

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | 2019 | 2020 | 2021 | 2022 | 2023 |
|--|-----------------|-----------------|-----------------|----------------|------------------|
| Capital Expenditures | | \$30,000 | | \$850,000 | \$400,000 |
| Operating Costs | \$15,000 | \$16,500 | 18,150 | \$19,965 | \$21,962 |
| External Revenues | | | | | |
| Program Income (County) | | | | | |
| In-Kind Match (County) | | | | | |
| NET FISCAL IMPACT | \$15,000 | \$46,500 | \$18,150 | 869,965 | \$421,962 |
| # ADDITIONAL FTE POSITIONS (Cumulative) | | | | | |

Is Item Included in Current Budget: Yes X No
Does this item include the use of federal funds? Yes No X

Budget Account No:

| | | | | | | | |
|------|-------------|------|------------|------|-------------|--------|-------------|
| Fund | <u>3804</u> | Dept | <u>411</u> | Unit | <u>TBD</u> | Object | <u>4907</u> |
| Fund | <u>0001</u> | Dept | <u>410</u> | Unit | <u>5220</u> | Object | <u>4607</u> |

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Initial operating cost calculations for maintenance and repair are as follows and include a 10% annual increase:
 1000 KW Monthly cost \$140 x 11=\$1,540; Annual cost \$2,400; Load test \$1,200 Total \$5,140
 350KW Monthly cost \$140 x 11=\$1,540; Annual cost \$1,300; Load test \$1,200 Total \$4,050
 Parts & Materials, Labor, Misc. repairs Total \$5,810
 \$15,000

Funding for the FY 20 CIP project of \$30,000 for Generator Fuel tank Remote Monitoring will be from the Public Building Improvement Fund.

Funding for the replacement of the generators in FY 2022 & 2023 will be included in Facilities Management County-Wide R&R CIP Request using the Public Building Improvement Fund.

C. Departmental Fiscal Review: Ken Ayler

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

ASDA 4/1/19
 OFMB 9/4/19 LH4/1

Dr. J. Jacobson 4/13/19
 Contract Development and Control 4/13/19

B. Legal Sufficiency:
Assistant County Attorney 4/8/19

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

Background and Justification (Cont'd) :

In July 2018, a few months prior to the expiration of the 1998 Agreement, the fuel tank, which comprised part of the Emergency Power Equipment, released fuel which required remediation by Fair and resulted in both the Fair and the County, who have the same insurance carrier, filing insurance claims in regard to the incident. The insurance carrier has indicated that it will be paying the County on its claim and County in this Agreement acknowledges that it will forward all insurance proceeds it receives to the Fair, which incurred the costs associated with the spill and subsequent remediation. In negotiating this Agreement, the Fair advised that they do not use and derive no benefit from the Emergency Power Equipment. Due to this and to better ensure equipment operability, the County in this Agreement takes responsibility for the inspection, maintenance, repair, and replacement of the Emergency Power Equipment.

This Agreement also preserves County's ability to access and exclusively use the Expo Center and to provide a shelter for special needs residents during emergencies. Under this Agreement, the County takes responsibility for all damages to the shelter during its use, including if the damage was caused from the emergency event, and the County is designated as the responsible party for seeking reimbursement from FEMA. This puts County in the best position possible to facilitate the reimbursement process with FEMA. It also allows the County to control the restoration/repair process to ensure that the repairs are done in compliance with County standards and thus permit the County to continue to be able to use the facility as a shelter.

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2019, by and between PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY," and the SOUTH FLORIDA FAIR AND PALM BEACH COUNTY EXPOSITIONS, INC., a Florida nonprofit corporation organized under Chapter 616, Florida Statutes, hereinafter referred to as "FAIR".

