



# STAFF REPORT

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August 17, 2022  
File Number 0600-10

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## SUBJECT

**CITY COUNCIL DISCUSSION OF THE OPERATION AND MANAGEMENT AGREEMENT BETWEEN THE CITY AND THE CALIFORNIA CENTER FOR ARTS, ESCONDIDO, FOUNDATION AND THE FUNDING ASSOCIATED WITH AN EXTENSION OF THIS AGREEMENT**

## DEPARTMENT

City Manager

## RECOMMENDATION

Request the City Council (1) receive and file a staff report concerning the Management Agreement between the City and the California Center for Art, Escondido, Foundation ("CCAEF"); and (2) provide direction to staff regarding any budget adjustments to be made to the FY2023 General Fund Operating Budget concerning annual funding for the CCAEF.

Staff Recommendation: Receive and file the Staff Report; provide direction regarding budget adjustment

Presenter: Christopher W. McKinney, Deputy City Manager/Director of Utilities

## FISCAL ANALYSIS

The City of Escondido ("City") provides funding to the CCAEF for the operation and maintenance of the California Center for the Arts, Escondido ("CCA") via the Operation and Management Agreement for the CCAE ("Agreement"). The Agreement, which is attached to this Staff Report as Attachment "1" has historically had a term of five years, with five-year renewals approved by the City Council and the Board of Trustees of the CCAEF at the end of prior term. However, no such renewal was completed when the last Agreement term expired in 2019. Since that time, the Agreement has proceeded as a month-to-month agreement until a new Agreement is negotiated. In FY2023, the City budgeted \$655,370 to the CCAEF to fulfil its management fee obligations under the Agreement. This was a reduction of \$133,000 from the originally proposed amount, a percentage decrease similar to that requested by the City Council from other General Fund expenditures prior to the inclusion of American Rescue Plan Act ("ARPA") and Section 115 Pension Trust funds to reduce the budget impact on the General Fund. The Management Fee is to be paid across two equal payments in July 2022 and January 2023. The payment scheduled for July 2022 has not been made pending the outcome of the City Council regarding future funding of the CCAE.

The City also expends money from the City's General Fund to fulfill its obligations under the management agreement for maintenance of the CCAE facility, which is owned by the City. The FY2023 Operating Budget includes \$810,000 for natural gas and electric utility costs, as well as \$337,579 in building maintenance



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costs. More information on the division of maintenance responsibilities among the CCAEF, as operator, and the City, as owner, can be found in the Background section of this report.

### **PREVIOUS ACTION**

On September 24, 2014, the City Council adopted Resolution No. 2014-139, authorizing execution of the Agreement with a five-year term. The agreement was executed on October 15, 2014. The agreement included an annual management fee of \$700,970, to be adjusted annually by the Consumer Price Index and contingent on the City Council's decision regarding the availability of funds.

On June 22, 2022, the City Council adopted Resolution No. 2022-69, adopting the FY2023 Operating Budget, including funds budgeted for the CCAE Management Fee, electric and gas utilities, and building maintenance that is the City's responsibility.

### **BACKGROUND**

In 1994, five years after the incorporation of the CCAEF, the City completed construction of the arts, theater, conference center, and museum complex that Escondidans know as the CCAE. With the CCAE buildings and infrastructure complete, the City – as stated in the Agreement – desired “that the Center be managed with special expertise in the field of performing arts, theatre and museum operations; the holding of special events; the attraction of world class entertainers; and the promotion and support of local cultural programming all the while affording proper accountability to the citizens of Escondido.” The City Council entered into the Agreement with CCAEF because it was deemed competent to provide the personnel and expertise necessary to accomplish these goals.

The following paragraphs describe in some detail the specific terms of the Agreement and the relationship between the City and the CCAEF. The City has prepared a draft agreement for future consideration by the CCAEF Board of Trustees and the City Council later in Calendar Year 2022. The goal of the City and CCAEF is to finalize the new Agreement prior to the next Management Fee payment in January 2023.

The Agreement defines the CCAE (“Center”) as the complex along Escondido Boulevard between Valley Parkway and the crossing of the Escondido Creek Channel. The Center includes the theaters, educational facilities and studios, museum, conference center, central plant, and administrative offices; as well as the immediately adjacent exterior gardens, plazas, and grounds, and a central plant. The area commonly referred to as the Great Lawn in Grape Day Park is not included as part of the Center Premises under this Agreement. The agreement gives the CCAEF the right to occupy, use, and operate the Center facilities and the CCAEF agrees to operate them in accordance with the agreement.

