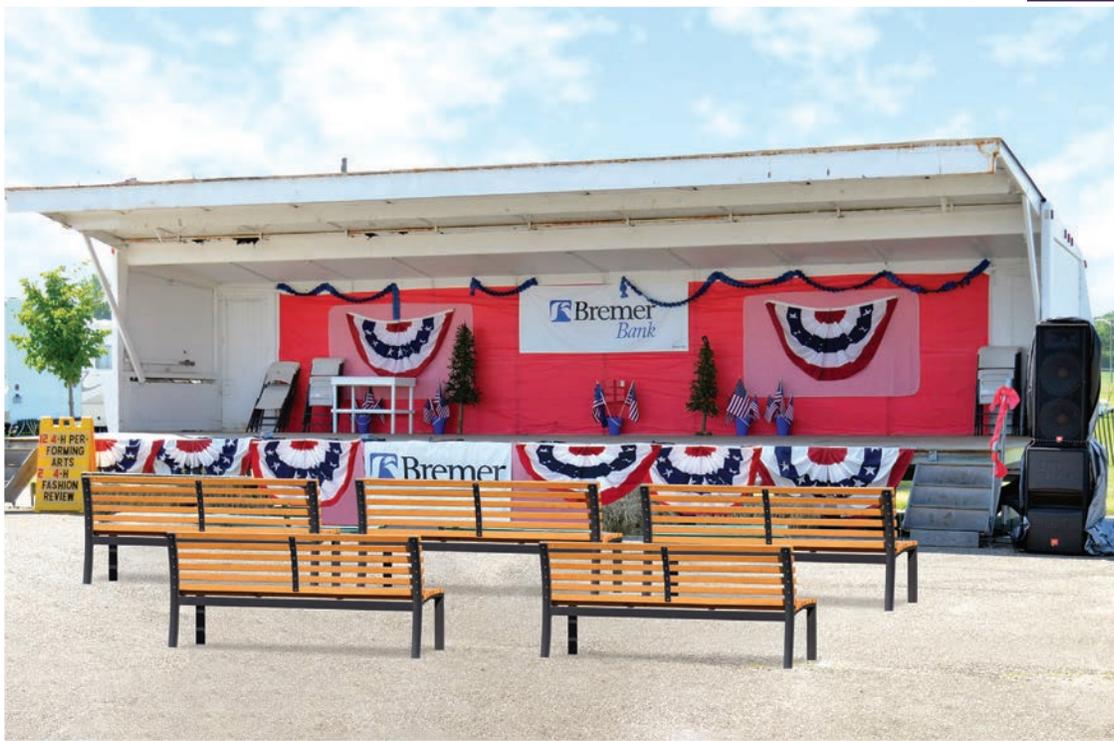


FACILITY USE AND LEASE AGREEMENTS

From a family picnic or a regional fundraiser to an all-terrain vehicle race, requests to use fair facilities come from all kinds of groups and individuals, and this use of fairgrounds and buildings are key revenue sources. Careful supervision and attention to risk management are essential to smooth operation and administration. Agreement review before an event prevents aggravation later.



FACILITY USE AND LEASE AGREEMENTS



The range and types of activities and groups that use fairgrounds vary widely. Some activities, such as those involving alcohol or high-risk activities, may not be well-suited for all fairgrounds. To ensure that only compatible activities take place, the agricultural society should develop policies and procedures for reserving and renting fair facilities to the public.

Having such policies and procedures minimizes potential legal and political problems regarding what types of groups may rent facilities and the parameters of that use.

Prior to drafting policies, identify certain basic information:

- What types of groups want to use fair facilities?
 - What activities are planned?
 - Are there certain activities incompatible with current fair operations and/or facilities?
 - What types of activities will necessitate special services (parking, traffic control, law enforcement, security, sanitation, etc.)?
- Would certain activities require that additional approval be obtained by the applicant, such as permits, special events insurance, liquor liability coverage (if allowing alcohol)?
 - For rental of buildings and shelters, what requirements regarding cleaning, food handling, etc. are prudent?
 - In what manner will requests be processed, e.g., first come, first served; lottery; special application?
 - How will the organization ensure no area is double booked?
 - Who in the organization has authority to approve requests and be responsible for ensuring compliance with agricultural society policies?
 - How will fairgrounds/facility rules be communicated and enforced?

The organization should formally adopt all policies. Train board members, employees and volunteers about these policies and make them available to the public upon request.

FACILITY REQUEST PROCEDURES

When a request for use of a facility is received, determine the appropriate process. Consider:

- Reservations
- Applications
- Fees
- Staffing—before, during and after (staffing may affect whether a request can be approved)

Application

An application process allows an entity to identify expectations, rules and requirements; and to communicate those to the individual or group requesting use of facilities. It ensures that groups conduct activities consistent with leased fair facility guidelines.

Details, such as any insurance requirements, alcohol prohibition, catering requirements or fees (rental or security deposits), should be outlined in the application. Providing information up front makes sure that lessees know the financial costs and/or



Periodically review request procedures to ensure that they are current with facility capabilities and are equally applied to all applicants.

requirements before signing an agreement and allows them to determine whether the fair facility meets their needs.

Written Agreement

Once the application is accepted, consider putting the terms and conditions of facility use into a written agreement. A written facility use agreement is a legally binding document that establishes the purpose, date, time and cost for the facility use. In addition, the

agreement should outline the procedures to follow, should the facility become unusable as planned for the event or activity.

