



## Board of County Commissioners

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# Memorandum of Understanding

## Memorandum of Understanding #: Lewis County Superior Court Memorandum of Understanding COVID-19

This Memorandum of Understanding is entered into by and between, Lewis County, herein after referred to as County, and Lewis County Superior Court, herein after referred to as LCSC along with Lewis County District Court, herein after referred to as LCDC.

### Preamble

**Background:** This endeavor is an effort by the LCSC/LCDC to provide safe, space for social distancing jury selection for citizens of Lewis County (herein referred to as GUESTS) at the Southwest Washington Fairgrounds. Accommodations will be provided tentatively August 1 to October 31<sup>st</sup>, 2020 these dates may be shorter or longer in accordance with Washington State “Safe Start Guidance”.

**Purpose:** This agreement states the arrangement between LCSC/LCDC and the Southwest Washington Fairgrounds for the use of the property for jury selection in the Community Events Building.

### Recitals

WHEREAS, COVID-19, a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person; and

WHEREAS, on January 31, 2020, the United States Department of Health and Human Services Secretary Alex Azar declared a public health emergency for COVID-19, beginning January 27, 2020; and

WHEREAS, on February 29, 2020, Washington Governor Jay Inslee declared a state of emergency in response to the continued and growing threat presented by COVID-19; and

*Erik Martin*  
County Manager

*Edna J. Fund*  
First District

*Bobby Jackson*  
Second District

*Gary Stamper*  
Third District

*Rieva Lester*  
Clerk of the Board

WHEREAS, on March 13, 2020, the Lewis County Board of County Commissioners declared a present emergency, and continues to extend such order, which necessitates utilization of emergency powers granted pursuant to RCW 36.40.180 and RCW 38.52.070(2); and

WHEREAS, it is in the best interest if Lewis County to work with local organizations and businesses to coordinate acquiring necessary supplies for prevention, detection, treatment, and eradication of COVID-19; and

WHEREAS, Lewis County has been federal funding for costs incurred during the public health emergency with respect to the coronavirus disease during the period of March 1, 2020, thru October 31, 2020; and

WHEREAS, the Washington State Department of Commerce has awarded a grant for \$4,371,400.00 to address the costs incurred during the coronavirus public health emergency; and

WHEREAS, the parties agree to proceed as outlined herein and enter into this Memorandum of Understanding as a voluntary and mutually beneficial understanding.

## **Witnesseth**

NOW THEREFORE, in consideration of the mutual benefits and covenants hereafter contained, the parties agree hereto as follows:

### **General Terms and Conditions**

#### **1. Accounting and Payment for Services**

The Southwest Washington Fairgrounds shall invoice LCSC/LCDC on a monthly basis.

#### **2. Assignment and Subcontracting**

Unless otherwise provided for in this MOU, no portion of this MOU may be assigned or subcontracted to any other individual, form, or entity without the express and prior written approval of the County MOU Representative.

#### **3. Regulations and Requirements**

This MOU shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Terms and Conditions.

#### **4. Public Records Law**

Each Party will fulfill their independent obligations, separately, under the Washington Public Records Act (chapter 42.56 of the Revised Code of Washington). In the event one Party fails to fulfill its obligations pursuant to this section and due in whole or in part to such failure a court of competent jurisdiction imposes a penalty upon the other Party for violation of the Public Records Act, the failing Party shall indemnify the other for that

penalty, as well as for all costs and attorney fees incurred by the other Party in the litigation giving rise to such a penalty. The obligations created by this section shall survive the termination of this MOU.

**6. Political Activity Prohibited**

None of the funds provided under this MOU shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or ballot measure. However, no person engaged to perform such services pursuant to this MOU shall be precluded from devoting income derived from such services to any lawful political activity, or to the support of a candidate for public office or of a ballot measure.

**7. Right to Review**

This MOU is subject to review by any federal or state auditor. The Parties or their designees shall have the right to review and monitor the financial and service components of this MOU by whatever means are deemed expedient by the MOU Representative. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County or LEDC agents or employees, inspection of all records or other materials which the Parties deem pertinent to the MOU and its performance, and any and all communications with or evaluations by service recipients under this MOU.

