

"Approved by the City Council/Redevelopment Agency Board on January 11, 2005."

CITY COUNCIL/REDEVELOPMENT AGENCY
MINUTES OF THE REGULAR MEETING

WESTMINSTER, CALIFORNIA
November 2, 2005

The City Council/Agency Board of the City of Westminster, California convened on November 2, 2005, at 6:50 p.m. in an Adjourned Regular Meeting in the Council Chambers, 8200 Westminster Blvd, Westminster, California.

6:30 P.M.

Mayor Pro Tem Paris participated in this meeting through teleconferencing. Pursuant to Government Code Section 54953(b)(1), the agenda was posted at 15561 Eden Street, Westminster, California; the location was freely accessible to the public.

ROLL CALL:

PRESENT: RICE, PARIS, FRY, MARSH, QUACH
ABSENT: NONE

SALUTE TO FLAG: Led by Council Member Quach

ORAL COMMUNICATIONS

1. (City/Agency) Theater/Art Gallery Facility Management Services Agreement for the Westminster Rose Center

The Finance Director reported that at the September 19, 2005 Study Session meeting, the Rose Center Foundation presented its proposed operating plan to the City Council for its consideration. Along with the Rose Center operating plan, staff presented its financial operating plan for the Council's review. In order to formalize the understanding between the City and the Rose Center Foundation, the Theater/Art Gallery Facility Management Services Agreement to the City Council was presented for Council's consideration. The agreement details the following:

- Services to be provided by the City
- Policies and Priority for Site Use
- Terms of Agreement
- Use of Theater Complex and Shared Use Areas
- Maintenance, Repair and Replacement responsibilities
- Insurance Requirements

During the course of preparing the agreement with the representatives of the Rose Center Foundation, it was determined that certain furniture fixtures and equipment were not included in the projected costs of the theater. Based on staff's analysis, the equipment not included in the project costs will amount to approximately \$180,000, as detailed in Exhibit C of the proposed agreement between the City and the Friends of the Abbey Centre, Inc., dba as the Rose Center Foundation. Per the agreement, he noted that the equipment would initially be provided by the City. As the initial equipment was not included in the

original projected cost, staff will recommend that the City Council/Agency Board consider authorizing an appropriation from the Redevelopment Operating Fund Contingency at the November 16, 2005 meeting.

The Finance Director reported that lastly, during the course of preparing the Theater/Art Gallery Facility Management Services Agreement, it was found that no Annual Fee had been established. Direction from the Council is needed to establish the annual lease, if any.

Staff recommendation is that the Mayor and the City Council review the proposed draft Theater/Art Gallery Facility Management Services Agreement with the Friends of the Abbey Centre, Inc., dba as the Rose Center Foundation; and consider appropriate funding sources to cover the costs of City equipment not originally bid in the Theater project.

The Mayor and City Council reviewed proposed changes to the Theatre/Art Gallery Facility Management Services Agreement submitted for consideration by the Rose Center Foundation.

Mayor Pro Tem Paris stated that he did not like the idea of using General Fund Contingency monies for the equipment expenditure. Mayor Rice concurred, noting that it was agreed upon that no General Fund monies would be used for the equipment. The Finance Director replied that his staff is waiting for a detailed line item estimate for the items listed in Exhibit C.

Council Member Marsh commented that this unbudgeted expense equals the amount that has been raised in the last two years by the Foundation. He expressed concern with more expenses being added. He asked what the financial benefit is to have the Rose Center Foundation run the Center, rather than the City hiring a private contractor to hire the personnel. He referred to the estimated shortfall of approximately \$128,000 addressed at a previous Council meeting. Theoretically, he said the Rose Center Foundation should be able to retain people at less than prevailing wage. Ms. Evans stated that the Rose Center Foundation's hired personnel will not be subject to the prevailing wage.

The City Manager commented that from a financial standpoint, both entities are very concerned about insuring that proper internal and external systems are in place, and that quarterly reports and audits are conducted. The Council will receive regular reports to be informed of the financial status.

Mayor Rice stated that the monies are coming in and that the caterer has booked the conference rooms through July, 2006. She expressed the importance of the contract being approved, so that the Theater Manager can start bookings.

