

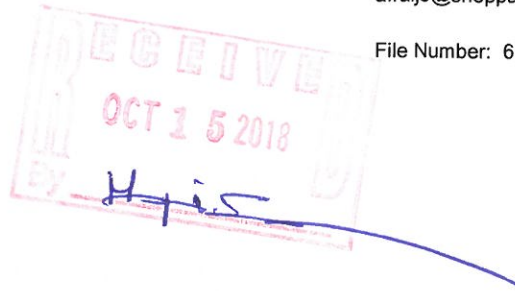
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VIA ELECTRONIC MAIL

Arnold Alvarez-Glasman
City Attorney
City of Pomona
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Pomona, CA 91766
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Re: Discussion of Item F.7 at September 26, 2018 Planning Commission Meeting

Dear Mr. Alvarez-Glasman:

As you know, this firm represents the Los Angeles County Fair Association ("Fairplex"). The purpose of this letter is to clarify statements made at the September 26, 2018 City of Pomona ("City") Planning Commission meeting (the "September 26th Meeting") regarding agenda Item F.7. Fairplex appreciates the Planning Commission's thoughtful consideration of the different resolutions and options to address the Fairgrounds' zoning, and we appreciate the Commission's recommendation to deny adoption of the F-Zone Amendment at the September 26th Meeting. However, we are concerned with statements made by the City Attorney regarding the proposed Memorandum of Understanding ("MOU") to guide the development of a Specific Plan for the Fairgrounds. The discussion of the enforceability of a MOU was confusing and inaccurate, and we wish to clarify the purpose of a MOU at this time.

Purpose of the MOU between the City and Fairplex

As a brief background, following the request of the Planning Commission at its August 8, 2018 meeting for the City to work on a MOU and Specific Plan process, Director Suarez began collaborating with Fairplex to draft a Term Sheet to guide the crafting of a MOU. The Term Sheet summarizes community concerns related to trash, noise, parking, and lighting in and around the Fairgrounds and identifies existing rules, regulations, and practices that the City and Fairplex can enforce and rely on to address those concerns while a Specific Plan is developed. The purpose of a MOU would be to publicly memorialize the issues identified in the Term Sheet in order to reach an agreement between the City and Fairplex on operational matters while the Specific Plan is drafted and potentially adopted by the City. Again, these operational matters would be based on existing City ordinances and regulations that are already enforceable.

Comments by City Attorney Led to Confusion at the September 26th Meeting

Following a motion to adopt Resolutions 1C and 1D at the September 26th Meeting, the City Attorney interjected to state that the MOU “would not raise to the level of being enforceable once we’re in a specific plan or a zoning code amendment or a development agreement” and that the MOU “in and of itself [is] not an enforceable document.” This was an unsolicited and misleading comment from the City Attorney. The City Attorney’s comment led Commissioner Kercheval to respond that the MOU “sounds like a backroom deal” and “is not an open process.” These statements only added confusion to the discussion and dissuaded the Commission from adopting Resolution 1C because staff did not accurately explain the purpose of the MOU in the Specific Plan development process. Furthermore, the Term Sheet was provided to the Planning Commission and the public prior to the September 26th Meeting as Attachment 6 to the staff report for Item F.7. It was done so in order for the Term Sheet to be publicly discussed and considered by the Planning Commission. In no way is the Term Sheet or the subsequent MOU a “backroom deal.”

MOUs are Commonly Adopted Prior to Project Approval to Guide the Development Process

It is settled law that the California Environmental Quality Act (“CEQA”) prohibits project “approval” by a public agency prior to complying with CEQA.¹ Fairplex is not advocating that the City violate CEQA, and approval of a MOU would not do so. Several recent cases have held that preparation of Term Sheets and MOUs were not project “approval” under CEQA because the agencies maintained the ability to respond to findings from the subsequent CEQA review process and/or not approve the project following CEQA review.² For example, in *Delaware Tetra Technologies, Inc. v. County of San Bernardino* (2016) 247 Cal.App.4th 352, 361, agency approval of a MOU calling for development of a groundwater management, monitoring, and mitigation plan simultaneously with preparation of an Environmental Impact Report (“EIR”) was not a “project” under CEQA because the MOU preserved full agency discretion to respond to the EIR’s findings.

While the MOU clearly cannot bind the City to take a particular action, such as adopt a Specific Plan, it can clarify the parties’ intentions during the Specific Plan development process. The draft Term Sheet envisions the MOU containing enforceable City ordinances and regulations to address community concerns in the interim while a more comprehensive Specific Plan is drafted. By stating the MOU was “unenforceable,” the City Attorney gave the impression that the document was somehow inappropriate under the circumstances. This gave Commissioner Kercheval the impression that a MOU is “not an open process.” Neither the City Attorney nor

¹ Cal. Code of Regs., Tit. 14, § 15004(b)(2).

² See *Saltsonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 570, where a nonbinding term sheet relating to the development of a basketball arena project left the city with complete discretion to adopt mitigation measures and to refuse to approve the project on completion of CEQA review. See also, *Cedar Fair LP v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, where the city’s agreement to a detailed term sheet relating to development and operation of a football stadium did not create a binding contractual commitment to proceed with the project or commit parties to a particular course of action.

staff informed Commissioner Kercheval that a MOU would be reviewed and adopted by the City following a public hearing where members of the public could weigh in on the document.

Instead of describing the MOU as a useful, organizational tool for publicly **stating the parties'** actions thus far and what they will continue to do to address community concerns while a comprehensive and responsive Specific Plan is developed, the City has given the impression that Fairplex is proposing inappropriate, "backroom deal" **planning actions**. The MOU is not a replacement for a Specific Plan for the Fairgrounds. Fairplex has always advocated for a transparent planning process, which is why we continue to support the MOU and Specific Plan as the most efficient, effective, and inclusive means of addressing all stakeholder concerns regarding the Fairgrounds. At the same time, we welcome any option put forth by the City that works towards the same goals and achieves the same result as the MOU and Specific Plan.

Sincerely,



Alfred Fraijo Jr.
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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cc: Timothy Sandoval, Mayor
City Council
Planning Commission
Linda Lowry, City Manager
Andrew Jared, Assistant City Attorney
Marie Macias, Interim City Clerk
Mario Suarez, Development Services Director
Miguel Santana, Walter Marquez, and Cielo Castro, Fairplex
Joyce Chang and Thomas Faughnan, County Counsel