



COUNCIL AGENDA: 3/10/2020
ITEM: 8.1
FILE NO: 20-214

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: March 10, 2020

SUBJECT: Hammer Theatre Center Operations and Maintenance Agreement

RECOMMENDATION

As recommended by the Community and Economic Development Committee on February 24, 2020, accept the report and adopt a resolution authorizing the City Manager to negotiate and execute an agreement with San Jose State University for the operations and maintenance of the Hammer Theatre Center for a 15 year term with two additional 10 year options to renew starting July 1, 2020, for an annual amount of \$315,000 with adjustments according to the consumer price index, subject to the appropriation of funds by the City Council.

CEQA: Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (Economic Development)

[Community and Economic Development Committee referral 2/24/20 - Item (d)2]



Memorandum

TO: COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE
FROM: Kerry Adams Hapner
SUBJECT: SEE BELOW
DATE: February 13, 2020

Approved _____ Date _____

Kim Walech 2/13/20

SUBJECT: HAMMER THEATRE CENTER OPERATIONS AND MAINTENANCE AGREEMENT

RECOMMENDATION

Accept report and forward a recommendation to the City Council to adopt a resolution authorizing the City Manager to negotiate and execute an agreement with San Jose State University for the operations and maintenance of the Hammer Theatre Center for a 15 year term with two additional 10 year options to renew starting July 1, 2020, for an annual amount of \$315,000 with adjustments according to the consumer price index, subject to appropriations approved by City Council.

OUTCOME

The outcome of this item supports San Jose State University as the operator of the Hammer Theatre Center for up to 35 years.

EXECUTIVE SUMMARY

After the closure of the San Jose Repertory Theatre, a year-long public process resulted in the selection of San Jose State University to develop a sustainable model to operate and program the Hammer Theatre Center. During the four-year initial incubation period, San Jose State University (SJSU) has revitalized the Hammer Theatre through regular day and evening activation that brings high quality diverse arts experiences that engage new audiences, honors the building's history and original design for professional theater, and offers long-term sustainability.

The recommended agreement includes an initial 15-year term with two 10-year options to extend. The Operations and Maintenance (O&M) subsidy for the Hammer Theatre is proposed at \$315,000 with annual adjustments tied to the consumer price index (CPI) and capped at 3%.

To help address facility capital needs, \$15,000 of the \$315,000 subsidy will be diverted to the Hammer Theatre Capital Maintenance Sinking Fund, contingent upon a City match of \$15,000. These funds are intended to supplement capital funding planned for the Hammer Theatre as part of the City's multi-year Capital Improvement Plan.

BACKGROUND

Built by the San Jose Redevelopment Agency for the San Jose Repertory Theatre (the Rep), the four-story, 528-seat and 58,000 square foot Susan and Phil Hammer Theatre Center ("Hammer Theatre") was opened in the heart of the downtown in 1997 and operated by the Rep until 2014. Following the bankruptcy of the Rep in summer 2014, the City undertook an extensive year-long public process to identify a new operator to reactivate the City-owned theater so that the facility could continue to be a vital arts and cultural anchor in the downtown. An 11-member body was formed to advise staff and oversee an extensive Request for Interest (RFI) process that resulted in the recommendation of SJSU to be the new operator for an initial incubation period prior to entering into a longer term agreement.

City Council voted unanimously on December 1, 2015 to approve an O&M agreement for an initial incubation period of three years with options to extend for a longer period. In October 2018, O&M agreement was extended for 18-months through June 30, 2020 to allow review of three fully-staffed seasons of operations and to allow future contract cycles to align with the City's and SJSU's fiscal year.

The incubation model emphasized co-creation and ongoing iterative improvement based on actual operational experience. To support the success of this partnership during the initial incubation years, SJSU convened the Hammer Theatre Advisory Group (HTAG), a team comprised of SJSU faculty, City, downtown and arts community advisors. The City was represented by Councilmember Raul Peralez, Arts Commission member Richard James, and Director of Cultural Affairs Kerry Adams Hapner. The HTAG met monthly to provide valuable strategic counsel in the start-up phase and gradually decreased its meeting frequency in subsequent years as the model began to prove its stability and sustainability. With its purpose successfully achieved, the HTAG will sunset with the adoption of new O&M agreement.

