

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital Expenditures					
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income (County)					
In-Kind Match (County)					
Net Fiscal Impact	<u>0*</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	0	0	0	0	0

Is Item Included In Current Budget? Yes No

Budget Account Exp No: Fund Department Unit Object
 Rev No: Fund Department Unit RevSc

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

*There is no fiscal impact associated with this item.

Departmental Fiscal Review: Stephan Semok
3/11

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Shen B
 1/15 OFMB 1/15/16

D. J. Jacobson 1/29/16
 Contract Administration
 B. Becker 1-26-16

B. Legal Sufficiency:

James Brub 2/1/16
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

EMERGENCY GENERATOR USE AGREEMENT

THIS GENERATOR USE AGREEMENT (the "Agreement") is made and entered into, this _____ day of _____ 2016, by and between Palm Beach County, a political subdivision of the State of Florida, (the "County") and the SOUTH FLORIDA FAIR & PALM BEACH COUNTY EXPOSITIONS, INC., a Florida not for profit corporation (the "Fairgrounds"), located at 9067 Southern Blvd., West Palm Beach 33406.

WHEREAS, Chapter 616, Florida Statutes, authorizes counties to make contributions of money, property, or services to fair associations to assist in carrying out the purposes of the associations; and

WHEREAS, the Fairgrounds desires to locate and operate a County-owned generator on the premises to be used during times of commercial power disruption to the medical and security building; and

WHEREAS, Palm Beach County's Board of County Commissioners finds that the use the Fairgrounds will make of the Generator constitutes and will serve a valid public purpose; and

WHEREAS, the County, through its Department of Emergency Management (the "DEM") has agreed to allow the Fairgrounds use of a Magnum MG205 250KW generator (the "Generator"), (DEM Asset Tag #10196711 and UASI ID #MIA5422) to the Fairgrounds for the terms set forth below.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Recitals

The recitals contained above are true and correct and incorporated herein by reference.

Section 2 Term

The term of this Agreement shall commence upon _____, and shall extend for a period of three (3) years thereafter (the "Term"), unless sooner terminated pursuant to the provisions of this Agreement. The County hereby grants to the Fairgrounds, upon written agreement by both parties so long as the Fairgrounds shall not be in default of any term, covenant, condition under this Agreement, the right and option to extend the Term of this Agreement for two (2) successive periods of one (1) year each under the same terms and conditions of this Agreement and commencing upon the expiration of the initial Term of this Agreement or any extension thereof. The Fairgrounds shall exercise its option to extend, if at all, by written notice to the County received by the County on or before thirty (30) days prior to the expiration of the initial Term of this Agreement or any extension thereof.

Section 3 Delivery, Training and Responsibility of the Generator

- A. The DEM shall deliver and may provide initial training for the Generator, on the Premises, in the location approved by the County specifically identified in Exhibit "A" attached hereto and made a part hereof.
- B. The Fairgrounds acknowledges and agrees that the Generator shall only be available for use when commercial power has been interrupted to the medical/security building.

Section 4 Repair and Maintenance of the Generator

The Fairgrounds shall provide all necessary repair and maintenance to the Generator. The Fairgrounds shall conduct monthly testing of the Generator and provide routine maintenance one time per week or as needed. Should the need arise to contact the Fairground regarding repair or maintenance of the Generator, the County shall contact Randy Hoffner 561-793-0333.

