

MOTION BY SUPERVISOR HILDA L. SOLIS

DECEMBER 8, 2020

Amendment of Existing Lease with Fair Association-Fairplex Pomona

The Los Angeles County Fair Association (Fair Association) and its predecessor have conducted the Los Angeles County Fair (Fair) since 1922. On January 20, 1988, the County of Los Angeles (County) and the Fair Association entered into a 56-year lease, with two 5-year options to extend (Lease No. 58394). It is the purpose and intention of the County and Fair Association, for the Fair Association to operate the Fair and host other interim events on County-owned land. The State of California (State) and County conducted audits of the Fair Association in November 2016 which identified problems with rent payments to the County, compliance with lease terms regarding fiscal reporting, Fair Association administrative staff compensation and benefits, and the physical condition of the Fair Association building and structures. Specifically, the audits recommend:

- Clarifying the rent structure so it is a true percentage of gross receipts generated from the leasehold.
- Fair Association compliance with fiscal reporting requirements.

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- Correctly calculating RV Park rents.
- Restructuring of Fair Association administrative salaries and benefits.
- Implementing a plan to ensure Fair Association buildings and assets are maintained such that there is very little deferred maintenance.

Since that time, the Fair Association has brought in new leadership, and the Fair Association has engaged in a process of seeking public input, and partnered with my Office, the City of Pomona, and the CEO's Office to address these audit findings, and to develop a new vision of how to partner with the County and strengthen the community serving nature of the Fairplex.

The CEO and the Fair Association have worked to address the various audit findings and develop a settlement agreement and amendment to the lease that memorializes these changes. The Auditor-Controller has reviewed Attachment 1 and has agreed that it appears to address all recommendations from their audit of the Fair Association.

Further details regarding the Amendment and Settlement Agreement can be found in Attachment 1.

I, THEREFORE, MOVE that the Board of Supervisors:

1. Find that the recommended actions are not subject to the California Environmental Quality Act ("CEQA") because they are activities that are excluded from the definition of a project by section 21065 of the Public Resources Code and Section 15378(b) of the State CEQA Guidelines. This proposed action is an organizational or administrative activity of government which will not result in direct or indirect physical changes to the environment.

2. Delegate authority to the Acting Chief Executive Officer (CEO), or her designee, to execute a settlement agreement, approved as to form by County Counsel, between the County and the Fair Association to address the findings of both the State and County audits as specified in Attachment 1.
3. Delegate authority to the Acting CEO, or her designee, to execute an Amendment to the Lease, consistent with the settlement agreement and approved as to form by County Counsel, and any other ancillary documentation necessary to effectuate the amendment and settlement agreement(s), and authorize the Acting CEO, or her designee, to take actions necessary and appropriate to implement the amendment and settlement agreement(s).

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COUNTY OF LOS ANGELES & LOS ANGELES COUNTY FAIR ASSOCIATION
SUMMARY OF PROPOSED TERMS AND CONDITIONS FOR SETTLEMENT AND FIFTH AMENDMENT TO
GROUND LEASE AND OPERATING AGREEMENT FOR LOS ANGELES COUNTY FAIRPLEX

