



Department: Administration
Cost Center: 1005
For Agenda of: 12/10/2024
Placement: Public Hearing
Estimated Time: 20 minutes

FROM: Greg Hermann, Deputy City Manager

Prepared By: Robert Hill, Sustainability & Natural Resources Official

SUBJECT: SAN LUIS OBISPO REPERTORY THEATRE LEASE AGREEMENT

RECOMMENDATION

Adopt a Draft Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, finding that a Lease Agreement with San Luis Obispo Repertory Theatre for certain real property owned by the City located at 610 and 614 Monterey Street, a portion of 972 Nipomo Street, and a portion of City Parking Lot No. 14 is of Public Benefit in accordance with California Government Code Section 53078 and approving the Lease Agreement" to:

1. Find that a 99-year lease serves the public interest of the City of San Luis Obispo by advancing arts and culture, economic development, and other public benefits, in accordance with California Government Code Section 53083; and
2. Approve a 99-year Lease Agreement between the City of San Luis Obispo and the San Luis Obispo Repertory Theatre and authorize the City Manager to execute the agreement.

POLICY CONTEXT

SLO REP's long-standing plans for construction of a new Downtown Theatre project (the "Downtown Theatre") are consistent with the plans for the Cultural Arts District identified in the City's Downtown Concept Plan (2017) and the "Economic Resiliency, Cultural Vitality and Fiscal Sustainability" Major City Goal, Strategic Approach 1.4(a), "Continue to work with our community partners to ensure the Cultural Vitality of the City," as specified in the City's 2023-25 Financial Plan. The City's policies for long-term leases of City-owned property are found at Section 475 of the Financial Management Manual, as adopted by City Council (Resolution No. 10175 (2010 Series)).

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. SLO REP first began to set forth a vision for a new 300-seat community theatre in the early 1990s. In March 2000, the City Council identified several options for such a theatre 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.

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SLO REP is a strong community partner and local non-profit, including a sound Board and governance structure, professional staff and theatre offerings, and implementation of a significant capital campaign in anticipation of the design, construction, and operating costs associated with the planned move to a new location.

On May 22, 2019, the City and SLO REP entered into an Exclusive Negotiating Agreement (“ENA”) to set the parameters and conditions for SLO REP’s long-term use of a portion of the City property for construction and operation of a new Downtown Theatre where the Cultural Arts District Parking Structure will also be located (Attachment C).

On January 25, 2022, SLO REP submitted to the City Council a formal “Challenge Grant” request for funding in the amount of \$3.94 million towards construction of the Downtown Theatre project. At its regularly scheduled meeting on February 15, 2022, the City Council appropriated the requested funding as part of the FY 2021-2022 Mid-Year Budget Review. On April 21, 2022, the City and SLO REP entered into a Grant Agreement for funding in the aggregate amount of \$3.94 million (Attachment D).

On January 23, 2024, the City Council made findings pursuant to the California Surplus Land Act, declaring the subject property surplus exempt under California Government Code sections 54221 and 54234 ([Resolution No. 11471 \(2024 Series\)](#)).

On May 22, 2024, the City and SLO REP entered into Amendment No. 1 to the Exclusive Negotiating Agreement to extend the term for an additional one-year term in total, with additional provisions that require a written document that demonstrates an operating reserve of 20% for the first year of operating the Downtown Theatre and a three-year operating plan, including the establishment of a fund for building and facilities maintenance and repair. It was anticipated that the ENA would be replaced by a long-term lease with a term not-to-exceed 99 years when SLO REP can demonstrate that all conditions of the ENA, as amended, have been met (Attachment E).

On May 30, 2024, the City Council received from SLO REP an update to their Challenge Grant request (Attachment F). In making its request for additional funding, SLO REP’s letter describes the following investment rationale:

1. Direct economic impact of more than \$4 million annually once fully operational.
2. Attraction of 50,000 people annually to the downtown area.
3. Consistency with Major City Goals for arts and culture, as well as relevant DEI activities through multi-cultural programming, diverse casting, theatre offerings, and support of other local non-profits / community-based organizations.
4. Activation of “Theatre in the Park” events to reach new audiences at no-cost or low-cost at staged outdoor venues such as Mission Plaza or Mitchell Park.

On June 4, 2024, the City Council adopted [Resolution No. 11501 \(2024 Series\)](#) approving the Fiscal Year 2024-25 Budget, including a commitment to providing an additional \$2.76 million in grant funding to SLO REP towards the project from the City’s Infrastructure Investment Fund.

On October 1, 2024, the City Council approved Amendment No. 1 to Grant Agreement, which contractually added the \$2.76 million in additional grant funds for a total, combined amount of \$6.7 million, and also clarified reporting requirements by SLO REP during the course of construction of the Downtown Theatre that will be due to the City for review (Attachment G).

