CITY COUNCIL AGENDA REPORT

MEETING DATE: MAY 10, 2010 **ITEM NUMBER:**

SUBJECT: **ORANGE COUNTY FAIRGROUNDS/PRIVATE OPERATOR PROPOSALS**

DATE: **MAY 10, 2010**

FROM: **ALLAN L. ROEDER, CITY MANAGER**

PRESENTATION BY: **ALLAN L. ROEDER, CITY MANAGER**

FOR FURTHER INFORMATION CONTACT: **Allan L. Roeder at (714) 754-5328**

RECOMMENDATIONS:

1. Approve the Negotiating Team's recommended ranking, as follows:

   (1) American Fairs and Festivals, Inc/Advance Real Estate Services
   (2) Facilities Management West, Inc.; and

2. Authorize exclusive negotiations with American Fairs and Festivals, Inc/Advance Real Estate Services

DISCUSSION:

At the regular City Council meeting of May 4, 2010, the City Council and the public received two proposals from private firms interested in operating the Orange County Fair and Event Center (OCFEC). One proposal (Facilities Management West) offered private ownership of the site with negotiated provisions for public/community elements within the 150 acre property. The other proposal (American Fairs and Festivals/Advance Real Estate Services) proposed municipal ownership of the property with private operation through a partnership of current businesses operating at the OCFEC.

Following the May 4th City Council meeting, the Negotiating Team (including Council Members Foley and Monahan, City Attorney Barlow, Project Manager Findley, Financial Advisor Head of Keyser Marston, Inc., City Manager Roeder and Advisors Righeimer, Ball and Kapko) met to critically evaluate the proposals. The group met on Saturday May 8, 2010 to review the materials submitted to date as well as reports prepared previously by the City Attorney and Keyser Marston. The focus of the meeting was to determine a ranking of the two proposals submitted and whether a recommendation could be made to the full City Council to enter into formal negotiations with the top ranked proposer.

The City Council is under no obligation to go forward with either of the proposals submitted. However, a decision not to go forward with either proposal will effectively remove the City from any further exclusive negotiations with the State. Should this occur, it is expected that the State will issue a new Request for Proposals (which will most likely include a minimum bid of $96 million) to sell the property to the highest bidder

Based on direction from the Governor's Office, the City has until May 21, 2010 to submit that it has selected a private concern to operate the OCFEC that demonstrates the financially capability to meet the State's $96 million selling price for the property. It is with this deadline in mind that the City scheduled a Special Meeting for May 10, 2010 to consider selection of a private operator with whom the City would enter into exclusive negotiations at this time.

Following the extensive discussion of the Negotiating Team on May 8th, the consensus opinion was to recommend that American Fairs and Festivals/Advance Real Estate Services be identified as the top ranked proposal followed by Facilities Management West as the second ranked proposal. This recommendation is based on the principals put forth by the City for the negotiations with the State for sale of the property. A significant factor in forming this recommendation was American Fairs and Festivals/ Advance Real Estate Services commitment to continued public ownership of the OCFEC. Under it's proposal, American Fairs and Festivals/ Advance Real Estate Services commits to ground lease the OCFEC from a Joint Powers Agency (to be established by the City) and obligate itself to 100% of the debt service for purchase of the property. The City will hold title to the property.

A key condition to recommending American Fairs and Festivals/ Advance Real Estate Services was its ability to come to agreement with the State for financing of the purchase. Because American Fairs and Festivals/Advance Real Estate Services expressed its desire to secure financing through the State, the Negotiating Team believed it was imperative that the financing be confirmed in advance of any recommendation in support of exclusive negotiations with the City. Discussions on the subject between American Fairs and Festivals/ Advance Real Estate Services and the State have taken place over the past 7 to 10 days. The City requested written confirmation earlier today from the Governor's Office regarding the State's willingness to accept the terms put forth by American Fairs and Festivals/ Advance Real Estate Services. A copy of the City's request is attached as Exhibit A.

