

**EL DORADO COUNTY BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

**Meeting of
March 29, 2005**

AGENDA TITLE: Approval of Agreement with Fair Association for Management of County Fair

DEPARTMENT: County Counsel

DEPT SIGNOFF:

CAO USE ONLY: C

CONTACT: Louis B. Green *[Signature]*

DATE: 3/25/2005

PHONE: 621-5770

[Signature] 3/25/05

DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:

County Counsel recommends that the Board of Supervisors approve the attached agreement with the Fair Association for continued management of the County Fair for a term of five (5) years with automatic annual renewals.

RECEIVED
BOARD OF SUPERVISORS
EL DORADO COUNTY

MAR 25 PM 3:56

CAO RECOMMENDATIONS:

Financial impact? () Yes (X) No

Funding Source: () Gen Fund () Other

BUDGET SUMMARY:

Other:

Total Est. Cost _____

CAO Office Use Only:

Funding

4/5's Vote Required () Yes (X) No

Budgeted _____

Change in Policy () Yes (X) No

New Funding _____

New Personnel () Yes (X) No

Savings _____

CONCURRENCES:

Other _____

Risk Management *[Initials]*

Total Funding _____

County Counsel *[Initials]*

Change in Net County Cost _____

\$0.00

Other _____

***Explain**

BOARD ACTIONS: MAR 29 2005

APPROVED

Vote: Unanimous _____ Or

I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors

Ayes: DUPRAY, SWEENEY, BAUMANN, PAINE, SOLARO

Date: _____

Noes: NONE

Abstentions: NONE

Attest: Cindy Keck, Board of Supervisors Clerk

Absent: NONE

By: _____

1 AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND
2 THE EL DORADO COUNTY FAIR ASSOCIATION, INC.
3 A GENERAL NON-PROFIT CORPORATION

4 THIS AGREEMENT, made and entered into by and between the COUNTY OF EL
5 DORADO, a political subdivision of the State of California (hereinafter "County") and the EL
6 DORADO COUNTY FAIR ASSOCIATION, INC., a general non-profit corporation (hereinafter
7 "Association") the 1st day of April, 2005.

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

9 WHEREAS, County proposes to hold and conduct an annual county fair in El Dorado County
10 at the location hereinafter specified, and acting by and through its duly elected, qualified and acting
11 Board of Supervisors, in regular session assembled, on the 3rd day of April, 1973, by resolution, did
12 so announce and declare such purpose, and likewise on the same day by resolution named and
13 designed the fair as the EL Dorado County Fair; and

14 WHEREAS, the State of California has appropriated certain monies for the encouragement
15 of county fairs and said monies are apportioned to such fairs in accordance with rules and regulations
16 prescribed by the Department of Food and Agriculture of said state pursuant to section 4401, et seq.
17 of the Food and Agricultural Code of said state; and

18 WHEREAS, Association will, by terms of this Agreement, have facilities available to hold
19 said fair on the County Fairgrounds, such dates as may be hereafter designated by Association which
20 shall establish the date for the purpose of exhibiting and advertising the agriculture, livestock,
21 lumber products and other domestic industry of County and the State of California; and

22 WHEREAS, it is the mutual desire of the parties hereto that Association act as an agent of
23 County pursuant to Government Code section 25906 for the purpose of holding and conducting said
24 fair, and have the use, possession and management of the fairgrounds for the period of this
25 Agreement; and

26 WHEREAS, it is mutually understood by and between the parties hereto that the laws of the
27 State of California vest in County and its duly elected and appointed officials, the sole power and
28 authority to hold and conduct a county fair annually; and that records required by state law must be

1 kept in connection therewith, which said records constitute County records; and that all money
2 constituting gross receipts from or in connection with the operation, holding and conducting of said
3 fair, and through the use, possession and management of the fairgrounds, constitute County monies.

4 NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

5 1. Association as agent for County under the authority of law applicable thereto, pursuant
6 to Government Code section 25906 will hold and conduct said fair on County Fairgrounds on the
7 dates designated by the Board of Directors of Association.

8 2. Association during the term hereof will annually present to the State Department of Food
9 and Agriculture the premium list and those other documents for said fair, which said list and
10 presentation hereof has constituted or shall constitute an application on the part of County to the
11 Department of Food and Agriculture of the State of California, for the apportionment, if such has
12 not heretofore been made, for the disbursement to County of monies from the State of California,
13 Fairs and Expositions Fund of the full amount as by law allowed.

