

TULSA COUNTY
PURCHASING
DEPARTMENT

MEMO

DATE: JUNE 15, 2016

FROM: LINDA R. DORRELL
PURCHASING DIRECTOR 

TO: BOARD OF COUNTY COMMISSIONERS

SUBJECT: LEASE AGREEMENT – TULSA COUNTY PUBLIC FACILITIES
AUTHORITY

SUBMITTED FOR YOUR APPROVAL AND EXECUTION IS THE ATTACHED VENDOR AND CONCESSION LEASE AGREEMENT BETWEEN THE BOARD OF COUNTY COMMISSIONERS ON BEHALF OF THE TULSA COUNTY ASSESSOR'S OFFICE AND TULSA COUNTY PUBLIC FACILITIES AUTHORITY FOR RENTAL OF EXHIBIT SPACE AT THE TULSA STATE FAIR, SEPTEMBER 29, 2016 THROUGH OCTOBER 9, 2016, LOCATED AT THE RIVER SPIRIT EXPO CENTER, LOWER LEVEL 223-224, TULSA, OKLAHOMA.

RESPECTFULLY SUBMITTED FOR YOUR APPROVAL AND EXECUTION.

LRD/arh

ORIGINAL: PAT KEY, COUNTY CLERK, FOR THE JUNE 20, 2016 AGENDA.

COPIES: COMMISSIONER JOHN M. SMALIGO
COMMISSIONER KAREN KEITH
COMMISSIONER RON PETERS
KEN YAZEL, ASSESSOR
MICHAEL WILLIS, CHIEF DEPUTY
VICKI ADAMS, CHIEF DEPUTY

VENDOR AND CONCESSIONAIRE LEASE AGREEMENT

2016 TULSA STATE FAIR
4145 EAST 21ST STREET – TULSA, OKLAHOMA 74114
PHONE (918) 744-1113 ext. 2100

This Lease Agreement (the "Agreement"), made and entered into this 6th day of April, 2016, by and between the TULSA COUNTY PUBLIC FACILITIES AUTHORITY, a public trust (herein called the "Authority"), and

BOCC on Behalf Tulsa County Assessor

918-596-5169

(NAME)

(PHONE)

500 S Denver Ave Ste 215

Tulsa Ok 74103

(STREET, P.O. BOX OR ROUTE)

(CITY, STATE, ZIP)

(Herein called "Lessee" or "Vendor").

Whereas the Authority has possession of certain facilities known as the Tulsa County Fairgrounds and conducts thereon an event known as the annual Tulsa State Fair, September 29 through October 9, 2016 inclusive (the "2016 Fair");

Now therefore, upon terms and conditions hereof, the Authority hereby grants and the Lessee hereby accepts a non-assignable right for the Lessee to use and occupy the following described location(s):

Location: River Spirit Expo LL 223-224

Size: 20x10

Zone: River Spirit Expo Zone C

Specific Requirement:

Rental Rate is \$0.00 vs 0% of gross sales after city, state and county taxes, whichever is the greater.

(herein the "Leased Premises") as shown on the latest plat of the Tulsa County Fairgrounds on file in the Authority's office for the eleven (11) day period of the 2016 Fair. It is mutually agreed that the Lessee shall have the right and privilege to sell, display, advertise and demonstrate the following described items and no others:

Literature

July 30th, 2016

It is mutually agreed that as a fair and reasonable compensation for said rights, privileges and use of the Leased Premises, Lessee shall pay Authority **\$1950.00** as follows: ~~fifty percent thereof with the signing of the Lease Agreement on or before May 15, 2016, and the remaining balance including service order form and insurance fees on or before July 1, 2016;~~ provided, that any Agreement negotiated and executed after August 3, 2016 shall require payment in full with said execution. Time is of the essence of this Agreement. After this date there will be no refund of monies paid on Space cancellations, services ordered or the Agreement. **THIS AGREEMENT MUST BE SIGNED AND RETURNED TO THE AUTHORITY ON OR BEFORE MAY 15, 2016.** ~~Lease Agreements not returned by May 15, 2016 need not be considered by the Authority and the space rented to someone else.~~ In addition, failure by Lessee to pay sums in full on or not before the agreed dates shall result in automatic cancellation of the Agreement by the Authority without refund of any monies paid by Lessee to Authority. All monies due hereunder must be paid in full before Lessee can move in or set up. No extension of credit will be authorized. In case of any default in or breach of the provisions of this Agreement, failure to pay rent as due or failure of Lessee to show, move in and set up for any cause, the Authority shall retain all monies paid by Lessee as liquidated damages and have the right to lease the Leased Premises and the rights and privileges relating thereto to other parties without notice to Lessee.

