



CITY COUNCIL/COSTA MESA PUBLIC FINANCING AUTHORITY BOARD AGENDA REPORT

MEETING DATE: May 18, 2010 ITEM NUMBER: PFA - 2

SUBJECT: JOINT POWERS AUTHORITY FOR FAIRGROUNDS

DATE: MAY 17, 2010

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW,
CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714 754-5339

RECOMMENDATION:

1. Council to adopt the resolution authorizing creation of the Orange County Fairgrounds Authority, with the Costa Mesa Public Financing Authority and authorize Mayor to Execute Joint Powers Agreement and direct City Manager and City Attorney to take necessary steps to implement Joint Powers Agreement
2. Costa Mesa Public Financing Authority Board to adopt the resolution authorizing creation of the Orange County Fairgrounds Authority, with the City of Costa Mesa and authorize Authority Chair to Execute Joint Powers Agreement and direct Executive Director and Authority Attorney to take necessary steps to implement Joint Powers Agreement

BACKGROUND:

Council has directed staff to negotiate with the State of California to acquire the Orange County Fair and Event Center (OCFEC). The Council has also directed staff to move forward with creation of a Joint Powers Authority in order to acquire and manage the OCFEC, create a separate governance structure for it, and to allow for protection of the City's General Fund. The item before the Council and the Board would create the Joint Powers Authority and approve the initial agreement between members. Additional Public Entity Members could be added to the Authority at a later time.

ANALYSIS:

A Joint Powers Authority is a separate legal entity from the public entities which constitute its members. The powers of a Joint Powers Authority are limited by the powers of its members – in other words, if no member of the JPA has the authority to exercise a specific power, then the JPA cannot exercise that power. What a JPA does is allow for the creation of a separate governance structure and to allow for specialization of functions, pooling of resources and protecting the member entities from liability.

Staff recommends that, in light of the Council's goals for acquisition and operation of the OCFEC, a Joint Powers Authority be created to acquire and operate/lease the OCFEC. Staff recommends that the City enter into a Joint Powers Authority with a related public agency, the Costa Mesa Public Financing Authority, in order to expedite the process, and allow for addition of other public agencies as members in the future if the new Authority is able to negotiate appropriate agreements with outside public agencies. We would also recommend that the new Authority's governing board initially be comprised of City Council members, but allow for the Council ultimately to designate others as the Authority Board if it so chooses. Staff recommends that the new Authority be called the Orange County Fairgrounds Authority.

FISCAL VIEW:

No fiscal review is necessary. The costs of preparing necessary documents and adopting a Joint Powers Authority can be accomplished within the City Attorney's existing budget.

LEGAL REVIEW:

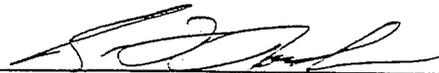
The City Attorney's Office has prepared the resolutions and Joint Exercise of Powers Agreement.

CONCLUSION:

Staff recommends that the City Council approve the Resolution forming the Orange County Fairgrounds Authority and authorize the Mayor to execute the Joint Exercise of Powers Agreement.

KIMBERLY HALL BARLOW

CITY ATTORNEY



ALLAN L. ROEDER

CITY MANAGER

DISTRIBUTION:

Attachment 1	Resolution of the City Council to form JPA
Attachment 2	Resolution of the P.F.A. to form the JPA
Attachment 3	Joint Powers Agreement - Orange County Fairgrounds Authority.

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, AUTHORIZING FORMATION OF THE ORANGE COUNTY FAIRGROUNDS AUTHORITY WITH THE COSTA MESA PUBLIC FINANCING AUTHORITY

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the City of Costa Mesa (the "City") is undertaking proceedings for the potential purchase of the Orange County Fair and Event Center ("OCFEC") from the State of California; and

WHEREAS, in connection with such purchase, the City and the Costa Mesa Public Financing Authority (the "Authority") propose to form a joint powers authority pursuant to Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (section 6500 *et seq.*) in order that such authority may purchase the OCFEC and manage the real and personal property which are purchased from the State of California, including the rights to operate the Orange County Fair; and

WHEREAS, the City is entitled to own property for recreational, fair, exposition or exhibition purposes, to operate such facilities, and to lease property owned by it to others for such purposes; and

WHEREAS, the assistance provided by such a joint powers authority to the City and the Authority in connection with such proceedings will result in significant public benefits to the City and the Authority.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Costa Mesa, California, does hereby authorize the officers and staff members of the City to assist in the organization of a joint powers authority between the City and the Authority, to be known as the Orange County Fairgrounds Authority. The City Council hereby approves and authorizes the Mayor to execute and the City Clerk to attest the Joint Powers Agreement forming the Orange County Fairgrounds Authority, in substantially the form on file with the City Clerk.

