

EXCLUSIVE NEGOTIATING AGREEMENT

This Exclusive Negotiating Agreement (“Agreement”) is entered into this 5/22/2019 day of _____, 2019 (the “Effective Date”), by and between the City of San Luis Obispo, a California charter municipal corporation (“the City”) and San Luis Obispo Repertory Theatre, a California non-profit corporation (“SLO REP”). The City and SLO REP are jointly referred to as the “parties”.

RECITALS

WHEREAS, the City is the legal owner of the property located at 888 Morro Street in San Luis Obispo, California (the “Property”); and

WHEREAS, the City identified a portion of the Property as the site of a proposed public parking structure (“Palm Nipomo Parking Structure”) and anticipates that an estimated 18,000 square foot portion of the Property will not be needed for the Palm Nipomo Parking Structure (“Remainder Property”); and

WHEREAS, SLO REP desires to construct a not-for-profit live performance theatre facility and related on-site and off-site (if any) improvements (“Theatre”) on the Remainder Property; and

WHEREAS, the parties recognize that the exact location, size and availability of the Remainder Property for the Theatre cannot be determined at this time, and understand that the Remainder Property has development restrictions including maintenance of trees, street setbacks and provision of pedestrian connections/plazas from the Palm Nipomo Parking Structure to Monterey Street that affect the net buildable land; and

WHEREAS, the City wishes to support community-based performing arts groups by encouraging development of a live performance theatre facility in the downtown; and

WHEREAS, the City and SLO REP recognize that identifying a location for the Theatre, as well as some of the terms of a future lease, may help SLO REP’s capital fundraising efforts; and

WHEREAS, construction of the Palm Nipomo Parking Structure and the Theatre and related rezoning and general plan amendments will require environmental review, and SLO REP must provide certain information about the Theatre before City can conduct the environmental review; and

WHEREAS, the City’s Financial Management Manual allows exclusive negotiations for long term lease of City property when there is a clear link between the proposal and accomplishment of significant City goals, plans or policies; and

WHEREAS, the City considers the development of a not-for-profit live performance theatre on the Remainder Property to be in the public interest and in accordance with the City’s goals and the existing and proposed Downtown Concept Plan.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, promises and agreements herein set forth, the parties agree as follows:

AGREEMENT

1. **RECITALS.** The above Recitals are true.
2. **TERM.** This Agreement shall commence upon the Effective Date and shall continue in effect for a period of five (5) years (the “Term”), unless sooner terminated as provided herein. The Parties may extend the Term of this Agreement in writing upon mutual consent.
3. **PURPOSE.** The purpose of this Agreement is to enable the City to proceed with the Palm Nipomo Parking Structure, and to allow SLO REP to explore the feasibility of SLO REP financing, designing, constructing and operating the Theatre, at its sole cost and expense, on the Remainder Property.
4. **CITY’S OBLIGATIONS.** The City shall, during the Term of this Agreement:
 - a. **Exclusivity.** Negotiate exclusively with SLO REP as the future tenant of the Remainder Property.
 - b. **Initiate Rezoning, General Plan amendments, and Lot Line Adjustment.** Upon City Council authorization, initiate all rezoning, General Plan amendments, and a lot line adjustment necessary to allow the construction of the Palm Nipomo Parking Structure on a portion of the Property and the Theatre on the Remainder Property. The intent of this Agreement is for the Remainder Property to be created as a “finished lot,” although the City legally cannot, and therefore does not, contractually agree as to how it will exercise its legislative authority to rezone or amend the General Plan and its land use authority to complete a lot line adjustment.
 - c. **Environmental Review.** The City has completed environmental review of the Palm Nipomo Parking Structure and the Theatre and has certified a Final Environmental Impact Report (“FEIR”) by Resolution No. 10923 (2018 Series). If SLO REP makes any changes to the Theatre design or if any of the conditions set forth in CEQA Guidelines § 15162 are triggered, then SLO REP may negotiate the portion of costs it will bear in the event substantial new environmental issues are discovered during construction, or if any project-specific environmental review related to the Theatre is deemed necessary.
5. **SLO REP’S OBLIGATIONS.** SLO REP shall, during the term of this Agreement:
 - a. **Non-Profit Status.** Be a California non-profit corporation in good standing and be exempt from state and federal income taxes under section 501 (c) (3) of the Internal Revenue Code.
 - b. **Proof of Financial Ability.** Provide to City’s reasonable satisfaction that it has the financial ability to design, construct and operate the Theatre on the Remainder Property. At a minimum SLO REP shall:
 - Fundraising Plan.** Provide the City with a fundraising plan by December 31, 2019 that is acceptable to, and approved by, the City Manager, whose approval shall not be unreasonably withheld, delayed or conditioned. The fundraising plan shall include a timeline with milestones that shall be met no later than 1 year from the estimated completion of the Palm Nipomo Parking Structure. These