On October 24, 2024, SLO REP submitted a memorandum to City staff detailing how SLO REP has met and exceeded all applicable fundraising milestones and other applicable conditions precedent to entering into a lease agreement (Attachment B) with the City, per the Exclusive Negotiating Agreement and Amendment No. 1 to the ENA. At this time, SLO REP has provided evidence that it has assembled approximately \$14.1 million that can be used towards total project costs (including design, construction, contingency, fees, and operating reserve) of the approximately \$17.8 million that is estimated to be needed, or 79% of the overall total (Attachment H). SLO REP reports that additional funding has been secured since their October 24, 2024, memorandum and they reasonably anticipate successfully completing their capital campaign efforts, including a broad-based public campaign, prior to occupancy and construction, as required by the draft Lease Agreement.

Key Highlights of the Lease Agreement

The draft Lease Agreement was developed by both staff from the City and SLO REP, together with each party's respective legal counsel, and includes the following key deal points and structure, consistent with the Exclusive Negotiating Agreement, as amended, and prior direction from the City Council:

1. The term of the lease is 99 years in accordance with Government Code Section 37380 (see further discussion regarding this statute in the sub-section, below).
2. SLO REP shall pay rent of \$1/year.
3. SLO REP shall commence construction of the Downtown Theatre no later than one year after delivery of the premises from the City (upon completion of the Cultural Arts District Parking Structure) and must complete construction within three years thereafter. To commence construction, SLO REP must demonstrate that it has all of the funds necessary to complete the project, including a 15% construction contingency, a 20% operating reserve for the first year, and a three-year plan to establish a building and facilities maintenance and repair fund.
4. Construction of the Downtown Theatre shall be in accordance with the approved Final Environmental Impact Report for the project, as well as conditions of approval for the architectural designs and improvements and all pertinent building permit requirements.
5. SLO REP shall use the Downtown Theatre primarily for live performances that will serve the cultural, educational and recreational needs of the community and visitors, and may also provide activities and events such as festivals, workshops, public speakers, educational outreach programs, and special events. Admission fees are SLO REP's discretion. The City shall have a right to make use of the Downtown Theatre on two occasions per year with advance, reasonable notification.

6. Utilities, maintenance, and ownership of improvements are the responsibility of SLO REP, and the lease also includes provisions for insurance requirements, indemnification, and taxes.
7. SLO REP may only assign the lease with City Council approval, sublet a portion of the leased premises with City Manager approval, and may enter into short-term rentals up to 30-days in duration at its discretion.

Requirements for Local Government Leases

99-Year Lease Term

Under California Government Code Section 37380, cities are typically allowed to lease property owned by it for a term not to exceed 55 years. However, a city may lease property owned by it for a period exceeding 55 years but not exceeding 99 years if certain conditions set forth in Section 37380 are met. Specifically, a charter city, such as San Luis Obispo, may enter a 99-year lease if the lease is “subject to periodic review by the city [taking] into consideration the then current market conditions. The local legislative body may, prior to final execution of the lease, establish the lease provisions which will be periodically reviewed, and determine when those provisions are to be reviewed.” (Cal. Gov. Code § 37380(b)(1).) Charter cities are exempt from satisfying the other conditions listed in Section 37380 and instead “...may utilize a procedure as specified by charter or adopted by ordinance in accordance with its charter.” (*Id.*)

Pursuant to Section 37380(b)(1), the draft lease agreement provides that the lease consideration (paragraph 5) and insurance requirements (paragraph 15) shall be subject to review every twenty years to take into consideration then current market conditions and industry standards.

Furthermore, Section 906 of the City’s charter provides that “the City Council, by ordinance or resolution, shall adopt policies and procedures that shall be applicable to the sale of lease of City property.” Such policies and procedures are set forth in the City’s Financial Management Manual, which was adopted by [Resolution 10052 \(2009 Series\)](#). The City’s lease of the land to SLO REP has complied with such policies.

Surplus Land Act

The California Surplus Land Act requires local agencies to prioritize affordable housing, as well as parks and open space, when disposing of “surplus land” (which includes leasing). However, on January 23, 2024, the City Council adopted [Resolution No. 11471 \(2024 Series\)](#) declaring that the proposed lease area is not necessary for the City’s use and is therefore “exempt surplus” land pursuant to California Government Code sections 54221 and 54234. The City’s resolution was forwarded to the California Department of Housing and Community Development for review in accordance with state law and received their concurrence.

Economic Development Subsidy

Under California Government Code Section 53083, the City is required to provide specified information in written form available to the public, through its website, for any economic development subsidy within its jurisdiction and to provide public notice and a hearing regarding the subsidy. An “economic development subsidy” is defined in relevant part under the Government Code as “any expenditure of public funds or loss of revenue to a local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to . . . grants . . . [and] land price subsidies.” (Cal. Gov. Code § 53083(g)(1)). The City Council has committed \$6,700,000 in grant funding toward the Downtown Theatre and the land lease is being offered at a discounted rate due to the long-standing community partnership with SLO REP and the anticipated public benefit the Downtown Theatre will provide. As such, the grant and lease agreement constitute an “economic development subsidy” and disclosure of the following information and a public hearing are required, as follows (shown in *italics*):

(1) The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

San Luis Obispo Repertory Theatre, A California Non-Profit.
P.O. Box 122
San Luis Obispo, CA 93406

(2) The start and end dates and schedule, if applicable, for the economic development subsidy.

