



Date: January 4, 2012

To: City Manager/Executive Director for Council/Stadium Authority Action

From: Assistant City Manager

Subject: Adoption of a Resolution to Approve the Fourth Amendment to the Theme Park Ground Lease with Cedar Fair, the acceptance of a Quitclaim Deed from Cedar Fair, and Grant an Easement over certain property for the use as parking for the Stadium, Adoption of a Resolution to Approve a Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC

EXECUTIVE SUMMARY:

In 1989 the Santa Clara Redevelopment Agency entered into a Ground Lease with Right of First Refusal ("Ground Lease") with Kings Entertainment Company leasing the Great America Theme park property to Kings. Through a series of assignments, Kings' interest in the lease was assigned to Cedar Fair in 2006 and Cedar Fair has operated the Theme Park since that time. In March, the Redevelopment Agency transferred the property subject to the Ground Lease and assigned the Ground Lease to the City. Under the terms of the Ground Lease, Cedar Fair has rights to use certain City-owned property for Theme Park parking. The parking areas subject to the lease include what is referred to in the Ground Lease as the Overflow Lot located at Tasman and Centennial, which is the current site for the development of the Santa Clara Stadium by the Santa Clara Stadium Authority. In order to proceed with the development of the Stadium it is necessary to amend the Ground Lease and accept a quitclaim deed to terminate Cedar Fair's rights to use of the Overflow Lot. In exchange for giving up those parking rights Cedar Fair has requested additional lease amendments, including an extension of the term of the lease, certain adjustments to participation rent formula and new mortgagee protection provisions.

In order to accommodate the need for Stadium parking, Cedar Fair has also agreed to enter into a Parking Agreement with the City, the Stadium Authority and Forty Niners Stadium, LLC ("StadCo") to allow use of Cedar Fair's main parking lot for stadium events. The Parking Agreement provides conditions for the joint use of the Cedar Fair main parking lot, including requirements for joint operations, scheduling of events and revenue sharing. The Parking Agreement implements part of the parking program necessary for Stadium operations. In addition to providing the parking rights as set forth in the Parking Agreement, the City is also granting both the Stadium Authority and StadCo with a non-exclusive easement granting them use of the parking lots for Stadium event parking. This easement provides the Stadium Authority and StadCo with clear and insurable title to the parking areas. In consideration for granting StadCo the parking easement, StadCo has agreed to pay to the City in advance the funds necessary to pay the costs of a special events unit for one year to develop procedures and protocols for implementation of the Public Safety Costs. StadCo had originally agreed to pay these costs upon Stadium opening, but based on the advice of the City's Police Chief, there is a need to begin working on these tasks much earlier than originally thought and the early payment of these funds will provide the City with the ability to address public safety issues in a timely manner.

ADVANTAGES AND DISADVANTAGES OF ISSUE:

Approval of the Fourth Amendment to the Ground Lease, the Parking Agreement, the Grant of Easement and acceptance of the quitclaim deed will allow the stadium project to move forward on the Overflow Lot and provide parking for stadium events. The Fourth Amendment includes a reduction of the required parking spaces from 8,100 to 6,500 with the goal of 7,000. The negotiation of these agreements represents the culmination of over four years of efforts on the part of staff and the 49ers to reach agreement with Cedar Fair. Additionally, as part of the Parking Agreement, Cedar Fair has agreed to dismiss its pending lawsuit challenging the adequacy of the environmental impact report for the Stadium.

Approval of the Fourth Amendment to the Ground Lease will result in an extension of the Ground Lease based on options that can be exercised by Cedar Fair for an additional 35 years. Base rent will increase with each extension option. Additional amendments in the Ground Lease will change the formula for determining the City's participation rent which could result in decreased participation rent depending upon how revenues at the Theme Park increase over time. However, in order for Cedar Fair to obtain the increases in the thresholds, Cedar Fair would have to invest at least \$10 million in capital improvements in the Theme Park in the five years preceding the adjustment dates.

ECONOMIC/FISCAL IMPACT:

The Fourth Amendment to the Ground Lease allows for the potential extension of the Ground Lease for an additional 35 years. Pursuant to the terms of the Fourth Amendment, base rent will increase by 7.5% upon exercise of the first option in 2039 and by 5% if the second and third options are exercised in 2054 and 2064. These increases in ground rent most likely will not capture the full increase in property values during this time period but the City, under the terms of the Fourth Amendment, will continue to be guaranteed the payment of annual base rent of \$5.3 million plus the increases.

