

INTRODUCED BY: GARY GRANT

PROPOSED NO. 85-60 1

ORDINANCE NO. 7137

AN ORDINANCE relating to an Agreement between King County and the producer of a home show for use of the King County Domed Stadium in accordance with Ordinance 2556, and authorizing the King County Executive to sign said Agreement.

PREAMBLE:

King County is the owner of the King County Domed Stadium which is suitable for the presentation of a home show. The Seattle Home Show has successfully produced and promoted a home show in the Domed Stadium for the last seven years and desires to use the Domed Stadium for that purpose for the next five years. King County and the Seattle Home Show have negotiated an Agreement for use of the King County Domed Stadium at such rental rates, terms and conditions which adequately protect the public interest and reasonably reflect existing market conditions.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

The execution by the County Executive of the Agreement between King County and the Seattle Home Show, a copy of which is attached hereto and by this reference made a part hereof, is hereby authorized and approved.

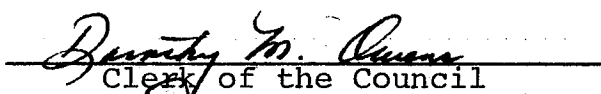
INTRODUCED AND READ for the first time this 11th day of February, 1985.

PASSED this 25th day of February, 1985.

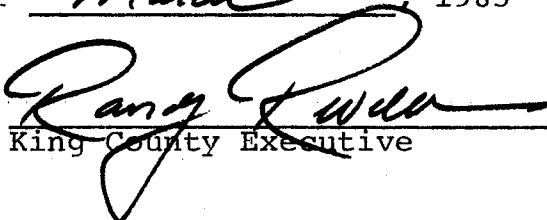
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


VICE Chairman

ATTEST:


Clerk of the Council

APPROVED this 4th day of March 1985


King County Executive

AGREEMENT

THIS AGREEMENT, made and entered into this 7th day of March, 1985, by and between King County, Washington, a duly incorporated municipal corporation of the State of Washington (hereinafter "County") and the Seattle Home Show (hereinafter "Tenant") located at 170 Mercer Street, Seattle, Washington 98109.

W I T N E S S E T H:Recitals

WHEREAS, the County is the owner and operator of the King County Stadium in Seattle, Washington; and,

WHEREAS, Tenant and County desire to enter into an agreement specifying the terms and conditions under which Tenant will use the Domed Stadium for the presentation of the Seattle Home Show;

NOW, THEREFORE, for and in consideration of the mutual agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE ONEDefinitions

All words in this agreement bearing initial capitals, other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in this article.

As used in this agreement, the following terms and words are hereby defined as follows:

1.1 Contract Year means the fiscal year period beginning February 1 and ending on January 31 of the following year for each year during the Term of this agreement.

1.2 County means King County, a municipal corporation of the State of Washington.

1.3 Domed Stadium means the multi-purpose Stadium, providing approximately 153,000 square feet of gross exhibit space, and all of the appurtenances thereto, constructed, owned and operated by the County and situated at 201 South King Street in the City of Seattle, Washington, but excluding areas reserved to others, the parking lots and the Domed Stadium administration building.

1.4 Domed Stadium Video Screen means the 24 foot by 36 foot electronic color video display screen located at the north end of the Domed Stadium in the middle of the main scoreboard system.

1.5 Event means the Seattle Home Show and all its related activities as specified in Article Two herein.

1.6 Event Day means each calendar day during any given Contract Year on which the Domed Stadium is used for private and/or public admission to the Event.

1.7 Event Move-In/Out Day means each calendar day during any given Contract Year on which the Domed Stadium is used for purposes of preparing, setting up and removing Event displays and exhibits by the Tenant and its Event participants.

1.8 Stadium Director means the Director of the King County Department of Stadium Administration or his delegate.

1.9 Stadium Novelties and Souvenirs means those novelties and souvenirs sold by the County's Domed Stadium concessionaire which depict the Stadium.

1.10 Term means the period of this agreement set forth in Article Three.

1.11 Ticket Sales Proceeds means gross revenues derived from paid attendance to the Event during the Term of the agreement less then current City of Seattle admission tax.

ARTICLE TWO

Scope of Event

The Event each Contract Year shall be the Seattle Home Show to include consumer displays and exhibits of home related products and services and shall be similar in size, scope and quality to home shows produced by Tenant at the Domed Stadium in previous years to this agreement. It is understood by Tenant that the Event shall include only housing and home related product and service displays and any changes to said Event activities must receive prior approval from the County. The Tenant will be responsible for the production and presentation of the Event each Contract Year.