There were other factors beyond public ownership that support the Negotiating Team's recommendation in support of American Fairs and Festivals/ Advance Real Estate Services top ranking:

- Continuity in the operation of the OCFEC consistent with its historical use;
- Continuing opportunity for the City and the public to participate in oversight and advisement regarding the OCFEC;
- Expressed willingness to transition a "to be determined" number of OCFEC personnel to the private sector operation of the facility; and
- Balanced presentation for both profit and non-profit, public use of the OCFEC.

As noted previously, the proposal by Facilities Management West calls for private ownership of the property with negotiated public/community elements within the site.

The operator submitted a refined proposal received earlier today (see Exhibit B) that more clearly addresses questions of community use, public ownership, operation expertise and related topics. This proposal also incorporates a new concept put forth by Facilities Management West that would allow the City to acquire the property in the future should it so desire under a "to be established" formula for establishing property value.

While ranked second by the Negotiating Team, Facilities Management West did offer a solid proposal with committed private financing for the purchase. The offer does not put the City at financial risk and Facilities Management West commits to operate the OCFEC in full compliance with the proposed land use initiative (Measure C) on the June ballot. While limited in terms of specifics as to the future operation of the OCFEC, Facilities Management West does commit to contract with Comcast-Spectacor as the site operator. Comcast-Spectacor has extensive experience in operating entertainment venues, fairgrounds, convention centers and arena across the Country. Its subsidiary, Ovations Fanfare, presently provides food and beverage service at the OCFEC.

CONCLUSION:

Given the extremely short timeframe provided to accomplish all of the tasks required to get to the point of formal negotiations, the City is fortunate to even be in a position of negotiating the future of the OCFEC. Both American Fairs and Festivals/ Advance Real Estate Services and Facilities Management West have put an extensive amount of time and effort into their proposals. If not for their efforts, the City might likely not be in the position to shape the future of the OCFEC beyond its land use authorities.

Attachments:	Exhibit A	Letter of Request to Governor
	Exhibit B	Facilities Management West – Current Proposal

c. City Attorney
Project Manager
Financial Advisor
Negotiation Advisors

Allan L. Roeder
City Manager

CITY OF COSTA MESA

P.O. BOX 1200, CALIFORNIA 92628-1200

FROM THE OFFICE OF THE CITY MANAGER

May 10, 2010

Mr. Fred Aguiar
Mr. John G. Cruz
Office of the Governor
State Capitol
Sacramento, California 95814

Mr. Aguiar and Mr. Cruz:

First of all, thank you for the opportunity of allowing the City of Costa Mesa additional time to identify a private sector company to manage the Orange County Fair and Event Center property and solidify a finance option that makes sense to all the impacted parties. Since our meeting with the two of you on April 21, 20010, we at the City have reached out to the logical interested entities in regards to this effort. We have narrowed the field to two companies who have a strong interest in moving forward under terms that are within the spirit of the State's and City's outlined conditions. We are now looking for the State's guidance in terms of the finance options proposed by one of the finalist.

The City of Costa Mesa is prepared this afternoon to make a decision on the selection of a private sector company to move this process forward. If the City selects American Fairs, it will do so with the understanding that the note will be signed by American Fairs and Festivals. As you know, the City's debt limitation prevents the City from being liable under the note. Therefore, American Fairs would be assuming 100% of the financial responsibility under the proposed financing and the City of Costa Mesa can in no way be obligated for servicing debt on the note. The note will be secured by a deed of trust on the Fairgrounds property. **Consequently, we will need to have affirmed for us in writing the State's acceptance of the following before 4:00 p.m. today.** Prior to making this decision, the City is asking that the State review the financing terms being proposed by this particular finalist (American Fairs and Festivals, Inc.). The following is a summary of their proposal for your review:

- Purchase Price - $96,000,000.00
- Note at 5% Interest per year with a beginning note balance of $96,000,000.00
- 20% down in the form of prepaid interest $19,200,000.00
- Note Amortized over 40 years
- Annual payments - $5,545,044.00

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These proposed terms provide the State with a greater return over the term of the loan and satisfies the objective of requiring a twenty percent (20%) cash payment at closing. For the City this proposal provides additional security because no interest payments will be required for a period of approximately four years. This allows the City and American Fairs additional time to stabilize the business operations of the Fairgrounds while allowing for the creation of a reserve to set aside for future interest payments due under the Note.