The agreement also establishes the rules and articulates any other requirements and limitations of the use. For example, no alcohol may be served without liquor liability coverage, no music past 10 p.m., etc. The agreement should include the following details, depending on the circumstances:

- Parties involved
- Scope of use
- Limits on use (e.g., the maximum number of people)
- Restrictions on use (e.g., illegal, loud or disruptive behavior; pets; alcohol; etc.)
- Maintenance/clean up requirements
- Specific timeframe for using facilities

- Deposit, rental amount and any fees, and establish when they are due
- Insurance requirements (require a certificate of insurance)
- Defense, hold harmless and indemnification clause

In the agreement, address issues such as advertising on the fairgrounds; alterations, decorations and damage; additional users; and consequences for violation of agricultural society rules or local laws. Include fairgrounds rules and a general clause whereby the lessee agrees to be responsible for all misconduct or damage caused by his or her guests.

With any agreement, ensure that parties entering into it have such authority. Have all agreements reviewed and approved by the agricultural society's legal counsel prior to implementation.

EVENT PREPARATION

Prior to rental, fairgrounds staff should plan for the following:

- Any staffing that may be required or beneficial
- Extra resources to have on hand, such as law enforcement, fire or ambulance
- Parking or traffic control arrangements
- First aid
- Responsibility for cleanup
- Inspections—before and after
- Signage—dos and don'ts
- Evaluations
- Repairs—before and after
- Completion of required written documentation



Fairgrounds staff should consider all the variables prior to rental.



MAINTENANCE

When someone leases facilities on the fairgrounds, he or she expects them to be well-maintained. Meeting this expectation requires that facilities be regularly inspected and problems remedied in a timely manner. Regular maintenance ensures a longer useful life for facilities than for those that are neglected.

In addition, establish a log to record any accidents and/or damage that occurs on the property. Inspect any known dangers and take action to resolve them.

Good maintenance programs are scheduled so as not to be overlooked. It is vital to keep records of the inspection and maintenance performed.



Regularly scheduled inspections and maintenance of fairground facilities help extend their useful life.

OFF-SEASON STORAGE

An off-season storage program is a specialized facility use. This practice has a potential exposure to loss: responsibility for damage to the stored property.

The liability section of the MCIT Coverage Document contains the garagekeepers comprehensive coverage endorsement. This endorsement provides protection when it is determined that the member is legally liable for damages to an auto (land motor vehicle, trailer or boat) left in the member's care (i.e., attending, parking or storing).

Garagekeepers comprehensive coverage is excess coverage to any other insurance on the auto; therefore, the owner should maintain the primary insurance coverage and continue coverage while storing the vehicle.

When an agricultural society or member is legally obligated (determined to be negligent), the garagekeepers endorsement only covers comprehensive damage to an auto stored on county or agricultural society property. Typical comprehensive losses include fire, wind, hail, vandalism and theft while commonly stored on the fairgrounds.

The endorsement specifies that comprehensive coverage does not include damage caused by flood or earthquake, collision or overturn of the auto.



Using vacant space to store personal property of others, such as boats, RVs, trailers and campers, is often a revenue source.

Therefore, agricultural society staff/volunteers should not drive any of these autos. Organizations should obtain permission to move the auto at the owner's risk when it is necessary to operate the vehicle.

The limit of coverage under MCIT's garagekeepers endorsement is \$100,000, subject to a \$1,000 deductible. This is the maximum amount available for any one loss, regardless of the number of autos damaged in the occurrence.

Note: The endorsement does not apply to contractual obligations assumed by the member. Specifically, there is no coverage for liability resulting from any agreement by which the agricultural society accepts responsibility for loss. MCIT recommends that

members not enter into any agreement that would require primary coverage for an auto that is in their care, as MCIT's garagekeepers coverage is provided only on an excess basis.

Exposures for Storage and Parking

When storing personal property of others on the fairgrounds, exposures to loss include such situations where the member could be found negligent. This might be due to a fire as a result of the member's negligence or a roof collapse because the member did not clear snow buildup from the roof.

These situations could potentially result in damage to multiple autos. Depending on the circumstances, the

agricultural society could be held legally responsible for the items stored in the building.

For stored autos, members should:

- Use a rental agreement with a waiver of liability when renting space to others. The rental agreement should contain a waiver that excuses the agricultural society in advance for any fault or damage to property.
- Not agree to a contractual obligation that accepts responsibility for loss.
- Keep storage buildings locked and secure.
- Inspect and maintain storage buildings, paying special attention to fire hazards and excess snow accumulation on building roofs.

COLLECTING DATA

When renting or leasing fairground facilities for others' use, the agricultural society collects information from the public. It is important to remember that all data collected is considered government data and needs to be treated consistent with the entity's policies and procedures, the records retention schedule and the Minnesota Government Data Practices Act. *See Chapter 1, Governance for more about MGDPA.*

To ensure compliance with the rules and regulations, the agricultural society should review the types of data collected and determine what is public and not public. The organization should assess these requirements with legal counsel or the entity's responsible authority. Consider:

- What data is needed?



The collection and storage of data from the public should comply with government rules and regulations.

- What is the classification of the data?
- What are the limitations on use of the data?
- Where is the data stored? Is the information secured?

Resources

The following articles are available at MCIT.org and provide additional information:

- "Red Flags in Contracts: Coverage, Exclusions and Risk Management"
- "Certificate of Insurance"