ARTICLE THREE

Term

3.1 Term. The Term shall be for a period of five (5) years beginning February 22, 1985 and ending February 21, 1990. During each Contract Year, the County agrees to rent the Domed Stadium to Tenant for sixteen (16) consecutive days during the time period from the last calendar week in February to the first two calendar weeks in March; provided, the Tenant recognizes that the rights conferred by this section are subject to the prior contractual scheduling rights of the Domed Stadium's professional baseball tenant beginning March 15 of each year. The County agrees to provide to Tenant a minimum of six (6) hours prior to the established Event move-in time each year for the purposes of floor layout and planning.

3.2 Option to Renew. By mutual agreement of the Tenant and County upon expiration of the Term of this agreement, the Tenant shall have the option to renew this agreement for an additional five (5) years beginning February 22, 1990 and ending February 21, 1995; provided, the terms and conditions of this agreement will be subject to review and possible renegotiation if determined necessary by the Tenant and County. The Tenant shall notify the County of its intention to renew this agreement in writing by no later than February 1, 1989.

ARTICLE FOUR

Consideration

4.1 Consideration.

(a) Building Rental. In consideration for the use of the Domed Stadium as provided for in this agreement, the Tenant shall pay the County beginning in the first Contract Year the sum of Five Thousand Dollars (\$5,000) per Event Day or Fifteen Percent (15%) of Ticket Sales Proceeds per Event Day, whichever is greater, and Two Thousand Five Hundred Dollars (\$2,500) per Move-In and Move-Out Day. Beginning with the second Contract Year effective February 22, 1986 and every Contract Year thereafter, the minimum rental considerations for Event Days and Move-In and Move-Out Days shall be increased or decreased by the percentage increase or decrease in the United States Bureau of Labor Statistics All Urban Consumer Price Index for the Seattle-Everett Metropolitan Area for the September to September time period preceding the Contract Year in question provided said percentage increase or decrease shall not exceed Five Percent (5%) per Contract Year. For example, for the Contract Year from February 22, 1986 to February 21, 1987, the minimum considerations shall be increased or decreased by the percentage increase or decrease in the Consumer Price Index from September 1984 to September 1985 not to exceed Five Percent (5%). If said price index is discontinued, a comparable federal price index shall be substituted.

(b) Rental Adjustment. It is recognized by both parties that unanticipated economic conditions could threaten the financial viability of the Event in a given Contract Year. If it is determined by both parties that such economic conditions exist in a certain Contract Year, by mutual written agreement of the Tenant and Stadium Director, a unique rental structure may be implemented that will assist the Event in remaining financially viable. If said unique rental structure is implemented, the rental considerations stipulated in Paragraphs 4.1(a) and 4.1(b) will be deemed amended only for the Contract Year in question.

7137

(c) Other Services. The Tenant shall reimburse the County for the actual cost of the services and supplies provided by the County pursuant to Articles 7, 10 and 13.

4.2 Time of Payments.

(a) Payments for Use Rental and Additional Services. The Tenant shall pay to the County the use rental fees stipulated in Paragraphs 4.1(a) and 4.1(b) and the additional services cost stipulated in Paragraph 4.1(c) within five (5) working days after receipt of the Event settlement statement from the County. The Tenant shall be assessed a late payment fee of Eighteen Percent (18%) per annum on any outstanding balance past the five (5) working day limitation until paid, unless prior written approval by the County has been granted for payment extension.

(b) Partial Consideration. As partial consideration for the execution of this agreement, Tenant shall pay to the County the sum of Five Thousand Dollars (\$5,000) for each Event by no later than January 15 of each Contract Year. If Tenant shall have fully complied with all the terms and conditions of this rental agreement, but not otherwise, said sum so paid shall be credited to Tenant's final payment of consideration, as provided in Paragraph 4.1. If Tenant does not fully comply with the terms and conditions of this agreement, the partial consideration, whether paid or unpaid, shall be nonrefundable and forfeited.

ARTICLE FIVE

Concession, Novelty and Parking Revenues

5.1 The County reserves the right to operate and receive all income from concessions and parking operations derived from the Event. Such concessions shall include, but not be limited to, the dispensing or sale of food, drink, tobacco products, Stadium Novelties and Souvenirs. In addition to the right to conduct sales on the 100 seating concourse level, the County will have the right to conduct concession sales in locations adjacent and readily accessible to the main exhibit floor; provided, the Tenant shall have the right to approve the number and location of the concession sales areas by the main floor, which approval shall not be unreasonably withheld.