As we committed to you last month, we are doing everything possible to make this effort successful for both the State and the City within the required timeframe. Please let me know if this proposal is acceptable to you before 4:00 p.m. today. Thanks for your cooperation in this matter.

Sincerely,

Allan L. Roeder
City Manager

FACILITIES MANAGEMENT WEST, INC.
190 Newport Center Drive, Ste. 100
Newport Beach, CA 92660
Telephone: (949)644-1860
Telecopier: (949)644-1142

May 10, 2010

The Honorable City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Honorable Council Members:

This communication responds with greater precision to several questions raised since our May 3 letter regarding our interest in purchasing and operating the Orange County Fair and Event Center (OCFEC).

WHAT ARE YOUR INTENTIONS/MOTIVATIONS?

We will continue operating the fair and related entertainment/educational/community activities as they exist today. Our commitment is to improve them for broader enjoyment, access, utilization and participation by the public, as well as for enhanced economic activity and new revenue they can generate for the city.

We are prepared to meet the state's purchase requirement. Additionally, we will commit new capital to improve the fair, its aging public facilities, areas which have considerable deferred maintenance issues, and the Pacific Amphitheater. The Orange County Market Place and Centennial Farm are significant community assets, and we want them to thrive.

IS THIS JUST A REAL ESTATE PLAY FOR NEW DEVELOPMENT AT THE FAIRGROUNDS?

No. Our focus and passion is to improve existing facilities. We absolutely have no development plans or intentions, beyond considering new facilities – like a new community conference center – that would augment and be complementary to existing uses. We understand that city general plan and zoning for the site require any new uses be compatible with fair and entertainment-related uses.

WHAT ABOUT COMMUNITY GROUPS THAT USE THE FAIR FACILITIES FOR MEETINGS AND EVENTS?

We are committed to retaining the many that exist such as the Orange County Marathon, Junior League Christmas Company, 4H, Girl Scouts, school district educational programs and the All American Boys Chorus – and encourage the city and other community groups to use

the facilities. We will expand and strengthen the OCFEC relationship with Orange Coast College.

DOESN'T THE CITY LOSE CONTROL UNDER YOUR PRIVATE OWNERSHIP PROPOSAL?

No. We believe the city can and will protect its considerable interests and most significant concerns through several mechanisms: General plan and zoning restrictions, binding covenants tied to the property, the permitting process, and contractual agreements negotiated with us. Additionally, our broad-based community advisory council will have an important role advising Facilities Management West on operating issues that may arise.

Further, we commit to give the city the OPTION TO PURCHASE the fair and event center from Facilities Management West in year 10, 20 or 30, subject to a mutually agreeable formula for assessing the value of the property at that time. This permits the city to assess the considerable influence we believe it will exert on maintaining the integrity of the fair and event center uses, and to measure the improvements in management, operations, maintenance and marketing that we envision. If the city reasonably believes their expectations have not been met, it has the option to reconsider municipal ownership. In a major way, this approach is further motivation for us to fulfill our pledge to operate in the public interest.

AS A FINANCIAL MATTER, WHY IS YOUR PROPOSAL SUPERIOR TO THE ONE ENVISIONED BY THE CITY?

Our proposal contains absolutely no municipal risk or required bureaucratic cost now or anytime in the future. It appears the city believes it can gain title and ownership of the fair grounds, and direct its operations, with no liability or expenditure of public funds through a complex financial structure. If an arrangement like this sounds too good to be true, it probably is. It is doubtful the city can legally shield itself – and thus its taxpayers – from the long-term risk of operating deficits (a historic reality), default by one or more of the private investors who would finance the city's purchase, or everyday lawsuits that arise from operating such a substantial operation. The Facilities Management West financing proposal envisions no legal involvement by the city, and therefore no risk, no financial contribution, no costs and no liability now or at any time in the future.

