



Stephen L. Madkour
County Counsel

March 31, 2022

Board of County Commissioners
Clackamas County

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Members of the Board:

Review, Consideration and Approval of Fair Management Agreement

Purpose/Outcomes	Approval of Revised 2022 Fair Management Agreement with the Fair Board
Dollar Amount and Fiscal Impact	Uncertain at this time. If County performs services under section 13 of the Agreement, the County would be compensated at current hourly rates by the Fair Board.
Funding Source	Fair Board funds
Duration	30 Minutes
Strategic Plan Alignment	Building public trust through good government
Previous Board Action	The Board has discussed at various intervals the County Fair and the Board's relationship with the Fair Board.
County Counsel Review	Counsel has reviewed the Fair Management Agreement.
Procurement Review	Not Required
Contact Person	Stephen L. Madkour, County Counsel

BACKGROUND:

In 2018, the Board of Commissioners and the Fair Board entered into a Fair Management Agreement. The Agreement was the culmination of years of negotiations over the relationship between the County and the Fair Board and the future of the County Fair and the fairgrounds. The Agreement established roles, responsibilities, and expectations for the respective Boards and has served as a successful model for the operation of the annual County Fair and other activities and events regularly occurring at the fair grounds and events center.

The 2018 Agreement has expired. The County and the Fair Board have since worked collaboratively on amending the 2018 Agreement and including provisions and terms to aid the parties in managing and operating the fair and fair grounds for the next three years. This proposed 2022 Fair Board Agreement does not differ substantially from the 2018 version. It does, however, have some new terms that warrant mentioning. Specifically, the 2022 Agreement includes sections 13.1-13.5 on pages 8 and 9, which allow the Fair Board to utilize County operations for specific services, such as County Counsel and Facilities Management. The Fair Board would pay the then-current County rates for services. Other subject matter specific services as needed.

Allowing the Fair Board to utilize in-house County services will provide the Fair Board with professional services and facilities management expertise in a cost and time efficient manner.

It has been reported that the Fair Board has approved this version of the Agreement.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approve the 2022 Fair Board Agreement and authorize the Chair to execute the Agreement on behalf of the Board. Alternatively, the Board could revise the Agreement to reflect and incorporate some discussion points that have arisen during the budget discussions.

Sincerely,



Stephen L. Madkour
County Counsel

Attachment: 2022 Fair Board Agreement

3/26

**FAIR MANAGEMENT AGREEMENT
BETWEEN CLACKAMAS COUNTY FAIR BOARD
And CLACKAMAS COUNTY, OREGON**

This Fair Management Agreement (this "Agreement") is between the Clackamas County Fair Board, an entity formed under ORS 565.210, and Clackamas County, a political subdivision of the State of Oregon ("County").

1. DEFINITIONS

- 1.1 "BCC" means the Board of County Commissioners, the duly elected governing body of Clackamas County.
- 1.2 "Clackamas County Fairgrounds and Event Center" or "FEC" means "the ground, and all other property owned, leased, used or controlled by a county and devoted to the use of a county fair" ORS 565.010(4), currently located at 694 NE 4th Avenue, Canby, OR 97013.
- 1.3 "Fair Board" means the Clackamas County Fair Board.
- 1.4 "Fair Fund" means a fund in which all moneys received from activities conducted at the county fair or at the county fairgrounds or facilities are deposited and expended only for the promotion and operation of the county fair and to provide, maintain and improve county fairgrounds, buildings, facilities and improvements on the county fairgrounds for the county fair and other events authorized by the county fair board. ORS 565.325.
- 1.5 The "Fair" means the annual Clackamas County Fair and Rodeo, which includes "exhibition held for the purposes of disseminating knowledge concerning, and encouraging the growth and prosperity of, all agricultural, stock raising, horticultural, mining, mechanical, artistic and industrial pursuits in a county, including the racing of animals and vehicles." ORS 565.010(3).

2. PURPOSE

- 2.1 Pursuant to ORS 203.035 and ORS 565.230(4), the County and the Fair Board enter into this Agreement for the purpose of clarifying the rules, policies, and procedures to be used in the conduct of county fair activities as laid out in ORS 565.190 through ORS 565.447 and ORS 565.610 through ORS 565.650, and for the purpose of protecting the County and the BCC from liability relating to personnel or contractual matters, as described in ORS 565.230(4).

