

State of California

California Exposition & State Fair
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MEMORANDUM

Date: April 16, 2018

To: Long Range Planning Committee
California Exposition & State Fair

From: Rick K. Pickering, Chief Executive Officer
California Exposition & State Fair

Subject: **A) Update on Exploration of Potential Drive Shack Family Entertainment and Innovative Golf Facility at Cal Expo**
B) Consideration of Adoption of Letter of Understanding (LOU) with Drive Shack Sacramento LLC, on behalf of Drive Shack Inc.

OVERVIEW

The California Exposition and State Fair has strategically embarked on a wide variety of “renewal efforts” over the past few years, with the goal of further enhancing the foundation of the 21st century State Fair. One such endeavor was the issuance of a Request for Qualifications (RFQ) in 2015. The RFQ provided an open public process in which Respondents could propose lease-hold development of a portion or all of Cal Expo. Although a number of developers attended the RFQ’s “mandatory walkthrough,” no formal responses to the RFQ were received in late 2015.

In 2016, Rock & Brews approached Cal Expo to discuss the possibility of developing a franchised operation as a lease-hold interest on the Southwest corner of Exposition/Arden/Ethan. Cal Expo entered into a Letter of Understanding (LOU) with Rock & Brews that established negotiating and CEQA parameters for negotiations with Rock & Brews. Subsequently, a Revenue Generating Agreement was successfully negotiated and entered in to between Cal Expo and Rock & Brews.

In March of 2018, Drive Shack approached Cal Expo to explore the potential of negotiating a Revenue Generating Agreement for the use of up to 12 acres of Cal Expo. Cal Expo provided Drive Shack with copies of the Revenues Generating Agreements for the Multiuse Sports Facility (aka Papa Murphy’s Park) and for Rock & Brews. Staff recommended to Drive Shack that a similar approach be taken to exploring negotiations. On April 6, 2018, after discussing several potential locations – along with

various operational items, Drive Shack requested that a Letter of Understanding (LOU) be drafted and placed on the Board's Agenda for the April 27, 2018 Board Meeting. (See attached Drive Shack discussion document dated April 6, 2018.)

UPDATE

Staff has had preliminary discussions regarding this potential project and the related negotiation process with the Department of General Services and with the Attorney General's Office. Subject to further review, Staff was advised that the process used for the Multiuse Sports Facility and for Rock & Brews, be used with Drive Shack.

Based upon this initial due diligence a Draft Letter of Understanding (LOU) was developed for consideration by the Board. This Draft Letter of Understanding (LOU) is similar to the Letter of Understanding (LOU) that was used to define negotiations related to the Multiuse Sports Facility and to the Rock & Brews project.

While more details will be forthcoming during formal negotiations, Drive Shack's initial discussions of Cal Expo has included: possibly a 12 acre facility (7 acre golf and entertainment facility, plus 5 acre parking lot;) three story tall hitting bays; artificial turf for landing areas; Kid's entertainment zone; food and bar services; catering and meeting rooms; low density lighting; etc.

On April 5, 2018, Drive Shack opened its first facility in Orlando, Florida. For this opening, Drive Shack's press release included the following, "***Drive Shack Orlando is a subsidiary of Drive Shack Inc. (NYSE: DS), a publicly traded owner and operator of golf-related leisure and entertainment businesses. Drive Shack is developing venues across the country that are reimagining the traditional concept of a golf course through blended, industry-leading technology, design and service that creates a golf-entertainment experience for every skill level and interest. Unlike traditional driving ranges, Drive Shack's complexes will feature technologically enhanced, signature golf-based games using complimentary Taylor Made clubs and are designed for players of all skill levels. Each venue will have full-service food and beverage areas as well as private event space that can accommodate groups from 10 up to 1,000 in size. Drive Shack Inc. also owns American Golf, one of the largest owners and operators of golf properties nationwide.***

LETTER OF UNDERSTANDING

The attached draft Letter of Understanding (LOU) has been prepared between Staff and Drive Shack, and is being presented first to the Long Range Planning Committee. If approved by the Committee, the Letter of Understanding (LOU) will be presented to the full Board of Directors for review and consideration. The Letter of Understanding (LOU) is designed to address several items through a prudent process and related time line. Specifically, the Letter of Understanding (LOU):

1. Specifies that Drive Shack will develop and file the appropriate CEQA documents, subject to Cal Expo's review.
2. Specifies that Cal Expo will serve as the Lead Agency for CEQA, and that Drive Shack will indemnify Cal Expo should any CEQA challenge be issued.