- b. **Availability of Funds for Design, Construction, and Operation of the Theatre** Prior to execution of the lease, SLO REP demonstrates to the City Manager's reasonable satisfaction that SLO REP has met all applicable fundraising milestones in the fundraising plan approved by the City Manager.
 - c. **Non-Profit Status.** SLO REP has maintained its non-profit and tax-exempt status under applicable state and federal law.
 - d. **Design and Construction Schedule.** Prior to lease execution, provide to the City's Community Development Director's reasonable satisfaction, a design and construction schedule, demonstrating, at a minimum, the Theatre will be constructed and completed within 3 years of the completion of the Palm Nipomo Parking Structure.
 - e. **Design Coordination.** Coordinate design of the Theatre with the City to ensure it is compatible with the Palm Nipomo Parking Structure.
- 8. GENERAL LEASE TERMS.** If the parties enter into the exclusive negotiations, the parties desire that the lease include the following general provisions; provided, the actual language of each provision is subject to further negotiation, and most material terms and provisions of the lease have not yet been discussed. The City shall not lease the land for minimal rent unless the lease is completely acceptable to the City and approved by the City Attorney. Nothing in this paragraph shall be interpreted as an agreement or offer to lease upon the terms, provisions or language set forth below.
- a. SLO REP shall commence construction of the Theatre no later than one (1) year after the completion of the Palm Nipomo Parking Structure and shall complete construction of the Theatre within three (3) years after that. SLO REP shall not commence construction of the Theatre unless SLO REP demonstrates, to the City's Finance Manager's reasonable satisfaction prior to expiration of the year within which SLO REP is to commence construction, that SLO REP has all of the funds necessary to design and construct, as well as operate for at least one (1) years after completion of construction, the Theatre, plus a 15% contingency, available in cash or approved financing (the "Required Funds"). If SLO REP does not timely demonstrate that SLO REP has the Required Funds, or if SLO REP fails to timely begin or timely complete construction, SLO REP shall be in substantial default, and the lease shall automatically terminate unless City agrees otherwise in writing. The Theatre shall be deemed complete only upon issuance of a Certificate of Occupancy.
 - b. Minimum 40-year term with the right of first refusal for additional lease years provided that Theatre is in good standing at the time of the renewal window, which shall open after 35 years and conclude after 37 years unless the window is extended.
 - c. Rent of \$1.00 per year provided SLO REP:
 - i. Is a California non-profit corporation in good standing; and
 - ii. Is a federal and state income tax exempt 501 (c)(3) entity; and uses the Remainder Property solely as a live performance theatre and related City approved community uses.

- iii. SLO REP's failure to maintain its non-profit corporate status in good standing or its tax-exempt status under applicable state and federal law or to use the Remainder Property for any purpose other than as a live performance theatre and related City approved community uses during the term or any extended term of the lease, shall be a material breach of the lease. In the event any such breach occurs, City may, at its option, either terminate the lease or raise the rent to fair market rates for neighboring commercial uses.
- d. SLO REP shall design, construct, operate and maintain the Theatre and all street frontage and landscaping, utility extensions and connections, and other improvements, based on agreed upon and approved plans and specifications, at its sole cost and expense without any assistance from the City.
- e. SLO REP shall be responsible for meeting or mitigating all conditions, impacts, mitigations and requirements identified in the environmental review and entitlement processes for issues associated with the SLO REP's operation of a theatre on the Property, at SLO REP's sole cost and expense.
- f. The design of the Theatre must be compatible with the design of the Palm Nipomo Parking Structure, including the parking structure's entrance and exiting needs, as determined by the sole discretion of the Public Works Director.
- g. SLO REP shall take all reasonable efforts to preserve, protect, and maintain the large oak tree on 614 Monterey, along with the tree on the corner of Monterey and Nipomo.
- h. If the SLO REP is not in material compliance with the Lease or ceases to be financially solvent and to maintain the Property in a commercially reasonable manner, the lease shall contain provisions for the City to declare a default of the Lease, for SLO REP to effect a reasonable cure of the default(s), and for the City to terminate the Lease if the default(s) are not cured pursuant to the terms and conditions of the Lease, and for the Remainder Property to revert to the City.
- i. Prevailing wages shall be paid by SLO REP for construction of the Theatre and related improvements, mitigations etc.
- j. SLO REP shall pay all applicable parking in lieu fees for a Community Partner, as determined by the sole discretion of the City's Public Works Director.
- k. Payment of possessory interest and other taxes by SLO REP.
- l. Other long-term landlord protection ground lease provisions, such as City standard insurance requirements, indemnity provisions, attorneys' fees, prohibitions against nuisance, waste, requiring maintenance at SLO REP expense, etc.
- m. If the City Council does not move ahead with the construction of the Palm/Nipomo structure, a new agreement will need to be negotiated between the parties for a mutually acceptable alternate site or an alternate set of requirements for a portion of the Property.
- n. The City will not subordinate its interest in the Remainder Property to any financing.