**8. Modifications**

Either party may request changes in the MOU. Any and all agreed modifications shall be in writing, signed by each of the parties.

**9. Termination**

Either Party may terminate this MOU upon 30 days' prior written notification to the other Party. If this MOU is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this MOU prior to the effective date of termination.

**10. Termination for Public Convenience**

Either Party may terminate the MOU, in whole or in part, whenever the terminating Party determines, in its sole discretion that such termination is in the interests of the terminating Party. Whenever the MOU is terminated in accordance with this paragraph, the non-terminating Party shall be entitled to payment for actual work performed at unit MOU prices for completed items of work. The terminating Party shall make a reasonable, equitable adjustment in the MOU price for partially completed items of work, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this MOU by Party at any time during the term for convenience, shall not constitute a breach of MOU by the terminating Party.

**11. Suspension of Performance and Resumption of Performance**

In the event of government closure, suspension, or limitation of funding in any way after the effective date of this MOU and prior to normal completion, Parties may give notice to the other Party to suspend performance as an alternative to termination. Parties may

elect to give written notice to the other Party to suspend performance when the Party determines there is a reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow performance to be resumed prior to the end date of this MOU. Notice may include notice by facsimile or email to the MOU's Representative. The Parties shall suspend performance on the date stated in the written notice to suspend. During the period of suspension of performance, each Party may inform the other of any conditions that may reasonably affect the potential for resumption of performance. Notice may be contingent upon the occurrence or non-occurrence of a future event; *e.g.* the failure of the State of Washington to pass a budget by a date specified in the notice.

When the Parties determine that the funding insufficiency is resolved, the Parties may give written notice to resume performance and a proposed date to resume performance. Upon receipt of written notice to resume performance, the Parties will give written notice to the other as to whether it can resume performance, and, if so, the date upon which it agrees to resume performance. If Parties give notice that they cannot resume performance, the Parties agree that the MOU will be terminated retroactive to the original date of suspension of performance.

If the funding issue is not resolved, the Parties may terminate the MOU under the "Termination for Convenience" clause.

## **12. Defense and Indemnity MOU**

Either Party shall defend, protect, and hold harmless the other Party or any officers or employees thereof, from and against all claims, suits, or action arising from any intentional or negligent act or omission of the other Party or any employee, agent or representative of the other Party or any subcontractor, while performing under the terms of this MOU.

## **13. Resolution of Conflicts**

In the event of an inconsistency in this MOU, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- i. Applicable federal and state statutes and regulations
- ii. Special terms and conditions
- iii. Exhibits
- iv. General terms and conditions
- v. Any other provision of this MOU whether incorporated by reference or otherwise.

## **14. Disputes, Venue and Choice of Law**

Both Parties agree that any disputes that arise under or relating to this MOU that cannot be resolved to the satisfaction of both parties shall be submitted to mediation before either party starts litigation in any form. An impartial third party acceptable to both the County and LEDC will be appointed to mediate. Should the parties be unable to agree upon a mediator, then the dispute shall be mediated through the Washington Arbitration and Mediation Service, at its Tacoma office, and in accordance with the WAMS mediation

rules. Each Party shall pay an equal percentage of the mediator's fees and expenses. Either Party may not use any funds received under this MOU to pay mediator's fees and expenses. The mediation shall be confidential in all respects, as allowed or required by law.

In the event that mediation does not resolve the dispute, the venue for any litigation arising under or relating to this MOU shall be in the courts of the State of Washington. This MOU shall be governed by the laws of the State of Washington, excepting only the choice of law rules of the State of Washington.

#### **15. Records Maintenance**

Each Party shall maintain all books, records, documents, data and other evidence relating to this MOU and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this MOU. Both Parties shall retain such records for a period of seven (7) years following the date of final payment.

