage or potentially damage the goodwill, reputation, business or affairs of the County. All services that Asset Manager provides to the

County during the Term of this Agreement shall be deemed to be Services required by this Agreement and consideration for the compensation provided for herein. Asset Manager shall obtain and maintain all necessary permits, licenses and governmental and professional approvals, permits, licenses and designations necessary for Asset Manager to carry out its obligations and to provide the Services under this Agreement.

1.2 Dealings with Third Parties. Asset Manager shall deal at arms' length with all third parties and shall serve the County's interests in such dealings. Asset Manager shall not accept or knowingly receive, for its own benefit, any commissions, reductions, finder's fees or other concessions in connection with the Project and shall use its best efforts to prevent any of its affiliates or employees, officers, members or agents from receiving same. Notwithstanding the foregoing, the County understands and acknowledges that Stonehenge Holdings, LLC, a Texas limited liability company ("Developer"), has entered into that certain Development Agreement with the Borrower (the "Development Agreement"), whereby Developer was engaged to develop and construct the Project for Borrower. The limitations and restrictions contained in this Section 1.2 on affiliate contracts and affiliate compensation shall not operate to restrict or impair Developer from providing the services called for under the Development Agreement to the Borrower nor to prevent or impair the payment to Developer of the consideration called for under the Development Agreement.

1.3 Execution of Contracts. Asset Manager or the Management Services Provider shall have the right to enter into Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Project. Any such contracts shall contain standard indemnification and insurance obligations on the part of each vendor, licensee, or service provider, as is customary for the type of services or obligations being provided or performed by such parties. Asset Manager or the Management Services Provider will make copies of all Service Contracts, Revenue Generating Contracts and other contracts relating to the Project available to the County on a web-based document server. The Asset Manager and/or the Management Services Provider will use a competitive bid process to procure the best value goods and services for the Project. Neither the Asset Manager nor the Management Services Provider will receive any kickbacks or incentives from any such third party agreements. The only compensation to which the Asset Manager or the Management Services Provider will be entitled to are those contained within the terms of this Agreement and the agreement between Asset Manager and Management Services Provider.

1.4 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase of goods or procurement of services for the Project (including, without limitation, food and beverage services, ticketing services, and Sponsorship and Advertising sales), Asset Manager and/or Management Services Provider may purchase or procure such goods or services, or otherwise transact business with, an Affiliate of Asset Manager and/or Management Services Provider, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties providing such goods or rendering comparable services.

1.5 Limitations on Asset Manager's Duties. Asset Manager's obligations under this Agreement are contingent upon and subject to the County making available, within the time frames set forth herein, the funds budgeted for and/or reasonably required by Asset Manager to carry out such obligations during the Term. Asset Manager shall not be considered to be in breach or default of this Agreement and shall have no liability to the County or any other party, in the event Asset Manager does not perform any of its obligations hereunder due to failure by the County to timely provide such funds.

Section 2. Management of Project.

2.1 Third Party Manager. The County acknowledges that the Asset Manager intends to contract with a third-party provider engaged in professional sports and entertainment facility operations and

providing full-time on-site operations management of the Project, including all staffing and services required to operate the Project, which is initially Sports Facilities Management, LLC (the "Management Services Provider"). Asset Manager is responsible to select a qualified Management Services Provider capable of achieving the financial and operational objectives of a sports and entertainment complex.

2.2 Use of Project. The County hereby grants to Asset Manager the exclusive right and license to use the Project for the Term for the sole purposes of operating a sports, entertainment, and cultural events complex that is reasonably likely to generate revenues from event operations. Asset Manager accepts such right of use and agrees to perform or cause to have performed the Management Services, including, without limitation, the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance, and management of the Project, including, without limitation, athletic space, food service, meeting areas, and such other uses as shall be compatible for the operation of a state-of-the-art athletic facility. Asset Manager and/or Management Services Provider shall have the right to utilize the Project to host events for its employees from time to time for the purpose of training and development, at no cost to the operational budget other than that incurred by the staff who are regularly stationed at the Project, provided that no such events operate to supersede or displace any third-party event. Asset Manager will provide to the County a calendar identifying all scheduled events at the Project, including those events that are dedicated for use by Asset Manager or Management Services Provider. The calendar will be provided in electronic format and/or on the web-based document server described in Section 1.3.

2.3 Restrictions, Conditions, and Requirements on Use. Asset Manager hereby agrees, represents, and warrants that the use, operation, and management of the Project will comply with the following restrictions, conditions, and requirements:

- (a) The Project shall be a non-smoking facility and campus.
- (b) The Project, in all respects, shall be a family-friendly facility, which includes, but is not limited to, a requirement that all advertising for and at the Project be family-friendly.
- (c) The Project shall not be used for large-crowd, non-compatible events such as flea markets, or similar such bookings/events that would create occupancy loads and assembly uses not approved under the Project's design and permit(s) as a sports, entertainment, cultural and recreation complex and venue.

2.4 Distribution of Revenues. The County acknowledges that the Management Services Provider will generally receive and accumulate Revenues from the Project and pay Operating Expenses and compensation to the Asset Manager and the Management Services Provider from the Operating Account. The Operating Account(s) will be owned by the County. The Operating Account(s) will be pre-funded on a monthly basis by the County in accordance with the annual business plan approved by the County. Except as otherwise agreed to by the parties in writing all Revenue derived from operation of the Project shall be deposited by Asset Manager or Management Services Provider into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that Asset Manager and Management Services Provider shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement, without needing to obtain the co-signature of a County employee or representative. The County will have access and visibility to all accounts maintained for the Project. The Revenues and Excess Revenues generated by and from the operation of the Project shall be distributed by Asset Manager and used in the following order:

(a) First, to pay current Operating Expenses, including the fees of the Asset Manager and the Management Services Provider;

(b) Second, to pay back any outstanding debt and/or operating losses from prior years. For example, in the event that Asset Manager has to obtain a loan to cover operating losses, any and all Excess Revenues generated by and from the Project shall be used first to pay back such loan obligations. The foregoing does not obligate Asset Manager or Management Services Provider to advance any of their own funds to cover Project expenses.

(c) Third, to establish and fund, at the recommendation of Asset Manager and in consultation with the Management Services Provider and with approval of the County, which shall not be unreasonably withheld, one or more reserve accounts as approved by Asset Manager and the County.