5.2 Tenant may sell Event souvenirs, novelties and programs which directly relate to the Event; provided, that such souvenirs, novelties and programs shall be sold by the Domed Stadium concessionaire at the established commission fee therefore. All revenues net of payment of the commission fee shall belong to the Tenant. The Stadium Director shall be the final arbiter in any dispute which may arise with regard to entitlement to revenues from the sale of such items.

ARTICLE SIXLiability Insurance

General public liability and property damage liability insurance in the amount of \$5,000,000 combined single limit bodily injury and/or property damage liability, insuring both County and Tenant, shall be required before use of the Domed Stadium as outlined in this agreement is permitted. Tenant shall be responsible for providing the above insurance, at its own cost, and naming County as an additional insured on Tenant's policy with respect to use of the Domed Stadium, as outlined in this agreement. Proof of such insurance by certificate or other evidence satisfactory to County shall be presented by Tenant upon contract signing. The certificate must provide the specified coverage for the Move-In and Move-Out Days as well as the Event Days. The certificate must include a prior thirty (30) days' notice by carrier of their intent to cancel, materially change, or refuse to renew coverage provided. If such evidence is not presented, the Event shall be cancelled, unless the Tenant thereafter provides satisfactory evidence of coverage. The insurance carrier must be licensed to do business in the State of Washington.

Tenant agrees to protect and save the County harmless from and against all claims, demands and causes of action of any kind or character, including the cost of defense thereof, arising out of Tenant's use of the Domed Stadium.

For and in consideration of the execution of this rental agreement by each of the parties hereto, each party herewith and hereby releases and relieves the other and waives its entire claim of recovery for loss or damage to property arising out of or related to fire, lightning and the perils included in the extended coverage endorsement in, on or about the Domed Stadium regardless of the cause thereof, including the negligence of either party, its agents or employees.

The County reserves the right to review periodically the insurance requirements for the Event and, subject to agreement of the Tenant which shall not be unreasonably withheld, the County may change said insurance requirements to insure adequate levels of coverage are provided by Tenant.

ARTICLE SEVENStadium Personnel and Services

7.1 Event Staffing. The County shall provide all personnel, including ticket sellers, ticket takers, ushers, clean-up personnel, maintenance personnel, medical personnel, security personnel and all other personnel reasonably necessary for the operation of the Domed Stadium and protection of public safety for this

Event. The exact number and type of such personnel shall be mutually agreed upon between the County and Tenant at least ten (10) days prior to the presentation of of the Event. The cost to the County of furnishing said personnel shall be reimbursed by Tenant as provided in Paragraphs 4.1 and 4.2. In addition, the Tenant shall pay a Seven and One-Half Percent (7-1/2%) administration fee on the total actual staffing costs incurred for the Event.

7.2 Additional Services Requested by Tenant. If requested by the Tenant, the County may provide, at the sole discretion of the Stadium Director, or his designee, additional services and/or supplies in support of the Event's activities. The Tenant shall reimburse the County for the actual cost incurred in providing such services and/or supplies as provided in Paragraphs 4.1 and 4.2.

ARTICLE EIGHT

Staging, Lighting, Sound

8.1 Staging. The Tenant, at its own expense and liability, shall be responsible for the construction and removal of any staging required for the presentation of the Event during the Term. Installation and removal of such staging shall be coordinated with the Stadium Director.

8.2 Sound Equipment. The Tenant shall have the right to use the public address and sound system installed in the Domed Stadium by the County. The Tenant, at its own expense and liability, shall be responsible for any sound broadcasting equipment, other than said equipment installed by the County in the Domed Stadium, which the Tenant may desire or require for the presentation of the Event during the Term.

8.3 Additional Lighting. The Tenant, at its own expense and liability, shall be responsible for the installation and removal of any additional lighting, other than the lighting which is permanently installed in the Domed Stadium, which the Tenant may desire or require for the presentation of the Event during the Term.

ARTICLE NINE

Ticket Program

The Tenant, prior to distribution of tickets, shall present to the Stadium Director for approval the Tenant's program for Event tickets to include hard copy of each type (including coupons), method of ticket distribution, complimentary and discount tickets and other such pertinent details. Prior to any ticket printing, proofs of ticket copies shall be provided to the Stadium Director for review and approval.