10. AMENDMENT. This Agreement may be extended or modified with the mutual consent of the parties. Any such extension, amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Council.

11. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties. No oral agreement, understanding or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding or representation be binding upon the parties.

12. NOTICE. All notices to the parties shall be in writing and shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

City: Derek Johnson
City Manager
990 Palm Street
San Luis Obispo, CA 93401

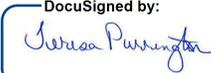
SLO REP: Kevin Harris
Managing Artistic Director
888 Morro Street
San Luis Obispo, CA 93401

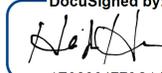
13. AUTHORITY TO EXECUTE AGREEMENT. Both City and SLO REP warrant and represent that each individual executing the Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.

IN WITNESS WHEREOF, the parties execute this Agreement on the day and year first above written.

ATTEST

CITY OF SAN LUIS OBISPO

DocuSigned by:

898BADBF9C78436...
Teresa Purrington
City Clerk
Date

DocuSigned by:

1E92864773C14EC...
Heidi Harmon
Mayor
Date

APPROVED AS TO FORM:

SLO REPERTORY THEATRE

DocuSigned by:

784AE45BC8BC44F...
J. Christine Dietrick
City Attorney
Date

DocuSigned by:

4B225AE42E304BF...
Kevin Harris
Managing Artistic Director
Date



Council Minutes

City Hall, 990 Palm Street, San Luis Obispo

Tuesday, December 4, 2018 Regular Meeting of the City Council

CALL TO ORDER

A Regular Meeting of the San Luis Obispo City Council was called to order on Tuesday, December 4, 2018 at 6:00 p.m. in the Council Hearing Room, located at 990 Palm Street, San Luis Obispo, California, by Mayor Harmon.

ROLL CALL

Council Members

Present: Council Members Carlyn Christianson Aaron Gomez, Erica A Stewart, Vice Mayor Andy Pease, and Mayor Heidi Harmon.

Council Members

Absent: None

City Staff

Present: Derek Johnson, City Manager; Christine Dietrick, City Attorney; and Teresa Purrington, City Clerk; were present at Roll Call. Other staff members presented reports or responded to questions as indicated in the minutes.

PLEDGE OF ALLEGIANCE

Vice Chair Pease led the Pledge of Allegiance.

APPOINTMENTS

1. APPOINTMENTS TO THE ZONE 9 ADVISORY COMMITTEE

City Clerk Purrington presented the contents of the report.

Public Comments:

None

---End of Public Comments---

ACTION: MOTION BY VICE CHAIR PEASE, SECOND BY COUNCIL MEMBER CHRISTIANSON, CARRIED 5-0 to:

Make appointments to the Zone 9 Advisory Committee, effective December 31, 2018, and recommend the County Board of Supervisors confirm, as follows:

1. Appoint Christine Mulholland to serve as public member to represent the City of San Luis Obispo on the Zone 9 Advisory Committee for a term to expire on December 31, 2022; and
2. Appoint Dave Romero to serve as the alternate member to represent the City of San Luis Obispo on the Zone 9 Advisory Committee for a term to expire on December 31, 2022; and
3. Appoint Matt Horn, City Engineer, to serve as the staff representative on the Zone 9 Advisory Committee; and
4. Appoint Brian Nelson, Supervising Civil Engineer, to serve as the alternate staff representative on the Zone 9 Advisory Committee for a term to expire on December 31, 2022.