The Fourth Amendment to the Ground Lease also revises the formula for determining the City's participation rent. Currently under the Ground Lease, the City receives a percentage of annual gross revenue if annual gross revenue exceeds \$56 million with the percentage increasing if annual gross revenue exceeds \$100 million. Under the terms of the Fourth Amendment, the thresholds for receiving participation rent will be increased with the first increase occurring in 2020, the second increase in 2030 and then increasing every five years thereafter. The thresholds will increase by 15% each time. The result of the increase in the thresholds could be that the City's participation rent is reduced over time. The City has not collected participation rent since 2006.

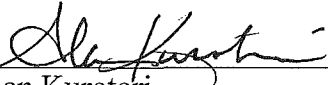
The Parking Agreement calls for Cedar Fair to receive a lump sum payment for the parking rights under the agreement. StadCo is making the required payments to Cedar Fair under the Parking Agreement but in negotiation with StadCo related to the Stadium Lease, some portion of that payment may be attributed to non-NFL stadium events as a cost of parking.

The Grant of Easement to StadCo and the Stadium Authority provides StadCo and the Stadium Authority property rights with respect to the parking areas that are consistent with Cedar Fair's rights under the lease. In consideration for the Grant of the Easement, StadCo is paying the City in advance for the special events unit necessary to assist with creating and implementing the public safety plan for the Stadium. Originally, StadCo was to pay the first installment of these funds at the time of Stadium opening. The earlier payment will allow the City to begin addressing public safety issues earlier and assist in preparation for the Stadium opening.

RECOMMENDATION:


1. That the Council adopt the resolution to approve:
 - a. The Fourth Amendment to the Theme Park Ground Lease with Cedar Fair.
 - b. The Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC to allow use of Cedar Fair's main parking lot for stadium events.
 - c. Granting an easement to the Stadium Authority and StadCo in consideration for StadCo paying to the City \$250,000 as an advance payment of public safety costs.
 - d. Acceptance of a Quitclaim Deed from Cedar Fair Southwest regarding its interest in certain property

2. That the Stadium Authority adopt the resolution to approve the Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC to allow use of Cedar Fair's main parking lot for stadium events and approving the Grant of Easement from the City granting the Stadium Authority a nonexclusive easement over certain parking areas.



Alan Kurotori
Assistant City Manager

APPROVED:



Jennifer Sparacino
City Manager/Executive Director

Documents Related to this Report:

- 1) *City Resolution Approving Fourth Amendment to Theme Park Lease, Parking Agreement, and Acceptance of Quitclaim Deed*
- 2) *Stadium Authority Resolution Approving Parking Agreement*

DISCUSSION:

Staff has been working with Cedar Fair since 2008 in an effort to reach agreement on siting the stadium on what is part of the parking provided to Cedar Fair for Theme Park use. After many efforts to resolve this issue, Cedar Fair has agreed to an amendment to the Ground Lease and to enter into a parking agreement that will allow use of the Theme Park main lot for stadium events.

A. Fourth Amendment to Ground Lease.

The current Ground Lease requires that the City make available to Cedar Fair 8,100 parking spaces as needed for Theme Park use. The parking spaces are provided in the main Theme Park parking lot and in the overflow lot which is the site for the new stadium. Pursuant to the Fourth Amendment to the Ground Lease, Cedar Fair is willing to reduce the required number of parking spaces to be provided by the City to those spaces that can be provided in the Main Lot, with a minimum requirement of 6,500 spaces and a goal of providing 7,000 spaces. Based on the current count of parking spaces and additional spaces that can be achieved through a renovation of the main lot the 6,500 spaces can be accommodated and it is possible that 7,000 spaces can be accommodated. Cedar Fair is also releasing any interest it has in the overflow lot as evidenced by the Quitclaim Deed from Cedar Fair to the City, which the City is being asked to accept. The remaining provisions regarding parking requirements in the Ground Lease have been updated but generally remain the same. Cedar Fair is responsible for operation and maintenance of the Main Lot. Additionally, Cedar Fair is responsible for obtaining rights to park on the Hetch Hetchy Right of Way that is adjacent to the main lot.

The Ground Lease currently expires in 2039. The Fourth Amendment would allow Cedar Fair to exercise options that could extend the Ground Lease until 2074 or the length of the Stadium Lease. The first extension option under the Fourth Amendment could be exercised in 2039 and extend the term until 2054. If Cedar Fair exercises the extension option the base rent of \$5.3 million would increase by 7.5% to \$5.7 million. If the second option is exercised in 2054, the term would be extended until 2064 and the base rent would increase by 5% to \$5.98 million. If the third option is exercised in 2064, the term would be extended until 2074 and base rent would increase by 5% to \$6.3 million.