3. GENERAL

- 3.1 The duties and responsibilities of the Fair Board are defined in ORS 565.210 through 565.447 and 565.610 through 565.650. The Fair Board is subject to most laws applicable to public bodies. Nothing in this Agreement prohibits the Fair Board from contracting for services to manage the fair, Clackamas County Fairgrounds and Event Center, and Fair Board activities, when done in conformance with this Agreement and applicable laws and policies.

4. **THE FAIR BOARD**

4.1 The Fair Board shall consist of “not less than three nor more than seven members” appointed by the BCC to staggered three-year terms pursuant to ORS 565.210(2). Members of the Fair Board may be removed from office for cause by the BCC as provided in ORS 565.210(5) and 565.225.

4.2 Pursuant to ORS 565.210(3), each member of the Fair Board is required to furnish a good and sufficient bond in favor of the County, conditional upon faithful performance of the duties of the office. Additionally, pursuant to ORS 565.220(3) the Fair Board secretary is also required to furnish a similar bond. The bond for each Fair Board member and the Fair Board secretary shall be no less than \$10,000.00. The bonds, when approved by the BCC, shall be filed with the County Clerk. The premium on the bond(s) shall be paid by the Fair Board as a Fair Board expense.

4.3 Pursuant to ORS 565.220, the members of the Fair Board shall, as soon as their bonds have been filed and approved, meet and organize by electing a chair and other officers. A majority of the members of the Fair Board shall constitute a quorum for the transaction of all business at meetings. In the absence of the chair, another member of the Fair Board shall perform the duties of the chair. If there is a conflict between the Fair Board Bylaws and this Agreement, the terms of this Agreement shall control.

4.4 The Fair Board is a public body subject to requirements of the public meetings laws of the state as provided in ORS 192.610 through 192.710 and the Fair Board members are public officials subject to the government standards and practices provision of ORS Chapter 244.

4.5 The Fair Board is subject to the public records laws of the state as set forth in ORS Chapter 192.

4.6 Throughout the term of this Agreement, the Fair Board shall maintain and periodically update, as necessary, a Clackamas County Fairgrounds and Event Center Policy and Procedure Manual (the "Manual").

5. **PERSONNEL**

5.1 Employees working at the Fair are considered employees of the Fair Board and are not subject to Clackamas County bargaining unit agreements, but they are subject to all other applicable state and federal laws, and the County budget process. Salary and benefits of the Fair Board employees shall be determined by the Fair Board or its delegate.

6. **BUDGET**

6.1 Pursuant to ORS 565.325, the County maintains a fair fund to record revenues and expenses of the Fair and to use to promote and operate the Fair. “The fair fund may be expended only for the promotion and operation of the county fair and to provide, maintain, and improve county fairgrounds, buildings, facilities and improvements on the county fairgrounds

for the county fair and other events authorized by the county fair board.” ORS 565.325(1). “All moneys received from activities conducted at the county fair or at the county fairgrounds or facilities, and all moneys received by a county fair as the licensee for pari-mutuel wagering on races conducted at or on behalf of the fair shall be deposited in the county fair fund.” ORS 565.325(2). The fair fund is subject to the Local Budget Law (ORS Chapter 294). The fair fund is part of the regular County budget, and is subject to all County fiscal policies, procedures, and auditing.

6.2 The Fair Board acknowledges that it must comply with Oregon budget laws and appropriate limits established by ORS 565.325 for the fair fund. Furthermore, under ORS 565.325, all receipts from fairground activities must be deposited into the fair fund.

6.3 The Fair Board agrees to continue providing FEC financial records to the County to be included in the County’s budget and Comprehensive Annual Financial Report.

6.4 The fair staff responsible for preparing the budget will follow current budget processes as established each year by the County Budget Officer. The Fair Board shall review and approve the budget as prepared by fair staff before it is submitted to the County.

6.5 Capital improvement projects, and the estimated costs for each project and its ongoing operation and maintenance, shall be set by the Fair Board and submitted to the BCC by February 1 of each year for review and approval.

6.6 The Fair Board will operate on the same fiscal year as the County, July 1 through June 30.

7. FINANCE

7.1 Through the fair fund, the County will provide the level of fiscal means necessary to maintain proper records of the Fair Board. The Fair Board will assume responsibility for the accuracy of all financial activities and accounts for which the BCC has the responsibility, including in the County accounting and auditing reports. The Fair Board acknowledges and agrees that it is solely and exclusively responsible for the accuracy of all financial information provided to the County for inclusion in the final auditing and accounting reports.

