

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Policy Session Worksheet

Presentation Date: 11/28/17 **Approx. Start Time:** 11:00am **Approx. Length:** 30 min

Presentation Title: Clackamas County Fair Board Governance/Fair Management Agreement

Department: Business and Community Services

Presenters: Stephen Madkour, County Counsel; Laura Zentner, BCS Interim Director

Other Invitees: N/A

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Discussion regarding the governance of the Clackamas County Fair & Event Center and approval of a Fair Management Agreement.

EXECUTIVE SUMMARY:

Background Information: State and County Fairs are governed under ORS 565 Fairs & Exhibits. The Clackamas County Fair and Event Center is structured to be governed by a Fair Board appointed by the Board of County Commissioners. This is the default structure as prescribed by ORS.

The Fair Board has responsibilities for the year-round programming and operation of the Event Center/Fairgrounds. The management and operational staff of the Fair and Event Center are employees of the Fair and not the county, with the Event Center Executive Director reporting to the Fair Board. The County Fair Fund budget is included in Business & Community Services and the Event Center Executive Director coordinates with BCS staff regarding the preparation and presentation of the County Fair Fund budget. The County Commissioners have approval authority and oversight of the fund.

Conversely, the County owns the fairgrounds and the buildings and therefore has liability relating to those assets. This current structure results in a separation between ownership and governance, leading to challenges in long-term strategic planning and capital asset management. For example, the Fair Board has led discussions around the development of a long term strategic plan and capital improvement plan but lacks ownership control of the fairground assets. The Board of County Commissioners owns the land and assets; however, per ORS the Fair Board has management responsibilities for the assets. This organizational structure was highlighted just prior to the 2014 County Fair, when a critical asset had to be demolished in the weeks leading up to the Fair. This resulted in a temporary structure solution but long term capital asset questions remain. Resolution of the roles and responsibilities arising from this split in capital asset ownership and management versus event planning and management would aid in resolving challenges around assets, staff, and strategic planning.

On December 16, 2014, staff held a Policy Session and presented alternative governance and management structures in order to provide the Board with governance options. Following this Policy Session, BCS and Administration staff met with the Fair Board on several occasions to develop and implement a governance model where the County would be more actively involved in the operations and management of the Clackamas County Fair & Event Center; however, the Fair Board elected to continue with the current Clackamas County governance model.

The County did elect to diversify the Fair Board by increasing the number of Fair Board members from five (5) to seven (7). To ensure the responsibilities and associated liabilities of the Fair Board and Clackamas County are delineated under this governance structure, the Fair Board and staff from BCS

and County Counsel have been working on the attached Fair Management Agreement. The Agreement was briefly discussed at Issues on November 21, 2017 and it was decided that a more robust conversation was needed regarding the Agreement and governance structure.

FINANCIAL IMPLICATIONS (current year and ongoing):

NA

STRATEGIC PLAN ALIGNMENT:

- How does this item align with your Department’s Strategic Business Plan goals?
Build public trust through good government and ensure safe, healthy and secure communities
- How does this item align with the County’s Performance Clackamas goals?
Build public trust through good government and ensure safe, healthy and secure communities

LEGAL/POLICY REQUIREMENTS: Governed by ORS 565

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS:

1. Approve the proposed Fair Management Agreement as presented. The Fair Board would retain control of year-round planning, programming and operations of the Event Center/Fairgrounds and the County would retain ownership of the capital assets. A Capital Asset management plan will still need to be formulated and funded under this governance structure.
2. Modify the Fair Management Agreement between the Fair Board and Clackamas County based on the outcome of BCC discussions at 11/28/17 Policy Session.

RECOMMENDATION:

BCS staff recommends approval of the attached Fair Management Agreement between the Fair Board and Clackamas County with the additional recommendation that conversations should continue regarding the long range capital asset management and planning.

ATTACHMENTS:

1. Fair Management Agreement Between Clackamas County Fair Board and Clackamas County, Oregon (Draft)

SUBMITTED BY:

Division Director/Head Approval _____

Department Director/Head Approval _____

County Administrator Approval _____

For information on this issue or copies of attachments, please contact Laura Zentner @ 503-742-4351

DRAFT**FAIR MANAGEMENT AGREEMENT****BETWEEN****CLACKAMAS COUNTY FAIR BOARD and CLACKAMAS COUNTY, OREGON**

This agreement ("Agreement") is between the Clackamas County Fair Board, an agency of Clackamas County, hereafter called "Fair Board," and Clackamas County, a political subdivision of the State of Oregon, acting by and through its Board of County Commissioners ("BCC"), hereafter called "County."

1. DEFINITIONS

1.1 "Fair Board" means the Clackamas County Fair Board.

1.2 "BCC" means the Board of County Commissioners, the duly elected governing body of Clackamas County.

1.3 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).

1.4 "Clackamas County Fairgrounds and Event Center" 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), located at 694 NE 4th Avenue, Canby, OR 97013.

2. PURPOSE

2.1 Pursuant to ORS 203:035 and ORS 565.230(4), the County and 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 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. Under ORS 565.230, the Fair Board has the exclusive management authority, year-round, over the Clackamas County Fairgrounds and Event Center and is entrusted and charged with the entire business management, financial and other affairs of the Fair. 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 are covered by County personnel policies and the County budget process. Salary and benefits of the Fair Board employees shall be determined by the Fair Board.

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 using the County financial and budget systems, policies and procedures.

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, shall be set by the Fair Board and submitted to the BCC by February 1 of each year for review and approval.

6.6 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, 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.

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, the Fair Board agrees to follow the financial and fiscal procedures as described in the Manual.

8. CONTRACTING

8.1 The Fair Board must follow applicable public contracting laws. 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 County Counsel's office may review and update the contract documents as necessary. The Fair Board may contact the County Counsel's office prior to accepting or agreeing to any material modifications or changes to previously review 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 can be disposed of as surplus in accordance with County surplus property procedures and the assets 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 even marketing coordinators, recruitment of a security company, 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.

10. FEE SETTING

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

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 (as available), 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. JOINT MEETING

13.1 The County, BCC, and Fair Board will meet no less than annually, preferable bi-annually. If no joint meeting occurs pursuant to subsection 14.2 of this Agreement, the current Agreement will remain in force.

14 MISCELLANEOUS

14.1 This Agreement is intended to reflect the duties and responsibilities of the Fair Board as defined in ORS 565.210 through 565.447 and 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.

14.2 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 _____, 2017.

CLACKAMAS COUNTY FAIR BOARD

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Chair

Approved as to Form:

STEPHEN L. MADKOUR
Clackamas County Counsel

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