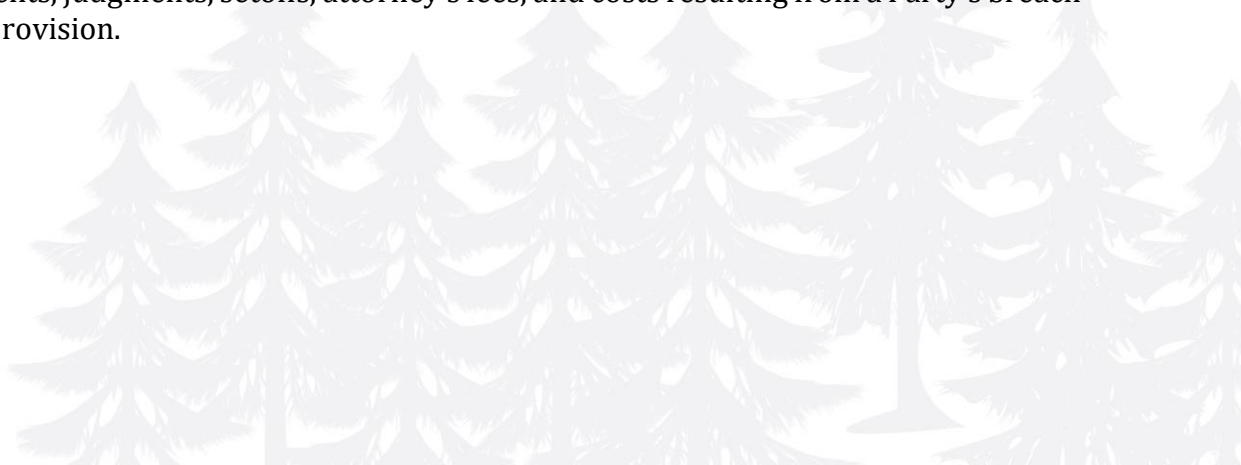
If any litigation, claim or audit is started before the expiration of the seven- (7) year period, the records shall be retained for a period of seven (7) years after all litigation, claims, or audit findings involving the records have been finally resolved.

#### **16. Recapture**

In the event a Party fails to perform services specified in this MOU in accordance with state laws, federal laws, and/or the provisions of this MOU, the other Party reserves the right to recapture funds in an amount required to compensate the other Party for the noncompliance in addition to any other remedies available at law or in equity. Repayment by the failing Party or refunds under this recapture provision shall occur within the timeframe specified by the other Party. In the alternative, the other Party may recapture such funds from payments due under this MOU.

#### **17. Confidentiality**

Both Parties or any employee, agent or representative of the Parties or any subcontractor shall maintain the confidentiality of all information provided or acquired by the Parties in performance of this MOU, except upon prior written consent of the Attorneys for each Party or an order entered by a court after having acquired jurisdiction over the Parties. Each Party shall indemnify and hold harmless the other Party, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorney's fees, and costs resulting from a Party's breach of this provision.



**18. Ethics/Conflicts of Interest**

In performing under this MOU, both Parties will assure compliance with the Ethics in Public Service Act (Chapter 42.52 Revised Code of Washington), and any other applicable state or federal law related to ethics or conflicts of interest.

**19. MOU Amendments**

No amendment, modification or renewal shall be made to this MOU unless set forth in a written Memorandum of Understanding Amendment, signed by both parties. Work under a Memorandum of Understanding Amendment shall not proceed until both Parties duly executes the Memorandum of Understanding Amendment.

**20. Severability**

If any term or condition of this MOU or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this MOU are declared severable.

**21. Conformance**

If any provision of this MOU violates any statute or rule of law of the state of Washington or of the United States of America, it is considered modified to conform to that statute or rule of law.

**22. Waiver**

Waiver of any breach or condition of this MOU shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this MOU shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the party granting such a waiver.

**23. Survival**

The terms and conditions contained in this MOU will survive the completion, cancellation, termination or expiration of the MOU.