This Agreement is for open space rental only. Any expenditure for structures or improvements required by Lessee, such as buildings, tents, trailers, wiring, sewage, plumbing, etc., shall be the responsibility of the Lessee. The Authority agrees to furnish booths located inside buildings, with fire resistant drapes with an 8' high back and 36" high sides and a standardized advertising sign 7" x 44". If electricity is required by Lessee, an electrical usage fee, determined by Authority, will be charged to Lessee, in addition to rent stated hereinabove. Accurate electrical requirements must be submitted; power is provided in each Zone (the fairgrounds is divided into Zones; i.e. Exchange Zone.) based on your submitted requirements; if electrical requirements change after August 15, 2016, and the Authority is able to accommodate, a \$250.00 charge will be assessed to make necessary adjustments. In addition, any wiring or special requirements needed for stands or exhibits are Lessee's expense and will be installed by the Authority. Charges for labor and materials supplied by the Authority's designated electricians will be paid at the time the service is performed, according to the rates it has established for such services and materials. Any lines, pipes or connections needed to reach available outlets for water and sewage will also be at the expense of Lessee and must meet all applicable codes and regulations and will be installed by the Authority.

It is further mutually agreed and understood that the additional provisions printed below this section onto page 2 and the provisions in the Tulsa State Fair Rules and Regulations Handbook (available on the Tulsa State Fair website) governing this event are made part of this Agreement as if fully set forth herein and that these documents contain the entire agreement of the parties concerning this Lease, and no other promises, understandings, representations or agreements shall be of any force or effect.

It is also hereby agreed that Vendor gate access badges and/or admission tickets issued to Lessee are solely for the use of personnel manning Leased Premises and are not to be sold, exchanged or transferred under any circumstances. **LESSEE MUST BE SETUP AND READY FOR OPERATION WHEN THE FAIR OPENS AT 5:00 PM, THURSDAY, SEPTEMBER 29, 2016 AND REMAIN IN FULL OPERATION EACH DAY UNTIL 9:00 PM, SUNDAY, OCTOBER 9, 2016 WHEN VERBAL RELEASES WILL BE GIVEN FOR REMOVAL OF EQUIPMENT.**

ADDITIONAL PROVISIONS OF AGREEMENT

1. The rights and privileges granted by the Authority in this Agreement are only those stated herein; no part of which shall be sublet or assigned by Lessee. Solicitation of Fair patrons by Lessee or agents of Lessee outside of or away from the Leased Premises shall not be permitted. The Authority may remove signs or advertising matter of any kind deemed objectionable by the Authority, in its sole discretion, without liability or damage therefore.
2. Obstructing visitor's passageways, use of public address systems, recorders, gongs, bells, loud music or any other objectionable devices or methods of attracting attention shall not be permitted. The Authority, in its sole discretion, shall have the power to decide what is objectionable and instruct Lessee to stop or to eliminate such conduct, and all such decisions shall be final.
3. Any item or structure placed by the Lessee upon the Tulsa County Fairgrounds shall conform and be operated in compliance with requirements of the Authority, public health agencies and all applicable City, County, State and Federal laws, rules, ordinances and regulations.
4. The Authority reserves the right to regulate the commodities and services offered by Lessee, the manner of display thereof, the prices received for same, if any, and the type and location of price signs which Lessee posts for benefit of patrons. Lessee further agrees to honor all distribution rights and privileges granted by the Authority, if any, and to purchase from such distributors all such products or services required by Lessee for use or sale at the Fair.