SJSU is the oldest state university in California and distinctive in being sited in the downtown core of a large metropolitan city. SJSU offers bachelors and masters degrees in 134 areas of study to more than 30,000 undergraduates and graduate students in seven colleges. SJSU has extensive experience in facilities operation, including the operation of multiple theaters and performance venues. An example of a successful collaboration between the City and SJSU is the Dr. Martin Luther King Jr. Library, which was built in 2003 and offers joint library services to SJSU students and the residents of San Jose.

ANALYSIS

In over four years serving as the operator of the Hammer Theatre, SJSU has laid a solid foundation for a financially sustainable operating model which retains the Hammer Theatre as a vital arts and cultural anchor in the downtown and supports the educational mission of SJSU. The City's partnership with SJSU to operate the Hammer Theatre has provided consistent and high quality cultural programming in this iconic downtown venue. Under SJSU management, programming in the Hammer Theatre reflects a rich diversity of arts and cultural offerings by a variety of producers including SJSU, community arts and nonprofit groups and national touring entities. SJSU's core programmatic business model encompasses:

Programming

Under SJSU management, Hammer Theatre programming has reflected a rich diversity of arts and cultural offerings by a variety of producers including SJSU, community arts and nonprofit groups and national touring entities. SJSU's core programmatic business model encompasses:

1. SJSU programming: cultural and other events (including concerts, plays, exhibits, lectures, etc.) created by SJSU academic programs and vetted by a campus committee to ensure that the offerings are suitable for the scale and character of the facility and are likely to appeal to diverse local and student audiences;
2. SJSU sponsored programming: sponsored by SJSU academic and other units for the benefit of the university and the community, including co-produced theater and other cultural programming between SJSU and outside cultural organizations; and
3. Community rentals: tiered rental model with discounts for nonprofit organizations encompasses rental of all performance and reception spaces at the facility.

SJSU has created a dedicated and robust website with online ticketing features for the Hammer Theatre (<http://hammertheatre.com>). The full calendar of events for the current year is included as **Attachment A**, and the Spring season brochure is included as **Attachment B**.

Programming accomplishments during the most recently concluded season include:

- Annual attendance of over 57,000, an increase of 6% from the prior year.
- Almost 200 performances in the Hammer Theatre, a 17% increase from the prior year.
- Upheld tradition of the Hammer Theatre as a place to see high quality theater, with one-quarter of its offerings focused on theater.
- High quality productions for the community produced by SJSU including *Frankenstein @ 200* (talks, screenings and radio play), *Urinetown: The Musical*, *American Night*, *The Ballad of Juan Jose*, Leonard Bernstein's *MASS*, and *The Dreamer Project*.
- Over one-third of performances presented by community-based groups such as San Jose Jazz and Cinequest, as well as other local cultural organizations such as New Ballet, San

Jose Dance Theatre, Grupo Folklorico Los Laureles, San Jose Youth Symphony, EnActe Arts and Ballet Folklorico Fuego Neuvo.

- Increased audiences for highly acclaimed *National Theater Live* and *National Geographic Live*.
- Family-friendly programming including The New Ballet's *San Jose Nutcracker* and other popular programs that attract residents and visitors to the downtown during the holidays.

In addition to increasing performances inside the Hammer Theatre, SJSU has increased outdoor activation in the downtown by sponsoring popular and free public events on the plaza surrounding the Hammer such as International Jazz Day, South First Fridays monthly art walk and Theatre Plaza Celebration which attracted 3,700 people over two nights to view aerial dancers performing on the building's exterior walls.

Staffing

Following a rapid ramp-up phase in the first year, SJSU has operated fully staffed with experienced managers who have strong qualifications in production management, client services and patron support. Mr. Christopher Burrill, a veteran arts administrator, has provided consistent leadership for the Hammer Theatre since June 2016. The Hammer Theatre is currently staffed with seven full-time staff and two part-time staff. The professional staff are supported by a cadre of volunteers and paid student assistants who gain valuable experience that gives them an edge in securing future jobs in arts and related disciplines. In addition, through an innovative partnership with SJSU, the International Alliance of Technical Stage Employees (IATSE) provides students with the opportunity to earn credit towards their journey person card while working with IATSE professionals. This arrangement helps reduce technical costs for theater users while providing a new pipeline for emerging technical professionals.