(d) Fourth, Excess Revenues will be paid to the County.

On at least an annual basis, the Asset Manager will compare the actual Revenues, expenses and compensation to Asset Manager with the budgeted amounts for such categories, and will reconcile the actual amounts with the budgeted amounts.

2.5 Source of Funding. Asset Manager shall pay all items of expense for the operation, maintenance, supervision, and management of the Project, including all Operating Expenses, from the funds in the Operating Account generated by operation of the Project and other sources as secured by Asset Manager. The County agrees to cause funds in the Start-Up Expense Budget (as such term is defined in the Development Agreement) to be deposited into the Operating Account within ten (10) days after the Effective Date. The Operating Account shall be funded with amounts generated by operation of the Project, or otherwise made available by Owner. To ensure sufficient funds are available in the Operating Account, the County will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the month beginning on the Effective Date. The County shall thereafter, on or before the first (1st) day of each succeeding month following the Effective Date, deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such month. In the case of a special event at the Project that requires additional advance funding in excess of that contained within the Operating Account, Asset Manager will give notice to the County and the County will advance such funds as specified by Asset Manager in order to fund such special event, with payment thereof to be made within fifteen (15) days of request by Asset Manager. Manager shall have no liability to the County or any third party in the event Asset Manager is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Asset Manager to pay such expenses in a timely manner.

2.6 Advancement of Funds. Under no circumstances shall Asset Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses or any other forms of compensation to Asset Manager or Management Services Provider.

2.7 Taxes and Assessments. The County acknowledges that due to the structure of the Facilities Lease and the financing transaction under which the Bonds were issued, the Project is exempt from real estate property taxation and there will be no real estate taxes assessed to the Asset Manager. Asset Manager shall be responsible for and promptly pay from the Operating Account all personal property taxes, improvement assessments, where required, and other like charges related to the Project and the property on which the Project is located.

2.8 Compliance with Legal Requirements. Asset Manager shall take such actions as may be necessary to comply with any and all laws, orders, or requirements affecting the County or the Project by any federal, state, county, or municipal agency, or authorities having jurisdiction thereover.

2.9 Use of Property. Asset Manager agrees not to knowingly permit the use of the Project for any purpose which might jeopardize the tax-exempt status of the bonds issued to finance the Project, void any policy of insurance relating to the Project, or which might render any loss thereunder uncollectible, or which would be in violation of any government restriction. Asset Manager does not assume and is given no responsibility for compliance of the Project or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify the County promptly, or forward to the County promptly, any complaints, warnings, notices, or summonses received by Asset Manager relating to such matters.

2.10 Operating Expenses; Asset Manager Compensation; Capital Expenditures. Asset Manager will provide monthly billing to the County for the funds required to operate the Project. Asset Manager shall make payment of all Operating Expenses, Asset Manager compensation and Management Services Provider compensation from funds in the Operating Account. If the funds in the Operating Account are not adequate to cover the current obligations, the County will deposit additional funds to make up the shortfall within fifteen (15) days after request by the Asset Manager. The County shall be responsible for debt service (for bonds, mortgage loans and notes for borrowed money) on the Project, and Capital Expenditures for the Project.

2.11 Observance of Agreements. Throughout the Term, The County agrees to pay, keep, observe, and perform all payments, terms, covenants, conditions, and obligations under any leases, bonds, debentures, loans, and other financing and security agreements to which the County is bound in connection with its lease of the Project.

2.12 Liquor License. The County agrees to cooperate in the granting of a liquor license and other permits and approvals for the Project (or an establishment located at the Project).

2.13 Employees. The Operating Budget shall define the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. Asset Manager and/or Management Services Provider will use reasonable and prudent judgment in the selection and supervision of such personnel. The County specifically agrees that Asset Manager and Management Services Provider shall be entitled to pay their employees, as an Operating Expense, bonuses and benefits in accordance with the Asset Manager's and Management Services Provider's then-current practices, which may be modified by Asset Manager, and Management Services Provider from time to time in their sole discretion. Personnel engaged by Management Services Provider will include a full-time on-site General Manager and other Management-Level Employees. Hiring of the General Manager by Management Services Provider shall require the prior approval of Asset Manager. The General Manager will have general supervisory responsibility for Management Services Provider and will be responsible for day-to-day operations of the Project, supervision of employees, and management and coordination of all activities associated with events taking place at the Project. In the event of termination, or in any case where the County, and/or its affiliated agencies or entities, expresses an interest in hiring Asset Manager's or Management Services Provider's Management-Level employee(s), Asset Manager shall reserve the right to agree or deny such a request. In the event that Asset Manager elects to permit the County to hire any of Management Services Provider's Management-Level employee(s), the County shall provide Management Service Provider with a one-time fee (the "Recruitment Fee") equal to six (6) months' gross salary and benefits of the employee so hired. In any of these events described, Management Service

Provider's employee would not retain Management Service Provider's intellectual material in any future employment.

2.14 Use of Images and Marks. Management Service Provider has the right to display its brand and marks in the Project and on the Project's marketing materials in a manner that does not exceed Ten Percent (10.0%) of the overall impression of the Project's own brand. Asset Manager and Management Service Provider have the right to use and store the database and contact information of the customers of the Project. Management Service Provider will provide to the County from time-to-time images and other marketing material that it owns and holds the license to for use by the Facility. The County agrees not to use those images and that material in any manner outside of the operation of the Project while Asset Manager is engaged to operate it. Asset Manager and Management Service Provider have the right to use images and marks from the Project for their own marketing and promotions material in perpetuity, without restriction.

Section 3. Term and Termination.

3.1 Period of Performance. This Agreement shall commence on the Effective Date and, unless terminated earlier as described in this Section 3, shall expire on the date that is ten (10) years after the date that the Project is substantially completed such that it is capable of being used for its intended purposes, as evidenced by a certificate of occupancy or other similar governmental permit or approval (the "Term"). Upon expiration of the initial Term, this Agreement shall automatically renew for successive periods of five (5) years each, unless either party gives the other party notice of termination at least one hundred eighty (180) days prior to the expiration of the Term or any renewal Term.

