



CITY COUNCIL AGENDA REPORT

MEETING DATE: MAY 4, 2010

ITEM NUMBER: IX-2

SUBJECT: STATUS REPORT ON POTENTIAL ACQUISITION OF THE ORANGE COUNTY FAIRGROUNDS

DATE: MAY 2, 2010

FROM: CITY MANAGER'S DEPARTMENT, CITY ATTORNEY'S OFFICE

PRESENTATION ALLAN L. ROEDER, CITY MANAGER

BY:

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CONTACT:

Special Note: Because various aspects of this report were still the subject of intense negotiations as late as the close of business on April 30, 2010, routine preparation and submittal of this agenda report was delayed. Our sincere apologies for the delay which was necessary to provide the City Council and the public the information contained herein.

DISCUSSION:

Almost one year ago, the Governor announced his intention to sell State assets including the OC Fair & Event Center (OCFEC) to address State budget deficits. In July 2009 as part of the authorizing legislation adopting the State budget, ABX4 22 was approved which authorized the sale. The State conducted a bid process for sale of the property beginning October 2009 and concluding in early January 2010. The bid process was followed by an auction among those bidding for the property. Ultimately, the highest offering at auction was rejected by the State in March of this year.

The City of Costa Mesa supported the "Stop the Sale" effort and widely communicated its commitment to preserve the OC Fair & Event Center. The City Council adopted refined General Plan language to strengthen the Orange County Fairgrounds' designation and approved a ballot initiative that requires the public to vote on any future land use changes to the property. The initiative measure will appear before Costa Mesa voters in June 2010. Finally, the City actively supported Assembly Members Tran and Solorio in the form of Assembly Bill 1590 to rescind the budget authorization to sell the OCFEC.

Following the formal bid submission and the auction, the City initiated contacts with the State Department of General Services (DGS) and the Governor's Office in an effort to explore options to sale of the property. After a considerable effort to engage the State, the City submitted a request for the right to exclusive negotiations for public acquisition

of the property. The Governor's Office ultimately granted the City's request, but limited the exclusive negotiations to no more than 30 days. The Governor also stipulated the selling price (\$96 million) and the required time in which escrow must close (October 2010).

Given the above constraints, the City moved forward on multiple, concurrent fronts. These include but were not limited to:

1. Preparation of proposed Terms & Conditions for the Sale & Purchase Agreement;
2. Legal research regarding options and authorities for City purchase of the OCFEC;
3. Detailed review of OCFEC finances, lease commitments, capital investment and operating expenses;
4. Review of options to acquire the property without financial obligation or risk to Costa Mesa residents; and
5. Solicitation of private sector proposals to operate the OCFEC on a contract basis.

The preceding tasks were completed in a timely fashion for submission to the Governor's Office on April 21, 2010. To date, the proposal has been well received at the State level although there has been no written confirmation to proceed further as of this date. The proposal included a draft Sales & Purchase Agreement; written proposals from four private sector parties and one public sector entity expressing an interest in working with the City towards acquisition of the OCFEC; a legal opinion regarding the constitutional limitations as to the method of acquisition of the property by the City and a draft agreement to extend the exclusive negotiations.

While the preceding was accomplished in an extremely short period of time, it was done so without the benefit of applying standards which the City would normally require of any such transaction, especially an acquisition of this magnitude. Before addressing further the current status of negotiations, it is important to make note of the key impacts of the State's extremely short timeframe on this effort.

- **Request for Proposals**

Under normal conditions, the City would follow a process of drafting a detailed Request for Proposals (RFP) for a private sector operator for the OCFEC. Typically, this would involve a very detailed RFP, distribution State-wide or nationally (given the size and complexity of the OCFEC), evaluation of the submittals to the RFP, interviews with the private sector operators, identification of the highest rated proposal followed by negotiations for a lease or site management contract. Under ideal circumstances, the preceding could be expected to take a minimum of 6 months.

Because of the very short deadlines placed on the City by the State, the City opted to contact those firms that previously had submitted bids to the State for purchase of the property. This is not standard practice and while the firms submitting proposals to the State did follow a lengthy formal process, the process was designed for sale of the property and not for operation of the OCFEC. Despite the limitation created by the State's deadline, the City was successful in obtaining four private sector proposals.