14 3. Association will pay all premiums awarded by the judges at said fair, subject to the prior
15 approval of the premium list by the Department of Food and Agriculture and the necessary
16 apportionment and disbursement of the required funds by the State of California provided:

17 A. That all premium awards are made in accordance with a published premium list,
18 approved by the Department of Food and Agriculture as aforesaid, and applicable rules and
19 regulations of the Department of Food and Agriculture; and

20 B. That certification of the awards of said premiums by said judges has been duly
21 and regularly made and presented to County.

22 4. County will and does hereby constitute and appoint Association as agent of County
23 pursuant to Government Code section 25906 for the following purposes: To manage, use and
24 possess and to operate and conduct said fair, fairgrounds property and fairgrounds activities for the
25 term of this Agreement, under the by-laws in force and effect on the date of this contract as indicated
26 in Exhibit "A". The term of this Agreement shall commence the date first set forth above, and shall
27 run through June 30, 2010, at which time it shall expire, unless extended pursuant to the terms of
28 this Paragraph. Commencing April 1, 2006, and each April 1st thereafter (the "Renewal Date")

1 during the term of this Agreement, the term of this Agreement shall be extended automatically,
2 without action of the parties, for a period of one (1) beyond its then current expiration date, unless,
3 prior to any Renewal Date, either party to this Agreement gives written notice to the other of its
4 intent not to renew this Agreement. In the event such notice is given prior to any Renewal Date, then
5 the term of the Agreement shall not be extended upon that or any subsequent Renewal Date and the
6 Agreement shall expire at the end of its then remaining term, it being the intent of the parties that
7 notice of nonrenewal be given not less than four (4) years prior to expiration of the Agreement.

8 5. Association will, subject to the laws of the State of California and County ordinances,
9 rules and regulations, use and possess said fair and fairgrounds, and operate and conduct said fair
10 and other activities within the limits and provisions of this Agreement to the end that said fair and
11 other activities shall be conducted in accordance with the highest and best standards for the benefit
12 of County and the State of California.

13 6. The real property known as the fairgrounds subject to this Agreement consists of APN
14 Nos. 152-240-11, 352-240-12, 352-280-02 and 352-280-04.

15 7. Association agrees to bear, assume, pay and discharge all expenses and obligations
16 incurred by it in connection with said fair from the funds provided to Association by County.

17 8. County shall pay to Association such sums as have been or may be appropriated by the
18 State Department of Food and Agriculture to County from the Fairs and Expositions Fund of the
19 State of California for the purpose of said fair and fairgrounds. County is not obligated to provide
20 general fund monies for any activity contemplated by this Agreement.

21 9. Claims of any type made against Association shall be deemed to be claims against County.
22 Association agrees that upon receipt of any document which purports to be a claim, it will forthwith
23 forward such documents to the office of the clerk of the Board of Supervisors.

24 10. County agrees to defend and indemnify Association, its officers and employees against
25 any claims made against such persons for personal injuries or property damage resulting from the
26 negligence or willful misconduct of such persons occurring in the course of official duties.
27 Association, its officers and employees shall cooperate in the defense of any action against County.

28 As part of its annual budget, the Board of Supervisors shall determine a direct services charge

1 for Association which will reimburse County for its costs of such general liability risks of loss as
2 arise from operation of the County Fair. By March 1 each year, County shall notify Association in
3 writing of the amount of this charge. County shall compute and determine the amount of this charge
4 using the same computational methods as it employs to develop and budget similar internal charges
5 for the other departments of County Government. Association shall pay this charge in October of
6 each year, or in the month immediately following adoption of County's final budget.

7 11. It is understood that at this time vehicles used by Association in connection with official
8 duties are registered with the Department of Motor Vehicles in the name of Association. County
9 agrees that it shall defend and indemnify Association, its officers and employees resulting from
10 injuries to persons and property as the result of the negligence of willful misconduct of such persons.

11 Property damage to Association vehicles, whether caused by third persons or otherwise, shall
12 be the sole responsibility of Association. By mutual agreement with County, Association may
13 transfer title to such vehicles to County for management within County's fleet management program.
14 In that event only, Association shall remit to County the mileage based internal charges applicable
15 to the County departments. Fleet managed vehicles are replaced or repaired at County expense when
16 depreciated or damaged.

17 12. The buildings, tenant improvements and all other fixed assets on the fairgrounds are
18 property of County, and shall be financially protected against sudden and accidental loss or damage
19 to the same extent as County insures or self-insures against these same risks of loss to other County
20 owned properties and assets.