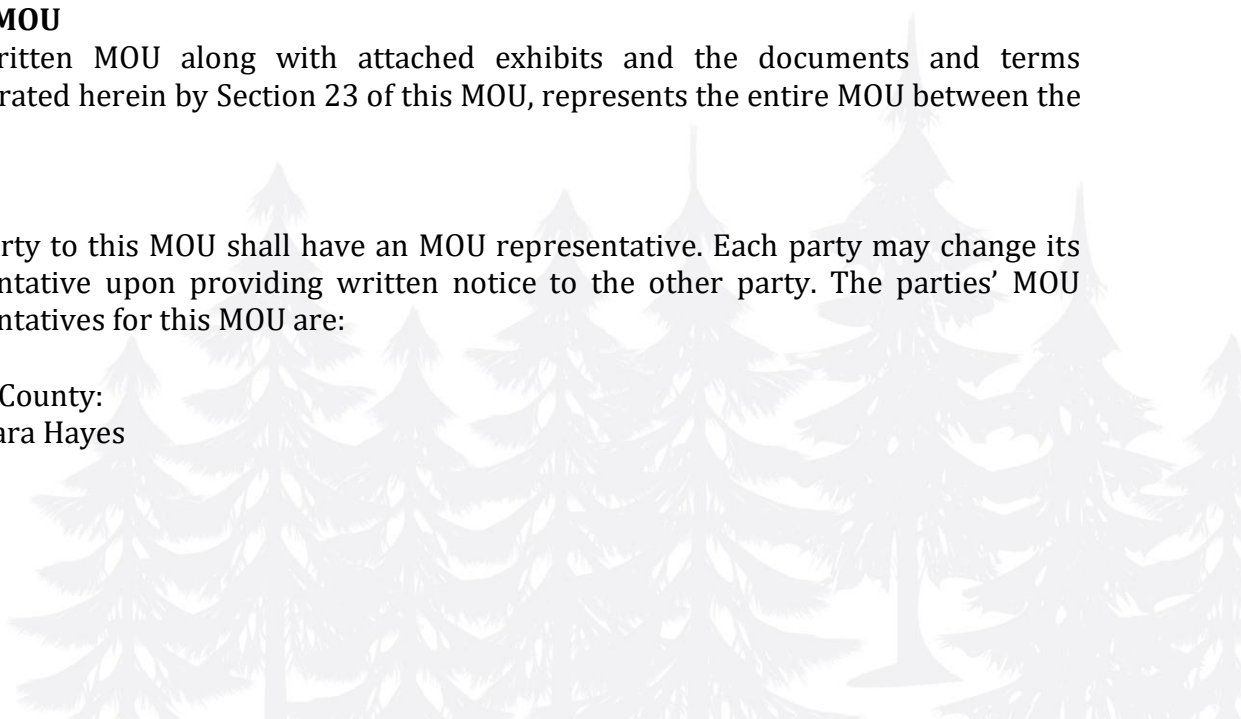
**24. Entire MOU**

This written MOU along with attached exhibits and the documents and terms incorporated herein by Section 23 of this MOU, represents the entire MOU between the parties.

**25. Parties**

Each party to this MOU shall have an MOU representative. Each party may change its representative upon providing written notice to the other party. The parties' MOU representatives for this MOU are:

For the County:  
Tamara Hayes



For Lewis County Superior Court  
Judge Lawler

For Lewis County District Court  
Judge R. W. Buzzard

**26. Authorization**

Only the Lewis County Board of County Commissioners, Southwest Washington Fair Manager or its designated MOU Representative identified herein, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this MOU with respect to the rights and responsibilities of County. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this MOU is not effective or binding unless made in writing and signed by the Lewis County Board of County Commissioners, Southwest Washington Fair Manager or its MOU Representative.

Only the Lewis County Superior Court and Lewis County District Court or its designated MOU Representative identified herein, shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this MOU with respect to the rights and responsibilities of LCSC/LCDC. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this MOU is not effective or binding unless made in writing and signed by the LCSC/LCDC its MOU Representative.



