

AGENDA ITEM

FORT BEND COUNTY FY 2010 COMMISSIONERS COURT AGENDA REQUEST FORM

Return Completed Form by E-Mail to: Agenda Coordinator, County Judge's Office

20B

Date Submitted: 03/31/2010

Submitted By: Mary Reveles

Court Agenda Date: 04/06/2010

Department: County Attorney

Phone Number: 341-4554

SUMMARY OF ITEM:

Commissioner Precinct 1:

Take all appropriate action on the renewal of the Master Agreement between Fort Bend County and the Fort Bend County Fair Association through December 31, 2012.

RENEWAL AGREEMENT/APPOINTMENT

YES ☒

NO ☐

REVIEWED BY COUNTY ATTORNEY'S OFFICE:

YES ☒

NO ☐

List Supporting Documents Attached: Agreement, signed by Fair Assn.

COUNTY JUDGE
RECEIVED
MAR 31 2010

FINANCIAL SUMMARY:BUDGETED ITEM: YES ☐ NO ☐ N/A

FUNDNG SOURCE: Accounting Unit: Account Number: N/A
Activity (If Applicable):

DESCRIPTION OF LAWSOM ACCOUNT: _____

Instructions to submit Agenda Request Form:

- Completely fill out agenda form: incomplete forms will not be processed.
- Agenda Request Forms should be submitted by e-mail, fax, or inter-office mail, and all back-up information must be provided by Wednesday at 2:00 p.m. to all those listed below.
- All original back-up must be received in the County Judge's Office by 2:00 p.m. on Wednesday.

DISTRIBUTION:

Original Form Submitted with back up to County Judge's Office ☒ (✓ when completed)

If by E-Mail to ospindon@co.fort-bend.tx.us

If by Fax to (281) 341-8609

Distribute copies with back-up to all listed below. If by fax, send to numbers below:

☒ Auditor (281-341-3774)
☒ Budget Officer (281-344-3954)
☐ Facilities/Planning (281-633-7022)
☒ Purchasing Agent (281-341-8642)
☐ Road & Bridge
☒ Parks Department

☒ Comm. Pct. 1 (281-342-0587)
☒ Comm. Pct. 2 (281-403-8009)
☒ Comm. Pct. 3 (281-242-9060)
☒ Comm. Pct. 4 (281-980-9077)
☒ County Clerk (281-341-8697)
☒ County Atty (281-341-4557)

RECOMMENDATION / ACTION REQUESTED:

Special Handling Requested (specify):

4-9-10 2 origs. ret. to Mary
at Co. Attorney

THE STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**MASTER AGREEMENT
FORT BEND COUNTY & FORT BEND COUNTY FAIR ASSOCIATION**

This Agreement is entered into by and between Fort Bend County, Texas (hereinafter referred to as “the County”), a body politic acting herein by and through its Commissioners’ Court and the Fort Bend County Fair Association (hereinafter referred to as “the Association”), a non-profit Texas corporation.

WHEREAS, Section 319.001 of the TEXAS LOCAL GOVERNMENT CODE authorizes a County to provide for annual exhibits of horticultural, agricultural, livestock, mineral, and other products of interest to the community; and

WHEREAS, the County desires the assistance of the Association in the oversight and the conducting of such exhibits, including but not limited to the use and operation of buildings, and improvements at the Fort Bend County Fairgrounds; and

WHEREAS, the Association desires the County to assist in conducting such exhibits, including but not limited to the use and operation of buildings and improvements at the Fort Bend County Fairgrounds; and

NOW THEREFORE, it is mutually agreed by the parties hereto as follow:

**Section I
Definitions**

1.01 **Definitions:** For the purpose of this Agreement, the following shall mean:

- A. **Income:** Proceeds from the Fort Bend County Fair.
- B. **Property:** The property commonly referred to as the Fort Bend County Fairgrounds and/or facilities thereon, including parking lots.
- C. **Rental Fees:** Rent and security deposits paid by tenants of the Property.
- D. **All-Facility Rental:** The rental of the Property that includes buildings, arena, barns and all common areas rented by the County or Association.
- E. **Tenant Lease:** An individual, group of individuals, or an entity that pays a rental fee for the use of the all or a portion of the Property. The County, when using the Property for a county purpose as deemed by Commissioners Court, shall be

treated, as any other tenant except no rental charge shall be required, with the exception as provided in 3.03(c) of this agreement.

