



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 6/21/2011

Report Type: Consent

Title: Parking Agreement: California Musical Theatre

Report ID: 2011-00522

Location: 15th & H Streets, District 3

Recommendation: Adopt a Resolution authorizing the City Manager to execute a parking agreement with California Musical Theatre for discounted parking at Memorial Garage.

Contact: Matt Eierman, Operations General Supervisor, (916) 808-5849, Transportation Department

Presenter: None

Department: Transportation Department

Division: Off-Street Parking Admin

Dept ID: 15001211

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Agreement Cover Sheet
- 4-Resolution
- 5-Exhibit A Lease

City Attorney Review

Approved as to Form
Joseph Cerullo
6/9/2011 6:16:39 PM

City Treasurer Review

Prior Council Financial Policy Approval or
Outside City Treasurer Scope
Russell Fehr
6/7/2011 8:54:47 AM

Approvals/Acknowledgements

Department Director or Designee: Jerry Way - 6/9/2011 11:33:11 AM

Assistant City Manager: John Dangberg - 6/9/2011 3:55:54 PM



Description/Analysis

Issue: Since 2002 the City of Sacramento has provided discounted parking for season ticket holders of the California Musical Theatre's (CMT) Music Circus. CMT and the City would like to continue this parking program whereby CMT season ticket holders and volunteers can purchase discounted parking passes to park at Memorial Garage.

Policy Considerations: This recommendation is consistent with the City's strategic plan and the goals of the City Council to achieve sustainability and enhance livability, and to expand economic development throughout the City.

Environmental Considerations:

California Environmental Quality Act (CEQA): The project is exempt from CEQA under CEQA Guideline 15301, as it is for the operation of an existing public structure with negligible or no expansion of use.

Sustainability Considerations: None.

Other: None.

Commission/Committee Action: None.

Rationale for Recommendation: Each year over 130,000 patrons attend Music Circus productions. Memorial Garage, located directly across from the Music Circus's Wells Fargo Pavilion, is the primary source of parking for patrons and volunteers, helping to reduce on-street parking congestion in the surrounding neighborhoods. Under this agreement, the City will commit up to 500 parking spaces in Memorial Garage for each CMT evening and weekend performance and up to 200 spaces for each weekday, matinee performance.

Financial Considerations: Season ticket holders who park at Memorial Garage may purchase \$6 discounted parking passes from CMT; the standard event parking rate at Memorial Garage currently averages \$8. On a monthly basis, CMT will pay the City \$6 for each pass used by its season ticket holders and volunteers. Based on the sale of over 10,000 discounted parking passes during the 2010 performance season, it is projected the City will collect over \$60,000 annually from this agreement. Beginning with the 2012 CMT performance season, the rate for each parking pass will increase annually based on the Consumer Price Index (CPI) for the San Francisco, Oakland, and San Jose Metropolitan Area for All Urban Consumer (CPI-U), All Items (1982-84=100).

Emerging Small Business Development (ESBD): Not applicable.



Background Information

Since 2002, the City of Sacramento has provided discounted parking at Memorial Garage for the patrons and volunteers of the California Musical Theatre's (CMT) Music Circus. CMT and the City would like to continue this parking program whereby CMT patrons and volunteers can purchase discounted parking passes to park at Memorial Garage.



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.

- The Unexecuted Contract is included as an exhibit to the Resolution, however, the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.

- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are to be in the Office of the City Clerk before agenda publication.



RESOLUTION NO.

