

Memorandum



CITY OF DALLAS

DATE December 5, 2018

TO Honorable Members of the Quality of Life, Arts & Culture Committee: Sandy Greyson (Chair), Mark Clayton (Vice Chair), Rickey D. Callahan, Jennifer S. Gates, Scott Griggs, B. Adam McGough, Omar Narvaez

SUBJECT **Fifth Amendment to Fair Park Contract with State Fair of Texas**

The Fifth Amendment to Fair Park Contract with State Fair of Texas is attached for your review and discussion at the Quality of Life, Arts and Culture Committee meeting at 9 a.m. on Monday, December 10, 2018. This item will be scheduled on the Addendum for the December 12, 2018 City Council Agenda.

Also attached are the following reference documents:

- Fair Park Contract adopted August 28, 2002 by Resolution 02-2405
- Memorandum of Understanding between the City of Dallas and the State Fair of Texas approved June 28, 2017 by Administrative Action 17-6482
- State Fair of Texas Security Plan authorized September 13, 2017 by Resolution 17-1436
- City Council Resolution 18-1532
- Park & Recreation Board Resolution regarding the 2018 Fair Park Management Proposal

Please let me know if you have questions.

A handwritten signature in blue ink, appearing to read 'Joey Zapata'.

Joey Zapata
Assistant City Manager

c: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Chris Caso, City Attorney (I)
Carol Smith, City Auditor (I)
Billerae Johnson, City Secretary
Preston Robinson, Administrative Judge

Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Majed A. Al-Ghafry, Assistant City Manager
Jon Fortune, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Directors and Assistant Directors



Agenda Information Sheet

File #: 18-1447

Item #: 4.

STRATEGIC PRIORITY: Quality of Life
AGENDA DATE: December 12, 2018
COUNCIL DISTRICT(S): 7
DEPARTMENT: Park & Recreation Department
EXECUTIVE: Willis C. Winters

SUBJECT

Authorize a fifth amendment to the Fair Park Contract dated May 21, 2003, as previously amended (the "Agreement") to: **(1)** extend the initial term of the agreement for a period of 10 years (the term shall expire on December 31, 2038); **(2)** establish annual rental fees for 2028 thru 2038; **(3)** incorporate financial processes and procedures for the allocation of funds; **(4)** require the State Fair of Texas to pay its full-time and part-time employees at least \$11.15 per hour or the federal minimum wage, whichever is higher; **(5)** incorporate a security plan process between the Dallas Police Department and the State Fair of Texas; and **(6)** incorporate miscellaneous provisions as required by state law - Revenue: \$39,750,000.00 (see Fiscal Information)

BACKGROUND

This item is being placed on the addendum per the City Manager's Office.

On May 21, 2003, City Council authorized a twenty-five (25) year lease agreement with two five-year contract extensions with the State Fair of Texas (SFT) to host the annual State Fair at Fair Park by Resolution No. 02-2405. The City's and State Fair's roles and responsibilities were clearly defined.

On August 9, 2006, City Council authorized a first amendment to the lease agreement with the State Fair of Texas for Phase I improvements to the Cotton Bowl by Resolution No. 06-2070. SFT agreed to provide the Phase I improvements to the Cotton Bowl Stadium totaling \$19.5 million in lieu of paying \$13.9 million to the City for rent. The rent payments to the City would be forgiven until early 2018, at which time the total amount of the scheduled rent payment would total \$13.9 million.

On October 22, 2008, City Council authorized a second amendment to the lease agreement with the State Fair of Texas to grant the State Fair of Texas the right to seek naming rights contracts for the Cotton Bowl Stadium and Summer Place Park Operation on behalf of the City by Resolution No. 08-2858.

On April 6, 2011, City Council authorized a third amendment to the Fair Park Contract with the State

Fair of Texas for marketing Fair Park by Resolution No. 11-0892. This allowed SFT a waiver of the annual \$50,000.00 marketing fee payment due to the City for four years to allow SFT to pay the Dallas Convention and Visitor Bureau \$200,000.00 up front to assist in paying Bowl game team payouts.

On February 13, 2013, City Council authorized a fourth amendment to the Fair Park Contract between the City and the State Fair of Texas to allow the State Fair of Texas to operate and maintain the Fair Park Livestock Center and seek naming rights and sponsorship opportunities for the facility and its components and allow for a 70/30 revenue split for parking revenues from the State Fair Summer Adventures' attendees by Resolution No. 13-0308.

On October 24, 2018, City Council procured, authorized, and entered into a twenty (20) year management agreement with the non-profit, Fair Park First, for the year-round private operation, maintenance, and enhancement of Fair Park by Resolution No. 18-1531.

On October 24, 2018, City Council authorized a resolution directing the City Manager to, in collaboration with Fair Park First, negotiate any necessary amendments or options to the existing Fair Park resident institutions, State Fair of Texas, and Texas Department of Transportation contracts, including extending the length of the terms to coincide with the Fair Park First contract and making any other improvements to other provisions of said contracts by Resolution No. 18-1532.

It is the mutual goal and desire of the City and SFT to cooperate with Fair Park First throughout the term of the private management agreement in order to further the enhancement, development, and improvement of Fair Park as a year-round public entertainment facility, tourist attraction, campus for cultural facilities, and public park. To facilitate that mutual goal and desire, City and SFT agree that the initial term of the Agreement should be extended to coincide with the initial term of the private management agreement with Fair Park First.

In this proposed fifth amendment, the following revisions are included:

- Extends the initial term of the agreement for a period of ten (10) years, bringing the expiration date to December 31, 2038. This extension will allow the term of the agreement to match the date of the Fair Park First contract.
- Establishes annual rental fees for 2028 to 2032 at \$1,950,000.00 per year, and for 2033 to 2038 at \$2,250,000.00.
- Amends the Agreement by incorporating financial processes and procedures for the allocation of funds.
- Requires the SFT to pay full-time and part-time employees at least \$11.15 per hour or the federal minimum wage, whichever is higher.
- Authorizes the incorporation of a security plan process between the Dallas Police Department and the SFT.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On September 6, 2018, the Park and Recreation Board authorized a twenty (20) year agreement with two five-year renewal options with Fair Park First for management of Fair Park and a resolution that

supported the extension of Fair Park tenants' contracts to coincide with the initial term of the Fair Park First contract.

On October 24, 2018, City Council authorized a resolution directing the City Manager to, in collaboration with Fair Park First, negotiate any necessary amendments or options to the existing Fair Park resident institutions, State Fair of Texas, and Texas Department of Transportation contracts, including extending the length of the terms to coincide with the Fair Park First contract and making any other improvements to other provisions of said contracts by Resolution No. 18-1532.

The Quality of Life Committee will be briefed by memorandum regarding this item on December 10, 2018.

FISCAL INFORMATION

Revenue: \$39,750,000.00

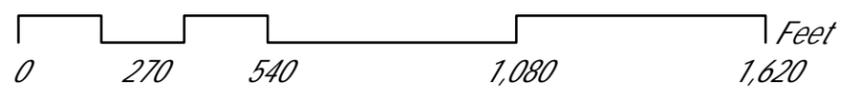
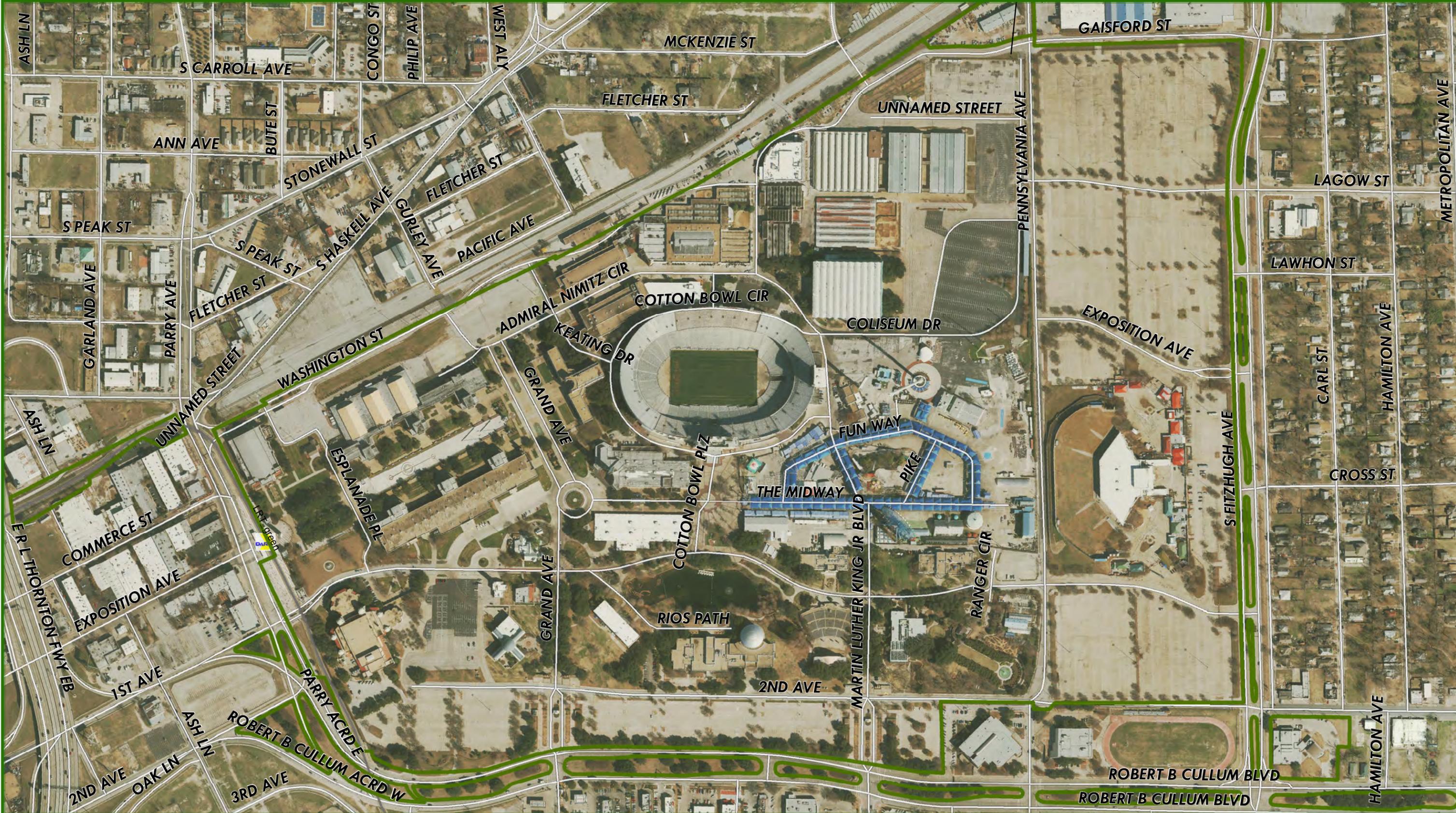
Per the initial agreement authorized in FY 2002, the State Fair shall pay the City annual rental fees for 2018 - 2027 and with the ten-year extension of the contract, annual rental fees for 2028 - 2038 as follows:

<u>Year</u>	<u>Annual Rental Fee</u>
2018	\$ 1,550,000.00
2019	\$ 1,550,000.00
2020	\$ 1,550,000.00
2021	\$ 1,550,000.00
2022	\$ 1,550,000.00
2023	\$ 1,750,000.00
2024	\$ 1,750,000.00
2025	\$ 1,750,000.00
2026	\$ 1,750,000.00
2027	\$ 1,750,000.00
2028	\$ 1,950,000.00
2029	\$ 1,950,000.00
2030	\$ 1,950,000.00
2031	\$ 1,950,000.00
2032	\$ 1,950,000.00
2033	\$ 2,250,000.00
2034	\$ 2,250,000.00
2035	\$ 2,250,000.00
2036	\$ 2,250,000.00
2037	\$ 2,250,000.00
2038	<u>\$ 2,250,000.00</u>
Total	\$39,750,000.00

All rental fees will be paid to the City pursuant to the State Fair Contract, and will promptly be remitted by the City to Manager (Fair Park First).

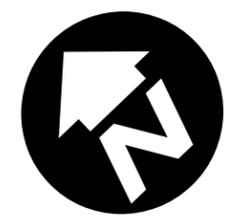
MAP

Attached



Fair Park

1200 Second Avenue



December 12, 2018

WHEREAS, on May 21, 2003, the City and State Fair of Texas entered into the Fair Park Contract for a term of 25 years with two five-year extensions, to provide for the use of the City's Fair Park for the annual State Fair of Texas Exposition and to clearly define the roles and responsibilities of the City and the State Fair of Texas (the "Agreement") by Resolution No. 02-2405; and

WHEREAS, on October 24, 2018, City Council authorized a 20-year management agreement with the non-profit, Fair Park First, for the year-round private operation, maintenance, and enhancement of Fair Park by Resolution No. 18-1531; and

WHEREAS, it is the mutual goal and desire of the City and the State Fair of Texas to cooperate with Fair Park First throughout the term of the private management agreement in order to further the enhancement, development, and improvement of Fair Park as a year-round public entertainment facility, tourist attraction, campus for cultural facilities, and public park; and

WHEREAS, to facilitate that mutual goal and desire, the City and the State Fair of Texas now agree that the initial term of the Agreement should be extended to coincide with the initial term of the private management agreement with Fair Park First; and

WHEREAS, as part of the consideration for extending the term of the Agreement, the City and the State Fair of Texas also agree to amend the Agreement to incorporate: (i) certain financial processes and procedures; (ii) the wage rate requirements for all State Fair employees; (iii) certain security plan requirements; and (iv) certain miscellaneous provisions now required by state law; and

WHEREAS, all other terms, provisions, conditions, and obligations of the Agreement between the City and State Fair shall remain in full force and effect, and the Agreement, as previously amended, and this fifth amendment shall be construed together as a single contractual agreement.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

December 12, 2018

SECTION 1. That the City Manager is hereby authorized to execute a fifth amendment to the Fair Park Contract dated May 21, 2003, as previously amended (the "Agreement") to: **(1)** extend the initial term of the agreement for a period of 10 years (the term shall expire on December 31, 2038); **(2)** establish annual rental fees for 2028 thru 2038; **(3)** incorporate financial processes and procedures for the allocation of funds; **(4)** require the State Fair of Texas to pay its full-time and part-time employees at least \$11.15 per hour or the federal minimum wage, whichever is higher; **(5)** incorporate a security plan process between the Dallas Police Department and the State Fair of Texas; and **(6)** incorporate miscellaneous provisions as required by state law, approved as to form by the City Attorney.

SECTION 2. That the Chief Financial Officer is hereby authorized to receive and deposit funds from the State Fair of Texas (Vendor 078069) in the Fair Park Naming Sponsorship Fund, Fund 0426, Department PKR, Unit 5234, Revenue Code 7199.

SECTION 3. That this contract is designated as Contract No. PKR-2019-00008943.

SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

THE STATE OF TEXAS §
 § FIFTH AMENDMENT TO
 § FAIR PARK CONTRACT
COUNTY OF DALLAS §

THIS FIFTH AMENDMENT (the “Fifth Amendment”) to the Fair Park Contract dated May 21, 2003, as previously amended (the “Agreement”), is entered into by and between the CITY OF DALLAS, TEXAS (the “City”), a Texas municipal corporation acting by and through its City Council, and STATE FAIR OF TEXAS (“State Fair”), a Texas nonprofit corporation.

WHEREAS, on May 21st, 2003, by Resolution No. 02-2405, the City and State Fair entered into the Agreement for a term of 25 years with two five-year extensions, to provide for the use of the City’s Fair Park for the annual State Fair of Texas Exposition and clearly define the City’s and State Fair’s roles and responsibilities; and

WHEREAS, on October 24, 2018, by Resolution No. 18-1531, the Dallas City Council procured, authorized, and entered into a management agreement with the non-profit, Fair Park First, for the year-round private operation, maintenance, and enhancement of Fair Park; and

WHEREAS, it is the mutual goal and desire of the parties to cooperate with Fair Park First throughout the term of the private management agreement in order to further the enhancement, development, and improvement of Fair Park as a year-round public entertainment facility, tourist attraction, campus for cultural facilities, and public park; and

WHEREAS, to facilitate that mutual goal and desire, the parties now agree that the initial term of the Agreement should be extended to coincide with the initial term of the private management agreement with Fair Park First; and

WHEREAS, as part of the consideration for extending the term of the Agreement, the parties also agree to amend the Agreement to incorporate: (i) certain financial processes and procedures; (ii) the wage requirements for all State Fair employees; (iii) certain security plan requirements; and (iv) certain miscellaneous provisions as required by state law; and

WHEREAS, all other terms, provisions, conditions, and obligations of the Agreement between the City and State Fair shall remain in full force and effect, and the Agreement, as previously amended, and this Fifth Amendment shall be construed together as a single contractual agreement.

NOW, THEREFORE, City and State Fair, in consideration of the mutual covenants, terms and conditions contained in this Fifth Amendment, and for other good and valuable consideration, agree as follows:

1. AGREEMENT TERM EXTENSION

Article II, “TERM”, Sections 2.02 and 2.03 of the Agreement are hereby deleted and replaced with the following Section 2.02:

2.02 Extension of the Initial Term. Effective January 1, 2019, the Initial Term of this Agreement shall be extended for a period of ten (10) years. For the purposes of this Agreement, the definition of “Initial Term” shall include the ten-year extension as stated in this Section 2.02. The Initial Term shall expire on December 31, 2038.

2. REVISED ANNUAL RENTAL FEE

Article VIII, “ANNUAL RENTAL FEE”, Sections 8.01 thru 8.03 of the Agreement are hereby deleted and replaced with the following Section 8.01:

8.01 Initial Term. During the remaining portion of the Initial Term, the State Fair shall pay the City an annual rental fee according to the following schedule:

Year	Annual Rental Fee	Quarterly Payment Amount
2018 thru 2022	\$1,550,000	\$387,500
2023 thru 2027	\$1,750,000	\$437,500
2028 thru 2032	\$1,950,000	\$487,500
2033 thru 2038	\$2,250,000	\$562,500

The annual rental fee shall be paid by the State Fair to the City in equal quarterly installments on or before the 15th of the first month of each calendar quarter (January, April, July, and October) during the Initial Term of this Agreement.

3. FINANCIAL PROCESSES AND PROCEDURES

The Agreement is hereby amended by adding Section 11.06 to the end of Article XI, “ALLOCATION OF NET REVENUES”:

11.06 Financial Processes and Procedures. In accordance with the Memorandum of Understanding agreed to by the parties and effective June 28, 2017, the parties now agree herein:

- (a) Before the end of February of each year of this Agreement, the City and State Fair mutually agree to the following:
 - (i) State Fair will close-out financial books on prior year;

(ii) State Fair’s Board of Directors will determine “reasonable and prudent reserves” and establish its “Reserve Fund” policy and amount for current year that follows the guidelines set forth by the National Council of Nonprofits;

(iii) City, through its Director of the Park and Recreation Department or the Director’s authorized representative (the “Director”) and State Fair will hold an initial meeting for State Fair to present preliminary estimates of Net Revenues from the previous fiscal year;

(iv) State Fair will present a proposed schedule of capital expenditure projects and major maintenance projects to the Director (the “Preliminary Schedule”). City will have final approval of all major maintenance projects in the Preliminary Schedule;

(v) City will present its own list of proposed major maintenance projects to State Fair for review with State Fair and incorporation into the Preliminary Schedule;

(vi) During the review of the Preliminary Schedule, State Fair and the City will initially agree which party is best suited to undertake each major maintenance project, thereby initially determining and agreeing to the City’s Allocation;

(vii) If feasible, State Fair will provide an initial portion of funding of the City’s Allocation in the Fair Park Improvement Fund and such portion will be available to the City for agreed-upon City-designated major maintenance projects. Upon request, State Fair shall release funds to the City; and

(viii) City will provide State Fair a written list and status report of major maintenance projects previously funded by State Fair.

(b) Before the end of April of each year of this Agreement, the City and State Fair mutually agree to the following:

(i) State Fair will receive final audited financial statements, prepared in accordance with GAAP, from its independent public accountants;

(ii) State Fair will hold a second meeting with the Director to present final figures for Net Revenues from the previous fiscal year;

(iii) State Fair will present the Final Schedule, (which shall be inclusive of major maintenance project responsible party designations, as agreed to by the parties), for written approval by Director; and

(iv) Pursuant to Section 11.02 of this Agreement, no later than April 30, State Fair will provide the final dollar amount allocated to the City for the City's Allocation. That full amount for the City's Allocation will be earmarked and made available to the City from State Fair's board designated restricted Fair Park Improvement Fund account, if not already fully-funded in February.

4. LIVING WAGE, SECURITY PLAN, & MISCELLANEOUS PROVISIONS

The Agreement is hereby amended by adding the following Articles to the Agreement:

XXV. LIVING WAGE

25.01 State Fair shall pay both its full-time and part-time employees at least \$11.15 per hour. If the federal minimum wage is increased to exceed \$11.15 per hour during the Initial Term, then State Fair shall thereafter comply with all applicable federal minimum wage laws.

XXVI. SECURITY PLAN

26.01 City representatives from the Dallas Police Department ("DPD") and State Fair shall meet 180 days prior to each annual Fair to develop a security plan for that year's Fair. The security plan shall include, but not be limited to: (i) crowd control; (ii) perimeter traffic control; (iii) number of necessary personnel from police agencies or security service providers, including DPD officers; (iv) estimated direct costs for DPD officers, including those costs that would be normally provided in accordance with the practices and policies of the City of Dallas as well as DPD officers provided via overtime assignment; (v) reasonable and necessary reimbursement for special services provided; and (vi) other mutually agreeable security measures for operation of the Fair (collectively, the "Security Plan"). If private security personnel or elements from police agencies other than DPD or off-duty DPD personnel are included in the Security Plan, DPD shall provide the command structure, coordination, and deployment oversight for the implementation of the Security Plan. State Fair will be responsible for direct payment to non-DPD agencies and off-duty DPD personnel for services performed under the Security Plan.

26.02 Once the Security Plan is developed and agreed upon by DPD and State Fair, DPD shall implement and oversee the plan during the twenty-four operating days of the Fair. DPD will then invoice State Fair by December 31 of that year for reimbursement for services provided, including full cost recovery of both on-duty and overtime assignments based on actual hours worked. Within thirty (30) days of receipt, State Fair shall pay the full invoice amount.

XXVII
MISCELLANEOUS

27.01 Pursuant to Section 2270.002, Texas Government Code, State Fair hereby (i) represents that it does not boycott Israel, and (ii) subject to or as otherwise required by applicable federal law, including without limitation 50 U.S.C. Section 4607, agrees it will not boycott Israel during the Term. As used in the immediately preceding sentence, “boycott Israel” shall have the meaning given such term in Section 2270.001, Texas Government Code.

27.02 State Fair hereby represents that (i) it does not engage in business with Iran, Sudan or any foreign terrorist organization and (ii) it is not listed by the Texas Comptroller under Section 2252.153, Texas Government Code, as a company known to have contracts with or provide supplies or services to a foreign terrorist organization. As used in the immediately preceding sentence, “foreign terrorist organization” shall have the meaning given such term in Section 2252.151, Texas Government Code.”

5. ENTIRE AGREEMENT

All other terms, provisions, conditions, and obligations between City and State Fair shall remain in full force and effect, and the Agreement, as previously amended, and this Fifth Amendment shall be construed together as a single contractual agreement. All capitalized terms in this Fifth Amendment not otherwise defined herein shall have the meanings described in the Agreement. This Fifth Amendment cannot be modified without written agreement of the parties. To the extent of any conflicts between this Fifth Amendment and the Agreement, the terms and conditions of this Fifth Amendment shall control.

[Signatures are on the following page.]

EXECUTED this the 12th day of December 2018, by CITY, signing by and through its City Manager, duly authorized to execute same by Resolution No. _____, adopted by the City Council on December 12, 2018, and by STATE FAIR, acting through its duly authorized officials.

APPROVED AS TO FORM:

CITY OF DALLAS

CHRISTOPHER J. CASO,
Interim City Attorney

T.C. BROADNAX,
City Manager

By: _____
Assistant City Attorney

By: _____
Assistant City Manager

ATTEST:

By: _____
City Secretary

PARK AND RECREATION BOARD

By: _____
Name: Robert Abtahi
Title: President

STATE FAIR OF TEXAS,
a Texas nonprofit corporation

By: _____
MITCHELL GLIEBER,
President

By: _____
JAIME NAVARRO,
Chief Financial Officer
Senior Vice President, Finance

ATTEST:

By: _____
Corporate Secretary

clearly define the obligations, responsibilities, rights and duties of each with respect to the other, to provide for the enhanced year-round utilization of Fair Park as an entertainment center, tourist attraction and fair-grounds, and to provide a location for the annual State Fair of Texas for an additional twenty-five year term, with options for two five-year extensions.

NOW, THEREFORE, for and in consideration of the mutual undertakings herein provided, and other good and valuable consideration, the receipt and sufficiency of which are hereby confessed, the City and the State Fair do hereby renew, extend, modify, amend and replace the prior contractual relationship between them and agree as follows:

I.

DEFINITIONS

1.01 "City" means the City of Dallas, Texas.

1.02 "State Fair" means State Fair of Texas, a non-profit corporation organized under the laws of the State of Texas, and its successors or assigns.

1.03 "Park Board" means the City Park and Recreation Board as constituted pursuant to the Dallas City Charter or such other board or governing authority as may hereafter be established by the City for the purpose of exercising similar or other powers of a like nature in connection with the subject matter of this Agreement.

1.04 "Fair Park" means the tracts of land described in Exhibit A as that area is now constituted or may be diminished or increased during the term of this Agreement, including all buildings, structures, and improvements situated or erected on the tracts of land during the term of this Agreement.

1.05 "City Permanent Areas" means the areas, offices and/or buildings within Fair Park to be

available to and controlled by the City on a year-round, full-time or permanent basis as provided herein. City Permanent Areas are more fully described in Exhibit B.

1.06 "State Fair Permanent Areas" means the areas, offices and/or buildings within Fair Park to be available to and controlled by the State Fair on a year-round, full-time or permanent basis as provided herein. State Fair Permanent Areas are more fully described in Exhibit C.

1.07 "State Fair Seasonal Areas" means the areas, offices and/or buildings within Fair Park to be available to and controlled by the State Fair on a seasonal basis to further its operations of the annual State Fair of Texas as provided herein. State Fair Seasonal Areas are more fully described in Exhibit D.

1.08 "Fair" means the annual State Fair of Texas exposition presently held during the months of September and October each year under the supervision and control of the State Fair within Fair Park.

1.09 "Period of the Fair" means a period not to exceed thirty consecutive days during the months of September and October each year, or such other number of days as may be agreed upon by the City and the State Fair.

1.10 "Long term concessions" means contracts for food and drink services, souvenirs, or other sales which are intended to operate on a year-round, full-time or permanent basis.

1.11 "Temporary concessions" means contracts for food and drink services, souvenirs, or other sales which are intended to operate only on a short-term basis, such as during the Period of the Fair the State Fair's periods of Midway operations, or similar short terms.

1.12 "Cultural Facilities" means the current facilities known as Starplex, Museum of Natural History, the Aquarium, the Hall of State, Science Place I and II, the African American Museum, the

Women's Museum, the Music Hall, the Texas Discovery Gardens, and the Age of Steam, as outlined in Exhibit E, and such other museums, art galleries, educational or performance venues or similar year-round facilities as the Park Board may designate or establish as Cultural Facilities, whether as new construction or expansion or conversion of existing facilities; provided, however, the City shall secure the prior written approval of the State Fair prior to establishing any such new, converted or expanded facility, other than in the "Cultural Facility Districts" as outlined in Exhibit F, such approval not to be unreasonably withheld or conditioned.

1.13 "Community Outreach Programs" means those activities, events, programs, projects and/or organizations designed to enhance the Cultural Facilities for presentations and exhibits during the Fair, as well as those activities, events, programs, projects and/or organizations designed to promote State Fair and Fair Park within the City of Dallas.

1.14 "Midway" means the portion of Fair Park identified as such on the map of Fair Park attached hereto as Exhibit G.

1.15 "Long Range Plan" means any so-called Long Range Development Plan, as amended from time to time, mutually agreed upon in writing between the City and the State Fair, the purpose of which is to address the expanding and changing needs at Fair Park by providing a framework and guidelines for development, improvement, expansion, renovation, and preservation of Fair Park as the site of the Fair, as a campus for Cultural Facilities and related programming, and as a year-round entertainment center, tourist attraction, and public park.

II.

TERM

2.01 Initial Term. The Initial Term of this Agreement shall be for a period of twenty five (25)

years, beginning with the effective date of January 1, 2003 ("Initial Term").

2.02 First Extended Term. This Agreement shall automatically renew and continue for an additional five (5) years beyond the Initial Term ("First Extended Term"), unless the City or the State Fair shall elect to not renew this Agreement with the specific understanding that such non-renewal must be noticed in writing to the other party by December 1, 2025.

2.03 Second Extended Term. This Agreement shall automatically renew and continue for an additional five (5) years beyond the First Extended Term ("Second Extended Term"), unless the City or the State Fair shall elect to not renew this Agreement with the specific understanding that such non-renewal must be noticed in writing to the other party by December 1, 2030.

III.