- F. **Arena**: The open arena with seating used for horse shows, roping competition and rodeo events.
- G. **Barns**: George Barn, Port City Barn, Barn H and Old Rodeo Barn (used as old warehouse).
- H. **Pavilion**: Open air area adjacent to the Arena.
- I. **Building B**: Approximately 10,000 sq. ft. building with large kitchen and inside restrooms, typically rented for parties and weddings.
- J. **Building C**: Approximately 20,000 sq. ft. building with large kitchen and inside restrooms, typically rented for parties and weddings.
- K. **Building D**: Approximately 7,000 sq. ft. building divided into two (2) rooms, each room with a hospitality kitchen, typically rented for parties and family functions. Large restrooms located outside of building.
- L. **Building W**: Approximately 12,000 sq. ft. building consisting of meeting rooms and a warehouse.
- M. **Fair Office**: Office of the Fort Bend County Fair Association.
- N. **Storage Building**: Approximately 20x40 portable metal building to be used only as storage.
- O. **Sheriff's Office Building**: A command post used during the County Fair by law enforcement and first responders.
- P. **Ticket Building**: a building used to purchase admittance into Property, used for the County Fair and other events at the Property.
- Q. **RV spaces**: The campground used by recreational vehicles with full hook-ups for day and overnight stays.
- R. **Refreshment Center**: multi-use pavilion area.
- S. **Bar-B-Q Lots**: Large fenced area for BBQ cook-offs, livestock parking, etc.
- T. **Midway**: Used for carnivals, BBQ cook-offs, motorcycle training, etc.
- U. **County Fair**: the Fort Bend County Fair held annually during the months of September and October.

- V. **Repairs:** For the purposes of this Agreement, 'repairs' refer to the restoration to sound condition after damage to County owned property; whether such damage occurs by negligence, accident or any other cause.
- W. **Maintenance:** For the purposes of this Agreement, "maintenance" refers to keeping the facilities in working condition, including, but not limited to the plumbing and roofing.
- X. **Clean up:** refers to the buildings being broom clean and barns and arena being in the same condition as existed at the commencement of the lease term.
- Y. **Appliances:** refers to electrical equipment, coolers, and HVAC equipment located on the Property. For purposes of this Agreement, the term "appliances" does not include equipment utilized by vendors at the County Fair.

Section II

Term

- 2.01 The Term of this Agreement commences on April 6, 2010, and expires December 31, 2012, subject to cancellation by either party upon giving an 18-month written notice to the other party; unless there is a breach of contract by either party. If contract is breached, the offended party may deliver a written notice of breach and initiate a 90-day period for correction. If breach is not corrected within the 90-day period, the offended party may accelerate termination by giving 6-month written notice of cancellation. (i.e. a breach shortens the 18-month period to 9-months).
- 2.02 This agreement may only be amended by mutual agreement of the parties.
- 2.03 Commissioners' Court must approve extensions or changes to this Agreement.

Section III

Duties & Responsibilities

- 3.01 **Management of Property:** The County is responsible for the management of the Property.
- 3.02 **Collection and Allocation of Rental Fees:**
 - A. The County shall manage all tenants and collect and enforce the collection of all rent and fees for the following:
 - 1. Buildings B, C, D,
 - 2. All Concession stands except for the concession stand in the Arena and George Barn
 - 3. Sheriff's Office building,
 - 4. Ticket building,
 - 5. RV spaces,

6. Refreshment Center,
 7. Bar-B-Q Lots
 8. Midway.
 9. Rental of County, appliances, extra equipment, chairs, tables and stages.
- B. The Association shall manage all tenants and collect and enforce the collection of all rent and fees for the following:
1. The Arena - including concession stand
 2. Pavilion
 3. Barns – including concession stand in the George Barn
 4. Building W
 5. Storage Building identified in Section 1.01(N) – no rental, to be used by the Association only for storage purposes.

3.03 Negotiation of Tenant Leases:

- A. In the event of an All Facility Rental as described in Section 1.01(D), fees will be established by the Association and the County pursuant to their standard rates for each facility as described in Section 3.02.
- B. The County will water and work the Arena twice a week. The Association and/or the Tenant will have sole responsibility for panel set-up in the arena, the set up of the return alley, and the set up of the barn.
- C. When being used for a County purpose, by letter of authority as recorded in the Commissioners Court records, there shall be no charge for the use of the Property by the County, subject to availability of the Property with the exception of the nine days of the County Fair. However, when the County has an activity on the Property, the County shall be subject to the terms and conditions of the Tenant's Lease Agreement.
- D. The Association shall have the exclusive right and responsibility for the rentals and will collect fees and keep schedules for the facilities identified in Section 3.02(B). The Association will assign a person to be on- call for every event. The County shall perform maintenance on the Arena, by written request to County's representative.
- E. The County shall have the exclusive right and responsibility for the rentals and will collect fees and keep schedules for the facilities identified in Section 3.02(A).
- F. In the event the County performs any clean-up for the facilities identified in Section 3.02(B), the Association will be invoiced at \$25.00 per hour. The County shall notify the Association prior to providing any clean-up services and shall provide an invoice to the Association. The Association shall provide payment to the County within thirty (30) days of receipt of the invoice.