21 As part of its annual budget, the Board of Supervisors shall determine a direct service charge
22 for Association that will reimburse County for its costs of such risk of property losses. By March
23 1 each year, County shall notify Association in writing of the amount of this charge. County shall
24 compute and determine the amount of this charge using the same computational methods as it
25 employs to develop and budget similar internal charges for the other departments of County
26 government. Association shall pay this charge in October of each year or in the month immediately
27 following adoption of County's final budget.

28 13. Association will implement such loss control policies and procedures and keep records

1 appropriate to the operations and management of the fairgrounds as are properly required of County
2 departments. At least once annually association officer shall meet with County officers to review
3 these policies and procedures.

4 14. In connection with any fair functions or fair sponsored function, Association shall require
5 all concessionaires and sublessees to provide appropriate insurance and indemnity agreements to
6 indemnify County and Association from any and all liability or loss due to negligent acts or willful
7 misconduct of the concessionaires or sublessees. Risk Management shall provide to Association an
8 annual schedule of all required insurance parameters with respect to type of coverage. County
9 Counsel will provide the required indemnity language.

10 15. Association will accurately make and keep all records substantially in agreement with
11 the accounting and procedures as illustrated in the FAIRS ADMINISTRATION MANUAL, issued
12 by the Department of Food and Agriculture, Division of Fairs and Expositions, of all its transactions
13 as an agent hereunder, and will, among other things, require and procure serially numbered receipts
14 for any and all money received and detailed itemized invoices or other supporting documents for any
15 and all money disbursed or expended by Association in connection with its executive management
16 and control of said fair and fairgrounds. Association hereby agrees that all books, records and
17 documents pertaining to said management and control shall be subject to examination by the State
18 Department of Food and Agriculture and that all such books, records and documents shall be
19 preserved by Association and remain public records.

20 16. Association shall retain and use all monies received by it from the conducting of said
21 fair, and from the use, possession and management of said fair, and from the use, possession and
22 management of fairgrounds, and shall pay therefrom all expenses incurred in connection with both.
23 Association shall carry out all provisions of law relating to county fairs. In accordance with
24 Government Code section 25906, Association agrees that an annual budget shall be submitted by it
25 to and approved by the Department of Food and Agriculture after approval by the County Board of
26 Supervisors, showing the estimated revenues and the proposed expenditures from all sources during
27 the ensuing calendar year, and no funds shall be expended by such Association except pursuant to
28 such budget.

1 17. Association agrees to file with the clerk of the Board of Supervisors of County, and with
2 the Department of Food and Agriculture, a certified copy of the minutes of each meeting of the
3 Board of Directors of Association within twenty (20) business days after each meeting.

4 18. Association agrees to include and maintain within the text of its governing by-laws
5 provision for the establishment and reservation of County directorships, upon its governing board
6 of directors, which shall be five (5) in number.

7 19. County agrees that, in the matter of selecting its nominees for service on Association's
8 governing board, it will follow the criteria contained within Association's current by-laws wherein
9 the qualification of directors is set forth.

10 20. It is mutually agreed that County hereby delegates to Association the matter of hiring,
11 terms of employment, discharge and all other personnel matters and shall be employees of
12 Association. Such employees of Association shall not be members of the classified service of
13 County and shall not be listed in the County Authorized Personnel Allocation Resolution. However,
14 such employees shall be treated as County employees for the purpose of membership in CALPERS
15 retirement programs as allowed by law. County agrees to provide, and Association agrees to pay for,
16 the following employee benefits:

17 A. Workers' Compensation as required by statutes of the State of California, through
18 County's Workers' Compensation Program.

19 B. The same health benefits as provided to County employees, through County's
20 program, pursuant to the currently in force Memorandum of Understanding with the recognized
21 employee organization representing the General, Professional and Supervisory Bargaining Units,
22 excluding any benefits under the county's retiree health defined contribution plan.

23 C. Unemployment Insurance as required by statutes of the State of California.

24 D. Payment of payroll taxes due for participation in the Medicare portion of Social
25 Security as required by federal law.

26 E. Long Term Disability and Life Insurance as provided to County employees
27 pursuant to the currently in force Memorandum of Understanding with the recognized employee
28 organization representing the General, Professional and Supervisory Units.

1 F. County's Employee Assistance Program as provided to County employees
2 pursuant to the currently in force Memorandum of Understanding with the recognized employee
3 organization representing the General, Professional and Supervisory Bargaining Units.

