

FACILITY MANAGEMENT AGREEMENT

by and between

WEBB COUNTY

and

LAREDO INTERNATIONAL FAIR AND EXPOSITION, INC.

Dated: _____

FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 2019 (“Effective Date”), by and between WEBB COUNTY, a political subdivision of the State of Texas (“Owner”) and LAREDO INTERNATIONAL FAIR AND EXPOSITION (“Manager”).

RECITALS:

WHEREAS, Owner owns the land, infrastructure, buildings, parking, lighting, and all other hard assets associated with the Webb County Fairgrounds (A/K/A LIFE Downs) as the same exist now or may exist in the future including improvements related thereto, exclusive of, as the same exist now or may exist in the future, (collectively, the “Facility”);

WHEREAS, Manager has provided management services for the Webb County Fairgrounds; and

WHEREAS, Owner and Manager desire for Manager to manage the Facility subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager agree as follows:

ARTICLE I DEFINITIONS

1.1 **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

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

Approved Policies: The term “Approved Policies” shall mean Webb County Fairgrounds Rental Policies & Procedures (Rev. Mar. 2019).

Management Fee: The term “Management Fee” shall have the meaning ascribed to such term in Exhibit “B” to this Agreement.

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

Facility: The “Facility” shall have the meaning ascribed to such term in the Recitals to

this Agreement.

General Manager: The employee of Manager acting as the on-site general manager of the Facility.

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

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

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

Term: The term "Term" shall have the meaning ascribed to such term in Section 2.2 of this Agreement.

Termination Date: The term "Termination Date" shall have the meaning ascribed to such term in Section 2.3 of this Agreement.

APPOINTMENT; TERM; TERMINATION

2.1 **Appointment.** Owner hereby retains, engages and appoints Manager as Owner's agent to act as the manager and of the Facility and to perform the Management Services (as further set forth on **Exhibit "A"** attached hereto) during the Term, as more fully described herein, and Manager hereby accepts said appointment upon and subject to the terms hereof.

2.2 **Term.** This Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect until the first (1st) anniversary of the Effective Date ("**Term**") unless earlier terminated pursuant to this Agreement. Owner shall have the right to extend this agreement for two additional one year terms.

2.3 **Termination.** This Agreement may be terminated by the Owner upon ninety (90) days written notice to Manager in the event the Owner decides to close the Facility for business, and certifies such fact in writing to Manager. In addition, this Agreement may be terminated by either party upon sixty (60) days written notice, if the other party fails to materially perform services in accordance with this Agreement or, in the case of Manager, if Owner fails to meet any of its material obligations under this Agreement, and such failure is not cured during such thirty (60) day notification period, or if not curable during such time, reasonable efforts are being made and maintained to cure such default at the earliest practical time. This Agreement may be terminated immediately, in whole or in part, by a party if the other party is judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within one hundred twenty (120) days after appointment, or if the other party shall make an assignment of its property for the benefit of creditors or shall

file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within one hundred twenty (120) days after such filing.

2.4. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, (i) Manager shall vacate the property and promptly discontinue the performance of all services rendered hereunder related to the Facility; (ii) Owner shall promptly pay Manager all management fees due Manager up to the date of termination or expiration; (iii) Manager shall make available to Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder.

ARTICLE III OWNERSHIP; MANAGEMENT SERVICES

3.1 **Ownership of Facility.** Owner shall at all times retain ownership of the Facility, including but not limited to real estate, fixtures and similar property, including improvements made during the Term, at the Facility and Manager agrees that any and all agreements, licenses and permits, which precede the date of this agreement are terminated and of no force or effect.

3.2 **Management of the Facility.**

(a) **General.** Owner hereby delegates to Manager, subject to the terms and conditions set forth in this Agreement, the discretion and authority to determine and implement certain programs and regulations affecting the Facility or the operation thereof.

3.3 **Use of the Property.**

(a) **General.** Owner shall provide Manager with a sufficient amount of suitable office space in the Facility (exact office space to be mutually agreed upon by the parties) to perform its obligations under this Agreement. In addition, Owner shall make available to Manager, at no additional cost, parking spaces adjacent to the Facility for all of Manager's employees and for the Facility's event staff.

(b) Relationship. The parties agree that in no event is the relationship established herein one of landlord and tenant, or licensor and licensee, and Manager has no right to operate the Facility other than for the purposes set forth in this Agreement.

ARTICLE IV COMPENSATION; FINANCIAL REQUIREMENTS

4.1 Compensation Payments. Owner shall pay to Manager, as compensation for the Management Services rendered hereunder, those payments set forth on **Exhibit "B"** attached hereto.

4.2 Operating Account. Except as otherwise agreed to by the parties in writing, all Revenue derived from operation of the Facility shall be deposited in Owner's accounts. The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth by Owner.