5. Should Lessee find he or she is unable to participate in the Fair and requests a refund, cancellation of lease agreement and request for refund must be made in writing to the Authority. No refund will be made without written notice. A cancellation fee of \$100.00 will be assessed to any Lessee cancelling his or her lease agreement between May 16, 2016 and July 1, 2016. A cancellation fee of \$200.00 will be assessed to any Lessee cancelling his or her lease agreement between July 2 and August 3, 2016, only applicable if space is resold. After August 3, 2016, there will be no refunds of monies paid on Space cancellations, services ordered or the Agreement. Leased space will be cancelled and reassigned. Product, menu and pricing changes must have prior approval after May 16, 2016. Monies due will be refunded after the 2016 Tulsa State Fair.
6. The Lessee agrees to defend, indemnify and save and hold harmless the Authority from any and all loss, cost expense, debt, liability or judgment incurred for any cause of action, claim or damage, liability, cost or expense to persons or property, resulting directly or indirectly from the acts or omissions, merchandise sold, presence or operation of the Lessee, its agents, representatives or employees before, during or after the event named herein.
7. If at any time subsequent to the signing of the Agreement, the Authority deems it in the best interest of the Authority to cancel the Agreement or to change the dates as set forth in this Agreement, the Lessee accepts such action without claim for loss or damage except the right to make written request for return of amounts paid hereunder, which request must be made within fifteen (15) days of the mailing of notice to Lessee. If the Authority does not receive request for refund within such fifteen (15) days, Lessee shall be deemed to have accepted and agreed to such change.
8. Lessee shall not assign, sublet or apportion the whole or any part of the Leased Premises, nor exhibit therein, nor permit any other party to exhibit therein, any goods or advertising matter other than those manufactured, distributed or sold by the Lessee in the regular course of its business. Likewise, the Lessee shall not permit any representative of any person or business, other than its own, to solicit business or take orders in the Leased Premises.
9. Lessee agrees to have general public liability insurance coverage on its operation at the Fair of a least \$1,000,000.00; naming "Tulsa County Public Facilities Authority" as additional insured. Lessee agrees to furnish the Authority with a certificate indicating proof of coverage or Lessee may purchase this insurance through the Authority (the Authority has an agreement with an insurance company to provide general public liability insurance coverage of \$1,000,000.00 for vendors and concessionaires per quoted fees; see handbook). A 5% processing fee will be charged for insurance purchased. Lessee shall not be allowed to set up at the Fair without proof of such general public liability insurance.
10. All drawings or contests must be conducted according to and in compliance with the policy adopted by the Authority concerning such drawings and contests and any applicable state laws. The Lessee hereby acknowledges receipt of a copy of such policy. Refer to Handbook.
11. All money deposits accepted by the Lessee on merchandise, goods or sales must be received by Lessee according to and in compliance with the policy adopted by the Authority concerning such deposits. The Lessee hereby acknowledges receipt of a copy of such policy. Refer to Handbook.
12. Exhibit buildings and midways will open on Thursday, September 29, at 5:00 p.m.; Fridays, Saturdays and Sundays they open at 10:00 a.m.; Monday through Thursday they open at 11:00 a.m. Buildings will close at 10:00 p.m. each evening. On Sunday, October 9, buildings close at 9:00 p.m. The Independent Midway closes at 11:00 pm Sunday through Thursday and Midnight on Fridays and Saturdays.
13. The Authority shall not be responsible for any loss or damage to property of Lessee, its employees or agents, from any cause whatever. The Lessee, in signing this Agreement, expressly releases Authority from any and all claims for such loss or damage.
14. The Authority shall be the final arbiter of disputes between vendors and/or concessionaires.
15. The Authority shall not be responsible for any loss, damage or injury to the person or persons of Lessee, its employees or agents from any cause whatever arising from the performance of this Agreement. The Lessee in signing the agreement expressly releases Authority from any and all claims for such loss damage or injury.
16. No promises, representations, agreements, or conditions have been made or agreed to which are not stated fully herein.
17. All percentage based vendors/concessionaires must report sales daily and settle no later than Monday, October 10, 2016 between the hours of 9:00 am - 12:00 pm.
18. No propane is allowed in the buildings per Fire Marshall Codes.
19. All excess exterior cords of any trailer or concession stand must be zip tied and coiled by 10pm, Wednesday, September 28, 2016. Electrical must be figured 8 under or at stand. Violation of this policy will result in a \$25.00 charge per day.
20. Grease and any liquid substance poured in non-approved areas will result in a \$25.00 charge per offense. Refer to Handbook for approved areas.
21. Any item found to be objectionable by the Authority, in its sole discretion, whether advertised, displayed, used or offered for sale by Lessee, shall be immediately withdrawn and removed from the Leased Premises. If same is not removed immediately after request of the Authority, the Authority may close the Leased Premises and remove Lessee without liability or any claim by Lessee for damages or otherwise.
22. The Lessee agrees to reimburse the Authority for any attorney fees expended by the Authority in enforcing any provision of this Agreement.
23. The Authority will charge \$25.00 for all checks returned from the Lessee's banks.
24. The Authority reserves the right to audit sales of all percentage based vendors / concessionaires. The Authority may use any form of audit technique it deems necessary. Such audits will not unduly harm or hinder Lessee's normal sales activities, but Lessee agrees to timely provide all records and to cooperate fully.
25. In order to comply with an Oklahoma state law, Lessee is required to provide proof of workers' compensation insurance coverage for full time and/or part time employees working at the Tulsa State Fair, unless Lessee falls into one of the exemption categories as noted by the Oklahoma Department of Labor. Lessee agrees to furnish Authority with a certificate indicating proof of coverage or may purchase this insurance through the Authority's group policy program that has been set up with the Oklahoma State Insurance Fund. The fee quoted to us at this time is \$150.00 for each Lessee (subject to change). A 5% processing fee will be charged for insurance purchased. The Oklahoma Department of Labor has indicated that it will cite any employer at the Tulsa State Fair who does not carry the required workers' compensation insurance on its employees.
26. Lessees must conduct business within the boundaries of their booth and booths must be opened and manned during Fair hours.
27. This Agreement shall be governed by and construed pursuant to the laws at the State of Oklahoma. The district court of Tulsa County, Oklahoma, shall have exclusive jurisdiction and venue regarding any dispute arising hereunder. If any clause, term or provision of this Lease is illegal, invalid, or unenforceable under present or future laws during the term of this Lease, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the full extent permitted by law. Further, no amendment or modification of this Lease shall be valid or binding unless in writing and signed by the parties.