3. Identifies a 180 day time line for Cal Expo and Drive Shack to complete the negotiations for a possible Revenue Generating Agreement. While negotiations should proceed more quickly, additional time is contemplated due to the upcoming 2018 California State Fair.
4. At the end of the appropriate CEQA period, and if a Revenue Generating Agreement is reached with Drive Shack, the potential project would be returned to the Board of Directors for review and possible approval.

The Letter of Understanding (LOU) does not approve the potential Drive Shack project, and specifically notes that no guarantee of approval is tied to the Letter of Understanding (LOU).

PROCESS

If the Letter of Understanding (LOU) is approved by the Board, Staff will work with Drive Shack to complete and file the appropriate CEQA documents. Staff will also negotiate with Drive Shack to develop a draft Revenue Generating Agreement. Once the CEQA time period has been completed, the Revenue Generating Agreement would be returned to the Board for consideration and possible approval.

LETTER OF UNDERSTANDING

The parties to this Letter of Understanding ("LOU") are the California Exposition & State Fair ("Cal Expo"), an independent entity of state government; and Drive Shack Sacramento LLC ("Drive Shack") or its assign. Hereinafter, Cal Expo and Drive Shack, collectively, will be referred to as the "Parties."

RECITALS

1. Cal Expo and Drive Shack have agreed (subject to the provisions of this LOU) to cooperate and work together in an attempt to evaluate the feasibility, and negotiate a revenue generating agreement for the development of a Drive Shack facility (the "Proposed Project") upon the Cal Expo property. The location of the Drive Shack improvements shall be negotiated along with the revenue generating agreement following the execution of the LOU.
2. The Parties anticipate that the Proposed Project will be developed as a Drive Shack facility similar to Drive Shack's facility in Florida on the Cal Expo property.
3. If the Parties agree to proceed with the Proposed Project, the costs for development and construction of the Proposed Project will be funded by Drive Shack.
4. It is the intention of the Parties that the Proposed Project will be developed in an environmentally-sensitive manner that will provide new jobs and incremental tax revenue for the State of California, the City of Sacramento, and the County of Sacramento.
5. As part of these continuing discussions and negotiations, Cal Expo and Drive Shack will jointly: (i) consider detailed plans for the layout of the Proposed Project in relation to existing and planned Cal Expo facilities; and (ii) negotiate a revenue generating agreement to govern the Proposed Project.

Wherefore, based upon and in furtherance of the preceding Recitals, Cal Expo and Drive Shack agree to the following:

TERMS

1. Discussion Period. Unless terminated sooner in accordance with the terms of this LOU, the Parties agree to continue discussions diligently and in good faith with one another from the date this LOU is signed by the Parties through October 31, 2018, (the "Discussion Period") in an attempt to develop, evaluate, and agree on a plan for the Proposed Project, and, if such agreement is reached, to negotiate a mutually acceptable revenue generating agreement providing for the implementation of the Proposed Project. This LOU will terminate on October 31, 2018 unless otherwise extended by the Parties in a written agreement.
2. Development and Evaluation of the Proposed Project. During the Discussion Period, the Parties shall work together in good faith to evaluate, and negotiate a revenue generating agreement for the Proposed Project as follows:
 - A. Drive Shack, at its sole cost, in consultation with Cal Expo, will develop the conceptual plan (the "Conceptual Plan") for the Proposed Project, which shall include: (i) a detailed land use master plan, including program analysis and phasing and (ii) feasibility analysis, including projected infrastructure, site, fee and development cost, and value analyses.
 - (1) Cal Expo shall work collaboratively with Drive Shack in providing site information and necessary access to Cal Expo to Drive Shack, its consultants, and contractors for the purpose of conducting physical site assessments, based on a mutually acceptable right of entry agreement before the any entry by Drive Shack, its consultants, and contractors on Cal Expo.
 - (2) Drive Shack shall pay all reasonable costs and attorney's fees incurred by Cal Expo related to Cal Expo's review of: (i) the master plan, including program analysis and phasing; (ii) feasibility analysis, including projected infrastructure, site, fee and development cost, and value analyses. The reimbursement provision will be subject to an aggregate cap of \$40,000, which may be extended as necessary by written agreement between the Parties. Cal Expo will not incur any