Fiscally Sustainable Model

SJSU tracks the Hammer Theatre as its own cost center according to a fiscal year that is aligned with the City. The operating budget for the Hammer Theatre has remained relatively steady, with revenues of nearly \$2.5 million in its most recently completed fiscal year, with revenue comprised of City's O&M subsidy (11%), SJSU support (57%) and rental and presenting income (31%).

Revenues from rentals and presenting activities have shown robust increases, reflecting the success of the programming and high levels of customer service that have increased the attractiveness of the venue as a performing arts center. At the end of FY2018-2019, SJSU reported that operating revenues for the Hammer Theatre exceeded expenses by \$73,609, but, given the significant ongoing capital expenditures and repairs required for a building of this size and age, these profits have been absorbed into the cost of capital maintenance expenses which have required significant additional capital outlays by SJSU.

To increase revenue for future years, SJSU recently launched a Friends of the Hammer fundraising initiative to cultivate individual donors at multiple benefit levels. The initiative also includes specific sponsorship opportunities to support Hammer Presents events. In addition, the Office of Cultural Affairs has set aside up to \$50,000 from Transient Occupancy Tax funds in FY2019-2020 to help support the growth of rental income, especially clients with potential for multi-year commitments and presenters seeking to invest in a new market.

Agreement Term and Guiding Principles

The term of the agreement will be 15 years with two additional 10-year options to renew. Although the current agreement, which expires on June 30, 2020, contains an option to extend for 15 years, a new agreement is being recommended which allows for a longer term of up to 35 years based on the successful proof-of-concept of SJSU's programming model. A greater term length provides stability for both the City and SJSU in the management of the Hammer Theatre and increases SJSU's capacity to fundraise for future programming and facility investment. Should either party wish to terminate the agreement, a notice of 18 months is required so that each party has sufficient time to budget for and implement a smooth transition. The new agreement will retain the following key guiding principles contained in the original incubation agreement and its approved amendments:

1. SJSU shall maintain an evolving and sustainable programming and operational model that emphasizes co-creation and ongoing iterative improvement.
2. SJSU shall review the programming and operational model along the following elements: financial sustainability, robust programming, full facility activation, community engagement and community use, and a management system for facility maintenance.
3. The core programmatic model shall consist of three primary elements: a) SJSU cultural and other events, chiefly related to student education; b) partnerships of cultural programming between SJSU and outside cultural organizations; and c) rentals to cultural and other outside organizations, with a tiered rental rate structure. The Theatre will not be used for regularly scheduled SJSU lecture courses except with prior City permission for courses that directly support practical training in technical theater, performing arts and related arts disciplines and at times that do not negatively impact the rental of the venue as a performing arts center.
4. In addition to SJSU programming, the Hammer Theatre will achieve financial sustainability for co-created programs and presenting programs through rentals. The Theatre will prioritize programming professional theater, in recognition of the history and design of the facility.
5. Availability for use by community-based cultural organizations at tiered rental rates on desirable dates is an important to achieve robust diversified cultural offerings and financial sustainability.
6. A percentage of offerings will be curated, providing a cohesive set of high-quality offerings rather than purely generated by unsolicited renters.
7. The goal is to maintain and operate the facility as a high-quality, destination-worthy regional arts facility.

8. Another important goal is to build a pipeline of future audiences and future artistic, technical and administrative professionals through SJSU arts education offerings and opportunities.

Recommended Subsidy

The O&M subsidy for the Hammer Theatre is proposed at \$315,000 with annual adjustments tied to the consumer price index (CPI) and capped at 3%. The annual CPI adjustments are consistent with other recently re-negotiated O&M agreements that recognize the increasing costs of operating and maintaining aging buildings. As discussed in a separate section below, \$15,000 of the \$315,000 subsidy will be diverted to the Hammer Theatre Capital Maintenance Sinking Fund, contingent upon a City match of \$15,000.

