

AGREEMENT/CONTRACT REVIEW FORM		MEETING DATE
DO NOT PLACE ITEMS ON AN AGENDA UNTIL REVIEW IS COMPLETED		
DATE:	04/09/14	
Staff Member Preparing Form:	Katie Starling	
Department Submitting Contract:	Administrative and Contractual Services	
Vendor Name:	Dungeons Haunted Attractions	
Contract Title:	Fairgrounds Lease Agreement - The Dungeons Haunted Attractions	
SUMMARY (TO BE COMPLETED BY DEPARTMENT)		
1. New Contract	<input checked="" type="radio"/> Y <input type="radio"/> N	9. Contract Amount (*Detail negotiation efforts below) * See Below *
2. Renewal/Amend./Supplement	<input type="radio"/> Y <input checked="" type="radio"/> N	10. Last Year's Price (*If increase explain below) N/A
3. Sole Source (**explain below)	<input type="radio"/> Y <input checked="" type="radio"/> N	11. Date of Original Contract N/A
4. Quotes/bid policy met	<input type="radio"/> Y <input checked="" type="radio"/> N	12. Number of Renewals
5. Need to waive bid policy	<input type="radio"/> Y <input checked="" type="radio"/> N	13. Length of Term 5 years
6. Automatic renewal	<input type="radio"/> Y <input checked="" type="radio"/> N	
7. Standard Addendum Executed	<input type="radio"/> Y <input checked="" type="radio"/> N	Agreement Purpose: To provide for use of certain facilities at the Clay County Fairgrounds for the production of its annual haunted house event.
8. Advance Payment Required	<input type="radio"/> Y <input checked="" type="radio"/> N	
Funding Source	COMMENTS: This is a revenue generating agreement, all funds shall be dispersed to P&R Utilities: Rents and Royalties	
Account Number:	001-3201-543000 FG	
Account Name:	NA - Revenue Parks and Recreation Utilities: Rents: Royalties	

Approvals

Purchasing:	No Changes	With Changes
Review Date:		<input checked="" type="checkbox"/>
Budget:	No Changes	With Changes
Review Date:	<input checked="" type="checkbox"/>	
County Attorney:	No Changes	With Changes
Review Date:	<input checked="" type="checkbox"/>	
Finance:	No Changes	With Changes
Review Date:	<input checked="" type="checkbox"/>	

Recommended Changes: See margin comments. Add Standard Addendum Verbiage & Standard Addendum. Who will be responsible for providing EMT & vehicle parking services during events? The attached public records law verbiage should be incorporated into this Agreement.

Dan Little's changes

*Price Negotiation Efforts:

RECEIVED
 PURCHASING DIVISION
 2011 APR 11 P 1:33
 CLAY COUNTY BOARD OF COMMISSIONERS

** Sole Source Explanation:

* All comments have been addressed and/or incorporated into the Agreement.



**CLAY COUNTY
FLORIDA**

Purchasing Division
P.O. Box 1366
477 Houston Street
4th Floor, Admin Building
Green Cove Springs, FL
32043-0367

Area Code: 904
Phone: 278-3761
529-3761
Fax: 278-3728

County Manager
Stephanie C. Kopelousos

Commissioners:
Wendell D. Davis
District 1

Douglas P. Conkey
District 2

Diane Hutchings
District 3

T. Chereese Stewart
District 4

Ronnie E. Robinson
District 5

Switchboard:
GCS (904) 284-6300
KH (352) 473-3711
KL (904) 533-2111
OP/MBG (904) 269-6300

www.claycountygov.com

MEMORANDUM

TO: Budget, Personnel and Policy Committee
FROM: Daniel Littles, Jr., Contracts Coordinator
DATE: April 29, 2014
RE: Fairgrounds Lease Agreement
W/Dungeons Haunted Attractions

Issue: Approval of the Clay County Fairgrounds Lease Agreement with Dungeons Haunted Attractions. Rent for the use of the facilities shall be in accordance with the Clay County fee structure appended to the Lease Agreement as Attachment A.

Background:

This Agreement will provide for the use of certain facilities (as described in the Agreement) at the Clay County Fairgrounds for the production of Dungeons Haunted Attractions annual haunted house event.

Agreement Term:

The Agreement will be effective as of February 1, 2014 and will expire on February 1, 2019.

