

BOULDER COUNTY FAIR CONTRACT NO. 1

DETAILS SUMMARY

I. Contact Information for the Parties

County Department: Parks and Open Space
Address: 5201 St. Vrain Road, Longmont, CO 80503
Contact Name, Title: Rosa Brohm, Administrative Supervisor
Contact Email Address: rbrohm@bouldercounty.org

Fair Board: Boulder County Fair, Livestock Show & Rodeo, dba Boulder County Fair Board
Address: 9595 Nelson Road, Suite 200, Longmont, Colorado 80501
Contact Names: Melanie Bohren
Contact Email Addresses: mel_coward@yahoo.com

II. Contract Documents

OFS # 302665

III. Brief Description of the Work: Administration and management of the 2023 Boulder County Fair.

IV. Contract Term

Start Date: July 31, 2023
Expiration Date: August 17, 2023
Final End Date: August 17, 2023
Additional Notes:

V. Contract Amount: \$20,000.00

Firm Amount
 Not-to-Exceed Amount

Additional Notes: Up-front payment for operating expenses for the 2023 Fair.

NOTES: The dates required to hold the Fair, including set up dates, public dates, and take down dates for the Fair shall begin July 31, 2023 and continue through August 17, 2023.

THIS CONTRACT ("Contract") is entered into by and between the **County of Boulder**, State of

Colorado, acting by and through its Board of County Commissioners for the benefit of Parks and Open Space Department ("County") and **Boulder County Fair, Livestock Show & Rodeo**, a Colorado nonprofit corporation, dba the Boulder County Fair Board ("Fair Board"). County and Fair Board are each a "Party," and collectively the "Parties."

WHEREAS, County is the owner and managing agency of the Boulder County Fairgrounds located at 9595 Nelson Road in Longmont, Colorado; and

WHEREAS, County is authorized by C.R.S. § 30-25-106, as amended, to appropriate money from the General Fund for Fairs; and

WHEREAS, County wishes to continue the tradition of having the Fair Board administer the Boulder County Fair (the "Fair"); and

WHEREAS, the official Fair dates for the 2023 Fair shall be held between the dates of August 3, 2023 through August 13, 2023.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Contract, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation into Contract: The **Details Summary** is incorporated into this Contract. The **Contract Documents** are incorporated into this Contract by reference, except to the extent that the Proposal, if any is incorporated, contains any obligations placed upon County and not otherwise contained in this Contract.
2. Work to be Performed: Fair Board will provide all labor and equipment and do all tasks necessary and incidental to performing the work as described in the **Details Summary** and **Contract Documents** (the "Work"). Fair Board will perform the Work (a) in a good and workmanlike manner, (b) at its own cost and expense, (c) in accordance with recognized industry standards of care, skill and diligence for the type of work being performed, and (d) in strict accordance with the Contract.
3. Term of Contract: The Contract Term begins on the **Start Date** and expires on the **Expiration Date**, unless terminated sooner. All the Work must be performed during the **Contract Term**. With respect to performance of the Work, the Parties further agree that the dates required to hold the Fair, including set up dates, public dates, and take down dates for the Fair shall begin July 31, 2023 and continue through August 17, 2023 subject to the exceptions listed below. County may change this schedule in its sole discretion, and must pre-approve all changes in writing.
 - a. The designated Carnival Contractor, Crabtree Amusements, Inc., may arrive and drop equipment only in the Midway Parking Lot for set up beginning July 31, 2023 no exceptions.
 - b. The 4-H Horse Fair program begins with horses arriving on site August 3, 2023.

- c. The North Parking Lot is privately contracted and in use on August 5, 2023 and August 12, 2023.
- d. The Exhibit Building only is available for set up beginning July 31, 2023.

4. Payment for Work Performed: In consideration of the Work performed by Fair Board, and subject to conditions contained in this Contract, County will pay the **Contract Amount** to Fair Board in accordance with the **Contract Documents**. The Parties agree to enter into a subsequent, separate contract for County to pay Fair Board an additional \$50,000.00 for a total amount not-to-exceed a combined amount of \$70,000.00. Payment of the additional \$50,000.00 is subject to all of the following conditions:

- a. The Fair is not canceled;
- b. Fair Board has met all insurance requirements and all required liability certificates are approved by the County Risk Manager prior to Fair start date;
- c. Fair Board has held at least one (1) major public event, as defined by County;
- d. Fair Board has contracted for carnival operations;
- e. Fair Board has contracted for security services;
- f. Fair Board has contracted for paramedic services;
- g. Fair Board has arranged for 4-H events to be held at the Fair, as sponsored by the Colorado State University Extension Office;
- h. Fair Board has received and documented approval from the Fire Marshal; and
- i. Fair Board has obtained, or caused to be obtained by its subcontractors, all applicable applications, permits, licenses, and requirements for serving liquor, which were supplied to and approved by the County.