BE IT FURTHER RESOLVED that the Mayor, the City Manager, Finance Director, City Clerk, and City Attorney of the City, and any other officers of the City, are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder with respect to the formation of the Orange County Fairgrounds Authority, including, but not limited to, the execution and delivery of any agreements, certificates, instruments, and other documents, which they, or any of them, may deem necessary or desirable and not inconsistent with the purposes of this resolution.

PASSED AND ADOPTED this ___ day of May, 2010.

Allan R. Mansoor, Mayor

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney

RESOLUTION NO. 10-

A RESOLUTION OF THE BOARD OF THE COSTA MESA
PUBLIC FINANCING AUTHORITY AUTHORIZING
FORMATION OF THE ORANGE COUNTY
FAIRGROUNDS AUTHORITY WITH THE CITY OF
COSTA MESA, CALIFORNIA

THE BOARD OF THE COSTA MESA PUBLIC FINANCING AUTHORITY HEREBY
RESOLVES AS FOLLOWS:

WHEREAS, the City of Costa Mesa (the "City") is undertaking proceedings for the potential purchase of the Orange County Fair and Event Center ("OCFEC") from the State of California; and

WHEREAS, in connection with such purchase, the City and the Costa Mesa Public Financing Authority (the "Authority") propose to form a joint powers authority pursuant to Articles 1 through 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (section 6500 *et seq.*) in order that such authority may purchase the OCFEC and manage the real and personal property which are purchased from the State of California, including the rights to operate the Orange County Fair; and

WHEREAS, the PFA is entitled to own property for recreational, fair, exposition or exhibition purposes, to operate such facilities, and to lease property owned by it to others for such purposes; and

WHEREAS, the assistance provided by such a joint powers authority to the City and the Authority in connection with such proceedings will result in significant public benefits to the City and the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Board of the Costa Mesa Public Financing Authority, does hereby authorize the officers and staff members of the Authority to assist in the organization of a joint powers authority between the City and the Authority, to be known as the Orange County Fairgrounds Authority. The Board of the Authority hereby approves and authorizes the Chair of the Board to execute and the City Clerk, acting as Authority Secretary, to attest the Joint Powers Agreement forming the Orange County Fairgrounds Authority, in substantially the form on file with the City Clerk.

BE IT FURTHER RESOLVED that the Board Chair, the Executive Director, Treasurer, Secretary, and Authority Attorney of the Authority, and any other officers of the Authority, are hereby authorized and directed to take all actions and do all things necessary or desirable hereunder with respect to the formation of the Orange County Fairgrounds Authority, including, but not limited to, the execution and delivery of any agreements, certificates, instruments, and other documents, which they, or any of them, may deem necessary or desirable and not inconsistent with the purposes of this resolution.

PASSED AND ADOPTED this ___ day of May, 2010.

Allan R. Mansoor, Chair

ATTEST:

APPROVED AS TO FORM:

Julie Folcik, Authority Secretary

Kimberly Hall Barlow, Authority Attorney

JOINT EXERCISE OF POWERS AGREEMENT
ORANGE COUNTY FAIRGROUNDS AUTHORITY

THIS AGREEMENT is dated as of the ___ of May, 2010, by and between the City of Costa Mesa (the "City") and the Costa Mesa Public Financing Authority (the "PFA"), each duly organized and existing under the laws of the State of California.

WITNESSETH:

WHEREAS, the City and the PFA are each authorized to own, lease, purchase, receive and hold property necessary or convenient for their governmental operations; and

WHEREAS, the acquisition of property by the City and the PFA acting separately may result in duplication of effort, inefficiencies in administration, and excessive cost in the acquisition of such property, all of which, in the judgment of the City and the PFA, could be eliminated if the financing, acquisition and ongoing operation of property were capable of being performed through a single public agency, and such is the purpose of this Agreement; and

WHEREAS, the City and the PFA are entitled to own property for recreational, fair, exposition or exhibition purposes, to operate such facilities, and to lease property owned by them to others for such purposes.

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the City and the PFA do hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meanings herein specified.

"Act" means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

"Agreement" means this Agreement.

“Authority” means the Orange County Fairgrounds Authority established pursuant to this Agreement.

“Board” means the Board of Directors referred to in Section 2.03, which shall be the governing body of the Authority.