The Agreement provides for numerous rights and responsibilities in the operation and maintenance of the Center facilities. The following list describes several of the more important of these rights and responsibilities:



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- The CCAEF uses the Center for rental to outside groups that rent the facility for their own events, for the display of artistic exhibitions and for educational activities.
- The CCAEF uses the two theaters on the Center campus for presentation of performing arts (*e.g.* dance, music, theater) by outside groups and promotional entities that rent the Center and stage their own productions.
- CCAEF may not use the Conference Center for its own programming or productions, other than for incidental internal administrative purposes such as staff meetings, training and related activities that do not interfere with or detract from the primary purpose of the Conference Center.
- CCAEF has the exclusive right to rent and control events at the Center, distribute tickets, operate a ticket office, and charge admission for events at the museum and theaters.
- The CCAEF has the exclusive right to sell beverages, food, confections, clothing, novelties, and publications within the Center.
- CCAEF assembles, on behalf of the City, objects of art for display at the museum. The City recognizes that a permanent art collection may be held in trust by CCAEF.
- CCAEF may lease space at the Center to other entities sharing CCAEF's vision or purpose. These leases are subject to the City's prior approval and are between the City and the lessee.
- With 24-hours' notice, the City may use facilities at the Center if those facilities are not already in use.
- CCAEF may rent Center facilities for political activities or for campaigning for the nomination or election of any persons to any public office only if these rentals occur at standard publicly-available (*i.e.*, non-preferred) rates.
- The City may require the CCAEF to retain, at the CCAEF's expense, additional security for the Center campus. Presently, this additional security includes use of City Park Rangers funded by the CCAEF.
- The CCAEF may request temporary use of portions of Grape Day Park, including the area commonly referred to as the Great Lawn, or other City-owned facilities adjacent to the Center Premises. This use is subject to prior written approval from the City, including issuance of any necessary Temporary Use Permits. Special uses must be coordinated with the City to avoid conflicts with City sponsored events.
- Although the City has the authority to approve of the schedule of events at the Center, the CCAEF retains control over leasing details (*e.g.* artist or group approval, performance schedule, and artistic or promotional matters).
- CCAEF provides to the City its completed financial statement, audited by an independent certified public accountant, who is approved by the City. The City may choose to select an independent certified public accountant to generate annual financial audits of the CCAEF. The City also has the right to approve the annual operating budget of the CCAEF.

The Agreement specifies the annual management fee that the City will make as compensation to the CCAEF for the services performed at the CCAE. The payment to CCAEF is made on a fiscal year basis. The Agreement calls for such payment in each subsequent fiscal year during the term of this Agreement to be



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adjusted as agreed to by the Parties during the budgeting process before the start of a new fiscal year. The management fee is contingent upon the availability of funds, as determined by the City in its sole and exclusive discretion, in the City's annual budget and shall occur as part of the City's normal budget process each fiscal year.

The Agreement does not specifically assign maintenance responsibilities to the CCAEF and to the City. In practice, the City as building owner has been responsible for maintenance of the permanent structures (excluding painting of interior walls), exterior building and landscape maintenance, HVAC and plumbing, elevators, fire alarms, permanent kitchen equipment (e.g. stoves, refrigerators, and ventilation hoods). The CCAEF is responsible for light interior building maintenance and cleaning, janitorial and sanitary services, routine maintenance of the kitchen, security alarms, plumbing fixtures, and exterior cleaning.

### Potential Adjustment to the FY2023 General Fund Operating Fund Budget

The City Council may, at its discretion, chose to reduce or eliminate funding to the CCAEF for the management fee, costs of electric and gas utilities, and/or maintenance costs. The CCAEF may choose, based on the ultimate level of funding, to continue operating the Center at the level of funding provided by the City, or to cease as operator of the Center. If the CCAEF chose to cease operations of the Center, the City would have the option to seek a new operator.

The Fiscal Analysis section of this staff report described the level of financial support from the City to the CCAEF in the FY 2023 Operating Budget. If the City Council chooses to adjust this budget allocated to the CCAEF, it may do so by a simple-majority vote when considering this item.

### **ATTACHMENTS**

- a. Attachment "1" – 2014 Operation and Management Agreement for the California Center for the Arts