WITNESSETH:

WHEREAS, the COUNTY, under Florida Statutes Chapter 252, is responsible for safeguarding the lives of its citizens during emergencies and for establishing safe public shelter space for hurricane evacuations; and

WHEREAS, the FAIR is a non-profit organization organized and regulated by Chapter 616 of the Florida Statutes which owns approximately 122 acres in central Palm Beach County, Florida, which is located at 9067 Southern Boulevard, West Palm Beach, Florida ("Fairgrounds"); and

WHEREAS, the Fairgrounds contains various exhibit buildings comprising over 100,000 square feet of flat floor space ("Expo Center"), one of which buildings is commonly referred to as the Expo West ("Expo West") and is the West building of the two buildings connected together; and

WHEREAS, the parties entered into an agreement in 1998, under which the COUNTY provided FAIR with money and services for certain capital projects at the Fairgrounds (1998 Agreement), which 1998 Agreement expired in December, 2018; and

WHEREAS, under the 1998 Agreement, certain of the projects the COUNTY paid for involved retrofitting and hardening certain portions of the Expo West for use as an emergency shelter, and further, the COUNTY installed generators and other emergency power equipment; and

WHEREAS, the 1998 Agreement provided that in consideration for COUNTY's performance of these capital improvements to certain portions of the Expo West, COUNTY was entitled to the use and possession of Expo West known as the special care unit (now known as the "Special Needs Shelter") for sheltering evacuees during emergencies; and

WHEREAS, the 1998 Agreement also sets forth the understandings and responsibilities of the parties regarding maintenance of the Special Needs Shelter; and

WHEREAS, both parties now desire to enter into a new agreement wherein the terms are updated and amended.

WHEREAS, the countywide need for shelter facilities for evacuees continues and COUNTY requires full occupancy, use and possession of the Special Needs Shelter immediately

prior to, during, and after an emergency event for emergency protective measures including sheltering evacuees; and

WHEREAS, this Agreement allocates legal responsibility for repairs and maintenance to the Special Needs Shelter on a long term and on-going basis as consideration for the establishment and securing to COUNTY of legal rights to possession and use of the Special Needs Shelter for sheltering and recovery operations in the event of an emergency.

NOW THEREFORE, in accordance with the mutual covenants hereinafter set forth and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 PURPOSE OF AGREEMENT

Section 1.01 Recitals

The parties affirm and incorporate the recitals set forth above.

Section 1.02 Purpose

The Purpose of this Agreement is to set forth the understandings and responsibilities between the parties surrounding the use of the Special Need Shelter during an emergency and the legal responsibility for improvements to, maintenance and repair of the Special Needs Shelter, including its emergency power system during the term of this Agreement.

Section 1.03 Special Needs Shelter

The Special Needs Shelter is located in what is referred to as Expo West in the Expo Center at the Fairgrounds. The Special Needs Shelter serves as an emergency shelter for the COUNTY. It was previously retrofitted, at COUNTY's expense, and the retrofitting project included: a) bracing of exterior wall panels; b) replacing of two (2) overhead roll-up doors; c) installing storm shutters for windows and glass doors; d) replacing of emergency exit doors; e) installing exterior wind walls to protect HVAC and other equipment, f) installing an emergency power system, and g) modifying the electrical distribution system for use as a Special Needs Shelter.

Section 1.04 Emergency Power System

The COUNTY installed the emergency power system at the Special Needs Shelter at the COUNTY's expense under the prior agreement. The emergency power system is currently comprised of two generators (the Lift Station Generator and the Building Generator), the required transfer switches, panels and accessories. It also includes an enclosed wall to protect this equipment, a fuel tank, and all ancillary equipment (collectively the "Emergency Power System"), which the parties acknowledge and agreed are the property of the County. For the purpose of this Agreement, the Emergency Power System specifically excludes any and all electrical distribution system components supplying, regulating and/or controlling commercial power to Expo West and

Special Needs Shelter beyond the transfer switch. The generators are located outside of the Special Needs Shelter and are used to provide emergency power to Expo West. The Emergency Power System is critical for providing power to the medical equipment required for special needs evacuees. The COUNTY as of the signing of this Agreement takes the Emergency Power System AS IS WHERE IS WITH ALL FAULTS.

Section 1.05 Administration of Agreement

The COUNTY's Director, Facilities Development & Operations, or his/her designee, shall be responsible for all aspects of the administration of the terms and conditions of this Agreement concerning the COUNTY's obligations, unless otherwise determined by the County Administrator.

