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AGENDA COVER MEMO

AGENDA DATE: July 8, 2009
Memorandum Date: June 19, 2009

TO: LANE COUNTY BOARD OF COMMISSIONERS

DEPARTMENT: OFFICE OF LEGAL COUNSEL AND COUNTY
ADMINISTRATION

PRESENTED BY: H. Andrew Clark, Assistant County Counsel 

AGENDA ITEM TITLE: Order No. _____/In the Matter of Adopting the Memorandum
of Understanding between Lane County and the Lane County Fair
Board

I. MOTION

Move to adopt the Memorandum of Understanding between Lane County and the Lane County Fair Board.

II. DISCUSSION

A. Board Action and Other History On or about May 7, 2008, the Board discussed the future management of the Lane County Fairgrounds taking into consideration the Oregon Statutes. Previously the Lane County Fair and all other events at the Lane County Fairgrounds had been directed by the five-member Lane County Fair Board and managed by a Fair Manager. The composition of the Fair Board was reduced to three members by Order No. 07-1-10-8. The 3 Fair Board members later resigned.

By Order No. 08-6-25-14, the Board directed the County Administrator to provide options for the Board to consider regarding the management of the Lane County Fairgrounds. Board Order No. 08-6-25-14 expressed the Board's intent to appoint a five member Fair Board, and established policies for the management of the Lane County Events Center and Lane County Fair. The Memorandum of Understanding between Lane County and the Lane County Fair Board implements this Order.

B. Recommendation I recommend the Board approve the order adopting the Memorandum of Understanding between Lane County and the Lane County Fair Board.

III. ATTACHMENTS

Board Order
Exhibit A – Memorandum of Understanding between Lane County and the Lane County Fair Board

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF ADOPTING THE
MEMORANDUM OF UNDERSTANDING BETWEEN
LANE COUNTY AND THE LANE COUNTY FAIR
BOARD

WHEREAS, on May 28, 2008, the Board of County Commissioners of Lane County discussed the future management of the Lane County Fairgrounds and eventually adopted Order 08-6-25-14 providing the foundation and giving direction for the future management of the Lane County Fair and the Lane County Events Center, and

WHEREAS, the Board has determined, in accordance with ORS 565.230, that an agreement between the Board and the Lane County Fair Board is desirable to establish the rules, policies and procedures for the operation of the Lane County Fair and the Lane County Events Center, and

WHEREAS, the Board's direction required substantial changes to the pre-existing memorandum of understanding between the Board and the Lane County Fair Board, and

WHEREAS, the Lane County Fair board has reviewed and approved the Lane County and the Lane County Fair Board Memorandum of Understanding (the "MOU"), attached as Exhibit A, at its regular meeting on April 16, 2009, and

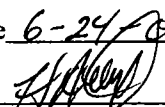
WHEREAS, the MOU sets forth the terms of the agreement between Lane County and the Lane County Fair Board,

NOW, THEREFORE IT IS HEREBY ORDERED that Lane County adopts the attached MOU, and

IT IS FURTHER ORDERED that the County Administrator is delegated authority to execute a memorandum of understanding in substantially the form as the attached MOU.

DATED this _____ day of July, 2009.

Chair, Lane County Board of
Commissioners

APPROVED AS TO FORM	
Date <u>6-24-09</u>	Lane County
	
OFFICE OF LEGAL COUNSEL	

Lane County
and
The Lane County Fair Board
Memorandum of Understanding ("MOU")

Parties: Lane County, acting by and through its Board of Commissioners ("County").

Lane County Fair Board, appointed by the Board of Commissioners ("Fair Board").

Definitions: "County Board" means the Board of County Commissioners, elected by the voters of Lane County.

"County Department" is the Lane Events Center at the Fairgrounds, a County department whose function is to manage the Events Center, including its use, on behalf of Lane County.

"County Fair" means the annual Lane County Fair event, including the time set for the public use and reasonable time for set up and tear down, unless stated otherwise.

"Events Center" means the ground and all other property owned, leased, used or controlled by the County located at 796 W. 13th Avenue, Eugene, Oregon, including but not limited to the Convention Center, Administration Building, Auditorium, the Wheeler Pavilion, Exposition Halls, Livestock Building, Lane County Ice, and various other buildings and related structures.