STATEMENT OF PURPOSE AND POLICY

3.01 General Principles. It is the intent of the parties to provide for the continued operation and presentation of the annual Fair at Fair Park in the City of Dallas as well as for the year-round operation of Fair Park by the City and the enhancement, development and improvement of Fair Park as a public entertainment facility, tourist attraction, campus for Cultural Facilities, and public park. It is the desire of the parties to more clearly define the respective roles and responsibilities of the City and the State Fair, and to promote mutual cooperation in order to achieve these joint purposes. It is therefore agreed that the City shall be responsible for the year-round operation, programming, maintenance and development of Fair Park. The State Fair shall be responsible for assembling, programming, operating, conducting and disassembling the annual Fair, including the annual University of Texas-University of Oklahoma football game at the Cotton Bowl, the annual Grambling State University-Prairie View A&M University football game at the Cotton Bowl, other

collegiate or professional athletic events held at the Cotton Bowl during the Period of the Fair, and operation of the Midway, both during the Period of the Fair and periodically throughout the year according to this Agreement.

3.02 Nondiscrimination. It is the intent of the parties to award concession and other contracts on a nondiscriminatory basis and to promote equal access to business opportunities at Fair Park among all segments of the community.

IV.

CONDUCT OF THE ANNUAL STATE FAIR OF TEXAS

4.01 Period of the Fair. The City agrees that the State Fair shall have possession and occupancy of Fair Park, other than City Permanent Areas and Cultural Facilities, for the Period of the Fair, or such additional time as may be agreed upon by the parties.

4.02 Fair Set-up Period. The City agrees that the State Fair may assume possession and occupancy of Fair Park, other than City Permanent Areas and Cultural Facilities, up to sixty (60) days prior to the opening of the Fair for the purpose of preparation, assembly, erection, organization and programming of the Fair ("set-up period").

4.03 Fair Take-down Period. The City agrees that the State Fair may also have possession and occupancy of Fair Park, other than City Permanent Areas and Cultural Facilities, for a period not to exceed thirty (30) days after the closing of the Fair for the purposes of disassembling the Fair, cleaning up, and restoring Fair Park to acceptable condition ("take-down period").

4.04 Condition Received. The City agrees that Fair Park, including the Cotton Bowl but excluding City Permanent Areas and Cultural Facilities, shall be made available to the State Fair in good, clean and usable condition each year prior to occupancy by the State Fair for the conduct of the

Fair.

4.05 Condition Returned. The State Fair agrees to return to the City those portions of Fair Park used for conducting and presenting the Fair in good, clean and usable condition, normal "wear and tear" excepted.

4.06 Open to Public. During the set-up and take-down periods, Fair Park shall remain open to the general public, and areas not being used by the State Fair may be programmed and used by the City in any manner that does not unreasonably interfere with the set-up and take-down of the Fair. The State Fair will cooperate to accommodate City events during said set-up and take-down periods.

V.

THE MIDWAY OPERATIONS

5.01 Use by the State Fair. The State Fair shall program and operate the Midway during the Period of the Fair and throughout the year as weather conditions permit. These obligations include assembling, programming, operating, and disassembling all rides, games, food concessions, and other activities necessary for the development and programming of the Midway as an integral part of the annual Fair and Fair Park's year-round entertainment and tourist attraction efforts. Operation of the Midway by the State Fair during non-Fair periods shall be coordinated through the Director of the Park and Recreation Department or his designee. It is the objective of the City and the State Fair to identify non-Fair opportunities during the year for operation of the Midway and the State Fair will program and operate the Midway during such opportunities as are deemed economically feasible by the State Fair.

VI.

CONCESSIONS AND EXHIBIT CONTRACTS

6.01 During the Period of the Fair. The State Fair may enter into contracts for the operation of any temporary concessions, exhibit, attraction, or entertainment enterprise for terms not to exceed the term of this Agreement when the contracts are to be performed during the Period of the Fair. The contracts may be performed at any location within Fair Park under the control of the State Fair during this period. The contracts must contain appropriate provisions reserving unto the State Fair, the City, and the Park Board the right to require the contractor to vacate (permanently or temporarily) its location if the location is needed for permanent improvements or is otherwise in conflict with the needs of the State Fair, the City or the Park Board in connection with the development and operation of Fair Park.

6.02 Long-Term Cotton Bowl Contracts. The State Fair may enter into contracts for annual sports events at the Cotton Bowl to occur during the Period of the Fair such as the annual University of Texas-University of Oklahoma football game and the annual Grambling State University-Prairie View A&M University football game for terms not to exceed the term of this Agreement.

6.03 Long-term Concessions. The City may, as it deems appropriate and advisable, solicit, award, and renew long-term concession contracts at the Cotton Bowl and Old Mill Inn Restaurant. It shall also be the responsibility of the City to solicit and award long-term concession contracts for food and drink concessions in the permanent buildings, such as the Tower Building, Automobile Building, Embarcadero Building, Grand Place, Coliseum, Food & Fiber Building, Band Shell, Centennial Building, and such other permanent buildings for which long-term food and drink concessions are deemed to be appropriate. These City concession contracts shall be awarded for terms of one or more years, and may be renewable by the Park Board as it deems appropriate. The City agrees to cooperate and consult with State Fair prior to the awarding of any future long-term concession

contracts in Fair Park during the term hereof. The City agrees to use its reasonable best efforts to require current contractors to operate the concessions subject to the rules of the State Fair during the Period of the Fair, including their executing a "Fairtime Food Concession Agreement" that will be binding upon the contractors for the Period of the Fair. Additionally, the City shall require new/renewed contractors to operate any concessions subject to the rules of the State Fair during the period of the Fair, including incorporating the execution of the "Fairtime Food Concession Agreement" into such contracts. It shall be a condition of these concession contracts that during the Period of the Fair State Fair shall have a unilateral right to suspend a contract for cause, if State Fair determines that the concession contractor has failed to comply with the rules and regulations of the State Fair, breached the "Fairtime Food Concession Agreement," failed to pay the appropriate percentage of gross receipts, or otherwise failed to perform in accordance with the terms and conditions of the concession contract or "Fairtime Food Concession Agreement." Upon compliance with the above stated requirements, the State Fair agrees to treat the City's concessionaires/contractors no less favorably than its concessionaires/contractors.

6.04 Prior Notice of Long-Term Contracts. The City agrees to provide the State Fair with at least ninety (90) days advance notice prior to the award of any concession contract for a term of one year or more at Fair Park. The City agrees to receive and give consideration to any recommendations, suggestions or comments which the State Fair may provide to the City in connection with the award of long-term concession contracts; provided, however, the City's decision to award contracts shall be in its sole and unqualified discretion.

6.05 Temporary (Non-Fair) Concessions. The City may solicit and award temporary contracts for concessions at Fair Park which do not involve (a) operations during the Period of the Fair, (b) the

Midway, or (c) State Fair Permanent Areas.

6.06 Other Concession Contracts. All concession contracts which operate only during the Period of the Fair, excluding those in Cultural Facilities, will be solicited, awarded, supervised, and managed solely by the State Fair.

6.07 Fees during the Fair. The State Fair shall have the sole authority to legally establish all fees, rates, fares, and charges for all concessions, rides, admissions, parking, exhibits, sporting events, sponsorships and all other activities at Fair Park for the Period of the Fair, except for fees charged by or at Cultural Facilities.

VII.

INCOME AND REVENUE

7.01 State Fair Revenue. The State Fair shall receive all revenues from temporary concession contracts, rentals, exhibit fees, sporting events, entertainment events, vehicle parking fees, sponsorships, and all other sources of revenue from Fair Park generated during the Period of the Fair, except for revenue generated by the Cultural Facilities.

7.02 Concessions during the Period of the Fair. The State Fair shall receive the revenue generated during the Period of the Fair that would otherwise be collected by the City from concessionaires at Fair Park under contracts with the City, except for those involving Cultural Facilities.

7.03 Midway and State Fair Permanent Area Revenues. The State Fair shall receive all revenue from the operation of the Midway whenever operated by the State Fair, including revenue from any specific concession contracts awarded by the State Fair for operations within the Midway. Additionally, the State Fair shall receive all revenues from temporary concession contracts, rentals, exhibit fees, events, vehicle parking fees, sponsorships, and all other sources of revenue from the

operations of the State Fair Permanent Areas during non-Fair periods; provided, however, that the City shall receive all revenue from parking fees, rentals, exhibit fees, events, sponsorships, concession fees, and all other sources of revenue from City events during non-Fair periods, even if such revenue is generated from the use of State Fair Permanent Areas. The City must secure the prior written approval of the State Fair for use of State Fair Permanent Areas for City events; however, the State Fair will make every reasonable effort to accommodate such requests.

7.04 City Revenues. The City shall receive all revenue from concession contracts, rentals, exhibit fees, vehicle parking fees, sponsorships, and all other sources of revenue in Fair Park except (a) during the Period of the Fair, (b) all revenues from the Midway, when the Midway is operated by State Fair during non-Fair periods, and (c) all revenue from the State Fair Permanent Areas (except as provided in §7.03 above).

VIII.

ANNUAL RENTAL FEE

8.01 Initial Term. During the Initial Term of this Agreement the State Fair shall pay the City an annual rental fee according to the following schedule:

Year	Annual Rental Fee	Quarterly Payment Amount
2003 thru 2007	\$950,000	\$237,500
2008 thru 2012	\$1,150,000	\$287,500
2013 thru 2017	\$1,350,000	\$337,500
2018 thru 2022	\$1,550,000	\$387,500
2023 thru 2027	\$1,750,000	\$437,500

The annual rental fee shall be paid by the State Fair to the City in equal quarterly installments on or before the 15th of the first month of each calendar quarter (January, April, July & October) during the Initial Term of this Agreement.

8.02 First Extended Term. Subject to paragraph 2.02, the State Fair shall pay the City an annual rental fee of One Million Nine Hundred Fifty Thousand and No/100s Dollars (\$1,950,000) each year during the First Extended Term. The annual rental fee during the First Extended Term shall be paid by the State Fair to the City in equal quarterly installments on or before the 15th of the first month of each calendar quarter.

8.03 Second Extended Term. Subject to paragraph 2.03, the State Fair shall pay the City an annual rental fee of Two Million Two Hundred Fifty Thousand and No/100s Dollars (\$2,250,000) each year during the Second Extended Term. The annual rental fee during the Second Extended Term shall be paid by the State Fair to the City in equal quarterly installments on or before the 15th of the first month of each calendar quarter.

8.04 Rental Fee Use. The City agrees that the entire amount of the rental fee paid pursuant to this Article VIII shall be placed in a special account by the City and used only for the operation, maintenance, development and improvement of Fair Park.

8.05 Marketing Fee. As additional consideration the State Fair shall pay to the City on or before January 15th of each year an annual marketing fee in the amount of \$50,000 to provide for marketing and community programs involving Fair Park as determined by the City in its sole and absolute discretion.

8.06 Support of Cultural Facilities and Community Outreach Programs. As additional consideration the State Fair agrees to spend at least \$150,000 each calendar year during the term of

this Agreement with the Cultural Facilities and Community Outreach Programs. The specific expenditure items under this paragraph 8.06 shall be determined by and in the sole and absolute discretion of the State Fair.

IX.

OTHER CONSIDERATION AND OBLIGATIONS OF THE STATE FAIR

9.01 Return in Good Condition. Following the use of Fair Park for the Fair, the non-Fair time operation of the Midway by the State Fair, or any other use of Fair Park by the State Fair, the State Fair shall return the premises of Fair Park to the City in substantially the same and as good a condition as before the use, normal "wear and tear" excepted, unless otherwise agreed in writing by the City's Director of Park and Recreation Department.

9.02 Reserve Fund. In order to provide a sound financial basis for the future economic integrity of the Fair, the State Fair agrees to develop and maintain a reserve fund in the amount of at least \$4,500,000. This fund shall be used by the State Fair only upon authorization by the Board of Directors of the State Fair, as reflected in the minutes of the board and only for purposes consistent with ensuring the future operation of the annual Fair. If the balance of the reserve fund falls below the amount of \$4,500,000, the State Fair agrees to make reasonable efforts to restore the balance of the fund in a timely manner.

9.03 Utility Expenses. The State Fair agrees to pay the following costs:

- (a) all electrical energy, natural gas, water, and sewer utility costs ("utilities") incurred at Fair Park during the term of this Agreement for the period from September 15th through October 31st of each year, excluding those for City Permanent Areas and Cultural Facilities;
- (b) cost associated with private "meter reader" personnel to determine the State Fair

utility usage during the above-described period;

(c) all utilities attributable to State Fair Permanent Areas throughout the entire year;

(d) all utilities attributable to State Fair Seasonal Areas during the period of their usage by the State Fair; and

(e) all utilities attributable to the Midway for non-Fair periods of operation by the State Fair, including set-up and take-down periods attributable thereto.

The City shall invoice the State Fair each year of this Agreement for all costs associated with utility usage by the State Fair during the previous Fair. The City shall invoice the State Fair on a monthly basis during this Agreement for all costs associated with utility usage by the State Fair for State Fair Permanent Areas. The City shall invoice the State Fair for utility usage by the State Fair for non-Fair Midway operations and use of State Fair Seasonal Areas by the State Fair as soon thereafter as is practicable. The State Fair shall pay the City such utility costs within forty-five (45) days of receipt of such invoices.

9.04 Bonds, Indemnification and Standards. The State Fair shall require all of its contractors for any construction, repair or renovation work to obtain performance and payment bonds if those bonds would be required of a contractor for the same work for the City. Both the City and the State Fair shall be named as joint obligees in all bonds. The State Fair agrees to require all contractors and concessionaires of the State Fair to indemnify both the State Fair and the City, and to provide reasonable insurance (not less than required by the City on similar contracts) naming both the State Fair and the City as additional insureds.

9.05 Maintain Non-profit Status. The State Fair shall not, either by act or omission, allow its non-profit status with the State of Texas or the Internal Revenue Service to lapse or become forfeit.

X.

INDEMNIFICATION AND INSURANCE

10.01 Indemnification. The State Fair agrees to defend, indemnify, and hold the City and its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought ("Damages"), suffered by any person or persons, that may arise out of or be occasioned by any negligent or strictly liable act or omission of the State Fair or its officers, agents, employees or contractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, and in the event of joint and concurring negligence or fault of the State Fair and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the City or defenses of the parties under Texas law. It is further provided that the City shall give the State Fair prompt and reasonable notice of any such claim or action and the State Fair shall have the right and obligation to investigate, compromise, defend and pay same to the extent required herein. To the extent not covered by the proceeds of insurance, the State Fair further agrees to fully indemnify and hold the City harmless from any and all damage of any kind or character whatsoever to any property of the City, real or personal, arising out of the occupancy or use of Fair Park by the State Fair. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10.02 Insurance. See Exhibit H, which is attached hereto and incorporated herein for all purposes.

XI.

ALLOCATION OF NET REVENUES

11.01 Application of Excess Revenues. The State Fair agrees to expend the excess of its revenues, less its expenses and after all reasonable and prudent reserves are funded, on major maintenance and capital expenditures, which State Fair agrees to use for the development and enhancement of Fair Park and the Fair, using as a reference and guide the mutually agreed upon Long Range Plan.

