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**Centre City
Development
Corporation**

DATE ISSUED: September 19, 2007 REPORT NO. CCDC-07-36

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of September 25, 2007

ORIGINATING DEPT: Centre City Development Corporation

SUBJECT: Balboa Theatre (868 Fourth Avenue) – Cooperation Agreement
and Lease Agreement between the Redevelopment Agency of the
City of San Diego and San Diego Theatres, Inc -- Horton Plaza
Redevelopment Project — **Public Hearing**

COUNCIL DISTRICT: 2

REFERENCE: None

STAFF CONTACT: Eli Sanchez, Senior Project Manager – Real Estate - 619-533-7121

REQUESTED ACTION:

That the Redevelopment Agency of the City of San Diego (“Agency”) approve the proposed agreements between San Diego Theatres, Inc. (“SDTI”) and the Agency for the rehabilitation, operation and management of the Balboa Theatre.

STAFF RECOMMENDATION:

That the Agency adopt resolutions approving:

- A Cooperation Agreement by and between SDTI and the Agency for the rehabilitation, operation and management of the Balboa Theatre located at 868 Fourth Avenue (“Theatre”) in the Horton Plaza Redevelopment Project Area;
- A Lease by and between the Agency and SDTI for the operation and management of the Theatre; and
- Stating for the record that the Agency has previously reviewed and considered information contained in the Master Environmental Impact Report (“MEIR”) as it pertains to the rehabilitation of the Theatre.

SUMMARY:

The Agency owns the Theatre and is currently rehabilitating the historic Theatre. The Cooperation Agreement defines the roles and responsibilities of each party in the rehabilitation, operation and management of the Theatre. Generally, the Cooperation Agreement provides that the Agency will be responsible for the cost of design and construction for the rehabilitation of the Theatre; the Theatre will be operated and managed by San Diego Theatres, Inc. under a lease with the Agency (“Lease”).

The Lease provides for the terms and conditions under which SDTI will operate the Theatre. The Lease further provides that, to the extent permitted by Community Redevelopment Law ("CRL") and to the extent that the Agency owns the Theatre, the Agency will be responsible for the payment of property insurance and major capital replacements and/or improvements to the Theatre ("Reserve Fund") as the Landlord. To the extent that the Agency owns the Theatre and to the extent permitted by CRL, the Agency will be required to annually appropriate funds necessary to fulfill the obligations of the Lease.

FISCAL CONSIDERATIONS:

The total project cost for rehabilitation of the Theatre is \$26,000,000. To the extent permitted by CRL (Health & Safety Code §33000 *et seq*) and to the extent that the Agency owns the Theatre, the Agency will be responsible for the annual property insurance premium starting in Fiscal Year 2008 in an estimated amount of \$74,000. Funds for the rehabilitation and payment for Fiscal Year 2007-08 property insurance are available in the Redevelopment Agency Fiscal Year 2007-08 Budget.

The Agency shall also establish, maintain and administer the Reserve Fund with an initial minimum contribution of \$259,385 in Fiscal Year 2009 based on an estimated annual amount, plus interest over 20 years. An annual contribution for 15 years to such reserve fund may be made in any amount determined by the Agency and/or its designee necessary to fulfill the \$5,968,444 amount required by the 20-year Capital Improvement Plan ("CIP"). An estimated 20-year payment schedule to the Reserve Fund is provided as Attachment C.

To the extent that the Agency owns the Theatre and to the extent permitted by CRL, the Agency will be required to annually appropriate funds necessary to fulfill the obligations of the Lease.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION: On June 27, 2007, the Centre City Development Corporation ("CCDC") Board of Directors voted unanimously in favor of the proposed terms and conditions of the two agreements and recommended that the Agency approval.

On September 19, 2007, the CCDC Board will consider approving a recommendation that, in accordance with the Cooperation Agreement and Lease, the Agency accept the obligation to fund the Reserve Fund with an initial minimum contribution of \$259,385 in Fiscal Year 2009 and that an annual contribution to such reserve fund may be made in any amount determined by the Agency and/or its designee necessary to fulfill the \$5,968,444 dollar amount required by the twenty-year CIP over the projected twenty year span. Staff will be prepared to provide an oral report of the action taken by CCDC.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

In 2003, at the initiation of the design, the design team performed a program and budget development process via a series of work sessions with the stakeholders. These work sessions provided the stakeholders, which included CCDC representing the Agency, SDTI, potential user groups, technical representatives and public representatives, a forum to define the mission, design goals, program requirements, budget goals and schedule objectives. Ultimately these were incorporated in the Project Planning Guide.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders for the project are the proposed future operator, SDTI, and the future arts organizations that will use the Theatre.

