



REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: May 6, 2008

SUBJECT: APPROVING THE UPDATED OPERATING AGREEMENT FOR THE
WOODLAND OPERA HOUSE WITH THE STATE DEPARTMENT OF
PARKS & RECREATION

Report in Brief

The State Department of Parks and Recreation owns the Woodland Opera House. The City entered into a long-term operating agreement with the State Department of Parks and Recreation in 1979 to allow the City to operate and maintain the Opera House. The operating agreement has expired and the State Department of Parks and Recreation drafted an updated agreement. Approving the proposed operating agreement will ensure the City is able to continue to operate and maintain the Woodland Opera House.

Staff recommends that the City Council approve the proposed operating agreement for the Woodland Opera House.

Background

The City and the State Department of Parks and Recreation entered into an operating agreement for the Woodland Opera House in 1979. The agreement transferred title to the Opera House to the State in exchange for State restoration work and provisions allowing the City to operate and maintain the Opera House. The original operating agreement recently expired.

The State Department of Parks and Recreation has drafted an updated operating agreement. The proposed agreement will allow the City to continue operating and maintaining the Woodland Opera House rent-free in exchange for complying with the terms of the operating agreement.

Discussion

The City Council's approval of the updated operating agreement will permit the City to continue to operate and maintain the Woodland Opera House. Below are the summarized changes to the agreement:

I. Modified Terms

Term

The Old Agreement had a twenty-five year term and no extension options. The New Agreement retains the twenty-five year term, but permits the State with the City's concurrence to extend the Agreement for an additional twenty-five year term. The New Agreement explicitly creates a month-to-month tenancy if the City holds over with the State's explicit or implied consent.

Consideration

The cited consideration for the Old Agreement was the City was able to occupy the building in exchange for delivering title of the Opera House to the State, paying the State \$70,000 as required by the Agreement and operating and maintaining the Opera House. The New Agreement permits the City to occupy the Opera House rent-free as long as the City maintains a good faith effort to comply with the Agreement.

Alcoholic Beverages

The New Agreement explicitly permits the City to serve alcoholic beverages on the premises provided the City complies with State regulations regarding alcohol sales. The Old Agreement permitted the City to grant concessions (as does the new one) but did not explicitly authorize alcohol sales.

Construction of Improvements

The Old Agreement permitted the City to make repairs and alterations with State approval. The New Agreement also permits the City to make repairs and alterations with State approval. However, the New Agreement changes the process. Under the Old Agreement, the City submitted plans and specifications for the project for State approval. Now, the City must comply with Department of the Interior rehabilitation standards set forth in Exhibit B of the New Agreement. Additionally, the approval process is not outlined in the New Agreement. Rather, the New Agreement permits the State to define the approval process.

The New Agreement also imposes new requirements on the City's construction and post-construction process. First, the City is explicitly required to prosecute alterations to completion with "reasonable diligence" and has an affirmative duty to obtain all necessary permits and comply with the Public Contract Code. Second, once construction is complete, the City must 1) record a notice of completion and provide a copy to the State, 2) provide the State with a complete set of "as built," 3) submit evidence all improvements are clear of mechanic's liens and stop notices, 4) submit a verified accounting of the construction costs and 5) submit a report demonstrating compliance with state and federal accessibility laws.

Title to City Improvements

The Old Agreement provided that title to City improvements vested in the State building, except that unless certain conditions applied the City could remove improvements upon termination of the Agreement. The New Agreement provides that all improvements are State property. However, the

State may elect to require the City to remove improvements that are peculiar to the City's use and are not normally required or used by the State or future occupants.

City Maintenance

The Old Agreement generally required the City to maintain the Opera House. The New Agreement imposes specific maintenance provisions. First, the City must maintain the premises in a safe, sanitary manner. To ensure this, the City must have a certified building inspector conduct an annual investigation of the Opera House and submit a written report to the State. Second, in the event the City does not adequately maintain the Opera House, the State may make the necessary repairs provided it provides the City with ten days written notice of its decision to do so. Third, the State reserves the right to inspect the Opera House with written notice.

Concessions

The Old Agreement permitted the City to grant concessions for six months or less without State approval. The New Agreement requires written State approval for all concessions. The New Agreement also adds a section notifying the City that the right to do business on State property may subject the concessionaire to property tax liability.

Reporting Requirements

The reporting requirements under the two Agreements are similar. However, there are a few changes. First, the City was required to submit weekly attendance figures to the State. This has been modified to monthly estimates. Second, the Old Agreement did not specify the form of reporting financial information. The New Agreement requires the City use the form contained in Exhibit C. Third, the Old Agreement did not specify the time period the City had to maintain its records. The New Agreement requires that the City maintain records for four years.

Indemnification

The indemnification provisions have been modified. Under the Old Agreement, the City had to indemnify the State for liability arising out of the development, construction, operation or maintenance of the property. The State had to indemnify the City for liability arising out of the State's restoration work. The New Agreement retains the City-State indemnification provision and now explicitly includes ADA claims. However, the New Agreement no longer requires the State to indemnify the City.