ARTICLE TENDomed Stadium Video Screen

10.1 Tenant Use. At Tenant's option, the Domed Stadium Video Screen shall be made available for Tenant's use during the Event. The Tenant shall have the right to display on the Domed Stadium Video Screen Event related information, public service messages and Event sponsor identification (name only); provided, that no commercial advertising, to include Event sponsors, of any kind or nature shall be displayed by the Tenant at any time. If the Tenant elects to use the Domed Stadium Video Screen, the Tenant shall reimburse the County for all operating costs associated with said video screen.

10.2 County Use. It is understood by the County and Tenant that the County, or its designee, is selling commercial advertising on the Domed Stadium Video Screen and that the revenue generated therefrom is committed to amortize the capital and operating costs of said video screen. The County, or its designee, shall, therefore, have the exclusive right to sell and display up to nine (9) minutes of commercial advertising on the Domed Stadium Video Screen during each Event day. The County will consult with the Tenant on the timing of the display of such commercial advertising during the Event. If the Tenant elects not to use the Domed Stadium Video Screen as specified in Paragraph 10.1, the County, or its designee, shall be responsible for the operating costs incurred to display the commercial advertising time during the Event.

ARTICLE ELEVENAdvertising Rights

It is understood by the Tenant that the County, or its designee, leases commercial advertising space on the Domed Stadium premises in which advertisers provide compensation to the County for certain advertising rights. To protect the advertising rights of the County and its advertisers, only the following methods of promotion and commercial advertising by the Tenant and the Event sponsors on the Domed Stadium premises during the Term of this agreement shall be acceptable:

- Display of products and services by Event exhibitors.
- Advertising in Event program.
- Advertising on back of Event ticket.
- Brief display of sponsor(s) name (nondistinctive letter style only) on Domed Stadium Video Screen; provided, no sponsor commercial message, trademark or logo are displayed.

- Acknowledgment of sponsor(s) over Domed Stadium public address system.
- If the Event is broadcasted, the broadcast station can display one (1) temporary identification banner by the broadcast location. The type, installation and removal of banner must obtain prior County approval. Banner installation and removal shall be the responsibility of the Tenant.
- Event promotional handout materials that acknowledge sponsor(s).

Any exception to the above methods of advertising and promotion must receive prior approval from the County.

ARTICLE TWELVE

Tenant Property Not Removed

The Tenant shall be responsible for removing from the Domed Stadium on or before the established move-out deadline each Contract Year all property, goods and effects belonging to Tenant and its participants, employees and attendees, or caused by it to be brought upon the Domed Stadium premises for the Event. If such property is not removed within the established move-out deadline, the County shall have the right to remove and store such property, goods and effects at Tenant's expense. The Tenant assumes all risk of damage and/or loss, by theft or otherwise, to the property, goods and effects of the Tenant and its participants, employees and attendees incurred during any removal and storage activities by the County.

ARTICLE THIRTEEN

Utilities

Utilities Provided. On Event Days and Event Move-In/Out Days of the Event presented pursuant to the agreement, the County shall furnish and have available at the Domed Stadium all utilities required for the use of the Domed Stadium to present the Event (including, without limitation, electric power and light, heat, air-conditioning, and hot and cold water), together with such technical and other personnel as are required to maintain and operate such utilities. Tenant shall reimburse the County for the actual cost of said utilities incurred on Event Days.

ARTICLE FOURTEEN

Successors and Assigns

The Tenant will not assign its rights under this agreement without prior written approval of the County. The terms and provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE FIFTEENDefault

15.1 Nonexcusable Acts of Default by the Tenant. The County shall have the right to terminate this agreement in its entirety in the event that the Tenant shall not, within sixty (60) days of receipt of notice thereof, cure or commence to cure and then prosecute the curative action with diligence any of the following events of default:

(a) The occurrence of any act or omission on the part of the Tenant which operates to deprive it of the right, powers, licenses and authorization necessary for the lawful and proper conduct and operation of the services and activities authorized herein; or

(b) The abandonment or discontinuance without the written consent of the County of any or all of the operations of the Tenant under this agreement; or

(c) The failure of the Tenant to pay the considerations required under the terms of this agreement; or

(d) The failure of the Tenant to perform, keep and observe any of its obligations hereunder.

15.2 Excusable Acts of Default by the Tenant. Any condition, occurrence or delay as set forth in this section which substantially interferes with the Tenant's performance under this agreement shall excuse performance by the Tenant of its contractual obligations under this agreement, including the payment of rental and other considerations to the County provided herein; but only for the period of time such substantial interference or condition exists.