3.2 Termination for Default. In the event of a material failure by a Party to this Agreement to perform in accordance with the terms of this Agreement, the non-defaulting Party shall give notice of such default to the other Party, setting forth the nature of the material failure. The recipient shall have a period of up to one hundred twenty (120) days to cure such default or failure, other than a monetary default, which must be cured within thirty (30) days. If the defaulting Party fails to cure such default within the time periods set forth in the preceding sentence, the non-defaulting Party may terminate this Agreement upon notice to the defaulting Party.

3.3 Remedies. In the event this Agreement is terminated for any reason, the Parties shall have all rights and remedies available to them at law or in equity, subject to the limitations set forth in Article 13.

3.4 Effect of Termination. Upon termination or expiration of this Agreement in accordance with its terms, (i) Asset Manager shall vacate the property and promptly discontinue the performance of all services rendered hereunder related to the Project; (ii) County shall promptly pay Asset Manager all fees due Asset Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Operating Year), (iii) Asset Manager shall make available to the County all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Project as may have been accumulated by Asset Manager in performing its obligations hereunder, whether completed or in process and to the extent Asset Manager has the right to such documents; and (iv) if such agreement is in effect at the time of termination or expiration of this Agreement, Asset Manager shall assign, and the County shall assume, Asset Manager's rights and obligations under the Facility Management Agreement with the Management Services Provider, and/or assign to the County, and the County shall assume or shall cause a successor manager to assume, all obligations arising after the date of such termination or expiration under any Service Contracts, Revenue Generating Contracts, booking commitments, and any other agreements entered into by Asset Manager or the Management Services Provider in furtherance of its duties hereunder, including responsibility for

payment of all Operating Expenses, and all unpaid bills which have been incurred pursuant to the Facility Management Agreement or other agreement entered into by Asset Manager in performance of its services hereunder, or as otherwise approved by the County as set forth herein. Upon such assignment by Asset Manager, Asset Manager shall have no further liability (for costs or otherwise) related to the administration of the Project. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

Section 4. Representatives.

4.1 Asset Manager. The authorized representative of Asset Manager is Kevin Matocha (the “Asset Manager Representative”) who shall serve in such capacity at all times during the term of this Agreement. The Asset Manager Representative shall devote such amount of time to the duties of Asset Manager hereunder during the Term as may be necessary or appropriate to the performance of Asset Manager’s duties hereunder. The Asset Manager may replace or supplement its authorized representative at any time by written notice to the County.

4.2 County. The authorized representative of the County is James Knight, Director of Facilities Management and Planning, who shall act on the County’s behalf. The County may replace or supplement its authorized representative at any time by written notice to Asset Manager.

Section 5. Relationship of Parties.

5.1 Independent Contractor. The relationship of Asset Manager to the County shall be that of an independent contractor. Asset Manager shall not be an employee, partner or venturer of the County or any other party having an interest in the Project (“Interested Party”) or any of their affiliates, nor shall Asset Manager provide consulting services to any Interested Party in connection with Project. All employees, servants, or agents of Asset Manager shall be hired and retained at the sole cost and expense of Asset Manager. Asset Manager shall be responsible for the payment of all wages and other compensation and benefits (including, without limitation, workers’ compensation insurance, employers’ liability insurance, Social Security tax withholding, state and federal income tax withholding and disability tax withholding) payable to such individuals and shall be responsible for complying with all laws and regulations affecting such employment, including, without limitation, laws relating to working conditions, workers’ compensation insurance coverage, health and safety, tax withholding, anti-discrimination and other labor laws.

Section 6. Related Documents.

6.1 Review of Related Documents. Asset Manager hereby acknowledges that it has received and reviewed a copy of the Trust Indenture, Loan Agreement, Ground Lease, and Facilities Lease, and is familiar with the terms and conditions contained therein and obligations of the parties thereto.

Section 7. Ownership of Documents and Materials.

7.1 Title. All tangible (which term also includes electronic media) reports, materials, and documents generated or prepared by Asset Manager or any of its subcontractors as a result of the performance of the Services are considered to be works for hire, and shall, upon the County’s full and final payment to Asset Manager for performance of the Services, become the property (including all intellectual rights relating therein) of the County without further compensation and, except as otherwise provided herein, without any restrictions. The County shall, at all times, be entitled to retain the originals of such reports, materials and documents. To the extent such reports, materials, and documents are not considered a work for hire, subject to the County’s full and final payment to Asset Manager for the Services, Asset

Manager will and hereby does assign to the County all rights, title, and interests in and to such reports, materials, and documents, including but not limited to the copyrights pertaining thereto.

7.2 Ownership of Project Data, Equipment, and Materials. Borrower shall at all times retain ownership of the Project, including, but not limited to, real estate, technical equipment, furniture, displays, fixtures, and similar property, including improvements made during the Term, at the Project. Any data, equipment, or materials furnished by the Borrower to Asset Manager or acquired by Asset Manager as an Operating Expense shall remain the property of the Borrower and shall be returned to Borrower when no longer needed by Asset Manager to perform under this Agreement. Notwithstanding the above, neither Borrower nor the County shall not have the right to use any third-party software licensed by Asset Manager for general use by Asset Manager at the Project and other facilities managed by Asset Manager, the licensing fee for which is proportionately allocated and charged to the Project as an Operating Expense, and such software may be retained by Asset Manager upon expiration or termination hereof. Furthermore, the County recognizes that the Operations Manual to be developed and used by Asset Manager hereunder is proprietary to Asset Manager and shall belong solely to Asset Manager at the end of the Term and the County shall not use or maintain copies of the Operations Manual upon the end of the Term for any reason whatsoever.

7.3 Intellectual Property. The County acknowledges that Asset Manager and/or Management Services Provider has certain intellectual property, trade secrets and proprietary business techniques ("Intellectual Property ") that it will utilize on behalf of the Project to meet their respective obligations under this Agreement. The County acknowledges that it obtains no ownership rights whatsoever in the Intellectual Property and, upon termination of this Agreement, the owner of such Intellectual Property shall retain all rights to the Intellectual Property and remove such Intellectual Property from the Project and its operations. For purposes of this Agreement, the term Intellectual Property shall include, without limitation, analytical tools and documented procedures for forecasting, performance tracking, operational and marketing systems that are unique to Management Services Provider's approach, staff training programs, program curriculum and agendas, rights to certain discounts or programs that Management Service Provider has negotiated for other Management Service Provider-operated facilities, and other intellectual property which Management Services Provider has previously introduced to the Project and of which Management Services Provider is an author or owner.