The amount of annual subsidy during the incubation period was set at \$285,000, the same level of support provided to the facility's last operator. Beginning in FY2019-2020, the O&M subsidies of the City's nonprofit cultural facility operators, including SJSU, were restored to FY2011-2012 levels with a very modest consumer price index adjustment of about 5%. (In FY2012-2013 as a result of the recession, all cultural facility operators received a reduction in their subsidies which was not restored until this year with the direction contained in the Mayor's June Budget Message.)

Maintenance and Capital Repairs

Following execution of the incubation agreement on December 1, 2015, both the City and SJSU funded significant initial capital investments to bring the facility and its technical theater equipment to competitive standards. The City's start-up capital investment of \$900,000 funded critical building and safety systems and repairs/upgrades to theater technical controls. SJSU's start-up investment of \$1.5M funded expenses such as new lighting, sound and audio-visual equipment, state-of-the-art orchestra shell system and other upgrades. City and SJSU shared costs for upgrading the digital signs with advanced electronic features. In subsequent years, both the City and SJSU have continued to make capital investments to maintain the facility at professional standards so that it can remain an attractive venue for audiences and renters.

Key provisions for capital maintenance and repair are retained in the new O&M Agreement, including:

- SJSU will be responsible for routine maintenance in the interior of the facility and documenting preventive maintenance of the building systems.
- SJSU will be responsible for capital repairs.
- City, or its designated contractor, will be responsible for routine exterior facility maintenance.
- City will be responsible for full replacement of building system assets or its components, such as Heating, Ventilation and Air Conditioning (HVAC) systems, that have reached

the end of their useful life. Capital replacements, including improvements, equipment and systems, shall be funded through funds appropriated by the City for the capital repairs and capital replacements in its cultural facilities.

- SJSU will provide at its own expense, personal property such as furniture, fixtures and equipment (FF&E) necessary to conduct theater operations, other than FF&E currently in the facility. Such FF&E would be the property of the university.

The Hammer Theatre is over two decades old and reaching the age where its internal building systems require more frequent maintenance and repairs. Of particular concern to SJSU is the City's timely replacement of aging HVAC equipment which is nearing the end of its serviceable life and causing increasing energy and repair costs due to inefficiencies. In FY2018-2019, SJSU reported capital maintenance and repair expenses of approximately \$300,000, and this amount is likely to increase given the age of the facility and the high cost of facility operations and maintenance.

The City will refresh a 2012 capital repair, maintenance and life-cycle assessment for the Hammer Theatre to provide a current professional evaluation that will be used to identify critical capital replacements and repairs as well as monitor routine and preventative maintenance of equipment and or systems. This report will gather and document information about critical building infrastructure, with an emphasis on major HVAC equipment/systems, plumbing equipment, electrical equipment, fire and life safety equipment and systems, and the building exterior. This report will also inform a schedule for reporting on expected maintenance which will help prevent premature break-down of costly building systems and inform the planning for future costs associated with capital replacement needs. Notwithstanding the deferred maintenance needs of the City's other cultural facilities, prioritizing the timely replacement of the HVAC system at the Hammer is an important shared goal of the City and SJSU to avoid costly emergency situations that can negatively impact programming and audience experience.

Hammer Theatre Capital Maintenance Sinking Fund

To help finance the sustainability of City-owned cultural facilities, in FY2012-2013 City staff reached out to all City cultural facilities operators at that time and recommended the establishment of an optional and ongoing Cultural Facilities Matching Allocation. Cultural facility operators could redirect 5% of their O&M subsidy annually towards a capital maintenance sinking fund, with the City matching that 5% from the Convention and Cultural Affairs Fund annually. The Children's Discovery Museum, The Tech Interactive and the School of Arts and Culture at Mexican Heritage Plaza currently participate in a sinking fund to fund capital maintenance projects for their respective facilities.

SJSU has expressed interest in taking part in the sinking fund arrangement going forward into this long-term agreement, directing \$15,000 of its O&M subsidy annually towards a capital maintenance sinking fund for the Hammer Theatre, provided that the City Council appropriates \$15,000 annually to match SJSU's contribution. Annually, SJSU will work jointly with the City to select capital maintenance or replacement projects that address its critical priorities. Should

funds not be expended in any given year, or there be a desire to “save” the funds for larger projects, the funds would be rebudgeted and carried over into the subsequent year. The sinking fund acknowledges mutual benefits of jointly funding deferred capital facility needs and is intended to supplement, not replace, the City’s ongoing capital investment in the Hammer Theatre which is planned as part of the multi-year Capital Improvement Plan.

