



DATE ISSUED: May 4, 2005 REPORT NO: CCDC-05-19

ATTENTION: Chair and Members of the Redevelopment Agency
Docket of May 10, 2005

SUBJECT: Balboa Theatre - Proposed Memorandum of Understanding with
Balboa Theatre Foundation - Organ Installation – Horton Plaza
Redevelopment Project

REFERENCE: Wells Fargo Bank Letter
Shoberg and Company Agreement
Westlake Reed and Leskosky Letter
Memorandum of Understanding

STAFF CONTACT: Eli Sanchez, Senior Project Manager - Real Estate

SUMMARY

Issue - Should the Redevelopment Agency approve a proposed Memorandum of Understanding with the Balboa Theatre Foundation pursuant to the proposed essential terms and conditions and state for the record that the Agency has previously reviewed and considered information contained in the Master Environmental Impact Report and the Secondary Study with respect to the proposed installation of a Wonder Morton Organ as part of the rehabilitation of the historical Balboa Theatre?

Staff Recommendation - That the Redevelopment Agency approve a proposed Memorandum of Understanding (“MOU”) with the Balboa Theatre Foundation (“Foundation”) pursuant to the proposed essential terms and conditions and state for the record that the Agency has previously reviewed and considered information contained in the Master Environmental Impact Report and the Secondary Study with respect to the proposed installation of a Wonder Morton Organ as part of the rehabilitation of the historical Balboa Theatre.

Centre City Development Corporation Recommendation - On April 20, 2005, the Corporation Board of Directors voted 5 in favor with 1 recused to approve staff's recommendation.

Other Recommendations - None.

Fiscal Impact - The proposed MOU would provide that the source of funds for the additional cost for the inclusion of the organ in the rehabilitation of the Balboa Theatre is the obligation of the Foundation on a schedule of delivery provided for in the MOU. The estimated cost of providing for the design and construction of improvements to the Balboa Theatre to accommodate the installation of the organ by the Foundation is \$550,000. The Foundation estimates that the installation, partial restoration and rehabilitation of the organ is approximately an additional \$409,000. Total cost is anticipated to be \$959,000.

BACKGROUND

The rehabilitation of the Historic Balboa Theatre (the "Theatre") advances the Visions and Goals of the Horton Plaza Redevelopment Project by:

- Eliminating blight through the rehabilitation and upgrade of a significant historic structure;
- Strengthening the Arts District, thereby contributing to the growth of making downtown the dominant regional center for the arts, entertainment, dining and public festivals; and
- Providing a community facility to cater toward both downtown residents and visitors.

In addition, the Historic Preservation Focus Plan and the 2004-2009 Implementation Plans for Centre City and Horton Plaza specifically list the rehabilitation of the Theatre as a focus project.

A study conducted by Harrison Price Company, with assistance from Theatre Projects in 1986, concluded that there was a need for a first class, professional, mid-sized lyric theater (1,500 seats + or -). Over the past 17 years, no new or rehabilitated facilities have come on line and, therefore, the need has only grown.

The Theatre is listed on the National Register of Historic Places and is proposed to be publicly rehabilitated for adaptive reuse as a publicly maintained and operated state-of-the-art, multi-purpose, performing arts center. Local requirements provide for any improvements, renovations, rehabilitation and/or adaptive reuse of properties listed on the National Register to be in accordance with the Secretary of the Interior Standard for Rehabilitation of Historic Buildings ("Rehabilitation Standards").

The facility would provide live theater, music and dance, as well as movie and conference venues, with seating provided for up to 1,400 persons. The exterior wall of the structure would be renovated to maintain the office facade and storefront design along Fourth Avenue. The five-story office component along Fourth Avenue would provide expanded lobby space, restrooms, and other patron support space. Back-of-the-house support facilities, such as dressing rooms, "green" rooms, and storage, would be housed in portions of the office component as well as the basement.

At the October 2, 2002 joint meeting of the Projects/Budget/Finance Committees, staff was directed to proceed with the rehabilitation of the Theatre as a public initiative, proceed with issuing an Request for Qualifications ("RFQ") for professional services, and develop a business and financial plan.

In 2003, the necessary team of consultants were assembled in accordance with established Board policy, through an RFQ process. In April 2003, Kitchell CEM was selected to provide Owner's Representative Services for design and construction phases. This was followed by the selection of WRL in August 2003 to provide architectural and engineering design services for the rehabilitation. Since authorizing the consultant team to proceed, the approximate 13-month planning phase of the project, which included the pre-design phase, has been completed.

The design phase represents a significant portion of the overall project schedule. This 16-month-long phase consists of the schematic design and design development sub-phases, as well as construction documents sub-phases for the renovation and restoration work in addition to selective demolition and abatement, and seismic retrofit. The selective demolition and abatement bid and award phase runs concurrent with the renovation and restoration design development phase, followed by the seismic retrofit construction in the second quarter of the year, with the final renovation and restoration construction phase commencing in the last quarter of the year.