Section 8. Compensation.

8.1 Asset Management Fee. Asset Manager shall be entitled to receive for Services rendered as Asset Manager the fees and other compensation set forth in Exhibit "C" attached hereto. These sums will include compensation to Management Services Provider. Any sums due Asset Manager under any provision of this Agreement, and not paid by the County within forty-five (45) days after such sums have become due, shall bear interest at the rate of Eighteen Percent (18.0%) per annum.

Section 9. Confidential Information.

9.1 Restrictions. Asset Manager recognizes and acknowledges that Asset Manager will have access to certain information concerning the Project and certain other information of then County, and that such information is confidential and constitutes valuable, special, and unique property of the County ("Confidential Information"). Asset Manager shall not at any time, either during or subsequent to the Term of this Agreement, disclose to others, use, copy or permit to be copied, except in pursuance of Asset Manager's Services for and on behalf of the County, any Confidential Information except for disclosures required by law or court order. Asset Manager shall maintain in confidence any information of third parties received as a result of Asset Manager's contractual relationship with the County in accordance with Asset Manager's obligations to such third parties and any policies established by the County from time to time.

9.2 Exceptions. Notwithstanding anything herein to the contrary, the term “Confidential Information” shall not include any of the following: (1) information which is or becomes generally known to the public other than by disclosure by Asset Manager; and (2) information Asset Manager acquired or acquires from a third party, disclosure of which is not in breach of any obligations owed by such third party to County. Asset Manager shall deliver to the County upon request, or if later, at the termination of this Agreement, all documentation, including all Confidential Information, that is in Asset Manager’s possession, custody, or control relating to the Project.

9.3 Asset Manager Created Documents and Information. Reports and other materials created by Asset Manager for the County's benefit may be used by the County as reasonably necessary for the operation of the Project, including disclosure to the Borrower and the Trustee, and may be disclosed pursuant to a valid request under the Texas Public Information Act, Securities and Exchange Act of 1934 Rule 15c2-12, or other applicable state or federal law.

Section 10. Notices.

10.1 Points of Contact. All notices or other communications required under this Agreement shall be made by personal delivery in writing, by certified mail, return receipt requested, by electronic mail or by reputable overnight delivery. Notice shall be deemed to have been given on the date delivered or mailed to the Parties at the address set forth below or such other address as either Party may specify to the other Party in writing.

County: Fort Bend County
401 Jackson St.,
Richmond, TX 77469
Attn: County Judge
Telephone: 281-341-8608
Facsimile: 281-341-8609
Email: FBC.Judge@fortbendcountytexas.gov

With a Copy to: Fort Bend County Facilities Management & Planning
301 Jackson St., Suite 301
Richmond, TX 77469
Attn: Director
Telephone: 281-238-3097
Facsimile: 281-633-7022
Email: James.Knight@fortbendcountytexas.gov

Asset Manager: Stonehenge Holdings Asset Management, LLC
1600 Highway 6 South, Suite 245
Sugar Land, Texas 77478
Attn: Kevin Matocha
Telephone: 713-491-4840
Facsimile: 281-240-2999
Email: kevin@stonehengeco.net

With a Copy to: Jeb Brown
Attorney at Law
3100 Edloe Street Suite 220
Houston, TX 77027
Telephone: 713-439-1988

Section 11. Indemnification.

11.1 **Asset Manager Indemnification.** Asset Manager shall indemnify and hold harmless the County and its commissioners, agents, officers, directors, owners, and employees (the "Indemnitees") from and against all liability, claims, damages, fines, penalties, loss, costs, and expense arising from (i) the breach by Asset Manager of this Agreement; or (ii) the negligence or willful misconduct of the Asset Manager or its employees, agents, consultants, and subconsultants. In the event one or more Indemnitees is determined to be liable on account of such breach, negligence, or willful misconduct of Asset Manager and/or its employees, agents, consultants, and subconsultants, Asset Manager shall indemnify such Indemnitees for all reasonable costs, fees, and expenses of defense, including, but not limited to attorney's fees and expenses, court costs, and expert witness fees and expenses. The indemnification obligations contained herein shall survive any termination hereof.

11.2 **Conditions to Indemnification.** With respect to each separate matter brought by any third party against which a party or other person ("Indemnatee") is indemnified by the other party ("Indemnitor") under this Section, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (a) the Indemnatee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (b) the Indemnatee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnatee hereunder in connection therewith; and (c) neither Indemnitor nor Indemnatee shall agree to any settlement without the other party's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnatee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's sole expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnatee shall promptly (and in no event more than ten (10) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

12. Insurance.

12.1 **Minimum Requirement.** Asset Manager shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and who have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to the County. By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risk that may be applicable to Asset Manager. Asset Manager shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Asset Manager is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. Asset Manager shall take such steps as are necessary so that no policy described below will be canceled without unconditional written notice to the County at least ten (10) days before the effective date of the cancellation.

12.2 **Scope of Insurance Coverage.**

(a) **Worker Compensation.** Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for the County. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

Coverage	Limit
Worker's Compensation	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

(b) **Automobile Liability.** Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

(c) **Commercial General Liability.** The required commercial general liability policy will be issued on a form that insures Asset Manager or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

(d) **Umbrella/Excess Liability.** Umbrella/Excess Liability Insurance with limits of not less than \$2,000,000 per occurrence and aggregate with a deductible of no more than \$10,000, and will be excess over and be no less broad than and "following form" of all included coverage described above. Inception and expiration dates will be the same as the underlying policies. Drop-down coverage will be provided for reduction and/or exhaustion of underlying aggregate limits and will provide a duty to defend for any insured.

(e) **Professional Liability.** Professional Liability (Errors & Omissions) insurance with limits of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of Asset Manager and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, Asset Manager agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (3) years after the expiration of cancellation of this Agreement.

12.3 **Evidence of Insurance.** Asset Manager must deliver to the County evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any Services described in this Agreement by Asset Manager. Additional evidence of insurance must be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

12.4 Additional Insured and Primary Coverage. All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name the County as an Additional Insured up to the actual liability limits of the policies maintained by Asset Manager. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary and Non-Contributory basis.