The Fourth Amendment also calls for adjustment in the formula for determining the City's participation rent. Currently the City receives participation rent if annual gross revenues for the Theme Park exceed \$56 million. If annual gross revenues exceed \$100 million then the amount of participation rent increases. Under the provisions of the Fourth Amendment, starting in 2020 the thresholds for determining participation rent would increase by 15%. There would be a second increase of 15% in 2030 and then the thresholds would increase by 15 % every five years. However, in order for Cedar Fair to obtain the increases in the thresholds, Cedar Fair would have to invest at least \$10 million in capital improvements in the Theme Park in the five years immediately preceding the adjustment date. If Cedar Fair fails to make at least \$10 million in capital improvements by 2020 then there will be no future increases in the thresholds.

The Fourth Amendment also updates the anti-discrimination clauses in the Ground Lease to conform to current law, including expanding the categories of protected classes to be consistent with California and Federal law.

The Fourth Amendment updates the mortgagee protection provision to conform to current lending standards. These provisions give Cedar Fair's lenders certain protections in case Cedar Fair defaults under the Ground Lease, including the right to notice of the default and the right to cure any such default. Any lender to Cedar Fair would also have the right to step into Cedar Fair's position under the Ground Lease and assume Cedar Fair's obligations under the Ground Lease.

The Fourth Amendment also contains a provision in the event the Stadium is not constructed. If that occurs, Cedar Fair would continue to have rights to park on the overflow lot. However, the provisions regarding lease extension and increases in the participation rent formula would be void. Cedar Fair would retain the right to one fifteen year extension of the term of the lease allowing the lease to be extended to 2054. Rent for that extension would increase from the current \$5.3 million per year to \$5.83 million for the additional 15 year term.

Additional revisions to the Ground Lease have been made to remove references to Agency financing that has been paid off.

B. Parking Agreement.

In addition to the Fourth Amendment to the Ground Lease, the Stadium Authority and the City are being asked to consider approval of the Parking Agreement with Cedar Fair and Forty Niners Stadium, LLC ("StadCo"). The Parking Agreement provides the Stadium Authority and StadCo rights to use the Theme Park main lot for parking for stadium events under certain conditions.

Under the terms of the Parking Agreement, certain events are considered "Permitted Events." The Stadium Authority or StadCo can use the main lot for parking for Permitted Events without obtaining the consent of Cedar Fair. Permitted Events include:

- Events that are held when the Theme Park is not open to the public
- NFL Games, provided that as long as there is only one team playing in the Stadium, no more than five NFL games will be held on Sundays in September and October and no NFL games will be scheduled for Saturdays in August
- Events that do not require the use of the main lot to accommodate the parking demands
- Events that are scheduled to begin at 5 pm or later on Sundays, Mondays, Tuesdays, Wednesdays and Thursdays other than on Memorial Day weekend, Labor Day weekend, the week before the Fourth of July, including the Fourth of July and Halloween and the day before and day after Halloween

City Manager/Executive Director for Council/Stadium Authority Action

Adoption of a Resolution to Approve the Fourth Amendment to the Theme Park Ground Lease with Cedar Fair, Adoption of a Resolution to Approve a Parking Agreement with Cedar Fair, the City, the Stadium Authority, and the Forty Niners Stadium, LLC, and the Acceptance of a Quitclaim Deed from Cedar Fair Southwest

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- Events scheduled on (i) Monday through Thursday prior to May 31st in any year (except for Memorial Day), (ii) Monday through Friday from June 1st through June 10th of any year; and (iii) events scheduled on Monday through Friday from August 15th through the end of the Theme Park Season in any year provided such events are “Designated Dual Use Events” as defined below

The Parking Agreement also describes “Sole Discretion Events” which are events that can only be held if Cedar Fair consents to the event, which consent is within Cedar Fair’s sole discretion. These events are:

- Events on (i) any Saturday or Sunday in June, July or August; (ii) Memorial Day Weekend; (ii) Labor Day Weekend; (iii) Fourth of July and the day before and the day after Fourth of July; and (iv) Halloween and the day before and after Halloween
- Events on up to five weekdays in June, July and August that Cedar Fair can designate prior to their season opening

If an event is not a Permitted Event or a Sole Discretion Event then it is considered to be a “Reasonable Discretion Event,” meaning that the event can be held only if Cedar Fair approves the event but Cedar Fair may not unreasonably withhold its approval. Under the terms of the Parking Agreement it would be unreasonable for Cedar Fair to withhold approval if the Stadium Authority or StadCo demonstrate to Cedar Fair that adequate parking is available for Theme Park patrons and Stadium event patrons.