IN WITNESS THEREOF, this executed on \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Accepted:  
Lewis County  
Southwest Washington Fairgrounds

Accepted:  
Lewis County Superior Court

\_\_\_\_\_  
Tamara Hayes

\_\_\_\_\_  
Judge Lawler

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Accepted:  
Lewis County District Court

\_\_\_\_\_  
Judge R. W. Buzzard

Dated: \_\_\_\_\_

APPROVED AS TO FORM:  
JONATHAN MEYER, Prosecuting Attorney

\_\_\_\_\_  
Amber Smith, WSBA# 53121





## Exhibit A: Facility Use Agreement

**FACILITY & USE FEES** (weekly) – Utilities are included in the cost of rental, tables and chairs

<u>Building(s)</u>	<u>Fee (weekly)</u>	<u>.082% Tax</u>	<u>Total</u>
Community Events	\$1,500.00	\$123.00	\$1,623.00

**PERIOD OF AGREEMENT:** August 1, 2020 to October 31, 2020

## Exhibit B: The Southwest Washington Fairgrounds Event Disclaimers

**FACILITIES USED:** FAIRGROUNDS agrees to grant the CUSTOMER use of the areas indicated in this AGREEMENT. FAIRGROUNDS' facilities to the grounds. FAIRGROUNDS buildings, grandstand, and barns are smoke free in accordance with RCW 70.160. Smoking is prohibited on the fairgrounds during public events except in designated areas.

**PURPOSE:** CUSTOMER will use the PREMISES for the sole purpose indicated on the Facility Use AGREEMENT.

**USE PERIOD AND TIME SCHEDULE:** CUSTOMER will move in, use and occupy the PREMISES in accordance with the dates and times indicated on the facility use AGREEMENT. CUSTOMER will vacate and surrender possession of the PREMISES at the time indicated on the AGREEMENT. The CUSTOMER will not extend time for the occupancy or use of the PREMISES for CUSTOMER or for installation or removal of equipment without the express written permission of the FAIRGROUNDS. Additional time will be charged at a rate of published facility rates.

**FEES:** Fees for use of county-owned facilities are reviewed annually by the Lewis County Board of County Commissioners (BOCC) and are subject to change with 60 days advance written notice. Should a new schedule of fees be adopted at least 60 days prior to the date of Customer's event, and should such any fees be greater than those set out herein, this Agreement shall be deemed to be amended to reflect such new and higher fees.

**CONDUCT OF PERSONS:** CUSTOMER will be solely responsible for the orderly conduct of all persons using the PREMISES by its invitation, either expressed or implied, during all times covered by the agreement. FAIRGROUNDS reserves the right to eject or cause to be ejected from the PREMISES any person due to unlawful conduct, publicly offensive language or other offensive conduct as determined by the Fair Manager in her sole discretion. And further the Lewis County Sheriff, at his or her discretion, will determine the need and number of security officers necessary for a particular event. Said security will be paid at the sole cost and expense of CUSTOMER.

**CONTROL OF BUILDING:** The CUSTOMER will be provided with a key to the building on the Friday prior to the event dates.

**CARE OF THE PREMISES AND EQUIPMENT USE:** CUSTOMER will not injure, mark or deface PREMISES or EQUIPMENT used by or available to CUSTOMER. CUSTOMER agrees to keep PREMISES clean and safe during all periods of CUSTOMER'S occupation and use. FAIRGROUNDS reserve the right to require CUSTOMER to take such reasonable protective measures as the FAIRGROUNDS may determine necessary to insure the preservation and protection of the PREMISES and EQUIPMENT and the safety of event patrons.

1. CUSTOMER and Customer's GUESTS will not injure, mark or deface PREMISES, including but not limited to placing nails, tacks, hooks or screws into any part of PREMISES; or adhere signs or posters to painted or glass surfaces by any means including duct tape or masking tape; or posting advertising or other materials in or about

the PREMISES without the FAIRGROUNDS written approval. Upon approval posters and signs are permitted to hang with painter's tape or gaffer tape within the designated PREMISES.

2. In the event of damage or alteration to the PREMISES or EQUIPMENT, CUSTOMER agrees to pay FAIRGROUNDS to fully restore the PREMISES or EQUIPMENT or repair the damage or replace altered or damaged portions, all at the CUSTOMER'S sole cost and expense.

**LAWFUL USE:** CUSTOMER agrees to comply with all Federal, State, and local laws and regulation. CUSTOMER is responsible for becoming familiarized with these laws, ordinance, rules, and regulations. Customer agrees, represents and warrants that it or its contractor(s) has obtained all permits, licenses, certifications and authorizations necessary to open and operate a homeless shelter at this location and in the manner in which it will be operated and that all employees, contractors and volunteers are fully and properly licensed, permitted, reviewed, and authorized to provide all services they will provide at the facility. Customer further agrees, represents and warrants that the mobile facilities to be used for this function are lawfully designed, permitted and authorized for the contemplated use and are fully insurable and have been insured for that use.

