



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: 11-14-12

**SUBJECT: NAMING RIGHTS AND SPONSORSHIP FOR SAN JOSÉ CIVIC
AUDITORIUM AND CENTER FOR THE PERFORMING ARTS**

RECOMMENDATION

As recommended by the Rules and Open Government Committee on November 14, 2012 and outlined in the attached memo previously submitted to the Rules and Open Government Committee:

- (a) Conduct a public hearing in accordance with City Council Policy 7-2 on the renaming of the San José Civic Auditorium in exchange for a five-year sponsorship and naming rights agreement with City National Bank in the net amount of \$870,000 to the City of San José.
- (b) Adopt a resolution:
 - (1) Authorizing the City Manager to negotiate and execute any required agreements or amendments to existing agreements with City National Bank, Team San José, Front Row Marketing Services, L.P., or Nederlander Concerts San José, LLC, for naming rights at the San José Civic Auditorium and sponsorship rights at the Center for the Performing Arts, for a period of five years and total fee of \$1.2 million with a net amount of \$870,000 to the City of San José, with these funds specifically dedicated to the San José Civic Auditorium and Center for the Performing Arts marketing and capital needs to support the activation and long-term use of these venues; and
 - (2) Delegating the authority to approve the renaming of the San José Civic Auditorium to the City Manager.



Memorandum

TO: RULES AND OPEN
OPEN GOVERNMENT COMMITTEE

FROM: Kim Welsh

SUBJECT: SEE BELOW

DATE: November 7, 2012

Approved

Date

11/7/12

COUNCIL DISTRICT: 3

**SUBJECT: NAMING RIGHTS AND SPONSORSHIP FOR SAN JOSE CIVIC
AUDITORIUM AND CENTER FOR PERFORMING ARTS**

RECOMMENDATION

1. Conduct a public hearing in accordance with City Council Policy 7-5 on the renaming of the San Jose Civic Auditorium in exchange for a five year sponsorship and naming rights agreement with City National Bank in the net amount of \$870,000 to the City of San Jose; and
2. Recommend to the City Council to adopt a resolution:
 - a. Authorizing the City Manager to negotiate and execute any required agreement(s) or amendment(s) to existing agreement(s) with City National Bank, Team San Jose, Front Row Marketing Services, L.P., or Nederlander Concerts San Jose, LLC for naming rights at the San Jose Civic Auditorium and sponsorship rights at the Center for the Performing Arts, for a period of five (5) years and total fee of \$1.2 million with a net amount of \$870,000 to the City of San Jose, with these funds specifically dedicated to the San Jose Civic Auditorium and Center for the Performing Arts marketing and capital needs to support the activation and long-term use of these venues.
 - b. Delegating the authority to approve the renaming of the San Jose Civic Auditorium to the City Manager.

OUTCOME

The public hearing will allow any interested person to speak on the proposed renaming of the San Jose Civic Auditorium in accordance with City Council Policy 7-5. Adoption of a resolution by the City Council will result in negotiations and execution of any required agreement(s) and/or

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amendment(s) to existing agreement(s) for sponsorship and naming rights at the San Jose Civic Auditorium and sponsorship rights at the Center for the Performing Arts, in exchange for \$870,000 to the City of San Jose.

BACKGROUND

Team San Jose (TSJ) operates and manages the Convention Center, Center for the Performing Arts, California Theatre, Montgomery Theater, Parkside Hall and South Hall under an existing agreement with the City of San Jose (City) dated July 1, 2009. All venues operated and managed by TSJ have various capital and marketing needs to ensure the highest level of activation of these facilities on behalf of the City. With limited capital resources available to support these venues, along with the recent demise of the San Jose Redevelopment Agency and the financial challenges within the City's General Fund, public-private partnerships are increasingly important for the City and TSJ to leverage City owned assets. As a result of TSJ's improved financial operations and slow growth of Transient Occupancy Tax, City's Convention and Cultural Affairs Fund (Fund 536) has not been able to help address the long-term capital needs and deferred maintenance of the theaters and convention facilities.

In 2007, the San Jose Redevelopment Agency Board appropriated \$11 million to support the reactivation of the San Jose Civic Auditorium as a concert and conference general session venue. Since that time, the San Jose Civic Auditorium has been under renovation. Also, during the renovation process, TSJ entered into a new agreement with Nederlander Concerts San Jose, LLC (Nederlander) dated July 1, 2011 to help activate the San Jose Civic Auditorium as a concert venue. Under the agreement, Nederlander has a non-exclusive right to book live or pre-recorded performance, commercial, and entertainment events at the San Jose Civic Auditorium. This fall, the San Jose Civic Auditorium celebrated 76th years as a community venue and was officially launched as a concert, special event and general session venue.

