



PARKS AND RECREATION COMMISSION AGENDA REPORT

MEETING DATE: JUNE 27, 2013

ITEM NUMBER: 9c

**SUBJECT: RENEWAL OF THE LICENSE AGREEMENT WITH THE ORANGE COUNTY
MODEL ENGINEERS FOR THE USE OF A PORTION OF FAIRVIEW PARK**

DATE: JUNE 13, 2013

FROM: PUBLIC SERVICES DEPARTMENT/ENGINEERING DIVISION

PRESENTATION BY: BALTAZAR MEJIA, PARKS PROJECT MANAGER

**FOR FURTHER INFORMATION CONTACT: BALTAZAR MEJIA, PARKS PROJECT
MANAGER, 714.754.5291**

RECOMMENDATION

Provide input on the proposed renewal of the License Agreement with the Orange County Model Engineers, Inc. (OCME).

BACKGROUND

In 1988, the City entered into a license agreement (Attachment 1) with OCME for the installation, operation and maintenance of the model railroad facility at Fairview Park. The term of the agreement is for twenty-five years until September 2013. OCME is interested in renewing the agreement (Attachment 2) for an additional twenty-five years upon its expiration.

ANALYSIS & DISCUSSION

Orange County Model Engineers, Inc. is a 501 c3 non-profit organization that operates a 7-1/2" gauge railroad over a 5-mile layout of track, a train station, restroom, and 20,000 sq. ft. maintenance yard at Fairview Park. The club offers free train rides to the public every third weekend of the month. 21,296 people rode the trains in 2012. Funding for OCME operations and activities at the railroad is made available through membership dues, private and corporate donations, in kind services, and volunteer labor. Members donate over 10,000 hours annually to the operation and maintenance of the facility. OCME also sponsors many annual special events operated by OCME members and community volunteers which include:

- Polar Express Holiday event, 1,200 train rides.
- 48 birthday parties attended by 1,152 people.
- Pumpkin Run.
- Volunteer service opportunities for the Sunshine Academy and local high school students. Park maintenance, track repairs, and construction projects provided 450 hours of labor to the park.
- Eagle Scout Projects in the past include the building of a retaining wall, rebuilding of the Hank Horsveld Bridge, and rebuilding of the canopy at the train station.
- Spring and fall train meets.
- OCME hosted events on site sponsored by the California Fire Museum, Costa Mesa Police Dept., American Cancer Society, American Civil War Society, Lions Club, Kids with Cancer, Kiwanis Club, Junior Costa Mesa Fire Dept., and the Raise Foundation.

- OCME hosts various model train clubs from around the world such as the group last year from Australia that brought their trains and ran them on the Fairview Park tracks.

OCME has an approved Master Plan of Improvements that is consistent with the Fairview Park Master Plan. Over the past ten years the club and its volunteers has installed a shade structure at the train yard and safety gates at the loading dock, expanded the concrete walkway between the train station and train yard, rebuilt the train station canopy, and added approximately 1,000 linear feet of track.

FISCAL REVIEW

There is no fiscal review required with this item.

LEGAL REVIEW

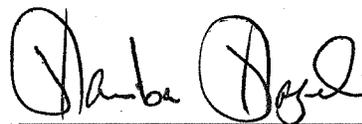
The City Attorney's office has reviewed the agreement and finds it acceptable as to form.

CONCLUSION

Approval of the license agreement renewal with OCME is scheduled to go before the City Council in August 2013. Comments from the Commission will be included in the report for the Council to consider at the City Council meeting.



ERNESTO MUÑOZ
Public Services Director



FARIBA FAZELI
Interim City Engineer



BART MEJIA
Parks Project Manager

Attachments: 1- Existing OCME License Agreement
 2- Proposed OCME License Agreement

Distribution: Tom Hatch, Chief Executive Officer
 Rick Francis, Assistant Chief Executive Officer
 Bobby Young, Finance Director
 Colleen O'Donoghue, Assistant Finance Director
 Bruce Hartley, Maintenance Services Manager
 Robert Knapp, Recreation Manager
 Lisa McPherson, Recreation Supervisor
 Alfa Lopez, Management Analyst, Public Services



CITY OF COSTA MESA

CALIFORNIA 92628-1200

P. O. BOX 1200

FROM THE OFFICE OF THE CITY CLERK

September 14, 1988

Orange County Model Engineers
Post Office Box 17561
Irvine, CA 92713

Gentlemen:

Enclosed is your fully executed copy of the License Agreement between the City of Costa Mesa and the Orange County Model Engineers for the use of a portion of Fairview Park for the installation of a model railroad facility.