ARTICLE 2

COUNTY'S RIGHT TO POSSESSION AND EXCLUSIVE USE OF SPECIAL NEEDS SHELTER DURING EMERGENCY

Section 2.01 Possession and Exclusive Use of Special Needs Shelter

In consideration of the mutual covenants and agreements set forth herein, FAIR grants to COUNTY the exclusive use and possession of the Special Needs Shelter during emergencies as set forth in this Agreement. The COUNTY and the FAIR agree to support and assist each other in the event the COUNTY is threatened by an emergency, including, but not limited to, a tropical storm, hurricane, or any other natural, man-made or technological emergency which County reasonably determines may result, in substantial injury or harm to the population and which reasonably requires the COUNTY's use of the Special Needs Shelter. The parties understand and agree that the emergency, and COUNTY's use of the Special Needs Shelter, may occur with little advance warning, or notice.

Section 2.02 COUNTY's Rights and Responsibilities When in Possession of the Special Needs Shelter

When the COUNTY determines that an emergency as defined in Section 2.01 exists, and as declared by the Board of County Commissioners, which requires the use and possession of the Special Needs Shelter, the COUNTY shall notify the FAIR of its activation and its right to exclusive use and possession of the Special Needs Shelter (Expo West) under Article II of this Agreement, and the following rights and responsibilities shall apply:

- a. The COUNTY shall make reasonable efforts to notify FAIR sufficiently in advance of the need to utilize the Special Needs Shelter. FAIR will be provided with a copy of the Declaration of Local State of Emergency or other document which states the reason for the use of the Special Needs Shelter.

- b. Prior to use and possession, COUNTY shall inspect and document the condition of the Special Needs Shelter.
- c. The COUNTY shall provide staff and logistic support to oversee and manage the use of the Special Needs Shelter.
- d. During COUNTY's use and possession of the Special Needs Shelter, the County shall be responsible for operations, including County staff and volunteers; and the County shall be responsible for oversight of care for evacuees and patients and for the care and custody of all emergency supplies and equipment, and the maintenance and repair of the Special Needs Shelter.
- e. During COUNTY's use and possession of the Special Needs Shelter, the COUNTY shall be responsible for the restoration and repair of any and all damage to the Special Needs Shelter, including its furnishings, fixtures, equipment and other improvements located thereon and shall return the Special Needs Shelter to the same condition found prior to its use.
- f. Except for the negligence of the Fair or any of its agents, County shall be responsible for all injury to any and all persons located in, using, occupying or being sheltered in the Special Needs Shelter during such time that County is in possession of and using the Special Needs Shelter.
- g. If the Emergency Power System is damaged, the COUNTY shall be responsible for repairs.
- h. COUNTY shall be responsible for seeking reimbursement from FEMA, or other applicable State or federal agency for-all emergency use related restoration costs and emergency sheltering expenses incurred as a result of COUNTY's use and possession of the Special Needs Shelter. Notwithstanding the aforesaid, COUNTY shall promptly restore the Special Needs Shelter and reimburse FAIR for those items that are the County responsibilities under this Agreement, regardless of FEMA's reimbursement determination.
- i. The COUNTY shall provide the FAIR with a daily report which will identify the length of time required before the COUNTY expects to return use and possession of the Special Needs Shelter to FAIR.
- j. During COUNTY's use and possession of the Special Needs Shelter, it may obtain and install all necessary equipment and emergency power required to effectively respond to the emergency event, and to power the Special Needs Shelter at COUNTY's risk.

Notwithstanding anything stated within this Section, or this Agreement to the contrary, the FAIR

shall have sole use and exclusive possession of the Special Needs Shelter for the conduct of its statutorily required annual fair and it is agreed that notwithstanding any emergency, declared or otherwise, the COUNTY will not be entitled to possession from December 15th until February 15th for each year of this Agreement, unless otherwise agreed to by the FAIR in its sole discretion.

