



**A Report to the
Jackson County
Board of Commissioners**

Commissioners

Rick Dyer

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**Expo
Family Fun Center
Contract Review**

December 2021



Internal Audit Program

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**JACKSON
COUNTY**
Oregon

MEMO
I N T E R - O F F I C E

Internal Audit

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To: Board of Commissioners
Re: Audit of Expo Family Fun Center Contract
Date: December 28, 2021

The enclosed report presents the results of an audit of contractual compliance with the contract between the Jackson County Exposition Center and the Family Fun Center. The audit was conducted to verify the Family Fun Center is accurately reporting gross revenue in compliance with the terms and condition of the contract and that the revenue is accurately and completely being deposited and recorded in the County's financial records.

Please feel free to contact me at your convenience if you have any questions or would like additional information not contained in the report.

C: Audit Committee
Moss Adams, LLP

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Audit Objectives

The objectives of the audit were to evaluate whether the Family Fun Center is accurately reporting gross revenue in compliance with the terms and conditions of the contract and to determine whether revenue is accurately and completely being deposited and recorded in the County's financial record.

What We Found

The Family Fun Center is compliant with the contract terms and all revenue due the Expo is accounted for. However, we did find that the contract language pertaining to rental amounts, which dates back to 1996, is confusing and open to various interpretations.

What We Recommend

We recommend that the contract be amended for the purpose of clarifying the language pertaining to rental amounts.

Introduction and Background

Audit Authority

We conducted our audit in accordance with Codified Ordinance 218 pertaining to the County Auditor. This audit was included in our fiscal year 2021-22 Internal Audit Plan.

Compliance with Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Additionally, the standards address the importance that auditors be independent of management. The Internal Audit program operates in compliance with the generally accepted government auditing independence standard for internal audit shops.

Confidential or Sensitive Information

We did not withhold information that would be considered sensitive or confidential.

Audit Conclusion

All revenue due the Expo has been accurately calculated and is accounted for. However, the contract should be amended due to the existence of confusing language in sections pertaining to rental revenue.

Audit Objectives, Scope & Methodology

Our audit objectives focused on determining whether the Family Fun Center is in compliance with the terms and conditions of the contract and whether all revenue is accounted for.

Our audit procedures included:

- We reviewed the contract to gain an understanding of the terms and conditions of the contract. As needed, we obtained the assistance of County Counsel in understanding the payment terms.
- We met with Family Fun Center management for the purpose of gaining an understanding of their revenue tracking and reporting processes.

- We reviewed a sample of 3 day's receipt detail from September 2021 to ensure Point of Sale reports matched what was reported for daily sales in Quickbooks.
- We totaled the Point of Sale reports for September 2021 and noted that it reasonably matched the Quickbooks Profit & Loss for September 2021.
- We compared annual gross sales reported to the Expo to what was reported on federal tax returns for 2018, 2019, and 2020 and noted that the totals materially matched.
- We successfully traced annual payments per Family Fun Center Lease Calculations to the E1 Financial System for 2016 through 2021.

Background

In 1996, the Expo and the Family Fun Center entered into a contract that allows the Family Fun Center to operate on Expo land. The contract was for a ten-year initial period (Sept. 1, 1996 – Aug 30, 2006) while also providing the Family Fun Center the option to renew the contract three times, with each renewal term being for a ten-year period. The contract is in its 2nd ten-year renewal period, which ends in 2026. In 2026 the Family Fun Center may select to renew the contract for one more ten-year period.

Chapter 1: Contract Compliance

The Family Fun Center has been compliant with the terms and conditions of the contract.

The Family Fun Center has, as required:

- Kept an appropriate system of books and records from which gross revenue can be determined.
- Rendered monthly gross receipt statements.
- Accurately calculated rent due, per the interpretation of the contract, and made the required rental payments in a timely manner.

Chapter 2: Contract Language

The contract was written in 1996. As discussed below, the portions of the contract pertaining to the base rental rate and percentage rental rate are confusing and should be revised.

Base Rate

Section 3.2 Adjustments to Base Rent states:

The base rent for the first renewal term shall be the sum of \$65,000.00 annually increased by a percentage equal to the percentage increase in the Consumer Price Index published by the United State Bureau of Labor Statistics. The comparison shall be made using the Index entitled "All Urban Consumers, All Items, for Portland, Oregon." The change shall be determined by comparison of the figure for January 1996 with that of January 2016.