Further, our proposal involves the creation of a new revenue stream to the city from the operation of the fair grounds and related facilities. The more successful the OCFEC operations, the more beneficial it will be for the city.

HOW DO WE KNOW THAT YOU ARE FINACIALLY STRONG AND STABLE ENOUGH TO COMPLETE THIS TRANSATION?

We provided the city with evidence of our financial strength, and can complete the purchase in a cash transaction with the state, if it is required. The weakness of the American Fairs proposal is that it rests on a relatively small down payment and 30-40-year state financing.

If any of the participants default on their payments during the next three or four decades, the oversight organization – headed by the City of Costa Mesa, which holds title to the OCFEC – must step in or find an angel investor to make good on the obligation.

WHY DO YOU BELIEVE YOU CAN OPERATE THE FAIRGROUNDS BETTER THAN THE CITY IN PARTNERSHIP WITH AMERICAN FAIRS?

First, the city's talented staff has little or no experience or expertise running a fair or a large-scale, multi-venue entertainment center. American Fairs consists of the owner/operators of several substantial activities at the fair grounds, but likewise doesn't have experience managing or assuming overall operating responsibility for a comprehensive fair and entertainment facility. This currently is the responsibility of the fair board and staff.

Facilities Management West would retain the services of Comcast-Spectacor, a national organization with considerable experience in the management and operations of entertainment venues. Its subsidiaries include Ovations Fanfare, which has been providing food and beverage services at the Orange County Fair and Event Center since 1995. They provide similar services at more than 200 fairgrounds, event centers, amphitheaters, convention centers, stadiums, arenas and racetracks throughout the United States and Canada – including seven fairgrounds in California.

They have an excellent operational and business practices record at OCFEC, and their local knowledge will be invaluable to the management team.

Additionally, Comcast-Spectacor owns Global Spectrum, New Era Tickets, and Front Row Marketing. Clearly, Comcast-Spectacor is better equipped than American Fairs to oversee the COMPREHENSIVE management, maintenance, marketing and branding of the fair and event center.

A single ticketing operation for everything occurring at the fair grounds is just one example of how efficiency and cost reduction – let alone improved customer interface -- can be achieved under our operating proposal. The balkanized ownership/operation model proposed by American Fairs encourages individual owner/operators of existing venues to protect their turf and financial advantages. It doesn't lend itself to thinking first about what is in the best interests of the entire 150-acre fair and event center. The Facilities West Management proposal provides for a broader, more comprehensive approach which, in turn, will benefit the larger community and the individual owner/operators of existing venues.

HOW WILL YOU TREAT CURRENT STATE EMPLOYEES OF OCFEC?

We start by believing they have experience and historical perspectives that can be valuable to the ongoing management of the OCFEC. They will receive priority consideration for retention by Comcast-Spectacor, a more promising prospect than the transitional assistance contemplated by the city and American Fairs.

DO YOU HAVE CONFLICTS OF INTEREST WITH EXISTING OPERATIONS AT OCFEC?

Absolutely none. But, this question raises a significant conflict issue regarding the American Fairs proposed operating structure: Who oversees the managers, if the owner/operators of individual fairground venues sit on the oversight organization? How will the oversight organization members resolve issues that impact their own operations? Who decides contract issues involving these organizations? Or operational, ground lease, financial, bidding or auditing issues? It is an awkward, highly unusual structure that is ripe for conflict.

As we have emphasized before, we are local residents and investors with a passion for the fair. We understand "public ownership," at first blush, sounds appealing and desirable. But, we believe the proposal we have advanced achieves the goals of public ownership without its risks and obligations. And with the promise of a buy-back provision, the city will have the future option of organizing a public purchase of the facility.

We stand ready to work with the city, the community and OCFEC vendors and stakeholders to bring the fair grounds to a higher level of operation in which we all can share both pride and financial benefits.

Most cordially,

Facilities Management West, Inc.