- **Due Diligence**

The City is legally obligated to conduct its due diligence as it pertains to the condition of the OCFEC. This involves a very close review of the condition of the structures and improvements on the property, adequacy and physical condition of utilities serving the site, examination for any hazardous materials, Phase I Environmental Review of the site and required CEQA review.

While the City has received a considerable amount of documentation relative to the physical condition of the property, it has not completed the above steps as yet. Based on information received to date, the City does not have any reason to believe that subsequent studies and analysis of site conditions will impact any purchase proposal. However, those possibilities exist and all of the preceding steps and those others required for the City to complete its due diligence will be completed in advance of close of escrow.

OWNERSHIP & FINANCING STRATEGY:

There has been a good deal of questions as to how the City can submit a viable proposal to the State to acquire the OCFEC in these very difficult economic times. Those questions are legitimate and are at the heart of one of the principles put forth by the City Council in its effort to preserve the OCFEC. Specifically, the City Council has committed “to purchase the OCFEC without utilizing Costa Mesa public funds or putting Costa Mesa taxpayers at risk.” In order for this to be accomplished, it is necessary for the City to identify private sector businesses to operate the OCFEC on a long-term lease arrangement satisfactory to meet debt service for the purchase.

The attached diagram (see Exhibit A) is a very simplified explanation of the process the City is seeking to complete. It involves the sale of the OCFEC by the State to the City in an amount of \$96 million. The State has committed to an all cash transaction or will finance the sale with a 30 to 40-year note. Concurrent with the purchase of the property from the State, the City would establish a separate public entity to oversee the OCFEC, assume all legal obligations on behalf of the City, be subject to all open meeting laws and contract for private operation of the OCFEC. The separate public entity will most likely be a Joint Exercise of Powers Authority (JPA), but that has not been determined at this time nor has the composition of its Board or Advisors. The separate public entity would then enter into a long term lease agreement for operation of the OCFEC, the terms of which would require the operator to guarantee debt service. The terms of the guarantee are to be negotiated but under no circumstance will the City be obligated for any debt service payments.

Given the need for a private sector operator to successfully manage the site under mutually agreeable terms & conditions, the City pursued discussions with the four private entities that expressed interest during the 30-day exclusive negotiating period. Those four entities (Craig Realty; American Fairs and Festivals, Inc.; Advanced Real Estate Services, Inc. and Facilities Management West, Inc.) responded to the City’s RFP. Ultimately, their proposals were submitted to the Governor as an indication of the level of interest in the private sector for cooperation with the City in the acquisition. At the April 21, 2010 meeting with the Governor’s Office, the City was advised verbally that if negotiations were to continue, it would have 30 days additional to make a decision

regarding the future operator and have the terms of its agreement with the operator substantially complete.

Accordingly, the City followed up with each of the submitting firms including the solicitation of questions to a number of specific details regarding the OCFEC operations, financial capacity, ownership, preservation of key elements of the OCFEC and related details. This was followed by a series of interviews with the firms making proposals to the City. Ultimately, Craig Realty chose not to continue further with the City. Advanced Real Estate Services went into partnership with American Fairs and Festivals and Facilities Management West has continued its interest. Both Facilities Management West and American Fairs and Festivals/Advance Real Estate Services have been invited to make brief (15 minute) presentations at the City Council meeting as an overview of their proposals. American Fairs and Festivals/Advance Real Estate Services has accepted the offer while Facilities West Management declined to make a presentation but has submitted the attached letter (see Exhibit B).

CONCLUSION:

Due to circumstances outside the control of the City of Costa Mesa, the process depicted in the preceding has been undertaken in an extremely short period of time. Because of the unique nature of the transaction (combining purchase of the property and retention of the Annual Fair and related aspects of the OCFEC), the City has had to establish much of the process along the way. While not desirable and an impediment to the preferred, more thoughtful, inclusive process, the only option would be for the City to withdraws its efforts and allow the State to proceed with sale of the property through a pending RFP.

Allan L. Roeder
City Manager

Attachments: Exhibit A [City Process Explanation Diagram](#)
 Exhibit B [Letter from Facilities West Management](#)

Distribution: City Attorney
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