



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Paul Krutko

**SUBJECT:** SEE BELOW

**DATE:** August 6, 2007

Approved

*Ray Wines*

Date

*8/27/07*

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: AUTHORIZATION OF A THIRD AMENDMENT TO A GRANT  
AGREEMENT WITH SAN JOSE STAGE COMPANY**

## RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a third amendment to the grant agreement with San Jose Stage Company in order to 1) extend the term of the agreement to an optional fourth year with a grant in an amount not to exceed \$69,977, thereby increasing the total grant amount to \$284,105 for the four-year term, and 2) make other amendments necessary for the administration of the grant.

## OUTCOME

Approval of this resolution authorizes an extension to a fourth year of an agreement with the San Jose Stage Company (SJSC) for General Fund Base Budget funding to support its general operations and programs, authorizes a specific grant amount for the fourth year of the grant agreement and authorizes the City Manager to negotiate additional provisions to the agreement necessary for the administration of the grant.

Should SJSC wish to seek City support for its programs and operations after fiscal year 2007-2008, it may do so by submitting an application to the City's Operating Grants arts program.

## **BACKGROUND**

The Mayor's FY 2003-2004 Budget Message adopted by City Council directed the City Manager to develop and make available to the City's arts grantees an opportunity to request to opt out of the competitive grant programs and transfer for a limited time to General Fund Base Budget funding. Although the City's Arts Commission recommended against such a change, in part because any grantee opting for the transfer would no longer be subject to the application reviews by independent Grant Panels that are integral to the annual arts grant programs, staff established guidelines for a transfer to General Fund Base Budget funding and, in keeping with the Council's direction, advertised the opportunity to arts grantees in the fall of 2004.

San Jose Stage Company was the only grantee to make the transfer request. On October 4, 2004, the City entered into an agreement with SJSC that memorialized its transfer from the City's Operating Grants arts program to General Fund Base Budget funding for a period of three years to support SJSC's annual operations and programs.

The City's agreement with SJSC covered the period from July 1, 2004 through June 30, 2007. It included an option to extend its term for up to two additional years, provided SJSC met the terms of the agreement during its original life. In December 2006, SJSC requested a one-year extension in a memorandum to the Arts Program Director of the Office of Cultural Affairs (OCA), which administers the agreement.

Funding for this agreement is subject to the annual appropriation of funds by City Council. In the General Fund Operating Budget approved by City Council in June 2007, the Council authorized an appropriation of \$69,977 for the agreement with SJSC.

## **ANALYSIS**

The agreement provides that the amount of the grant each year following the first year should reflect the same average percentage increase or reduction as recommended for non-public safety city service areas in the General Fund Operating Budget. In keeping with the terms of the agreement, therefore, the Budget Office arrived at the appropriation for FY 2007-2008 as follows:

\$71,289	(FY 2006-2007 grant)
+\$ 2,139	(3% Cost-of-Living Adjustment)
\$73,428	
- \$ 3,451	(4.7% average reduction in non-public safety areas)
\$69,977	

The method of arriving at the recommended funding was consistent with the method applied to other community-based organizations funded through the General Fund Base Budget.

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Annual grant amounts over the life of the agreement with SJSC have been \$74,560 (FY 2004-2005), \$68,279 (FY 2005-2006) and \$71,289 (FY 2006-2007). The budget approved by Council on June 26, 2007 included the recommended appropriation of \$69,977 for FY 2007-2008.

### **Performance of Grantee**

During the original three-year term of this agreement, SJSC generally met its obligation to produce a certain amount of live theater of particular genres for presentation to the public in San Jose. Nearly all of these productions were presented at the 200-seat theater that SJSC operates as San Jose Stage in the City's SoFA district downtown.

Since the beginning of the agreement, however, SJSC has fallen short in meeting a number of reporting obligations. Although OCA has worked repeatedly with SJSC staff to facilitate the successful completion and delivery of reports, each of SJSC's end-of-year reports has been late — by as much as two months — and each of its required annual program plans has been late — by as much as three months. In addition, required audited financial reports for both FY 2004-2005 and FY 2005-2006 remain undelivered, even though OCA awarded, through a competitive process, an Organization Development Grant (technical assistance) of \$7,000 to SJSC in part to support the preparation of audited financial reports. Instead, SJSC recently requested an amendment to the agreement that would reduce the requirement for audited financial reports for FY 2004-2005 and FY 2005-2006 to less demanding reviewed financial reports. As a consequence, the City remains unable to obtain a clear picture of SJSC's overall financial condition.