(a) Force majeure causes or any other circumstances found and determined by the County to be beyond the reasonable control of the Tenant; or

(b) Failure by the County to make the Domed Stadium premises available to the Tenant under the terms of this agreement; or

(c) The filing by or against the Tenant or any petition in bankruptcy, either voluntary or involuntary.

ARTICLE SIXTEENMiscellaneous

16.1 Powers of the County. Nothing contained in this agreement shall be considered to diminish the governmental or police powers of the County.

16.2 Parking on Day of Event. The Tenant shall have the right to use Fifty (50) parking spaces in the Domed Stadium parking lot during the Event presented under this agreement, without charge.

16.3 Books, Records and Inspection. The Tenant shall keep accurate books and accounts of the matters upon the basis of which the use payments specified in Paragraph 4.1 are to be computed and ascertained. Such books and records shall be open and available for inspection by the County upon the official request of the Stadium Director during regular working hours between Monday and Friday. The County covenants and warrants that it will keep the information acquired from the examination of such books and records confidential and that it will not disclose any of such information directly or indirectly or use such information for any purpose during the term of this agreement or any time thereafter except with respect to the disclosure of information concerning the amount of the use payments made to the County pursuant to Paragraph 4.1, and except with respect to the disclosure of information which is required by the laws of the State of Washington.

16.4 Notices. Any notice or communication hereunder shall be in writing, and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mails, properly addressed, with postage prepaid. If given otherwise than by registered or certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at their following addresses:

If to the County:

Director, Department of
Stadium Administration
201 South King Street
Seattle, WA 98104
(206) 628-3400

If to the Tenant:

Managing Director
The Seattle Home Show
170 Mercer Street
Seattle, WA 98109
(206) 284-0960

Either party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

16.5 Nondiscrimination. The Tenant agrees to comply with all applicable Federal, State and County laws regarding nondiscrimination, and specifically agrees not to discriminate against any employee or applicant for employment because of race, color, religion, creed, sex or national origin.

16.6 Taxes. The Tenant agrees to pay on a current basis all taxes or assessments levied on its activities and property; provided, however, that nothing contained herein shall modify the right of the Tenant to contest any such tax, and the Tenant shall not be deemed to be in default as long as it shall, in good faith, be contesting the validity or amount of any such taxes.

16.7 Non-Waivers. Neither the waiver by either party to this agreement of any breach of any agreement, covenant, condition or provision hereof, nor the failure of either party to seek redress for violation of, or to insist upon strict performance of, any such agreement, covenant, condition or provision, shall be considered to be a waiver of any such agreement, covenant, condition or provision or of any subsequent breach thereof. No provision of this agreement may be waived except by written agreement of the party to be charged.

16.8 Washington Law Controlling. This agreement shall be deemed to be made in and shall be in accordance with the laws of the State of Washington, which will be controlling in any dispute that arises hereunder.

16.9 Paragraph Headings. The paragraph headings contained herein are only for convenience and reference and are not intended to be a part of this agreement or in any manner to define, limit or describe the scope or intent of this agreement or the particular paragraphs to which they refer.

16.10 Entire Agreement. This agreement constitutes the entire agreement between the County and the Tenant and may not be altered, amended or modified except by an instrument in writing signed by the parties hereto with the same formality as this agreement.

16.11 No Partnership. Nothing contained herein shall make, or be deemed to make, the County and the Tenant a partner of one another, and this agreement shall not be construed as creating a partnership or joint venture.

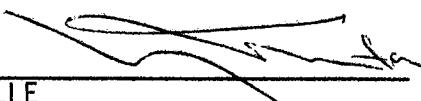
16.12 Singular and Plural. Wherever the context shall so require, the singular shall include the plural and the plural shall include the singular.

16.13 Impossibility. The County shall not be responsible for its failure to make the premises available or provide the facilities and services described herein where such performance is rendered impossible or impractical due to labor strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restrictions, enemy action, civil commotion, fire, unavoidable casualty, or similar causes beyond the control of the County, in which case the partial consideration paid under Article Four shall be refunded in full.


16.14 Domed Stadium Tours. County shall not conduct nor permit tours of the Domed Stadium on the day of the Event without prior approval of the Tenant.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written.

KING COUNTY

By 
RANDY REVELLE
King County Executive

THE SEATTLE HOME SHOW

By 
WILLIAM G. McDONALD
Managing Director

APPROVED AS TO FORM:
KING COUNTY PROSECUTING ATTORNEY

By 
STEPHEN A. SEWELL
Deputy Prosecuting Attorney