Cost:

N/A – Revenue Agreement

Funding Source:

N/A

Staff Review Comments:

Staff review has been completed and all comments have been addressed and/or incorporated into the Agreement.

Advance Payment Required: N/A

Sole Source: N/A

FAIRGROUNDS LEASE AGREEMENT BETWEEN CLAY COUNTY, FLORIDA AND THE DUNGEONS HAUNTED
ATTRACTIONS

The following constitutes a Lease Agreement ("Agreement") made this _ day of _____, 2014, to be effective as of _____, 2014, between Clay County, a political subdivision of the State of Florida, by and through its Board of County Commissioners ("the County") and the Dungeons Haunted Attractions, an organization ("DHA"), for the production of the annual haunted attraction event ("event(s)").

In consideration of the mutual promises set forth and the desire to provide the citizens of this County and surrounding areas with a fall festival/ haunted house style encounter, the County and the DHA hereby agree as follows:

1. GROUND, FACILITIES, AND MAINTENANCE/USE FEES

- A. During the term of this Agreement, the County shall make available to the DHA the use of Exhibit Buildings 1, 2, and 3, the Midway Area, the Entertainment Stage and trailer storage space.
- B. These facilities will be made available to the DHA for the purpose of producing its annual event(s).
- C. The DHA will have use of all or a portion of the above listed facilities beginning June 1st with continued use through the second Sunday of each November.
- D. The DHA will exercise a first right of refusal on said facilities no later than March 1st of each year. Failure to secure the above referenced facilities by the March deadline may result in all or some of the facilities being offered to the general public for rental.
- E. The County shall subsidize the standard rental fee for the Fairgrounds as stated in the Fairgrounds General Rules and Fee Schedule for the event(s). Services encompassed in the standard rental fee shall include: use of the Fairgrounds Exhibit Buildings, Entertainment Stage, and the Mid-Way Area on a staggered basis. The County shall also incorporate into the lease fee an amount to cover the storage of 3 semi-trailers on an annual basis for production of the event(s).
- F. The DHA shall reimburse the County for the full cost of metered electricity consumed during the DHA use of the Fairgrounds. A Fairgrounds representative shall read the electric meters upon the arrival of the first representative of the DHA and immediately following the return of the possession of the leased facilities to the County.
- G. The County shall submit a statement of costs (invoice) to the DHA 2 weeks prior to the DHA taking possession of leased facilities on June 1. The DHA shall remit one

half of the invoiced amount due to the County no later than 60 days after receipt of the County's statement of cost (invoice). A final payment of the remaining statement balance as well as the charges incurred for metered electric will be due to the County in full no later than 30 days following the last day of the DHA event(s). All payments must be made in form of a check.

- H. The County's statement of cost (invoice) shall be derived as representative in Attachment "A", for which shall be considered the "active fee schedule" for the annual event(s) hosted by the DHA. The DHA does hereby acknowledge that the fees have been established using the General Rules and Fee Schedule approved by the Clay County Board of County Commissioners. From time to time, the Board may elect to amend this document and as such any amendments will be reflected in this Agreement.

2. LABOR AND MANAGEMENT

- A. The DHA shall provide all labor necessary for the promotion, production, and administration of the DHA event(s), including supervision of all volunteer labor. The County will not be involved in the management of the DHA event(s).
- B. The DHA shall submit all proposed drawings/plans/layouts/diagrams to the Clay County Department of Public Safety Fire Chief no later than April 1st each year for review and subsequent approval. The DHA does hereby acknowledge that without consent and approval of the Fire Chief, the proposed annual event(s) cannot take place. The County will yield to any and all opinions given by the Fire Chief.
- C. The County will not provide law enforcement personnel or clean-up services in connection with the DHA event(s).

3. INSURANCE

- A. The DHA shall procure and maintain throughout the term of this Agreement insurance of the following types and minimum limits:

<u>Insurance Type</u>	<u>Limits</u>
Workers Compensation	Florida Statutory Coverage
Commercial General Liability	\$3,000,000.00 General Aggregate
(Including premises operations, and contractual liability)	\$2,000,000.00 Products/Comp. Ops Agg \$1,000,000.00 Personal/Advertising Injury \$1,000,000.00 Each Occurrence
	\$50,000.00 Fire Damage
	\$5,000.00 Medical Expenses
Automobile Liability	\$1,000,000.00 Combined Single Limit

All of the insurance referenced above shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes. Such insurance shall be endorsed to provide for a waiver of underwriter's right of subrogation in favor of the County. Such insurance shall be written by an insurer with an A.M. Best Rating of A X or better. Notwithstanding anything in this Agreement to the contrary, the DHA's liabilities under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage. Neither approval nor failure to disapprove insurance furnished by the DHA shall relieve the County from the responsibility to provide insurance as provided herein. The provisions of this paragraph shall survive the termination or expiration of this Agreement.