By: _____

Guy W. Lemmon

cc: Allan Roeder, City Manager

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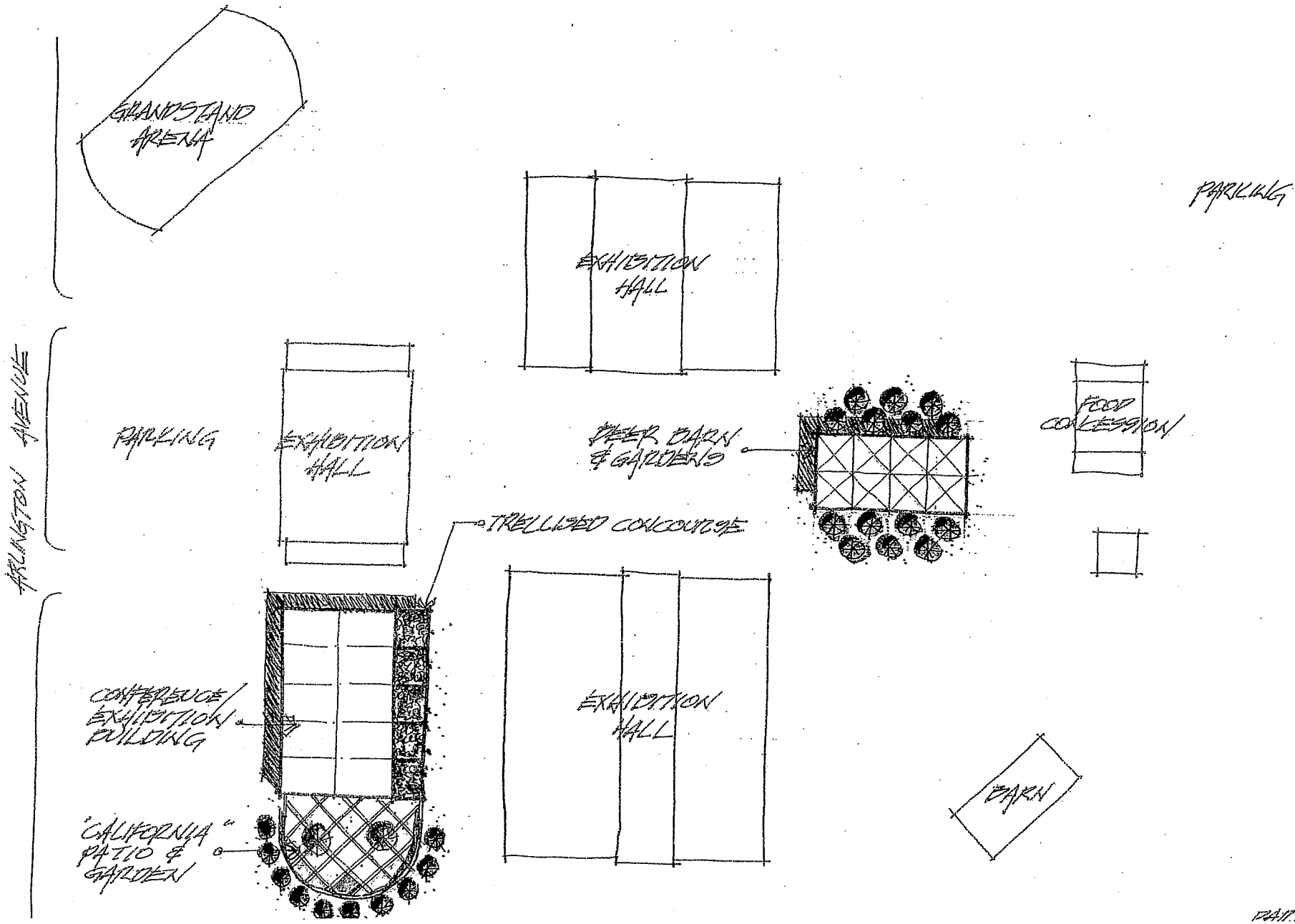
Most cordially,

Facilities Management West, Inc.

By: _____

Guy W. Lemmon

cc: Allan Roeder, City Manager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