



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 15, 2009

ITEM NUMBER: IV-1

SUBJECT: MEMORANDUM OF UNDERSTANDING WITH THE COUNTY OF ORANGE FOR SUBMISSION OF A BID TO PURCHASE THE ORANGE COUNTY FAIRGROUNDS

DATE: DECEMBER 11, 2009

FROM: CITY MANAGER'S OFFICE AND THE CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY
ALLAN L. ROEDER, CITY MANAGER

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RECOMMENDATION:

Approve a Memorandum of Understanding with the County of Orange.

BACKGROUND:

The Orange County Fair and Event Center (OCFEC), operated by the 32nd Agricultural District, has been part of the Costa Mesa community since 1949. OCFEC's mission is to provide educational, entertainment and recreational opportunities for the general public and preserve the heritage of California agriculture. This is achieved by showcasing the talents, interests and accomplishments of the citizens of California, especially Orange County residents, year-round. It is located on a 150-acre parcel bounded by Newport Boulevard, Fair Drive, Fairview Road, and Arlington Avenue.

In May 2009, Governor Schwarzenegger announced that the State of California may find it necessary to sell various State assets and properties – including the Orange County Fairgrounds – in order to close the State's budget deficit. In response, the City Council adopted a resolution (Attachment 1) opposing the sale of the property and any closure or relocation of the Orange County Fair and Events Center. The resolution essentially mirrors action previously taken by the City Council in 2004 when this subject was last raised by the State. A similar resolution was adopted by the Orange County Board of Supervisors (Attachment 2) following the City Council's action.

As part of the State's budget adoption in July 2009, AB X4 22 was approved by the State Legislature and signed by the Governor. The State Department of General Services (DGS) was authorized to sell the OCFEC pursuant to a public bidding process. The site was the only State held property among those identified in May to be placed on the market for sale. The measure did not declare the property as surplus but did direct that the property be sold for its highest and best use to maximize the return to the State.

Following adoption of AB X4 22, DGS began the process of crafting the Request for Proposals (RFP) for sale of the property.

During the timeframe in which the RFP was being prepared, City staff was in contact with DGS advising of the City's land use regulations and restrictions on the site. A substantial amount of information was supplied by the City to DGS which was subsequently incorporated into the RFP by reference. However, DGS did not include anything in the RFP that as a condition of sale limited future use of the property to a Fair and Event Center. Upon release of the RFP in October 2009, the City initiated steps to clarify for prospective bidders the land use limitations of the property by way of a Specific Plan and subsequently a General Plan initiative. Those efforts are currently underway and will be brought back to the City Council for final action shortly after the first of the New Year.

In response to the RFP and the potential for closure of the OCFEC, significant public concern has been expressed on this subject. The City Council is well aware of these concerns so they will not be detailed again in this report. But the level of public opposition to the sale and closure of the OCFEC lead to a formal decision by the City Council on November 17, 2009 to request of Governor Schwarzenegger that the sale of the property be cancelled. The County of Orange subsequently adopted a resolution likewise calling for the sale to be cancelled and requesting that cities throughout Orange County take similar action. Cities in Orange County have adopted resolutions or sent letters to the Governor requesting cancellation of the sale – an updated list of those cities will be provided at Tuesday's Special City Council meeting. In addition to the actions of the City, the County and other communities in Orange County, Assembly Bill 1590 has been introduced in the current special session of the State Legislature. Sponsored by Assemblyman Jose Solorio and co-sponsored by Assemblyman Van Tran, AB 1590 would repeal authorization to sell the OCFEC under AB X4 22. A copy of the measure and correspondence to Governor Schwarzenegger is included with this report (Attachment 3).