Eminent Domain Proceedings

Under the Old Agreement, if the Opera House was taken by eminent domain, the State received the entire award, except the City received the fair market value of its improvements with some exceptions. Under the New Agreement, the State receives the entire award with no limitations.

Termination

Under the Old Agreement, the State could terminate the Agreement with two years written notice for any reason or immediately for any major breach. Under the New Agreement, either party may terminate the Agreement with one-year written notice. In the event the State chooses to terminate pursuant to this provision, it must pay the City the depreciated cost of the improvements constructed

by the City, excepting 1) improvements erected with funds realized from the Opera House and 2) improvements the cost of which the State paid for or reimbursed the City.

In addition, either party may terminate the Agreement if the other party defaults on one of its provisions and does not cure the default after thirty days written notice. In the event the default cannot not reasonably be cured within thirty days, the party must begin curing its default within thirty days of the notice and diligently prosecute to completion. If the State does not cure its default, the City may terminate the Agreement with written notice. If the City does not cure its default, the State may terminate the Agreement and immediately retake possession of the Opera House.

II. New Terms

Insurance

The New Agreement requires the City maintains liability insurance in the amount of \$1 million adjusted annually by the CPI and fire insurance.

Holding Over

The New Agreement provides that if the City does not return possession of the Opera House within thirty days of the expiration of the Agreement or termination, the City must indemnify the State for all damages resulting from the City's holdover. In addition, if the City holds over a month-to-month tenancy, terminable by thirty days notice, is created.

Real Property Acquisition

The New Agreement requires that all real property acquisitions by either party appurtenant to the Opera House be made on behalf of the State and are subject to the written approval of the State.

Nondiscrimination

While the Old Agreement contained a Fair Employment Practices Addendum, the New Agreement requires the City not discriminate based on sex, sexual orientation, race, color, religious creed, martial status, ancestry, national origin, medical condition, age and disability. In addition, the City must comply with a number of anti-discrimination statutes, including the Fair Employment and Housing Act.

Disability Access

The New Agreement states that the City is responsible for complying with all disability access laws including the ADA.

NLRB Certification

The New Agreement requires the City to warrant it has no more than one final, unappealable finding of contempt of court by a federal court within the two-year period preceding the Agreement because of the City's failure to comply with an order of the NLRB.

Drug-Free Workplace

The New Agreement requires the City to operate a drug-free workplace. The City must complete a certification form attached to the Agreement.

Environmental Awareness

The New Agreement requires the City to comply with the State's resource management and preservation mandates.

Hazardous Substances

The New Agreement prohibits the City from storing hazardous materials at the Opera House or operating machinery that will damage the structure. In addition, the City must obtain the State's approval prior to conducting pest control activities. The City must submit a pest control recommendation form to the State. The State has fourteen days to approve or deny the request. Once the work is complete, the City must submit a report detailing the completed work within seven days.

Signs and Advertising

The New Agreement prohibits the State from displaying signs, logos, names, placards or advertising matter on or circulating within the Opera House without the State's written approval.

Intellectual Property Rights

The New Agreement provides that any names, logos, trademarks or copyrights developed pursuant to the Agreement that identify the State Park system must be approved by the State prior to their use and shall belong to the State. In addition, the City agrees not to incorporate information or make any deliverables under the Agreement dependent upon the intellectual property rights of a third party without obtaining the State's written approval and granting the State a royalty-free, nonexclusive license in the work. If any infringement actions are brought against the State, the City must indemnify the State.

Participation in State Park Marketing Programs

The New Agreement requires the City participate in State Park marketing programs.

Child Support Compliance Act

The New Agreement requires the City to warrant it complies with the Child Support Compliance Act.

Disputes and Limitation

The New Agreement requires the City continues with its responsibilities during disputes under the Agreement and that the Agreement is subject to all valid and existing contracts, leases, licenses and claims of title affecting the Opera House.

Standard Boilerplate Terms

The New Agreement contains a number of new boilerplate terms. These are 1) paragraph titles are for reference only, 2) the Agreement may be executed in counterparts, 3) the Agreement is the entire agreement between the parties, 4) the Agreement is binding on successors in interest, 5) severability, 6) time is of the essence, 7) the Agreement is interpreted according to California law, 8) the City is an independent contract and not a State employee, and 9) modifications to the Agreement must be in writing.

After careful review of the revised agreement by City staff, City Attorney and the Executive Director of the Opera House, the attached agreement is recommended for approval. The agreement is fair and reasonable for the operation and management of a historic state park. Approval of the agreement will enable the City and the Opera House to continue operation of a historic landmark in a manner that meets the needs of the Woodland community.

Fiscal Impact

City funds required to meet the conditions stipulated in the agreement are included in the FY 2007-08 budget and will be proposed within the FY 2008-09 budget.

Public Contact

Posting of the City Council agenda. A copy of the agenda and report has been provided to the Opera House Executive Director.

Alternative Courses of Action

1. Approve the proposed operating agreement for the Woodland Opera House with the State Department of Parks and Recreation.
2. Do not approve the proposed operating agreement for the Woodland Opera House.

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

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Parks and Recreation

Mark G. Deven
City Manager

Attachment:

1. The proposed Operating Agreement for the Woodland Opera House