4 As part of its annual budget, the Board of Supervisors shall determine a direct service charge
5 for Association which will reimburse County for its costs of such workers' compensation risks of
6 loss as arise on account of Association's employees. By March 1 each year, County shall notify
7 Association in writing of the amount of this charge. County shall compute and determine the amount
8 of this charge using the same computational methods as it employs to develop and budget similar
9 internal charges for the other departments of County government. Association shall pay this charge
10 in October of each year, or in the month immediately following adoption of County's final budget.

11 The Board of Supervisors shall from time to time establish the rates per pay period for the
12 cost of County sponsored health benefits. Association agrees to pay County at this established rate,
13 each pay period, for health benefits on the same basis as a County department.

14 As part of its annual budget, the Board of Supervisors shall determine a direct service charge
15 for Association which will reimburse County for its costs to provide the life insurance, long term
16 disability insurance and employee assistance programs specified above. County shall compute and
17 determine the amount of this charge using the same computational methods as it employs to develop
18 and budget similar internal charges for the other departments of County government. Association
19 shall pay this charge to County quarterly each year.

20 It is agreed that as to employees, the type and level of employee benefits, other than those
21 required by law, may be established by the Association board of directors.

22 21. As part of its annual budget, the Board of Supervisors shall determine a direct service
23 charge for Association which will reimburse County for its costs for PERS retirement by May 1 of
24 each year. County shall notify Association of the PERS cost for the following fiscal year.

25 22. That Association agrees that all routine contracts which it executes, including but not
26 limited to, exhibit space, concession services and non-fair usage shall have the approval of a quorum
27 of the Board of Directors of Association and shall be recorded in the minutes of the meeting.

28 23. Association and County agree that with respect to the commitment or expenditures of

1 any funds allocated by an executive order of the State Department of Food and Agriculture pursuant
2 to section 19630 of the Business and Professions Code, which provides regulations for the
3 expenditure of state monies in support of capital improvement projects at fairs, the regular County
4 procedure with respect to purchases and contracts must be followed.

5 24. It is mutually agreed that the solicitation, selection, supervision and any other
6 employment related matters of the County Fair employees shall be the sole responsibility of
7 Association, following such rules, agreements and policies established by Association.
8 Remuneration for employees shall be set by Association.

9 25. The criteria for the establishment of the number and categories of employees and degrees
10 of remuneration shall be in strict accord with the then-current state approved Association budget,
11 wherein authorized personnel requirements are outlined. The criterion for job descriptions of all
12 Association employees shall be in accord with those outlined by the State Personnel Board, which
13 recognizes the special category of "Fairgrounds Employees" within the state's system.

14 26. This Agreement shall be without force or effect unless it is approved by the State
15 Department of Food and Agriculture.

16 27. Association agrees to provide County with a complete cash audit of its operations under
17 this Agreement if during the term of this Agreement, the State of California fails to perform such an
18 audit.

19 28. The El Dorado County Fair Association Board of Directors shall annually, on or before
20 March 1, and in conjunction with its budget review, submit to County in writing a general briefing
21 and program review including a five (5) year plan projection.

22 29. That County Counsel be designed as legal advisor on an "as needed" basis for the Board
23 of Directors, and only to the extent that County Counsel determines there is no conflict of interest
24 between County and Association.

25 30. If any provision of this Agreement, or part thereof, is for any reason held to be invalid,
26 the remaining sections shall not be affected but shall remain in full force and effect and to this end,
27 the provisions of this Agreement are severable.

28 31. This Agreement supersedes and replaces that agreement entered into by the County and

1 the Association for the same purposes, the term of which was January 1, 2005 through June 30,
2 2005.

3 IN WITNESS WHEREOF, County has, by order of the Board of Supervisors, caused these
4 presents to be subscribed by the Chairman of the Board and to be attested by the clerk of the Board,
5 and Association has duly caused these presents to be subscribed by its duly authorized officers who
6 have affixed the corporation seal of Association hereof, the day, month and year written below.

7 Dated:

COUNTY OF EL DORADO

8
9 By

Charlie Paine

Chairman, Board of Supervisors 3/29/05

10 ATTEST:

11 CINDY KECK, Clerk of the
12 Board of Supervisors

13 By

Cindy Keck
Deputy Clerk 3/29/05

14
15 Dated:

4/5/05

EL DORADO COUNTY FAIR ASSOCIATION

16
17 By

Walter S. May
President

18
19 By

Jacqueline May
Secretary-Manager

20 Per paragraph __, this Agreement is approved:

21 Dated:

DEPT. OF FOOD AND AGRICULTURE,
Division of Fairs and Expositions

22
23 By

Michael L. King
Assistant Director

24 LBG/km

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