Purpose: To clarify the understanding between the parties regarding: 1) the annual County Fair event, 2) the management of certain Events Center property both when it is and is not devoted to the use and production of the County Fair, 3) the protocols between the parties, and 4) provide some protection from liability for the County for personnel and contractual matters related to Fair Board and its members' activities.

Recitals

A. The County's powers are exercised by and through the elected County Board, per Home Rule Charter, statute, ordinance and adopted policies.

B. The County Board exercises its powers through delegations of authority and responsibility to various appointed boards, officers, and employees of the County.

C. Regarding the County Fair, the Fair Board is also empowered by state statute. It is desirable and in the best interests of all to clarify, by this MOU, the protocols that are to govern the management of the Events Center, and the production of the County Fair.

D. The primary function of the Fair Board should be to oversee the planning, preparation, and production of the County Fair. The County Board should provide adequate staff assistance to the Fair Board to discharge this responsibility.

E. During the period of the County Fair, the Fair Board should have the use and control of the Events Center or such part of it as is needed for County Fair purposes. The Fair Board will appoint a director to act as the executive officer of the County Fair ("County Fair Director").

F. During the rest of the year, the management of the Events Center should be the responsibility of the manager of the County Department ("Events Center Manager"), who will be responsible for the day-to-day management pursuant to the direction of the County Administrator, in accordance with County policies and procedures and subject to the ultimate supervision and control of the County Board.

UNDERSTANDING: Now Therefore, the Parties Agree to the Following Provisions, Relationships, Protocols and Matters Set Forth Below:

1. **Fair Board:** The County Board will appoint a five person Fair Board. One County Commissioner may serve as a member of the Fair Board in lieu of appointing a lay citizen, with the concurrence of a majority of the County Board.

a. Each Fair Board member must be a resident of the County. In its appointments to the Fair Board, the County Board will strive to achieve a balance of skills, interests, diversity and geographic representation, to the extent practicable.

b. Fair Board members will generally serve for staggered terms of three years, with terms being assigned by lot by the County Board as necessary to achieve staggering. Terms will begin upon appointment, and will end on December 31 of the assigned year; thereafter terms will be for a term of three years. Fair Board members may serve no more than two consecutive complete terms, unless the County Board grants an exception.

c. Pursuant to ORS 565.210(3), each member of the Fair Board is required to furnish a good and sufficient bond or irrevocable letter of credit in favor of the County, conditional upon faithful performance of the duties of the office. The County will secure the bonds with charges to be assessed as appropriate to the Fair Board.

d. Fair Board members are subject to removal by the County Board per ORS 565.225 (for inefficiency, neglect of duty, misconduct in office, incompetence, incompatibility, dereliction of duty or other good cause) as those reasons are defined by Lane Code 2.300. The County Board shall conduct all procedures to remove a Fair Board member in accordance with state statute. The County is not liable for decisions or activities of the Fair Board, or any of its members, that are outside the scope of their duties, or constitute malfeasance in office or willful or wanton neglect of duty.

2. **Officers:** Annually, the Fair Board shall elect a President and Vice-President. Each will perform the duties normally associated with those offices. One officer will be designated as liaison to the County Board.

3. **Secretary:** The Fair Board will annually select a secretary, who may be a member of the Fair Board or the Fair Board may utilize the Events Center Manager, or Events Center Manager designee, as the secretary. The County will secure the secretary's bond with charges to be assessed as appropriate to the Fair Board. The secretary will be the official custodian of the Fair Board records and will perform the duties normally associated with that office, plus such other duties as are assigned by the Fair Board.