IT IS YOUR RESPONSIBILITY TO READ AND COMPLY WITH ALL THE PROVISIONS OF THIS LEASE AGREEMENT.

VENDOR ID: 7151
LEASE AGREEMENT 2016-306

Signature:

Date Signed:

LESSEE

Signature:

Date Signed:

Mark Andrus President/CEO

TULSA COUNTY PUBLIC FACILITIES AUTHORITY

APPROVED AS TO FORM
ASSISTANT DISTRICT ATTORNEY

ADDENDUM

May 13, 2016

Commercial Vendor Lease #16-306 Agreement


By and Between

Tulsa County Public Facilities Authority and BOCC on behalf of Tulsa County Assessor's Office

The Authority agrees to amend the numbered paragraphs in the "Additional Provisions of Agreement" section of this Commercial Exhibits/Concessionaire Lease Agreement as follows:

1. Paragraph 6 is deleted in its entirety and replaced with the following:
"The Lessee agrees to indemnify the Authority to the extent allowed by Oklahoma law, including but not limited to the Oklahoma Constitution, Article 10, Section 26, and subject to the limits of the Oklahoma Governmental Tort Claims Act (51 O.S. Section 151 et seq., "GTCA")."
2. Paragraph 9 is deleted in its entirety and replaced with the following:
"Lessee agrees that it is self-insured for its operations at the Tulsa State Fair. Lessee agrees to furnish the Authority with a certificate or letter indicating it is self-insured. Lessee will not be allowed to set-up at the Tulsa State Fair without such a statement."
3. Paragraph 13 is deleted in its entirety and replaced with the following:
"Subject to the provisions of the Oklahoma Governmental Tort Claims Act (51 O.S. Section 151 et seq., "GTCA"), the Authority shall not be responsible for any loss or damage to property of Lessee, its, employees or agents. Neither party hereto waives any defenses or rights available to it pursuant to the GTCA, common law, or other statutes."
4. Paragraph 15 is deleted in its entirety and replaced with the following:
"Subject to the provisions of the Oklahoma Governmental Tort Claims Act (51 O.S. Section 151 et seq., "GTCA"), the Authority shall not be responsible for any loss, damage or injury to the person or persons of Lessee, its employees or agents, from any cause whatever. Neither party hereto waives any defenses or rights available to it pursuant to the GTCA, common law, or other statutes."
5. Paragraph 22 is deleted in its entirety.
6. Paragraph 25 is deleted in its entirety and replaced with the following:
"Lessee agrees to comply with the Worker's Compensation laws of the State of Oklahoma."

Board of County Commissioner Chair


Mark Andrus President/CEO
Tulsa County Public Facilities Authority

Date: _____

Date: 5/13/16

ATTEST:

APPROVED:

County Clerk


Sr. Asst. District Attorney

made
Not allowed at all
by Oklahoma law
Oklahoma
Constitution
ART X sec.
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