Adopted by the Sacramento City Council

PARKING AGREEMENT: CALIFORNIA MUSICAL THEATRE

BACKGROUND

- A. Each year, over 130,000 patrons attend Music Circus productions. Located directly across from the Music Circus's Wells Fargo Pavilion, the City's Memorial Garage is the primary source of parking for patrons and volunteers of the California Musical Theatre (CMT).
- B. Under this agreement, the City will commit up to 500 parking spaces in Memorial Garage for CMT patrons and volunteers for each evening and weekend performance and up to 200 spaces for each weekday, matinee performance.
- C. Season ticket holders who park at Memorial Garage may purchase \$6 discounted parking passes from CMT; the standard event parking rate at Memorial Garage currently averages \$8. On a monthly basis, CMT will pay the City \$6 for each pass used by its season ticket holders and volunteers. Based on the sale of over 10,000 discounted parking passes during the 2010 performance season, it is projected the City will collect over \$60,000 annually from this agreement. Beginning with the 2012 CMT performance season, the rate for each parking pass will increase annually based on the Consumer Price Index (CPI) for the San Francisco, Oakland, and San Jose Metropolitan Area for All Urban Consumer (CPI-U), All Items (1982-84=100).
- D. The term of this agreement is one year and will automatically renew each May 31 unless terminated by either party.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager is hereby authorized to execute on the City's behalf an agreement with California Musical Theatre to provide a discounted-parking program for Music Circus season-ticket holders. The agreement will have a one-year term that automatically renews each May 31 unless terminated by either party. The rate for each parking pass will begin at \$6 and will increase annually based on the Consumer Price Index (CPI) for the San Francisco, Oakland, and San Jose Metropolitan Area for All Urban Consumer (CPI-U), All Items (1982-84=100).



Agreement for Discounted Parking at Memorial Garage

This agreement, dated June 21, 2011, for purposes of identification, is between the **City of Sacramento**, a California municipal corporation, (the "City"), and **California Music Theatre**, a California non-profit corporation ("CMT").

Background

- A. CMT hosts various theatrical presentations at the Music Circus Theatre, located at 1419 H Street, Sacramento, California, that bring numerous patrons into the downtown area. Each year, CMT has one performance season that generally runs from July 1 to August 31 (the "CMT Season").
- B. CMT desires to provide its patrons with affordable, convenient parking during its performances, and the City desires to encourage patronage of CMT. To those ends, the City and CMT desire to implement a parking program that will provide CMT's patrons with discounted parking at the City's Memorial Garage, located at 14th and H Streets across from the Music Circus Theatre (the "Garage").

With these background facts in mind, the City and CMT agree as follows:

1. Parking.

- (a) During each CMT Season, the City shall make available up to 500 spaces at the Garage for use by CMT during evening and weekend performances and up to 200 spaces for use by CMT during weekday matinee performances, subject to the following:
 - (1) The actual number of spaces the City must make available for a performance will be determined by the estimate CMT provides under Section 2(c).
 - (2) Spaces will be available no earlier than two hours before any performance.
 - (3) Spaces will be available for no more than 50 performance days total during the CMT Season, which for purposes of this Section 1(a)(3) begins on the first performance day and ends on the last performance day of the CMT Season.
- (b) The City shall provide staffing on the day of each performance to collect CMT-generated parking passes at each entrance to the Garage. In exchange for the CMT-generated parking pass, CMT patrons will receive an "exit pass" that will allow for fast and efficient exiting of the Garage at the end of each performance.
- (c) The City may suspend its obligations under this Section 1 in either of the following circumstances:

- (1) The City cannot perform its obligations because of events beyond its reasonable control, including but not limited to the elements (e.g., floods, earthquakes, tornados, windstorms, unusually severe weather), fire, energy shortages or rationing, riot, acts of terrorism, war or war-defense conditions, the acts of any public enemy, the actions or inactions of any governmental entity (excluding the City) or the entity's agents, injunctions or other court or administrative orders, labor shortages (including but not limited to shortages caused by strikes or walkouts), and materials shortages. The duration of a suspension under this Section 1(c)(1) will be equal to the duration of the event that precludes the City's performance.
- (2) The City determines, in its sole discretion, that the Garage must be closed for repairs or maintenance or to protect public health or safety. If the closure is for repairs or maintenance, then the duration of a suspension under this Section 1(c)(2) will be the time actually required to perform the repairs or maintenance. If the closure is to protect public health or safety, then the duration of a suspension under this Section 1(c)(2) will be the duration of the threat to public health or safety, as determined by the City in its sole discretion.