4. **Procedures:**

a. The Fair Board may establish the procedures it deems best in order to discharge its responsibilities subject to the terms of this MOU and to applicable laws, such as Oregon's public records and meetings laws, and government standards and practices law. The Fair Board shall adopt its own bylaws that include, at a minimum, the following provisions: (i) that a majority of the members of the Fair Board constitutes a quorum for the transaction of all business at meetings, (ii) that in the absence of the president another member of the Fair Board will perform the duties of the president, and; (iii) other provisions deemed necessary including those in County policies. Copies of the Fair Board's bylaws, meetings notices, and minutes will be furnished to the County Administrator.

b. The Fair Board shall comply with all applicable state laws and County policies, procedures and collective bargaining agreements in terms of contracts, personnel, budget, and fiscal management.

c. The Fair Board shall award, execute, be responsible for, and manage all public purchasing contracts, permits and licenses related solely to the County Fair, and; has authority to cancel or terminate such contracts as provided in the contract or by law, and; to further delegate this authority to the County Fair Director.

d. The Fair Board is prohibited from soliciting, negotiating, awarding or executing any contracts, permits, licenses or other documents that, in any manner, may impact the County's authority over the Events Center outside the County Fair, without approval of the County Administrator. The Fair Board shall allow the Events Center Manager opportunity to review contracts, permits, licenses, and other documents prior to award and execution to ensure compliance with this provision. In the event of impact on the County's authority outside the County Fair, the County Administrator has authority to require document modifications or conditions to the approval, including that the County execute the contract and that it manage matters outside the County Fair.

e. Subject to the conditions in b., c., and d. above, in conducting solely County Fair business, the Fair Board agrees to follow the County's purchasing rules in Lane Manual Chapter 21, with changes as follows: (i) the "Fair Board" is substituted for "department" or "Department" (except where the Fair Board is specifically referenced in County rules); (ii) the Fair Board will act as the decision maker with respect to any protest of intent to award a contract that is filed, and has authority to call and open bids and award and execute County Fair contracts; (iii) the Fair Board is substituted for the "County Administrator" for purposes of waiver of competitive selection for personal service contracts, sole source findings; and authority to execute contracts and their amendments, grants and grant documents; (iv) the County Fair Director is substituted as the "public officer" and "department director". In accordance with these rules, the County Board will serve as the contract agency and local contract review board for the Fair Board, and the County's contract process and competitive exemption rules in Lane Manual Chapter 20 also apply to the Fair Board.

f. To the extent possible and practicable, the Fair Board shall require third party contractors to agree to defend, and indemnify the Fair Board, its members, Lane County, its Commissioners, officers, agents and employees and provide additional insured coverage for the same on the contractor's liability insurance, in addition to any other standard County contract provisions.

g. In the event it was necessary for the County to execute contracts, permits, or licenses prior to the first meeting of the current Fair Board, if there are any in the name of the "Fair Board" which cover matters solely outside the County Fair, the parties agree that the County Department assumes full responsibility and management of those contracts, permits, and licenses.

h. In the event it was necessary for the County to execute contracts, permits, or licenses prior to the first meeting of the current Fair Board, if there are any in the name of the "Fair Board" which cover matters both related and unrelated to the County Fair, the parties agree that the name of the contracting party will be the County, but by this MOU, the Fair Board is solely responsible for management and liability to the extent it concerns County Fair matters. The parties will cooperate in resolving an equitable sharing of costs and accounting in such contracts.

i. The Fair Board agrees that the County has unrestricted authority to use any intellectual property claimed by the Fair Board for any purpose. To the extent that the Fair Board owns or holds any intellectual property right, including any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other similar proprietary right, the Fair Board hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display any Fair Board intellectual property, and to authorize others to do the same on County's behalf. The Fair Board will not assert the right, title, and interest to intellectual property against the County.

5. Use of Certain Events Center Property for County Fair: The County agrees to devote the Events Center to the exclusive management of the Fair Board only during the time for the County Fair, with the exception of: Lane Events Center administrative offices; year-round Events Center storage, electrical and mechanical areas, and appropriate ingress and egress as more specifically designated by the Events Center Manager. The Fair Board and County shall coordinate and cooperate concerning the use of this excepted property during the time of the County Fair.

In addition, with regard to the exclusive management of property by the Fair Board during the County Fair, the County may reasonably request access, such as to inspect for safety reasons, to protect property, to respond to emergencies, to address other life, health and safety needs, or when it would not interfere with County Fair work. The Fair Board agrees to grant reasonable requests for access by the County. Any actual use of property not expressly devoted for the use of the County Fair in accordance with this provision does not constitute devotion by implication.