- G. The Association is responsible for any damage caused by the activities of the Tenant for the facilities identified in Section 3.02(B).
- H. The County agrees to allow the Association, or Association employee, or beverage corporation to acquire proper license for beer, wine or liquor on premises and to negotiate soft drink contracts.
- I. The Fort Bend County Commissioners' Court shall have the authority to cancel any Tenant Lease if in the sole opinion of the Commissioners Court, the Tenant Lease may cause harm to the health, safety or general welfare of the public.

3.04 Maintenance & Repairs:

- A. The County shall be responsible for all maintenance and repairs for the facilities identified in Section 3.02(A). The County shall notify the Association in writing in the event the County discovers damage to the facilities identified in Section 3.02(B).
- B. The Association shall be responsible for all maintenance and repairs and shall conduct regular inspections for the facilities identified in Section 3.02(B). The Association shall not be responsible for any repairs to the facilities identified in Section 3.02(B) that are the result of acts of God, lightning, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars or other civil or industrial disturbances. In the event the Association fails to make any necessary repairs within sixty (60) days of knowledge the damage, the County may make the repairs and the Association shall reimburse the County for the costs of the repairs within thirty (30) days of receipt of an invoice.
- C. For any repairs and/or maintenance for the facilities identified in Section 3.02(B), the Association shall comply with the County's insurance requirements as stated in attached Exhibit A, incorporated by reference as if set forth herein verbatim, and the Association shall maintain a copy of the insurance certificate and verify the insurance prior to the commencement of any maintenance and/or repair. All repairs and/or maintenance to the facilities shall be in accordance with accepted standards of construction in the Greater Houston Metro Area, applicable thereto and the Association shall use that degree of care and skill commensurate with the construction profession to comply with all applicable state, federal, and local laws, ordinances, rules and regulations relating to the services to be rendered.

3.05 Payment of Utilities:

- A. The Association shall provide and pay for the telephone system used by the Association.
- B. The Association shall advance the County for the cost of utilities at the Fair Office. At the time of this Agreement, the estimate for the utility costs at the Fair Office is \$4200 annually. The cost of utilities for the Fair Office for the month of

September shall be included in the Association's payment of all utilities during the County Fair as provided in Section 3.05(E) below. The Association shall pay to the County the amount of \$2450 for the first seven (7) months of this Agreement on or before May 31, 2010. Thereafter, the Association shall pay to the County the amount of \$3850 in four (4) installments:

1. \$700.00 on or before October 1
2. \$1050.00 on or before January 1
3. \$1050.00 on or before April 1
4. \$1050.00 on or before July 1

In the event the County determines that the annual payment by the Association is less than the actual cost of utilities for the Fair Office, the County shall provide notice to the Association of the increased costs and the Association shall pay the difference to the County within thirty (30) days.

- C. The Association shall pay the County a fee of \$25.00 per hour from all rentals of the Arena and Barns for electric utility services and appliances within thirty (30) calendar days from the last date of the rental.
- D. The Association will inform the County of any no-charge rentals of the Arena and Barns will provide the number of hours that Arena and Barns will be used. The Association will be responsible to ensure that the electricity and other utilities used in Arena and Barns are turned off immediately after usage. Failure of the Association to comply with this section shall result in the Associations payment of \$25.00 per hour from the commencement of the no-charge rental to the time the utilities were discovered left on by the County. The Association shall pay the invoice from the County within thirty (30) calendar days of receipt.
- E. The Association shall be responsible for all electrical usage charges incurred on the Property in preparation for and during the County Fair and shall reimburse the County for those charges incurred during said time period. The initial reading of the meter shall occur on the fourteenth (14th) calendar day prior to the opening of the County Fair and shall end the Tuesday following the closing of the County Fair.
- F. The County shall be responsible for paying water utility located at Bar-B-Que Cook-Off lots. The County shall provide Association a statement when Association utilizes Bar-B-Que Cook-Off lots during the County Fair or any other event related with Association. The Association shall reimburse the County within (30) days from receipt of a statement for use of water utility at Bar-B-Que lots.