11.02 Proposed Projects. On or before April 30th of each year of this Agreement, the State Fair shall present to the Director of the City's Park and Recreation Department a schedule of the following:

- (a) major maintenance and capital expenditure projects which the State Fair will undertake for the year; and
- (b) allocation of anticipated expenditures by the State Fair for Cultural Facilities and Community Outreach Programs.

"Major maintenance" project shall mean capital projects to Fair Park real property or any improvements thereon.

11.03 City Approval. The State Fair agrees to cooperate and consult with the Director of the City's Park and Recreation Department prior to preparing and submitting the schedule for major maintenance and capital expenditure projects. No major maintenance projects may be pursued without the Director of the City's Park and Recreation Department's advance review and written approval.

11.04 Plans and Specifications. All applicable major maintenance and capital expenditure projects performed by the State Fair shall be inspected by the Engineering/Design/Development staff of the

Park and Recreation Department for compliance with City Codes.

11.05 Audit. The City shall have the right to audit the schedule of major maintenance and capital expenditure projects to ensure proper compliance with the terms of this Agreement.

XII.

STATE FAIR OFFICE SPACE AND OTHER AREAS

12.01 Office Space, Etc. The State Fair shall occupy or control on a year-round basis the office space and other areas within Fair Park constituting State Fair Permanent Areas. The State Fair shall occupy or control on a seasonal basis the office space and other areas within Fair Park constituting State Fair Seasonal Areas ("move-in" dates set forth on Exhibit D). Additionally, State Fair shall have exclusive control of the adjacent parking areas to the above-described office areas.

12.02 Expenses. The State Fair agrees to pay the cost of all maintenance and utilities for State Fair Permanent Areas and State Fair Seasonal Areas (when occupied) during the term of this Agreement.

12.03 Release of Space. Should the State Fair elect not to occupy or use the first floor office space of the Centennial Building, which is designated for the State Fair's use on a seasonal basis as a part of the State Fair Seasonal Areas, the City may elect to take over said space in which event it shall be removed from the State Fair Seasonal Areas and added to the City Permanent Areas, without adjustment to any consideration provided herein.

XIII.

RECORDS AND AUDITS

13.01 Audited Annual Statements. The State Fair shall provide the City with audited annual financial statements, together with report of independent public accountants, by May 1 of each year of this Agreement.

13.02 Audit. The City reserves the right to conduct audits of the State Fair regarding compliance with this Agreement, and the State Fair agrees to maintain all financial records for a period of five (5) years. The State Fair agrees to permit access to its records by the City Auditor, or any outside auditor retained by the City, for the purpose of conducting audits during regular business hours and upon reasonable notice.

XIV.

LIAISON COMMITTEE

14.01 General. If the parties desire, a Liaison Committee shall be established consisting of two members from the Board of Directors of the State Fair and two members of the Park Board. The purpose of the Liaison Committee is to enhance liaison and communication between the parties, and to provide a format for ongoing discussions of mutual goals for the support and improvement of Fair Park and the presentation of the Fair. This committee shall function in an advisory capacity only, without any specific policy making authority or decision making power. The reports, recommendations, and suggestions of the Liaison Committee shall be received, reviewed, and considered by the Board of Directors of the State Fair and the Park Board. The Liaison Committee shall meet as often as necessary as determined by its members.

14.02 Advisory Review. The Liaison Committee shall also function as an Advisory Review Committee in the event differences of opinion or disagreements occur relating to the award or termination of concession contracts, when these matters cannot be satisfactorily resolved by the Director of the Park and Recreation Department and the President of the State Fair. When functioning in its capacity as an Advisory Review Committee, the Liaison Committee shall be augmented by an additional member, who shall be a neutral citizen of the City of Dallas selected by

agreement of the committee. After conducting a review of the facts and circumstances submitted to the committee by the Director of Parks and Recreation and the President of the State Fair, the committee shall submit its conclusions in the form of a recommendation for appropriate action, which recommendation shall be submitted to the Park Board and the Board of Directors. The final resolution of disputed matters shall be consistent with the terms and conditions of this Agreement.

XV.

CASUALTY AND CONDEMNATION

15.01 Remainder Unsuitable for Fair. In the event a substantial enough portion of Fair Park is damaged or destroyed by casualty or taken in condemnation or conveyed under threat and in lieu of condemnation such that the remainder is no longer a reasonably suitable site/venue for presenting the annual Fair, either party may terminate this Agreement by written notice to the other.

XVI.

NOTICES

16.01 All notices, communications, and reports required or permitted under this Agreement shall be effective only if in writing and delivered via U.S. mail (first class certified mail, postage prepaid), personal delivery, or private/overnight courier. Notices shall be effective upon receipt by the addressee.

If intended for the CITY, to:

Director, Park and Recreation Department
City of Dallas
City Hall, Room 6FN
1500 Marilla Street
Dallas, Texas 75201

If intended for the STATE FAIR via U.S. Mail, to:

President
State Fair of Texas
P.O. Box 150009
Dallas, Texas 75315

If intended for the STATE FAIR via personal delivery or private/overnight courier, to:

President
State Fair of Texas
3921 Martin Luther King Blvd. (Fair Park)
Dallas, Texas 75210

XVII.

VENUE

17.01 The obligations of the parties to this Agreement are performable in Dallas County, Texas, and if legal action is necessary to enforce same, exclusive venue shall lie in Dallas County, Texas.

XVIII.

APPLICABLE LAWS

18.01 This Agreement is made subject to the provisions of the Charter and ordinances of the City, as amended, and all applicable state and federal laws. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

XIX.

LEGAL CONSTRUCTION

19.01 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and such portion shall be deemed severed from this Agreement and the remaining part shall remain in full force and effect and the

parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.

19.02 Constructions and Interpretation. This Agreement shall be fairly interpreted in accordance with its terms and without any strict construction in favor or against either party hereto and ambiguities shall not be construed against the drafting party. All references to "Paragraphs", "Articles" or "Sections" contained in this Agreement are, unless specifically indicated otherwise, references to provisions of this Agreement. Whenever in this Agreement the singular number is used, the same shall include the plural where appropriate (and vice versa), and words of any gender shall include each other gender where appropriate. As used in this Agreement, the following words or phrases shall have the meanings indicated: (i) "or" means "and/or"; (ii) "include," "including," and their derivatives means "including without limitation"; and (iii) "laws" means statutes, regulations, rules, judicial orders, and other legal pronouncements having the effect of law.

XX.

COUNTERPARTS

20.01 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

XXI.

CAPTIONS

21.01 Captions and headings of the paragraphs or sections of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.

XXII.

SUCCESSORS AND ASSIGNS

22.01 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective executors, administrators, successors and, except as otherwise provided in this Agreement, their assigns. Neither party may assign or transfer its interest in this Agreement without the advance written consent of the other party.

XXIII.

ENTIRE AGREEMENT

23.01 This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

XXIV.

NO THIRD PARTY BENEFICIARIES

24.01 The provisions of this Agreement are solely for the benefit of State Fair and the City, and not intended to create or grant any rights, contractual or otherwise, to any employee of either party or to any other person or entity; and no such employee, other person or entity shall have any right of enforcement of this Agreement or any provision contained herein, such right of enforcement being exclusively reserved to State Fair and the City as the sole parties to, and sole beneficiaries of, this Agreement.

EXECUTED this the 21st day of May, 2003, by CITY, signing by and through its City Manager, duly authorized to execute same by Resolution No. 02-2405, adopted by the City Council on August 28, 2002, and by STATE FAIR OF TEXAS, acting through its duly authorized officials.

APPROVED AS TO FORM:
MADELEINE B. JOHNSON
City Attorney

CITY OF DALLAS
TEODORO J. BENAVIDES
City Manager

By: [Signature]
Assistant City Attorney

By: [Signature]
Assistant City Manager

ATTEST:

PARK AND RECREATION BOARD OF
THE CITY OF DALLAS

[Signature]
Board Secretary

By: [Signature]
Board President

ATTEST:

STATE FAIR OF TEXAS

[Signature]
Robert B. Smith, Corporate Secretary

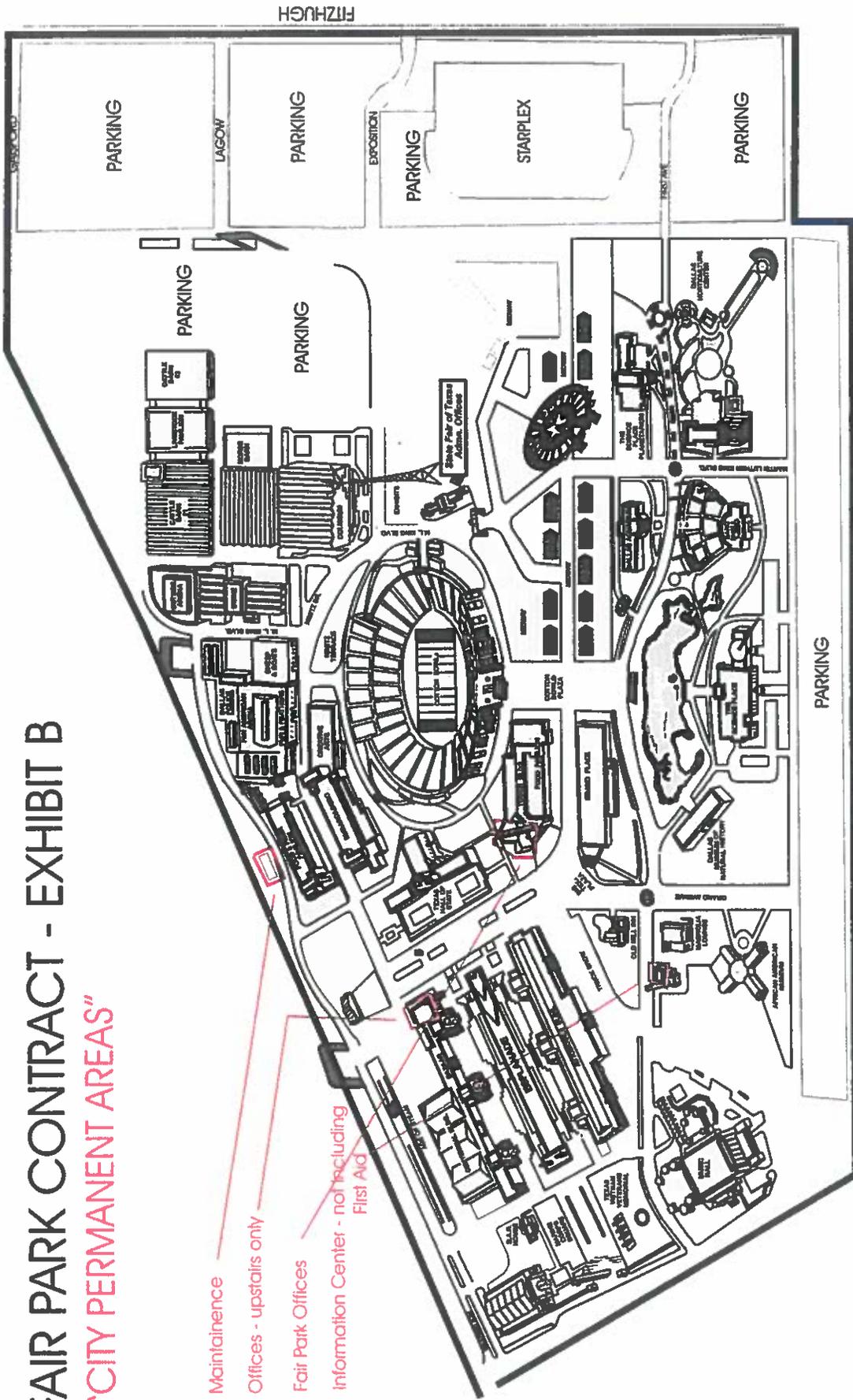
By: [Signature]
Errol McKoy, President

By: [Signature]
Lee Winton, CFO/Sr. Vice President,
Finance

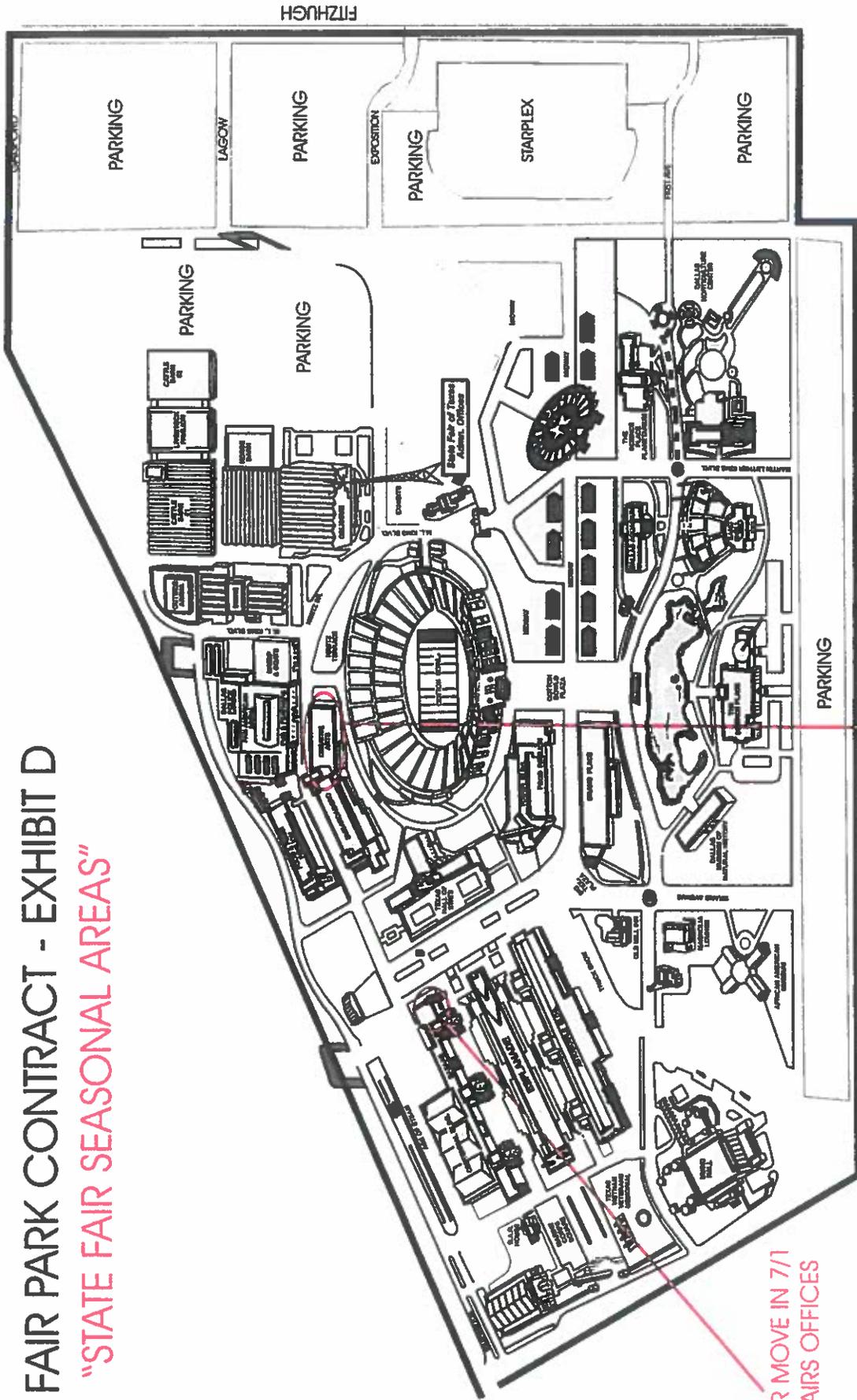
FAIR PARK CONTRACT - EXHIBIT B

"CITY PERMANENT AREAS"