This Agreement was approved at the Council meeting of September 6, 1988.

Very truly yours,

EILEEN P. PHINNEY
City Clerk

sr

cc: Leisure Services

Enclosures (2)

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this 6th day of September, 1988,
by and between the CITY OF COSTA MESA, a Municipal corporation, ("CITY")
and ORANGE COUNTY MODEL ENGINEERS, an unincorporated association,
("O.C.M.E.")

R E C I T A L S :

WHEREAS, O.C.M.E. desires to install, maintain, and operate a model
railroad facility at Fairview Park in the City of Costa Mesa; and

Whereas, CITY and O.C.M.E. desire to set forth herein the conditions
under which CITY will permit such facility;

NOW, THEREFORE, the parties agree as follows:

1. LICENSE

CITY hereby licenses the installation, maintenance, and operation
of a model railroad facility on the premises of Fairview Park, a public
park owned by CITY, by O.C.M.E., for a period of 25 years. This
license shall include construction of facilities, track, tunnels,
bridges, and other improvements as approved by CITY in the master plan
and specific plan for development.

2. USE FEE

The CITY, grants O.C.M.E. this license to use a portion of Fairview
Park site at no fee. CITY, shall receive in return a unique
recreational facility.

3. INSTALLATION OF IMPROVEMENTS

- A. Prior to construction of any facilities O.C.M.E. shall provide a master
plan of the facility to CITY. CITY shall have final right of approval
of all improvements.
- B. Prior to construction O.C.M.E. shall provide to CITY, construction
plans and specifications. The plans and specifications will require
approval by both the Department of Leisure Services and the Building
Safety Department prior to construction.
- C. O.C.M.E. shall provide short-term and long-term schedules for
improvements - future or existing.

- D. Improvements must be compatible with other park improvements - future and existing.
- E. O.C.M.E. shall pay for and bear the cost of all improvements, including plan check fees and permits.

4. OPERATION

A. Run Days

O.C.M.E. shall provide the CITY a yearly schedule of anticipated run days no later than January 2 of each year. The schedule shall if necessary be updated monthly. The model railroad shall be made to run on those days scheduled. In the event of inclement weather or emergencies O.C.M.E. will be excused from running the railroad. The CITY has the option to approve or disapprove the submitted schedule. In the event of disapproval, O.C.M.E. shall submit a revised schedule that conforms to the CITY's requirements. CITY's approval shall not be unreasonably withheld. The run day schedules will be posted and protected at the park facility and made available for public viewing. O.C.M.E. is also required to provide the approved schedule in the form of a press release to local newspapers for their use.

B. Hours of Operation

O.C.M.E. shall submit, along with the run day schedule, a schedule indicating the actual hours of operation. O.C.M.E. shall adhere to the schedule. The CITY has the option to approve or disapprove the submitted schedule. In the event of disapproval, O.C.M.E. shall submit a revised schedule that conforms to the CITY's requirements. CITY's approval shall not be unreasonably withheld. O.C.M.E. shall post and protect the hours of operation at the facility and make them available for public viewing. O.C.M.E. shall include the hours of operation with the run day schedule in the press release referred to above.

C. Fees

O.C.M.E. is not allowed to collect fees from the public for riding on users trains or for use of the park or facilities. O.C.M.E. may collect unsolicited donations from the public in a manner acceptable to the City.

D. Closure of Facility for Construction or Maintenance

In the event the facility will be closed for construction or maintenance, O.C.M.E. shall submit a revised schedule to the CITY for approval. The revised schedule shall be posted and protected at the site and made available for public viewing. O.C.M.E. shall also provide press releases to local newspapers regarding the temporary closure of the facility.

5. Operation Rules and Regulations

- A. O.C.M.E. shall provide all club members and train operators a set of Rules and Regulations for Railroad Operations and Safety and also shall ensure that all rules and regulations are strictly enforced. (See attachment B).
- B. O.C.M.E. shall immediately notify CITY in writing of any accidents, vandalism, and any similar occurrences.
- C. O.C.M.E. shall provide the CITY monthly records of the number of passengers carried on each day of operation.

6. GENERAL PUBLIC

- A. No unlawful discrimination in any form shall be practiced.
- B. O.C.M.E. shall provide free rides on every scheduled run day.
- C. O.C.M.E. shall provide all necessary safety devices, regulations, and warning signs. All signage shall be approved by CITY prior to installation.
- D. O.C.M.E. shall supervise the public while using the facility. If park users are uncontrollable O.C.M.E. shall contact the Costa Mesa Police Department or the Park Ranger.
- E. O.C.M.E. shall post a notice stating that there is a maximum weight limitation of 225 pounds per person allowed to ride on members' trains.