5. Invoicing: RESERVED

6. Extension of Contract Term: RESERVED.

7. Renewal of Contract: RESERVED.

8. Schedule of Work: RESERVED.

9. Indemnity: Fair Board agrees to indemnify and hold County harmless from and against all claims, suits, actions, damages, causes of action, costs or losses for personal injury, loss of life,

damages to property, including the Boulder County Fairgrounds or facilities, and from any incurred loss associated with the Fair, including but not limited to any injury, damage, loss or expense incurred by Fair Board, its employees, its agents, subcontractors, volunteers, or by members of the public, whether participants or onlookers, incurred while participating, viewing, or setting up, operating or taking down the Fair. Fair Board shall be responsible for all costs, attorney fees, and expenses associated with any claims brought against County that relate to the Fair, including but not limited to the costs of investigations, legal defenses, judgments, orders, decrees, or liens. In addition to the foregoing, Fair Board shall be responsible for any costs necessary to repair damage done to the Boulder County Fairgrounds or facilities that arise from the Fair. By agreeing to this provision, County in no way waives or intends to waive the limitations on liability that are provided to County under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

10. Nondiscrimination: Fair Board will comply with the letter and spirit of the Colorado Anti-Discrimination Act, C.R.S. § 24-34-401, et seq., as amended, and all applicable local, State and Federal laws concerning discrimination and unfair employment practices. County prohibits unlawful discrimination on the basis of race, color, religion, gender, gender identity, national origin, age 40 and over, disability, socio-economic status, sexual orientation, genetic information, or any other status protected by applicable Federal, State or local law. The Parties agree that no person shall be excluded from participation in the Fair or denied the benefits of its activities based on any of the statuses listed herein. Fair Board agrees to require its subcontractors to comply with this paragraph.

11. Information and Reports: Fair Board will provide to authorized County, State, and Federal government representatives all information and reports that may be required for any purpose authorized by law. Fair Board will permit access to such representatives to Fair Board's facilities, books, records, accounts, and any other relevant sources of information. Where information required by a representative is in the exclusive possession of a person or entity other than Fair Board, Fair Board must so certify to County and explain what efforts it has made to obtain the information.

12. Independent Contractor: Fair Board is an independent contractor for all purposes in performing the Work. Fair Board is not an employee of Boulder County for any purpose, including the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the Colorado Workers' Compensation Act, the Colorado Unemployment Insurance Act, and the Public Employees Retirement Association. Accordingly, County will not withhold or pay any income tax, payroll tax, or retirement contribution of any kind on behalf of Fair Board or Fair Board's employees. As an independent contractor, Fair Board is responsible for employing and directing such personnel and agents as it requires to perform the Work. Fair Board will exercise complete authority over its personnel and agents and will be fully responsible for their actions.

13. Termination for Non-Appropriation: RESERVED.

14. Termination for Breach: Either Party's failure to perform any of its material obligations under this Contract, in whole or in part or in a timely or satisfactory manner, will be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Fair Board, or the appointment of a receiver or similar officer for Fair Board or any of its property, which is not vacated or fully stayed within thirty (30) days after the institution of such proceeding, will also constitute a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Contract or at law, including immediate termination of this Contract.

15. Termination for Convenience: RESERVED.

16. Remedies for Non-Performance: If Fair Board fails to perform any of its obligations under this Contract, County may, at its sole discretion, exercise one or more of the following remedies, which shall survive expiration or termination of this Contract:

a. Suspend Performance: County may require that Fair Board suspend performance of all or any portion of the Work pending necessary corrective action specified by County and without entitling Fair Board to an increase in compensation or extension of the performance schedule. Fair Board must promptly stop performance and incurring costs upon delivery of a notice of suspension by County.

b. Withhold Payment Pending Corrections: County may permit Fair Board to correct any rejected Work at County's discretion. Upon County's request, Fair Board must correct rejected work at Fair Board's sole expense within the time frame established by County. Upon completion of the corrections satisfactory to County, County will remit payment to Fair Board.

c. Deny Payment: County may deny payment for any Work that does not comply with the requirements of the Contract or that Fair Board otherwise fails to provide or complete, as determined by County in its sole discretion. Upon County's request, Fair Board will promptly refund any amounts prepaid by County with respect to such non-compliant Work.

d. Removal: Upon County's request, Fair Board will remove any of its employees or agents from performance of the Work, if County, in its sole discretion, deems any such person to be incompetent, careless, unsuitable, or otherwise unacceptable.

17. Binding Arbitration Prohibited: County does not agree to binding arbitration by any extra-judicial body or person.

18. Conflicts of Interest: Fair Board must not engage in any business or personal activities or practices or maintain any relationships that conflict in any way with the full performance of Fair Board's obligations.

