



# *CITY COUNCIL/ORANGE COUNTY FAIRGROUNDS AUTHORITY BOARD AGENDA REPORT*

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**MEETING DATE:** August 24, 2010      **ITEM NUMBER:** VIII.2.

**SUBJECT:** PROPOSED LEASE WITH ORANGE COUNTY FAIR AND EVENT CENTER, L.P.

**DATE:** AUGUST 24, 2010

**FROM:** CITY ATTORNEY/AUTHORITY ATTORNEY

**PRESENTATION BY:** KIMBERLY HALL BARLOW,  
CITY ATTORNEY/AUTHORITY ATTORNEY

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

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## **RECOMMENDATION:**

Adopt a Resolution approving the draft lease subject to revisions authorized by the Board and completion of exhibits and minor revisions approved by the Authority Attorney and Executive Director.

## **BACKGROUND:**

The Authority was created by action of the City Council and the Costa Mesa Finance Authority by resolution on May 18, 2010. The Authority Board has previously approved a proposed Purchase and Sale Agreement with the State of California to acquire the 150 acre Orange County Fair and Event Center property together with associated personal property and intangible rights. While Legislative approval is still required to complete that transaction, another critical component to the acquisition is approval of a ground lease for the selected Tenant. Staff, consultants and a Council subcommittee negotiated with Facilities Management West (FMW), and a Memorandum of Understanding containing key deal points was approved by the Authority Board on June 18, 2010, and executed by both parties on that date (Attachment 1). The draft lease submitted to the Authority Board for consideration is the result of on-going negotiations concerning the lease terms between the Authority and OC Fair and Event Center, L.P., formed or to be formed by FMW and David Pyle or their affiliates, with the general partner to be called OC Fair and Event Center LLC, also formed by FMW and David Pyle or their affiliates.

## **ANALYSIS:**

The draft lease primarily reflects the terms of the Memorandum of Understanding of June 18<sup>th</sup>, with additional deal points as negotiated by the parties. The proposed Lease includes a number of provisions designed to ensure that no additional development of the site occur without appropriate review under the California Environmental Quality Act, and also to ensure that the protections put into place by Measure C last November bind the JPA and the ground Tenant.

There remain a few areas raised by members of the Council or the public which are not fully resolved, and these are reflected in the draft lease. The first involves Section 6.1 of the draft lease, which staff proposed to modify to include a prohibition on “rave” events at the facility. The proposed Tenant does not wish to include staff’s proposed language.

The next issue is 6.2 of the Lease dealing with community uses at the Fairgrounds, such as fundraising activities, use of office space for such things as the All-American Boys Chorus and similar community groups. While the parties are in agreement in concept that the current community uses of the fairgrounds property, and similar uses in the future, should continue, the parties are still negotiating as to how to accomplish that goal while still giving the ground Tenant the flexibility it desires to run a successful business on the site. Following distribution of the draft Lease on Thursday, August 19<sup>th</sup> (Attachment 2) the potential Tenant submitted a proposed revision to the language of section 6.2 which is reflected in the attached summary of issues remaining to be resolved (Attachment 3). The August 19<sup>th</sup> version of section 6.2 is shown first, and the Tenant’s proposed modification is shown second.

The second area still unresolved is whether the ground Tenant should have the right to rename the entire facility from the Orange County Fair and Events Center to a different name. The Tenant wants to have the right to change or add to the facility’s name, and originally proposed to delete the entirety of the second paragraph of section 6.2. The prospective Tenant has now proposed to limit the provision to the Orange County Fair. Their proposed language is reflected in Attachment 3.

The next area relates to the specific language to be included regarding the Tenant encouraging Operators and Sublessees to provide access to their operations for local youth and other fundraising groups as has traditionally been done (Sections 15.4 and 15.7 of the draft lease). The proposed language of section 15.4 distributed on August 19<sup>th</sup> is reflected in Attachment 3 first, and the alternative language proposed by Tenant is reflected second. Likewise, the alternatives for Section 15.7 are shown in Attachment 3. Staff believes that these proposed revisions are acceptable.

The next issue relates to the JPA’s proposal to restrict the Tenant from holding annual fairs which compete with the required Orange County Fair. The JPA proposes to restrict Tenant from operating another fair in the County of Orange (Section 15.10). The proposed Tenant wants the proposed language deleted in its entirety.

The final area of negotiation is whether the JPA/City should be entitled to use of some or all of the facility for public events a specified number of days per year and when there is otherwise availability for holding public events. Section 28.3(a) and (b) of the August 19<sup>th</sup> lease. Staff proposed alternative language on August 23<sup>rd</sup>, also reflected in Attachment 3. The Tenant proposes to delete these provisions from the Lease entirely.

A proposed revision of the Lease distributed on August 19<sup>th</sup> is attached as Attachment 4 and reflects some corrections and additions agreed to by the Tenant and recommended by staff.

**FISCAL REVIEW:**

The terms of the Lease and the related documents relating to the proposed purchase of the Fairgrounds from the State of California have been drafted to ensure that there is no risk to the City’s general fund involved in acquiring and leasing the Fairgrounds. The financial terms mutually agreed to in the Memorandum of Understanding have been restated Article 3 and Exhibit “E” of the lease. Based on an independent financial analysis of the terms of the lease as prepared by Kaiser Marston Associates, the City will receive \$234,494,570 in rent and sponsorship fees over the term of the 55 year agreement. A copy of the revenue analysis is included in this report as Attachment 5.

It requires notation that the JPA/City will assume some level of continuing responsibility for oversight of the lease and operations of the OCFEC. The appropriate level of staffing and/or consulting assistance will be modest in comparison to the revenue generation but will still be necessary. A determination as to the desired level of staffing and oversight of the Tenant should be determined prior to the close of escrow.

**CONCLUSION:**

Staff recommends that the Authority Board adopt the attached Resolution approving a lease with OC Fair and Event Center, LP, predicated on its compliance with the MOU and as directed by City Council/Authority Board subject to such changes as are authorized by the Board, and subject to independent verification of the financial capacity of the Tenant, its general partner and the guarantors, and authorize the Chair and Secretary of the Authority to execute same, subject to addition of the remaining exhibits and such minor changes as are approved by the Authority Attorney and Executive Director.

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KIMBERLY HALL BARLOW

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ALLAN R. ROEDER

CITY ATTORNEY/AUTHORITY  
ATTORNEY

CITY MANAGER/EXECUTIVE  
DIRECTOR

**DISTRIBUTION:**

- ATTACHMENTS    1    [6-18-10 MOU](#)
- 2    [Draft Lease \(8-19-10\)](#)
- 3    [Alternative Language for Unresolved Issues](#)
- 4    [Draft Lease \(8-24-10\)](#)
- 5    [Financial Analysis](#)
- 6    [Resolution](#)