Parties	County of Los Angeles (“ County ”) Los Angeles County Fair Association (“ Fair Association ”)
Project	Los Angeles County Fair Grounds, Pomona, California (“ Fairplex ”)
Ground Lease	Ground Lease and Operating Agreement dated January 20, 1988 between County and Fair Association, as amended by the First Amendment to Ground Lease and Operating Agreement dated January 28, 2000, the Second Amendment to Ground Lease and Operating Agreement dated September 30, 2003, the Third Amendment to Ground Lease and Operating Agreement dated May 13, 2008, and the Fourth Amendment to Ground Lease and Operating Agreement dated August 21, 2020 (collectively, as amended, the “ Ground Lease ”)
Settlement of Past Due Rent; Release	<p>There is a dispute regarding the appropriate amount of past rent owing to the County and without acknowledging any fault, the parties agree to settle the dispute as follows:</p> <p>Fair Association shall pay the County: (a) \$6,512,527.00 in past due rent owed under the Ground Lease for revenue generated by the hotel and conference center combined; and (b) \$278,068.49 in past due rent owed under the Ground Lease for revenue generated by the RV Park. Such amounts are collectively referred to herein as the “Past Due Rent”.</p> <p>Fair Association shall pay the Past Due Rent to the County as follows:</p> <ul style="list-style-type: none"> • The sum of \$1,790,595.49 (the “Cash Portion”) shall be payable in cash to County, amortized over a 5-year period, with interest accruing at the 5-Year Treasury Rate (as of the Repayment Commencement Date defined below) plus 225 basis points annually, which interest shall begin to accrue on the Repayment Commencement Date. Equal quarterly payments of principal and interest in an amount necessary to fully amortize the Cash Portion with interest over said five-year period shall be made in quarterly installments (on Jan. 1, Apr. 1, July 1 and Sept. 1 of each year) commencing on the earlier of (a) the first Jan. 1 following the next occurrence of the Fair, and (b) Jan. 1, 2023 (the earlier of which dates shall be the “Repayment Commencement Date”); and • The balance of the Past Due Rent, in the sum of \$5,000,000.00 (the “County Credit”), shall be available to the County as a credit that can be redeemable by the County, at its election, for any fees, costs or expenses that the County may owe or are otherwise payable (in cash or credit) to the Fair Association (whether pursuant to the Ground Lease or otherwise), at any time from and after the effective date of the amendment contemplated by this Term Sheet, without expiration. The County Credit shall be memorialized in the form of a Promissory Note. <p>Provided Fair Association complies with its foregoing repayment obligation as and when required, and there are no intervening events of default, County</p>

	<p>will deem all Past Due Rent to be satisfied in full, and will release all claims against Fair Association for the same.</p> <p>If Fair Association defaults under any debt obligations owed to third parties while any portion of the Past Due Rent remains outstanding, the full amount of the then-outstanding Past Due Rent (together with accrued interest thereon) shall become immediately due and payable. For the avoidance of doubt, the existing technical default of Fair Association for failing to comply with certain debt service ratios under its existing bonds shall be detailed and excluded from triggering the foregoing due-on-default provision subject to such terms and conditions as the parties shall mutually agree in the amendment to Ground Lease.</p>
Amendment of Definition of Gross Revenue	<p>The definition of “Gross Revenue” (as defined in Sections 3.07.a and 15.08 of the Ground Lease) shall be restated in its entirety as follows:</p> <p>“As used in this Lease, the term ‘gross revenue’ shall mean and include any and all money, cash receipts and/or other things of value (including but not limited to: admissions; gross charges; sales; rentals; fees; percentage rent payments; lease payments; hotel room revenues and resort fees; concessions; commissions; and in kind payments, assets, and/or property), made, received or earned by Fair Association and/or its assignees, sublessees, licensees, permittees, concessionaires, managers, operators, agents and/or any Affiliate (as defined below) of Fair Association, whether collected or accrued from any business, use, occupation or any combination thereof, originating, transacted, or performed in whole or in part, at or on the Fairplex (including, without limitation, sales by email, telephone, facsimile, Internet, electronic, video, and computer and mobile device orders from any website, and goods sold or revenue generated by means of other technology-based systems, whether currently existing or developed hereafter, that are placed or filled at or from the Fairplex (including, for example and without limitation, ticketing and wagering)), excepting only (i) moneys or grants from governmental agencies given to Fair Association or its Affiliates for specific purposes (except payments for the use of property which shall be included as gross revenues and payments in lieu of rent), (ii) taxes for the benefit of a governmental body collected by Fair Association or its Affiliates, (iii) advertising or promotional considerations received in connection with the operation of the Fair, and (iv) revenue generated at or on property that is owned (as opposed to leased) by the Fair Association or its Affiliates. For the avoidance of doubt, there shall be no deduction from ‘gross revenue’ for any overhead, cost or expense of operation, such as, but without limitation to, salaries, wages, cost of goods, interest, Fair Association’s debt amortization, collection, credit card and bad debt charges, insurance and taxes paid by Fair Association. For purposes hereof, an ‘Affiliate’ of Fair Association shall mean any entity that directly or indirectly (through one or more intermediaries), controls, is controlled by, or is under common control with, Fair Association; provided, however, for purposes of this Section [] and the determination of Gross Revenue, ‘Affiliates’ shall specifically exclude ‘The Learning Center at Fairplex’ (“TLC”) and ‘Child Development Center’ (“CDC”); provided, further, that on January 15 of each year during the term, Fair Association shall provide an annual</p>