3.06 **Liability Insurance:**

The Association shall, during the entire term hereof, keep in full force and affect a policy of commercial general liability insurance with respect to the Property, and the business operated by the Association, in which the limits of commercial general liability shall not

be less than \$1,000,000.00 per occurrence. The policy shall name the County as an additional insured, and shall contain a clause that the insurer will not cancel, or change the insurance without first giving the County thirty (30) days prior written notice. The insurance shall be in a company acceptable to the County and a copy of the policy or certificate of insurance shall be delivered to the County on the date hereof.

- 3.07 **Income from County Fair:** The Association shall retain all income derived from the County Fair and other rentals as provided herein.
- 3.08 **Emergency Usage of Property:** The Association expressly understands that there will be times when an official declaration of emergency by the County Judge or designee shall require usage of all or a portion of the Property for emergency operation during the time period that the Association would normally occupy the Property. The Association expressly agrees to accommodate such disruptions. The County agrees that it will endeavor to inform the Association as far in advance as possible of an event that would cause the County to displace the Association or disrupt events scheduled on the Property and shall provide the Association with a copy of the County Judge's order as soon as possible. The County shall assist the Association to make reasonable accommodations when it requires the Association to vacate all or a portion of the Property.
- 3.09 **Association Volunteers:** Any volunteers utilized by the Association shall be subject to and covered by the Associations liability insurance as provided in Section 3.06.

SECTION IV

Limitation of Liability and Indemnity

Notwithstanding any provision of this Agreement to the contrary, the County shall not be liable to the Association or any of its agents, employees, servants or invitees, for any damage to persons or property due to the condition or design or any defect in the Property which may exist or subsequently occur, and the Association with respect to itself and its agents, employees, either proximate or remote by reason of the present or future condition of the Property. Association agrees that it will indemnify and hold the County harmless of, from and against all suits, claims, and actions of every kind by reason of any breach, violation or non-performance of any term or conditions on the part of the Association hereunder. Association shall indemnify, protect, and hold harmless County, their successors, assigns, agents, officials and employees, from and against any and all claims, demands, losses, damages, causes of action, suit, and liability of every kind, including all expenses of litigation, court costs, and attorneys' fees, and including injury to or death of any person, or for damage to any property, in any way arising out of or in connection with the negligent or willful acts or omissions of Association, its agents, employees, or persons operating under Association in the use of the Property. This paragraph is for the benefit of the County on the Property only, and no right of action shall accrue hereunder to any third party by way of subrogation or otherwise. The foregoing sentence shall not be effective, however, if the result is to invalidate any fire, casualty, commercial general liability or other liability insurance policy.

SECTION V

County Employees

- 5.01 The County retains sole discretion regarding hiring, termination, discipline, and working conditions of all County employees at the Property.
- 5.02 Employees of the County may perform services for the Association upon request submitted to the County's supervisor at the Property. The County shall provide an estimate to the Association prior to providing any services and shall provide an invoice after the services have been provided.
- 5.03 During the County Fair, one (1) County employee may be utilized by the Association for work needed on the Property. The Association will be invoiced by the County Auditor; the calculation of pay shall be based on the County employee's regular rate of pay plus overtime, if any, at the County's applicable overtime rate. The Association agrees to reimburse the County for such services at the County employee's overtime rate including benefits. The Association shall schedule the use of one (1) County employee through the Fort Bend County Parks & Recreation Department's representative on-site, or Parks Department Director. The Association shall specify the hours needed in the request for the County employee. The County shall not assign any County employee to the Association until the County receives a written request from the Association manager or president.
- 5.04 County employees and contractors shall have access to the Property for the purposes of performing maintenance work that may be required by the County or Association.
- 5.05 All County owned equipment can only be used by County employees. Request for assistance by Association shall be made to the County's representative. County equipment must be operated by County employees on duty if required during tenant rentals. The County shall not assign any County employee to operate any County equipment until the County receives a written request from the Association manager or president.
- 5.06 County employees are not bonded for handling or transporting money for the Association. No County employee shall be responsible for Association funds, or for transporting or handling beer or liquor at any events.

Section VI

Use of Property

- 6.01 **Association's Use of Property:**
 - A. Subject to availability, the Association may use the Property free of charge for fund raising or meetings so long as proceeds from fundraising are used directly for the County Fair and/or scholarship fund.

- B. No capital improvement projects can be commenced by the Association on the Property without the prior approval of the Commissioners' Court.

6.02 Capital Improvements by County:

The Association has been made aware that certain capital improvements are projected for the Property, namely a Park & Ride facility to be constructed in the parking area. The County shall keep the Association informed of such future capital improvements to the Property and will use all reasonable efforts to minimize disruption to the Association and the Property. However, any capital improvements to the Property shall be the sole responsibility of the County. The Association may be allowed input in the proposed improvements, but shall have no binding authority or function in the planning of the improvements.