The base rent for the second renewal term shall be equal to the base rent of the first renewal term increased by a percentage equal to the percentage change in the Consumer Price Index published by the United States Bureau of Labor Statistics. The comparison shall be made using the Index entitled "All Urban Consumers, All Items, for Portland, Oregon." The change shall be determined by the comparison of the figure for January 2016 with that of January 2026

There are two issues:

- The first issue is minor. It is just that typos were apparently made when typing the dates. The first renewal occurred in 2006 but the contract indicates that the 2016 CPI should have been used when determining the rate by which the 2006 base rate should have increased. This error follows through to subsequent renewal periods. It appears that this was understood to be a typo and that the appropriate years were used when calculating the CPI adjustment.
- The second issue could have consequences. This issue is a question as to whether CPI adjustments are to occur every year or every renewal period. The first sentence could be interpreted to mean annual increases. It states: "The base rent for the first renewal term shall be the sum of \$65,000.00 annually increased by a percentage equal to the percentage increase in the Consumer Price Index..." However, the

wording also indicates that the CPI should be calculated using comparison from the start to the end of ten-year periods, which suggests that the CPI is adjusted every ten years (2006, 2016, 2026) but doesn't change in the other years.

In practice, the Family Fun Center has tracked the annual CPI increases for each year and then added the sum total of the annual increases when entering a renewal period. For example, at renewal in September 2016 the base rate increased 22.3% from what had been used from September 2006 through August 2015.

This second issue could have consequences because the base rate is used in the calculation of the percentage rate increase, as discussed below.

Percentage Rate Increases

Section 3.3 Percentage Rent states:

3.3 Percentage Rent.

In addition to the base rent, Lessee shall pay to Lessor during each lease year of the original term and each lease year of any renewal term of this lease, as percentage rent, a sum equal to the amount by which 7% of the first \$928,572.00 of Lessee's gross receipts, plus 4% of the remaining gross receipts, exceeds the basic rent payable for that lease year.

Seven percent of \$928,572 equals \$65,000 which is the base rate for the original contract term (1996 – 2006). The Family Fun Center has been paying the Expo \$65,000 and then paying 4% on gross revenues that exceed \$928,572.

The multiple ways the contract can be interpreted include:

- The renter pays the higher of the base rent or the calculated percentage rate. The base rate is adjusted by the CPI factor but the \$928,572 used to calculate the percentage rate stays the same.
- The renter pays the higher of the base rent or the calculated percentage rate. Both the base rate and the \$928,572 are adjusted by the CPI factor.
- The renter pays a base rate plus a calculated percentage rate. However, Section 3.3.3 indicates that this is not the intended interpretation. Section 3.3.3. states: "No percentage rent shall become due until such time that the percentage of gross receipts exceeds the basic rent payable for that lease year."

Because the base rate increases per the CPI index each term and because “7% of the first \$928,572” equals the initial base rate, it is unclear as to whether the intent was for the ‘\$928,572’ to increase per the CPI as well.

County Counsel staff reviewed the contract and also found the language confusing and the intent unclear.

Recommendation

We recommend that the Expo ask the Family Fun Center to agree to a contract modification for the purpose of eliminating the confusion and avoiding any potential disagreements over interpretation that could occur in the future.

Management Response



12/23/21

To: Eric Spivak; Internal Audit Program

From: Helen Baker; Director, Jackson County Fairgrounds and Exposition Park

Subject: Management Response, Family Fun Center Contract Review

Date: December, 2021

I would like to thank Eric Spivak and Tanya Baize of the Internal Audit program for not only the review that was completed on the Family Fun Center Contract, but the manner in which the work was done. The diplomacy working with our Family Fun Center representatives was impeccable. The recommendations made within this report are reasonable and helpful. It is imperative that the Jackson County Fairgrounds and Expo Park have complete, concise and competitive contracts that are easily understood and transparent for all Southern Oregon residents we serve. It was a pleasure working with you both and we look forward to putting these recommendations into action in the reasonable future.

Helen Baker

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