The Center for the Performing Arts (CPA) will celebrate 40 years providing performing arts and cultural events in San Jose. Over the last 40 years, there has been limited funding available to support the capital needs of this cultural venue. In 2008, TSJ and Nederlander Broadway partnered together to attract high quality Broadway shows to San Jose. The CPA has a number of capital repairs needed to ensure that it can continue to support Broadway San Jose and Ballet San Jose event needs into the future.

TSJ also has an agreement dated May 1, 2011 with Front Row Marketing Services, L.P., a firm dedicated to providing marketing and commercial rights services to the facilities managed by TSJ on behalf of the City. From a theater standpoint, sponsorships are a key ingredient to support concerts and special events. Earlier this year, Front Row Marketing approached TSJ with an opportunity for naming rights at the San Jose Civic Auditorium and other sponsorships focused at the CPA.

ANALYSIS

City Council Policies

City Council Policy 7-5 sets forth the policy on the naming or renaming of City land and facilities including opportunities for the City to attract sponsors who contribute significant funds to assist the City in construction, maintenance, or operations of City lands and facilities, in exchange for naming rights. A public hearing is required by the appropriate commission or Council committee to develop a recommendation to the City Council. Under the policy, staff needs to make reasonable efforts to have the sponsor agree to incorporate the existing name into a newly recommended name. Additionally, staff has to prepare a report that includes a net benefit analysis to evaluate such factors as (i) proposed length of sponsorship opportunity, (ii) cost of sponsorship, (iii) current market factors, (iv) costs of acquisition, construction, ongoing facility operations and maintenance, and (v) alignment to fundraising and sponsorship guidelines and business plans.

Council Policy 1-17 sets forth the policy to encourage partnerships to aid in revenue generation. Staff believes the proposed sponsorship and naming rights with City National Bank (CNB), as explained in details below, meets the criteria set forth in both City Council policies.

Sponsorship and Naming Rights

As part of the City's Management Agreement with TSJ, TSJ is charged with locating additional revenue streams to support the venues they manage on behalf of the City. The TSJ-Front Row Marketing agreement helps drive sponsorship opportunities to support the venues managed by TSJ.

The recommendation in this memorandum is for the Rules Committee to conduct a public hearing in accordance with City Council Policy 7-5 for the renaming of the San Jose Civic Auditorium and recommend to the City Council to adopt a resolution to allow the City Manager to negotiate and execute a new agreement(s) or amend existing agreement(s) for the sponsorship and naming rights discussed in this memorandum. The City and its partners have not finalized how to structure the sponsorship and naming rights agreement and terms. Therefore, staff is requesting the flexibility to negotiate and execute the necessary agreement(s) and amendment(s) (collectively "Agreement") to implement this partnership with Nederlander, Front Row, TSJ and City National Bank.

The proposed Agreement would be for (5) years and CNB would pay a total upfront of \$1.2 million for the sponsorship rights to CPA and naming rights to the Civic Auditorium. The City's share of the sponsorship is \$870,000 and the remaining amount of \$330,000 would be paid directly to Front Row and Nederlander Concerts jointly as "commission" for their efforts in securing this partnership. While the TSJ Agreement with Front Row specifies a higher amount, Front Row and Nederlander Concerts reduced their contractually obligated commission for the

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City National Bank naming rights sponsorship opportunity to ensure a greater share of the sponsorship is dedicated to the CPA and San Jose Civic for capital and marketing needs. CNB will pay the full amount before December 31, 2012.

Total Naming/Sponsorship Rights Fee:	\$1,200,000
To Front Row/Nederlander for commission	\$ 330,000
To City for Civic Auditorium and CPA Theater	\$ 870,000

City National Bank has requested the \$870,000 be deposited in Fund 536 and be contractually secured to be used to market the newly named Civic Auditorium and the CPA with the remaining funds dedicated to capital investment back into these two venues. The City is currently working to prioritize the capital needs of both facilities with TSJ.

Staff believes the \$870,000 amount to be paid to the City to be a fair amount for the sponsorship and naming rights for the Civic Auditorium and CPA for a five-year period. TSJ and Front Row have been seeking sponsorship opportunities for the Civic Auditorium for the past few years. The deal presented above is the first substantial sponsorship opportunity the City has received for these two facilities. Based on the annual attendance at the Civic Auditorium and the CPA, the funds offered will allow the City to market and invest in capital needs at both facilities to increase activation, visitors and visitor spending.

