Facilities Management West – Orange County Fairgrounds Authority
MOU for Lease of OC Fair and Events Center

1. Property Being Leased.

A. Fairgrounds and events center with amphitheater and 7-15 acre equestrian center as described in existing master plan and zoning initiative; subject to existing leases and user rights.

B. Lessee required to maintain/continue reciprocal parking agreements and emergency staging/training grounds; marketplace; right/obligation to operate annual fair (minimum 24 days in July/August annually).

C. Electronic reader board subject to some City of Costa Mesa ("City")/JPA use as agreed.

D. All transferrable right to use billboards along Newport Blvd shall be leased to FMW for term of lease. City/JPA to have use of billboard for public service/promotional purposes on an agreed upon schedule with FMW.

E. All of JPA's interests in all tangible and intangible personal property located upon or utilized in connection with the current operations on the Property, including without limitation, equipment, fixtures, furniture, inventory, supplies, and trademark rights. The tangible personal property which has a useful life expectancy of less than the lease term shall be transferred to FMW by bill of sale upon execution of the Ground Lease. At end of lease term, tangible personal property which may have replaced property transferred to FMW shall be transferred to JPA by way of bill of sale.

2. Term.

55 years, no options to extend. FMW will have a right to make an offer for any proposed sale of the Property during the term of the Ground Lease, as well as any proposed sale, ground lease or other transfer or lease of the Property or any portion thereof by the JPA.

3. Ground Rent.

A. Ground Rent – JPA to receive a minimum of $750,000 rent over any debt service payment during first five years of lease term. At year six, minimum rent of amount of debt service plus $1.5 million per year through year 10 at which point rent goes to debt service plus $2.5 million per year from year 11-20. Year 21-30, $2.85 million per year over debt service, Year 31-55, $3.2 million per year over debt service (year 41-55, rent includes underlying debt service cost which was otherwise paid in prior years). The JPA shall be paid a portion of revenue generated from, including but not limited to, event and product sponsorships, location and building naming rights, etc. excluding revenues for non-profit activities. The JPA's portion shall be as follows:

Years	% of Revenue	Total Annual Max
1-5	5%	$50,000
6-20	5%	$75,000
21-35	5%	$100,000

36-55	5%	$200,000

Ground rent subject to increase at reappraisal for change in land use and lease segregation as set forth below.

B. Not tied to net profits.

C. Rent to be paid to an independent collection agent, who will pay the debt service directly to the State and remit the remaining balance of any rent payments to the JPA. At such time as the State Note is fully repaid, JPA would receive all rent which otherwise would have been paid as debt service, and the collection agent will no longer be utilized.

D. There will be a financial guaranty for the Ground Lease payments, which will not exceed the difference between the outstanding principal balance of the State Note, plus any and all interest which has accrued and is unpaid under the State Note during the first four years, less $70,000,000. At such time as the principal balance of the State Note has been reduced to $70,000,000, the financial guaranty shall terminate and the Ground Lease shall become non-recourse. The credit requirements for the financial guaranty need to be agreed upon.

E. Tenant may not renegotiate note with State to pay off over longer term without JPA consent, but JPA has the right to refinance the debt so long as FMW does not have any recourse liability and the lender provides a non-disturbance agreement acceptable to FMW. Tenant will cooperate and sign necessary documents to facilitate refinancing, including new note and security instrument.

F. There will be reappraisal of the ground rent upon any change in land use currently not permitted by the General Plan solely as to the portion of the Property which is developed for such expanded or changed use, or upon any lease segregation.

4. <u>Real Property Taxes</u>.

To the extent any real property taxes or possessory use taxes are assessed against the Property, FMW shall be responsible to pay such taxes under the Ground Lease.

5. <u>Property Operations</u>.