6. County Fair: The Fair Board is responsible to ensure that a suitable County Fair is planned, prepared and produced each year. To discharge this responsibility, the Fair Board has and may exercise all related powers, including:

a. Making rules and regulations for the conduct and management of the County Fair (ORS 565.240).

b. Providing security during the County Fair, including, if necessary, the appointment or approval of marshals or police. (ORS 565.240).

c. Setting the dates of the County Fair.

d. In exercising the above powers, the Fair Board shall give priority to: (i) the personal safety and security of members of the public who attend, as well as those who work and participate in the County Fair, and (ii) to the security and preservation of the property being used at the Events Center. The Fair Board shall maintain and keep the Events Center in good repair and condition during the County Fair, normal wear and tear excluded, and shall not contract for public works or capital improvements without the approval of the County.

e. The Fair Board shall ensure that the County Fair business is conducted in compliance with all applicable statutes and policies and protocols, and that the staff and employees involved with the County Fair are suitably informed and trained. The County Board, Fair Board, County Administrator, County Fair Director and Events Center Manager agree to consult and collaborate to assure the Fair Board is able to achieve compliance.

f. Annually, the Fair Board will develop or update short and long-term plans for the planning, preparation, development, promotion and production of the County Fair. Copies of the business plan and updates will be furnished to the County Board liaison and the County Administrator, and will be reviewed during the joint meeting between the County Board and the Fair Board.

7. Authority and Management of Events Center Outside County Fair: As the landowner, the County has established the County Department as a department to manage the use of the Events Center at times other than during the County Fair. The County Department's responsibility is to maximize the use of the Events Center to the fullest extent possible for the pleasure, recreation and benefit of the public outside the County Fair and to maintain and preserve the Events Center. As deemed appropriate by the Fair Board, it may make reasonable proposals to the County on ways to more fully utilize the Events Center and to meet both the County's and Fair Board's interests. The Fair Board will not exercise authority over the Events Center at times other than the County Fair without the express approval of the County.

8. Events Center Manager/County Fair Director/Personnel/Volunteers: The County agrees to provide adequate administrative assistance to the Fair Board to discharge its responsibility to provide the County Fair, including providing meeting space and access to the Events Center as appropriate for Fair Board business, both during the County Fair and otherwise.

a. The County employs an Events Center Manager whose duties include management of the Events Center except with respect to the production of the County Fair. The Events Center Manager reports to and is supervised by the County Administrator or designee with respect to Event Center events outside the County Fair. The Events Center Manager will work under the direction and supervision of the County Administrator or designee in connection with the day-to-day and year-round management of the Events Center outside of the County Fair; the Fair Board does not have any directive or supervisory authority over the Events Center Manager for this purpose. The Events Center Manager has sole authority to

direct, supervise and manage County Department staff and volunteers at all times, including during and outside the County Fair. Making decisions about use and management of County Department staff for County Fair work is an assigned duty of the Events Center Manager. In the event of a vacancy of the Events Center Manager position, the County Administrator will consult with the Fair Board on the position description for the Events Center Manager, and will solicit advice and recommendation of the Fair Board with respect to the selection of the Events Center Manager.

b. The Fair Board will appoint a County Fair Director who will work under the direction and supervision of the Fair Board in connection with the operational matters relating solely to the County Fair. Initially, the Fair Board will appoint the same individual currently serving as the Events Center Manager as its County Fair Director, with the understanding that this individual may need to attend to County Department business when there would not be significant interference with County Fair work. After 2009, if the Fair Board determines that it is in the best interest of the County Fair to select someone other than the then current Events Center Manager to serve as the County Fair Director, the Fair Board may raise the issue at a joint meeting between the Fair Board and the County Board. At the joint meeting, the Fair Board and the County Board will also discuss whether, how and when to implement any changes to the County Fair Director position, and how any changes will be funded.

c. The Events Center Manager will be evaluated annually by the County Administrator or designee following consultation with the Fair Board.

d. The County may engage other employees to assist the Events Center Manager as resources and circumstances allow. Volunteers are recognized as a source of assistance in connection with both Events Center and County Fair matters.