- B. The DHA shall provide spectator liability insurance coverage, excluding Midway and commercial food vendors, for the event(s) in the amount of \$2,000,000.00 general aggregate and \$1,000,000.00 each occurrence. Upon the execution of this Agreement, The DHA shall provide the Division of Parks and Recreation a Certificate of Insurance (COI) naming "Clay County, a political subdivision of the State of Florida; The Board of County Commissioners, Clay County, Florida; and all public agencies of Clay County, as their interests may appear" as "Additional Insured" and "Certificate Holder" for the above referenced insurance coverage.
- C. It is the responsibility of the DHA to insure that all COI required for the event(s) are on file with the Division of Parks and Recreation two (2) weeks prior to the event(s). The event(s) are subject to cancellation if the COI's are not on file with the Division of Parks and Recreation prior to the event(s).
- D. If any event which arises from the DHA event(s) production, claimed, or otherwise, causes an increase in the County's insurance premiums, then the DHA shall promptly reimburse the County in the amount of the increase.
- E. Any Midway or commercial food vendors operating during the DHA event(s) shall submit proof of individual insurance coverage with a company licensed by the State of Florida in the amount of \$2,000,000.00 general aggregate and \$1,000,000.00 per occurrence. Clay County must be named as an additional insured on any insurance policy required under this section.

4. FAIRGROUNDS INSPECTION, CLEAN-UP, DUTY TO REPAIR

- A. 15 days prior to the DHA taking over use of leased facilities in June and 15 days following the conclusion of the DHA event(s), the Director of Parks and Recreation or the Director's designee shall tour the facilities with a representative of the DHA to inspect the condition of the leased facilities.
- B. The DHA shall thoroughly clean the leased facilities and repair damage to them during the DHA use of the facilities. The DHA will not be responsible for damage attributable to force majeure, pre-existing deterioration, reasonable wear and tear, age beyond reasonably expected useful life, or damage caused by the County (to the extent of the County's fault).
- C. The DHA shall begin making repairs within 10 days of the date of inspection. Repairs must be completed within a reasonable time and in a workmanlike manner. If there

are unresolved issues regarding the clean-up or repair of the leased facilities, the County may make the repairs and bill the DHA for the work performed.

5. INDEMNITY

The DHA agrees to defend, indemnify, and hold harmless the County and all its agents, employees, contractors, and other representatives, against all suits, costs, and damages, including reasonable attorney's fees, to which the County or its agents may be put because of injury to persons or property resulting from the DHA use of the leased facilities during the term of this agreement. This provision includes injury that arises through the negligence of the DHA, its agents, or its contractors or subcontractors. Except as provided in this Agreement, the DHA shall be solely responsible for all costs associated with the promotion and conduct of the events and shall indemnify the County against any claim made by any third party with respect to the same.

6. LIAISON

- A. The Director of Parks and Recreation (the Director), or the Director's designee, shall serve as the County's liaison to the DHA during the term of this Agreement. The Director shall be responsible for directing the general repair and maintenance of the Fairgrounds and its facilities throughout the year.
- B. The President of the DHA shall serve as the DHA liaison to the County.

7. PRODUCTION OF EVENTS AS A CONDITION TO AGREEMENT

As a condition to this Agreement, the DHA shall produce the Haunted Attraction event (s) annually under a valid permit issued pursuant to Section 546.006 (2) of the Florida Statutes. In the event that a force majeure prevents the DHA in good faith from producing the event(s) in a given calendar year, then the provisions of this paragraph will not apply to that calendar year.

8. REMEDIES

Upon breach of any provision of this Agreement, the non-defaulting party may declare this Agreement terminated immediately and is entitled to all remedies provided under law.