7.2 In the exercise of its management authority and in accordance with ORS 565.315, the Fair Board has authority to execute contracts for the authorized purposes set forth in statute, subject to budget approval and in accordance with this Agreement.

7.3 The Fair Board has authority to make expenditures from its budget in accordance with ORS 565.315. The Fair Board shall comply with public purchasing laws and applicable County rules.

7.4 Pursuant to ORS 565.315, the Fair Board shall, once each year, file with the County Budget Officer a complete financial statement showing all funds received and disbursed. The Fair Board may include in the report such suggestions and recommendations, as in its opinion

would make for the improvement and advancement of agricultural and related industries of the fair. The Fair Board will have conducted an annual third party audit as required under Oregon Law. This audit will be conducted in coordination with, and with the input of, the County's Finance Department.

7.5 The Fair Board may establish and operate a petty cash account that is consistent with County petty cash policies and procedures. The Fair Board chair or the chair's designees who have been approved by the Fair Board may authorize expenditures from the petty cash account.

7.6 The Fair Board chair or the chair's designee, who has been approved by the Fair Board, have authority to cosign with the Fair Director for approved expenditures.

7.7 Without limiting the generality and applicability of the above provisions, the Fair Board agrees to follow the financial and fiscal procedures as described in the Manual. To the extent there is a conflict between the County's financial and fiscal policies and procedures and those in the Manual, the County's policies and procedures shall control to the extent the County's policies and procedures comply with applicable law included in ORS Chapter 565.

7.8 Once every five years, starting with the second year of this Agreement and thereafter as required, the Fair Board shall engage a third party auditor identified by the County to perform a performance audit. The scope and nature of this audit shall generally be focused on successful implementation of the business plan and capital plan referenced in Section 10 below, adherence to applicable laws and valid agreements, including this one, and a general report on performance in relation to other similarly situated county fairs and/or event centers.

8. **CONTRACTING**

8.1 The Fair Board must follow applicable laws, including those for public contracting by a public body, appropriate permitting and inspection by the applicable jurisdictions, whether City of Canby or County, and bonding of public works projects. The Fair Board agrees to use standard County contract language and processes.

8.2 Except as otherwise approved by the County, all contracts entered into by the Fair Board chair or chair's designee approved by the Fair Board shall contain provisions addressing, (i) minimum types and amounts of required insurance coverage, (ii) indemnification of the Fair Board and County, and its elected officials, employees, officers, and agents, (iii) voluntary waivers or releases or (iv) other provisions addressing allocations of risk or risks of loss as deemed appropriate following consultation with County Counsel's office.

8.3 Periodically, but no less frequently than every three (3) years, the Fair Board and the County may review and update the contract documents as necessary. The Fair Board will contact the County Counsel's office prior to accepting or agreeing to any material modifications or changes to previously reviewed and approved contract documents.

9. **OPERATION OF FAIRGROUNDS**

9.1 All fair real property and fixtures are the property of Clackamas County. The Fair Board may contract with the County for maintenance or repair of its vehicles, power equipment, or facilities. "The county fair board has the exclusive management of the [Clackamas County Fairgrounds and Event Center] and all other property owned, leased, used or controlled by the County and devoted to the use of the county fair, and is entrusted and charged with the entire business management and financial and other affairs of such fair." ORS 565.230(1).

9.2 Source, scheduling and method of replacing equipment is a management decision of the Fair Board. Equipment purchased by the Fair Board is the sole property of the Fair Board can be disposed of as surplus in accordance with County surplus property procedures and the proceeds retained in the Fair fund.

9.3 As provided herein, the Fair Board shall exclusively operate and manage the Clackamas County Fairgrounds and Event Center. "In order that the fairgrounds and buildings may be utilized to the fullest extent for pleasure, recreation and public benefit, the board shall at all times have the authority to provide park facilities for the public or to issue licenses and grant permits for the holding of any exhibitions, shows, carnivals, circuses, dances, entertainments or public gatherings upon the fairgrounds. During the progress of county agricultural or industrial fairs and not otherwise, any such businesses so licensed by the board shall not be required to pay license to any city or county other than to the board as provided in this section. The board shall fix the sum to be paid for such permits and licenses, which shall be issued and signed by the president and secretary of the board. The moneys received from the issuance of such permits and licenses shall be deposited to the credit of the fair fund and warrants drawn against it the same as upon the disbursement of any other fair funds." ORS 565.230(2).