To date, there has been no indication from State Officials that the process (as detailed in the RFP) for offering the OCFEC for sale will be halted. DGS officials have stated that they have no authority to stop the sale and that they are required to carry out the Legislature's direction. Although not confirmed by State officials, it is believed that only the Governor has the authority at this time to stop the sale. It bears mentioning that neither AB X4 22 nor the RFP mandate that the property be sold. The State maintains the right to reject all bids at various points in the process. A full copy of the RFP and the four addenda issued subsequent to its issuance are included with this report (Attachment 4).

With issuance of the RFP and inaction by the State to stop the sale, the City Council and management have explored whether or not a bid should be submitted for acquisition of the property with the sole intent of preserving the OCFEC. Consideration of this option has from the outset been strictly an alternative in the event the State refused to stop the sale. Yet with a deadline of January 8, 2010 for submission of bids and nothing at this time to suggest the property will be withdrawn from the market by the State, the City Council has considered the assets and liabilities of submitting a bid.

ANALYSIS:

At the City Council's direction, management has investigated a range of options and possible scenarios for submission of a bid to retain the OCFEC. This has included a financial analysis of the OCFEC Operations and Financials, Phase 1 Environmental Review, Architectural Review of OCFEC Facilities, Preliminary Title Report Review, Financing Options and related due diligence. Because the County of Orange is also considering the possibility of submitting a bid to retain the OCFEC, the City and County have cooperated fully to reduce the cost of this necessary analysis. The County and the City collaborated on the submission of questions to DGS regarding the RFP that were responded to in Addendum #4 by DGS.

In considering options for the submission of a bid, management has made certain assumptions that are stated, as follows:

- The intent is to retain the OCFEC substantially "as is" and to ensure it is retained as an educational, recreational, entertainment and cultural resource. While the OCFEC will undoubtedly change over time to meet the changing needs and interests of Orange County, its essential mission is to remain the same.
- Submission of a bid cannot place the City's General Fund at risk. Current economic conditions have necessitated that the City reduce the cost of operations, cut back various services and take a number of extraordinary steps to conserve precious tax dollars. As such, the City cannot place local tax dollars at risk to acquire the OCFEC. Financing options considered are predicated on the acquisition covering the cost of debt service for the purchase. While this will likely require the City's full faith and credit to finance the purchase, it will require the operations of the OCFEC to offset the purchase price.
- Consistent with City Council direction, any prospective oversight and management of the OCFEC must be transparent and compliant with the principles of open governance and public participation.
- The City does not maintain the expertise to manage and operate the OCFEC. If the City were successful in acquiring the OCFEC, it should look to an independent operator (similar to the current arrangements with the City's golf course concession) or contract with a non-profit or similar entity to operate the facilities. The City should not attempt to go into the business of day-to-day operation of the OCFEC.

Taking into account the preceding, management considered the following alternatives:

1. No Bid

The City could choose to focus all its efforts towards stopping the sale and implementing the Specific Plan and the General Plan initiative. These steps have been and continue to be the first priorities as they relate to the OCFEC sale. If efforts to stop the sale are unsuccessful, the City will be limited in its prospective involvement with the site to strictly land use control. While such control is significant, it does place the City in a position of responding to proposed changes as opposed to controlling/leading change as it relates to the OCFEC. The City would avoid financial risk, liability exposure and a significant commitment of personnel resources by not submitting a bid.

2. City Purchase

The City does have the ability to submit a bid to acquire the OCFEC in its entirety. In so doing, the City would assume 100% of the financial risk & liability and full responsibility for future operations. Regarding the latter, the most likely scenario would be to contract with a separate operator or agency (up to and including the 32nd District Agricultural Association) for day to day operations. The City would need to arrange for 100% financing of the acquisition with debt service secured by OCFEC revenues and backed by the City's credit worthiness. The benefit to this alternative is that the City would have 100% control over the OCFEC. The liability is that the City would assume 100% of the financial risk and liability in exchange for obtaining the 100% control.

