



Council Agenda Report

Item 6j

Department: Administration
Cost Center: 1005
For Agenda of: 5/21/2024
Placement: Consent
Estimated Time: N/A

FROM: Greg Hermann, Deputy City Manager
Prepared By: Robert Hill, Sustainability & Natural Resources Official

SUBJECT: AMENDMENT NO. 1 TO EXCLUSIVE NEGOTIATING AGREEMENT
WITH THE SAN LUIS OBISPO REPERTORY THEATRE

RECOMMENDATION

Approve Amendment No. 1 to the Exclusive Negotiating Agreement between the City of San Luis Obispo and the San Luis Obispo Repertory Theatre.

POLICY CONTEXT

The City of San Luis Obispo's policies and procedures for real property acquisition and disposal are found at Section 475 of the Financial Management Manual, which further incorporates City Charter Article IX, Section 906 and City Council Resolution No. 10052 (2009 Series).

San Luis Obispo Repertory Theatre's long-standing plan to construct a new theatre adjacent to the forthcoming Cultural Arts District Parking Structure is consistent with the Downtown Concept Plan (2017) and to vacate the City's old library property is consistent with the Facilities Master Plan (2018).

DISCUSSION

Background

The San Luis Obispo Repertory Theatre ("SLO REP"), previously known as the San Luis Obispo Little Theatre, has been a long-standing tenant of the City's old library property at 888 Morro Street located next door to City Hall. In March 2000, the City Council identified several options for a new theatre location within what would become known as the Cultural Arts District Parking Structure site, located at the corner of Palm and Nipomo Streets, and committed to working with SLO REP.

SLO REP is a valued community partner and local non-profit, has a strong Board and governance structure, has an established professional staff, and has increased theatre offerings. SLO REP has set forth a vision for a new 300-seat community theatre and has been implementing a significant capital campaign in anticipation of the design, construction, and operating costs associated with the long-planned move to a new location.

Previous Council Action

On May 22, 2019, the City and SLO REP entered into an Exclusive Negotiating Agreement (“ENA”) (Attachment B) to set forth the parameters and conditions for SLO REP’s long-term use of a portion of City property adjacent to the Cultural Arts District Parking Structure, which is now under construction. Among the key deal points of the ENA are that SLO REP complete a fundraising plan and proof of financial ability prior to entering into lease negotiations with the City for the site. The ENA has a five-year term and is therefore set to expire on May 22, 2024.

On April 19, 2022, the City and SLO REP entered into a Grant Agreement to provide funding in the amount of \$3,940,000 towards future construction of the new theatre. This action followed SLO REP’s submittal of a “Challenge Grant” proposal that detailed the anticipated local economic impact of the new theatre, which concluded that the new theatre would generate more than \$3 million annually while drawing 50,000 patrons to downtown San Luis Obispo each year.

On September 5, 2023, the City Council adopted Resolution No. 11445 (2023 Series) and made findings that the portion of City-owned land that is the subject of the ENA is Exempt Surplus Land under the California Surplus Land Act (Cal. Gov. Code § 54221). Exclusive Negotiating Agreements entered into prior to September 30, 2019, are not subject to the Surplus Land Act’s noticing and availability requirements so long as the land is disposed of prior to 2027. Without a timely extension of the ENA, as recommended herein, the City would be required to complete noticing and availability requirements pursuant to the Surplus Land Act.

Amendment No. 1 to Exclusive Negotiating Agreement

Staff recommends extending the term of the ENA, and the draft amendment includes the following key points:

1. Provides for an additional 6-month term, with an option to extend for an additional 6-month term, to maintain timely forward progress in reasonable anticipation that the ENA could be replaced by a prospective lease agreement within that timeframe. The extension requires SLO REP to disclose other sites or options, if any, that it may be considering for the theatre. The additional 6-month term is then predicated on SLO REP issuing a written notice of intent to proceed with final lease negotiations with the City.
2. Amends and clarifies the expected standard for a construction contingency of 15%, operating reserve for the first year of 20%, and the required approval of a three-year operating plan including the establishment of a fund for building and facilities maintenance and repair. City staff worked with SLO REP to identify an appropriate plan for reserve funding that is consistent with industry standards and practices and Council direction.
3. Forecasts the potential for a longer, 99-year lease term.
4. Acknowledges progress and milestones that have been met and addresses minor inconsistencies.

Public Engagement

Any member of the public may comment on this item either in writing in advance of the City Council meeting or by providing public comment during the hearing of this item.

CONCURRENCE

The City's Community Development and Public Works Departments concur with the recommendations contained herein.

ENVIRONMENTAL REVIEW

Entering into Amendment No. 1 to the Exclusive Negotiating Agreement is not considered a project, in and of itself, under applicable CEQA guidelines. However, it should be noted that the City completed environmental review as lead agency for both the Parking Structure and the Theatre and certified a Final Environmental Impact Report by Resolution No. 10923 (2018 Series).

FISCAL IMPACT

Budgeted: Yes

Budget Year: 2023-24

Funding Identified: Yes

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund				
State				
Federal				
Fees				
Other:				
Total	N/A	N/A	N/A	N/A

The recommended action does not have a direct fiscal impact. Modest staff time from the City Administration Department will be used to oversee the terms of the ENA and Amendment No. 1, if approved.

ALTERNATIVES

Council may request additional information, make changes, or decide not to approve the draft Amendment No. 1 to the Exclusive Negotiating Agreement. A decision not to approve is not recommended by staff because the City and SLO REP have been working diligently together to move the new theatre project forward pursuant to prior Council direction and because, if the extension of the term included in the amendment is not completed timely, the City will be required to undertake the current noticing and availability requirements of the California Surplus Land Act.

ATTACHMENTS

- A - Draft Amendment No. 1 to Exclusive Negotiating Agreement
- B - Exclusive Negotiating Agreement between City of San Luis Obispo and San Luis Obispo Repertory Theatre, May 22, 2019