9. Structure/Organization/Liaison:

a. Initially, the Events Center Manager will report to the County Administrator; however, during the first year, the County Administrator will evaluate the appropriate placement of the function within the County organization. In doing so, the County Administrator will seek input from the Fair Board.

b. The County Administrator and the Events Center Manager will ensure communication, exchange of information, access to County support services (e.g., fiscal, budget, legal, human resources, etc) and such other coordination with the County Board, Fair Board, and County departments is provided as is useful or necessary.

c. The Fair Board shall designate one of its members to be a liaison with the County Board. The County Administrator or designee will serve as the County's liaison with the Fair Board. Liaisons shall keep their respective board members and each other apprised of all significant activities, events, or issues that may arise, in particular any which would likely impact the other Board. When major actions or projects are contemplated which affect the County Department or the County Fair, the liaisons shall bring it to the attention of the County Board Chair and the Fair Board President for the purpose of scheduling a joint meeting to discuss and consult regarding the proposed action or project.

10. Business Plan: The County Fair Director will assist the Fair Board to develop a suitable business plan for the production of the County Fair, in coordination with the County Administrator. Additionally, the Events Center Manager will assist the County Board to develop

a suitable business plan for the year round management of the Events Center, in coordination with the County Administrator. The Fair Board and the County Board will review the business plans annually at their joint meeting.

11. Budget and Fiscal:

a. The Events Center Manager will provide the fiscal oversight, accountability and reporting for the County regarding the Events Center and the County Fair Director will provide the fiscal oversight, accountability and reporting for the Fair Board and the County Board regarding the County Fair. The Fair Board and the County shall ensure that the Events Center and the County Fair are operated in compliance with all applicable state and County laws, ordinances, rules, policies and procedures relating to budget and fiscal management.

b. The parties, including the County Budget officer, the Events Center Manager, the County Management Services Director and County Counsel will collaborate to maintain the Fair Fund within the budget that satisfies ORS 565.325 and applicable county budget and fiscal policies.

12. County and Fair Board Liability: It is a mutual objective of the County Board and the Fair Board to implement such fiscal, budget, legal and management policies, procedures and practices to limit the exposure and liability of the County, the County Board and the Fair Board.

a. Subject to section 1.d. above, the County will arrange for insurance for decisions or activities of the Fair Board and its members that are within the scope of their duties, and that do not constitute malfeasance in office or willful or wanton neglect of duty. The County will determine the coverage and limits that are reasonable based on the risks. Coverage amounts will be no less than the limits of the Oregon Tort Claims Act. Insurance for the Fair Board and its members constitutes an expense of the County Fair and will be reflected in the Fair Board's budget.

b. The County will secure the bond coverage described above in Sections 1 and 3.

c. The Fair Board may consult with County Counsel and the County Risk Manager as it deems advisable to ensure that these objectives are met with respect to the County Fair.

d. The County will secure or provide insurance as it deems reasonable for its risks related to the County Department, including for services provided to the Fair Board relating to the County Fair covered by this MOU.

13. Annual and Other Joint Meetings:

a. At least annually at a reasonable time after completion of the County Fair, the County Board and Fair Board will hold a joint meeting, the purpose of which will be to review the reports described below and to discuss topics of mutual concern. At or prior to the meeting, the Fair Board will furnish the County Board with the following (or an appropriate summary):

1. The annual report furnished to the County Fair Commission (ORS 565.442).
2. The most recent annual County Fair audit pursuant to ORS 565.443.

3. A summary of any significant operational issues or unresolved matters that have arisen since the last joint meeting.

4. An evaluation of the County's administrative support and recommendations for improvement or change.

5. The current business plan.

6. Information describing current and anticipated events, past, current and projected financial condition and such additional information as determined by the Fair Board or requested by the County Board.

b. The County Board and the Fair Board may schedule and hold additional joint meetings as mutually determined to be needed or desired. Scheduling of additional joint meetings is subject to the reasonable availability of the members of both boards.

14. Amendments: This MOU may be amended from time to time as needed, by mutual written agreement.

Dated this _____ day of _____, 2009.

Lane County

Lane County
Fair Board

Chair, Board of Commissioners