When the Stadium Authority or StadCo uses the Theme Park lot for parking, the Stadium Authority or StadCo, as applicable, will receive all revenues from the stadium event parking and will be responsible for paying all direct costs associated with operating the parking lot. If the parking lot is used on a Dual Use basis, the Stadium Authority or StadCo and Cedar Fair will each operate their parking areas and receive the revenue from their designated parking spaces and will likewise each pay the direct operating costs associated with their designated parking spaces. The Parking Agreement also includes provisions related to traffic management. Under the terms of these provisions, the Stadium Authority or StadCo, as applicable, will be responsible for providing traffic management consistent with the Transportation Management and Operations Plan (“TMOP”), at no cost to Cedar Fair. The costs of traffic management under the TMOP are considered part of the Public Safety Costs for which StadCo or the Stadium Authority will reimburse the City, in accordance with the Public Safety Agreement to be negotiated with the parties.

The Agreement also provides standards for determining how many parking spaces will be allocated to the Theme Park and to the Stadium event on those event days when the Theme Park and the Stadium will share the parking lot. These events are considered “Dual Use Events”. For NFL games that are dual use events, the Theme Park will have use of no more than 1,500 spaces in the main lot. For “Designated Dual Use Events”, which are limited to 15 events per year, the Theme Park will not have more than one half of the spaces in the main lot and for other dual use events, the Theme Park spaces will be based on a formula using prior parking demands for a similar day in a prior season and ensuring that at least 110% of the spaces needed to meet that day’s peak parking demand are available for Theme Park use.

The allocation of parking rights between the Theme Park and the Stadium is designed to give both venues flexibility in scheduling while also ensuring that each venue has adequate parking. Since the Theme Park's peak season is the summer, events at the Stadium requiring use of the main lot will be limited during that time but some large events can be scheduled for evenings. When the Theme Park is closed the Stadium will have use of the main parking lot. Additionally, the Stadium will have use of the main parking lot or some portion of the main parking lot during spring and summer when the Theme Park is open but at a lower capacity.

The Parking Agreement also calls for the renovation of the main lot to provide additional parking spaces. This renovation work is expected to include moving certain curbs and sidewalks and restriping a portion of the parking lot. Additionally the Parking Agreement allows for use of a portion of the main lot during construction of the Stadium as a lay down area and for storage, as long as the construction use does not extend beyond three Theme Park seasons.

The Parking Agreement provides for Cedar Fair to receive a payment in the amount of \$12.5 million_ for the parking rights provided for Stadium use. An initial deposit of \$3.5 million will be paid to Cedar Fair after execution of the Stadium Lease with StadCo and dismissal of the existing lawsuit Cedar Fair has pending regarding the adequacy of the Stadium EIR. The remaining payment of \$8.5 million is to be made by September 1st of the first year in which NFL games are played at the Stadium. The Parking Agreement calls for StadCo to make the required payment but Stadium Lease negotiations may result in some portion of the cost being attributed to the Stadium Authority for non-NFL Events.

C. Easement Agreement

The Easement Agreement grants to the Stadium Authority and StadCo easement rights over the main lot parking area. These easement rights are nonexclusive and are consistent with Cedar Fair's easement rights. The Easement Agreement grants to Stadium Authority and StadCo rights with regards to the parking that are consistent with and subject to the terms of the parking agreement. In consideration for the grant of the easement from the City, StadCo is paying to the City in advance, the amount of \$250,000 to be used to police officers to assist in the creation and implementation of the public safety plan. It was originally contemplated that StadCo would pay these public safety costs at time of Stadium opening. However, the City's Police Chief has indicated that having the funds available earlier to assist in the preparation of the public safety plan is necessary to ensure that the City is fully prepare for the opening of the Stadium.