- Maintenance
- Offices - upstairs only
- Fair Park Offices
- Information Center - not including First Aid



FAIR PARK CONTRACT - EXHIBIT D
"STATE FAIR SEASONAL AREAS"



STATE FAIR MOVE IN 7/1
DOWNSTAIRS OFFICES

STATE FAIR MOVE IN 8/1 - EXHIBIT SPACE



CITY OF DALLAS

ADMINISTRATIVE ACTION

See Administrative Directive 4-5 (Sections 6 Through 11) for Additional Guidelines and Routing

ADMINISTRATIVE ACTION

136622

EFFECTIVE DATE

8-19-2013 - Am

1. Place an "X" in the appropriate box, complete and submit this form for the approval of:

- a. Low bid contracts of not more than \$70,000
- b. Change orders for low bid contracts: \$50,000 or less (may not increase original contract price by more than 25%)
- c. Professional/Personal/Planning/Other Service contracts: \$50,000 or less.
- d. Amendments to non-bid contracts: \$50,000 or less, per City Code Sec. 2-34
- e. WRR-FM expenditures: \$50,000 or less per City Code Sec. 2-79D of the City Code.
- f. Other (explain on attachment)

RECEIVED
2013 OCT 25 AM 9:37
CITY SECRETARY
DALLAS, TEXAS

2. Attach all supporting documents including bid information as required. Approval shall be obtained before services are rendered.

3. Is this expenditure related to a construction project?

Yes X No

4. Any Administrative Actions to this vendor in the last 12 months? (if yes, attach explanation)

Yes X No

Vendor Name: State Fair of Texas

Subject: Amendment to Exhibits E & F to the City's Contract with State Fair of Texas
Department: Park & Recreation

Action Requested: Authorize amending Exhibits E & F (maps) of the State Fair of Texas contract with the City of Dallas removing the Museum of the American Railroad facility on both exhibits due to the museum's relocation to Frisco, Texas.

Contract Term: 7/25/2013 To 5/20/2028

Background: On August 28, 2002, Council approved an agreement between City of Dallas and the State Fair of Texas entitled "Fair Park Contract" which is in place for a 25-year term, with options for two five-year extensions. Due to the recent relocation of the Museum of the American Railroad (formerly known as "Age of Steam Museum") to Frisco, Texas, Exhibit E (highlighted map of "Cultural Facilities") and Exhibit F (highlighted map of "Cultural Facility Districts") now require amendment to remove the railroad museum from the maps for these two exhibits. (See current and proposed new exhibits E & F attached)
Contact: Daniel Huerta (214) 670-8483

FUND	DEPT	UNIT	ACTV	OBJ	PROGRAM	ENCUMBRANCE	VENDOR	AMOUNT
n/a								0.00

Project No.: _____ Commodity Code: _____ Financing: _____ No Cost Consideration to the City

Change Order No.	Original CR/AA No.	Original CR/AA Date	Original CR/AA Amount	Total Previous Change Orders	Change Amount Including this Order	Total Change Order Percentage

MWBE INFORMATION- Prime and Subcontractors use this section for low bid contracts greater than \$50,000 but less than \$70,000.

Indicate Amount to Each Group	African-American	Hispanic	Caucasian-Female	Other Minority	MWBE Certification Number
\$	\$	\$	\$	\$	

Approval: Approved as being in accordance with the Budget and Chapter 2 of the Dallas City Code.

By Department Director

Winnie Winters
8-16-13
DATE

Approved as to form by City Attorney

Christine Lenna
8-18-13
DATE

RECEIVED

JUL 31 2013

Original - City Secretary
PKR FINANCE

By Assistant City Manager

Dan Huerta
8/19/13
DATE

Max W. Wells, President
Park and Recreation Board

Carl Paul Secretary
REV 09/2012

NOTICE

FILE NUMBER 136622

**THE ATTACHED ADMINISTRATIVE ACTION OR CHANGE ORDER WAS
SUBMITTED AND ASSIGNED A FILE NUMBER AS IT APPEARS TO BE
COMPLETE.**

VALIDATED BY 
PRINTED NAME Biterae Johnson

DATE RETURNED OCT 28 2013

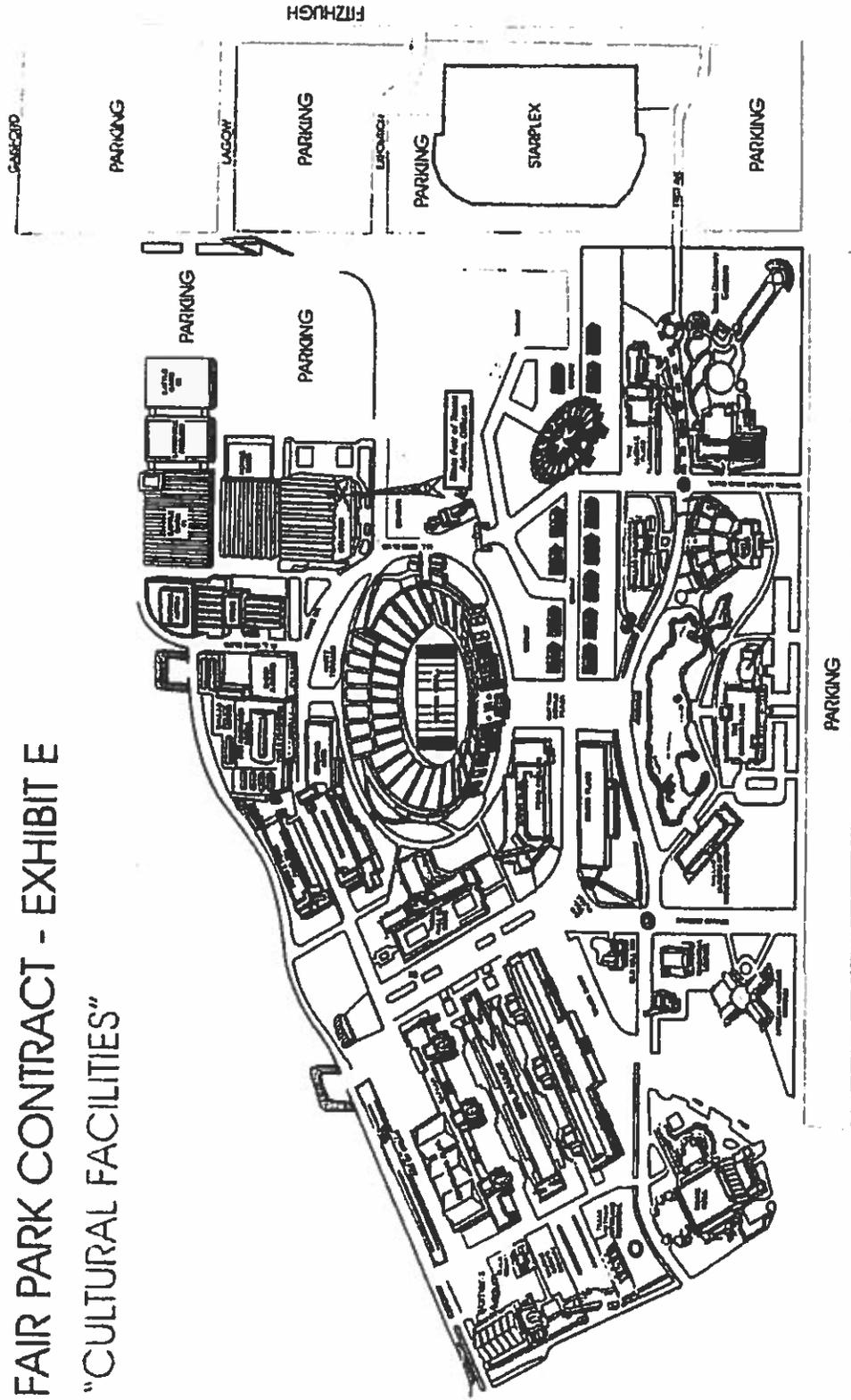
PREPARED BY 
Lindsay Thomas

**[THE CITY SECRETARY'S OFFICE HAS NO KNOWLEDGE OF THE PREPARATION
OF THIS DOCUMENTATION; PLEASE DIRECT ANY INQUIRIES TO THE
INITIATING DEPARTMENT. THANKS!]**

CITY SECRETARY

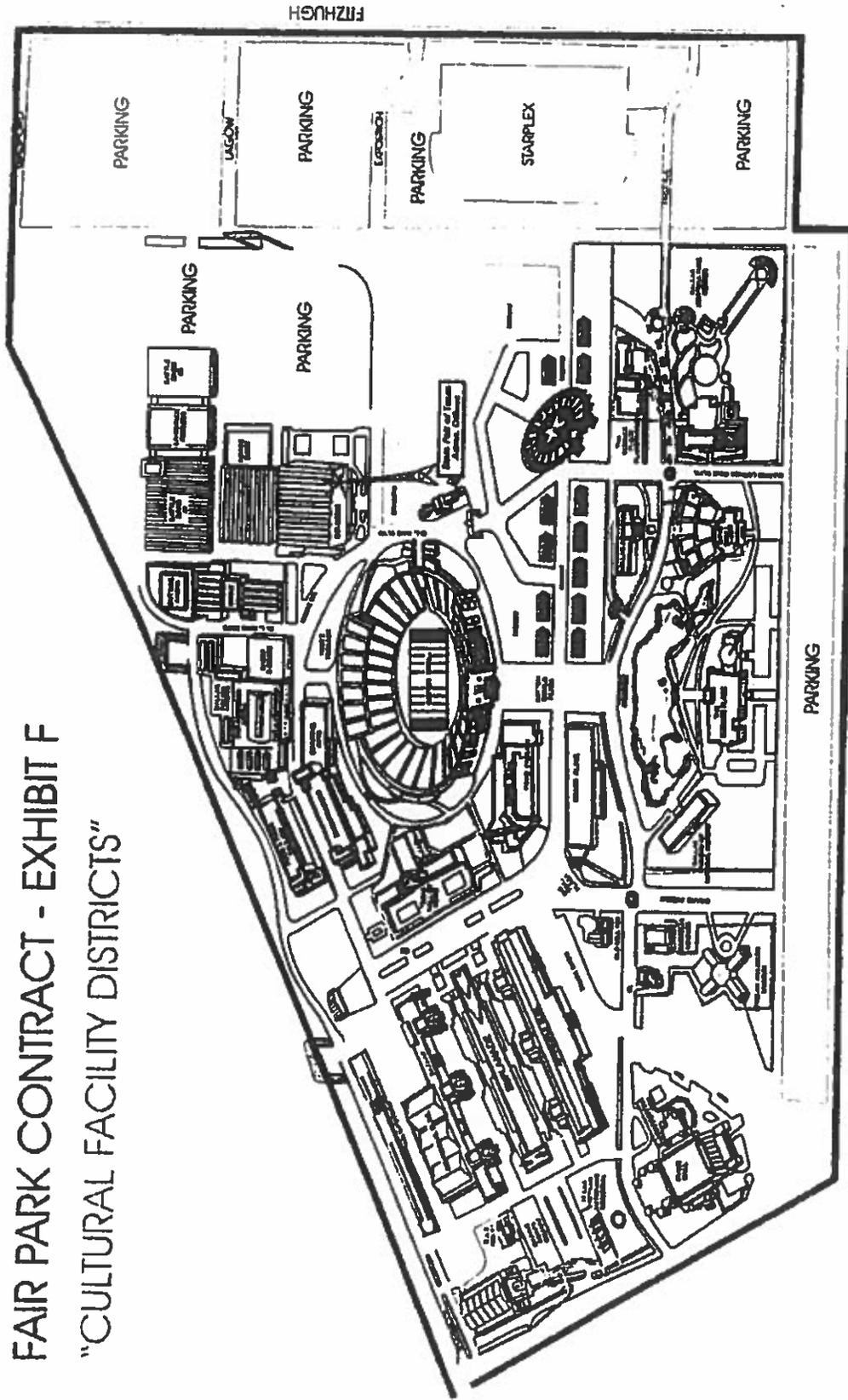
EXISTING

**FAIR PARK CONTRACT - EXHIBIT E
"CULTURAL FACILITIES"**



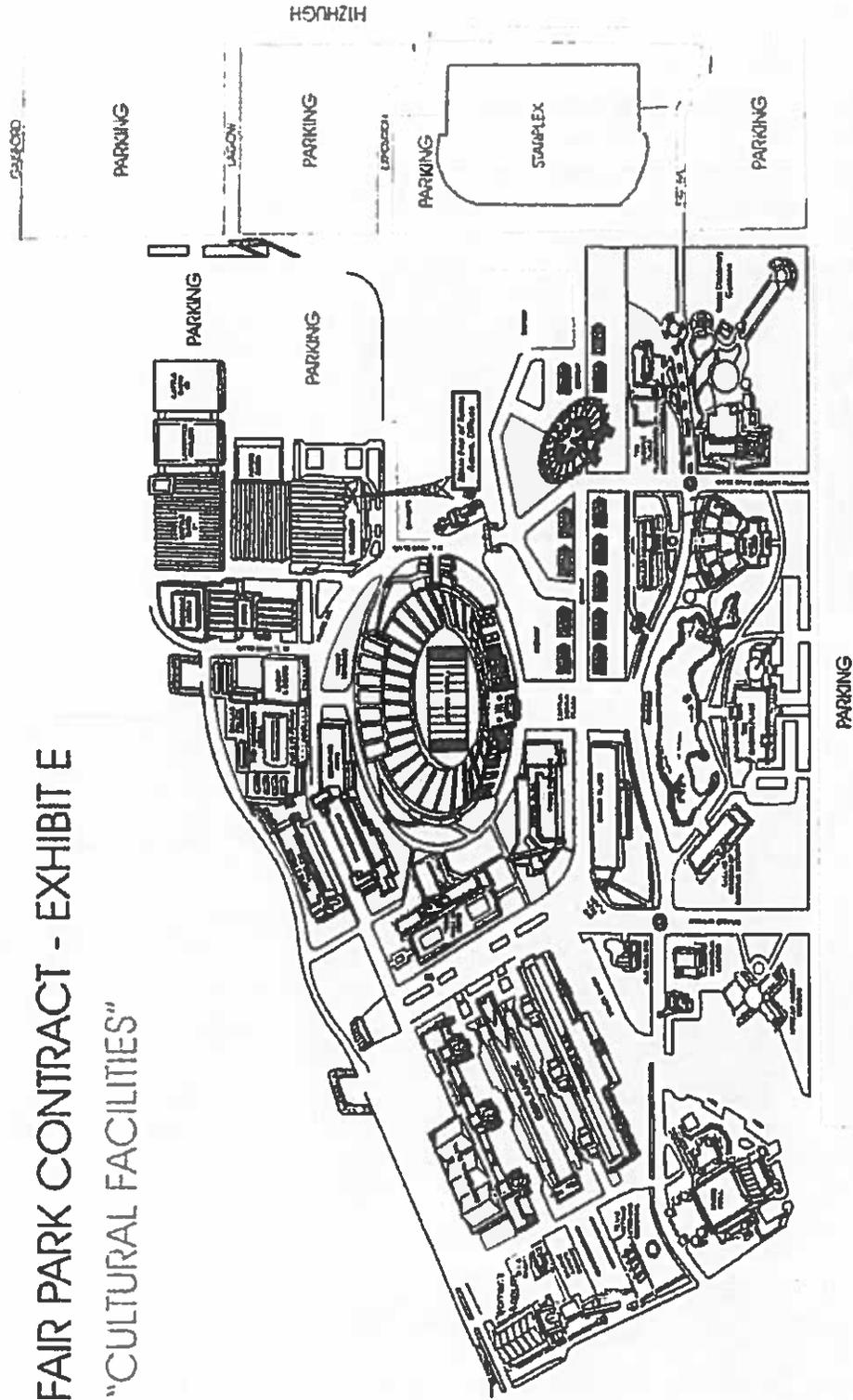
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FAIR PARK CONTRACT - EXHIBIT F
"CULTURAL FACILITY DISTRICTS"