Section 2.03 FAIR Rights and Responsibilities when COUNTY Uses Special Needs Shelter

Upon the COUNTY providing notice to the FAIR under Section 2.02, the FAIR shall make reasonable efforts to assure that the Special Needs Shelter is reasonably free of obstructions and available to COUNTY within eight hours of the COUNTY's notice. Upon COUNTY's use and possession of the Special Needs Shelter, FAIR shall provide COUNTY with a contact name, phone number and email address, who shall be available to COUNTY at all times to act as the FAIR'S point of contact with the COUNTY during its use and possession of the Special Needs Shelter. At the time of the signing of this Agreement the Fair's CEO, or the CEO's designee, shall be the COUNTY's Point of Contact as to all matters concerning the Special Needs Shelter.

Section 2.04 Fees, Invoicing & Payment for COUNTY's Use and Possession of Special Needs Shelter

- a. FAIR shall invoice COUNTY for all reasonable and necessary costs and expenses incurred as a result of FAIR's compliance with Article II of this Agreement.
- b. FAIR is only entitled to reimbursement for COUNTY's use and possession of the Special Needs Shelter, as well as all costs associated with staffing, maintenance or other services, equipment or supplies required under Article II of this Agreement to enable COUNTY to use and possess the Special Needs Shelter during the emergency.
- c. **Personnel Fees.** FAIR shall maintain specific records detailing the costs and expenses that FAIR incurred as a result of COUNTY's use and possession of the Special Needs Shelter. For staffing expenses, if any, FAIR shall maintain records detailing the tasks the staff performed, the hours worked each day, and any overtime hours worked. A current fee schedule for personnel hourly rates is attached hereto and incorporated herein as **Exhibit "A."** FAIR may update this fee schedule annually, to be consistent and comparable with its normal and customary rates charged to its offseason licensees. In no event shall COUNTY be charged any more or less than the FAIR's promulgated annual rate schedule.
- d. **Facility and Equipment Fees.** A current fee schedule for COUNTY's use and possession of the Special Needs Shelter is attached as **Exhibit "A."** FAIR shall only assess a charge for use of the Special Needs Shelter if the use lasts longer than five (5) days. FAIR shall only assess a use fee in an amount equal to 50% of the rate listed in **Exhibit "A."** If COUNTY's use beyond five (5) days causes the FAIR to have to cancel a previously scheduled event(s), then such usage would be

assessed at the full rate listed in **Exhibit "A."** There shall be no charge for use of FAIR's equipment during COUNTY's possession. County shall be responsible for any FAIR equipment that is damaged beyond repair as a result of COUNTY's use. FAIR may update this fee schedule annually, to be consistent and comparable with its normal and customary rates charged to its offseason licensees. In no event shall COUNTY be charged any more or less than the FAIR's promulgated annual rate schedule.

- e. In accordance with **Exhibit "A,"** FAIR shall invoice COUNTY within thirty (30) days of the emergency event, as well as provide COUNTY with its records detailing the costs and expenses incurred as a result of COUNTY's use and possession of the Special Needs Shelter. FAIR acknowledges that timely submission of this documentation is necessary to ensure claims are submitted within federal reimbursement time requirements.
- f. If FAIR incurs an expense that is not referenced in the approved fee schedule, COUNTY may negotiate with FAIR as to such an expense, and pay for such expense if it is mutually agreed to by both parties.

ARTICLE 3

ROUTINE OPERATION AND MAINTENANCE OF SPECIAL NEEDS SHELTER AND EMERGENCY POWER SYSTEM

Section 3.01 Special Needs Shelter Operation and Maintenance

When COUNTY is not using the Special Needs Shelter during an emergency event, the FAIR is solely responsible for the operation and all on-going maintenance of the Expo West.

Section 3.02 Inspection of Special Needs Shelter

- a. **Annual Storm Preparation Test.** Prior to Hurricane season of each year, COUNTY shall conduct a full test of the Special Needs Shelter and all attendant equipment to ensure the facility will meet the COUNTY's need during an emergency event. COUNTY shall coordinate only with FAIR, and not any other third party, to schedule said testing on a date and time that will not interfere with any shows or events or operations of the FAIR or its licensees. This annual test shall include, but not be limited to, COUNTY affixing all shutters and reinforced paneling to the facility, setting up electrical poles and medical equipment, verifying plumbing, electrical and other utility system requirements and confirming proper operation and condition of the Emergency Power System. The FAIR agrees to assist and work together with COUNTY to conduct this annual test. If the COUNTY, in its reasonable discretion, determines that necessary repairs to the Special Needs Shelter, excluding the Emergency Power System, are needed following this annual test, the FAIR shall make such repairs (less those repairs

required to the Emergency Power System which are the responsibility of the County), at its sole expense, prior to June 1st of each year (so long as the repairs are necessary and reasonable).