9. **TERM AND RENEWAL**

- A. This Agreement will be effective as of February 1, 2014 and will expire on February 1, 2019.
- B. If either party does not wish to renew this Agreement, written notice of non-renewal shall be served on the other party no later than February 1, 2019. If written notice of non-renewal is not served by February 1, 2019, then the term of this Agreement shall be extended for one additional year. This Agreement shall renew upon written Agreement between the parties hereto, for one-year terms until either party serves written notice of non-renewal on the other.

10. **PUBLIC RECORDS LAW**

The DHA acknowledges the County's obligation under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, to release public records to members of the public upon request. DHA acknowledges that County is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this Agreement.

The DHA specifically acknowledges its obligation to comply with the state of FL Public Records Law, s. 119.0701, Florida Statutes, with regard to public records, specifically to

- (1) Keep and maintain public records that ordinarily and necessarily would be required by County in order to perform the services required under this Agreement;
- (2) Provide the public with records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (4) Meet all requirements for retaining public records and transfer, at no cost, to the County all public records in possession of the DHA upon termination of the Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to comply with this Section shall be deemed a material breach of this Agreement, for which County may terminate this Agreement immediately upon written notice to DHA.

- 11. Clay County's Standard Addendum to all Contracts and Agreements is attached and made a part hereof.

12. **ENTIRE AGREEMENT**

This document constitutes the entire agreement entered into between the parties hereto, and may not be altered or amended in any manner except by written

instrument executed on behalf of each party. Any questions regarding this Agreement during initial or any renewal term will be brought to the attention of the County Manager.

13. EXECUTION

This Agreement shall be executed in duplicate and each party shall receive an original document.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

DUNGEONS HAUNTED ATTRACTIONS

BY: _____

Ryan Allen

Its President

ATTEST:

**CLAY COUNTY, a political subdivision of the State of
Florida, by and through its BOARD OF COUNTY
COMMISSIONERS**

BY: _____

Wendell D. Davis

Its Chairman

ATTEST:

S.C. Kopelousos, County Manager

Attachment "A"

The Dungeons Haunted Attractions

2014 Fee Structure:

Move into Exhibit Building 3 beginning June 1

June Rental:

Exhibit Building 3 -	\$300.00 per weekend	
	4 weekends @ \$ 300.00 per weekend =	\$1,200.00

July Rental:

Exhibit Building 3 -	\$300.00 per weekend	
	4 weekends @ \$300.00 per weekend =	\$1,200.00

Incorporate the use of Exhibit Building #1 beginning August 1

August Rental:

Exhibit Building 1 -	\$300.00 per weekend	
Exhibit Building 3 -	\$300.00 per weekend	
	5 weekends @ \$600.00 per weekend	\$3,000.00

Incorporate the use of Exhibit Building #2B beginning September 1

September Rental:

Exhibit Building 1 -	\$300.00 per weekend	
Exhibit Building 2B -	\$150.00 per weekend	
Exhibit Building 3 -	\$300.00 per weekend	
	4 weekends @ \$ 750.00 per weekend	\$3,000.00

Incorporate incremental use of the Midway Area and Entertainment Stage in October

October Rental:

Exhibit Building 1 -	\$300.00 per weekend	
Exhibit Building 2B -	\$150.00 per weekend	
Exhibit Building 3 -	\$300.00 per weekend	
Mid-Way Area -	\$150.00 per weekend (estimated 2 weekends)	
Stage -	\$200.00 per show (estimated 1 show)	
	4 weekends @ \$750.00 for Exhibit Buildings+ Mid Way and Stage -	\$3,500.00

The Dungeons Haunted Attractions

2014 Fee Structure:

November Rental:

Exhibit Building 1 -	\$300.00 per weekend	
Exhibit Building 2B -	\$150.00 per weekend	
Exhibit Building 3 -	\$300.00 per weekend	
	2 weekends @ \$ 750.00 per weekend	\$1,500.00
Total Facility Rental (does not include equipment or metered electric)		\$13,400.00
Storage Space (\$100.00 per month/per trailer; maximum 3 trailers)		\$1,200.00*
Sales Tax (7%)		\$1,022.00
Total Facility Rental		\$15,622.00

***This estimate reflects one trailer for 12 months. A maximum of 3 trailers are allowed of which the price will be adjusted per the above schedule.**

