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# MEMORANDUM



**TO: Mayor & City Council**

**FROM: Councilmember Dave Cortese**

**SUBJECT: San Jose Repertory Theater**

**DATE: August 28, 2006**

APPROVED:

 FOR D.C.

DATE:

8/28/06

## RECOMMENDATION

- 1) Direct the City Auditor to conduct an audit of the San Jose Repertory Theater (Rep) and report to Council on November 14, 2006.
- 2) Approve staff's recommendation to accelerate payment of \$225,000 to the Rep.
- 3) Defer action on the Rep's request for a one million dollar loan until the City Council has reviewed the results of the City Auditor's report.
- 4) Direct staff to work with the Rep to explore the possibility of a business reorganization plan in order to discharge debt and regain solvency.
- 5) Direct staff to work with the Rep to explore how RDA funds can be utilized towards resolving the Rep's approximately \$380,000 in capital needs.

## BACKGROUND

The San Jose Repertory Theater is a key cultural facility in the City of San Jose with over 11,000 subscribers. Per an operations and maintenance agreement with the City, the Rep receives an annual subsidy of \$300,000, to be provided in quarterly installments. Recently the Rep asked the City to accelerate these payments due to financial difficulties they have been experiencing. Simultaneously, and to their credit, the Rep has involved key stakeholders to help assess their operations and retool their business model. The Rep has also successfully leveraged some financial assistance from these stakeholders.

The Rep is now asking the City for greater financial assistance in the form of a one million dollar loan. This is a significant sum of money on top of the annual subsidy the organization already receives. Prior to Council voting on a financial investment of this size, it would be wise to better understand the Rep's financial situation so the City can have certainty as to how exactly additional funds would be used. Therefore it is recommended that the City Auditor immediately perform an audit and report back to City Council at its November 14th meeting, at which point Council can deliberate regarding the loan. In the meanwhile, Council should approve the acceleration of the Rep's annual subsidy payments so they will have enough cash flow to sustain them through the end of September.

The City Council should also direct City staff to work closely with the Rep in exploring a business reorganization plan. Such a plan should detail how to resolve debt through the division of assets among creditors. This supervised division allows the interests of all creditors to be treated with some measure of equality and typically allows a debtor to stay in business and use revenue generated to resolve the debts. It is not uncommon for businesses such as major department stores and airlines (many that serve our own airport) to complete a business reorganization while continuing to serve the public.

The City has various contractual agreements with a multitude of non profit organizations. We must be careful in how we help each organization in that we do not inadvertently set a precedent for other organizations approaching us with similar needs. Still, the Rep is a vital component of our strategy for attracting visitors to the downtown and providing culturally enriching programming. The City should work creatively with them to help turn their situation around.