**SCHEDULING:** Unless otherwise specified in writing, FAIRGROUNDS may schedule other similar events both before and after the dates of this contract without notice to the CUSTOMER.

**OCCUPANCY INTERRUPTIONS:** In the event that the PREMISES or any part of PREMISES is destroyed or damaged by fire, flood, or any other cause or if any casualty or unforeseen occurrence strikes, labor disputes, or acts of military authorities, render the fulfillments of this contract difficult or impossible to perform, this Agreement will be at once canceled. FAIRGROUNDS will not, in any such case, be held liable or responsible to the CUSTOMER for any damage caused by said cancellation and FAIRGROUNDS will be relieved from any further liability by reason of this Agreement, and the CUSTOMER will make no claims for compensation or for damages against FAIRGROUNDS. Any rental for the unused portion of said Agreement will be refunded to CUSTOMER.

**FOOD SAFETY PERMITS:** Events that are open to the general public and where food or beverage are served, require that all food booths obtain the appropriate food safety permits which are obtained through the Lewis County Health Department.

**LOST OR STOLEN ARTICLES:** FAIRGROUNDS is not responsible for lost, stolen, or damaged items during the use of the PREMISES. By law, FAIRGROUNDS will collect and have custody of articles left in the PREMISES by persons attending any performance, exhibition, or activity given or held on the PREMISES. CUSTOMER, or any person in CUSTOMER'S employee will not collect or interfere with FAIRGROUNDS' collection or custody of such articles. Articles will be given to the Lewis County Sheriff's Office.

1. **INSURANCE:** CUSTOMER shall obtain at its own cost and expense, commercial general liability insurance in the minimum amounts below. FAIRGROUNDS reserves the right to raise minimum levels based on type of event and crowd size.
2. One million dollars (\$2,000,000) per occurrence/ten million dollars (\$10,000,000) aggregate.
3. Lewis County/Southwest Washington Fairgrounds shall be named certificate holder and "Lewis County, Southwest Washington Fair, their officers, directors, agents and employees shall be named as primary, non-contributory additionally insured Certificates will not be accepted if they do not include the additional insured exactly as stated
4. CUSTOMER should ensure that the insurance policy is an occurrence based policy. FAIRGROUNDS will not accept a claims based policy.
5. The CUSTOMER'S insurers shall have a minimum A.M. Best's rating of A- and shall be licensed to do business in the State of Washington. The CUSTOMER shall provide to the FAIRGROUNDS, 30 days in advance, a completed copy of a certificate of insurance, signed by the insurance agent for the CUSTOMER, as evidence of such coverage prior to use of the facility. FAILURE TO DO SO MAY RESULT IN REVOCATION OF THIS AGREEMENT.
6. The policy shall be an endorsed and certificate shall reflect that Lewis County/Southwest Washington Fairgrounds is an additional insured on the CUSTOMER'S policy and the CUSTOMER'S insurance and any self-insurance carried is primary by the COUNTY is excess.

**CANCELLATIONS:** Cancellations by the CUSTOMER made less than 60 days in advance of the reservation will result in the loss of all the fees required to date (an invoice will be sent with balance due). Cancellation policy is based on the original date reserved. In addition, the FAIRGROUNDS will have the right to terminate all or part of this Agreement at any time, without liability on the part of FAIRGROUNDS, upon thirty (30) days written notice; provided, however, this Agreement may at any time be terminated when the PREMISES are required for public use because of unforeseen emergency. Under such termination, a deposit made by customer will be refunded. Please note: All cancellations will be subject to a \$25 administrative fee.

**RESCHEDULING:** If the event is rescheduled no later than sixty-one (61) days prior to the first move in date, the deposit may be applied towards the rescheduled date. If the date is rescheduled within (60) days from the first move in date, the deposit is non-refundable and any remaining balance owing for this contracted dates shall remain the responsibility of the renter.