Section 5 Fairground Acknowledgements

- A. The Fairground agrees and acknowledges, upon delivery in accordance with the terms of Section 6 of this Agreement, that it has inspected the Generator and accepts the generator "As-is", including the current condition and operational readiness. **NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE GIVEN. ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED.** The Fairgrounds assumes responsibility for any and all claims arising from any and all use of the Generator. The Fairgrounds fully understands that any Sheriff's Office law enforcement personnel or County security personnel that might be in or around the Generator for the purpose of security are not responsible for protection of the Generator. The Fairgrounds expressly acknowledges that any special security measures deemed necessary by the County, in its sole discretion, for additional protection of the Generator shall be the sole financial responsibility of the Fairgrounds.
- B. The Fairgrounds shall, at its sole cost and expense, secure any required permits and comply with all regulations of all county, municipal, state, federal and other applicable governmental authorities now in force, or which may hereafter be in force, pertaining to the use of the Generator. The Fairgrounds shall faithfully observe, in the use of the Generator, all municipal and county ordinances and state and federal statutes now in force, or which hereafter may be in force. TO the extent allowed by law, the Fairgrounds shall indemnify, defend and hold the County harmless from any and all penalties, fines, costs, expenses, suits, claims and damages resulting from the Fairgrounds failure to perform its specified obligations.

Section 6 County Responsibilities

The County shall deliver, in working order and operational condition, the Generator to the location specified in Exhibit A. The County may provide initial training on the operation of the Generator and when requested, in writing at least three (3) days in advance, recurring training on operational aspects of the Generator.

Section 7 Generator Regional Deployment

The Generator is a regional asset that can be deployed anywhere in Monroe, Miami-Dade, Broward and Palm Beach counties under the 2009 Urban Area Security Initiative (UASI) agreement. The Fairgrounds hereby grants to the County and other government agencies referenced in this Section 7, an irrevocable license to immediate access and inspection of the Generator. When emergency or non-emergency access is needed to deploy the Generator, the County will contact the Fairgrounds 24 hour security center at 561-644-3278 with notice. The County shall not be responsible for any damage to Fairgrounds property resulting from deployment of the generator.

Section 8 Indemnification

To the extent allowed by law, the Fairgrounds shall protect, defend, reimburse and hold the County, its agents, employees and elected officers harmless from and against any and all claims, liability, expense, loss, cost damages or cause of action of every kind or character, including attorney’s fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of the Fairgrounds.

Section 9 Insurance

During the entire term of this Agreement, the Fairgrounds shall keep in full force and effect General Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence combined single limit bodily injury and property damage including coverage for Premises-Operations, Contractual and Product Liability, Independent Contractors, Contractor Liability and Broad Form Property Damage Liability coverage.

The Fairgrounds shall maintain Business Automobile Liability insurance with limits of liability not less than \$500,000 each occurrence for owned, non-owned and hired automobiles. In the event the Fairgrounds has no owned automobiles, the requirement shall be to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. This coverage shall be provided on a primary basis.

The Fairgrounds shall also keep in full force and effect Workers' Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes.

The Fairgrounds shall provide Certificates of Insurance to the County prior to the Generator being placed in service which shall identify Palm Beach County as an Additional Insured. The Fairgrounds shall provide the Additional Insured endorsement coverage on a primary basis. The certificates shall indicate at least thirty (30) days prior notice of cancellation or adverse material change in coverage.

The Fairgrounds hereby waives any and all rights of subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Fairgrounds shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy in which a condition to the policy specifically prohibits such an endorsement or voids coverage for entering into such an agreement on a pre-loss basis.

In no event shall the limits of said insurance policies be considered as limiting the liability of the Fairgrounds under this Agreement. In the event the Fairgrounds fails to maintain in full force and effect any insurance coverage required to be obtained, the County shall have the right to terminate this Agreement immediately. Notwithstanding the foregoing, to the extent allowed by law, the Fairgrounds shall defend and hold the County harmless from any loss or damage incurred or suffered by County from the Fairgrounds failure to maintain such insurance.

In the event of loss or damage to the Generator and/or any of the Fairgrounds equipment, the Fairgrounds shall look solely to any insurance in its favor without making any claim against the County.

Section 10 Termination

The parties reserve the right to terminate this Agreement for any reason upon thirty (30) days written notice to the other party to this Agreement. Upon termination of this Agreement, the Fairgrounds shall, at its sole cost and expense, return all of equipment from the Generator and surrender the Generator in the same condition as it was upon execution of this Agreement, reasonable wear and tear excepted. In the event the County opts to terminate this Agreement, the County shall not be responsible for the costs of any business damages suffered by the Fairgrounds and this Agreement shall terminate and County shall be relieved of all further obligations hereunder accruing subsequent to the date of such termination. In addition, the County shall have no obligation to identify or provide an alternative Generator for the Fairgrounds.