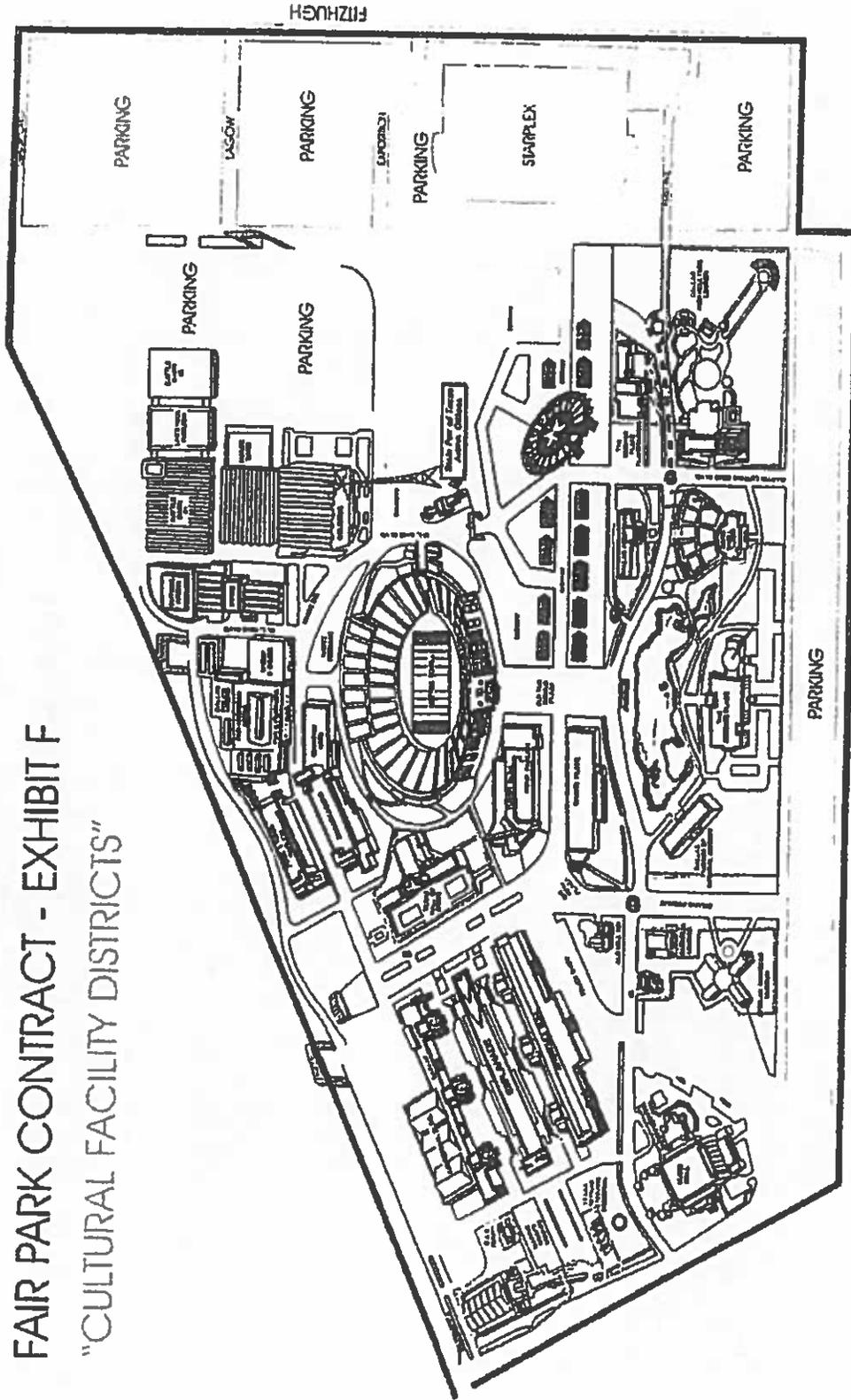
PROPOSED

FAIR PARK CONTRACT - EXHIBIT E
"CULTURAL FACILITIES"



PROPOSED

FAIR PARK CONTRACT - EXHIBIT F
"CULTURAL FACILITY DISTRICTS"



FAIR PARK CONTRACT - EXHIBIT G

"MIDWAY"

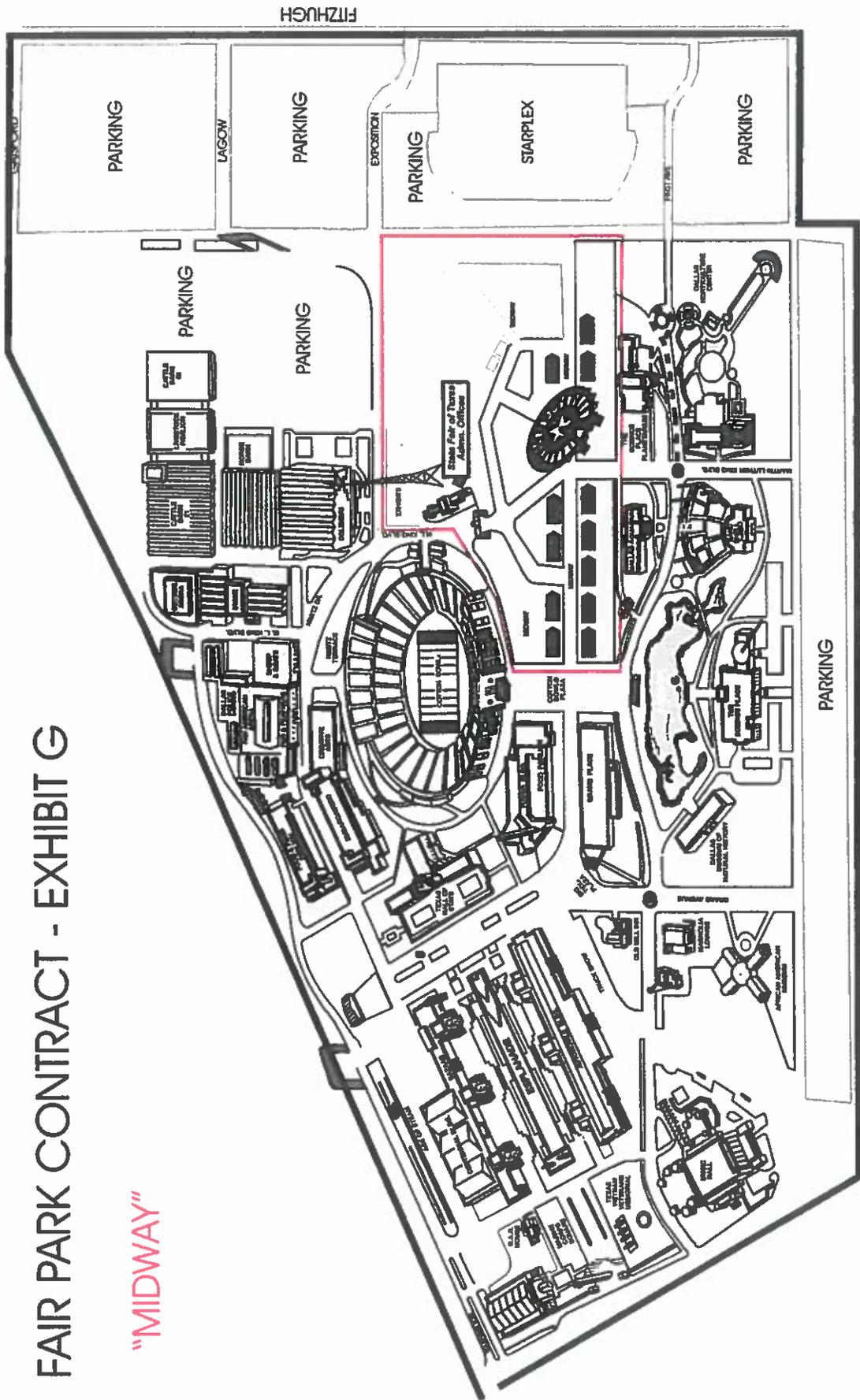


EXHIBIT "H"

INSURANCE REQUIREMENTS

SECTION A. Prior to the approval of this agreement by the CITY, STATE FAIR OF TEXAS (STATE FAIR) shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in Required Provisions b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Management Division of the Human Resources Department based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The STATE FAIR agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract or upon the underwriter of any such policy provisions). Upon request by CITY, STATE FAIR shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof. At the request of STATE FAIR, CITY will review the required insurance and make reasonable changes that may be necessary due to changes in conditions that would affect this insurance.

INSURANCE COVERAGE REQUIRED

SECTION C. Subject to STATE FAIR's right to maintain reasonable deductibles, STATE FAIR shall obtain and maintain in full force and effect for the duration of this agreement and any extension hereof, at STATE FAIR's sole expense, insurance coverage in the following type(s) and amounts:

1. Workers' Compensation with statutory limits; Employers Liability with minimum limits for bodily injury: a) by accident, \$100,000 per each accident; b) by disease, \$100,000 per employee with a per policy aggregate of \$500,000.
2. Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$500,000 per occurrence.

3. Commercial General Liability Insurance with respect to:

- a. "State Fair Permanent Areas", "State Fair Seasonal Areas", and adjacent Parking Areas as defined in the attached contract:

Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate.

- b. "Fair Park" during "Period of the Fair" and "Midway" Area during all periods as defined in the attached contract:

Premises/Operations (including the operation and use of all Amusement Rides), Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$10,000,000 per occurrence, \$20,000,000 general aggregate. Coverage shall include Liquor Liability with a minimum limit of \$2,000,000 per occurrence and Fire Legal Liability with a minimum limit of \$500,000. Coverage can be obtained through the purchase of one or more policies.

REQUIRED PROVISIONS

STATE FAIR agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled, nonrenewed or materially changed except after thirty (30) days written notice by certified mail to: (i) Park and Recreation, Attention: Eddie C. Hueston, Executive General Manager, Fair Park, P.O. Box 159090, Dallas, Texas 75325 and (ii) Assistant Director, Risk Management Division, Human Resources Department, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the STATE FAIR's insurance is primary insurance as respects the CITY, its officers, employees and elected representatives as it relates to the services provided by the STATE FAIR under this agreement.
- e. Provide contractual liability coverage sufficient to include coverage for the obligations of the STATE FAIR arising under this agreement.

- f. Ensure that all certificates of insurance identify the service or product being provided and the name of responsible City department shown in required provisions b.(i) as the Certificate Holder.

SECTION D. (1) Without limiting any of the other obligations or liabilities of the STATE FAIR, the STATE FAIR shall require all concessionaires, ride operators, exhibitors, talent acts, sponsors, vendors and other subcontractors to maintain levels of insurance that are appropriate for their services and consistent with industry standards. (2) The STATE FAIR shall obtain and monitor the certificates of insurance from each subcontractor. The STATE FAIR must retain the certificates of insurance for a minimum of five years following the termination of the contract between the STATE FAIR and each subcontractor. The STATE FAIR shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION E. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the STATE FAIR or its subcontractors shall not relieve the STATE FAIR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the STATE FAIR from liability.



CITY OF DALLAS

ADMINISTRATIVE ACTION

See Administrative Directive 4-5 [Sections 6 Through 11] for Additional Guidelines and Routing

ADMINISTRATIVE ACTION

176482

EFFECTIVE DATE

AUG 10 2017

RECEIVED
2017 AUG 18 PM 12:26
CITY SECRETARY
DALLAS, TEXAS

1. Place an "X" in the appropriate box, complete and submit this form for the approval of:

- a. Low bid contracts of not more than \$70,000
- b. Change orders for low bid contracts: \$50,000 or less (may not increase original contract price by more than 25%)
- c. Professional / Personal / Planning / Other Service contracts: \$50,000 or less.
- d. Amendments to non-bid contracts: \$50,000 or less, per City Code Sec. 2-34
- e. WRR-FM expenditures: \$50,000 or less per City Code Sec. 2-79(C) of the City Code.
- f. Other (explain on attachment) (MOU)

2. Attach all supporting documents including bid information as required. Approval shall be obtained before services are rendered.

3. Is this expenditure related to a construction project? Yes No

4. Any Administrative Actions to this vendor in the last 12 months? (if yes attach explanation) Yes No

5. Is Form 1295 - Certificate of Interested Parties required to comply with House Bill 1295 attached (if applicable)? Yes No

Vendor Name: State Fair of Texas Vendor No. 078069

Subject: Memorandum of Understanding between the City of Dallas and the State Fair of Texas Department: Park and Recreation Department

Action Requested: Authorize a Memorandum of Understanding between the State Fair of Texas and the City of Dallas. The MOU will confirm the parties' understanding and application of certain provisions and terms of the Fair Park contract between the City and State Fair and does not modify, alter or amend the original Fair Park contract. Contact: Daniel Huerta (214) 670-8483.