	report to the County on the community benefits provided by TLC and CDC for the prior year.”
Amendment of Rent	<p>Except with respect to Parcel 1 (as set forth below), the definition of “Rent” (as defined in Sections 3.01 and 15.18 of the Ground Lease) shall be restated in its entirety for all other purposes, such that the same shall be, in total, 5% of Gross Revenue (as redefined above) from all sources <u>other than Parcel 1</u> (i.e., whether “Fair Revenues”, “Interim Revenues”, or otherwise) for each Lease Year. Fair Association shall report Gross Revenues (as redefined above) on a consolidated basis for all sources and shall report the same to the County in accordance with Section 3.06 of the Ground Lease, and the parties shall use the “Gross Revenue” that is shown on Fair Association’s audited consolidated financial statements as the basis for calculating Rent as set forth herein.</p> <p>For the avoidance of doubt, Section 3.04 of the Ground Lease shall remain unmodified.</p>
County Involvement in Redevelopment of Fairplex and Future Fair Association Enterprises	<p>Fair Association shall include and consult with the County in connection with the Fair Association’s preparation and implementation of a long-term strategic plan and masterplan for the redevelopment of the Fairplex, both of which plans shall be subject to the County’s advance review and approval.</p> <p>The goal of the strategic and master plans will be to establish a blueprint that will maximize the use of the Fairplex campus to:</p> <ol style="list-style-type: none"> 1. Grow economic activity and tax revenues for the region through job creation, entrepreneurship expansion and housing, including affordable housing; 2. Create a place that celebrates LA County’s rich history and diverse cultures; 3. Provide educational and community programming; and 4. Expand, improve, innovate, and promote the Fair and the uses set forth in Art. 5 of the Ground Lease. <p>All existing governance structures, as well as any new governance structures that are created to oversee the implementation of the foregoing and/or the development of the Fairplex will include County representation.</p> <p>Fair Association and the County shall work together to identify and agree upon certain programs which may be implemented, funded and operated by the Fair Association, with the support of the County. Examples of short-term and long-term public benefit programs are included in the “Los Angeles County – Fairplex Collaborative Plan for Art, Wellness and Economic Mobility” prepared by the Fair Association, which has been shared with the County.</p> <p>County agrees to consult with the Fair Association, on a case-by-case basis if requested, to determine the feasibility of providing public-assisted financing to help offset a portion of the cost of developing and implementing such programs, subject to the approval of the Board of Supervisors (in its sole discretion) and the County’s appropriation process.</p>
County’s Approval of Major Subleases and Amendments	The definition of “ Major Subleases ” (as defined in Sections 12.04.a of the Ground Lease) shall be amended to clarify that the same shall include any leases or subleases whose term, when taking into account options granted in