3. Partnership with the County of Orange

As noted previously, the County of Orange is preparing to submit a bid for the OCFEC in an effort to retain it as a Fair & Exposition Center. Management believes that the County will submit a bid whether there is a partnership with the City or not. In discussions over the past several weeks with County representatives, the interests of the County and the City appear to be very much in accord with one another. The benefit of a partnership is that the City would share equal ownership and control over the OCFEC while only accepting 50% of the financial and liability risk. In conversations with the County, staff believes that such a partnership would still involve contracting for the day-to-day operation of the OCFEC with a third party. This option might also provide for other public agencies to participate as equity partners or under some alternative arrangement.

Based on the preceding and in consultation with the City Council, management has prepared the attached Memorandum of Understanding (MOU) for a partnership with the County of Orange for submission of a bid for the OCFEC. We believe this option maximizes the opportunity to retain the OCFEC if the State proceeds with the sale. It maximizes the City's ability to control the site while minimizing financial risk and liability. It likewise may afford future participation by other parties in defraying the cost of operations and implementation of the OCFEC Master Plan.

A draft MOU is attached to this report (Attachment 5). This draft was previously submitted to the City Council for review & comment and further negotiation with the County of Orange. Management has submitted its final proposed revisions to the County of Orange and is awaiting confirmation of their acceptance or rejection. The Orange County Board of Supervisors is scheduled to consider the MOU at its morning meeting of Tuesday, December 15, 2009. Consequently, the City will know by your meeting the evening of December 15, 2009 if the changes have been accepted by the County. Copies of the final MOU will be provided to the City Council and members of the public just as soon as it is available to the City. Management is highly cognizant of the City Council and the public's interest in this matter and the need for transparency and openness in these deliberations. It is important to keep in mind the very tight timeline set by the State and the nearly daily changes that have been occurring in the process for the past several weeks.

FISCAL REVIEW:

As referenced in the analysis segment of this report, management believes that any bid for purchase for the OCFEC must be supported by the operations of the Fairgrounds. General fund revenues should not be placed at risk even though the City will most likely need to place its full faith and credit behind the financing for the purchase along with that of the County of Orange. Because the purchase is being conducted under a sealed bid process followed by a voice auction, specific figures are not being released as part of this report but will be submitted to and authorized by the City Council in Closed Session pursuant to Government Code Section 54956.8.

While not a financial factor per se, it should be recognized that should the joint bid by the City and County be successful, a significant expenditure of management level staff time will be needed to follow through the required negotiations with the State up through the close of escrow. Not only will there be a required commitment of time to negotiate the details of the sales but development of a Governance structure, Business Plan and Transition Plan for existing operation of the OCFEC. In reality, the Governance Plan, Business Plan and Transition Plan will likely be more involved and labor intensive than the purchase itself. Even without the staffing reductions that the City has already found necessary to put into effect as a result of the recession, management will be unable to achieve the above unless other priority efforts are set aside or additional expertise brought in to supplement management’s participation. The cost of supplemental assistance would need to be considered in the overall cost of acquisition.

CONCLUSION:

The Orange County Fair and Event Center is not only unique to Costa Mesa but to all of Orange County. It is a significant part of the City’s identity not only locally but region-wide. While many very good arguments have been made as to why the State should not place the property up for sale – and why taxpayers should not have to pay twice for the same property – we have so far been unable to persuade the State to stop the sale. The action before the City Council is whether to take an additional step by participating in the bid process to retain the OCFEC? If the decision is to take the additional step, management strongly recommends the City do so with the participation of the County of Orange for the reasons stated herein. This should in no way be a substitute for efforts to stop the sale which should remain the City’s top priority.

ALLAN L. ROEDER
City Manager

KIMBERLY HALL BARLOW
City Attorney

- 2 [County of Orange Resolution No. 09-180](#)
- 3 [Correspondence from Assemblyman Solorio and AB 1590](#)
- 4 [Request For Proposals and Addenda](#)
- 5 [Memorandum of Understanding between City of Costa Mesa and County of Orange](#)