



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: David Sykes
Kim Walesh

SUBJECT: SEE BELOW

DATE: 05-27-11

Approved

Date

6/7/11

COUNCIL DISTRICT: 5
SNI: Mayfair

SUBJECT: ACTION RELATED TO IMPLEMENTATION OF THE SCHOOL OF ARTS & CULTURE AT THE MEXICAN HERITAGE PLAZA

RECOMMENDATION

- a) Adoption of a resolution authorizing the City Manager to negotiate and execute an Interim Incubator Operator Agreement with 1stACT Silicon Valley, for the management and operation of the Plaza based on business terms and conditions described in this memorandum for a term not to exceed 3 years at a maximum total compensation not to exceed \$1,485,000, subject to the City Council's annual appropriation of funds for the operating payments.
- b) Adoption of a resolution to amend the FY 2011-2012 Schedule of Fees and Charges (Resolution No. 72737, as amended) to suspend the use and rental fees for Mexican Heritage Plaza for so long as the City is not operating the facility.

BACKGROUND

On May 24, 2011, the City Council approved the Mexican Heritage Plaza Steering Committee's Business Plan for the School of Arts & Culture at the Mexican Heritage Plaza ("Plaza"). Based on the recommendations submitted by Mayor Reed, Council members Campos, Herrera, Kalra and Liccardo, the Council also authorized the City Manager to negotiate an Interim Incubator Operator (IIO) Agreement with 1stACT Silicon Valley. The recommendation further stated that execution of the agreement should not occur until adoption of the FY 2011-2012 budget. The purpose of this memo is to authorize the City Manager to negotiate and execute the IIO Agreement according to the direction of the Council.

ANALYSIS

Interim Incubator Operator (IIO) Agreement

The key business terms of the IIO Agreement to be negotiated and executed are as follows:

- **Contracting entity** - 1stACT, initially. However, a new organization affiliated with 1stACT, but a mirror of 1stACT in terms of structure, board composition, and officers has been created. This new organization was created so that the operations of the school and Plaza will be separated from other 1stACT activities. In this way, the interim operator will be focused simply on the operation of the school and Plaza, its business activities will be transparent and easily identifiable to the public, financial reporting and monitoring will be focused solely on school and Plaza operations, and lines of accountability will be clear. The interim operator may evolve into the long term operator, or it may give way to another organization as the long term operator after the Agreement expires. Until such time as the new organization receives a determination letter from the IRS that it is exempt from federal taxation, 1stACT will be responsible for all IIO duties.
- **Term** – 3 years, with the ability to terminate sooner, particularly if a long term operator is ready.
- **City investment** – Match, after the first \$300,000 of City investment, the combination of earned and contributed revenue generated by the school, up to a maximum of \$600,000 in 2011-12, \$550,000 in 2012-13, and \$500,000 in 2013-14. In each year, 10% of the total is to be directed to a capital repair and replacement fund to be managed by the operator.
- **Interim Incubator Operator functions** – Provide school programs and services, operate and maintain the Plaza, develop a successor organization that can become the long term operator (either one that develops during the incubation period or an existing organization that becomes ready during the incubation period).
- **Relationship with Cultural Arts Partners** – Negotiate agreements with the existing Cultural Arts Partners (Teatro Visión, Mexican Heritage Corporation, and San Jose Multicultural Artists Guild) to ensure continuing partnerships for programs that support the mission of the school, also consider recruiting new Cultural Arts Partners based on their ability to contribute to the mission.
- **Programming & Rentals** – Develop school programs based on the Guiding Principles described in the Business Plan. Develop a rental structure that balances activation and community use with cost recovery. Ensure that neighborhood associations named in the May 24 Council direction receive limited free use. Create specific methods to make the Plaza available for verified neighborhood associations.

- **Governance** – Follow the May 24 Council direction to convene an advisory committee comprised of 9 members representing the entities specified. The Advisory Committee on Permanent Governance will explore potential public/private opportunities as part of the governance and implementation of the long-term business plan. 1stACT should provide a progress report to the Community and Economic Development Committee no later than December 31, 2012.

EVALUATION AND FOLLOW-UP

Staff will manage the agreement with the new organization, monitoring revenue collections to verify the matching payments, and monitoring performance of the various tasks required of the IIO. City staff will also serve on the advisory committee that will guide the progress toward an eventual recommendation to Council regarding the selection of a permanent operator for the school.

PUBLIC OUTREACH

- 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 and staffing that may have impact 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)**

This item does not meet any of the above criteria. However, public outreach related to the Council's earlier direction to staff to negotiate the Interim Incubator Operator agreement was extensive. As was described in the Council memo for that item, the Steering Committee meetings from June 2009 to the present have been publicly noticed and conducted based on the Brown Act. An e-mail list of more than 400 community members has received notices prior to every meeting, a synopsis following every meeting, and special notices of items of unusual interest throughout the process. A website linked from the City's home page has been available throughout the process. For the May 24 Council meeting, additional outreach took place with the e-mail list of stakeholders, and staff has provided recent progress reports to the Community & Economic Development Committee and the Arts Commission, both of which included a final draft of the Business Plan and a detailed discussion of the Interim Incubator Operator. This memorandum will be posted on the City's Internet website for the June 21, 2011 Council agenda.

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COORDINATION

This memorandum has been coordinated with the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

The total cost of the recommended actions is \$600,000 in the General Fund in 2011-2012, partially offset by a transfer of \$116,442 from the Convention Facilities & Cultural Affairs Fund, as described in Manager's Budget Addendum #19. This compares to the City's 2010-2011 net cost of approximately \$680,000, a 12% reduction. This change is included in the 2011-2012 Proposed Operating Budget that is under consideration by the Council as this memo is written.

The recommended level of City investment is \$550,000 in 2012-2013 and \$500,000 in 2013-2014. The IIO agreement will contain language that conditions these payments upon annual Council approval of appropriations authorizing the expenditures.

CEQA

CEQA: Exempt, File No. PP10-097.

/s/

DAVID SYKES
Acting Director of Public Works

/s/

KIM WALES
Director of Economic Development and
Chief Strategist

For questions, please contact PETER JENSEN, Acting Assistant Director of Public Works, at 975-7290.