

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Paul Krutko
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: August 31, 2009

Approved

Date

9/4/09

COUNCIL DISTRICT: 3

SUBJECT: LEASE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CIRQUE DU SOLEIL AMERICA, INC. FOR A TOURING SHOW IN SAN JOSE IN 2010 AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE GENERAL FUND

RECOMMENDATION

1. Approval of a lease agreement with Cirque du Soleil for the purpose of leasing portions of the City's "E" Parking Lot (Taylor/San Pedro/Mission) to Cirque du Soleil from December 14, 2009 to April 2, 2010 to allow Cirque du Soleil to present to the public its touring show, for rental consideration to the City of \$95,000.
2. Direction to staff to facilitate the permitting process required to authorize use of the "E" Parking Lot for Cirque du Soleil's touring show, which will include community outreach and City employee and public parking plans, and that the City hold a public hearing to consider amendment of the current Conditional Use Permit for this site.
3. Adoption of the following Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
 - a. Establish a City-Wide appropriation to the Office of Economic Development for Cirque du Soleil in the amount of \$175,000; and
 - b. Increase the estimate for Other Revenue by \$175,000.

OUTCOME

Approval of the lease agreement with Cirque du Soleil will result in a six and one-half-week, 60-performance presentation of an internationally acclaimed Cirque show, "OVO." An estimated 137,970 residents and visitors will enjoy a unique cultural and entertainment opportunity, close to Downtown, Japantown and public transportation. The City traffic and parking management plan will minimize the event impacts on residents and businesses. The lease payment and City parking revenues from attendee parking at the C-Lot at Old City Hall are expected to offset City costs.

August 31, 2009

Subject: Lease Agreement between the City and Cirque du Soleil America, Inc. for the 2010 Touring Show and Adoption of Ordinance and Funding Sources Resolution Amendments in the General Fund

Page 2

BACKGROUND

Cirque du Soleil has presented biennial touring shows in San Jose since 1990. After locating in various Downtown parking lots, subsequent construction projects resulted in the lack of a central Downtown space sufficient to accommodate Cirque's size requirements.

For its 2008 touring show, Cirque du Soleil returned to the City's "E" Parking Lot (bounded by Mission, San Pedro and Taylor Streets). This site was selected after an extensive review of potential sites near the Downtown. A Lease Agreement was entered into between the City and Cirque du Soleil for the use of the E-Lot; a five-year Conditional Use Permit was issued by Planning, Building and Code Enforcement; and community outreach was conducted with the Vendome neighborhood, the County of Santa Clara and adjacent businesses. Alternative parking was developed to meet the needs of Police Department staff.

For each performance, parking signage and traffic control officers were provided. Special signage directed traffic away from adjacent residential streets and the Vendome neighborhood. Additionally, Cirque management developed a promotional program with the Valley Transportation Authority to encourage Cirque patrons to use Light Rail.

In late 2008, Cirque indicated its interest in returning to San Jose in 2010. After joint City/Cirque exploration of the feasibility of relocating to the vacant Jackson Street Corporation Yard, Cirque du Soleil informed the City in May 2009 that the Cirque Site Selection Committee had confirmed the E-Lot as a preferred location for its 2010 show.

ANALYSIS

In 2008, the City and Cirque shared responsibility for site preparation/restoration. However, Cirque's \$90,000 lease payment to the City offset the City's costs for its share of site work and for traffic control, the Conditional Use Permit fee and related outreach, and rental of spaces in the County Parking Garage. In addition, the City activated the C-Lot for attendee parking, with the resulting \$122,964 in parking revenues covering the City's costs for development and implementation of the Traffic Parking and Management Plan (signage, equipment, restriping Mission Street), Department of Transportation staff charges and parking concession costs. Therefore, the 2008 Cirque lease payment and parking revenues resulted in \$47,361 net General Fund revenue to the City.

For the upcoming 2010 Cirque production of "OVO," the City and Cirque are once again sharing responsibility for site preparation/restoration. The lease requires the City to complete its site preparation work prior to December 14, 2009, the first day of Cirque's site occupation period. As part of the lease, the City agrees to indemnify Cirque for any breach of the lease or breach of any representation or warranty contained in the lease. For example, failure by City to complete the work and deliver the site to Cirque may impact the schedule of performances and expose the City to

August 31, 2009

Subject: Lease Agreement between the City and Cirque du Soleil America, Inc. for the 2010 Touring Show and Adoption of Ordinance and Funding Sources Resolution Amendments in the General Fund

Page 3

damages for breach of the lease. The lease also provides indemnification to the City for Cirque's use of the E-Lot and requires Cirque to provide appropriate insurance at its own cost and expense.