- b. **Periodic Inspections.** The COUNTY may periodically inspect the Special Needs Shelter. County shall coordinate only with FAIR, and not any other third party, to schedule said inspections on a date and time that will not interfere with any shows or events or operations of the FAIR or its licensees. Upon inspection, if the COUNTY, in its reasonable discretion, determines that necessary repairs or maintenance work is reasonably required, the FAIR shall cause such work to be performed, at its sole expense, in a timely manner (so long as the repairs are necessary and reasonable).

Section 3.03 Emergency Power System Operation and Maintenance

COUNTY is solely responsible for the operation and all timely maintenance, repair and replacement of the Emergency Power System, including both generators, the fuel tank and all attendant equipment. COUNTY is responsible for inspecting, testing, and maintaining the Emergency Power System, at its own expense. COUNTY shall be responsible to the FAIR for the costs and expenses to repair any damages arising out of the placement and use of the Emergency Power System, including but not limited to any fuel spill, clean-up costs, and/or remediation, as well as dealings with the EPA, DEP, Palm Beach County ERM and associated entities. Notwithstanding the foregoing however, nothing in this Section 3.03 shall be construed as a waiver of County's sovereign immunity or shall be construed as consent to be sued by third parties.

- a. **County Access.** The FAIR shall permit access to COUNTY, and/or its designee, and shall fully co-operate with the COUNTY, and/or its designee at any time for inspection, testing, service, repair, maintenance, replacement or remediation related to the Emergency Power System, so long as COUNTY does not interfere with the routine operations of the FAIR, its licensees, invitees, or agents.
- b. **Notice.** The FAIR shall provide immediate notification to COUNTY of any irregularity, release of contents, or environmentally dangerous event related, or potentially related, to the fuel tank, generators and any other ancillary equipment associated with the Emergency Power System that is observed through the FAIR's observation of the Emergency Power System and surrounding area. For the purpose of this Section only, observation shall mean any irregularity that is deducted by sight, hearing or smell by FAIR personnel by the area in which the Emergency Power System is located. For avoidance of doubt, no legal obligation, affirmative duty or liability is placed upon FAIR or its personnel for observation of the Emergency Power System and surrounding area.
- c. **Incidental Beneficiary.** Both parties recognize that FAIR may receive an incidental benefit from the Emergency Power System in that it will continue to supply power to the Special Needs Shelter, including the administrative offices on

the second floor, in the event of a power outage. This benefit is unintended and merely incidental to COUNTY's operation and maintenance of the Emergency Power System. This incidental benefit creates no obligation that COUNTY ensure FAIR has uninterrupted power coverage nor does it provide FAIR with any rights to require COUNTY to replace or repair any defect in the System. COUNTY, in its sole discretion, shall determine when, or if, any defect in the system shall be repaired or replaced. COUNTY has no obligation to respond to FAIR regarding any power outage. FAIR shall not be charged by COUNTY for any incidental use.

- d. Fair Use Agreements.** In all Use Agreements with third parties, FAIR shall not indicate that it can provide backup generator power in the event of a power outage, if FAIR would be relying upon the Emergency Power System to provide the backup generator power. However, nothing shall preclude the FAIR or third parties from receiving the incidental benefits of the Emergency Power System if and when available.

Section 3.04 Renewal/Replacement and Future Improvements

The COUNTY may, at its expense, replace equipment, improve or harden the FAIR's facilities to better support the COUNTY's emergency use and possession of the Special Needs Shelter to the extent that such replacements, improvements or hardening do not otherwise impact or diminish the FAIR's use of the FAIR's facilities and Expo Center and are approved in writing in advance by the FAIR.