Lessee required to provide 1 year and 5 year business plans to JPA for review and capital improvement program/plan – 5 year plan updated annually. No budgets, cost or revenue projections or any other financial information shall be provided by FMW with the business plans submitted to JPA, except those required in connection with the Required Operations. FMW agrees that it will meet on an annual basis with the JPA to discuss the business plan and allow the JPA an opportunity to make suggestions or provide input. However, FMW shall not be obligated to make any revisions to its business plan based on any suggestions or input received by the JPA. The sole grounds upon which the JPA can disapprove the annual business plan is that it fails to provide for the required events and operations described below or fails to generate sufficient revenues to pay the Ground Rent/Debt Service. FMW agrees that it will continue the following events and operations at the Property and provide to JPA its annual budget(s) associated therewith for approval of the JPA (the "Required

Operations") during the term of the Ground Lease unless the parties mutually agree to modify or replace such events and operations:

A. Annual Fair (minimum 24 days in July/August annually);

B. Centennial Farm preserved as park-like use and to maintain current community uses therein at least at the current funded level of operations;

C. Youth Expo preserved, funded and operated by FMW as programs of education, recreation, cultural and social development for children and youth, which operations shall be at least at the current levels;

D. Existing Equestrian use to be maintained on property; JPA must approve any change in size or use; community programming specific to equestrian center to be maintained by FMW at least at the current level subject to revision with the reasonable approval of JPA; FMW and JPA to consider expansion opportunities and use of the Equestrian Center.

E. Existing Civic Center reciprocal uses such as reciprocal parking agreement with OCC and other third parties (including but not limited to NMUSD, CMSD, Orange County, Costa Mesa Police Department) to be maintained subject to FMW reaching alternative agreement with OCC or other public agency or other third parties. The existing Civic Center reciprocal uses will need to be specifically scheduled and attached to the MOU.

F. Discuss if there are any other existing community functions and services currently provided which the City/JPA would like to continue and which would be acceptable to FMW.

G. Minimum 18 month transition period to maintain existing agreements for marketplace/swap meet operations, though FMW reserves the right to exercise termination rights under such agreements so long as the date of termination will not become effective until the end of such 18 month period. Following transition period, Lessee required to maintain a marketplace/swap meet substantially similar in scope to the current operation. Major change in type of marketplace operation or decrease in number of days of marketplace operation requires JPA approval. No budget required to be submitted to JPA for this item.

FMW will have the right to resize and relocate within the Property so long as the Required Operations are maintained. In addition, FMW may also undertake any other uses and events on the Property without the approval of the JPA so long as they are consistent with the City's General Plan or the June 2010 ballot measure and consistent with the preceding Property Operation provisions. FMW will notify JPA before commencing new uses. Any use or event which is not consistent with either the City's General Plan or the June 10, 2010 ballot measure will require the approval of the JPA.

6. <u>State Purchase Agreement Issues</u>.

A. The State Purchase Agreement issues have been resolved, the State has agreed to take responsibility for the pre-existing ADA issues up to $1,000,000.

B. There needs to be an agreement between the JPA and FMW addressing the Purchase Agreement, which will provide among other things that the JPA will not amend the Purchase Agreement, nor grant any consents required under the Purchase Agreement (e.g., approving any

long term operating contracts), without first obtaining FMW's prior written consent, and to acknowledge FMW's rights to the $1,000,000 deposit under the State Purchase Agreement.

7. Pre-Existing Conditions and Existing Infrastructure Deficiencies.

FMW agrees that to the extent there are any pre-existing conditions on the Property which need to be repaired or addressed, including without limitation, any ADA issues, any environmental issues, the failure of any of the existing improvements to comply with any applicable laws and any seismic upgrades to the current improvements, as well as any deficiencies in the existing infrastructure for the Property, including without limitation, any required work for the existing storm drain, water, sewer and the curb and gutter work on Arlington (collectively, the "Pre-Existing Conditions"), FMW will be responsible for the Pre-Existing Conditions.

8. Capital Investment for New Improvements.

FMW intends to make a capital investment for the Pre-Existing Conditions and for the new improvements and enhancements of $6,000,000 to $8,000,000 for the Property over the next 5 years.

9. Alterations/Improvements.

FMW shall have the right, without the JPA's consent, to make alterations to the existing improvements, and make new improvements to the Property, provided, that, in the case of the alteration of the existing improvements, the new and remaining improvements must be sufficient to provide for the Required Operations. Any demolition of structures larger than 5000 square feet must be approved by JPA.