4.3 Source of Funding. Manager shall pay all items of expense for the supervision and management of the Facility.

ARTICLE V PERSONNEL

5.1 All Facility staff and other personnel, including those hired on a part-time and seasonal basis, shall be engaged or hired by Manager, and shall be employees, agents or independent contractors of Manager, and not of Owner. Manager shall select, in its sole discretion, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees; provided, however, Owner shall have the right to disapprove the hiring of any employee for good reason as determined in the sole discretion of the Owner, with notice of the same provided to Manager. Manager agrees to use its reasonable and prudent judgment in the selection and supervision of such personnel. During the Term, Owner shall have no right to supervise or direct such employees, agents or independent contractors.

5.2 General Manager. Personnel engaged by Manager will include an individual who will serve as Manager's senior employee.

ARTICLE VI RESPONSIBILITIES OF PARTIES

6.1 General Responsibilities of Manager. Manager is hereby charged with the sole and exclusive Management Services of the Facility. It is expressly understood and agreed

that so long as this Agreement is in force and effect, Owner shall not interfere with and shall at no time give or communicate orders or instructions to employees or personnel employed about the Facility.

6.2 Specific Responsibilities of Manager and Owner.

(a) Insurance. Owner and Manager shall be responsible for obtaining and administering insurance in connection with the Facility as follows:

(i) General Liability - Owner. Owner shall maintain at its sole expense a general liability policy which insures Owner, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$2,000,000. All such insurance shall be on an occurrence basis.

(ii) General Liability - Manager. Manager shall procure and maintain, at its own expense, a general liability policy (including contractual and Errors and Omissions liability insurance) which insures Manager as the named insured and where the Owner is listed as an additional insured, with a combined single limit of \$1,000,000 per occurrence and a general annual aggregate limit of \$3,000,000. All such insurance shall be on an occurrence basis.

(iii) Workers Compensation. Manager shall procure and maintain all workers compensation insurance required under applicable Texas state law.

(iv) Property Insurance. Owner shall procure and maintain fire and extended coverage casualty insurance, and (if appropriate) flood insurance, regarding the Facility in amounts and with companies acceptable to Owner in its sole discretion.

(v) Certificates of Insurance. Owner and Manager shall upon execution of this Agreement furnish to the other party certificates of all of the foregoing insurance as well as certificates of renewal no later than thirty (30) days prior to the expiration of each policy. No cancellation or non-renewal may take effect without thirty (30) days' prior written notice by registered mail to Owner.

(b) Taxes and Assessments. Owner shall be responsible for, and promptly pay, all real estate and personal property taxes, improvement assessments, where required, and other like charges related to the Facility and the property on which the Facility is located.

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

(d) Use and Maintenance of Property. Manager agrees not to knowingly

permit the use of the Facility for any purpose which might void any policy of insurance relating to the Facility, or which might render any loss thereunder uncollectible, or which would be in violation of any government restriction. Owner, at Owner's sole expense, hereby covenants and agrees to keep the Facility in good condition and repair. Manager agrees to make regular inspections of the Facility and notify Owner of necessary repairs and maintenance

ARTICLE VII FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES

7.1 **Event Contracts.** Owner shall provide to Manager, prior to each event full and complete copies of all Event Contracts related to the Facility. Manager shall administer and use reasonable commercial efforts to assure compliance with such Event Contracts.

7.2 **Execution of Contracts.** Upon written authorization of Owner, Manager shall have the right to enter into, Revenue Generating Contracts (Event Contracts) as agent on behalf of the Owner. Any such contracts shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of event being provided or performed by such parties. Manager shall obtain the prior approval of the Owner before entering into any such contract.

ARTICLE VIII COVENANTS AND REPRESENTATIONS

8.1 **Owner's Covenants and Representations.** Owner makes the following covenants and representations to Manager, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) **Owner's Status.** Owner is a political subdivision of the State of Texas organized pursuant to the laws of the State of Texas, and authorized to transact business in the State of Texas, with full power and authority to enter into this Agreement.

(b) **Authorization.** The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by requisite action, and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms and applicable Laws.

(c) **Effect of Agreement.** To Owner's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Owner nor Owner's performance of any obligation hereunder: (i) will constitute a violation of any law, ruling, regulation, or order to which Owner is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (A) to which Owner is a party or is otherwise bound, or (B) to which

the Facility or any part thereof is subject.

(d) Ownership Rights. Owner shall obtain and retain the property interests in the Facility necessary to enable Manager to perform its duties pursuant to this Agreement peaceably and quietly. Owner represents and warrants that Manager's performance of the services required by this Agreement shall not violate the property rights or interests of any other Person.

(e) Documentation. If necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Facility.

8.2 Manager's Covenants and Representations. Manager makes the following covenants and representations to Owner, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Corporate Status. Manager is a non-profit 501(c)(3) corporation duly organized, validly existing, and in good standing under the laws of the State of Texas and authorized to transact business throughout the United States, including within the State of Texas with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Manager has been duly authorized and approved by all requisite action of the board of directors of Manager, and this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms and applicable Laws.