19. Notices: All notices provided under this Contract must be in writing and sent by Certified

U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the other Party's **Contact** at the address specified in the **Details Summary**. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery.

20. Statutory Requirements: This Contract is subject to all statutory requirements that are or may become applicable to counties or political subdivisions of the State of Colorado generally, including but not limited to: C.R.S. § 38-26-107, which requires withholding funds where County receives a claim for payment from a supplier or subcontractor of Fair Board upon notice of final settlement (required for public works contracts that exceed \$150,000); C.R.S. § 8-17-101 et seq.; C.R.S. § 18-8-301, et seq.; and C.R.S. § 18-8-401, et seq.

21. Entire Agreement/Binding Effect/Amendments: This Contract represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Contract terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Contract may be amended only by a written agreement signed by both Parties.

22. Assignment/Subcontractors: If Fair Board subcontracts any of its obligations under this Agreement, Fair Board will remain liable to County for those obligations and will also be responsible for subcontractor's performance under, and compliance with, this Contract.

23. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance and enforcement of this Contract. Any claim relating to this Contract or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

24. Breach: The failure of either Party to exercise any of its rights under this Contract will not be deemed to be a waiver of such rights or a waiver of any breach of the Contract. All remedies available to a Party in this Contract are cumulative and in addition to every other remedy provided by law.

25. Severability: If any provision of this Contract becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Contract will continue to be operative and binding on the Parties.

26. Third Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Contract are reserved to the Parties. Any other person receiving services or benefits under this Contract is an incidental beneficiary only and has no rights under this Contract.

27. Colorado Open Records Act: County may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-101, et seq.

28. Conflict of Provisions: If there is any conflict between the terms of the main body of this

Contract and the terms of any of the **Contract Documents**, the terms of the main body of the Contract will control.

29. Governmental Immunity: Nothing in this Contract shall be construed in any way to be a waiver of the County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

30. Representations and Warranties: Fair Board represents and warrants the following:

- a. Execution of this Contract and performance thereof is within Fair Board's duly authorized powers;
- b. The individual executing this Contract is authorized to do so by Fair Board;
- c. Fair Board is authorized to do business in the State of Colorado and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Work and the Fair Board; and
- d. Fair Board and its subcontractors, if any, are financially solvent, able to pay all debts as they mature, and have sufficient working capital to complete the Work and perform all obligations under the Contract.

31. Legal Compliance: Fair Board assumes full responsibility for obtaining and maintaining any permits and licenses required to perform the Work. Fair Board's performance under this Contract and the Work itself will comply with all Federal, State, and Local laws, regulations, ordinances and codes.

32. Litigation Reporting: Fair Board is not currently involved in any action before a court or other administrative decision-making body that could affect Fair Board's ability to perform the Work. Fair Board will promptly notify County if Fair Board is served with a pleading or other document in connection with any such action.

33. Tax Exemption: County is exempt from payment of Federal, State, and Local government taxes. Fair Board shall collect no tax from the County, and the County shall not be liable to pay any taxes imposed on Fair Board. County shall provide its tax exemption status information to Fair Board upon request.

34. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners of the County of Boulder have delegated authority to the Department Head of the beneficiary Department and their designees to act on behalf of the County under the terms of this Contract.

35. Ownership of Work Product: RESERVED.

36. Publicity Releases: RESERVED.

37. Execution by Counterparts; Electronic Signatures: This Contract may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect

or enforceability of this Contract solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Contract in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

38. Limitation on Public Statements and Lobbying Activity. During the term of this Contract, Fair Board may receive from County its confidential data, work product, or other privileged or confidential information that is protected by law. To maintain the fact and appearance of absolute objectivity, Fair Board shall not, without the prior written consent of County, which shall not be unreasonably withheld, do any of the following: (a) disclose information obtained because of this contractual relationship to any third party; (b) lobby any County or State agency on any pending matter while this Contract is effective; or (c) make any public statements or appear at any time to give testimony at any public meeting on the subject matters regarding which Fair Board is or was retained by County. County may set reasonable conditions on any disclosure authorized by County under this provision. Notwithstanding, Fair Board may make disclosures as required by law, and to law enforcement officials in connection with any criminal justice investigation.

39. Conflict of Interest. Fair Board certifies that it: (a) has no interest, and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Fair Board's services; (b) shall not permit any of its members, officers, employees, designees, or agents to have any personal interest, direct or indirect, in this Contract or any subcontract pursuant hereto; and (c) shall incorporate this paragraph into all subcontracts under this Contract.