10. Subleases, Licenses and Operating Contracts.

The JPA shall not have any approval rights over any subleases, license agreements, operating agreements or any other contracts (collectively, the "Operating Contract") which FMW may enter into in connection with the operations on the Property, except for those which may be for terms which extend beyond the termination date of the ground lease, or that would be binding upon the JPA after a termination by the Ground Lessee. JPA will have reasonable approval rights over any capital improvement contracts in excess of $250,000 if JPA funds are utilized to pay for such work. The foregoing in no way releases FMW from its obligation to conduct the Required Operations. The JPA agrees that upon request by FMW, the JPA will provide a non-disturbance agreement for one or more of the Operating Contracts, which would provide that the JPA will continue to recognize such Operating Contracts if the Ground Lease is terminated, provided the JPA must first approve such Operating Contracts, which approval shall not be unreasonably withheld. All Operating Contracts will be required to contain agreed upon language as to insurance, preservation of the property, etc. and Subleases will have agreed upon language for condemnation.

11. Confirmation of Entitlements.

A. Upon the closing of the transaction, JPA, City, City Finance Authority or any other City-related entity shall not adopt any land use or other regulatory program of any type, including imposition of any tax or other fee (collectively, "Future Regulations") which otherwise would conflict with all existing Property uses, which are specific to the property or would only affect the property. In addition, except for Future Regulations which are City wide, if the JPA, City or City Finance Authority adopt any Future Regulation which materially increases the cost of operation of the Property, or materially impairs FMW's ability to make improvements to the Property which are consistent with the specified permitted uses of the general plan or the to-be-adopted master plan or specific plan, FMW shall have the rights described below. FMW shall be allowed to offset its ground rent payments on a dollar-for-dollar basis for any Future Regulation which are not City wide but are targeted for the Property (exclusive of the ground rent attributable to debt service on the State's Note). Future Regulations do not include any such changes which are necessary to protect the public health and safety, or if such changes are required to comply with changes in federal or state law if adopted the closing of the transaction. This commitment by the JPA will be memorialized in the Ground Lease. At FMW's request, City shall cooperate in processing a master plan or specific plan for the Property, to convert the Property from a legal non-conforming use to a fully conforming use, subject to City's reasonable legislative discretion.

12. <u>Assignment</u>.

The Assignment of the Ground Lease by the JPA or FMW shall be subject to the approval of the other party, which approval shall not be unreasonably withheld.

13. <u>Surrender of Property</u>.

Upon the expiration of the Ground Lease, FMW shall not have the right to remove any fixtures it has installed upon the Property, and will surrender the Property ground leased to FMW on an "AS-IS" basis without any obligation to remove any improvements. The property shall be maintained in accordance with industry standards (to be defined more specifically in lease) during the entire term of the Ground Lease, subject to ordinary wear and tear, provided, FMW shall have the right to spread over a period to be agreed upon any obligation to address the deferred maintenance or any other Pre-Existing Conditions.

14. <u>Casualty/Insurance Proceeds</u>.

FMW must maintain full replacement cost on the Property sufficient to rebuild, restore or replace any improvement over 5,000 feet on the Property. In the event of a casualty, insurance proceeds must be made available to FMW for the restoration or replacement of any improvements which FMW is required to undertake. Decision not to rebuild, restore or replace must be approved by JPA, which approval shall not be unreasonably withheld. To the extent insurance proceeds are not utilized for the restoration or replacement of any damaged improvements, such proceeds shall be paid to the JPA to the extent attributable to the existing improvements and shall be paid to FMW to the extent attributable to any new improvements made by FMW.

15. <u>Condemnation Proceeds</u>.

In the event of a condemnation, the proceeds shall first be made available to make improvements to the Property which FMW undertake to mitigate the impacts of such condemnation, subject to JPA's reasonable approval of such improvements. FMW shall also be entitled to retain any condemnation proceeds which are attributable to the value of its leasehold estate and any new improvements FMW made to the Property (exclusive of the proceeds attributable to the JPA reversionary rights in any new improvements). JPA entitled to retain proceeds attributable to value of JPA's property. Finally, the ground rent payable under the Ground Lease will be equitably reduced in the event of condemnation.

16. Insurance Requirements.

FMW shall only be required to carry all risk casualty insurance for buildings containing more than 5,000 square feet. Earthquake, flood and terrorist insurance will not be required. FMW will provide commercial general liability insurance of at least $10,000,000 which can be satisfied with a blanket and umbrella policy. FMW also to acquire and maintain Pollution Coverage in minimum amount of $10,000,000 if available at commercially reasonable rates.

