



Agenda Commentary

Item Title/ Subject: Chamber Contract

Staff Source: City Manager, Steve Hewitt

Date: May 11, 2012

History/Background Information:

The City Council / Industrial Authority approved the agreement with the Chamber to take over Frisco Center management operations, beginning July 1st.

Item/Subject Summary:

This is the official contract.

Price/Cost:

Recommendation: Staff recommends approval.

FACILITIES MANAGEMENT AGREEMENT

This FACILITIES MANAGEMENT AGREEMENT (“Agreement”) is entered into and effective as of the ____ day of _____, 2012, by and between Clinton Industrial Authority (“Authority”) and The Clinton Chamber of Commerce (“Manager”). The Authority and Manager are sometimes referred to individually as a “Party” and collectively as the “Parties.”

I. APPOINTMENT OF MANAGER

1.1 APPOINTMENT OF MANAGER. The Authority hereby retains Manager and Manager agrees to perform the Services set forth in Section 2.1 of this Agreement pursuant to the terms and conditions set forth herein.

1.2 INDEPENDENT CONTRACT STATUS. Manager is and shall be considered an independent contractor under this Agreement. Nothing herein contained shall constitute or designate Manager or any of its employees or agents as employees or agents of the Authority, nor shall Manager be deemed or considered as a partner or agent of the Authority. Manager shall have full power and authority to select the means, manner and method of performing its duties under this Agreement without detailed control or direction of the Authority except as set forth in this Agreement. The Authority is only concerned with results to be obtained. It shall be Manager’s responsibility as an independent contractor to pay any and all taxes on payments which it receives under this Agreement and to pay its own costs and expenses incurred in connection with performance of this Agreement.

II. DUTIES AND AUTHORITY

2.1 GENERAL DUTIES AND AUTHORITY. Manager shall perform the “Services” specified in Exhibit A, attached hereto and incorporated herein by reference, using the degree of skill and knowledge customarily employed by other professionals performing similar services in the area. Manager shall have no right or authority, express or implied, to take any action, expend any sum, incur an obligation, or otherwise obligate the Authority in any manner whatsoever, except to the extent specifically provided in this Agreement or specifically authorized or ratified by the Council. Manager shall at all times conform to the state policies established and approved by the Authority.

2.2 COMPLIANCE WITH APPLICABLE LAW. Manager shall provide the Services set forth herein in full compliance with all applicable laws, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction.

2.3 NO RIGHT OR INTEREST IN THE AUTHORITY’S ASSETS. Manager shall have no right or interest in any of the Authority’s assets, nor any claim or lien with respect thereto, arising out of this Agreement or the performance of the Services contemplated herein.

2.4 GENERAL LIMITATIONS AND REQUIREMENTS. In connection with performance of the Services, Manager agrees to:

A. Take all precautions necessary for safely and prudently conducting the Services required by this Agreement, including maintaining insurance as required by Section V hereof.

B. Advise the Authority of the status of the Services required by this Agreement on a regular basis and work in coordination with the City staff to assure that the Authority has the most complete information available for the exercise of the Authority's powers and discretionary authority.

C. Refrain from entering into any contract, oral or written, in the name of the Authority, and from incurring any debt, liability or obligation for or on behalf of the Authority. All obligations incurred by the Manager shall be obligations of the Manager, which shall hold the Authority harmless therefrom.

III. COMPENSATION

3.1 MANAGEMENT FEE. In consideration of the performance by Manager of its obligations under this Agreement, the Authority shall pay Manager a "Facilities Management Fee" in accordance with the "Fee Schedule" attached hereto as Exhibit B. The fees to be paid to Manager for performance of the Services set forth herein shall be subject to annual appropriation by the Authority during its annual budget process.

Any unpaid Facilities Management Fees shall accumulate, without interest, and may be paid to the Manager in future years as funds become available.

3.2 ANNUAL FORECAST. The Manager shall submit to the Authority no later than thirty (30) days prior to the earlier of (i.) the Authority's annual budget meeting or (ii.) November 1, of each succeeding year during the term of this Agreement, an annual forecast for the costs associated with provision of the Services (including expected "Reimbursed Expenses" as that term is defined in Section 3.5) (collectively the "Annual Forecast"). The Authority shall review the proposed Annual Forecast with Manager, and the Authority and Manager shall use their good faith reasonable efforts to resolve any objections to the proposed Facilities Management Fee prior to the Authority's annual budget meeting.

3.3 REPORTS. Manager shall submit to the Authority management reports in a form acceptable to the Authority.

3.4 EXPENSES. Manager shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as set forth in Section 3.1 of this Agreement, unless such expenses are approved for reimbursement in advance by the Authority in writing ("Reimbursed

Expenses”). Manager shall not charge the Authority any other fee for use by the Authority of Manager’s offices, personnel or overhead expenses except as agreed in advance by the Authority in writing.