Staff concluded that SJSC's ongoing inability to comply with the financial reporting requirements triggers the City's right to terminate the agreement for cause. However, given the uncertainty about its financial status, an abrupt cut-off of funding could threaten SJSC's ability to operate and, thereby, have a negative impact on the theater-going public. Therefore, staff will negotiate lesser remedies with SJSC, chief among which is a change in the grant disbursement schedule from quarterly advances to reimbursements for actual expenses incurred by SJSC. As SJSC has expressed concern about the impact such a change might have on its cash flow, staff will propose that reimbursements be made monthly instead of quarterly, thereby limiting the impact on cash flow.

Staff intends to establish new deadlines for each of the required annual financial reports, now including FY 2006-2007, and to clarify what level of review or audit each must take. Staff also proposes that the amendment stipulate that the agreement will not be extended beyond a fourth year, giving SJSC advance notice to prepare for re-applying to existing arts grant programs.

### **EVALUATION AND FOLLOW-UP**

The amendment provides the following performance measures:

- Monthly financial reporting by SJSC, including an accounting of actual expenses with receipts.

- New deadlines for completion and documentation of SJSC's CPA-reviewed 2004-2005 and 2005-2006 annual financial reports.
- Deadlines for completion and documentation of SJSC's CPA-audited 2006-2007 and 2007-2008 annual financial reports.
- A minimum of five mainstage play productions.

At City discretion and OCA expense, SJSC agrees to make itself fully accessible for an organizational assessment by an outside professional. The City would be responsible for the selection of the professional to conduct the assessment, with input from SJSC in the selection.

### **POLICY ALTERNATIVES**

*Alternative # 1:* Not grant the extension

**Pros:** Savings to non-public safety City service areas in the General Fund Operating Budget.

**Cons:** Immediate elimination of City funding could threaten the organization's ability to play its role as a producer of professional live theater in San Jose, as well as its sustainability.

**Reason for not recommending:** It is too late for SJSC to apply for significant City funding this year through the regular arts grant programs administered by the OCA. The immediate elimination of City funding could endanger the organization.

*Alternative # 2:* Grant the extension but not change material terms of the agreement such as disbursement schedules and the cap on extensions.

**Pros:** SJSC would not see any changes in the way it receives financial support from the City.

**Cons:** City would risk sending a message that grantees can ignore their obligations under the terms of their grant agreements without consequence. City would lose an opportunity to try to facilitate improved financial management capacity in a grantee, and the grantee might subsequently get into a more tenuous financial state.

**Reason for not recommending:** Staff has worked repeatedly with SJSC during the original term of the agreement to facilitate the timely completion and delivery of its financial reports. SJSC even applied for and received a technical assistance grant from OCA to assist with its financial reporting. Nonetheless, SJSC has been unable to meet the financial reporting obligations fully. Not changing the disbursement and reporting terms of the grant agreement could reinforce the grantee's behavior. It also risks failing the public's trust that the City will manage public resources responsibly.

### **PUBLIC OUTREACH/INTEREST**

**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)**

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

While this project is below the \$1 million threshold for Criteria 1, this memo is posted on the City's website for the September 11, 2007 Council Agenda.

### COORDINATION

This memorandum has been coordinated with the Office of the City Attorney and the City Manager's Budget Office.

### COST IMPLICATIONS

There are no cost implications for FY 2007-2008 beyond the recommended grant amount of \$69,977. The total prior cost of the grant agreement since its execution was \$214,128 —\$74,560 in FY 2004-2005, \$68,279 in FY 2005-2006, and \$71,289 in FY 2006-2007. The total cost including the recommended grant amount is \$284,105.

### BUDGET REFERENCE

Fund No.	Appn No.	Appn Name	RC No.	Total Appn	Amt. For Contracts*	2006-2007 Proposed Budget	Last Budget Action
001	3348	Non-personal / Econ Dev SJSC	009557	\$69,977	\$69,977	Page IX-9	07-08 App Ord N/A

\* Total over four years is \$284,105.

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CEQA

Not a project.

A handwritten signature in black ink that reads "Paul Krutko" with a long horizontal stroke extending to the right.

PAUL KRUTKO  
Chief Development Officer

For questions please contact Lawrence Thoo, Arts Program Director, 277-5144 x28.