Section VII
Assignments

The Association shall not assign this Agreement without prior written approval of the Fort Bend County Commissioners' Court.

Section VIII
Other Agreements

- 8.01 The parties acknowledge that other agreements may exist which relate to the Property, including but not necessarily limited to:
 - A. Arena , Barn Rental, Pavilion, Building W, and Beverage Agreements
 - B. Tower Agreement
 - C. Agreements for Emergency Usage during Official Disaster Declaration
 - D. Other Agreements that may be added from time to time by agreement of both parties
- 8.02 In the event of a conflict between the terms and conditions of this Master Agreement and the terms and conditions of any other agreement between the parties relating to the Property the parties hereby agree that the terms and conditions of this Master Agreement shall prevail.

Section IX
Independent Contractor / No Co-Partnership

9.01 Independent Contractor:

- A. It is agreed by the parties that at all time and for all purposes hereunder Association is an independent contractor and not an employee of the County. No statement contained in this Agreement shall be construed to find Association an

employee of the County, and Association, its agents and employees shall be entitled to none of the rights, privileges, or benefits of the County employees.

- B. The Association is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

9.02 No Co-Partnership:

- A. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties, or as constituting Association (including its officers, employees, and agents) the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever.
- B. The Association is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

Section X
Severability

Severability: The provisions of this Agreement are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of the Agreement. However, upon the occurrence of such event, either party may terminate this Agreement forthwith upon the delivery of written notice of termination by the other party.

Section XI
Entire Agreement: Requirement of a Writing

Entire Agreement: It is understood and agreed that the entire Agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties.

Section XII
Services Not Provided For

Services Not Provided For: The Association shall not perform any work or furnish any materials other than in the normal course of performing reasonable and necessary maintenance of the facilities identified in Section 3.02(B) unless same is approved in writing by the County and the Association.

Section XIII
Compliance with Laws and Regulations

13.01 Compliance with Laws:

- A. It is understood that the terms and conditions of this Agreement are governed by the laws of the State of Texas.
- B. In providing all services pursuant to this Agreement, the Association shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provision of, such services, including those now in effect and hereafter adopted. Any violation of said statutes; ordinances, rules, or regulations shall constitute a material breach of this Agreement, and shall entitle the County to terminate this contract immediately upon delivery of written notice to the Association.

Section XIV
Notices

Notices: Notices, correspondence, and all other communications shall be addressed to the Fort Bend County Commissioners' Court and submitted to the following representative:

Fort Bend County
Attn: County Judge
301 Jackson, 7th Floor
Richmond, Texas 77469

Notices to Association shall be delivered to: Fort Bend County Fair Association
Attn: President
P. O. Box 428
Rosenberg, Texas 77471

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Section XV
Execution

IN WITNESS WHEREOF, the parties have herewith set their hands as of the dates written below.

FORT BEND COUNTY

By: _____

Robert E. Hebert, County Judge

Date: _____

4/6/2010

ATTEST: _____

Dianne Wilson

Dianne Wilson, County Clerk

FORT BEND COUNTY FAIR ASSOCIATION

By: _____

President

Date: _____

3/29/10

ATTEST: _____

Secretary of Association

MER:fair assoc. management agreement:1108-2010 final

Exhibit A
FORT BEND COUNTY'S INSURANCE REQUIREMENTS

1. All Contractors shall obtain and maintain insurance of the types and in the minimum amounts set forth below.
2. Contractor shall furnish certificates of insurance to County evidencing compliance with the insurance requirements hereof. Certificates shall indicate name of Contractor, name of insurance company, policy number, and term of coverage and limits of coverage. Contractor shall cause its insurance companies to provide County with at least 30 days prior written notice of any reduction in the limit of liability by endorsement of the policy, cancellation or non-renewal of the insurance coverage required. Contractor shall obtain such insurance from such companies having Bests rating of A- or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - A. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - B. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - C. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$100,000 each accident and \$300,000 in the annual aggregate. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 - D. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
3. All Liability insurance policies shall name Fort Bend County as an additional insured. Furthermore, the Workers' Compensation and Liability Insurance carriers shall grant a waiver of subrogation in Fort Bend County's favor.
4. If required coverage is written on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the commencement of any work and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work is completed.
5. Contractor shall not commence any portion of the work until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
6. Approval of the insurance by County shall not relieve or decrease the liability of the Contractor.