

#101
4/09/24

(R-2024-419)

RESOLUTION NUMBER R- 315455
DATE OF FINAL PASSAGE APR 22 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A 15-YEAR PREMISES SCHEDULE WITH TWO 5-YEAR OPTIONS UNDER A PREVIOUSLY APPROVED MASTER AGREEMENT WITH ENERGY CENTER SAN DIEGO LLC TO PROVIDE CHILLED WATER TO THE BALBOA THEATRE LOCATED AT 868 FOURTH AVENUE IN SAN DIEGO.

WHEREAS, buildings located throughout Downtown San Diego use a chilled water loop system to condition the air within the buildings, and this approach provides flexibility and economies of scale as only one plant is necessary for air cooling rather than each building generating its own air conditioning; and

WHEREAS, on July 18, 2023, the City Council (Council) adopted Ordinance O-21676 (N.S.), which grants to Energy Center San Diego LLC (including its relevant predecessors-in-interest, NRG) a non-exclusive 20-year franchise to construct, maintain, and use a chilled water loop system beneath the City's streets and within various City-owned buildings in Downtown San Diego (Franchise); and

WHEREAS, the Franchise continues NRG's non-exclusive right to provide chilled water services to the City, which began more than 50 years ago, under Ordinance O-10639 (July 29, 1971); and

WHEREAS, on March 7, 2019, the Council adopted Resolution R-312222, which authorized a 20-year Master Energy Services Agreement (Master Agreement) between the City and NRG, by which NRG agrees to provide chilled water, for air conditioning purposes, to certain City-owned facilities; and

WHEREAS, the Master Agreement is structured to allow additional properties to be added to the Master Agreement through Council approval of a Premises Schedule which is then incorporated into the Master Agreement (each, a Premises Schedule); and

WHEREAS, each Premises Schedule details the terms specific to its respective property; and

WHEREAS, when the Council initially approved the Master Agreement, the Council also approved Premises Schedules for 1200 Third Avenue (Civic Center Plaza) and 101 Ash Street; and

WHEREAS, the City as successor agency (Successor Agency) to the former Redevelopment Agency for the City of San Diego (former RDA) owns the Balboa Theatre, located at 868 Fourth Avenue within the City (Theatre) but intends, under the terms of that certain Amended and Restated Long Range Property Management Plan approved by the State Department of Finance on October 15, 2015 (ARPMMP), to transfer the Theatre, via grant deed, to the City; and

WHEREAS, in the mid-2000s, the former RDA rehabilitated the Theatre, including installation of a chilled water system to condition the air within the building; and

WHEREAS, as of March 9, 2007, the former RDA entered into a 15-year chilled water services agreement with NRG which expired on or about June 30, 2022; and

WHEREAS, since that time, NRG has continued to provide chilled water services to the City on a holdover basis, pending approval of a new agreement; and

WHEREAS, upon the transfer of the Theatre from the Successor Agency to the City, the City and NRG desire to incorporate a Premises Schedule for the Theatre (Theatre Premises Schedule) into the Master Agreement; and

WHEREAS, the Theatre Premises Schedule will expire when the Master Agreement expires (in approximately 15 years), unless the City exercises one or both of its 5-year options to extend (subject to further extension of the Franchise); and

WHEREAS, the Office of the City Attorney has drafted this Resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, as follows:

1. The Council approves the Theatre Premises Schedule and its incorporation into the Master Agreement.
2. After the Successor Agency transfers the Theatre to the City, the Mayor or designee is authorized, on behalf of the City, to sign and deliver the Theatre Premises Schedule and all documents necessary or appropriate to perform the City's obligations under the Master Agreement, as supplemented by the Theatre Premises Schedule. A copy of the Theatre Premises Schedule, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. RR- 315455.
3. The Chief Financial Officer is authorized to expend an amount estimated to be approximately \$2,600,000 over the initial approximately 15-year term, approximately \$1,400,000 over the first five-year extension option, and approximately \$1,800,000 over the second five-year extension option, depending on actual usage, for the purpose of funding the Theater Premises Schedule to supply chilled water for air conditioning purposes to the Theatre, contingent upon (i) the adoption of the Annual Appropriation Ordinance for the applicable fiscal

year and (ii) the Chief Financial Officer furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch / for
Brian W. Byun
Deputy City Attorney

BWB:nja
03/18/2024
Or. Dept: READ
Doc. No. 3594462

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 09 2024.

DIANA J.S. FUENTES
City Clerk

By Krystell Medina
Deputy City Clerk

Approved: 4/22/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

APR 09 2024

Passed by the Council of The City of San Diego on _____, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

APR 22 2024

Date of final passage _____.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Kryshell Medina, Deputy

<p>Office of the City Clerk, San Diego, California</p> <p style="text-align: right;">315455</p> <p>Resolution Number R-_____</p>