reimbursable expenses before the revenue generating agreement has been agreed to in concept at which point Drive Shack will authorize Cal Expo to begin incurring reimbursable expenses by written letter (the "Reimbursement Authorization Letter"). No Cal Expo expenses will be reimbursed if they are incurred before the Reimbursement Authorization Letter. Drive Shack shall submit payment to Cal Expo (insert accounting address) for all such costs and attorney's fees within (30) thirty days of receipt of Cal Expo's invoice.

B. Drive Shack, at its sole cost and expense, shall cause to be prepared the appropriate environmental review determination and documentation for the Proposed Project in accordance with the California Environmental Quality Act ("CEQA").

(1) Cal Expo shall be the lead agency for purposes of reviewing and certifying the environmental review documentation and determination prepared by Drive Shack per Terms, Section 2.B. above.

(2) Drive Shack shall pay all reasonable costs and attorney's fees incurred by Cal Expo related to Cal Expo's review of the CEQA environmental review documentation and determination for the purposes of determining if the subject documentation and determination are consistent with the provisions of CEQA as related to the Proposed Project. Reimbursement specific to Cal Expo CEQA review shall be included in the \$40,000 aggregate cap per Terms, Section 2.A.(2) above and will only be incurred following the Reimbursement Authorization Letter. Drive Shack shall submit payment to Cal Expo (insert accounting address) for all such costs and attorney's fees within (30) thirty days of receipt of Cal Expo's invoice.

(3) Drive Shack shall agree to indemnify, hold harmless, and defend Cal Expo, the State of California, the State Fair Leasing Authority, and their respective officers, agents, employees, contractors, insurers, and attorneys, and any person or entity involved in this Proposed Project on their behalf, from any claims, damages, losses, cause of action and demands, including reasonable attorney's fees and costs incurred in connection with or in any manner arising out of Drive Shacks' preparation and processing of the CEQA environmental review documentation and determination per Terms, Section 2.B. above.

a. Drive Shack shall indemnify, hold harmless, and defend Cal Expo, the State of California, the State Fair Leasing Authority, and their respective officers, agents, employees, contractors, insurers, and attorneys, and any person or entity involved in this Proposed Project on their behalf, against any and all claims, suits, actions of every name, kind and description, brought forth from, or on account of, damage to property or injuries to or death of any person, including but not limited to workers or the public, resulting from any activities on the Premises conducted pursuant to this LOU, except for (i) claims arising out of the negligence of Cal Expo, the State of California, the State Fair Leasing Authority, and their respective officers, agents, employees, contractors, insurers, and attorneys, and any person or entity involved in this Proposed Project on their behalf, and (ii) claims arising out of conditions or occurrences with respect to the Premises and adjacent areas occurring or existing prior to the date of this LOU, which conditions or occurrences do not comply with, or may result in liability under the environmental laws or regulations of any governmental authority.

b. Drive Shack waives all claims and recourse against Cal Expo, the State of California, the State Fair Leasing Authority, and their respective officers, agents, employees, contractors, insurers, and attorneys, and any person or entity involved in this Proposed Project on their behalf, including the right to contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incident to this LOU, with the exception of Terms, Section 5, which Drive Shack reserves the right to enforce by any necessary legal remedy. Drive Shack's duty to indemnify and hold harmless includes the duties to defend (with counsel of Drive Shacks' choosing) as set forth in Civil Code section 2778.

c. Drive Shack waives any and all rights to any type of express or implied indemnity against Cal Expo, the State of California, the State Fair Leasing Authority, and their respective officers, agents, employees, contractors, insurers, and attorneys, and any person or entity involved in this Proposed Project on their behalf.

4. Development and Negotiation of a Revenue Generating Agreement. If through these discussions Cal Expo and Drive Shack independently determine that the Proposed Project is in each party's best interest, then Cal Expo and Drive Shack will negotiate and use diligent efforts to enter into a final and more definitive agreement for the Proposed Project, subject to approval of the Parties and state oversight authority, if applicable.

