



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

A-13

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

REPLACEMENT # 1
DATE 5/16/11 TIME 5pm

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COUNTY CLERK OF SUPERVISORS

Department Name: General Services
Department No.: 063
For Agenda Of: May 17, 2011
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority 4/5

TO: Board of Supervisors
FROM: General Services: Bob Nisbet, Director (560-1011)
Contact Info: *Robert Nisbet*
SUBJECT: Santa Barbara County Bowl – Amendment to Management and Lease Agreement
First Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form:

Other Concurrence: Risk Management

Yes

Recommended Actions:

That the Board of Supervisors approve and execute, in duplicate, the Amended and Restated Management and Lease Agreement between the Santa Barbara Bowl Foundation and the County of Santa Barbara which incorporates the first six amendments into a single document, extends the term to 45 years, adds a ticket surcharge that generates annual revenue for the Santa Barbara Arts Commission, and incorporates other miscellaneous amendments.

Summary Text:

County staff has been renegotiating the Lease and Management Agreement with the Santa Barbara Bowl Foundation for the past three years. The original Agreement was executed in 1994 and there have been six amendments since then. The new Amended and Restated Management and Lease Agreement incorporates those six amendments into a single document. Additionally, the original intent of the renegotiation was to address the installation of cell sites on the property, explore the possibility of transferring ownership of the property to the Foundation, and define the Foundation's responsibility for promoting community events. From these original intentions, many other items were discussed and the negotiations culminated with the Foundation agreeing to a \$0.25 per ticket surcharge (that increases to \$0.50 in 2015), proceeds of which, are directed to the Santa Barbara Arts Commission. It is estimated that this surcharge will generate approximately \$22,000 in 2011.

Background:

On December 21, 1993, the Board directed staff to negotiate a lease with the Santa Barbara County Bowl Foundation for long term management of the Bowl facility. The Foundation had already existed as a California non-profit public benefit organization since 1981. Their purpose was to operate a community-based, non-profit entertainment center under a lease from the County and to develop an annual plan which would include facility improvements and ongoing rehabilitation and maintenance, while actively scheduling community arts events. In 1991, the Foundation began working in advisory capacity assisting the County in developing and implementing the facility mission statement and business plan. The Foundation worked diligently to elect a Board of Directors representing a broad cross section of the community with various technical expertise to manage and operate the Bowl on a long term basis. The idea was to essentially create a non-profit private partnership for the management of the facility in order to improve the quality and quantity of performances, and to ensure independent financial security, self sufficiency, and on-going facility improvements.

On June 28, 1994, the County entered into a 45-year Management and Lease Agreement with the Santa Barbara County Bowl Foundation to operate the County Bowl as a multipurpose facility maximizing access for community programs, stage events, musical performances and other performing art events. The Agreement required the Foundation to prepare a Master Plan, raise the necessary capital to implement the Master Plan, and improve the facility in accordance with the Master Plan.

Since 1994, the Agreement has been amended six times, the most recent of which was executed on July 1, 2008. This amendment stipulated that Verizon Wireless would contribute \$45,000, and the County would contribute \$48,906, toward construction of a 6 inch waterline on the Bowl property.

Since 1994, the Foundation has done a remarkable job in fulfilling their end of the Agreement:

- ✓ In 1994, when the Foundation took over operation from the County, only 12 shows were held at the Bowl. Since 1995, there has been an average of 25 shows per year.
- ✓ The Foundation has raised nearly \$32 million; \$12 million of which was raised during their first ten years, and nearly \$20 million from their American Classic Campaign which began in 2004.
- ✓ Several major phases of the Master Plan have been completed including a new stage and backstage facilities for \$7 million in 2002; a new terrace for receptions and beverage concessions for \$3.1 million in 2004; the "Pavilion", a permanent stone and roof structure over the stage for \$8.2 million in 2008; and a new entrance gate and walkway up to the terrace known as the "Glen" for \$2 million in 2010.
- ✓ The Foundation created an Education Outreach Program. The goal of the program is to support music and performing arts education. It reaches approximately 20,000 students each year and is funded by a \$1.00 surcharge on concert ticket sales. Since 2004, approximately \$500,000 has been granted to the community through this program.

- ✓ They purchased a parcel adjacent to the parking lot of the Bowl property and envision additional enhancements to the original Master Plan by integrating a new ticket office and additional parking into this parcel.