40. Sustainability: County encourages Fair Board to consider the procurement and use of environmentally preferable products and services while performing services under this Contract. "Environmentally preferable purchasing" means making purchasing choices for products and services that have a lesser or reduced adverse effect on human health and the environment when compared with competing products and services that serve the same purpose. Environmentally preferable purchasing is consistent with Boulder County's commitment to protecting our air, water, soil, and climate for current and future generations. County encourages Fair Board to incorporate the following actions into Fair Board's performance of the Work: environmentally preferable supplies and services; conservation of water; efficient energy use; waste prevention; reuse and recycle construction and de-construction materials in a manner that maximizes reuse of materials; sustainability transportation choices, including consideration to business communication software such as Skype alternative to air travel and public transit or carpooling for in-person meetings; pollution prevention; low toxicity for public health & safety; and reduced emissions to address climate change.

41. Zero Waste 2023: Fair Board shall adhere to the County's zero waste and sustainability initiatives and directives ("Zero Waste") during the Fair.

42. Insurance Requirements: Prior to commencing the Work, Fair Board will provide a Certificate of Insurance to County demonstrating adequate insurance coverage as required by this paragraph. All policies evidencing coverage required by the Contract will be issued by insurance

companies satisfactory to County.

a. For the entire duration of this Contract including any extended or renewed terms, and longer as may be required by this Contract, Fair Board shall procure and maintain at its own expense, and without cost to County, the following kinds and minimum amounts of insurance to insure the liability risks that Fair Board has assumed under this Contract:

i. Commercial General Liability Insurance

Commercial General Liability Insurance, This coverage should be provided on an Occurrence Form, ISO CGOOL or equivalent, with Minimum limits of \$1,000,000 Each Occurrence, and \$2,000,000 Products Completed Operations Aggregate. Said insurance shall be maintained in full force and effect during the term of this Contract at the sole expense of the Fair Board and shall protect the County in addition to the Fair Board, its employees, subcontractors, agents, volunteers, and representatives from claims for damages for personal injury and wrongful death and for damages to property arising from the action of the Fair Board, its employees, agents, volunteers, or representatives in the performance of the Fair Board's obligations under this Contract.

ii. Workers Compensation and Employers Liability Insurance

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000.00 Each Accident \$500,000.00 Disease-Policy Limit \$100,000.00 Disease-Each Employee.

iii. Automobile Liability Insurance

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

iv. Liquor Legal Liability Insurance

With the minimum amount of \$1,000,000.00 per occurrence, \$1,000,000.00 aggregate shall be maintained by the Fair Board during the term of this Contract.

v. Umbrella / Excess Insurance

This insurance is a broad, high-limit policy, which acts in excess of the underlying primary insurance policy. This coverage is designed to provide additional liability limits beyond the primary insurance limits, and is triggered upon the underlying limits becoming exhausted. Minimum amount of \$4,000,000.00 per occurrence shall be maintained by the Fair Board during the term of this Contract.

- b. The Fair Board shall provide a current Certificate of Insurance to:

Boulder County Risk Management
Attention: Michelle Tusinski
P.O. Box 471
Boulder, CO 80306
riskinsurance@bouldercounty.org

Boulder County Parks and Open Space
Attention: Rosa Brohm
5201 St. Vrain Road
Longmont, CO 80503
rbrohm@bouldercounty.org

c. Boulder County shall be named as an additional insured for General Liability, as designated in this Contract. Additional insured shall be endorsed to the policy.

d. **THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS:** *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.*

- e. Each Certificate shall name "Boulder County" as Certificate Holder, as specified:

Boulder County
Attention: Risk Manager
P.O. Box 471
Boulder, CO 80306

f. **Notice of Cancellation:** Each insurance policy required by this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days' prior written notice has been given to County, except when cancellation is for non-payment of premium, then ten (10) days' prior notice may be given. If any insurance company refuses to provide the required notice, Fair Board or its insurance broker shall notify County of any cancellation, suspension, or nonrenewal of any insurance policy within seven (7) days of receipt of insurers' notification to that effect. Such notice shall be sent to the Boulder County Risk Manager.

g. **Insurance Obligations of County:** County is not required to maintain or procure any insurance coverage beyond the coverage maintained by County in its standard course of business. Any insurance obligations placed on County in any of the Contract Documents shall be null and void.

h. **Deductible:** Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Fair Board.

i. Primacy of Coverage: Coverage required of Fair Board and its subcontractors, if any, shall be primary over any insurance or self-insurance program carried by County.

j. Subrogation Waiver: All insurance policies in any way related to this Contract secured or maintained by Fair Board as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against County, its organizations, officers, agents, employees, and volunteers.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Contract as of the latter day and year indicated below.

Executed by Boulder County on _____.
(date)

**COUNTY OF BOULDER
STATE OF COLORADO**

ATTEST: _____

By: _____
Administrative Assistant
Clerk to the Board of Commissioners

By: _____
Chair
Board of County Commissioners

Executed by Fair Board on _____.
(date)

**BOULDER COUNTY FAIR, LIVESTOCK SHOW
AND RODEO**

ATTEST: _____

By: _____
Fair Board Secretary

By: _____
Fair Board President