RESOLUTION NO. ____ (STADIUM AUTHORITY)

A RESOLUTION OF THE SANTA CLARA STADIUM AUTHORITY AUTHORIZING THE EXECUTION OF A PARKING AGREEMENT BY AND AMONG THE CITY OF SANTA CLARA, THE SANTA CLARA STADIUM AUTHORITY, THE FORTY NINERS STADIUM, LLC AND CEDAR FAIR, L.P., AND ACCEPTING A GRANT OF A NON-EXCLUSIVE EASEMENT FOR PARKING PURPOSES

BE IT RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

WHEREAS, the Santa Clara Stadium Authority ("Stadium Authority"), a joint exercise of power entity created pursuant to Government Code Section 6500 *et seq.* composed of the City of Santa Clara, the Santa Clara Redevelopment Agency and the Bayshore North Project Enhancement Authority, is engaged in various activities designed to lead to the development of a 68,500 seat stadium suitable for professional football ("Stadium Project") on a property located in the Bayshore North Redevelopment Project Area at Tasman and Centennial Drive ("Stadium Site");

WHEREAS, the Stadium Authority, the Forty Niners Stadium, LLC ("StadCo"), Cedar Fair, the owner of the Great America Theme Park, and the City of Santa Clara desire to enter into that certain Parking Agreement, a copy of which is on file with the Stadium Authority Secretary ("Parking Agreement") and which was made available at the hearing on this matter, to provide for use of parking areas adjacent to the Great America Theme Park for stadium events;

WHEREAS, the Authority desires to accept a grant of a non-exclusive easement from the City for parking purposes in accordance with the Easement Agreement on file with the Authority Secretary;

WHEREAS, the Stadium Project has previously undergone environmental review pursuant to the California Environmental Quality Act ("CEQA") and was considered as part of the project Environmental Impact Report certified for the proposed 49ers Santa Clara Stadium Project at 4900 Centennial Boulevard (the "Stadium EIR"); and

WHEREAS, by staff report accompanying this Resolution (the "Staff Report"), the Stadium

Authority Board has been provided with additional information upon which the actions set forth in this Resolution are based.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE SANTA CLARA STADIUM AUTHORITY AS FOLLOWS:

1. That the Board of the Stadium Authority hereby finds that the above recitals are true and correct and by this reference makes them a part hereof.

2. The Stadium Authority hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the Stadium EIR has served as the environmental documentation pursuant to CEQA for approval of the Parking Agreement. The Stadium Authority further specifically finds that there have not been any of the following occurrences since the approval of the Stadium EIR that would require subsequent or supplemental environmental documents in connection with approval of this Resolution and the Parking Agreement:

A. There have not been substantial changes in the project analyzed in the Stadium EIR which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program;

B. There have not been substantial changes with respect to the circumstances under which the project analyzed in the Stadium EIR will be undertaken which would require major revisions in the Stadium EIR and the Mitigation Monitoring Program; and

C. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the Stadium EIR and the Mitigation Monitoring Program which is relevant to the approval of the Stadium EIR and the Mitigation Monitoring Program as it relates to the Parking Agreement.

3. The Stadium Authority Executive Director is hereby authorized and directed to file a Notice

of Determination with respect to the Parking Agreement in accordance with the applicable provisions of CEQA.

4. The Stadium Authority Executive Director is hereby authorized to accept a non-exclusive easement from the City in accordance with the Easement Agreement on file with the Authority Secretary subject only to such changes as are approved by the Stadium Authority signatory (such approval to be conclusively evidenced by the execution of the Easement Agreement) and to execute any and all documents necessary to effectuate the acceptance of the Easement including a certificate of acceptance.

5. The Stadium Authority hereby approves the Parking Agreement in the form as provided at the hearing on this matter, approves execution of the Parking Agreement by the Executive Director, approves the execution by the Executive Director of all ancillary documents in substantially the form on file with the Stadium Authority Secretary, with such changes as are approved by the Stadium Authority signatory (such approval to be conclusively evidenced by the execution of the Parking Agreement).

6. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the resolution. The Board of the Santa Clara Stadium Authority hereby declares that it would have passed this resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

7. Effective date. This resolution shall become effective immediately.

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I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE SANTA CLARA STADIUM AUTHORITY, AT A REGULAR MEETING THEREOF HELD ON THE ___ DAY OF _____, 2012, BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAINED: BOARD MEMBERS:

ATTEST:

ROD DIRIDON, JR.
SECRETARY OF THE STADIUM AUTHORITY
SANTA CLARA STADIUM AUTHORITY

Attachments incorporated by reference (*to be attached in final form after approval*):

1. Parking Agreement By and Among the City of Santa Clara, the Santa Clara Stadium Authority, the Forty Niners Stadium, LLC and Cedar Fair Southwest, Inc.

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