The following is a summary of substantive changes between the original 1994 Agreement and the proposed revised Agreement:

- 1) All six amendments to the 1994 lease have been incorporated into the new lease.
- 2) Community Event has been defined as, (i) a performance for school children held during the day, (ii) a performance that is co-sponsored by a local non-profit and profits from the performance are designated to that non-profit, or (iii) a Commercial Event in which the artist donates some, or all of the profits to a non-profit cause or organization.
- 3) The term Promoter is defined and used instead of Anchor Tenant. The definition includes the following statement: “Any Promotion Services Agreement between FOUNDATION and Promoter shall constitute a confidential document containing performing arts industry trade secrets, access to which shall be limited to FOUNDATION, its senior staff, officers and directors. Promotion Services Agreement may be provided to COUNTY but shall not be publicly disclosed pursuant to the Public Records Act.” This confidentiality term is emphasized further in Section 6.
- 4) The General Services Department has been designated as the County’s point of contact instead of the Parks Department.
- 5) The Mission Statement for the Bowl has been modified to describe the facility as one which, “...support community access...” as opposed to one that, “...maximiz[es] access for community programs...”
- 6) The term has been retained at 45 years but the beginning of the term has been reset to June 1, 2011. An automatic option to extend the lease for 25 years has been added that applies should the Foundation successfully complete the Master Plan
- 7) The maximum number of performances has been changed to say, “Foundation shall use its best efforts to stage a maximum of 37 Commercial Events...subject to any applicable CEQA requirements.” The section goes on to say, “Foundation has no obligation of any kind to promote or stage any such third party events or Performances.”
- 8) An Art’s Subsidy has been established that generates \$0.25 per ticket during 2010, 2011, 2012, 2013, and 2014 and \$0.50 during 2015 and subsequent years up to a maximum of \$50,000 between 2015 and 2019. Beginning in 2020 the \$0.50 surcharge is subject to a Consumer Price Index (CPI) increase every five years. The proceeds of the subsidy go to the Santa Barbara Arts Commission.

- 9) The new lease acknowledges that the Foundation has purchased the “Rudy Property” adjacent to the current parking lot. The use of this property will be incorporated into the Bowl Master Plan. Upon termination of the lease, title to the Rudy Property shall be transferred to the County.
- 10) **Default and Remedy in Event of Default.** This section has been significantly modified and effects several areas from the original Agreement. Essentially, under an alleged default of the Agreement, the defaulting party shall have 30 days to commence a good faith conclusion for the alleged default. County shall have the right to terminate the Agreement provided Foundation has not commenced good faith efforts to cure such default within 30 days. In the original Agreement, County had the right to terminate the Agreement if Foundation had not cured such default within 30 days. Additionally, the term “material breach” was used in several places in the original Agreement and meant that the County had the right to immediately terminate the Agreement. In the new version, the term is not used and in all instances of alleged default, Foundation has 30 days to commence a good faith effort to cure the default or breach.
- 11) Unlimited nighttime performances are now allowed Sunday through Thursday without the need for a variance request from the Board of Supervisors or County staff (so long as they are not over their total maximum number of performances of 37).

Compliance with CEQA:

A Mitigated Negative Declaration (MND) was prepared for the ~~initial Agreement and Facility Master Plan~~. It was determined by Planning and Development staff that the new Agreement is Categorically Exempt from environmental review pursuant to Section 15301 of the State CEQA Guidelines. This section exempts the “operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private... facilities” from environmental review. The proposed amendment to the existing lease agreement between the County of Santa Barbara and Santa Barbara Bowl Foundation is intended primarily to make explicit operational and administrative components of the Bowl’s existing facility operation. Therefore, the new lease agreement falls under this categorical exemption as an example of the leasing and minor alteration of an existing facility involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. A Notice of Exemption has been filed with the Clerk of the Board.

Fiscal and Facilities Impacts:

- ◆ The facility will continue to be improved in accordance with the approved Master Plan. All improvements revert back to the County upon termination of the Lease.
- ◆ An Arts Subsidy has been established that is generated by applying a \$0.25 surcharge to all tickets sold for Commercial Events during the 2010, 2011, 2012, 2013 and 2014 Bowl concert seasons. In 2015, the surcharge is increased to \$0.50 per ticket with a cap of \$50,000 in the 2015, 2016, 2017, 2018, and 2019 Bowl concert seasons. Beginning in the 2020 Bowl concert season and every five (5) years thereafter, the total annual Fifty Thousand Dollars (\$50,000) SBBF Arts Subsidy amount shall be subject to a Cost of Living (CPI) Adjustment. The CPI adjustment shall be made on each and every fifth year commencing with the 2020 Bowl concert season and every fifth concert season thereafter throughout the term of the Agreement.

- ◆ Concession sales at the Bowl have generated an average of \$62,000 in sales tax revenue per year for the County over the past 5 years. Of this amount, the County General Fund receives approximately \$5,300.

Attachments:

- 1) 1994 Management and Lease Agreement
- 2) Proposed Amended and Restated Management and Lease Agreement
(changes shown in underline/strikeout/bubble format)
- 3) Proposed Amended and Restated Management and Lease Agreement (clean version)