	the lease/sublease, and/or agreements or modifications made during the term of the lease/sublease, aggregate to at least 10 years, as well as any amendments, modifications or assignments of the same. Furthermore, no subtenant shall be permitted to holdover without the consent of the County, in its sole discretion, and Fair Association, at its sole cost and expense, shall be required to take any and all action as may be necessary (including the prosecution of unlawful detainer actions) to remove any subtenants that holdover without the County's consent.
County's Approval of Hotel Operating Agreement	All future hotel operating agreements pertaining to hotels located on any portion of the land comprising the Fairplex, as well as any extensions or material modifications of any existing hotel operating agreement on such land, shall be subject to the prior review and written approval of the County in accordance with a procedure similar to that for the County's approval of Major Subleases as set forth in Section 12.04.a. Furthermore, in connection with the County's review and approval of any future hotel operating agreement (or extension of material modification of any existing hotel operating agreement), the County intends to consider, among other things, if the Fair Association will be concurrently implementing a Labor Peace Agreement that requires the use of union labor at such hotel.
County Oversight of Fair Association Governance and Compensation	<p>Fair Association agrees to amend its Bylaws as proposed in the Amended and Restated Bylaws (a copy of which shall be attached to the amendment to Ground Lease contemplated by this Term Sheet), to ensure fairness and diversity related to its nominations and elections of its Board of Directors and its Members, and to establish reasonable executive compensation guidelines, and similar guidelines relating to Board of Director and Member event, business, and entertainment expenses. The proposed amendments include:</p> <ul style="list-style-type: none"> • <u>Membership.</u> Fair Association shall strive to achieve that its sixty (60) Regular Member body, at any given time, constitutes a diverse body (including but not limited to, skills, interests, gender, race, age, ethnicity and geographic representation), which diversity is reflective of the demographics of the County of Los Angeles, and consistent with the last issued United States Census Bureau report, to the extent practicable. • <u>Directors.</u> The Directors on the Board shall include increase to two (2) representatives of the County selected by County. In appointing Directors to the Board, LACFA and its Members shall strive to achieve a balance of skills, interests, gender, race, age, ethnicity, and geographic representation, which diversity is representative of the County of Los Angeles, to the extent practicable. Directors shall be permitted to serve no more than a maximum of three (3) terms, for a total of twelve (12) years. • <u>Executive Compensation.</u> Given that Fair Association is a uniquely situated organization, Fair Association shall set its officer compensation to be consistent with officer compensation of a composite of organizations of similar size, scope and operations. Such organizations should include other large State and County fair organizations in the public and non-profit sectors, and other organizations in the hospitality and entertainment services, trade organizations, and other closely related

	<p>organizations. Fair Association shall complete an executive compensation study every five (5) years at its sole cost and expense, which shall be completed by a reputable firm jointly selected by the Fair Association and the County, and annually certify that the Association is complying with the salary guidelines set by the compensation study to the County. The County shall be permitted to participate in all aspects of each compensation study (as and to the extent it deems reasonably necessary), and shall be provided with copies of all material correspondence, reports, and analysis related thereto contemporaneously with the Fair Association.</p> <ul style="list-style-type: none"> • <u>Fees and Expense Reimbursement.</u> Directors and members of committees shall not receive payment or other compensation for their services on the Board, and may only receive reimbursement for incurred expenses that are directly related to the Fairplex.
Deferred Maintenance and Creation of Capital Improvement Fund	<p>A capital improvement fund shall be created into which Fair Association shall contribute funds annually, the sole purpose and use of which shall be to perform County-approved capital improvements and/or deferred maintenance based on recommendations of a mutually acceptable third party property assessment firm (who, for the first assessment, shall be AECOM), who shall reassess the Fairplex every 5 years.</p> <p>County agrees to consult with the Fair Association, on a case-by-case basis if requested, with regard to determining the feasibility of providing publicly-assisted financing to help offset a portion of the cost to perform the recommended capital improvements and/or deferred maintenance, subject to the approval of the Board of Supervisors (in its sole discretion) and the County's appropriation process.</p>
City of Pomona Affordable Housing Covenant	<p>The Fair Association is a party to a certain Affordable Rental Covenant (the "Covenant") granted to the Redevelopment Agency of the City of Pomona by the recording of the Covenant in the Official Records of the County of Los Angeles on August 26, 2009 as Instrument Number 20091314366. The Covenant, by its terms, affects a portion of the Fairplex, and requires that certain "Affordable Rental Spaces" (described therein) be made available for rental to individuals who are very low to moderate income tenants. The Covenant is to be effective until August 26, 2064. The Fair Association will cause the Covenant to be removed as an encumbrance against the fee interest of the Fairplex, and limit the same to the Fair Association's leasehold interest under the Ground Lease for a term that does not exceed the term of the Ground Lease. If the Fair Association is unable to accomplish the foregoing by the date that is the earlier of (a) five (5) years prior to the expiration of the Ground Lease, or (b) the termination of the Ground Lease, then the County shall be entitled to receive from Fair Association, as additional rent under the Ground Lease, an amount reasonably calculated and satisfactory to the County to compensate the County for the reduction in rental income derived from the Affordable Rental Spaces (measured by the difference between the affordable rent which may be charged under the terms of the Covenant and the fair market rent) from the expiration or earlier termination of the Ground Lease until the date the Covenant is removed as an encumbrance against the</p>