Contract Number: PKR-2017-00002827 Contract Term: 6/28/2017 To 12/31/2028

Background: City Council Resolution 02-2404 authorized a 25 year contract with the State Fair of Texas, with two (2) five-year extensions. The Memorandum of Understanding was developed in response to the City Auditor's Recommendation V in the "Audit of Fair Park Business Partners Oversight" report of May 13, 2016.

FUND	DEPT	UNIT	ACTV	OBJ	PROGRAM	ENCUMBRANCE	AMOUNT
N/A	N/A			N/A		PKR-2017-00002827	\$0.00
TOTAL:							\$0.00

Project No: Commodity Code: N/A Financing: No Cost Consideration To City

Change Order No.	Original CR/AA No.	Original CR/AA Date	Original CR/AA Amount	Total Previous Change Orders	Change Amount Including this Order	Total Change Order Percentage
						%

M/WBE INFORMATION - Prime and Subcontractors use this section for low bid contracts greater than \$50,000 but less than \$70,000.

Indicate Amount to Each Group:	African-American	Hispanic	Caucasian - Female	Other Minority	MWBE Certification Number
	\$	\$	\$	\$	

APPROVAL: Approved as being in accordance with the budget and Chapter 2 of the Dallas City Code.

[Signature] 8-09-17
By Department Director DATE

[Signature] 8-15-2017
Approved as to form by City Attorney DATE

[Signature]
Robert Abtahi, President
Park and Recreation Board

[Signature]
By Assistant City Manager

8/10/17
DATE

[Signature]
Secretary
Park and Recreation Board

MEMORANDUM OF UNDERSTANDING
between
CITY OF DALLAS
and
STATE FAIR OF TEXAS

This Memorandum of Understanding (“MOU”) is between the **CITY OF DALLAS** (the “City”), a Texas municipal corporation, acting by and through its Park and Recreation Board, and the **STATE FAIR OF TEXAS**, a Texas nonprofit corporation (the “State Fair”). This MOU will confirm the parties’ understanding and application of provisions and terms of the Fair Park Contract between the City and State Fair and is not meant to modify, alter or amend the Fair Park Contract.

BACKGROUND

The City and State Fair entered into a contract, authorized by City Council Resolution Number 02-2405 and approved by City Council on August 28, 2002 and executed on May 21, 2003 (“Fair Park Contract”) for a term of 25 years with two (2) five-year extensions, to provide for the use of the City’s Fair Park for the annual State Fair of Texas Exposition and to further the year round operation of Fair Park and the enhancement, development and improvement of Fair Park as a public entertainment facility, tourist attraction, campus for cultural facilities and public park. The City and State Fair entered into four amendments to the Fair Park Contract, and, with the exception of the Second Amendment that expired on October 21, 2013, the Fair Park Contract and its amendments shall be construed together as a single contractual agreement.

PURPOSE

The purposes of this MOU is to (i) respond to the Office of the City Auditor’s recommendation made in its May 13, 2016 audit report (Report No. A16-009) with respect to the Fair Park Contract requirements regarding “*Application of Excess Revenues*”; and (ii) clarify the contract terms in Section 11.01 captioned “**ALLOCATION OF NET REVENUES**” of the Fair Park Contract, namely to establish a clear definition for the text set forth therein “excess of its revenues, less its expenses” and “all reasonable and prudent reserves”, to ensure the City can readily verify the reasonableness of the amounts available for the development and enhancement of Fair Park and the Fair (on major maintenance and capital expenditures).

AUDIT REPORT

In its May 13, 2016 audit report (Report No. A16-009), the Office of the City Auditor states the following in the section subtitled “State Fair of Texas Contract Requirements Regarding “*Application of Excess Revenues*” Are Not Clear” (page 14 of report):

“The State Fair of Texas (State Fair) contract does not clearly define “*Application of Excess Revenues*”. Without a clear definition of “*excess of its revenues less its expenses*” and “*all reasonable and prudent reserves*”, the City cannot readily verify the reasonableness of the amounts determined by the State Fair as available for the development and enhancement of Fair Park.”

The report immediately goes on to quote the section of the Contract in question:

“Contract Section XI.11.01 states: “The State Fair agrees to expend the excess of its revenues, less its expenses and after all reasonable and prudent reserves [emphasis added] are funded, on major maintenance and capital expenditures, which State Fair agrees to use for the development and enhancement of Fair Park and the Fair, using as a reference guide the mutually agreed upon Long Range Plan.” This section does not specify whether the source of information is from audited or unaudited financial statements. In addition, the lack of definition of “all reasonable and prudent reserves” gives the State Fair sole discretion in the determination of “reasonable and prudent.””

The Office of the City Auditor then references the National Association of State Auditors, Comptrollers and Treasurers (NASACT) Best Practices in Contracting for Services, to state “contract provisions should clearly state and define the scope of work, contract terms, allowable renewals, and procedures for any changes and provide for specific measurable deliverables and reporting requirements, including due dates etc.”

The Office of the City Auditor then makes the following recommendation (“Recommendation V”):

“We recommend the Director of PKR [Park and Recreation Department] works with the City Attorney’s Office and the State Fair to develop and agree on a contract definition that is sufficiently clear to allow PKR to verify the reasonableness of the amounts determined by the State Fair as available for the development and enhancement of Fair Park.”

In response to the Audit Recommendation, the City, by and through the PKR management submitted its response in agreement with the Audit Recommendation substantially in pertinent part as follows:

- **“Corrective Action plan: PKR** will work with the City Attorney’s Office and State Fair of Texas to clarify the definition of excess revenues in the existing executed contract.
- **Implementation date:** March 31, 2018
- **Responsible Manager:** Fair Park General Manager”

CLARIFICATION OF CONTRACTUAL TERMS

Article XI “ALLOCATION OF NET REVENUES”, Section 11.01 “Application of Excess Revenues” of the Fair Park Contract states: “The State Fair agrees to expend the excess of its revenues, less its expenses and after all reasonable and prudent reserves are funded, on major maintenance and capital expenditures, which State Fair agrees to use for the development and enhancement of Fair Park and the Fair, using as a reference guide the mutually agreed upon Long Range Plan.”

The parties agree that “excess of its revenues, less its expenses and after all reasonable and prudent reserves are funded” (“Net Revenues”) is understood by the parties to be derived as follows:

1. **“excess of its revenues, less its expenses”** refers to and means the line item from the State Fair’s annual audited financial statements, prepared in accordance with generally accepted accounting principles (GAAP), Statement of Activities titled “Excess of revenues over expenses” or any comparable statement or line item titled “Excess of revenues over expenses” should future State Fair annual audited financial statements no longer include a Statement of Activities and/or line item titled “Excess of revenues over expenses.”

2. **“reasonable and prudent reserves”** refers to and means State Fair’s then current “Reserve Fund” policy, which as of the date of this MOU is calculated to approximate 25% of the average for the five (5) year period preceding the current audited year of the line item from the State Fair annual audited financial statements, prepared in accordance with generally accepted accounting principles (GAAP), Statement of Activities titled “Total expenses” or any comparable statement or line item titled “Total expenses” should future State Fair annual audited financial statements no longer include a Statement of Activities and/or line item titled “Total expenses”. State Fair has represented to the City that its Reserve Fund Policy follows the guidelines set forth by the National Council of Nonprofits and the Nonprofit Operating Reserves Initiative (NORI) whitepaper titled “Maintaining Nonprofit Operating Reserves.”

The parties agree that “Total expenses” as described above is the equivalent of the term “expenses” set forth in the Fair Park contract. And, said “expenses” means all allowable expenses pursuant to GAAP, including but not limited to, the anticipated expenditures by the State Fair for Cultural Facilities and Community Outreach Programs (inclusive of scholarship programs) as presented annually by State Fair to City in accordance with Section 11.02 “Proposed Projects” of the Fair Park Contract.

“reasonable and prudent reserves” are recognized as a net asset in the State Fair’s annual audited financial statements on the Statements of Financial Position, on the line titled “Unrestricted [Net assets]” which specifies the amount of Board-designated funds, and also is described in the Notes to Financial Statements under “Summary of Significant Accounting Policies” in “Net Assets / Unrestricted Net Assets”

The parties also agree on the necessity of nonprofit organizations to set aside defined cash or revenue reserves to stabilize a nonprofit’s finances against unexpected events and loss of income. The City and State Fair emphasized this point in the negotiated provisions of Section 9.02 “Reserve Fund” of the Fair Park Contract, whereby it says, “to ensure the future operation of the annual fair”, the State Fair is required “to maintain a reserve fund of at least \$4,500,000”. The parties further acknowledge State Fair generates its revenues in a 24-day period window and therefore its revenues for carrying out its operating purpose and community outreach mission under the Fair Park Contract are uniquely vulnerable to excessive weather-related events, as well as other business interruptions such as public health issues, public safety concerns and extraordinary or catastrophic events which need to be bolstered by “reasonable and prudent reserves.” Accordingly, the parties acknowledge that the sufficiency of “reasonable and prudent reserves” for State Fair may change from time to time, and State Fair’s Board of Directors will periodically review its “Reserve Fund” policy and make reasonable adjustments in accordance with best practices for nonprofit organizations; provided, that the State Fair’s “reasonable and prudent reserves” shall comply with Section 9.02 “Reserve Fund” of the Fair Park Contract.

3. **“are funded”** refers to and means the difference between the current year’s reasonable and prudent reserve balance and the reasonable and prudent reserve balance the year preceding the current year, and any deficit would require “funding” out of State Fair’s “excess revenues, less expenses”. For purposes of this MOU, upon the initiation year this Memorandum becomes effective, the “Reasonable and prudent reserves” calculation needs to be performed for both the current year and prior year.

Therefore, in accordance with all of the foregoing understandings in sections 1-3 of this MOU, the parties agree that “revenues, less its expenses and after all reasonable and prudent reserves are funded” constitutes the meaning of the term “Net Revenues” for purposes of this MOU. The Board must designate yearly the amount of “reasonable and prudent reserves” as calculated in the current year from unrestricted net assets.

4. **“major maintenance and capital expenditures”** The parties agree “Net Revenues”, less the amount agreed to by the parties to be spent on capital expenditures pursuant to Section 11.03 of the Fair Park Contract, is allocated solely towards major maintenance projects. The parties acknowledge that major maintenance projects shall hereafter be expanded to allow for them to be undertaken by either the City or State Fair in accordance with the final schedule agreed to by the parties and delivered to the Director of the City’s Park and Recreation Department or his or her designee (hereinafter referred to as “PKR Director”) on or before April 30th of each year of the Fair Park contract (the “Final Schedule”).

Pursuant to the Final Schedule, State Fair shall earmark that portion of Net Revenues allocated by the parties for major maintenance projects agreed to be undertaken by the City and not State Fair (hereinafter referred to as City-designated major maintenance projects”), and the State Fair shall deposit said Net Revenues into a State Fair restricted account known as the “Fair Park Improvement Fund”. The parties agree that the City shall have sole control to request funds from the Fair Park Improvement Fund for undertaking the agreed-upon City-designated major maintenance projects. The parties agree that the City shall only be responsible for undertaking the City-designated major maintenance projects, while State Fair is solely responsible for undertaking those State Fair designated major maintenance projects agreed to by all the parties and all capital expenditure projects for State Fair property and leasehold improvements within Fair Park, all in accordance with the Final Schedule.

Furthermore, and in accordance with Section 11.03 “City Approval” of the Fair Park Contract, which states, “No major maintenance projects may be pursued without the PKR Director’s advance review and written approval”, the parties agree that upon execution of this MOU, the designation on the Final Schedule of which major maintenance projects are to be undertaken by State Fair shall be subject to City’s advance review and written approval by and through the PKR Director. The inclusion and undertaking of capital expenditures shall be subject to the coordinated review of the parties; provided, however, that once the PKR Director has approved the City Allocation, defined herein, the balance of Net Revenues shall be allocated and deemed approved for State Fair’s capital expenditure projects.

The parties further agree that notwithstanding that Section 11.02 “Proposed Projects” of the Fair Park Contract appears to limit the Final Schedule to major maintenance projects which

may only be undertaken and completed by State Fair within the Final Schedule year time frame, upon execution of this MOU, the major maintenance projects and capital expenditure projects listed on the Final Schedule shall not be required to be “undertaken” within the designated Final Schedule year time frame. Instead, the parties agree that once an item is listed on the Final Schedule, the parties at their election, but with prior notice to the other party, may either (i) undertake for completion of the item within the designated Final Schedule year time frame or (ii) delay the undertaking and completion of said item when the party deems feasible and appropriate in a subsequent schedule year. Provided however, if a party elects to delay the undertaking, the electing party must set aside or cause the set aside of the allocated Net Revenues per the Final Schedule and such delay shall not prejudice subsequent year allocations. For City requested delay, State Fair will set aside the allocated net revenues for City-designated major maintenance projects (“City Allocation”) per the Final Schedule in the Fair Park Improvement Fund for the respective year and such funds will be set aside and carried-over to be available to the City in the year it elects to undertake the City-designated major maintenance project. The accrual of any portion of the City’s Allocation of Net Revenues by State Fair shall not be deemed a default under the Fair Park Contract.

To ensure the amount of the accrual is readily verifiable, beginning with the State Fair’s annual audited financial statements for the year ended December 31, 2016 and every year thereafter, the amount of funds set aside and carried over if any, will be recorded in the annual audited financial statements as a current liability on the Statements of Financial Position on the line “Accrued major maintenance projects” and further described in the Notes to Financial Statements under “Relationship with the City of Dallas”.

Lastly, the parties acknowledge that State Fair has in the past voluntarily contributed funding in excess of its obligations under the Fair Park Contract for City’s application toward major maintenance projects. Upon execution of this MOU, State Fair may continue this type of additional funding in its sole discretion during the Term without prejudice to the City or State Fair under the Fair Park Contract, including but not limited to periods when as a result of review of the project schedule and the Statement of Activities, the PKR Director and State Fair deem additional funding beneficial for major maintenance projects at Fair Park.

PROCESSES AND PROCEDURES

During February of each year of the Fair Park Contract the parties agree to do the following:

- State Fair will close-out financial books on prior year.
- State Fair’s Board of Directors will determine “reasonable and prudent reserves” and establish its “Reserve Fund” policy and amount for current year that follows the guidelines set forth by the National Council of Nonprofits.
- City (through its PKR Director) and State Fair will hold an initial meeting for State Fair to present preliminary estimates of Net Revenues from the previous fiscal year.
- State Fair will present a proposed schedule of capital expenditure projects and major maintenance projects to the PKR Director (the “Preliminary Schedule”). PKR will have final approval of all major maintenance projects in the Preliminary Schedule.
- City will present its own list of proposed major maintenance projects to State Fair for review with State Fair and incorporation into the Preliminary Schedule.