9.4 As provided herein, the Fair Board shall operate and manage the Fair and Events Center. The Fair Board is responsible for recruiting bookings, scheduling, establishing standard facility and animal stall rental conditions and fees; general promotion, recruitment of event marketing coordinators, recruitment of security services, food service, concessions, maintenance and all other related operational activities, including contracts for these activities.

9.5 Pursuant to ORS 565.240, the Fair Board shall make and enforce all rules and regulations necessary for the proper conduct and management of the Fair and Event Center and all activities conducted at the Fair and Event Center.

9.6 The Fair Board will set prices of admission, licenses and all other fees provided by ORS 565.230 and 565.630.

10. COUNTY OWNERSHIP AND INVESTMENT IN FAIRGROUNDS AND EVENT CENTER

10.1 The County may, in its sole and absolute discretion, choose to invest funds above and beyond the fair fund in improving the FEC. Any such improvements will be added to the management responsibilities of the Fair Board but remain owned by the County.

10.2 The Fair Board agrees that it shall maintain and update as necessary a fully

developed capital asset management plan, including a site master plan and to present to the BCC for approval. If not approved, the Fair Board agrees to address any response and questions given by the BCC, revise the capital plan accordingly, and promptly re-present for approval.

10.3 The Fair Board agrees that it shall maintain and update a fully developed business plan designed to provide sustainable funding only through the use of fair fund revenues for the maintenance, upkeep, improvement, operation and management of the FEC and present to the BCC for approval. The business plan will address capital asset deficiencies identified in the capital asset management plan. If not approved, the Fair Board agrees to address any response and questions given by the BCC, revise the business plan accordingly, and promptly re-present for approval.

10.4 The Fair Board acknowledges that the County is the owner of the FEC. Authority to manage the FEC is delegated to the Fair Board by ORS 565.230(1). This delegation lasts so long as the County owns the FEC. The County is under no obligation to perpetually own the FEC and, if at any future date the County decides to sell the FEC, any revenues generated from the sale of the FEC shall be held in trust by the county for up to 5 years until a decision is made regarding the future of the FEC.

10.5 The Fair Board further acknowledges and agrees that the BCC may have need for the FEC for other purposes, and that such emergency purposes may take precedence. Specifically, but without limitation, the Fair Board acknowledges that the BCC may, in the event of a declared emergency, designate the FEC as a disaster coordination area, disaster debris management area, housing livestock, a warming shelter area, or such other uses as the BCC may determine. The Fair Board agrees to cooperate fully in all respects to support implementation of the BCC's direction for the use of the FEC. The BCC agrees to bear some of these costs and to reimburse the fair fund to the extent there is a negative impact from the alternate uses of the FEC.

11. **INSURANCE, BONDING AND INDEMNIFICATION**

The Fair Board currently pays all costs of auto, property and liability insurance through a group insurance pooling arrangement. The Fair Board shall obtain and maintain in full force the following policies and policy limits of insurance:

11.1 Commercial General Liability Insurance

The Fair Board shall obtain, at Fair Board's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and employees.

This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

11.2 Auto Liability Insurance

Commercial Auto/Business Auto Policy. The Fair Board shall also obtain, at Fair Board's expense, and keep in effect during the term of the contract, "Symbol 1" Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1 Million.

11.3 Workers' Compensation Insurance

The Fair Board, if it is an employer of one or more workers subject to Workers' Compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or as an exempt employer under ORS 656.126. If the Fair Board contracts with any independent contractors, such Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

11.4 Property Insurance

The Fair Board will at its sole expense, procure and maintain a property insurance policy (ISO "Special Form" policy, or its nearest equivalent available) covering the Fair Board's personal property, including but not limited to mobile equipment, located at the Premises, providing coverage on an all-risk basis, including coverage (if eligible), for the perils of earthquake, flood, and windstorm. Limits of coverage shall be no less than the replacement cost of all scheduled property. The Fair Board shall solely be responsible for the Property Policy's deductible and such policy will not contain a coinsurance requirement.

11.5 Additional Insured Provision

The insurance, other than Workers' Compensation shall include "Clackamas County, its agents, officers, and employees" as an additional insured.

11.6 Certificate of Insurance

As evidence of the insurance coverage required by this contract, the contractor shall furnish a Certificate of Insurance to Clackamas County. No contract shall be effected until the required certificates have been received, approved and accepted by the County. A renewal certificate will be sent to the Clackamas County Purchasing Division 10 days prior to coverage expiration.