7. INSURANCE

O.C.M.E. shall obtain and maintain for the duration of this Agreement, commercial general liability insurance with limits of not less than one million dollars combined single limit, per occurrence and aggregate. City of Costa Mesa shall be an additional named insured. The policy shall not be cancelled without first providing CITY 30-day written notice. O.C.M.E. shall provide proof of insurance to CITY in a form acceptable to the City Attorney's Office before beginning any installation or construction pursuant to this Agreement, and shall provide a new certificate for each policy period showing the required insurance in force.

8. MAINTENANCE OF AREA

- A. O.C.M.E. shall maintain a clean and safe area.
- B. CITY shall provide landscape maintenance.
- C. O.C.M.E. shall not store toxic, explosive, or flammable materials on the site.
- D. O.C.M.E. shall keep all facilities in good repair. If facilities are neglected, CITY may repair and back-charge O.C.M.E. CITY may terminate this agreement with 60 days notice if, in the CITY's opinion, O.C.M.E. fails to keep facilities in good repair.

9. SALE OF GOODS OR FOOD

- A. O.C.M.E. may sell food and drink (non-alcoholic) with prior written approval of CITY. No alcoholic beverages are allowed in the park or at the O.C.M.E. facility.
- B. O.C.M.E. shall obtain all necessary permits prior to selling food or drink.

10. SIGNAGE OR ADVERTISEMENT

No signs or advertisement shall be posted or erected without prior written approval of CITY.

11. UTILITIES

- A. CITY shall provide water and power to the site.
- B. CITY shall pay water and power bills.
- C. CITY shall provide trash pickup at trash cans.
- D. O.C.M.E. shall provide general litter pickup.
- E. CITY shall provide for telephone installation, and O.C.M.E. shall pay and be responsible for the monthly bills.

12. CONDITION OF PREMISES

- A. O.C.M.E. accepts site "As Is".
- B. City will provide rough grading for installation of track.

13. QUALITY

- A. O.C.M.E. shall maintain a high standard of service comparable to other facilities, i.e. Chula Vista, Riverside, Griffith Park, etc. The CITY shall be the ultimate judge of quality of service being provided by O.C.M.E.

14. PARK INSPECTION

CITY reserves the right to inspect the premises as it deems necessary.

15. **ASSIGNMENTS PROHIBITED**

O.C.M.E. shall make no assignment of any rights granted herein without prior written approval of the Director of Leisure Services or his designee.

16. **RELOCATION**

In the event that the track or other facilities require relocation to facilitate construction of CITY facilities, O.C.M.E. shall bear the cost of relocation. CITY shall make every effort to design around existing improvements. The CITY is not obligated to provide relocation assistance but may do so at its option.

17. **TERMINATION; REMOVAL OF MATERIALS AND EQUIPMENT**

Either party may terminate this agreement upon 90-days written notice to the other, either by certified mail or by personal delivery. Upon such termination or upon expiration of this agreement according to its terms, O.C.M.E. shall remove all its materials and equipment within 60-days. Any materials or equipment remaining on the site after that 60-day period shall be considered abandoned and may be removed and disposed of by CITY at its sole discretion.

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Upon

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DATED on the day and year first above written.

D. Hall

Mayor of the City of Costa Mesa

ATTEST:

Eileen P. Phinney

City Clerk of the City of Costa Mesa

ORANGE COUNTY MODEL ENGINEERS

Ben Viola

Ben Viola

TITLE: PRESIDENT OCME

APPROVED AS TO FORM:

Christiaan Anten

Christiaan Anten

TITLE: 2nd SUPERINTENDENT

Guarner M. Frey, Esq. C.A.

City Attorney of the City of Costa Mesa

LICENSE AGREEMENT

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by and between the CITY OF COSTA MESA, a Municipal corporation, ("CITY")
and ORANGE COUNTY MODEL ENGINEERS, an unincorporated association,
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R E C I T A L S :

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bridges, and other improvements as approved by CITY in the master plan
and specific plan for development.

2. USE FEE

The CITY, grants O.C.M.E. this license to use a portion of Fairview
Park site at no fee. CITY, shall receive in return a unique
recreational facility.

3. INSTALLATION OF IMPROVEMENTS

A. Prior to construction of any facilities O.C.M.E. shall provide a master
plan of the facility to CITY. CITY shall have final right of approval
of all improvements.

