



STAFF REPORT

March 22, 2023

File Number 0600-10; A-2429-1

SUBJECT

OPERATION AND MANAGEMENT AGREEMENT BETWEEN THE CITY OF ESCONDIDO AND THE CALIFORNIA CENTER FOR THE ARTS, ESCONDIDO FOUNDATION

DEPARTMENT

City Manager's Office

RECOMMENDATION

Request the City Council adopt Resolution No. 2023-34 authorizing the Mayor to execute the proposed Operations and Management Agreement between the City of Escondido and the California Center for the Arts, Escondido Foundation.

Staff Recommendation: Approval (City Manager's Office: Christopher W. McKinney, Deputy City Manager / Director of Utilities)

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

FISCAL ANALYSIS

The City of Escondido's ("City") Fiscal Year (FY) 2023 Budget includes \$655,370 of funding to pay Management Fees to the California Center for the Art, Escondido Foundation ("CCAEF") for management of the California Center for the Arts, Escondido ("CCA"). The CCAE campus at 340 North Escondido Boulevard is property owned by the City. The CCAEF operates the CCAE under the terms of the existing month-to-month Operation and Management Agreement. To this point in FY 2023, the City has paid \$394,185 in management fees to the CCAEF, or approximately 60% of the annual budget amount. If the City Council authorizes the new proposed Management Agreement, the management fee will be \$55,000 per month. The City would immediately pay the CCAEF the amount of \$97,342.50 to bring the total paid for FY 2023 to \$491,527.50, or 75% of the total annual management fee (covering 9 months from June 2022 through March 2023).

The City will pay the Management Fee for the remaining three months of FY 2023 under the terms of the proposed agreement. If the City Council approves, the City will pay a total of \$656,527.50 in Management Fees in FY 2023. Approval of the proposed Management Agreement increases the funds spent on Management Fees by \$1,157.50.

The total management fees paid in FY2024 under the terms of the proposed agreement will be \$660,000. The proposed agreement also requires the City to pay 75% of the premiums for insurance required by the



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agreement, which has been case under the existing agreement. The City's share of insurance premiums in FY2023 was approximately \$100,000.

PREVIOUS ACTION

On September 24, 2014, the City Council approved a management agreement with the CCAEF that consolidated three separate agreements between the City and the CCAEF into a single agreement. The City and the CCAEF executed this agreement on October 15, 2014 with a term of 5 years. Since this agreement's expiration in 2019, the CCAEF has continued to manage the CCAE under the same terms on a month-to-month basis.

BACKGROUND

The CCAE opened in 1994 in its current City-owned facilities located at 340 North Escondido Boulevard in Escondido. The CCAEF formed to operate and manage the facility on behalf of the City under the terms of a Management Agreement, which grew into three separate agreements. Through mutual agreement, the City and the CCAEF consolidated these agreements in 2014 into a single agreement with a five-year term. The CCAEF and City have worked under this expired agreement on a month-to basis since 2019.

The proposed agreement has a term of 15 months beginning on April 1, 2023 and ending on June 30, 2024. Within 3 months of the agreement's termination, the City and the CCAEF may agree to extend the agreement by one year, until June 30, 2025. After that extension, the Management Agreement may continue on a month-to-month basis if neither the City nor the CCAEF take further action.

The proposed Management Agreement is attached to Resolution No. 2023-34 as "Exhibit A". Several sections are of particular interest as the proposed Management Agreement is considered. Some of these sections change or add significant terms when compared to past Management Agreements between the City and the CCAEF, while others are noteworthy simply because they specify important responsibilities of the City and the CCAEF. These sections are:

Section 3 – Requires the CCAEF to remain a non-profit organization in good standing with the State of California, and to notify the City of amendments to any of its formation documents (e.g. Articles of Incorporation and Bylaws).

Section 4 – Grants the CCAEF exclusive rights to produce and present activities at the CCAE, with the understanding that the CCAE facilities are for the benefit of the public. Allows the CCAEF to produce its own "in-house" programming and to lease the premises to outside entities. Gives the City access to the Conference Center for a limited number of days each year at no cost.



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Section 6 – Gives the CCAEF the right to name or change the name of the CCAE or a portion of it, consistent with a City Council approved Naming Policy. If the Center has no Naming Policy, the City Council must approve any naming or changes of naming of CCAE facilities.

Section 7 – Specifies the process through which the CCAEF requests funding from City for Capital Improvements at the CCAE facility. The CCAEF must propose such improvements for a given fiscal year by April 1 of the prior fiscal year for consideration by the City Council during its annual budget setting process in May and June.

Section 8 and Section 9 – Reference Appendix “A” of the proposed Management Agreement, which specifies the responsibilities of the City and CCAEF concerning maintenance and replacement of the CCAE premises. Require performance by qualified and trained staff of all maintenance activities conducted by the CCAEF, or performance by a qualified contractor. City maintenance responsibilities include: (1) permanent structures, (2) exterior walls, roofs, and landscaping, (3) Heating Ventilation and Air Conditioning (HVAC), plumbing, and sewer, (4) permanent kitchen equipment, (5) elevators, (6) fire alarms, and (7) stage lighting and sound equipment.

Section 11 – Specifies that the CCAEF must obtain permits through the City’s regular process for events on the Great Green of Grape Day Park, but the City will charge no permit fee.

Section 12 – Requires the CCAEF to continue to provide production and exhibition assistance to non-profit and community groups, including production, promotional, and technical assistance, as long as the CCAE facilities remain available.

Section 15 – Requires the CCAEF to submit quarterly its schedule of events to the City on or about July 15, October 15, January 15, and April 15 to give the City an opportunity to confirm that the community has appropriate and reasonable access to the CCAE facility.

Section 16 – Requires the CCAEF Executive Director to participate in quarterly financial status updates to the City Council, along with City staff, giving a brief verbal update of the CCAE ongoing activities and plans. Requires the CCAE to specify in its annual budget the planned monthly expenditure of the Management Fee paid by the City, and to report monthly in writing any deviations in the actual expenditures from that budget.

Section 17 – If the CCAEF enacts employee furloughs, the Executive Director cannot be furloughed for more hours than any other full-time employee of the CCAEF.



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Section 21 – Updates and specifies requirements for insurance coverage for the CCAE facility and operations. Specifies that the City shall pay 75% of all premiums and the CCAEF shall pay 25% of all premiums.

Section 22 – Clarifies the respective legal responsibilities of the CCAEF and the City when third party claims for damages and lawsuits are filed against either party arising out of property-related or management- and event-related incidents.

Section 27 – Stipulates that the City will pay the CCAEF a Management Fee for the services it provides. The Management Fee will be \$55,000 per month over the 15-month term of the agreement (\$660,000 annually, \$825,000 total for 15 months), due on the 5th day of each month. The CCAEF agrees to designate \$100,000 annually of this Management Fee to fund several community events: (1) Annual 4th of July (Independence Day) Celebration, (2) Día de los Muertos, (3) Música en la Plaza, and (4) Winter Wonderland.

Section 29 – As previously described, the proposed agreement has a term of 15 months beginning on April 1, 2023 and ending on June 30, 2024. Within 3 months of the agreement's termination, the City and the CCAEF may agree to extend the agreement by one year, until June 30, 2025. After that extension, the Management Agreement may continue on a month-to-month basis if neither the City nor the CCAEF take further action. The Management Agreement may be terminated for cause by either the City or the CCAEF with 30-days' notice, and for convenience with six-months' notice. The City may terminate immediately if a court declares the CCAEF insolvent.

RESOLUTIONS

- A. Resolution 2023-34
- B. Resolution No. 2023-34 Exhibit "A"