The start date is upon commencement of possession of the leased premises, anticipated in 2026. City of San Luis Obispo grant funding would be expended within three years following commencement of construction. Rent of \$1.00 per year is for a 99-year term.

(3) A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

The total amount of direct expenditures of public funds is \$6,700,000.00. The leased premises is currently vacant land that does not produce revenue.

(4) A statement of the public purposes for the economic development subsidy.

The public purpose for the economic development subsidy is to support arts and cultural activities in the downtown area of San Luis Obispo, which is expected to generate direct and indirect local economic impact benefits.

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(5) Projected tax revenue to the local agency as a result of the economic development subsidy.

Projected tax revenue, whether sales tax or property tax, is not yet known. According to data provided by SLO REP and Americans for the Arts: Arts and Economic Prosperity 6 Survey (January 2024), the operation of the new Downtown Theatre will generate \$4 million in economic activity on an annual basis. SLO REP will be subject to possessory interest property tax, however as the Downtown Theatre is not yet constructed, it is not yet known what the assessment and taxing rate will be.

(6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

According to data provided by SLO REP, the operation of the new Downtown Theatre will generate 7 full time positions and 5 full time equivalent positions. Show-specific artist contracts will generate 16.73 full time equivalent positions, for a total of 28.73 full time equivalent positions comprised of 277 positions hired.

Public Engagement

SLO REP's Updated Challenge Grant Request was considered as part of the FY 2024-2025 Supplemental Budget Review at the City Council's regularly scheduled and noticed meeting. Council considered both public testimony and written correspondence submitted by SLO REP and its supporters detailing their current anticipated budget and necessary funding required to complete the new Downtown Theatre building.

The contractual arrangements specified in the Lease Agreement are considered a matter of routine City business in order to carry out City Council's priorities; however, any member of the public may provide written comments or in-person testimony addressing this item.

CONCURRENCE

SLO REP's Board of Directors reviewed the draft Lease Agreement at their Annual Meeting on November 2, 2024, and voted to authorize entering into the Lease Agreement. The City's Public Works Department and Community Development Department have also offered their concurrence with the recommended action.

ENVIRONMENTAL REVIEW

Entering into the subject Lease Agreement is not considered a project, in and of itself, under CEQA Guidelines Section 15378. However, the City completed environmental review as lead agency for both its Parking Structure and the Downtown Theatre and certified a Final Environmental Impact Report by [Resolution No. 10923 \(2018 Series\)](#).

FISCAL IMPACT

Budgeted: Yes
 Funding Identified: Yes

Budget Year: 2024-25

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$6,700,000			
State				
Federal				
Fees				
Other:				
Total	\$6,700,000		N/A	N/A

It is anticipated that the recommended actions of this Council Agenda Report will lead to future fiscal outcomes affecting the City. First, it is important to note the previously approved Grant Agreement and Amendment No. 1 to Grant Agreement represent, collectively, a \$6.7 million capital investment in the new Downtown Theatre project by the City, in addition to the provision of the subject land lease at \$1 per year. The 99-year lease term also represents a long-term commitment by the City to oversee and attend to the terms and provisions of the lease agreement, though this represents a modest amount of staff time expended on an as-needed and annual basis. Second, these investments are made in reasonable anticipation that the Downtown Theatre will generate \$4 million per year in direct economic impact, bring 50,000 patrons to the downtown area annually, advance City Council goals to support arts and culture, multi-cultural programming and education, support other nonprofits and community organizations, and launch a new downtown activation of outdoor theatre offerings.

ALTERNATIVES

- Council may direct modifications to the draft Lease Agreement to incorporate different terms or requirements.***
- Council could direct staff to make modifications to the draft Lease Agreement and bring it back as an item for future reconsideration. Should Council choose this alternative, it is recommended that a “date certain” be identified, as the term of the existing Exclusive Negotiating Agreement, as amended, is due to expire in May 2025.***

ATTACHMENTS

- A - Draft Resolution approving a Lease Agreement with SLO Rep
- B - Draft Lease Agreement
- C - Exclusive Negotiating Agreement 2019
- D - Grant Agreement 2022
- E - Amendment No. 1 to Exclusive Negotiating Agreement 2024
- F - SLO REP "Challenge Grant" letter correspondence 2024
- G - Amendment No. 1 to Grant Agreement 2024
- H - SLO REP "ENA Requirements" memorandum 2024