

REPORT OF GENERAL MANAGER

NO. 05-49

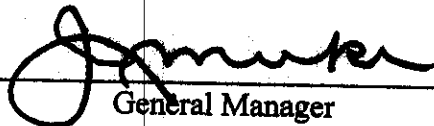
DATE February 16, 2005

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: AMENDMENT NO. 2 TO THE CONCESSION AGREEMENT WITH NEDERLANDER-GREEK FOR OPERATION OF THE GREEK THEATRE, TO DEFER WATERPROOFING THE DECK TO THE 2006 OFF-SEASON

J. Combs _____
F. Mok _____
K. Regan _____

J. Kolb _____
K. Chan _____
H. Fujita _____



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board:

1. Approve Amendment No. 2 to Concession Agreement No. 245, for operation of the Greek Theatre by Nederlander-Greek, Inc., substantially in the form attached, to defer completion of the required waterproofing of the seating deck until the 2006-2007 off-season without penalty of liquidated damages, subject to approval of the Mayor and the City Council, and the City Attorney as to form;
2. Direct the Board Secretary to submit the proposed Amendment No. 2 to the Mayor, in accordance with Executive Directive No. 16, and to the City Attorney for review and approval as to form;
3. Authorize the Board President and Secretary to execute the Amendment subsequent to receipt of all necessary approvals; and,
4. Waive any assessment of liquidated damages against Nederlander-Greek, Inc., pending execution of Amendment No. 2.

SUMMARY:

The terms of the ten-year contract executed in 2002 with Nederlander-Greek, Inc., for operation of the Greek Theatre, included a Capital Investment Program with a specified slate of improvements detailed; the total expenditure required for construction of these improvements, less equipment and

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soft costs such as design and permits, is \$6,052,000. The required capital improvements were to be completed over two phases. Phase 1 (2002-2003 off-season) included relocation of the box office, restoration of the original 1930 Theatre facade, development of a plaza, and expansion and remodeling of both North and South concession stands; this portion of the overall project was to be completed by April 15, 2003. In Phase 2 (2003-2004 off-season), the audience side of the stage house was to be modernized and remodeled, and new waterproof coating applied to the seating area; this remaining portion was to be finished by April 15, 2004. Failure to substantially complete specified improvements by the dates indicated would trigger liquidated damages of \$1,000 per day.

During the detailed design process for Phase 1, efforts to optimize customer satisfaction and revenue potential, and to apply value engineering principals, led to re-examination of key elements of the original phased construction. At the meeting of April 2, 2003 (Report No.03-100), the Board approved an Amendment to the agreement with Nederlander that slightly modified the capital improvement plan to be better suited to the orientation and appearance of the historic Theatre, and specified that the two Phases, except the waterproofing of the audience seating deck, would be completed concurrently as a single project in the off-season of 2003-2004. The waterproofing portion of the project was deferred to the off-season of 2004-2005. Liquidated damages would be triggered by failure to substantially complete the total capital improvements package by the start of the 2004 season, or to complete the waterproofing by the start of the 2005 season.

Major construction at the Greek Theatre commenced in late 2003 and continued through the first six months of 2004. The Theatre opened successfully in April of 2004. As the season continued and the capital project reached completion, however, some punch list items were still being resolved, and a final cost with change orders was still under negotiation between Nederlander and their general contractor. In light of the need to conclude those negotiations prior to doing any final work or expending more funds with the contractor, Nederlander has requested a one-season deferment of the waterproofing work. If approved, this last portion of the capital improvement project would commence sometime after the conclusion of the 2005 season, and would need to be completed by April 15, 2006, or result in charges of liquidated damages of \$1,000 per day. The seating area does evince some leaking, which can be monitored and controlled to prevent damages, but staff concurs with Nederlander that deferral of this work until after the upcoming season will not jeopardize the safety or integrity of the Greek Theatre. Both parties would desire for the waterproofing to be finished close after the end of the 2005 season, prior to typical winter rains if possible.

The Amendment has been reviewed by Nederlander and it is acceptable. Absent any action of the Board on this matter, however, liquidated damages on the non-completed waterproofing would begin to accrue after April 15, 2005, at \$1,000 per day. Staff therefore requests that the Board waive any assessment of liquidated damages for not completing the waterproofing, pending execution of the Amendment No. 2. The Greek Theatre Advisory Committee discussed this situation at their meeting of January 6, 2005, and was agreeable to the deferment.

A Mitigated Negative Declaration (MND) and Mitigation Monitoring Plan was prepared for the capital improvements, including the waterproofing work, in accordance with the requirements of the

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California Environmental Quality Act (CEQA). The MND was adopted by the Board on October 16, 2002 (Board Report 02-358). The proposed deferment of the waterproofing work until after the close on the 2005 season will require no additional CEQA review since no new or potentially significant environmental impacts will be generated.

The improvements completed by Nederlander at the Greek Theatre have been lauded by many patrons and likely contributed to the record-breaking season in 2004. The deferment request is reasonable and staff recommends approval.

Report prepared by Linda Barth, Administrative Resources Division