ARTICLE 4 ADDITIONAL OBLIGATIONS OF FAIR

Section 4.01 Additional Obligations

FAIR also agrees to the following:

- a.** Having COUNTY logo appear on FAIR newsletters and brochures, including FAIR flyers.
- b.** Use of FAIR electronic sign for COUNTY announcements or messages (twice per year).

ARTICLE 5 PAYMENT OF FUEL SPILL REMEDIATION COSTS FOR PRIOR INCIDENT

Section 5.01 Prior Incident

In early July of 2018, the Emergency Power System fuel tank released fuel, requiring remediation work to be undertaken by the FAIR ("Prior Incident"). As of the date of this Agreement, the remediation work remains unfinished and FAIR will diligently continue with the remediation work (both physically and financially) it has undertaken until all remediation work is completed.

5.02 Insurance Proceeds for Prior Incident

As a result of this Prior Incident, the FAIR submitted an insurance claim against its policy which was abandoned when the COUNTY submitted a claim under its policy for this same release. Using the FAIR's remediation documentation, COUNTY is currently and will continue diligently processing the claim for the Prior Incident with its insurer and will keep FAIR updated on the status. COUNTY agrees to promptly, after receipt, provide FAIR with any and all insurance proceeds COUNTY receives from its insurance carrier as a result of the claim the COUNTY filed against its insurance policy for the Prior Incident. The parties acknowledge that COUNTY's agreement to provide FAIR with such insurance proceeds shall not be interpreted, implied or imputed to be an indication of fault or liability on behalf of COUNTY in regard to the Prior Incident.

ARTICLE 6 INSURANCE/INDEMNIFICATION

Section 6.01 Insurance

- a. **Liabilities.** Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, the COUNTY acknowledges to be self-insured for liabilities under Florida's sovereign immunity statute with current monetary waiver limits of \$200,000 per person and \$300,000 per occurrence; or such limits that may change and be set forth by the legislature.

When requested, the COUNTY agrees to provide a Certificate of Insurance evidencing its self-insured status which the FAIR agrees to recognize as acceptable evidence of financial responsibility for COUNTY'S liabilities under this Agreement.

- b. **Pollution Liability Insurance.** Notwithstanding anything to the contrary set forth in this Section 6.01, COUNTY shall purchase, pay for, and maintain throughout the term of this Agreement, pollution liability insurance for the Emergency Power System storage tank with minimum coverage limits of One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) per aggregate, or as increased by the COUNTY as part of its normal and ordinary operations during the Term of this Agreement. At no time shall any policy deductible exceed \$100,000 per claim. The Policy shall provide coverage for third-party bodily injury and, or property damage, plus clean-up costs or corrective action. COUNTY shall be responsible for the payment of the policy deductibles for each claim.
- c. **Fire and Allied Lines Insurance.** FAIR shall at all times during the term of this Contract, purchase and maintain, Fire and Allied Lines insurance coverage for the Special Needs Shelter for not less than one hundred percent (100%) of its full replacement cost, providing protection with "All-Perils" coverage as provided by the "Special-Cause of Loss Form" together with, but not limited to, insurance against wind and hail, sprinkler leakage damage, vandalism, theft and malicious mischief. The proceeds of such insurance, so long

as this Contract remains in effect, shall be used to repair or replace the Special Needs Shelter.

Section 6.02 Indemnification

FAIR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the negligence of the FAIR's officers, agents and employees in connection with the performance of the terms of this Agreement.

COUNTY shall protect, defend, reimburse, indemnify and hold FAIR, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the negligence of the COUNTY's officers, agents and employees in connection with the performance of the terms of this Agreement.

The COUNTY as a governmental entity acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28, and acknowledges that such statute permits actions at law against the COUNTY to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of the COUNTY while acting within the scope of the employee's office or employment under circumstances in which COUNTY, if a private person, would be liable under the general laws of the State of Florida.

The FAIR is also entitled to sovereign immunity as provided by section 768.28, Florida Statutes.

The foregoing indemnifications shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes, by FAIR or COUNTY, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions or to be sued by a third party.

The provisions of this Section 6.02 shall survive the termination of this Agreement.