17. Indemnification.

The indemnification to be provided by FMW in the Ground Lease shall be limited to damages and liabilities arising out of FMW's operations on the Property, and will not cover any obligations or liabilities arising out of the pre-existing environmental conditions except to the extent remediation is required to be performed to permit or expand FMW's operations on the Property or as otherwise imposed by applicable law.

18. Leasehold Mortgagee Provisions.

The Ground Lease shall contain customary provisions to protect leasehold mortgagees, including without limitation, the following:

A. A new lease provision.

B. Notice and cure rights to the leasehold mortgagee, which will not have an outside date to complete the cure of any non-monetary defaults so long as the leasehold mortgagee is pursuing its rights to foreclose and thereafter diligently undertakes to complete such cure.

C. The leasehold mortgagee shall not be obligated to cure any non-curable defaults by FMW in order to preserve the Ground Lease;

D. The leasehold mortgagee will have the right to foreclose on the leasehold estate without obtaining the JPA's consent, and the JPA must be reasonable in approving any subsequent assignment of the Ground Lease by the leasehold mortgagee;

E. The Ground Lease may not be modified or terminated without the leasehold mortgagee's consent;

F. The Ground Lease will have a non-merger provision providing that the leasehold estate will not merge into the fee interest of the Property;

G. JPA will not have any approval rights over any leasehold mortgagee or its loan documents, though the JPA shall have no obligation to subordinate its fee interest in the Property to the leasehold mortgagee;

H. JPA will be reasonable in considering modifications to the Ground Lease which are requested by a leasehold mortgagee so long as such modifications do not revise any of the financial terms or otherwise adversely impact the rights and benefits of the JPA under the Ground Lease in any material respect; and

I. If the leasehold mortgagee forecloses upon the Ground Lease, it will only be liable for the payment of ground rent during its period of ownership.

19. Miscellaneous Ground Lease Issues.

A. Estoppel Certificate - The JPA will provide estoppels certificates if requested by FMW.

B. Cure Rights - If the JPA notifies FMW of an event of default under the Ground Lease, FMW shall have ten days to cure any monetary defaults and 30 days for any non-monetary defaults, provided if such non-monetary default cannot be reasonably cured within 30 days, the cure period shall be extended until FMW has completed such cure so long as FMW is diligently proceeding to address such matter.

C. Memorandum - A memorandum of the Ground Lease will be recorded. The JPA will be responsible for the cost of the title policy issued to ensure FMW's leasehold estate, and the issuance of such title policy shall be subject only to the title exceptions approved by FMW.

D. Easements - JPA agrees to execute any utility easements and access easements which FMW may reasonably require for the operations on the Property, as well as any parcel maps or any other subdivision approvals for the Property.

E. State of California Loan - If the JPA shall default on its obligations under the State loan, FMW shall have the right, but not the obligation, to cure such default and offset any costs incurred in effecting such cure against the rent due under the Ground Lease.

F. State of California Purchase Agreement - The indemnities and warranties provided to the JPA under the State Purchase Agreement will be assigned to FMW on a non-exclusive basis.

G. If the double escrow is implemented pursuant to the State Purchase Agreement, FMW shall not be responsible for any of the costs and expenses of such double escrow.

20. <u>Miscellaneous</u>.

A. Need to receive and review Noise Settlement Agreement.

B. Need to receive documents referenced in the City of Costa Mesa Document Request of 32nd District Agricultural Association.

C. FMW agrees to deliver a $150,000 deposit to the City/JPA upon execution of MOU, which will be used to cover the City's/JPA's third-party due diligence costs during the escrow period.

D. FMW will own all improvements (subject to the JPA's reversionary rights) for purposes of depreciation.

(WHICH WILL RESERVE ALL OUTSTANDING ISSUES)

Subject to negotiation of final Lease between parties, the foregoing is agreed to this 18th day of June, 2010, at Costa Mesa, California.

Facilities Management West, Inc.

By_____
Guy Lemmon

Orange County Fairgrounds Authority

By_____
Allan Roeder