12.5 Waiver of Subrogation. All insurance policies maintained by Asset Manager hereunder will be endorsed to provide a waiver of subrogation in favor of the County. None of the insurance policies described in this Section 12 will be canceled by Asset Manager (or the insurance carrier) without unconditional written notice to the County at least ten (10) days before the effective date of the cancellation. All insurance policies must be endorsed to require the insurance carrier providing coverage to send notice to the County ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Agreement.

12.6 Deductibles and Retention Amounts. Any deductible or self-insured retention must be declared to and approved by the County prior to the performance of any Services by Asset Manager under this Agreement. Asset Manager is responsible for paying any deductible amount or self-insured retention for any loss. All deductibles and self-insured retentions must be shown on the Certificates of Insurance.

12.7 Duration. The insurance coverage required by this Agreement will be kept in force until all Services have been fully performed and accepted by the County in writing.

12.8 Insurance Generally. The insurance premiums and costs for the policies required hereunder shall be paid by Asset Manager from the Operating Account as an operating expense of the Project. Any insurance policies required to be provided herein by Asset Manager may be provided by the Management Service Provider and the Asset Manager and the County shall be named additional insureds thereunder.

Section 13. Miscellaneous.

13.1 Pronouns. The pronouns used in this Agreement referring to Asset Manager shall be understood and construed to apply whether Asset Manager is an individual, co-partnership, corporation or an individual or individuals doing business under a firm or trade name.

13.2 Headings; Construction. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for nor against any of the Parties, and the construction of this Agreement and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of any of the Parties.

13.3 Counterparts; Amendments. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the Parties to this Agreement.

13.4 Successors. This Agreement shall be binding on the County and Asset Manager and their respective successors and permitted assigns.

13.5 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without reference to choice of law principles thereof. Subject to Section 13.14, venue for any action arising out of this Agreement or to enforce or interpret any provision of this Agreement shall be in Fort Bend County, Texas.

13.6 Enforceability. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

13.7 Entirety of Agreement; Severability. This document supersedes all prior agreements between the Parties, written or oral, and embodies the complete agreement and understanding among the Parties, written or oral, which may have related to the subject matter hereof in any way, and shall not be amended orally, but only by the mutual agreement of the Parties hereto in writing specifically referencing this Agreement. This Agreement sets forth the only agreements pursuant to which the County is obligated to pay money or any other benefit to Asset Manager. To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.

13.8 Number and Gender. All pronouns, whether in masculine, feminine, or neuter form, shall be deemed to refer to the object of such pronoun whether same is masculine, feminine or neuter in gender, as the context may suggest or require. All defined terms used herein, whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require.

13.9 No Assignment or Subcontracting. Asset Manager shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of the County. Any attempt to do so shall be void.

13.10 Force Majeure. No Party is required to perform any term, condition, or covenant of this Agreement or will be liable or responsible to the other for any loss or damage or for any delays or failure to perform, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, or other causes beyond the reasonable control of such Party. Notwithstanding the foregoing, a force majeure event shall not operate to excuse any non-payment under this Agreement.

13.11 Non-Waiver and Limitations. Nothing in this Agreement will be construed as a waiver or relinquishment by the County of its right to claim such exemptions, privileges, and immunities as may be provided by law. Further, no delay or omission in exercising any right accruing upon a default in performance of this Agreement will impair any right or be construed to be a waiver of any right. A waiver of any default under this Agreement will not be construed to be a waiver of any subsequent default under this Agreement.

13.12 Survival of Provisions. No expiration or termination of this Agreement will relieve any Party of any obligations under this Agreement that expressly or by their nature survive expiration or termination, including but not limited to Sections 7, 9, 11, 13.5, 13.12, 13.14, 13.15, and 13.16.

13.13 Legal Compliance. Asset Manager represents and warrants to the County that neither the execution nor delivery of this Agreement, nor the performance of Asset Manager's obligations hereunder violate, or will violate: (i) any contract or agreement to which Asset Manager is a party or by which Asset Manager is otherwise bound; (ii) any federal, state, or local statute, rule or ordinance.

13.14 Arbitration of Disputes. Any dispute or claim in law or equity arising out of this Agreement or as between the Parties shall be decided by binding arbitration by one (1) arbitrator in accordance with the Commercial Rules of Arbitration of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Parties shall have the right to filing of a judicial action for order(s) of attachment, receivership, injunction or other provisional remedies. The venue for any arbitration shall be Houston, Texas.

13.15 Attorney's Fees and Costs. If any action at law or in equity either judicial or by arbitration is initiated to enforce, interpret, or arising out of this Agreement, or as between the Parties, the prevailing party shall be entitled to reasonable attorney's fees, costs, accountant fees and necessary disbursements, in addition to any other relief to which such party may be entitled.

13.16 Limitations on Damages. In no event will either Party be liable to the other Party hereunder for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to such Party, and regardless of the form of the claim or action, or the legal theory on which it is based.

13.17 Certain State Law Requirements for Agreements with Governmental Entities. For purposes of sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Asset Manager hereby verifies that Asset Manager and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

(a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.

(b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Asset Manager does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in section 808.001 of the Texas Government Code.

(c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Asset Manager does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in section 809.001 of the Texas Government Code.

(d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Asset Manager does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in section 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in section 2274.001(6) and (7) of the Texas Government Code.

13.18 BY ACCEPTANCE OF AGREEMENT, ASSET MANAGER ACKNOWLEDGES THAT THE COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

13.19 Time. Time is of the essence of this Agreement. If the last day of any time period on which notice is to be given or action is to be taken under this Agreement falls on a weekend or a holiday, the deadline for giving any such notice or taking such action shall be extended to the next day which is not a weekend or holiday.

13.20 Defined Terms. For purposes of this Agreement, the following terms have the meanings referred to in this Section 13.20:

Asset Manager: The term "Asset Manager" shall have the meaning ascribed to such term in the Preamble to this Agreement.

Affiliate: A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

Agreement: The "Agreement" shall mean this Asset Management Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented, or restated from time to time.

Capital Expenditures: All expenditures for building additions consisting of additional square footage including foundation, roof, and walls.

Borrower: The term "Borrower" shall have the meaning ascribed to such term in the Preamble to this Agreement.

Effective Date: "Effective Date" shall have the meaning ascribed to such term in the preamble of this Agreement.

Excess Revenues: "Excess Revenues" means the total amount of Revenue less Operating Expenses, as calculated on a monthly basis.