(c) Effect of Agreement. To Manager's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which Manager is a party or is otherwise bound.

(d) Documentation. If necessary to carry out the intent of this Agreement, Manager agrees to execute and provide to Owner, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Owner may reasonably request in connection with the operation of the Facility.

ARTICLE IX
GENERAL PROVISIONS

9.1 **Relationship.** Manager and Owner shall not be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Manager understands and agrees that the relationship to Owner is that of independent contractor, and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage or operate property, or to conduct business activities, which are competitive with the business of the Facility. Manager covenants and agrees that even though it may have a management responsibility for other similar properties, which from time-to-time may be competitive with the Facility, Manager shall always represent the Facility fairly and deal with Owner on an equitable basis.

9.2 **Representations.** Owner represents and warrants: (i) that Owner has full power and authority to enter this Agreement; (ii) that to the best of Owner's knowledge, the property on which the Facility is located is zoned for the intended use; (iii) that all permits for the operation of the Facility have or will be secured and are or will be current; (iv) that the Facility and its operation do not violate any applicable statutes, laws, ordinances, rules, regulations, orders, or the like (including, but not limited to, those pertaining to hazardous or toxic substances); and (v) that no unsafe condition exists.

9.3 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.

9.4 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, successors, and assigns.

9.5 **Building Compliance.** Manager does not assume and is given no responsibility for compliance of the Facility or any equipment therein with the requirements of any building codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Owner promptly, or forward to Owner promptly, any complaints, warnings, notices, or summonses received by Manager relating to such matters. Owner represents that to the best of Owner's knowledge, the Facility and all such equipment contained therein comply with all such requirements.

9.6 **Notices.** All notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Owner: Webb County Judge
1000 Houston St.
Third Floor
Laredo, Texas 78040

Copy to: Webb County Commissioners Court
1000 Houston St.
Third Floor
Laredo, Texas 78040

If to Manager Laredo International Fair and Exposition
P.O. Box 1770
Laredo, Texas 78044

9.7 **Headings.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

9.8 **Force Majeure.** Any delays in the performance of any obligation of Manager under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager and any time periods required for performance shall be extended accordingly.

9.9 **Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Facility and supersedes and replaces any and all previous management agreements entered into or/and negotiated between Owner and Manager relating to the Facility covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Manager in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

9.10 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other

right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.

9.11 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Texas. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in Webb County, Texas.

9.12 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they has been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

9.13 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.

[SIGNATURE PAGE FOLLOWS]

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

OWNER
WEBB COUNTY

MANAGER
LAREDO INTERNATIONAL FAIR
AND EXPOSITION

Tano E. Tijerina
Webb County Judge

Joe L. Villarreal
(Signature)
JOE L. VILLARREAL
(Printed Name)

President
(Title)

ATTEST:

Margie Ramirez Ibarra
Webb County Clerk

Approved as to Form:

Nathan R. Bratton
Nathan R. Bratton
General Counsel
Civil Legal Division*

*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

[REMAINDER OF PAGE INTENTIONALLY BLANK]

EXHIBIT "A"

MANAGEMENT SERVICES

During the Term, Manager will provide services related to a broad range of management and operations set-up, (collectively, the "**Management Services**"). The Management Services address the Manager's responsibility for all aspects of oversight for event management and event operations of the Facility. These services include, without limitation, the following:

1. Enforce the Webb County Fairgrounds Rental Policies and Procedures (Rev. Mar. 2019) incorporated herein by reference as if set out in full for all intents and purposes.
2. Opening facilities for event set up (including the day before the event).
3. Turning on and off HVAC systems.
4. Supervise and assist with event set-up.
5. Supervision of premises during events.
6. Ensure that during events, security personnel are present.
7. Ensure all event participants, licensees and invitees have left the premises after an event and close and secure facilities.
8. Supervise and assist with premises clean-up after the event.
9. Provide Public Address/Speaker System upon request of event organizer.
10. Provide up to up to 100 chairs and 25 rectangular tables upon request of event organizer.
11. Provide BarBQ pit upon request (wood and consumables to be provided by event organizer).
12. Provide up to 15 tables, chairs and 16 picnic tables for outdoor events as requested by event organizer.
13. Promptly notify County of any maintenance issues.

EXHIBIT "B"

MANAGER COMPENSATION

During the Term of this Agreement, Manager shall receive compensation from the Owner according to the following:

Manager shall be paid 50% of the rental fees paid for each event however, those events which are sponsored by organizations associated with AgriLife (i.e. FFA, FHA, Showmanship Events or Prospect Shows) shall be managed at no cost.

As additional compensation, Owner shall assume the debt, in the approximate amount of \$55,411.39, for the building that was constructed by the Laredo International Fair and Exposition.