The selective demolition and abatement is the first phase of construction, and will prepare the building for the future installation of improvements. This phase will commence in April 2005. The second phase of construction, seismic retrofit, is expected to commence in July 2005, and followed by the renovation and restoration phase of construction in January 2006.

The effective utilization of building space for programming and an ability to adhere to a well defined design and construction schedule is essential to keep the rehabilitation of the Theatre within the project budget. The project team is committed to continually searching for ways to improve the value of the project, while keeping the overall costs at or below the total project budget.

Firm Name: Balboa Theatre Foundation Non-profit 501(c)(3) Corporation		
PRIMARY MEMBERS ASSIGNED TO AGREEMENT	TITLE	PRIMARY CONTACTS
Kay Porter	President	
Dr. Bill Bailey	Secretary	✓

DISCUSSION

The Balboa Theatre Foundation, a 501(c)(3) non-profit corporation established in 1987, has been instrumental in the preservation and the promotion of the Theatre as a live-performance venue. Early members of the Foundation contributed to the effort of the Theatre being listed on the National Register of Historic Landmarks.

The Foundation has been active in the past efforts by the Corporation to redevelop the Theatre as a live performance venue. The Foundation wishes to contribute to the current effort to rehabilitate the Theatre as a public asset.

The Foundation has acquired a historic Wonder Morton Organ ("Organ"). The Organ is currently crated and stored in Ramona, California. The Organ is similar to the organ that was originally installed in the Theatre shortly after its grand opening in 1924. The Foundation has also provided a letter from Wells Fargo Bank ("Bank") (Attachment A) indicating verification of \$300,000 available from a line of credit for immediate access by the Foundation on behalf of the Theatre "Wonder Morton Installation" project.

The Foundation proposes to be responsible for the cost of any necessary restoration, rehabilitation, assembly and installation of the Organ in the Theatre as part of the current rehabilitation program. The Foundation also proposes to be responsible for all costs associated with the design, and construction of the necessary space to accommodate the Organ in the Theatre. The Foundation has negotiated an agreement with W.A. Shoberg & Company ("Shoberg Agreement") for the restoration, rehabilitation, assembly and installation of the Organ in the Theatre (Attachment B). The Foundation represents that Shoberg & Company has the technical capability, expert knowledge and equipment to provide such services in a professional manner.

WRL has estimated that the cost to design the improvements necessary at approximately \$50,000 and the cost to construct improvements to accommodate the Organ to be approximately \$500,000.

ESSENTIAL TERMS AND CONDITIONS

1. Per the Shoberg Agreement, Wendell Shoberg has specified that the Organ components will be inventoried and that the Organ specifications and space requirements are to be delivered to Centre City Development Corporation ("CCDC") by April 9, 2005, which date has been extended until May 2, 2005. The Foundation agrees to provide the Organ specifications and space requirements in the Theatre to CCDC by May 2, 2005 in accordance with the WRL letter dated April 19, 2005 (Attachment C).

2. The Foundation will have executed the Shoberg Agreement and will provide the necessary deposit of \$50,000 upon signing of the Shoberg Agreement. The Foundation will pay Shoberg & Company a total \$358,900 in four additional installments after entering into the Shoberg Agreement as follows:
 - a. \$50,000 after three (3) months (June 9, 2005),
 - b. \$100,000 after seven (7) months (October 9, 2005),
 - c. \$100,000 when Organ ready for installation (January 2007), and
 - d. \$108,900 on date Organ installed in Balboa Theatre.
3. The Foundation has deposited a check for \$25,000 with CCDC to fund the additional work to determine the impact of accommodating the Organ in the Theatre ("Organ Accommodation Study"). The Foundation will deposit with the Agency an additional \$25,000 for the design work necessary to accommodate the Organ in the appropriate space in the Theatre ("Design/Construction Drawings") no later than three (3) days after the approval of the MOU by the Agency.
4. Time is of the essence in the determination of how to accommodate the Organ in the Theatre. The Foundation agrees that the Agency expend up to \$25,000 of Foundation funds on deposit for the Organ Accommodation Study prior to the approval of the MOU by the Agency. The Foundation further agrees that WRL will commence the Organ Accommodation Study upon receipt of the Organ specifications and space requirements from Shoberg & Company. Such funds expended on the Organ Accommodation Study will not be refundable to the Foundation for any reason, including but not limited to the Agency not approving the MOU.
5. The Foundation will collaborate with WRL during the Organ Accommodation Study and Design/Construction Drawing phases and will provide input toward the final design of the space and improvements to accommodate the Organ within the Theatre. The Agency will have final design approval of the space and improvements.
6. The Foundation will deposit with CCDC or restrict \$250,000 in unencumbered cash or cash equivalent funds in the Foundation's account with Wells Fargo Bank ("First Cash Advance") for the sole purpose of meeting the Foundation's obligations under the MOU. These funds will be applied towards the estimated cost of construction necessary to accommodate the Organ. Such deposit of funds to the Agency or the Bank will occur three (3) days after approval of the MOU by the Redevelopment Agency. The Foundation agrees that the restriction of these funds will be in effect until such time that the Agency, in its sole determination, finds that all obligations under the MOU have been satisfied.