2. APPOINTMENTS TO THE CITIZENS' REVENUE ENHANCEMENT OVERSIGHT COMMISSION, JACK HOUSE COMMITTEE, AND MASS TRANSPORTATION COMMITTEE

City Clerk Purrington presented the contents of the report.

Public Comments:

Toni Tyran Kincaid

---End of Public Comments---

ACTION: MOTION BY COUNCIL MEMBER CHRISTIANSON, SECOND BY COUNCIL MEMBER GOMEZ, CARRIED 5-0 to:

1. Confirm the appointment of Winston Newland to the Citizens' Revenue Enhancement Oversight Commission, to complete an unexpired term through June 30, 2019.
2. Confirm the appointment of Julie Moore, as the representative of the San Luis Obispo County History Center, to the Jack House Committee effective December 4, 2018; and
3. Confirm the appointment of Ryan Hund, as the ASI student representative, to the Mass Transportation Committee, to complete an unexpired term through March 31, 2019.

INTRODUCTION

3. INTRODUCTION OF ERIC HAGEN, CHIEF BUILDING OFFICIAL

Community Development Director Michael Codron introduced Eric Hagen as the new Chief Building Official.

PRESENTATIONS

4. PROCLAMATION - RECOGNITION OF SERVICE - CARRIE MATTINGLY

City Manager Derek Johnson presented a proclamation to retiring Utilities Director Carrie Mattingly, in recognition of her service.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None

---End of Public Comment---

CONSENT AGENDA

ACTION: MOTION BY COUNCIL MEMBER CHRISTIANSON, SECOND BY VICE CHAIR PEASE, CARRIED 5-0 to approve Consent Calendar Items 5 thru 12.

Public Comment

Lea Brooks – 8

Myron Amerine – 8

Kevin Harris – 10

Myron Amerine – 12

---End of Public Comment---

5. WAIVE READING IN FULL OF ALL RESOLUTIONS AND ORDINANCES

CARRIED 5-0, to waive reading of all resolutions and ordinances as appropriate.

6. SCHEDULE OF CITY COUNCIL MEETINGS FOR 2019

CARRIED 5-0, to adopt the proposed 2019 regular City Council meeting schedule with meetings normally held the first and third Tuesday of every month, with the following exceptions:

1. Reschedule the Regular City Council meeting of January 1 to January 8, 2019, and
2. Cancel the Regular City Council meetings of August 6 and December 17, 2019.

7. APPROVAL OF THE FINAL MAP FOR TRACT 3089 PHASE 1, AVILA RANCH, 175 VENTURE DRIVE (SBDV-2042-2015)

CARRIED 5-0, to adopt a Resolution entitled, “A Resolution of the City Council of the City of San Luis Obispo, California, approving the final map for Tract 3089 Phase 1 Avila Ranch (175 Venture Drive, SBDV-2042-2015),” and authorizing the Mayor to execute the easements, agreements, and associated fee offers, *including the recommended changes in the staff agenda correspondence*.

8. PLANS AND SPECIFICATIONS FOR BUCHON TRAFFIC CALMING

CARRIED 5-0, to

1. Approve Plans and Specifications for Buchon Traffic Calming Measures; and
2. Authorize staff to advertise for bids and the City Manager to award the contract if the lowest responsible bid is within the Engineer’s Estimate of \$160,000; and
3. Authorize the use and transfer of \$142,000 from the City’s Neighborhood Traffic Calming budget and \$18,000 from the City’s Traffic Safety & Operations Budget to the project account.

9. ADJUSTMENTS TO SUPPLEMENTAL SALARY SCHEDULE AND POLICY AS A RESULT OF MINIMUM WAGE INCREASES

CARRIED 5-0, to

1. Adopt a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, establishing and adopting a supplemental employee salary schedule and superseding previous resolutions in conflict," as necessary to comply with California Fair Wage Act of 2016 requiring a minimum wage of \$12.00 per hour effective January 1, 2019; and
2. Adopt the revised Supplemental Employee Policy.

10. SAN LUIS OBISPO REPERTORY THEATRE EXCLUSIVE NEGOTIATING AGREEMENT

CARRIED 5-0, to

Authorize the Mayor to sign an Exclusive Negotiating Agreement with the San Luis Obispo Repertory Theatre, SLO REP, for long-term use of a portion of the Palm/Nipomo Parking Structure site to construct and operate a new theatre, based on parameters previously set forth by the City Council.