3.5 FEE ADJUSTMENT. The Authority and Manager shall annually analyze the reasonableness of the fee set forth above and may, upon the mutual consent of the Authority and the Manager, adjust the schedule and fees as they deem appropriate. The failure of the Authority and the Manager to agree upon any such adjustment shall not require a termination of this Agreement nor shall either Party be entitled to seek an adjustment from any court or other tribunal.

IV. DURATION AND TERMINATION

4.1 TERM. This Agreement shall become effective as of the date first above written and shall terminate on _____, _____, unless otherwise terminated by either Party in accordance with Paragraph 4.2 of this Agreement. Notwithstanding the foregoing, this Agreement shall automatically renew on January 1st of each succeeding year for an additional one (1) year term unless: 1. terminated by the Parties pursuant to this Agreement; or 2. failure by the Authority to budget and appropriate funds for the succeeding year.

4.2 TERMINATION. Either Party may terminate this Agreement prior to expiration of the term set forth above with or without cause. Termination shall be initiated by delivery to the other Party of a written notice of termination at least thirty (90) days prior to the effective date of termination. Such notice shall specify the extent of termination and the effective date, but shall not be required for automatic expiration under Section 4.1 hereof. In the event of early termination, the Authority shall pay Manager for all Services performed to the Authority’s reasonable satisfaction prior to the designated termination date giving the account for any costs for which the Authority has become responsible through the date of termination. Said payment shall be made in the normal course of business.

Upon any termination, Manager shall transfer title and deliver to the Authority all Work Product which shall be deemed from and after the effective date of this Agreement to be the property of the Authority. “Work Product” shall consist of all written materials maintained by Manager in connection with performance of this Agreement, including but not limited to all maps, plans, drawings, specifications, reports, electronic files and other documents in whatever form. Manager shall maintain reproducible drawings of any project drawings which it obtains and shall make them available for the Authority’s use, and shall provide such copies to the Authority upon request at commercial printing rates.

V. INSURANCE

4.1 INSURANCE COVERAGE REQUIREMENTS. Unless otherwise agreed to by the Parties, Manager shall acquire and maintain during the term of this Agreement, including and extensions of the term, statutory worker’s compensation insurance

comprehensive general liability insurance, and automobile liability insurance in the following minimum amounts:

- A. Worker's Compensation insurance as required by law.
- B. Comprehensive general liability insurance, \$1,000,000 combined single limit for bodily injury damage, each occurrence, \$2,000,000 general aggregate.
- C. Automobile liability insurance in the amount of \$1,000,000 combined single limit bodily injury and property damage, each accident.

Prior to commencing any work under this Agreement, Manager shall provide the Authority with a certificate or certificates evidencing the policies required by this Section, as well as the amounts of coverage for the respective types of coverage. If the Manager sub-contracts any portion(s) of the Services, said sub-consultant(s) shall be required to furnish certificates evidencing statutory worker's compensation insurance, comprehensive general liability insurance and automobile liability insurance coverage in the amounts satisfactory to the Authority and the manager. If the coverage required under this Section expires during the term of this Agreement, Manager or sub-consultant shall provide replacement certificate(s) evidencing the continuation of the required policies.

Managers' failure to purchase the required insurance shall not serve to release it from any obligations contained herein; nor shall the purchase of the required insurance serve to limit Manager's liability under any provision herein. Manager shall be responsible for the payment of any deductibles on issued policies.

VI. MISCELLANEOUS

6.1 LIABILITY OF AUTHORITY. No provision, covenant or agreement contained in this Agreement, nor obligations herein imposed upon the Authority, shall constitute or create an indebtedness or debt of the Authority within the meaning of any constitutional provision or statutory limitation.

6.2 ASSIGNMENT. Except as set forth herein, neither this Agreement, nor any of the Parties' rights, obligations, duties or authority hereunder may be assigned or delegated in whole or in part by either Party without prior written consent of the other party which consent shall not be unreasonably withheld. Any improper attempt of assignment or delegation shall be deemed void and of no force or effect. Consent to one assignment or delegation shall not be deemed to be consent to any subsequent assignment or delegation nor the waiver of any right to consent to such subsequent assignment or delegation.

6.3 MODIFICATION. This Agreement may be amended only by an instrument in writing signed by the Parties, except as expressly set forth in Section 6.20.

6.4 INTEGRATION. This Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by either party or the agent of either part that is not contained in this Agreement shall be valid or binding.

6.5 SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

6.6 SURVIVAL OF OBLIGATIONS. Unfilled obligations of the parties arising under this Agreement shall be deemed to survive the expiration or termination by court order or otherwise of this agreement, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

6.7 GOVERNING LAW. This Agreement shall be governed and constructed in accordance with the laws of the State of Oklahoma.