7. The Foundation will deposit with CCDC or restrict at a minimum a second increment of at least \$250,000 in cash or cash equivalent toward the estimated cost of the construction for the Organ plus any additional dollars needed as a result of any increases to the construction estimate based on final design of the plans for construction ("Second Cash Advance").
8. The Foundation will be responsible to raise an additional \$408,900 for the restoration/rehabilitation and installation of the Organ in the Theatre. The Foundation plans to undertake a charitable capital fund-raising campaign to raise the needed funds over the next twenty-four (24) months.
9. The following are aggregate fund-raising milestones relating to the estimated \$958,900 needed to construct the necessary improvements in the Theatre to accommodate the Organ; and for the Foundation to restore, rehabilitate and install the Organ in the theatre.
 - a. \$25,000 cash deposited with CCDC on February 17, 2005 to be used to pay for design consultant fees of WRL;
 - b. An additional \$25,000 cash (for an aggregate \$50,000) to be deposited with CCDC not later than three (3) days after approval of the MOU to be utilized for design purposes;
 - c. \$50,000 payment made to Shoberg & Company on March 9, 2005, the date the Shoberg Agreement was entered into (for an aggregate \$100,000);
 - d. \$250,000 unencumbered cash or cash equivalent on deposit with Wells Fargo Bank to be restricted for the sole purpose of funding the necessary construction to accommodate the Organ not later than three (3) days after approval of the MOU by the Agency (for an aggregate \$350,000);
 - e. An additional \$250,000 cash together with the \$250,000 on deposit with Bank to be deposited with the Agency prior to July 31, 2005 to fund the necessary construction costs associated with the Organ (for an aggregate \$600,000);
 - f. An additional \$50,000 unencumbered cash or cash equivalent on deposit with Wells Fargo Bank to be restricted for the sole purpose of funding the restoration/rehabilitation and installation of the Organ in the Theatre or paid to Shoberg & Company pursuant to the Shoberg Agreement not later than June 9, 2005 (for an aggregate \$650,000);
 - g. An additional \$100,000 unencumbered cash or cash equivalent on deposit with the Bank to be restricted for the sole purpose of funding the restoration/rehabilitation and installation of the Organ in the Theatre or paid to Shoberg & Company pursuant to the Shoberg Agreement no later than October 9, 2005 (for an aggregate \$750,000);

- h. An additional \$100,000 unencumbered cash or cash equivalent on deposit with the Bank to be restricted for the sole purpose of funding the restoration/rehabilitation and installation of the Organ in the Theatre or paid to Shoberg & Company pursuant to the Shoberg Agreement by when the Organ is ready for installation but no later than January 9, 2007 (for an aggregate \$850,000); and
 - i. An additional \$108,900 unencumbered cash or cash equivalent on deposit with the Bank to be restricted for the sole purpose of funding the restoration/rehabilitation and installation of the Organ in the Theatre or paid to Shoberg & Company pursuant to the Shoberg Agreement on the date the Organ is properly installed in the Theatre (for an aggregate \$958,900). Completion of installation is anticipated to be June 9, 2007.
- 10. In the event that the Foundation does not deposit, in accordance with 9.e. above, the full \$500,000 in cash with the Agency by July 31, 2005, the improvements to accommodate the Organ will not be bid for construction. The Foundation will be responsible for the cost and expense to make the design changes necessary to delete the Organ from the construction drawings and prepare the necessary design for appropriate use of the space for alternative program utilization ("Alternative Program Design"). The Foundation further agrees that the cost and expense for the Alternative Program Design shall be paid from the First Cash Advance. The Foundation further agrees that due to escalation, the cost to the Project increases by approximately \$68,000 per month of delay and that the Foundation will pay for any delay caused the project associated with the design of the alternative programming from the First Cash Advance. After all costs and expenses have been paid from the First Cash Advance, the Agency will release the net balance of the First Cash Advance from the restriction that the funds be restricted for the sole purpose of meeting the Foundation's obligations under the MOU. Upon release of the restriction, the MOU will be terminated.
- 11. The Foundation will provide appropriate documentation from the Bank or Shoberg & Company to confirm achievement of each fund-raising milestone in unencumbered cash or cash equivalent.
- 12. The Foundation will be responsible to provide additional funds—if when and to the extent needed—to pay for cost overruns not otherwise previously funded by the Foundation. The Agency will not be responsible to fund any cost overruns or cash shortages.
- 13. The Agency will be responsible to provide design consultants services of WRL for the design of the improvements to accommodate the Organ in the appropriate space in the Theatre.