- During the review of the Preliminary Schedule, State Fair and the City will initially agree which party is best suited to undertake each major maintenance project, thereby initially determining and agreeing to the City's Allocation.
- If feasible, State Fair will provide an initial portion of funding of the City's Allocation in the Fair Park Improvement Fund and such portion will be available to the City for agreed-upon City-designated major maintenance projects. Upon request State Fair shall release funds to the City.
- City will provide State Fair a written list and status report of major maintenance projects previously funded by State Fair.

During April of each year of the Fair Park Contract the parties agree to do the following:

- State Fair will receive final audited financial statements, prepared in accordance with GAAP, from its independent public accountants.
- State Fair will hold a second meeting with the City (PKR Director) to present final figures for Net Revenues from the previous fiscal year.
- State Fair will present the Final Schedule, (which shall be inclusive of major maintenance project responsible party designations, as agreed to by the parties), for written approval by PKR Director.
- Per contract terms in Section 11.02 of the Fair Park Contract, no later than April 30, State Fair will provide the final dollar amount allocated to the City for the City's Allocation. That full amount for the City's Allocation will be earmarked and made available to the City from State Fair's board designated restricted Fair Park Improvement Fund account, if it wasn't already fully-funded in February.

TERM

The term shall commence June 28, 2017 and shall continue until the termination or expiration of the Fair Park Contract, unless otherwise terminated in accordance with the terms of this MOU, or amended or extended, as agreed upon by the parties.

COMPLIANCE WITH LAWS AND REGULATIONS

This MOU is entered into subject to and controlled by the Charter and ordinances of the City of Dallas and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. Each party shall, during the course of performance of this MOU, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

CONTRACTUAL RELATIONSHIP

The City and State Fair are independent contracting parties, and nothing contained in this MOU shall be deemed to create a partnership, joint venture, agency or employment relationship between them, nor does it grant either party any authority to assume or create any obligation on behalf of or in the name of the other. Neither party shall have any control or right of control in regard to the other party's employees, agents or independent contractors.

GOVERNING LAW/VENUE. This MOU shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to its conflict of law principles. If

any legal action is necessary to enforce this MOU, or for any dispute arising out of the operations or actions contemplated herein, exclusive venue shall lie in Dallas County, Texas.

LEGAL CONSTRUCTION

If any part of this MOU is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this MOU and the remaining part shall remain in full force and effect and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this MOU.

AMENDMENTS

This MOU is not subject to amendment or reformation except by written agreement executed by both parties. This MOU does not amend or reform the Fair Park Contract, but rather serves to clarify key accounting terms in Article XI and provide processes and procedures related thereto.

SIGNATORY APPROVAL

The undersigned parties bind themselves to performance of this MOU. It is mutually understood that this MOU shall not become effective until approved by governing bodies or authorized officials of all parties.

COUNTERPARTS

This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but together shall constitute one and the same document.

CONCLUSION

The City and State Fair are committed to work together in good faith under this MOU and the Fair Park Contract to continue the development and enhancement of Fair Park and the Fair.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE]

EXECUTED this the 28 day of June, 2017, by the duly authorized representatives of the City and the State Fair and the parties declare this MOU effective as of June 28, 2017.

CITY OF DALLAS:

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

CITY OF DALLAS
T.C. BROADNAX
City Manager

By: Christine Lannert, L.L.
Name: Christine Lannert
Title: Assistant City Attorney

By: Joey Zapata
Name: Joey Zapata
Title: Assistant City Manager

Recommended by:

WILLIS WINTERS
Director of Parks and Recreation Department

Willis Winters

STATE FAIR OF TEXAS:

BY: Mitchell Glier
Mitchell Glier,
President

By: Jaime Navarro
Jaime Navarro,
CFO/SVP-Finance

Attachments:

State Fair Audited Financial Statements for year ending December 31, 2016

State Fair of Texas Security Plan

This agreement will set forth the mutual understanding between the State Fair of Texas ("SFT") and the City of Dallas through its Dallas Police Department ("DPD") regarding the development and implementation of a written security and traffic control plan ("Security Plan") for the annual State Fair of Texas event ("Fair") and reimbursement of costs to the City of Dallas.

Starting upon execution of this agreement, DPD and SFT agree to meet 180 days (or for the 2017 Fair, as soon as possible after this agreement is executed) prior to each annual Fair to develop the Security Plan for that year's Fair. The Security Plan will include, but not be limited to: (i) crowd control; (ii) perimeter traffic control; (iii) number of DPD officers; (iv) estimated direct costs for DPD officers other than those that would be normally provided in accordance with the practices and policies of the City of Dallas; (v) reasonable and necessary reimbursement for special services provided; and (vi) other mutually agreeable security measures for operation of the Fair.

Once the Security Plan is developed and agreed-upon, DPD will implement the plan during the twenty-four operating days of the Fair. DPD will then invoice SFT by December 31 for reimbursement for special services provided under the Security Plan and SFT will pay the invoice within 30 days.

APPROVED AS TO FORM:
LARRY E. CASTO
City Attorney

BY *Don Knight*
Assistant City Attorney *AK*

CITY OF DALLAS
T.C. BROADNAX
City Manager

BY *Jon Fortune*
Assistant City Manager

STATE FAIR OF TEXAS

BY *Mitchell Blair*
Authorized Officer
President/State Fair of Texas

9-28-17
Date Signed

Jon [Signature]
CFO / STATE FAIR OF TEXAS

September 13, 2017

WHEREAS, the City of Dallas desires to enter into an agreement with the State Fair of Texas, by and through its Police Department to define duties and obligations involved with the security and traffic control plan for the annual twenty-four day run of the State Fair including the reimbursement for associated expenses; and

WHEREAS, it is in the best interest of the State Fair of Texas and the City of Dallas to have a safe and secure annual event for fair goers and merchants.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

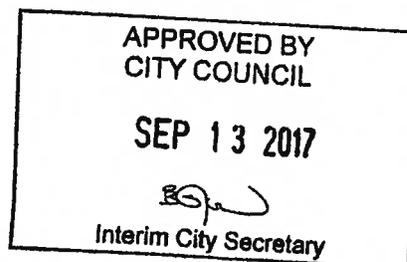
SECTION 1. That the City Manager is hereby authorized to sign an agreement with the State Fair of Texas, approved as to form by the City Attorney, regarding the development and implementation of a written security and traffic control plan for the annual State Fair of Texas event and the associated reimbursement of costs to the City of Dallas.

SECTION 2. That the Chief Financial Officer is hereby authorized to receive and deposit State Fair revenue in Fund 0001, Department DPD, Unit 2126, Revenue Code 7547.

SECTION 3. That this agreement shall remain in effect until terminated by either party upon providing written notification to the other party.

SECTION 4. That this contract is designated as Contract No. DPD-2017-00003539.

SECTION 5. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly resolved.



October 24, 2018

WHEREAS, Fair Park is home to numerous resident institutions such as Dallas Summer Musicals, the Museum of African American Life and Culture, Texas Discovery Gardens, and the Children's Aquarium that are a vital part of the cultural and historic fabric of Fair Park and the City; and

WHEREAS, the State Fair of Texas was established in 1886, hosts one of the country's largest and longest-running fairs in the nation, celebrating all things Texan by promoting agriculture, education, and community involvement through quality entertainment in a family-friendly environment, and serves as an anchor tenant in Fair Park; and

WHEREAS, the City Council has approved a contract with Fair Park First for the private management and operation of Fair Park, and it is the will of the City Council and the Park and Recreation Board that the terms of certain contracts be extended to coincide with the term of the Fair Park First contract; and

WHEREAS, the City's contracts with the resident institutions are assignable and will be assigned upon execution of Fair Park First Management Agreement; and

WHEREAS, the contracts with the State Fair of Texas and Texas Department of Transportation ("TxDOT") are assignable only if consent is given; and

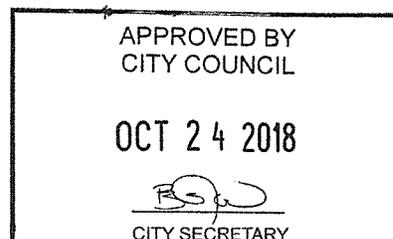
WHEREAS, Fair Park First and the City desire to ensure the continued productivity and enhancement of the Fair Park resident institutions and the State Fair of Texas, and Fair Park First has expressed support for working with the resident institutions, State Fair of Texas, TxDOT, and the City to ensure that the many successful activities underway at Fair Park continue.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. The City Manager is directed to, in collaboration with Fair Park First, negotiate any necessary amendments or options to the existing Fair Park resident institutions, State Fair of Texas, and TxDOT contracts, including extending the length of the terms to coincide with the Fair Park First contract and making any other improvements to other provisions of said contracts.

SECTION 2. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.





**RESOLUTION OF THE CITY OF DALLAS PARK AND RECREATION BOARD
REGARDING THE 2018 FAIR PARK MANAGEMENT PROPOSAL**

WHEREAS, the Dallas City Council created the Dallas Park and Recreation Board in 1905 to oversee the contractual, management and budgetary issues associated with the 1904 acquisition of Fair Park; and

WHEREAS, Fair Park is the largest intact concentration of 1930s-era exposition buildings and public art in the United States and one of the most significant sites in the world for Art Deco architecture; and

WHEREAS, Fair Park houses numerous resident institutions that must be supported, as they are a vital part of the cultural fabric of Dallas and Fair Park; and

WHEREAS, the State Fair of Texas is a critical asset to Dallas and should continue its 132-year tenure in Fair Park; and

WHEREAS, the Dallas City Council adopted a Comprehensive Development Plan for Fair Park in 2003 and in 2015 adopted the Mayor's Fair Park Task Force key recommendations, as amended by the Dallas Park and Recreation Board; and

WHEREAS, the Dallas Park and Recreation Board, after more than two years of engagement with Dallas civic groups, civic leaders, city officials and non-profits, adopted in 2016 terms for a management agreement for Fair Park; and

WHEREAS, the Dallas Park and Recreation Board fully supports using Fair Park as host locations for the 2026 World Cup and the 2036 Texas Bicentennial.

NOW THEREFORE, BE IT RESOLVED BY THE DALLAS PARK AND RECREATION BOARD:

Section 1. That the Park and Recreation Board recommends the Dallas City Council approve the Fair Park Management Proposal with the following modifications:

1. The non-profit manager, Fair Park First, must amend their contract in a manner that accomplishes the following changes:
 - a. The board must be restructured to be inclusive of the surrounding neighborhood, with a diverse group of community and civic-minded members who are experienced, respected fundraising leaders possessing the ability to effectively solicit capital from the private sector, while leveraging additional funding from the public sector and consist of not less than 13 members.
 - b. The board must act as an effective oversight body for the subcontractor, Spectra, to ensure that the best interests of the surrounding neighborhood—and the City of Dallas as a whole—are of the utmost importance. This includes, but is not limited to, the strict prohibition of any board member receiving a financial benefit from serving on the board, or serving as a board member, officer, director, or be an employee of, any organization that receives a financial benefit from Fair Park First.
 - c. At least ten percent of the board members shall be individuals who reside in the area bounded on the east by White Rock Creek, on the north by I-30, on the west by I-45, and the south by US-175.
 - d. The non-profit manager shall submit its performance indicators to the Dallas Park and Recreation Board for ratification. So long as the City fulfills its Annual Appropriation, any obligations of Manager to implement a Remediation Plan shall not be relieved due to a lack of funds.
 - e. The non-profit manager shall hire an executive director and staff.
 - f. The non-profit manager and all its subcontractors must pay employees at a wage rate not less than \$10.94 per hour, with annual adjustments in accordance with Dallas City Council Resolution 152141.
 - g. The non-profit manager shall complete the design of the Neighborhood Park by the third anniversary of the Contract, shall apply for all permits required to construct the Neighborhood Park as designed within 42 months after the date of the Contract, shall commence construction promptly after issuance of such permits, and diligently pursue construction thereafter to completion within 18 months after issuance of such permits.

- h. The phrase “so long as Manager is performing its management obligations with respect to Fair Park in accordance with the standards set forth in this Agreement” and similar phrases that appear in, among other places, Sections 3.01(b) and 13.01, shall provide that the management obligations and standards include all affirmative obligations of Fair Park First, including, but not limited to, the obligation to fulfill its Performance Plan under Section 4.03, the obligation to maintain and care for Fair Park under Section 4.19, the obligation to make the Annual Internship Investment under Section 4.23, the obligation to design and construct the Neighborhood Park under Section 6.17, the obligation to pay the Fair Park Living Wage under Sections 4.11(b) and 6.04, the obligation to comply with the City’s MWBE contracting rules, and the continuous operations provisions of Section 4.06.
- i. If the non-profit manager and the city are unable to agree on the 11th year Annual Appropriation, the 11th year Annual Appropriation shall be the lesser of the average operating deficit for the previous three years or the 10th year Annual Appropriation indexed to CPI.
- j. The non-profit manager shall maintain reserves for Fair Park Management in an amount not less than six months’ average Operating Expenses and not more than nine months’ average Operating Expenses. Further, the non-profit manager shall create a Fair Park Capital Improvement Fund for all funds received in excess of Operating Expenses and reserves for Fair Park Management.
- k. The Fair Park Capital Improvement Fund shall be used for the implementation of the Fair Park Capital Improvement Plan. No City funds shall be used for the Fair Park Capital Improvement Plan until the Fair Park Capital Fund is first exhausted. The non-profit manager shall submit the Fair Park Capital Improvement Plan to the Dallas Park and Recreation Board for approval.
- l. The non-profit manager must fulfill its financial obligations to Fair Park resident institutions so long as the City fulfills its Annual Appropriation.
- m. To ensure the Dallas Park and Recreation Board fulfills its obligations under the Dallas City Charter, Chapter XVII, any early termination of this contract shall be through the Park Board. Further, with regards to Alternative Dispute Resolution, any dispute that cannot be resolved by the Director shall be referred to the Park Board for resolution.

2. The Dallas City Council must put Fair Park in a position for long-term success by implementing the following recommendations:
- a. The anticipated capital needs of Fair Park should be included in any future bond allocations with matching dollars from the non-profit manager.
 - b. Capital funds should be allocated in a manner that accomplishes historic preservation, restoration of art, construction of a neighborhood park and to help the non-profit manager become successful in their mission.
 - c. The City of Dallas budget savings over the life of the non-profit manager's contract should be set aside for Fair Park major maintenance and Dallas park safety.
 - d. Current Fair Park tenants should have their contracts extended to coincide with the non-profit manager's initial term to ensure that long-term success can be the focus of all Fair Park entities' missions.
 - e. In anticipation of Fair Park revitalization, the city should implement options to mitigate the effects of gentrification in surrounding neighborhoods by exploring economic development tools such as TIFs and PIDs, and zoning options such as Historic Districts, Conservation Districts, and Neighborhood Stabilization Overlays.



Robert Abtahi, President
Dallas Park and Recreation Board



Willis C. Winters, Director
Dallas Park and Recreation Department