B. Prior to construction O.C.M.E. shall provide to CITY, construction
plans and specifications. The plans and specifications will require
approval by both the ~~Department of Leisure Services~~ ^{Public Services Department} and the ~~Building~~ ^{Development Services}
~~Safety Department~~ ^{Department} prior to construction.

C. O.C.M.E. shall provide short-term and long-term schedules for
improvements - future or existing.

- D. Improvements must be compatible with other park improvements - future and existing.
- E. O.C.M.E. shall pay for and bear the cost of all improvements, including plan check fees and permits.

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- E. O.C.M.E. shall post a notice stating that there is a maximum weight limitation of ³⁵⁰~~225~~ pounds per person allowed to ride on members' trains. club or

7. INSURANCE

O.C.M.E. shall obtain and maintain for the duration of this Agreement, commercial general liability insurance with limits of not less than one million dollars combined single limit, per occurrence and aggregate. City of Costa Mesa shall be an additional named insured. The policy shall not be cancelled without first providing CITY 30-day written notice. O.C.M.E. shall provide proof of insurance to CITY in a form acceptable to the City Attorney's Office before beginning any installation or construction pursuant to this Agreement, and shall provide a new certificate for each policy period showing the required insurance in force.

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- C. O.C.M.E. shall not store toxic, explosive, or flammable materials on the site.
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10. **SIGNAGE OR ADVERTISEMENT**

No signs or advertisement shall be posted or erected without prior written approval of CITY.

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- A. CITY shall provide water and power to the site.
 - B. CITY shall pay water and power bills.
 - C. ~~CITY shall provide trash pickup at trash cans.~~
 - D. O.C.M.E. shall provide general litter pickup.
 - E. CITY shall provide for telephone installation, and O.C.M.E. shall pay and be responsible for the monthly bills.
- OCME shall pay for a trash dumpster and schedule a monthly pickup of trash. Upon two weeks notice by OCME, CITY may pick up overflow trash from special events or allow OCME to deposit it at the CITY corporation yard.*

12. **CONDITION OF PREMISES**

- A. O.C.M.E. accepts site "As Is".
 - B. ~~City will provide rough grading for installation of track.~~
- OCME shall maintain the premises in a condition comparable to other similar facilities in the area, i.e., Chula Vista, Riverside, and Griffith Park.*

13. **QUALITY**

- A. O.C.M.E. shall maintain a high standard of service comparable to other facilities, i.e. Chula Vista, Riverside, Griffith Park, etc. The CITY shall be the ultimate judge of quality of service being provided by O.C.M.E.

14. **PARK INSPECTION**

CITY reserves the right to inspect the premises as it deems necessary.

15. **ASSIGNMENTS PROHIBITED**

O.C.M.E. shall make no assignment of any rights granted herein without prior written approval of the ~~Director of Leisure Services~~ or his Director of Public Services designee.

16. **RELOCATION**

In the event that the track or other facilities require relocation to facilitate construction of CITY facilities, O.C.M.E. shall bear the cost of relocation. CITY shall make every effort to design around existing improvements. The CITY is not obligated to provide relocation assistance but may do so at its option.

17. **TERMINATION; REMOVAL OF MATERIALS AND EQUIPMENT**

~~Either party may terminate this agreement upon 90-days written notice to the other, either by certified mail or by personal delivery. Upon such termination or upon expiration of this agreement according to its terms, O.C.M.E. shall remove all its materials and equipment within 60-days. Any materials or equipment remaining on the site after that 60-day period shall be considered abandoned and may be removed and disposed of by CITY at its sole discretion.~~

Either party may terminate this agreement upon 90-days written notice to the other, either by certified mail or personal delivery. Upon such termination of this agreement according to its terms, OCME shall have one year to remove its materials and equipment. Any materials or equipment remaining on the site after that one year period shall be considered abandoned and may be removed and disposed of by CITY at its sole discretion.

17. All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other will be in writing and will be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

CITY:
Costa Mesa Public Services Department
Contract Administrator
City of Costa Mesa, California
77 Fair Drive
P.O. Box 1200
Costa Mesa, CA 92628-1200

OCME:
President, OCME
P.O. Box 3216
Costa Mesa, CA 92628

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers

DATED on the day and year first above written.

D. Hall

Mayor of the City of Costa Mesa

ATTEST:

Esther P. Phinney

City Clerk of the City of Costa Mesa

ORANGE COUNTY MODEL ENGINEERS

Ben Viola

Ben Viola

TITLE: President O.C.M.E.

APPROVED AS TO FORM:

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TITLE: 2nd SUPERINTENDENT

Ulanor M. They last, C.A.

City Attorney of the City of Costa Mesa