Rose Center Foundation Board Member, Crystal Wadsworth, interacted with the Mayor and Council Members relative to the financial benefit of the Rose Center Foundation vs. a private entity managing the operations of the facility.

In regards to the Rose Center Foundation's proposed language change to the agreement termination clause, the City Attorney stated that from his perspective,

the City should have as much flexibility as it possibly can in terms of determining the direction and the success of the Theater.

Council Member Marsh told Ms. Evans that his biggest concern is what the City is going to do if the Foundation is unable to meet their financial expectations. However, he does want the Foundation to run with it, but is doing so as a leap of faith, as he is worried about the finances. He said he was real concerned when the Finance Director previously shared very significant estimated losses in the first year, and that these numbers were based on information provided by the Foundation.

Council Member Marsh said one of the language changes to the agreement proposed by the Foundation is for the contract to be only terminable for cause. The City Attorney stated that the language that currently exists in the contract gives the Council the authority with or without cause to terminate on a majority vote of the Council at any point in time. He concurred with Council Member Marsh on the need for flexibility in terms of the opt out language.

Council Member Marsh referred to the Foundation's proposed changes to Page 3 (M) of the agreement to include the words in the last sentence to read "Theatre Complex Management shall not be replaced without prior written notice **by the Foundation** and approval by the City". He stated that the City does not want to be involved in the approval process of employees, just veto power over the hiring, and no involvement in the termination. He also said the City should be notified if there is going to be a parking or traffic impact.

Council Member Marsh said he could not find in the contract the minimum charge for the use of the facility. Sondra Evans responded that this amount has not yet been determined, as the Foundation will not know that amount until the facility opens. Council Member Fry stated the costs of running the Theater, including depreciation and staff, needs to be determined. The City Manager said that these costs have already been included in the financial analysis. Council Member Marsh said he wants to make sure the City gets its share of the minimum charge and stressed the need for an up-front deposit to use the facility.

The City Attorney stated the minimum fee language will be built into the agreement, as it will take some time to establish what the rate will be, but when it has been established, it will come back to Council for approval.

Discussion ensued regarding the need to approve the contract and the \$180,000 shortfall to cover the costs of equipment. Mayor Rice stated that theater seats are being sold to cover the cost of the shortfall.

The Finance Director stated that the consideration of funding sources to cover the costs of the City equipment will be brought back to Council for a decision at the November 16, 2005 meeting. Discussion ensued regarding surplus furniture the City has that could be used. Council Member Marsh reviewed the changes

proposed by the Rose Center Foundation to the contract as follows:

- Page 9 (12) – “Termination of Agreement” – language to remain as is. No changes to be made.
- Page 3(O) – Clarified the need to have agendas that relate to the minutes to understand how the minutes were developed.
- Page 3(M) – Language to read, “Theater Complex Management shall not be replaced without prior written notice”. The City Attorney suggested adding language relative to notice (not approvals) of the hiring and terminations of the executive/managing director and box office manager of the Theater.
- Page 22 (I) of Business Plan – Change to be made as requested by Foundation.

Foundation Board Member Reginald Crozier submitted proposed changes to the agreement and expressed concerns he has with the Business Plan. Mayor Rice noted that Mr. Crozier was not a Board Member when the Business Plan was approved, and that Mr. Crozier did not realize that the Council has already approved it.

Mayor Pro Tem Paris ended his participation in the meeting via teleconferencing at 8:33 p.m.

Rose Center Foundation President Tony Lam thanked the Mayor and Council Members for their efforts in reviewing the agreement.

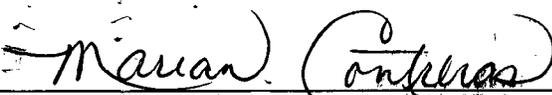
Council Member Marsh requested a change be made to Page 11, No. 13 Notice to Cure. He wants it changed to “with regard to failure to pay monies owed”.

Discussion ensued at length relative to an appropriate term for the contract, with a final consensus for a two year term from the date of issuance of a Certificate of Occupancy.

The City Attorney noted the changes will be incorporated in the agreement to be brought before Council for a vote at the November 16, 2005 meeting.

2. MATTERS FROM MAYOR AND CITY COUNCIL MEMBERS – None.

3. COUNCIL/AGENCY ADJOURNMENT At 9:00 p.m.


Marian Contreras, City Clerk/Agency Secretary