11.7 Primary Coverage Clarification

Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.

11.8 Cross-Liability Clause

A cross-liability clause or separation of insured condition will be included in all general liability,

professional liability, pollution and errors and omissions policies required by this contract.

To the extent that insurance premiums can be directly attributed to the Fair Board, costs will be budgeted and paid accordingly. All administrative costs will be allocated through the cost allocation plan.

Clackamas County shall be listed as an additional insured on all insurance policies.

The Fair Board shall defend and indemnify the BCC and the County from liability arising out of personnel or contractual matters occurring under the Fair Board's direction, management or authority, to the extent permitted by law.

12. LAW ENFORCEMENT

12.1 If necessary, the Fair Board will contract for the presence of Clackamas County Sheriff's deputies and reserve deputies, Oregon State patrol officers, or Canby Police Department officers on the grounds during major events. The Fair Board can also contract with private firms for security services during fairs and major events. See ORS 565.240.

13. PERFORMANCE OF SERVICES BY THE OFFICE OF COUNTY COUNSEL, COUNTY FACILITIES MANAGEMENT, AND COUNTY SUBJECT MATTER EXPERTS

13.1 County Counsel. Fair Board may request legal services from County Counsel. Such services may be provided on an as-needed basis. County Counsel will not provide legal services if County Counsel determines, in its sole discretion, doing so will create a conflict of interest in County Counsel's representation of the County or any related service district or other entity that County Counsel currently represents. County Counsel may, in its sole administrative discretion, decline to provide legal services if it determines that it lacks sufficient resources or staff to do so. In the event of a conflict, or if County Counsel declines to provide legal services, the Fair Board shall retain its own legal counsel.

13.2 Legal services provided by County Counsel shall be at County Counsel's then-current rates. Fair Board shall pay all invoices for legal services provided by County Counsel within thirty (30) days' of receipt of the invoice.

13.3 County Facilities Management. The Fair Board may request project management, maintenance, or construction services from the County Facilities Management. Such services may be provided on an as-needed basis and subject to time and availability. County Facilities Management may, in its sole administrative discretion, decline to provide facilities services if it determines that it lacks sufficient resources, staff, or expertise to do so.

13.4 Facilities Management services provided by the County shall be billed on a time and materials basis at Facilities Management's then-current hourly rates. Fair Board shall pay all invoices for Facilities Management services provided by the County within thirty (30) days' of receipt of the invoice.

13.5 County Subject Matter Experts. Fair Board may request services from County subject matter experts, including but not limited to County Human Resources, Finance, and Technology Services. Such services may be provided on an as-needed basis. Clackamas County may, in its sole administrative discretion, decline to provide subject matter expert services if it determines that it lacks sufficient resources or staff to do so.

13.6 Any subject matter expert services provided by Clackamas County shall be at County staff's then-current rates. Fair Board shall pay all invoices for such subject matter expert services provided by Clackamas County within thirty (30) days' of receipt of the invoice.

14. **JOINT MEETING**

14.1 The County, BCC, and Fair Board will meet no less than annually, preferably semi-annually. If no joint meeting occurs pursuant to this Agreement, the current Agreement will remain in force.

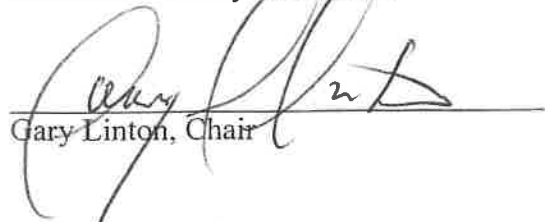
15. **MISCELLANEOUS**

15.1 This Agreement is intended to reflect the duties and responsibilities of the Fair Board as defined in ORS 565.210 through 565.447 and ORS 565.610 through 565.650. The Fair Board and the County mutually agree to cooperate fully to effectuate the terms of this Agreement. This Agreement may be modified, amended or repealed by the mutual written agreement of the parties.

15.2 This Agreement will be reviewed by the parties every three (3) years. The parties will negotiate in good faith whenever they review this Agreement or seek to renew it for additional three (3) year periods.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the _____ day of ____, 2022.

Clackamas County Fair Board



Gary Linton, Chair

Approved as to Form:

Stephen L. Madkour
Clackamas County Counsel

Clackamas County Board of Commissioners

Tootie Smith, Chair