2. Sale of Passes.

- (a) *Sale of Passes.* CMT will generate computer-stock parking passes ("Passes") for sale to its patrons and volunteers at the prices set out in this Section 2. Each Pass will be valid for parking in Garage during one CMT performance only.
 - (1) During the 2011 CMT Season, the price for each Pass will be \$6.00.
 - (2) Beginning with the 2012 CMT Season, the price for Passes will be increased annually using the Consumer Price Index (CPI) for the San Francisco, Oakland, and San Jose Metropolitan Area for All Urban Consumer (CPI-U), All Items (1982-84=100), published by the United States Department of Labor, Bureau of Labor Statistics.
- (b) *Use of Passes by Non-Patrons.* CMT shall not sell or otherwise provide Passes to persons, including CMT officials and employees, who are not CMT patrons or volunteers.
- (c) *Estimates of Daily Usage.* At least seven days before, but no more than fourteen days before, each CMT performance, CMT shall provide the City with an estimate of the number of Passes sold for the performance. The estimate may not exceed the relevant maximum specified in Section 1(a), and it will determine the City's obligation under Section 1(a) to make spaces available for the performance.
- (d) *Form of Passes.* CMT shall submit the form and design of the Passes to the City for review, and the City may approve or reject the form and design in its sole discretion.

- (e) *Payment to the City.* No later than the 10th of each month, CMT shall pay City for the Passes actually used by CMT patrons and volunteers in the immediately preceding month, calculating the total amount owed using the price for the Passes established in accordance with Section 2(a), above.
3. **Term.** The term of this agreement begins on the Effective Date (see Section 12, below) and expires on May 31, 2012. On that date, and on each subsequent May 31, this agreement will automatically renew for an additional one-year term (i.e., June 1 to May 31) unless a party gives the other party written notice of termination before the immediately preceding May 1. Upon termination, CMT shall pay the City all amounts then due.
4. **Taxes.** CMT shall pay all taxes that may arise from this agreement.
5. **Notices.** Any notice or other communication under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 5 to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. For example, a notice of termination deposited in the United States Mail on April 27 will be considered to have been given on April 30. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 5.

If to the City:

City of Sacramento
 Parking Services Division
 Attention: Parking Services Manager
 300 Richards Boulevard, 2nd Floor
 Sacramento, California 95811

If to CMT:

California Musical Theatre
 Attention: Marlene Shire-Anderson
 1510 J Street, Suite 200
 Sacramento, California 95814

6. **Assignments.** CMT may not assign or otherwise transfer this agreement or any interest in it without the City's prior written consent, which the City may withhold in its sole discretion without regard to the effect on CMT. An assignment or other transfer made contrary to this Section 6 is void.
7. **Binding effect.** This agreement binds and inures to the benefit of the parties' successors and assigns.

8. **Severability.** If a court of competent jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.
9. **Waiver.** A party's failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. No waiver is binding unless set forth in a writing signed by the waiving party.
10. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply.
11. **Attorneys' fees.** The parties shall bear their own costs and attorneys' fees incurred in connection with this agreement.
12. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
13. **Counterparts.** The parties may execute this agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
14. **Integration and modification.** This agreement sets forth the parties' entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.

(Signature Page Follows)

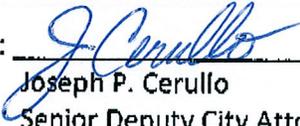
City of Sacramento

By: _____
Cassandra Jennings, Assistant City
Manager, for William H. Edgar, Interim
City Manager
Date: June __, 2011

Attest
Sacramento City Clerk

By: _____
Deputy City Clerk

Approved as to Legal Form
Sacramento City Attorney

By:  _____
Joseph P. Cerullo
Senior Deputy City Attorney

California Music Theatre

By:  _____
Richard Lewis
Executive Producer
Date: June 8, 2011