The proposed Lease Agreement has been updated to: 1) memorialize the City's right to sell unused VIP parking spaces to attendees when those spaces are not being used by Cirque's VIP guests; and 2) to increase the lease payment to \$95,000. The City will again activate the C-Lot for attendee parking. It is estimated that parking revenues to the City will range from \$80,000 up to \$120,000 for this event. Though parking revenues for Cirque du Soleil events historically have reached upward of \$120,000, due to the recent decline in parking revenues and the availability of private parking lots, a conservative estimate of \$80,000 is recommended. City staff anticipated the Cirque lease payment and parking revenues will offset the production costs currently estimated at \$175,000 including a \$5,000 contingency. Should parking revenues exceed the conservative estimate, it is anticipated that this event would bring in a slight benefit to the City's General Fund.

The Office of Economic Development has estimated the potential economic impact of Cirque's 2010 San Jose production to be \$20,521,000, using the methodology developed for the "*Analysis of the Economic and Fiscal Impact of Cultural and Sporting Events in San Jose*" (Economic Impact Tool), which was accepted by City Council on April 10, 2007. This conservative methodology measures only the impact of visitors attending Cirque in San Jose, excluding any economic impact provided by San Jose residents attending the performances.

The Office of Cultural Affairs (OCA) is leading the City team responsible for ensuring a safe, well-planned Cirque du Soleil in 2010. Staff contacted representatives of the County of Santa Clara to review the experiences of the 2008 event, in order to fine-tune the Traffic Parking and Management Plan for 2010. Parking impacts for Police Department staff have been reviewed with that department; and it has been resolved that the same arrangements will be made to accommodate Police Department parking as were made in 2008, including leasing a portion of the County Garage.

An invitation to a community meeting to be held on August 25, 2009, part of the process for amending the Conditional Use Permit issued in 2008, was mailed to all residents within 1,000 feet of the event site. At the meeting, City staff will present the 2010 event plan, take comments and answer questions. In addition, staff will work with Council District 3 to identify and resolve any neighborhood issues.

EVALUATION AND FOLLOW-UP

Staff will evaluate the impacts of the event on traffic, adjacent neighborhoods and businesses, and will finalize net revenue and refine the economic impact analysis. A final report will be provided as an information memorandum to City Council.

August 31, 2009

Subject: Lease Agreement between the City and Cirque du Soleil America, Inc. for the 2010 Touring Show and Adoption of Ordinance and Funding Sources Resolution Amendments in the General Fund

Page 4

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 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)**
- Criterion 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)**

Although this item does not meet the criteria above, this memorandum will be posted on the City's website as part of the agenda for the September 22, 2009, City Council meeting.

Cirque du Soleil 2010 requires an amended Conditional Use Permit. As part of that process, a community meeting will be conducted on August 25, 2009, at City Hall and the Planning Commission will conduct a public hearing on October 14, 2009.

COORDINATION

This item has been coordinated with Planning, Building and Code Enforcement, the City Attorney's Office, the Department of Transportation. The Lease Agreement has been coordinated with the City Attorney's Office and Risk Management.

FISCAL/POLICY ALIGNMENT

The presentation of Cirque du Soleil's unique new production, "OVO," is aligned with the City's Economic Development Strategy, which envisions San Jose as the "World's Most Livable Big City, with diverse and distinctive qualities of life." Drawing over 2,000 attendees for each of the 60 performances, Cirque du Soleil has proven to drive economic impact as well as support Economic Development Strategy Initiative #4: "Evolve and position Downtown as a unique creative and cultural center of Silicon Valley."

COST SUMMARY/IMPLICATIONS

The total cost of the 2010 Cirque production of "OVO" is estimated at \$175,000 including a \$5,000 contingency. City staff conservatively project \$80,000 in parking revenues and upon approval of the lease agreement, a \$95,000 lease payment from Cirque du Soleil, to offset City production costs.

August 31, 2009

Subject: Lease Agreement between the City and Cirque du Soleil America, Inc. for the 2010 Touring Show and Adoption of Ordinance and Funding Sources Resolution Amendments in the General Fund

Page 5

Anticipated costs include the City's cost for the event's traffic control, permit cost, County Garage lease and the City's share of site preparation/restoration cost. Expenditures will not exceed the lease payment as well as parking revenues received; should parking revenues exceed the conservative staff estimate it is anticipated that a net gain in revenue to the City's General Fund would result.

BUDGET REFERENCE

The table below identifies the funds and appropriation proposed to fund the contract recommended as part of this memo.

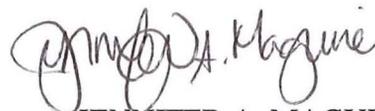
Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt for Event	2009-2010 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
Total Funding Recommended							
001	N/A	Cirque du Soleil	N/A	175,000	175,000	N/A	N/A
Total Funding					\$175,000		

CEQA

Exempt, File No. CPA05-015-02.

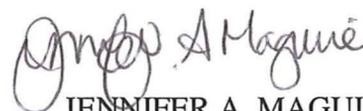


PAUL KRUTKO
Chief Development Officer



JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2009-2010 moneys in excess of those heretofore appropriated there from, said excess being at least \$175,000.



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Tammy Turnipseed, Events Director, (408) 277-5144 x22.