“Directors” means the representatives of the City appointed to the Board pursuant to Section 2.03.

“Fiscal Year” means the period from July 1st to and including the following June 30th.

“Secretary” means the Secretary of the Authority appointed pursuant to Section 3.01.

“Treasurer” means the Treasurer of the Authority appointed pursuant to Section 3.02.

ARTICLE II GENERAL PROVISIONS

Section 2.01. Purpose. This Agreement is made pursuant to the Act providing for the joint exercise of powers common to the City and the PFA. The purpose of this Agreement is to create a separate and distinct public entity for the purchase, ownership, and operation of the Orange County Fair and Event Center (“OCFEC” or “Fairgrounds”).

Section 2.02. Creation of Authority. Pursuant to the Act, there is hereby created a public entity to be known as the “Orange County Fairgrounds Authority”. The Authority shall be a public entity separate and apart from the City and the PFA, and shall administer this Agreement.

Section 2.03. Board. The Authority shall be administered by a Board of five (5) Directors, unless and until changed by amendment of this Agreement. The members of the City Council of the City shall constitute the Directors of the Authority. Each Director shall hold office for a term which coincides with such Director’s term of office as a member of the City Council of the City. The Board shall be called the “Board of the Orange County Fairgrounds Authority.” All voting power of the Authority shall reside in the Board.

Section 2.04. Meetings of the Board.

(a) **Regular Meetings.** The Board shall provide for its regular meetings; provided, however, that at least one regular meeting shall be held each year. The date, hour and place of

the holding of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be filed with each of the City and the PFA.

(b) **Special Meetings.** Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(c) **Call, Notice and Conduct of Meetings.** All meetings of the Board, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the provisions of Sections 54950 *et seq.* of the Government Code of the State of California.

Section 2.05. Minutes. The Secretary shall cause to be kept minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director and to the City and the PFA.

Section 2.06. Voting. Each Director shall have one vote.

Section 2.07. Quorum; Required Votes; Approvals. Directors holding a majority of the votes shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time. The affirmative votes of at least a majority of the Directors present at any meeting at which a quorum is present shall be required to take any action by the Board.

Section 2.08. Bylaws. The Board may adopt, from time to time, such bylaws, rules and regulations for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE III

OFFICERS AND EMPLOYEES

Section 3.01. Chair, Vice-Chair and Secretary. The Board shall elect a Chair and Vice-Chair from among the Directors, and shall appoint a Secretary who may, but need not, be a Director. The officers shall perform the duties normal to said offices. The Chair shall sign all contracts on behalf of the Authority (unless the Board shall by resolution designate another officer to sign any such contract), and shall perform such other duties as may be imposed by the Board. The Vice-Chair shall act, sign contracts and perform all of the Chair's duties in the absence of the Chair. The Secretary shall, as directed by resolution of the Board, countersign all contracts signed by the Chair or Vice-Chair on behalf of the Authority, perform such other duties as may be imposed by the Board and cause notice of execution of this Agreement to be filed with the Secretary of State pursuant to the Act.

Section 3.02. Treasurer. The Finance Director or Assistant Finance Director of the City of Costa Mesa is hereby designated as the Treasurer of the Authority. The Treasurer shall be the depository, shall have custody of all of the accounts, funds and money of the Authority from whatever source, shall have the duties and obligations set forth in Sections 6505 and 6505.5 of the Act and shall assure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. As provided in Section 6505 and Section 6505.6 of the Act, the Treasurer shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 3.03. Officers in Charge of Records, Funds and Accounts. Pursuant to Section 6505.1 of the Act, the Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 3.04. Legal Advisor. The Board shall have the power to appoint the legal advisor of the Authority who shall perform such duties as may be prescribed by the Board. Such legal advisor may be the City Attorney of the City.

Section 3.05. Other Officers and Employees. The Board shall have the power to appoint and employ such other officers and employees, including an Executive Director of the Authority, and such consultants and independent contractors, as may be necessary for the purposes of this Agreement. Any such officer or employee shall perform such duties as shall be prescribed by the Board.

All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Board shall be deemed, by reason of their employment by the Board to be employed by the City or the PFA or, by reason of their employment by the Board, to be subject to any of the requirements of the City or the PFA.

Section 3.06. Assistant Officers. The Board may appoint such assistants to act in the place of the Secretary or other officers of the Authority (other than any Director) as the Board shall from time to time deem appropriate.