5. For the duration of the LOU, Cal Expo will not enter into a subsequent LOU or any similar agreement with intent to enter into a real estate or revenue generating transaction with any other golf or golf entertainment operators building facilities greater than 10,000 SF.

6. Effect of this LOU

A. Neither party shall be legally bound to consummate the lease, transfer, or other conveyance of the Cal Expo site or any interest therein or to construct the Proposed Project as outlined herein unless and until a subsequent agreement has been approved and executed by the Parties. Notwithstanding any other provision hereof, neither Cal Expo nor Drive Shack shall be under any obligation to approve or execute any agreement during or upon conclusion of the Discussion Period.

B. While this LOU remains in effect, the Parties shall negotiate in good faith with each other with respect to the Proposed Project.

C. The Parties acknowledge the applicability of the Bagley-Keene Open Meeting Act (Government Code section 11120 et seq.), the California Public Records Act (Government Code section 6250 et seq.), the right to public documentation and disclosure, and other applicable laws.

D. In the event that a subsequent agreement is approved and executed by the parties, this LOU shall be superseded by the subsequent agreement.

E. Each party to this LOU represents and warrants that the person who has signed this LOU on each party's behalf is duly authorized to enter into this LOU, and to bind that party to the terms and conditions of this LOU.

F. By their respective execution hereof, the Parties agree that, notwithstanding anything herein to the contrary, neither of the Parties shall have any right to specific performance of this LOU or to any equitable or legal remedies, including without limitation, any right to damages. Drive Shack may terminate this LOU at any time, without further liability, upon written notice to Cal Expo, if Drive Shack determines, in its sole discretion, that it does not desire to proceed toward the Proposed Project, subject to Drive Shack paying for all costs and attorney's fees incurred by Cal Expo before the termination of the LOU, subject to Terms, Section 2.A.(2),

Agreed and accepted:

California Exposition & State Fair

Drive Shack Sacramento LLC

Name: Rick Pickering
Title: CEO

Date Name: Sarah Watterson
Title: CEO

Date



Exploration of Potential “Revenue Generating Agreement” April 6, 2018

Background Information:

- Not to be considered exclusive negotiations (unless LOU is entered in to.)
- 2014 Multiuse Sports Facility Revenue Generating Agreement; Staff Report, LOU, CEQA filing, supporting documents, etc.
- 2015 Request For Qualifications to possibly develop a portion (or all of Cal Expo)
- 2016 Rock & Brews Revenue Generating Agreement: Staff Report, LOU, CEQA filing, supporting documents, etc.

Corporate Information:

- Corporate Identification
- Principle(s)
- Most current corporate finances

Project Proposal:

- Financial performance of existing Drive Shack locations
- Projected pro forma for the Cal Expo location

Site & Facility Planning:

- Proposed site plan/layout
- Use of any existing structures/facilities/parking lots
- Proposed new facilities/structures
- Occupancy numbers
- Related amenities
- Parking
- Ingress & Egress to site
- Interface with public roadways
- Utilities
- Proposed hours of operation
- Proposed construction timelines
- Discussion of anticipated impacts to other activities at Cal Expo & State Fair

Governmental Oversight & Procedures:

- Review of potential CEQA process & related time line
- “As-Is” condition of the property & due diligence inspection

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Governmental Oversight & Procedures (continued):

- Plan checks, inspections (CFSA,) permits, etc.
- Any State, County, City, Special Districts requirements
- Liquor License, Health Department, State Fire Marshall, etc.
- City of Sacramento "Sound/Noise Settlement Agreement"
- Possible American River Flooding
- Corporate guarantee/surety bond
- Proposed length of the RG Agreement
- Proposed basic rent structure of the RG Agreement
- State required language: Additional Insured; Non-Discrimination; hazardous materials, taxes, Possessory Interest Tax; etc.
- Fair Market evaluation of the use of State owned land/facilities
- Safety/security plans
- Reimbursement of any related costs incurred by Cal Expo
- Yearly Capital Investment commitment
- Ownership of improvements vesting to the State
- Buy-Out clause
- Approvals - Cal Expo Board, participation by the Department of General Services & the Attorney General's office

Other Related Items & Questions:

DRIVE SHACK, Orlando, Florida

(Photos from the Web)