**ARTICLE 7
LENGTH OF TERM AND TERMINATION**

Section 7.01 Length of Term and Commencement Date

This Agreement shall take effect upon execution by both parties ("Commencement Date") and remain in effect for a period of twenty (20) years.

Section 7.02 Termination

This Agreement may be terminated by FAIR upon ninety (90) days' prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the FAIR. In the event this Agreement is terminated by the FAIR as provided hereinabove, the FAIR, at its election, shall notify COUNTY to remove its Emergency Power System and return the area to its original condition or, in the alternative, the FAIR may elect to have the COUNTY execute a bill of sale to FAIR for the Emergency Power System.

This Agreement may also be terminated by the COUNTY, with cause, upon five (5) business day's written notice to FAIR or without cause upon ten (10) business day's written notice to FAIR. In the event this Agreement is terminated by the COUNTY as provided herein above, the COUNTY shall remove its Emergency Power System and return the area to its original condition.

In either scenario where removal of the Emergency Power System is required, COUNTY shall have thirty (30) days to remove said System, and during said time, the liability, maintenance and insurance provisions contained within this Agreement shall remain in full force and effect.

Upon expiration of this Agreement, COUNTY shall have thirty (30) days to remove the Emergency Power System and return the area to its original condition. During said time, the liability, maintenance and insurance provisions contained within this Agreement shall remain in full force and effect.

**ARTICLE 8
MISCELLANEOUS**

Section 8.01 Successors and Assigns

The COUNTY and the FAIR each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the COUNTY nor the FAIR shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other.

Section 8.02 Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

Section 8.03 No Third Party Beneficiaries

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the COUNTY and/or FAIR.

Section 8.04 Independent Contractor

The FAIR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. Except during the COUNTY'S use as a Special Needs Shelter, all persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the FAIR's sole discretion, supervision, and control. The FAIR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the FAIR's relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The FAIR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

Section 8.05 Access and Audits

The FAIR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY, upon reasonable notice, shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the FAIR'S place of business.

Section 8.06 Office of the Inspector General

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Office of the Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the FAIR, its officers, agents, employees and lobbyists in relation to this Agreement in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 126.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 8.07 Non-Discrimination

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770,

as may be amended, the FAIR warrants and represents that throughout the term of the Agreement, including any renewals thereof, if applicable, all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

Section 8.08 Severability

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Section 8.09 Notice

All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5603

With copy to:

Palm Beach County Attorney's Office:
301 North Olive Ave.
West Palm Beach, Fl. 33401

If sent to the FAIR, notices shall be addressed to:
South Florida Fair & Palm Beach County Expositions, Inc.
ATTN: President/CEO
9067 Southern Blvd.
West Palm Beach, FL 33416

With copy to:

Foster & Fuchs, PA
4425 Military Trail
Suite 109
Jupiter, FL 33458

or to such other address, or to such other person as any party will designate by written notice to the others.

Section 8.10 Entirety of Contractual Agreement

The COUNTY and the FAIR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Section 8.11 Governmental Regulations

The FAIR and COUNTY shall comply with all laws, ordinances and regulations of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, applicable to the terms of the Agreement contemplated herein. FAIR and COUNTY are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the terms of this Agreement.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, COUNTY and FAIR have executed this Agreement, or have caused the same to be executed as of the day and year first above written.

ATTEST:

COUNTY:

SHARON R. BOCK
CLERK & COMPTROLLER

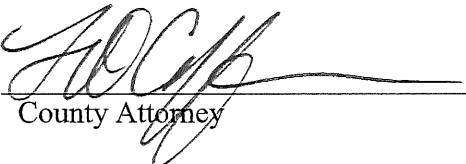
PALM BEACH COUNTY, a political
subdivision of the State of Florida

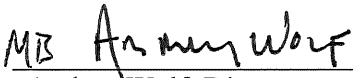
By: _____
Deputy Clerk

By: _____
Mack Bernard, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED AS TO TERMS AND
CONDITIONS:

By:  _____
County Attorney

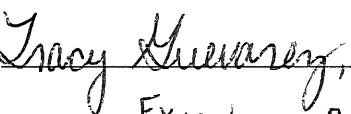
By:  _____
Audrey Wolf, Director
Facilities Development & Operations

WITNESS:

FAIR:

Tracy Guevarez

SOUTH FLORIDA FAIR AND PALM
BEACH COUNTY EXPOSITIONS,
INC.