CONCLUSION

The Hammer Theatre Center is a unique and important community cultural asset in our vibrant downtown. This agreement will ensure ongoing, high quality cultural programming in the venue, contributing to the City’s cultural and economic vitality goals. Activation of the theater also assists the many restaurants and businesses near the theater that benefit from increased patronage from Hammer audiences. Through this partnership, SJSU brings substantial resources to assist in the operations and maintenance of the iconic theater, and it provides SJSU the ability to use a modern fully equipped professional theater in a highly visible location just outside its campus. SJSU’s operation of the Hammer Theatre also provides valuable arts education opportunities for the next generation of arts professionals, participants, and patrons.

EVALUATION AND FOLLOW-UP

The Office of Cultural Affairs, in conjunction with the Department of Public Works, will monitor this agreement to ensure that operations and maintenance activities remain compliant with the requirements of the O&M agreement. SJSU will provide City staff annual reports that detail programming highlights, facility activation metrics and financial activities. In addition, City staff will meet regularly with SJSU to review capital repair and replacement priorities and preventive maintenance activities that reduce-the need for costly repairs and premature replacement of building systems.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Community and Economic Development Committee Agenda website for the February 24, 2020 meeting and will be subsequently posted the City Council Agenda as a cross-referenced item. The Hammer Theatre Advisory Group reviewed this recommendation at its final meeting on February 12, 2020 and expressed unanimous support.

COORDINATION

This report has been coordinated with the City Attorney's Office, Department of Public Works and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

Since the beginning of the initial agreement, status reports on the Hammer Theatre reuse partnership have been agendaized and discussed on a semi-annual basis by Arts Commission, the most recent meeting occurring on October 8, 2019. The Arts Commission expressed positive comments for the benefits of the on-going partnership to the arts and cultural life of the City, especially its impact on downtown activation.

FISCAL/POLICY ALIGNMENT

The recommendation aligns with the goals and strategies of the Council-adopted *Cultural Connection: City of San Jose's Cultural Plan from 2011-2020*, which has the strategic goals of: supporting the availability of diverse cultural spaces and places throughout the community; stewarding the sustainability of City-owned cultural facilities; and expanding residents' access to arts and cultural learning opportunities.

COST SUMMARY/IMPLICATIONS

Contingent upon annual City Council approval and appropriation, this recommendation will result in \$315,000 in annual support for the O&M agreement with an annual adjustment according to the consumer price index. Of the appropriation, \$15,000 will be diverted to the Hammer Theatre Capital Maintenance sinking fund contingent upon a City match of \$15,000, which will result in \$30,000 in annual support for Hammer Theatre capital maintenance needs, in addition to annual amounts for capital improvement and repairs budgeted in the five-year Capital Improvement Plan.

BUDGET REFERENCE

The table below identifies the fund and appropriations to fund the contract recommended as part of this memo and remaining project costs, including project delivery, construction, and contingency costs, subject to the appropriation of funds.

COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

Subject: Hammer Theatre Center Operation and Maintenance Agreement

February 13, 2020

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Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2019-2020 Proposed Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	2709	Hammer Theatre Center Operations and Maintenance	\$315,000	\$315,000	IX-27	10/22/2019, 30325
001	NEW	Hammer Theatre Capital Maintenance	N/A	N/A	N/A	N/A
Total Current Funding Available			\$315,000	\$315,000		

CEQA

Not a Project, File No. PP10-066(e), Agreements and Contracts, Services that involve no physical changes to the environment.

/s/
KERRY ADAMS HAPNER
Director of Cultural Affairs

For questions, contact Kerry Adams Hapner, Director of Cultural Affairs, at (408) 793-4333.

Attachment A: FY2019-2020 Calendar View of Events at the Hammer Theatre Center

Attachment B: Spring 2020 Programming Brochure