BACKGROUND

The rehabilitation of the Theatre advances the Visions and Goals of the Centre City Community Plan and the Objectives 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 serve 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.

At the October 2, 2002 Joint Committee meeting of the CCDC Projects and Budget/Finance, staff was directed to proceed with the rehabilitation of the Theatre as a public initiative, and proceed with issuing a Request for Qualifications for professional services. The rehabilitation of the Theatre has progressed through design and is now in Phase 3 of construction. Construction will be complete by October 2007 and the opening is anticipated in November 2007.

The Agency entered into an agreement with the San Diego Convention Center Corporation ("SDCCC") in August 2003 (amended in August 2004) to negotiate an agreement for the historic rehabilitation, operation and management of the Theatre ("Negotiation Agreement"). At that time, SDCCC was responsible for the operation and management of the Civic Theatre under the terms of an operating agreement with the City. Since that time, SDCCC has formed SDTI to manage, operate and market the Civic Theatre and upon its restoration, the historic Balboa Theatre. SDTI is a public benefit corporation formed under the California Nonprofit Corporation Law and is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. There is a five member board of directors comprised of diverse business and community leaders.

DISCUSSION

The Cooperation Agreement defines the roles and responsibilities of each party in the rehabilitation, operation and management of the Theatre. The Agency would retain fee title to the Theatre and have the right to transfer title to the Theatre and assign the Lease to the City. The Cooperation Agreement provides that the Agency would be responsible for: the renovation of the Theatre; the payment of any and all property insurance premiums; and the cost of any and all major capital replacements or capital improvements to the Theatre.

SDTI would, upon completion of the renovation, operate and manage the Theatre as a public facility under the terms and conditions of the proposed Lease.

The CCDC Board added provisions in the Lease to provide for the inclusion of start-up capital expenses in the Scope of Rehabilitation and to provide for a catch-up provision to the Percentage Rent for reimbursement to SDTI for shortfall of revenues from operations in fiscal year 2008 over the first five years of operations.

In addition, to assist with the efficient operation of the Theatre, the CCDC Board modified the Cooperation Agreement and Lease so that the Agency rather than the City be responsible for the payment of property insurance and major capital replacements and/or improvements to the Theatre to the extent the Agency owns the Theatre and as permitted by CRL. The Agency will be responsible to fund a capital replacement and improvement reserve based on a 20-year capital improvement plan starting in Fiscal Year 2008-09.

In general, the Cooperation Agreement and Lease provide for:

- The historic renovation of the Theatre to Secretary of Interior Standards, in accordance with local regulations;
- The financing of the renovation by the Agency, including the debt service on any bond issued whereby bond proceeds were used for the rehabilitation of the Theatre in accordance with the Scope of Rehabilitation. (Bond proceeds of approximately \$15.9 million were utilized.);
- The addition to the Scope of Rehabilitation:
 - Start-up capital expenses in an estimated amount of \$90,000; and
 - Installation of an acoustical "eyebrow" for an estimated amount of \$100,000 for design, fabrication and installation if found to be feasible for this amount.
- The Agency responsibility for the oversight of the historic renovation with design and operational input by SDTI;
- The term of the Lease shall commence on the Commencement Date (Agency approval date) and shall continue until the earlier to occur of (i) July 25, 2023 or (ii) the last day that the Agency is authorized to receive tax increment from the Redevelopment Project under applicable law, or (iii) on the date resulting from an earlier termination under the Lease terms.
- To the extent permitted by CRL and to the extent that the Agency owns the Theatre, the Agency will be responsible for:
 - The payment of property insurance; and
 - Major capital replacements and/or improvements to the Theatre as the Landlord pursuant to a 20-year Capital Improvement Plan ("CIP") at an estimated cost of \$5,968,444.
- The Agency maintains the right to transfer title and assign all of its rights, title and interest in the Theatre and the Lease to the City.
- SDTI would be required to use the Site as a public performing arts venue in compliance and consistent with whatever restrictions the financing structure for the bonds may require;
- SDTI would establish a program for the use of the Theatre by local non-profit performance organizations as an essential component of the operation of the Theatre;
- The Basic Rent by SDTI will be \$1.00 per year;
- The Agency will receive Percentage Rent paid by SDTI as follows:

- Twenty-five percent (25%) of the net revenue in the first two years; and
- Forty percent (40%) of the cumulative net revenue for the remainder of the term of the Lease. Revenue shall not include donations or other payments arising from interior donor recognition signs relating to a particular portion or item within the Theatre (but not the Theatre building), or other donations or earned funds received by tenant.
- The Agency will set Percentage Rent proceeds aside to be expended for specific purposes:
 - Over the first five years of operations, Agency will credit SDTI for shortfall of revenues from operations in fiscal year 2008 in an amount not to exceed \$154,000;
 - To the extent that funds are no longer needed to reimburse SDTI for shortfall of revenues, Agency will use proceeds to complete any unfinished portion of the rehabilitation described in the Scope of Rehabilitation; and
 - To the extent that funds are no longer needed to complete the Scope of Rehabilitation, the Agency will:
 - Deposit fifty percent (50%) into the Reserve Fund for the Theatre; and
 - Pay fifty percent (50%) to SDTI exclusively for the purpose of offsetting discounted base rental fees charged to local nonprofit performing arts organizations for use of the Theatre.

Scope of the Project – The scope includes both the retention of the Theatre as a public asset and the historic rehabilitation of the Theatre as a contemporary, live-performance facility. The construction is a public works project and the operation and management is anticipated to be as a public facility under the Lease with SDTI.

Project Budget & Financing – The Agency is financing the approximately \$26,000,000 rehabilitation with proceeds from tax-exempt bonds and other available Agency resources. SDTI is to be financially responsible for the operation and management of the Theatre under the Lease. To the extent that the Agency owns the Theatre and to the extent permitted by CRL, the Agency will be required to annually appropriate funds necessary to fund the Reserve Fund and pay the annual property insurance premium.

Disposition of Property – The title to the Balboa Theatre will remain a public asset. The Agency will hold title to the Theatre for the term of the Lease and maintains the right to transfer title to the City.

Participation by Agency – The Agency will be responsible for the actual development, construction, and financing for the rehabilitation of the Theatre. The Agency will be responsible for the ongoing payment of property insurance and major replacement or capital improvements to the Theatre to the extent that the Agency owns the Theatre and is permitted by Community Redevelopment Law. The Agency maintains the right to transfer title and assign the Lease to the City.

Proposed Schedule of Performance – Completion of construction is estimated to be in October 2007 with an anticipated opening date of November 2007. The term of the Lease shall

commence on the Commencement Date (Agency approval date) and shall continue until the earlier to occur of (i) July 25, 2023 or (ii) the last day that the Agency is authorized to receive tax increment from the Redevelopment Project under applicable law, or (iii) on the date resulting from an earlier termination under the Lease terms.

Project Benefits – The rehabilitation and reuse of the Theatre will help complete the redevelopment activities of the Horton Plaza Redevelopment Project. The Theatre will remain in the inventory of public assets. An operating Theatre will assist with the enhancement of the cultural life in downtown San Diego and the implementation of both the Centre City Arts and Centre City Community plans.

PROJECT DESCRIPTION

The Theatre is listed on the National Register of Historic Places and is being rehabilitated for adaptive reuse as a state-of-the-art, 1,350-seat, multi-purpose, performing arts center. The facility will provide live theater, music, dance, business and conference venues.

PROJECT ANALYSIS AND IMPACT ASSESSMENT

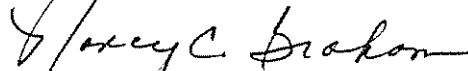
Environmental Impact – The City Council/Redevelopment Agency has previously reviewed and considered information contained in the Master Environmental Impact Report for the Centre City Redevelopment Project, and the Environmental Secondary Study prepared for the rehabilitation of the Balboa Theatre. The project has been found to be in compliance with these environmental documents; therefore, no further environmental review is required.

CONCLUSION

The proposed rehabilitation and management of the Balboa Theatre as a public facility will enhance the cultural life in downtown San Diego and implement the cultural, arts and entertainment goals described in the Centre City Community Plan which is to make Centre City the dominant center of the region for music, theater, dance and the visual arts.

Respectfully submitted,

Concurred by:



Eli Sanchez

Senior Project Manager – Real Estate

Nancy C. Graham

President

Attachments:

- A – Cooperation Agreement
- B – Lease
- C – Reserve Fund Payment Schedule