STANDARD ADDENDUM TO ALL CONTRACTS AND AGREEMENTS

Any other provisions of the contract or agreement to which this Standard Addendum is attached to the contrary notwithstanding, the parties specifically agree that the provisions hereinafter set forth will apply exclusively with respect to the matters addressed, whether addressed in said contract or agreement or not, and shall be deemed an integral part of said contract or agreement as if duly set out therein, having a force and effect of equal or superior dignity, as applicable, with the provisions thereof; provided, that if the provisions of the contract or agreement address a particular matter in a manner which results in a lower cost to the County than this Standard Addendum, then such provisions of the contract or agreement shall control and supersede the applicable provisions hereof (as used herein, the term "Contractor" means the vendor or other party in the contract or agreement providing construction, labor, materials, professional services, and/or equipment to the County thereunder; the term "County" means Clay County, a political subdivision of the State of Florida, its Board of County Commissioners, or any other name or label set forth in the contract or agreement identifying such entity).

1. All payments for services rendered, or supplies, materials, equipment and the like constructed, delivered or installed under the contract or agreement (the Work) shall be made by the County in accordance with the Local Government Prompt Payment Act (the Act). Upon receipt of a proper statement, invoice or draw request the County shall have the number of days provided in the Act in which to make payment.

2. Any work or professional services subcontracted for by the Contractor for which the County has agreed to reimburse the Contractor shall not be marked-up, but shall be payable by the County only in the exact amount reasonably incurred by the Contractor. No other such subcontracted services shall be reimbursed.

3. In the event the contract or agreement is for professional services, charged on a time basis, the County shall not be billed or invoiced for time spent traveling to and from the Contractor's offices or other points of dispatch of its subcontractors, employees, officers or agents in connection with the services being rendered.

4. The County shall not be liable to reimburse the Contractor for any courier service, telephone, facsimile or postage charges incurred by the Contractor, except as follows, and then only in the exact amount incurred by the Contractor [if the space below is left blank then "NONE" is deemed to have been inserted therein]:

5. The County shall not be liable to reimburse the Contractor for any copying expenses incurred by the Contractor except as follows, and then only at \$0.05 per page [if the space below is left blank then "NONE" is deemed to have been inserted therein]:

6. If and only if travel and per diem expenses are addressed in the contract or agreement in a manner which expressly provides for the County to reimburse the Contractor for the same, then the County shall reimburse the Contractor only for those travel and per diem expenses reasonably incurred and only in accordance with the provisions of Section 112.061, Florida Statutes. In the event the Contractor has need to utilize hotel accommodations or common carrier services, the County shall reimburse the Contractor for his, her or its reasonable expense incurred thereby provided prior approval of the County Manager of the County or his or her designee is obtained.

7. With respect to drawings and/or plans prepared on behalf of the County by the Contractor under the contract or agreement, unless specifically provided otherwise therein, complete sets of such drawings and/or plans shall be reproduced by the Contractor without cost to the County for all bidders requesting the same, and five complete sets of such drawings and/or plans shall be reproduced and delivered to the County without cost.

8. With respect to any indemnification by the County provided under the contract or agreement, any such indemnification shall be subject to and within the limitations set forth in Section 768.28, Florida Statutes, and to any other limitations, restrictions and prohibitions that may be provided by law, and shall not be deemed to operate as a waiver of the County's sovereign immunity.

9. In that the County is a governmental agency exempt from sales tax, the County shall pay no such taxes, any other provisions of the contract or agreement to the contrary notwithstanding. The County shall provide proof of its exempt status upon reasonable request.

10. Any pre-printed provisions of the contract or agreement to the contrary notwithstanding, the same shall not automatically renew but shall be renewed only upon subsequent agreement of the parties.

11. The Contractor acknowledges that in the budget for each fiscal year of the County during which the term of the contract or agreement is in effect a limited amount of funds are appropriated which are available to make payments arising under the contract or agreement. Any other provisions of the contract or agreement to the contrary notwithstanding, and pursuant to the provisions of Section 129.07, Florida Statutes, the maximum payment that the County is obligated to make under the contract or agreement from the budget of any fiscal year shall not exceed the appropriation for said fiscal year.

COUNTY:

ATTEST FOR CLAY COUNTY:

CLAY COUNTY, a political subdivision of the State of Florida, by its Board of County Commissioners

S. C. Kopelousos
County Manager and Clerk of the
Board of County Commissioners

By: _____
Wendell D. Davis
Its Chairman

CONTRACTOR:

(Corporate Seal)

By: _____
Its _____ President