11. REPEALING AND REPLACING RESOLUTION NO. 10894 TO REFLECT UPDATED ZONING REGULATION SECTION FOR PROPERTY MAINTENANCE STANDARDS

CARRIED 5-0, to Adopt a Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, repealing and replacing Resolution No. 10894 (2018) to reflect updated zoning regulation sections."

12. ACQUISITION OF EASEMENTS FOR THE RAMONA DRIVE TO FOOTHILL BOULEVARD CLASS 1 PATH

CARRIED 5-0, to Authorize the Mayor to execute easement and deed agreements in a total amount not to exceed \$423,700 including title and escrow charges in a form subject to the approval of the City Attorney.

PUBLIC HEARING ITEMS AND BUSINESS ITEMS

13. WATER RESOURCE RECOVERY FACILITY PROJECT - AUTHORIZATION TO BID

Utilities Director Carrie Mattingly and Deputy Director Dave Hix provided an in-depth staff report and responded to Council questions.

Public Comments:

Autumn Brown
Rosemary Wrenn
Scott Zimmerman
Daniel Mora
Richard Van Humbeck

Jesse Brooks
Quinn Brady
Tony Skinner
Sean Perry
Dave Baldwin
David Gilliland
Nick Andre
---End of Public Comment---

ACTION: MOTION BY MAYOR HARMON SECOND BY COUNCIL MEMBER CHRISTIANSON, CARRIED 5-0 to:

1. Approve plans and specifications for the Water Resource Recovery Facility (WRRF) Project, Specification No. 91620; and
2. Authorize staff to advertise for construction bids pending City Engineer's approval of the bid set; and
3. Authorize the City Manager to award the contract if the lowest responsible bid is within the project construction budget of \$111,600,000; and
4. Approve amended WRRF Project-specific Construction Contract Change Order policy and authorize the Utilities Director to be responsible for construction contract change orders (CCOs) for the WRRF Project in any amount with the limitation that the sum total of all CCOs not exceed the contingency budget amount of \$13,390,000; and
5. *Incorporate the Community Workforce Agreement into WRRF Project Spec. No 91620 as approved by signatory Craft Councils and Unions affiliates and the Tri-Counties Building and Construction Trades Council, AFL-CIO as included in the Council agenda packet for the November 13, 2018 Meeting.*

STUDY SESSION ITEMS

14. BOB JONES TRAIL (CALLE JOAQUIN TO OCEANAIRE) PREFERRED ALTERNATIVE SELECTION

Public Works Director Daryl Grigsby, Transportation Manager Jake Hudson and Active Transportation Manager Adam Fukushima provided an in-depth staff report and responded to Council questions.

Public Comments:

Myron Amerine
Lea Brooks
Ken Kienow

---End of Public Comment---

ACTION: By consensus, Council directed staff to evaluate other route alternatives which are not consistent with the Bicycle Transportation Plan as part of the planning of the forthcoming Active Transportation Plan.

RECESS

Council recessed at 8:35 p.m. and reconvened at 8:50 p.m., with all Council Members present.

PUBLIC HEARING ITEMS AND BUSINESS ITEMS

15. 2019-21 FINANCIAL PLAN PROCESS; ECONOMIC OUTLOOK, BUDGET POLICIES, AND CAPITAL IMPROVEMENT PLAN REVIEW

Finance Director Brigitte Elke and Budget Manager Alex Ferreira provided an in-depth staff report and responded to Council questions.

Public Comments:

None

---End of Public Comment---

ACTION: By consensus, the Council reviewed and approved the 2019-21 Financial Plan Goal Setting Process.

COUNCIL COMMUNICATIONS AND LIAISON REPORTS

Vice Mayor Pease invited the public to the Police Department Community Meeting and Station tour on Thursday, December 6, 2018 and also indicated that the City Council would be participating in the annual holiday parade on Friday, December 7, 2018.

ADJOURNMENT

The meeting was adjourned at 10:02 p.m. The next Rescheduled Regular City Council Meeting is scheduled for Tuesday, January 8, 2019 at 6:00 p.m., in the Council Chamber, 990 Palm Street, San Luis Obispo, California.


Teresa Purrington
City Clerk

APPROVED BY COUNCIL: 01/08/2019