14. The Agency will provide all necessary space in the Theatre for placement of the Organ and all its component parts in conformance with the approved plans and specifications prepared by WRL and paid by the Foundation.
15. The Agency will be responsible for the solicitation, selection, award and administration of a construction contract to the successful general contractor pursuant to City/Agency standard procedure for public works contracts.
16. The Agency will include the installation of the Organ by the Foundation in the construction schedule.
17. The legal and equitable ownership of the Organ will remain vested in the Foundation upon installation of the Organ in the Theatre. In the event the Agency proposes to convey the Theatre to a private entity, the Foundation will have an option to remove the Organ from the Theatre. The Agency will provide the Foundation with a 90-day notice of any such pending conveyance to a private entity. If the Foundation exercises this option, the Foundation will at its sole cost and expense and within a reasonable amount of time, remove the Organ from the Theatre. If the Organ is not removed within a reasonable amount of time, the Organ shall become the property of the Agency.
18. The Foundation will be provided an annual scheduled program of events. The dates and times will be determined by the Theatre operator. Currently it is anticipated that San Diego Theatres, Inc., an affiliate of the San Diego Convention Center Corporation ("Operator"), will be the operator. Balboa Theatre rental or usage charges to the Foundation for concerts and programs will be the same as provided for other non-profit entities.
19. The Operator and Foundation may enter into arrangements to make use of the Organ available to Foundation members and other organists authorized by the Foundation and Operator for practice and instructional purposes, without charge, at such times and under such conditions as the Operator deems appropriate.
20. Only those persons who are qualified organists of the Foundation, or persons who have otherwise demonstrated to the Operator their technical capability to perform on the Organ, may use the Organ. The Foundation may designate a qualified member or other person to be allowed to be present, without charge, at all functions, including rehearsals, involving use of the Organ.
21. The Foundation will indemnify the Agency against any and all claims, damages, costs or expenses, or demands of any kind connected with or arising out of the restoration/rehabilitation, installation, maintenance, repair, or use of the Organ by the Foundation, or any of its members or licensees. The Foundation will provide and maintain a General Liability Insurance and Commercial General Liability form policy in an amount to be determined. Such policy shall list the Agency and Operator as additional insured under the policy.

22. The Foundation, as owner of the Organ, will cause the Organ to be covered under a Property Loss Casualty Insurance policy at a value to be agreed upon by the Agency, Operator and the Foundation.
23. The Agency will use its best efforts to provide a secure enclosure for the Organ. Access to the Organ for maintenance, upkeep and repair shall be limited to such persons designated by the Foundation, except for such access necessary by Operator by persons designated by the Operator.
24. The Foundation will be responsible for the cost of maintenance and any needed repair of the Organ. The Foundation will be responsible to establish and fund on an annual basis a maintenance and repair reserve for the Organ in an amount of \$25,000 ("Maintenance & Repair Reserve"). Maintenance and repair will be scheduled and coordinated with the Operator based upon availability and timing of access.

Environmental Impact- Under the 1992 Master Environmental Impact Report ("MEIR") and Final Subsequent Environmental Impact Report ("SEIR"), an Environmental Secondary Study is prepared for all developments in the Centre City area in order to evaluate the project's compliance with the Community Plan and Planned District Ordinance and, therefore, the findings and conclusions of the MEIR and SEIR. Unless the project is found to be out of compliance with those planning documents, no further environmental review is required. The Balboa Theatre rehabilitation project has been reviewed by the staff of the Historic Sites Board and Corporation staff and has been found to be in compliance with the applicable rehabilitation standards, and as such, in compliance with the previous environmental documents.

SUMMARY/CONCLUSION

To enhance the ongoing revitalization of the Horton Plaza Redevelopment Project, adjoining Gaslamp Historic District, and downtown San Diego as a whole, the restoration of the Historic Balboa Theatre will play a vital role in fostering community participation in the arts and economic growth. The Balboa will become a multi-purpose performing arts center in the heart of downtown San Diego. This community treasure will become an exciting venue for cultural, commercial, community and convention activities.

Chair and Members of the Redevelopment Agency
Docket of May 10, 2005
Page -10-

The inclusion of the Organ in the Balboa Theatre will add to the historic fabric and contribute to the performance capabilities of the Theatre.

Respectfully submitted,

Concurred by: _____

Eli Sanchez
Senior Project Manager - Real Estate

Peter J. Hall
President

Attachment(s):

- A - Wells Fargo Bank Letter
- B - Shoberg & Company Agreement
- C - Westlake Reed Leskosky Letter
- _____ D - Memorandum of Understanding