Existing Contracts: Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Project existing as of the Effective Date.

Project: The "Project" shall have the meaning ascribed to such term in the Recitals to this Agreement.

County: The term "County" shall have the meaning ascribed to such term in the Preamble to this Agreement.

FF&E: Furniture, fixtures, and equipment to be procured by Borrower for use at, and initial start-up operation of, the Project.

Laws: Means all applicable laws, statutes, rules, regulations, and ordinances.

Maintenance Reserve: Shall mean a segregated reserve account of funds holding a reasonable sum of money to cover anticipated repairs, maintenance, and replacement of the Project and its improvements, both capitalized and non-capitalized.

Management Services Provider: A third party provider engaged in professional sports and entertainment facility operations and providing full-time on-site operations management of the Project, including all staffing and services required to operate the Project. Asset Manager is responsible to select a qualified Management Services Provider capable of achieving the financial and operational objectives of a sports and entertainment complex.

Operating Account: Shall mean a segregated account used for the deposit of all Revenues and the payment of all Operating Expenses.

Operating Expenses: All expenses incurred by Asset Manager and/or Management Services Provider in connection with its operation, promotion, maintenance and management of the Project, including but not limited to the following:

(i) event-specific employee and contractor expenses (excluding management-level employees) including payroll, bonuses and benefits (including payments to any national benefit system, relocation costs, termination costs (including severance costs and payments in lieu of termination), and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the fixed compensation to Asset Manager and Management Services Provider, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of Manager employees, (xv) cost of employee uniforms and identification, (xvi) exterminator and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi) audit and accounting fees, (xxii) legal fees, (xxiii) all bond and insurance costs, including but not limited to personal property, general liability, professional liability and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise concessions services and Sponsorship and Advertising sales), (xxv) cost of complying with any Laws, (xxvi) costs incurred by Asset Manager and Management Services Provider to settle or defend any claims asserted against Asset Manager and/or Management Services Provider arising out of its operations at the Project on behalf of the County or CFC; (xxvii) loss, costs, damage, liability and any other obligations arising under or incurred under Service Contracts and other agreements relating to Project operations, and (xxviii) Taxes. The term "Operating Expenses" does not include debt service on the Project or Capital Expenditures (all of which shall be the responsibility of Owner). Operating Expenses further exclude: costs, fees and penalties arising from Asset Manager or Management Services Provider's breach of contract or any agreement to which Asset Manager and/or Management Services Provider is a party, any costs and fees associated with a breach of law or ordinance by Asset Manager and/or Management Services Provider, any attorney's fees arising from a dispute between the County and Asset Manager.

Operating Year: Each twelve (12) month period during the Term, commencing on January 1 and ending on December 31, provided that the first Operating Year shall be a shortened year commencing on the Effective Date and ending on December 31st of that year and the last Operating Year shall be a shortened year, ending upon the expiration of this Agreement.

Operations Manual: The document to be developed by Asset Manager or Management Services Provider which shall contain terms regarding the management and operation of the Project, including

detailed policies and procedures to be implemented in operating the Project, as agreed upon by both Asset Manager and Management Services Provider.

Recruitment Fee: The term "Recruitment Fee" shall have the meaning ascribed to such term in Section 2.13 of this Agreement.

Regulatory Approvals: All applicable governmental or regulatory approvals, authorizations, consents, licenses or permits.

Revenue: All revenues generated by Asset Manager's or Management Services Provider's operation of the Project, including, but not limited to, event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Sponsorship and Advertising sales, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by Asset Manager in trust for a third party and paid to such third party, and sponsorship fees that are subject to a commission to Manager under this Agreement.

Revenue Generating Contracts: Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Project and entered into in the ordinary course of operating the Project.

Service Contracts: Agreements for services to be provided in connection with the operation of the Project, including, without limitation, agreements for consulting services, ticketing, web development and maintenance, computer support services, FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel, extermination, elevators, fire control panel and other safety equipment, snow removal, and other services which are deemed by Asset Manager to be either necessary or useful in operating the Project.

Sponsorship and Advertising: Naming rights, pouring rights, advertising, signage and banner rights, sponsorships, the branding of food and beverage products for resale, and memorial gifts at or with respect to the Project.

Taxes: Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges, and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the County at the Project, including, without limitation, the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Project, from any guests, or from any others using or occupying all or any part of the Project.

Term: The term "Term" shall have the meaning ascribed to such term in Section 3.1 of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the date and year first written above.

FORT BEND COUNTY

KP George, County Judge

Stonehenge Holdings Asset Management, LLC


By: 
Name: *Kevin M. Tocha*
Title: *President*

EXHIBIT A:
Property Description

EXHIBIT B:
Scope of Services

EXHIBIT C:
Compensation

EXHIBIT "A"
Real Property Description

Legal Description of Land

TRACT I:

Being a tract or parcel containing 45.00 acres (1,960,373 square feet) of land situated in the I. & G. N. Railroad Company Survey, Abstract Number 358 and the K. Hillyer Survey, Abstract Number 749, Fort Bend County, Texas; being out of and a portion of the remainder of that certain called 95.5 acre tract conveyed to Mary Francis Gubbels Koehl, et al, by deeds recorded in Volume 2002, Page 1972 and Volume 2002, Page 1978 of the Fort Bend County Deed Records (F.B.C.D.R.), Fort Bend County, Texas; said 45.00 acre tract being more particularly described as follows (bearings are referenced to the Texas Coordinate System, South Central Zone, (NAD 83);

BEGINNING at a cut "X" in concrete set marking the intersection of the west right-of-way (R.O.W.) line of North Fairgrounds Road (60- foot wide R.O.W.), as recorded in Volume 522, Page 87 F.B.C.D.R. with the south R.O.W. line of U.S. Highway 59 (Southwest Freeway) (Width Varies), being the southeast corner of a called 3.048 acre R.O.W. dedication recorded at Fort Bend County Clerk's File (F.B.C.C.F.) Number 2015029761, said cut "X" marking the northeast corner of the herein described tract;

THENCE, South 02° 36' 07" East, along the west R.O.W. line of said North Fairgrounds Road, a distance of 1,142.45 feet to a cut "X" in concrete set marking the northeast corner of that certain called 20.00 acre tract conveyed to the City of Rosenberg recorded in Volume 523, Page 585 F.B.C.D.R. and marking the southeast corner of the herein described tract;

