



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Kay Winer

**SUBJECT: MEXICAN HERITAGE
CORPORATION FIFTH
AMENDMENT TO AGREEMENT**

DATE: June 5, 2007

Approved

 Date 6/11/07

COUNCIL DISTRICT: # 5

RECOMMENDATION

Approval of the Fifth Amendment to the Agreement Between the City and the Mexican Heritage Corporation (MHC) for the Operation and Maintenance of the Mexican Heritage Plaza (Plaza) to require MHC to comply with additional financial reporting requirements for the remainder of the term of the agreement, to authorize the City Manager to advance a portion of the operation and maintenance support payments for Fiscal Year 2007-2008 to defray the cost of personnel assisting MHC with revenue generation and financial controls, and to suspend MHC's contributions to the reserve account for Fiscal Year 2007-2008.

OUTCOME

Execution of the Fifth Amendment to the Operations and Maintenance (O&M) between the City of San José and the MHC will allow the City Manager's Office to implement the direction provided to staff at the May 22, 2007 City Council meeting where MHC was discussed in a joint Council/Redevelopment Agency session.

BACKGROUND

On May 22, 2007 the City Council adopted a resolution authorizing the City Manager to negotiate and execute the Fourth Amendment to the Loan Agreement entered into by the City and the MHC to defer payment of MHC's loan for 12 months and a Fifth Amendment to the O&M Agreement entered into by the City and MHC to require MHC to provide additional monthly financial reports to the City for the remainder of the term of the Agreement.

This recommendation was amended to allow, subject to the City Manager's approval, City to advance funds for personnel costs associated with revenue generation and financial controls not to exceed the full time equivalent of one position for each of the categories and not to exceed the anticipated 2007-2008 annual operations and maintenance appropriation for MHC of \$413,783. In addition the MHC was requested to post on their web site audited financial statements and any financial information provided to the City in a manner that ensures easy public access.

Also, since MHC has had difficulty in the past making its annual contributions to the reserve account, the parties have agreed to suspend MHC's contribution for Fiscal Year 2007-2008. MHC shall resume contributing to the reserve account in Fiscal Year 2008-2009 at 3%, and 3% annually thereafter as set forth in the Agreement.

ANALYSIS

Approval of this recommendation implements the further direction given by City Council regarding a Fifth Amendment to MHC's O&M Agreement.

POLICY ALTERNATIVES

Alternative #1. Not approving this recommendation.

Pros: Not approving this recommendation could place MHC in a more difficult cash flow situation and delay their abilities to fill the appropriate staff positions to assist in their stabilization efforts.

Cons: Council has already discussed MHC and MHP in depth with detailed direction that includes both long-term and short-term strategies with this action fulfilling the previous recommendations as amended.

Reason for not recommending: Direction from City Council regarding this item was very clear and direct.

PUBLIC OUTREACH/INTEREST

Public outreach occurred during the May 22, 2007 joint City and RDA discussion of this item that included the participation of the Arts Commission with the topic of MHC reported and discussed at their monthly meetings.

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a

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Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

The City Attorney's Office and the Budget Office have participated in the staff efforts to develop this report and the amendment to the agreement.

FISCAL/POLICY ALIGNMENT

Allowing the City Manager to advance funds to MHC for the purposes of filling key staff functions assists MHC with cash flow while MHC operates during this period of assessment of both MHC and MHP.

Supporting both MHP and MHC aligns two (2) of the San José Economic Development Strategies, a "Creative Community: item 4. Evolve and Position Downtown as a Unique and Cultural Center of Silicon Valley, and the World's most Livable Big City; and item 12. Encourage Sporting Teams, Events, and Facilities, Professional as well as Amateur." While not in the immediate downtown, MHP is linked by producing major components of the Mariachi Festival and programming with the other cultural institutions in the downtown. Supporting this effort encourages the growth of one of San José's major cultural institutions as it continues professionally.

COST SUMMARY/IMPLICATIONS

Funding for MHC for the operations and maintenance of the Mexican Heritage Plaza is in the 2007-2008 Proposed Operating Budget.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.



KAY WINER
Chief Deputy City Manager

For questions please contact Kay Winer, Chief Deputy City Manager, at (408) 535-8130.