By:  _____
Executive Assistant


By:  _____
Richard J. Vynlatil, Pres., and CEO

EXHIBIT "A"

EXPO CENTER

at the South Florida Fairgrounds

Facility Rates

Buildings/Areas

| | | |
|--|---------|-----|
| Expo Center East (49,051 S.F.) | \$4,500 | day |
| 1/2 of Expo Center East (24,525 S.F.) | 2,500 | day |
| Expo Center West (35,700 S.F.) | 3,000 | day |
| Building 1* (7,060 S.F.-Air) | 650 | day |
| Building 6* (7,060 S.F.-Air) | 650 | day |
| Building 7 (3,637 S.F.) | 425 | day |
| Building 8 (5,340 S.F.-Air) | 550 | day |
| Building 9 (3,625 S.F.-Air) | 550 | day |
| Building 10 (11,490 S.F.-Air) | 725 | day |
| Building 6-10 as 1 bldg. (31,172 S.F.-Air) | 2,500 | day |
| Concourse | 300 | day |
| Area A (9,545 S.F.) | 150 | day |
| Area B (23,707 S.F.) | 400 | day |
| Area C (21,240 S.F.) | 300 | day |
| Area D (26,856 S.F.) | 400 | day |
| Area E (27,750 S.F.) | 400 | day |
| Area F (103,125 S.F.) | 1,500 | day |
| AgriPlex | 2,500 | day |
| AgriPlex Show Arena | 800 | day |
| Yesteryear Village | 1,500 | day |
| South Parking Lot | 5,000 | day |

Move-in / Move-out days 1/2 of show day rate

Utilities

Air Conditioning per day:

| | | |
|---------------------|-------|-----|
| Expo East | 1,400 | day |
| Expo West | 1,400 | day |
| Expo North | 1,000 | day |
| Bldgs. 6-10 | 1,400 | day |
| Move-in days no A/C | 500 | day |

Personnel Charges

| | | |
|--------------------------------------|-------|------|
| Security (Personnel) | 21.00 | hour |
| Maintenance (Personnel during event) | 21.50 | hour |
| Supervisor | 23.50 | hour |
| Carpenter | 30.00 | hour |
| Electrician | 41.00 | hour |
| Medical (EMT) | 35.00 | hour |
| Ticket Seller | 15.50 | hour |
| Ticket Taker | 15.50 | hour |
| Parking Attendants | 19.00 | hour |

Equipment Rental

| | | |
|--|---------------|---------------------------|
| Tables 8"x30"x30" | \$8 | event |
| Chairs | 3 | event |
| Up to 32" x 64" 36"-54" High Staging: | 1,200 - 4,500 | event |
| Risers 4' x 8' x 16" | 100 | section/event |
| Stanchions | 15 | Per 8' section/day |
| Temporary Fencing | 2.25 | running foot/event |
| Ticket Booth-Portable | 35 | unit/day |
| Podium | 30 | day |
| Bleachers (Aluminum, 50 person capacity) | 250 | day |
| Scissorlift (30 ft) | 100 | incl. operator-2-hr. min. |
| Forklift (10,000 lb. capacity) | 100 | incl. operator-2-hr. min. |
| Two-way Radios | 25 | day |
| Wireless PA System | 300 | day |

- Above labor rates apply only to standard workdays (includes weekends). Holidays are subject to a rate of double time.
- Minimum Labor call -- 4 hours per person.
- Electricians are required during all hours facility is occupied by a promoter (includes move-in and move-out).
- EMT's are required to be on duty during all hours of public access.
- A minimum of 2 people are required to provide move-in assistance
- The amount of security is determined by the Fair and required one (1) hour before and one (1) after each EVENT.
- Rates are subject to change.

Revised March 2019

9067 Southern Boulevard • West Palm Beach, FL 33411 • (561) 790-4908 • Fax (561) 790-5206
 Website: www.southfloridafair.com
 Annabell Manners, Sales Manager