ARTICLE IV

POWERS

Section 4.01. General Powers. The Authority shall exercise in the manner herein provided the powers of each of the City and the PFA as necessary to the accomplishment of the purposes of this Agreement. As provided in the Act, the Authority shall be a public entity separate from the City and the PFA.

Section 4.02. Specific Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to acquire real and personal property and to manage it;
- (b) to make and enter into contracts;
- (c) to employ agents or employees;
- (d) to sue and be sued in its own name;
- (e) to incur debts, liabilities or obligations, provided that no such debt, liability or obligation shall constitute a debt, liability or obligation of either the City or the PFA;
- (f) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States of America or of the State of California;
- (g) to invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State of California;
- (h) to carry out and enforce all the provisions of this Agreement;

Section 4.03. Obligations of Authority. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of either the City or the PFA.

ARTICLE V

METHODS OF PROCEDURE; CREDIT TO MEMBERS

Section 5.01. Assumption of Responsibilities by the Authority. As soon as practicable after the execution of this Agreement, the Directors shall give notice (in the manner required by Section 2.04) of the organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings as required by Section 2.04 and elect a Chair and Vice-Chair, and appoint the Secretary and other officers of the Authority.

Section 5.02. Delegation of Powers. The City and the PFA hereby delegate to the Authority the power and duty to acquire, by lease, lease-purchase, installment sale agreements, eminent domain or otherwise, the Fairgrounds, and to own and operate the Fairgrounds.

Section. 5.03. Credit to City and the PFA. All accounts or funds created and established pursuant to any instrument or agreement to which the Authority is a party, and any interest earned or accrued thereon, shall first be used to pay the expenses of the PFA in carrying out the terms of this agreement and any agreements to which the Authority is a part. All remaining accounts or funds shall inure to the benefit of the City.

ARTICLE VI

CONTRIBUTION: ACCOUNTS AND REPORTS: FUNDS

Section 6.01. Contributions. The City and the PFA may in the appropriate circumstance when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein, (b) make payments of public funds to defray the cost of such purposes, (c) make advances of public funds for such purposes, such advances to be repaid as provided herein, or (d) use its personnel, equipment or property in lieu of other contributions or advances. The provisions of Government Code 6513 are hereby incorporated into this Agreement.

Section 6.02. Accounts and Reports. To the extent not covered by the duties assigned to a trustee chosen by the Authority, the Treasurer shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority in the hands of a trustee or the Treasurer shall be open to inspection at all reasonable times by representatives of the City and the PFA. The Treasurer within 120 days after the close

of each Fiscal Year, shall give a complete written report of all financial activities for such fiscal year to the City and the PFA to the extent such activities are not covered by the report of such trustee. The trustee appointed under any trust agreement shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of said trust agreement. Said trustee may be given such duties in said trust agreement as may be desirable to carry out this Agreement.

Section 6.03. Funds. Subject to the applicable provisions of any instrument or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

Section 6.04. Annual Budget and Administrative Expenses. The Board shall adopt a budget for administrative expenses, which shall include all expenses not included in any financing issue of the Authority, annually prior to March 1st of each year. The estimated annual administrative expenses of the Authority shall be allocated by the Authority to the parties hereto equally.

ARTICLE VII

TERM

Section 7.01. Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect so long as the Authority owns the Fairgrounds.

Section 7.02. Disposition of Assets. Upon termination of this Agreement, all property of the Authority, both real and personal, shall be divided among the parties hereto in such manner as shall be agreed upon by the parties.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01. Notices. Notices hereunder shall be in writing and shall be sufficient if delivered to:

City of Costa Mesa
City Hall
77 Fair Drive
Costa Mesa, California 92628
Attention: City Clerk

Costa Mesa Public Financing Authority
City Hall
77 Fair Drive
Costa Mesa, California 92628

Attention: Chairman

Section 8.02. Section Headings. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

Section 8.03. Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 8.04. Governing Law. This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

Section 8.05. Amendments. This Agreement may be amended at any time, or from time to time, except as limited by certificates of participation in payments to be made by the Authority or the City or the PFA or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all of the parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including, without limitation, addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 8.06. Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

Section 8.07. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 8.08. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the City or the PFA, respectively. Neither the City nor the PFA may assign any right or obligation hereunder without the written consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, on the day and year set opposite the name of each of the parties.

CITY OF COSTA MESA

Allan Mansoor, Mayor

ATTEST:

Julie Folcik, City Clerk

COSTA MESA PUBLIC FINANCING
AUTHORITY

Chair

ATTEST:

Secretary

APPROVED AS TO FORM:

Kimberly Hall Barlow, City Attorney