Section 11 Non-Discrimination

The Fairgrounds warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry,

marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Fairgrounds has submitted to the County a copy of its non-discrimination policy which is consistent with the above, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Fairgrounds does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as amended.

Section 12 Remedies

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

Section 13 Severability

In the event that any section, paragraph, sentence, clause or provision hereof is held, by a court of competent jurisdiction, to be invalid, such holding shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

Section 14 Entirety of Agreement

This Agreement and any exhibits attached and forming a part hereof as if fully set forth herein, constitute all agreements, conditions and understandings between the County and the Fairgrounds concerning the Generator, and its use. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon the County or the Fairgrounds unless reduced to writing and signed by them.

Section 15 Notices

Any consents, approvals and permissions by the County shall be effective and valid only if in writing. All notices and elections (collectively, "Notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service, telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any Notice shall be the date of delivery of the Notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if by telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or

if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which Notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

If to the County at:
Public Safety Department
Attention: Vincent Bonvento, Director
20 South Military Trail
West Palm Beach, Florida 33415

With copy to:
Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, FL 33401

If to the Fairgrounds at:
South Florida Fair & Palm Beach County Exposition
Attn: Randy Hoffer, Director of Security
9067 Southern Blvd.
West Palm Beach, FL 33411
Fax: (561) 687-9943

With copy to:
Foster & Fuchs, PA
4425 Military Trail, Suite 109
Jupiter, FL 33458

Either party hereto may change the address for service of Notices required or permitted hereunder upon three (3) days' prior written notice to the other party.

Section 16 Ownership, Assignment and Subletting

Ownership of the Generator is, and shall remain during the term of this Agreement, vested in the County. The Fairgrounds, and its successors and assigns, may not assign, lend, sublet or rent, nor enter into any license agreement with respect to the Generator without written consent of the County, which may be granted or withheld at County's absolute discretion. This provision shall be construed to include a prohibition against any assignment, pledge, encumbrance, or sublease, by operation of law, legal process, receivership, bankruptcy, or otherwise, whether voluntary or involuntary.

Section 17 Default

Failure to perform or observe any of the agreements, covenants, or conditions contained in this Agreement to be performed or observed by such party upon ten (10) days prior written notice shall constitute a default of this Agreement.

Section 18 Access and Audits

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section, 2-421 – 2-440, as may be amended. The Inspector General’s authority includes but is not limited to the power to review past, present and proposed county contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the fairgrounds, its officers, agents, employees, and lobbyists in order to ensure compliance with the Agreement and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Section 19 No Agency Relationship

The Fairgrounds is not an agent, servant or employee of Palm Beach County or DEM. Neither Palm Beach County nor DEM is an agent, servant or employee of Fairgrounds. The Fairgrounds acknowledges and agrees that neither Palm Beach County nor DEM has any control over the actions, activities or decisions of the Fairgrounds or any agency, entity or third party with which it may have a relationship. Nothing contained herein shall create an agency relationship between the Fairgrounds and the County or DEM.

Section 20 Effective Date of Agreement


This Agreement shall become effective only when signed by all parties (the "Effective Date").

IN WITNESS WHEREOF, Fairgrounds and County have caused this Use Agreement to be executed on the date first above written.

**PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**

**South Florida Fair
and Palm Beach County Expositions, Inc.**

By: _____
**Mary Lou Berger, Mayor
Palm Beach County
Board of County Commissioners**



Signature
RICHARD J. VYNLATI
Typed Name

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Title As President/CEO for
South Florida Fair and
Palm Beach County Expositions, Inc.

By: _____
Assistant County Attorney

Approved as to Terms and Conditions

By: 

Department Director

EXHIBIT A
Medical/Security Building

