

DATE April 2, 2003

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: APPROVAL OF AMENDMENT NO. 1 TO THE CONCESSION AGREEMENT WITH NEDERLANDER-GREEK FOR OPERATION OF THE GREEK THEATRE, REGARDING THE CAPITAL INVESTMENT PROGRAM AND PERFORMANCE BOND REQUIREMENTS

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J. Duggan \_\_\_\_\_

J. Kolb \_\_\_\_\_  
B. Lukehart \_\_\_\_\_  
H. Fujita \_\_\_\_\_

  
General Manager

Approved \_\_\_\_\_

Disapproved \_\_\_\_\_

Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board:

1. Approve Amendment No. 1 to Concession Agreement No. 245, for operation of the Greek Theatre by Nederlander-Greek Inc., substantially as attached, to modify the details of the required Capital Improvement Investment Program, without modifying the minimum required investment, and to make modifications, as further specified in this report to the performance bonding requirements; and,
2. Find that an irrevocable standby letter of credit issued by a federally insured United States bank located in the City of Los Angeles is an acceptable instrument for the performance guarantee of \$300,000; and,
3. Submit the proposed Amendment No. 1 to the Mayor, in accordance with Executive Directive No. 16, and to the City Attorney for review and approval as to form, and thereafter to the City Council for approval; and,
4. Authorize the Board President and Secretary to execute the Amendment subsequent to receipt of all necessary approvals; and,
5. Waive any assessment of liquidated damages against Nederlander-Greek, Inc., pending execution of the Amendment.

## REPORT OF GENERAL MANAGER

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### 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 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) encompassed relocation of the box office to the current hospitality room, restoration of the original 1930 Theatre facade, development of a plaza, expansion and remodeling of both North and South concession stands, improvements to support spaces in the basement, relocation of hospitality and VIP rooms, construction of a sound blocking wall, and other improvements; this portion of the improvements were 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, lead to re-examination of key elements of the original phased construction. Notably, Nederlander indicated that the new box office would be better situated near the parking lots, on the north end of the premises at the top of the plaza area; this alternative location could obviate the need for removal of four aged and beautiful, healthy cedar trees in front of the hospitality room, and preserve the long-established hospitality room itself. The southern location would also require several steps to adapt the ticket windows to the slope of Vermont Canyon, which would be uninviting to persons less able to handle steps. Discussions also revolved around the level of mitigation to be expected from the sound wall, in proportion to its visual impact, the best stagehouse design to utilize modern speaker arrays, and box seat configurations.

Although Nederlander did have written authorization to begin Phase I work as originally proposed and approved, no construction began on any of the elements in order that Department staff, Nederlander managers, and the design team could arrive at the most beneficial improvement scenarios, and to seek input on those proposed changes from elected officials, the Greek Theatre Advisory Committee, and the neighborhood.

Over the last two months, Department staff has worked with Nederlander during this re-design effort and participated in the meetings with stakeholders. As of this date, the Los Feliz community representatives seem accepting of the changes, and on March 6, 2003, the Greek Theatre Advisory Committee voted to endorse all proposed modifications to the improvement program and schedule. Accordingly, Nederlander submitted a formal request for a change to the scope of required improvements, and to the completion schedule, but they have requested no change to the \$6,052,000 minimum required capital investment in hard costs.

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The required improvements in the current agreement are incorporated from the Nederlander proposal of 2001, in the form of an Exhibit of pages from the proposal. Any change in the capital investment program or dates for completion of Phase 1 and Phase 2 require an amendment to the agreement. Attached for consideration is a proposed amendment which captures the proposed modifications to the capital investment program, which modifications are in summary:

- ▶ The location of the Box Office is changed from the Hospitality Room to a location off the Theatre facade and in a location more convenient to the path of travel of patrons, and will feature sufficient windows to offer improved service to patrons and safety to staff members.
- ▶ The 40-foot high barrier wall on the south side of the Theatre above the administrative office and south concessions building, originally included to reduce sound, will be eliminated from the project because the visual unattractiveness outweighs the possible reduction of sound propagation of only up to 3 decibels.
- ▶ Additional points of sale will be added, but 20 may not be possible within the constraints of the Theatre premises and such obstacles as Coastal Live Oaks.
- ▶ Box Seats will be constructed, and the net result will be approximately 250 fewer seats in the Theatre, but the final count of net seats lost (regular seats lost less box seats gained) will not be determined until final Building and Safety approval of replacement disabled access seating.
- ▶ The 1950s roof will not be removed from the audience side of the stagehouse to reveal the 1930 original Greek Theatre columns and stage. Instead, the 1950s roof will remain, and the interior of the stage will be completely remodeled and re-equipped, to accommodate counter-weight or motor rigging systems, trusses for better stage lighting, and a rigging structure as needed to accommodate use of advanced sound transmission systems, such as an array speaker system.
- ▶ The basement dressing room remodeling work will not require HVAC upgrades, and the enlarged Commissary will be located in a location other than the Women's Chorus room.
- ▶ A second freight elevator will not be added so as to preserve dressing room and other space required by touring acts.

Plans for many of these elements have been completed and actual bids have received from contractors on some portions, so Nederlander has been able to hone their cost estimates for the various elements. The largest change in funding allocation due to the proposed modifications is that the stage work will cost about \$1,116,000 less than the original proposal estimate, but relocating the box office and attendant changes will cost \$1,104,000 more. Nederlander will be required to expend \$6,052,000 and their budget clearly still requires this amount to execute the revised program. In any event, if the project costs are less than \$6,052,000, the remaining amount must still be spent on improvements at the Greek Theatre, as approved by the General Manager, during the term of the agreement.

Other provisions have been included in the proposed Amendment, in light of the necessity of the delay to insure the most beneficial plan for the Greek Theatre, and review of the plan by stakeholders, and to provide for timely decisions as construction begins.

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- ▶ The deadline to complete all improvements except for the waterproofing of the audience seating area is moved forward one year, to April 15, 2004. If work is not substantially complete by this date, liquidated damages of \$1,000 per day will be assessed for each day the work is not complete. The waterproofing is to be completed by April 15, 2005.
- ▶ Minor changes to the elements of the Capital Investment Program, to meet exigencies which may not be found or reasonably anticipated until permits are applied for or construction begun, can be reviewed and approved by the General Manager.

The Amendment has been reviewed by Nederlander and it is acceptable. They are proceeding with design, with participation by Department staff, in anticipation of starting construction on November 1, 2003. Absent any action of the Board on this matter, however, liquidated damages will begin to accrue after April 15, 2003, at \$1,000 per day. Staff therefore requests that the Board waive any assessment of liquidated damages pending execution of the Amendment No. 1.

This project was subject of a Mitigated Negative Declaration and Mitigation Monitoring Plan adopted by the Board on October 16, 2002 (Board Report 02-358). The project changes as proposed above have been reviewed by staff of the Environmental Division. The modifications do not create nor does it appear likely that they will create any new impacts that have not already been considered or evaluated in the previous environmental study. The heavy construction portion of the project does not exceed the original time frame for completion (April 2004). Changes that essentially result in retaining existing conditions, such as not constructing the sound wall or retaining the 1950s roof, involve elements that had been design features in the project, and were not required mitigation for the project.

An outstanding issue also exists in the matter of the performance bond. It is unrelated to the capital program, but likewise requires amendment to the Agreement. Upon signing the Agreement in 2002 Nederlander indicated that they preferred, for reasons of cost effectiveness, to use an irrevocable standby Letter of Credit for the required performance guarantee of \$300,000, as had been the case under the prior agreement. The standard language on performance bonds which was integrated into the Agreement did not allow for a such Letter of Credit. However, the Agreement can be amended to provide for the use of that instrument to guarantee performance, with appropriate language protecting the City as provided by the City Attorney. Accordingly, staff has added the necessary Performance Bond amending language to this Amendment No. 1 as well.