Civic Auditorium

The proposed Agreement for the Civic Auditorium will include City National Bank as part of the official name of the Civic Auditorium. Currently, a name has not been mutually selected between City National Bank and the City. City National Bank is currently working with its consultants on a name and logo that will be coordinated with the City in the near future for review and approval. City National Bank has expertise working with city-owned and operated concert venues, including the city-owned, Grove in Southern California, and understands that all signage will conform to city policy and ordinances. Staff is requesting authority for the City Manager to approve the renaming of the Civic Auditorium and will provide the City Council with an informational memo once a new name is approved.

In addition, the proposed Agreement will include new signage at the Civic Auditorium at the expense of City National Bank. The new signage will include:

- a new sign or banner on the front of the venue,
- new signage on the existing small marquee,
- a new sign on the roof of the venue,
- signage for way-finding,
- four interior signs with CND messaging, and
- a new sign in second floor bar.

All signage will meet historical guidelines, Title 23 – City Sign Ordinance and City Council policies. A number of other elements will be also be at the expense of City National Bank

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including creation of a new logo, new print collateral and purchase of a new URL for marketing purposes. The City will not incur expenses related to signage.

Additional elements of the partnership for the Civic Auditorium include creation of a new logo by CNB, the new name and logo on print collateral (flyers), website, and event tickets, allowing CNB ads to run on TV's or screens within the venue, 300 free Tier 1 tickets per year to Nederlander Concert events, free one day per year facility rental, and other marketing opportunities. CNB would also be the exclusive bank entity tied to the venue and is requesting the opportunity to place and operate an ATM onsite.

The proposed Agreement will allow existing and future clients at the Civic Auditorium to have the option to opt out of the required signage with City National Bank. For example, if a current or future client has other partnerships that would prohibit them from using the Civic Auditorium because of the CNB signage, the signage can be temporarily covered or removed to accommodate the event. This will ensure the Civic Auditorium remains competitive and flexible for all event needs.

While the intent is for marketing activities over time to evolve with the use of the new name, the examples used above would not supersede or change current operational activities.

Center for Performing Arts

The proposed Agreement for the Center for Performing Arts is not a Naming Rights partnership deal. It would only be a sponsorship partnership. This sponsorship agreement will include a marketing partnership, new interior signage and the City National Bank logo on the CPA website.

Other elements of this partnership include interior signage with CNB branding, allowing CNB ads to run on TVs or screens within the venue, placing the CNB logo on CPA website and city banners, including a CNB ad in the playbills for Broadway and NDL Concerts events, and other marketing opportunities. Additionally, CNB would be the exclusive banking entity tied to the venue and is requesting the opportunity to place an ATM onsite. Existing and future clients at the CPA will have the option to opt out of the required signage as discussed above. CNB will also receive 50 free tickets and 50 VIP passes per year over the five-year term for events at the CPA.

Private Activity Restrictions

Renovations to the San Jose Civic Auditorium were funded with tax-exempt bonds issued by the San Jose Redevelopment Agency. Internal Revenue Service regulations, however, limit a private party's use of tax-exempt bond-funded facilities in their trade or business. This includes the benefits a private party derives from naming rights. Specifically, impermissible private activity arises where (1) the proportion of bond proceeds devoted to private use exceed certain limits and (2) where the payment the City receives from the private party (net of operating costs on the

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facility) exceeds 10% of bond debt service. If both of these limits are exceeded, the bonds may lose their tax-exempt status.

Following confirmation from the City's tax counsel and based on the terms of the proposed Agreement, the second "private payment" limit noted above would not be met. The 2012-2013 Adopted Operating Budget for the San Jose Civic Auditorium is \$1,577,663 while the proposed payment to the City for naming rights on the Civic is \$870,000. Therefore, the payment will more than offset the facility's operating cost, not exceeding 10% of debt service, and IRS private activity regulations would not be triggered under the payment test.

This analysis is based on the assumption that actual operating costs at the Civic Auditorium in 2012-13 will meet budgeted amounts and assumes there are no other private payments received from users of the Civic Auditorium or any other facilities funded with the Redevelopment Agency for the City of San Jose Tax Allocation Bonds, Series 2008.

EVALUATION AND FOLLOW-UP

The City Manager's Office and Team San Jose report quarterly to the Public Safety, Finance and Strategic Support Committee. Staff will provide an updated to the Committee in 2013.

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)**

City Council Policy 7-5 requires "a public hearing by the appropriate Commission or Council Committee shall be held in order for the proper body and responsible Department to develop a recommendation to the City Council."

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COORDINATION

This memorandum was coordinated with the City Manager's Budget Office, Finance Department, Public Works and City Attorney's Office.

CEQA

Not a Project, File No. PP10-066 (e), Agreements/Contracts.

/s/

KIM WALESH

Director of Economic Development

Chief Strategist

For questions please contact Lee Wilcox, Assistant to the City Manager, at (408) 535-8172.