6.8 HEADINGS FOR CONVENIENCE ONLY. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe any provisions hereof and shall in no way be deemed to define, limit, or add to the meaning of any provisions of this Agreement.

6.9 PERSONS INTERESTED HEREIN. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person, other than Parties hereto, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties hereto.

6.10 NOTICES. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, three days after deposited in the United States' mail, first-class postage prepaid, properly addressed to the Parties at

Either Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Party in the manner provided in this Section 6.10.

6.11 RECOVERY OF COSTS. In the event of any litigation between the Parties hereto concerning the subject matter hereof, the prevailing party in such litigation shall be entitled to receive from the losing party, in addition to the amount of any

judgment or other reward entered therein, all reasonable costs, expenses and attorneys' fees incurred by the prevailing party in such litigation.

6.12 INSTRUMENTS OF FURTHER ASSURANCE. The Parties hereto each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledges, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

6.13 COMPLIANCE WITH LAW. This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations of the jurisdiction in which the Agreement is performed. Manager declares that Manager had complied with all federal, State and Local laws regarding business permits, certificates and licenses that may be required to carry out the services to be provided under this Agreement.

6.14 NON-WAIVER. No waiver of any of the provision of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder.

6.14 BINDING AGREEMENT. This Agreement shall inure to an be binding on the heirs, executors, administrators, successors, and permitted assigns of the Parties hereto.

6.15 INDEMNIFICATION. The Manager hereby agrees to indemnify and hold harmless the Authority and each of its directors, employees, agents and consultants, form and against any and all claims, demands, losses, liabilities, actions, lawsuits, and expenses (including reasonable attorneys' fees), arising directly or indirectly, in whole or in part, out of negligence, willful misconduct, or any criminal or tortuous act or omission of the Manager or any of its agents or employees, in connection with this Agreement and/or the Manager's performance of the Services or work hereunder, whether within or beyond the scope of its duties or authority hereunder. The provisions of this Section shall survive termination of this Agreement.

6.16 NEGOTIATED PROVISIONS. This Agreement shall no be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

6.17 MINOR CHANGES. The Parties executing this Agreement are authorized to non-substantive corrections to this Agreement and attached exhibits, if any, as the parties mutually consider necessary.

6.18 GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

6.19 COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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

AUTHORITY:

CLINTON INDUSTRIAL AUTHORITY

By: _____

ATTEST:

MANAGER:

CLINTON CHAMBER OF COMMERCE

By: _____

Exhibit A
Services provided by Chamber

1. A receptionist from 8:00 a.m. to 5:00 p.m., Monday through Friday;
2. Answering all phone calls and greeting all guests;
3. Full bookings and scheduling of all meetings and events;
4. Handling of all billing and purchase orders;
5. Sending of faxes, filing and other office tasks;
6. Daily check of Frisco Center voicemail;
7. Daily check of Frisco Center general e-mail;
8. Stock and replenish all visitor information;
9. Provide visitor packets by request for meetings and events;
10. Provide facilities, support, including, making coffee, refilling water, making copies, etc. for meeting guests;
11. Provide complementary Chamber memberships and promotion for all City entities, including City Parks, Riverside Golf Course, The Frisco Center and the Airport; and
12. Update current schedule of events to Clinton Daily News, Frisco Center website, and relevant information for the digital sign.
13. Handling of all accounts receivable;
14. Scheduling of all part-time staff;
15. Handling of after hour phone calls;
16. Setting up and tearing down multiple meetings
17. Custodial duties:
 - a. Changing light bulbs
 - b. Taking out trash
 - c. Cleaning up meetings
 - d. Moving furniture
18. Delivering accounts receivable to City Hall;
19. Have authority over full time custodian, but shall not be responsible for custodian compensation;
20. Pay and hire part time employees to also:
 - a. Set up for all meetings and events;
 - b. Clean up after all meetings and events in the event a full-time custodian is not available;
 - c. making signs for all meeting and events (digital and paper);
 - d. Writing thank you notes after all meetings and events;
21. Have authority over all Frisco Conference Center employees who are directly employed by the City;
22. Market the Frisco Conference Center to promote future meetings and events as the City and Chamber agree;
23. Handle all day to day operations which include but are not limited to the following:
 - a. Keep stock of all items needed for meeting and events;
 - b. Insure customers have all needs taken care of for their meeting or event;

- c. Management over website with an up to date calendar of events, pricing, and marketing materials;
- d. Insure cleanliness of facility for customers;
- e. Handle compliance issues with the health department and code regulation as the City sees fit;
- f. Work within the budget set by the City to take care of needs for the Frisco Conference Center.

Exhibit B
Fee Schedule

The City will pay the Chamber of Commerce \$72,000/year on a payment of \$6,000/month.