THENCE, South 87° 25' 54" East, along the north line of said 20.00 acre tract, at a distance of 45.00 feet passing a found 1/2-inch iron pipe, at a distance of 1,409.49 feet passing a found 1-inch iron pipe, continuing in all, a distance of 1,145.87 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set in the northeasterly line of that certain called 159.309 acre tract recorded under F.B.C.C.F. Number 9877354 and in the southwesterly line of the remainder of said called 95.5 acre tract, said iron rod marking the most southerly southwest corner of the herein described tract;

THENCE, North 50° 48' 51" West, along the northeasterly line of said called 159.309 acre tract and along the southwesterly line of the remainder of said called 95.5 acre tract, parallel with and 140.00 feet northeasterly of the northeasterly line of Cottonwood Sec. 1 Final Plat and Cottonwood Sec 2 Final Plat as recorded at Plat Numbers 20040170 and 20050236 respectively of the Fort Bend County Plat Records, a distance of 552.99 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the southeast corner of that certain called 1.918 acre tract, Easement Grand and Dedication for Bamore Road as recorded under F.B.C.C.F. Number 2004099537, said iron rod marking the most westerly southwest corner of the herein described tract;

THENCE, along the easterly lines of said Bamore Road, as follows:

Northerly, a distance of 525.82 feet along the arc of a curve to the left, having a radius of 450.00 feet, a central angle of 66° 56' 58" and a chord which bears North 05° 42' 40" East, 496.41 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the end of said curve;

North 27° 45' 49" West, a distance of 189.43 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

Northerly, a distance of 108.58 feet along the arc of said curve to the right, having a radius of 350.00 feet, a central angle of $17^{\circ} 46' 27''$ and a chord which bears North $18^{\circ} 52' 36''$ West, 108.14 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set in the aforesaid south R.O.W. line of U.S. Highway 59 (Southwest Freeway) (Width Varies) and being in the south line of said called 3.048 acre R.O.W. dedication, said iron rod marking the northwest corner of the herein described tract;

THENCE, North $87^{\circ} 11' 37''$ East, along the south R.O.W. line of U.S. Highway 59 (Southwest Freeway), a distance of 1,867.28 feet to the POINT OF BEGINNING and containing 45.00 acres (1,960,373 square feet) of land.

TRACT II:

Being a tract or parcel containing 6.75 acres (294,201 square feet) of land situated in the I. & G. N. Railroad Company Survey, Abstract Number 358 and the K. Hillyer Survey, Abstract Number 749, Fort Bend County, Texas; being out of and a portion of the remainder of that certain called 95.5 acre tract conveyed to Mary Francis Gubbels Koehl, et al, by deeds recorded in Volume 2002, Page 1972 and Volume 2002, Page 1978 of the Fort Bend County Deed Records (F.B.C.D.R.), Fort Bend County, Texas; said 6.75 acre tract being more particularly described as follows (bearings are referenced to the Texas Coordinate System, South Central Zone, (NAD 83);

COMMENCING at a cut "X" in concrete set marking the intersection of the west right-of-way (R.O.W.) line of North Fairgrounds Road (60-foot wide R.O.W.) as recorded in Volume 522, Page 87, F.B.C.D.R. with the south R.O.W. line of U.S. Highway 59 (Southwest Freeway) (Width Varies), being the southeast corner of a called 3.048 acre R.O.W. dedication recorded at Fort Bend County Clerk's File (F.B.C.C.F.) Number 2015029761;

THENCE, South $87^{\circ} 11' 37''$ West, along the south R.O.W. line of U.S. Highway 59 (Southwest Freeway) and the south line of said called 3.048 acre R.O.W. dedication, at a distance of 1,867.28 feet passing a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the intersection of said south R.O.W. line of U.S. Highway 59 with the east line of that certain Easement Grant and Dedication for Bamore Road, a called 1.918 acre tract as recorded under F.B.C.C.F. Number 2004099537, continuing along said south R.O.W. line of U.S. Highway 59, in all, a distance of 1,967.89 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the intersection of said south R.O.W. line of U.S. Highway 59 with the west line of said Easement Grant and Dedication for Bamore Road, said iron rod marking the northeast corner of the herein described tract;

THENCE, along the westerly lines of said Bamore Road, as follows;

Southerly, a distance of 152.18 feet along the arc of a curve to the left, having a radius of 450.00 feet, a central angle of $19^{\circ} 22' 35''$ and a chord which bears South $18^{\circ} 04' 32''$ East, 151.46 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the end of said curve;

South $27^{\circ} 45' 49''$ East, a distance of 189.43 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

Southerly, a distance of 408.97 feet along the arc of said curve to the right, having a radius of 350.00 feet, a central angle of $66^{\circ} 56' 58''$ and a chord which bears South $05^{\circ} 42' 40''$ West, 386.10 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set in the northeasterly line of that certain called 159.309 acre tract recorded under F.B.C.C.F. Number 9877354 and in the southwesterly line of the remainder of said called 95.5 acre tract, said iron rod marking the southwesterly corner of the aforesaid

called 1.918 acre tract, Easement Grant and Dedication for Bamore Road and marking the southeasterly corner of the herein described tract;

THENCE, North 50° 48' 51" West, along the northeasterly line of said called 159.309 acre tract and along the southwesterly line of the remainder of said called 95.5 acre tract, parallel with and 140.00 feet northeasterly of the northeasterly line of Cottonwood Sec. 1 Final Plat as recorded at Plat Number 20040170 of the Fort Bend County Plat Records, at a distance of 246.93 feet passing a found 1/2-inch iron pipe, at a distance of 515.85 feet passing a 5/8-inch iron rod with cap stamped "Sam, Inc." found marking the most easterly corner of a called 4.00 acre tract as recorded in Volume 432, Page 411 F.B.C.D.R., continuing along the southwesterly line of a called 4.00 acre tract, at a distance of 1,024.985 feet passing a Texas Department of Transportation (TxDot) aluminum monument, continuing along the southwesterly line of the remainder of said called 95.5 acre tract and along the northeasterly line of said called 4.00 acre tract, in all, a distance of 1,047.89 feet to a 5/8-inch iron rod with plastic cap stamped "Terra Surveying" set in the aforesaid south R.O.W. line of U.S. Highway 59 (Southwest Freeway) (Width Varies), marking the southwest corner of the aforesaid called 3.048 acre R.O.W., dedication and marking the most westerly corner of the herein described tract;

THENCE, along the south R.O.W. line of U.S. Highway 59 (Southwest Freeway) and the south line of said called 3.048 acre R.O.W., dedication, a distance of 147.13 feet along the arc of a curve to the left, having a radius of 7,844.44 feet, a central angle of 01° 04' 29" and a chord which bears North 87° 43' 51" East, 147.13 feet to a TxDot concrete monument found marking the end of said curve;

THENCE, North 87° 11' 37" East, continuing along the south R.O.W. line of U.S. Highway 59 (Southwest Freeway) and the south line of said called 3.048 acre R.O.W. dedication, a distance of 569.08 feet to the POINT OF BEGINNING and containing 6.75 acres (294,201 square feet) of land.