	<p>fee interest of the Fairplex (the “Covenant Removal Date”). Once determined, such sum (the “Affordable Covenant Fee”), shall be amortized over the then-remaining term of the Ground Lease and paid by the Fair Association in equal monthly installments into a joint account under the County’s and Fair Association’s name until the expiration of the Ground Lease (or the termination date), at which time the Affordable Covenant Fee shall be paid: (i) to the County in full, if the Covenant has not been removed as an encumbrance against the fee interest of the Fairplex prior to such date, or (ii) to the Fair Association in full, if the Covenant has been removed as an encumbrance against the fee interest of the Fairplex prior to such date. Further, the Fair Association’s foregoing payment obligation shall terminate, and all funds deposited into the aforementioned joint account shall be disbursed to the Fair Association, anytime prior to the expiration or earlier termination of the Ground Lease if the Fair Association is successful in causing the Covenant to be removed as an encumbrance against the fee interest of the Fairplex. Without limiting the generality of the foregoing, the County acknowledges that the Fair Association may be able (with the City of Pomona’s consent) to remove the Covenant from the Fairplex property by transferring the Covenant’s restrictions to other property located in the City of Pomona; the County agrees to reasonably cooperate with Fair Association in such transference so as to remove the Covenant from the Fairplex property as soon as possible; provided that the County shall have no obligation to incur any cost or expense in connection with such cooperation.</p>
County Audit and Financial Oversight Rights	<p>In addition to re-affirming Fair Association’s reporting and audit compliance obligations under the Ground Lease, and acknowledging the County’s intent to enforce the same, Section 3.06 of the Ground Lease shall be amended to replace the reference to “Fair Expenses” with “Expenses”, which term shall be redefined to include expenses for all aspects of the Fairplex, not just those relating to the Fair.</p>
Subordination of Debt; Ability to Refinance	<p>Notwithstanding any intervening understandings or agreements to the contrary, Article 12 of the Ground Lease shall be amended to clarify that if the County consents (in its sole discretion) to the subordination of the Fair Association’s obligations under the Ground Lease to other debt holders, such consent shall be a one-time consent (i.e., consent shall be required in each instance), and shall not apply to refinancings, refundings, extensions or other material amendments to such debt without the County’s prior written consent, in its sole discretion.</p>
Non-Binding	<p>This term sheet constitutes a non-binding letter of intent only. The terms and conditions outlined herein are not intended to be all-inclusive, but rather, are intended to set forth a framework from which a mutually satisfactory transaction may be structured. It is understood and agreed that no agreements set forth herein shall bind either party unless and until a full and final written agreement is prepared and fully and mutually executed by the parties hereto, under advice of counsel.</p>