EXHIBIT "B"
Scope of Services

During the Term, Asset Manager will be responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Project.

1. **Staffing.** Asset Manager or Management Services Provider shall provide a full-time on-site General Manager and other employees as required to meet the operational needs of the Project, within the budgeted percentage of labor.

2. **Annual Business Plan.** Asset Manager will produce an Annual Business Plan two (2) months prior to the beginning of any Operating Year in the Term, Asset Manager shall update the Business Plan and submit the revised Business Plan to the County for its review and approval. Asset Manager will adjust the time frame for delivery of the Annual Business Plan in order to be consistent with the County's fiscal year and budgeting process. The County shall give its comments and/or approval of the updated Business Plan within sixty (60) days after receiving the Business Plan from Asset Manager. In the event of disapproval of the Business Plan, Asset Manager shall use commercially reasonable efforts to operate the facility pursuant to the general terms of this Agreement and the prior Business Plan then in effect, until such time as the revisions to the Business Plan are agreed upon. In the event of disapproval of the Budgets, Asset Manager shall continue operating the Project pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Revenues; or (ii) other matters beyond the control of Asset Manager, until such time as the County and Asset Manager agree upon the appropriate replacement Budgets. The County and Asset Manager agree to use good faith efforts to resolve any differences in opinion regarding the Business Plan and any portion thereof so that agreement on the Business Plan can be reached as soon as possible after the date Asset Manager first submits the revised Business Plan for such year to the County.

3. **Employment Matters.** Asset Manager shall present the then-current staffing, the incentive bonus plan for employees, and all salaries and payments to employees and agreement on the annual Supplemental Fixed Fee in the Operating Budget. It is understood by all parties that reductions and additions to various positions may be made at Asset Manager's discretion throughout the year due to business tempo, trends, opportunities, and budget requirements. If a change is recommended that will require expense above the budgeted labor percentage, the change will be submitted for the County's review and approval by the County via reforecast and revised business plan or budget.

4. **Independent Accounting Firm.** From time to time, as the County requests, Asset Manager shall hire an independent certified public accounting firm to be paid for out of the Operating Budget of the Project and to be selected by mutual agreement of the County and Asset Manager to audit the financial statements required under this Agreement.

5. **Accounting Records and Reporting.** During the Term, Asset Manager shall maintain professional accounting records. Asset Manager shall provide the financial statements in a format reasonably specified by the County. Asset Manager will provide all of the reports and information required to be provided by Asset Manager or Management Service Provider hereunder through a web-based document server so that the County can access such materials remotely.

INTERNAL CONTROL. Asset Manager agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Project, such controls to be consistent with professionally accepted accounting practices.

BANK ACCOUNTS. Asset Manager shall establish, in the Project's name, at a banking institution or institutions subject to the approval of the County, utilizing the federal tax identification number of the Project, an operating expense account (the "Operating Account") and a payroll account in Asset Manager's or the Management Service Provider's name, at a banking institution or institutions subject to the approval of the County, utilizing the federal tax identification number of Asset Manager or Management Service Provider (the "Payroll Account").

ACCOUNT FUNDING. Subject to Asset Manager's written notices to the County as set forth herein, the County acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Project provided that such Operating Expenses and capital improvements are made in accordance with the terms of this Agreement.

EXHIBIT "C"
Compensation to Asset Manager

1. **Pre-Opening Compensation.** During the time from the Effective Date of this Agreement to the first day of business operations which the Facility is open to the public (the "Grand Opening of the Facility"), the County shall draw the funds in Start-Up Expense Budget defined in the Development Agreement in the amount of \$1,237,000.00 which shall be deposited into the Operating Account. These funds shall compensate Asset Manager and Management Services Provider during the period prior to the Grand Opening of the Facility.

2. **Post-Opening Base Management Fee.** After the Grand Opening of the Facility, the Asset Manager shall be entitled to the following annual compensation, which shall include base compensation to the Asset Manager, payment of salaries and benefits and other employment costs for permanent on-site management and staff for employees of the Project:

<u>Operating Year</u>	<u>Base Management Fee</u>
1	\$2,118,593.00
2	\$2,226,954.00
3	\$2,333,054.00
4	\$2,416,295.00
5	\$2,494,177.00
6	\$2,616,976.00
7	\$2,700,123.00
8	\$2,787,080.00
9	\$2,878,029.00
10	\$2,973,834.00

3. **Deferred Management Incentive Fee.** To encourage Asset Manager and Management Services Provider to grow revenues, the County agrees to pay to Asset Manager a Deferred Management Incentive Fee in addition to the compensation described above. The Deferred Management Incentive Fee is equal to Three Percent (3.0%) of gross Revenues each month (excluding Revenues arising from Sponsorship and Advertising Compensation). Such calculations shall be made by Manager within thirty (30) days of the ending of any operating month and paid to Manager within thirty (30) days of such calculation being delivered to Owner.

4. **Sponsorship and Advertising Compensation.** Due to the role that Asset Manager and Management Services Provider will play in organizing the programs, negotiating agreements and pricing, and providing confidence to sponsors and advertisers, Asset Manager will receive Twenty-Two Percent (22.0%) of the gross Revenue arising from Sponsorship and Advertising, including Facility naming rights for all Sponsorship and Advertising sold throughout the Term of the Agreement (the "Sponsorship and Advertising Compensation"). Payments for any Sponsorship and Advertising Compensation earned will be made to Asset Manager within thirty (30) days of the time when a sponsor/advertiser makes payment.