

REPORT OF GENERAL MANAGER

NO. 11-172

DATE June 6, 2011

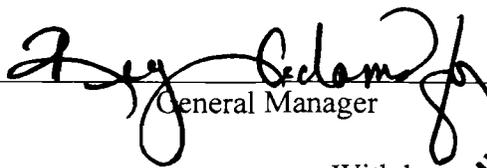
C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: THE GREEK THEATRE CONCESSION – WAIVER OF ANNUAL PERFORMANCE GUARANTEE

R. Adams _____
H. Fujita _____
V. Israel _____

K. Regan _____
M. Shull _____
*N. Williams NW



General Manager
Withdrawn JUL 13 2011

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board waive the Performance Guarantee penalty, for the 2009 and 2010 seasons, of Concession Agreement No. 245 between the City of Los Angeles Department of Recreation and Parks and Nederlander-Greek, Inc., for the operation and maintenance of the Greek Theatre Concession due to new competition in the surrounding area and the current economic condition.

SUMMARY:

On May 21, 2002, Concession Agreement Number 245 was executed between the City of Los Angeles Department of Recreation and Parks and Nederlander-Greek, Inc. (Concessionaire) for the operation and maintenance of the Greek Theatre Concession. The Concession Agreement includes a Performance Guarantee which requires that the annual gross revenue will not be less than \$15 million for the first concert season and will increase by 3% annually. The penalty for not meeting the Performance Guarantee is 20% of the amount under the guaranteed minimum.

On May 9, 2002, prior to the execution of the Concession Agreement, a letter was sent from the Department to the representatives of the Concessionaire which stated that should a proposed new concert theatre near the Staples Center be completed and create a negative impact on the Greek Theatre, the Department would entertain a request for relief from the Performance Guarantee and that the request would be brought to the Board for consideration and action (Attachment A).

For the 2009 and 2010 seasons, the Concessionaire was unable to meet the Performance Guarantee. On March 16, 2011, a letter was sent from the Department to the Concessionaire informing them about the Performance Guarantee penalty of \$493,789.

REPORT OF GENERAL MANAGER

PG. 2

NO. 11-172

On April 12, 2011, staff met with the Concessionaire to discuss the matter and the May 9, 2002 letter regarding new competition at the Staples Center. After discussions with the Concessionaire, staff reviewed the year-end financial documents and accounting adjustments previously submitted by the Concessionaire for calendar years 2009 and 2010. The accounting adjustments revise the annual gross revenue reported by the Concessionaire and the revised Performance Guarantee penalty is calculated to be \$452,679 (Attachment B).

The decline of the annual gross revenue which prevented the Concessionaire from meeting the Performance Guarantee for the 2009 and 2010 seasons is attributed to new competition in the surrounding area (Nokia Theatre), the current economic environment, and the downturn in the concert touring industry.

The Nokia Theatre

In October 2007, the Nokia Theatre opened at the L.A. Live complex, which also houses music venues such as Staples Center, Club Nokia, and The Conga Room. The Nokia Theatre has a seating capacity of 7,100 patrons versus the Greek Theatre's capacity of 5,801 seats. Between November 2007 and November 2008, the Nokia Theatre grossed \$31,319,346 in revenue and had 444,425 patrons.

The new music venue has successfully drawn business away from other similar venues such as the Greek Theatre, the Hollywood Bowl, the Gibson Amphitheatre, and numerous smaller venues at a time when the public is attending fewer concerts and spending less money at those concerts.

Recommendation

Staff recommends that the Board waive the Performance Guarantee penalty for the 2009 and 2010 seasons due to the negative impact caused by the Nokia Theatre and for consideration that the year-to-date cumulative Performance Guarantee target has been surpassed (Attachment B).

The cumulative Performance Guarantee target year-to-date totals \$151,200,000 and the actual gross revenue year-to-date is \$175,172,677. Also, consideration should be given that the Minimum Annual Rent requirement year-to-date totals \$10,800,000 and the actual rent paid to the Department year-to-date is \$13,298,191.

It should also be noted that during the term of the contract that the Concessionaire has absorbed the cost of traffic operations since the Department of Transportation ceased providing the service in 2009; partnered with the Department to produce a concert benefiting the Griffith Park Recovery efforts in 2007; routinely absorbs costs associated with the Bach, Rock and Shakespeare festival put on by John Marshall High School in order that the students have a place to perform; and, has consistently and effectively responded to issues brought up by the surrounding community.

REPORT OF GENERAL MANAGER

PG. 3

NO. 11-172

FISCAL IMPACT STATEMENT:

There is no impact to the General Fund.

Report prepared by Robert N. Morales, Senior Management Analyst II, Finance Division

BOARD OF RECREATION AND
PARK COMMISSIONERS

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DEPARTMENT OF
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200 N. MAIN ST.
13TH FLOOR
LOS ANGELES, CA 90012

(213) 473-5888
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ELLEN OPPENHEIM
GENERAL MANAGER

May 9, 2002

COPY

Mr. Neil Papiano
Iverson, Yoakum, Papiano & Hatch
624 South Grand Avenue, 27th Floor
Los Angeles, CA 90017-3328

Subject: Greek Theatre Agreement - Competition from new Staples Center Area Theatre

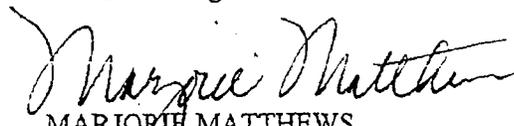
Dear Mr. Papiano:

At our meeting of February 4, 2002, we discussed several concerns your client (Nederlander Greek, Inc.) had with the above-referenced agreement, including potential negative impacts on Greek Theatre revenue that could ensue from the construction of a proposed new theatre near the Staples Center. We agreed that if and when the proposed new facility is completed and your client can demonstrate that the Greek Theatre is significantly impacted, the Department will entertain a request for rent relief and guarantee that the request will be brought to the Board of Recreation and Park Commissioners for consideration and action.

As we discussed, the appropriate time to deal with this matter is at the point where Nederlander Greek has verifiable experience that the new Staples area venue is drawing performers and revenue away from the Greek Theatre. I believe that this letter adequately recounts our conversation regarding this issue. If you require further information or clarification, please call me at (213) 473-6833.

Very truly yours,

ELLEN OPPENHEIM
General Manager


MARJORIE MATTHEWS
Executive Officer

cc: Board of Recreation and Park Commissioners
Pete Echeverria
Mark Brown

DEPARTMENT OF RECREATION AND PARKS
 THE GREEK THEATRE CONCESSION
 SUMMARY OF PERFORMANCE GUARANTEE AND ANNUAL RENT PAYMENT

Year	Performance Guarantee Target (With 3% Annual Increase)	Actual Annual Gross Revenue	Performance Guarantee Surplus / Shortfall
2002	\$ 15,000,000	\$ 16,982,241	\$ 1,982,241
2003	\$ 15,450,000	\$ 15,575,475	\$ 125,475
2004	\$ 15,900,000	\$ 20,135,192	\$ 4,235,192
2005	\$ 16,350,000	\$ 20,573,485	\$ 4,223,485
2006	\$ 16,800,000	\$ 19,343,443	\$ 2,543,443
2007	\$ 17,250,000	\$ 25,305,942	\$ 8,055,942
2008	\$ 17,700,000	\$ 22,770,296	\$ 5,070,296
2009	\$ 18,150,000	\$ 17,998,995	\$ (151,005)
2010	\$ 18,600,000	\$ 16,487,608	\$ (2,112,392)
TOTAL	\$ 151,200,000	\$ 175,172,677	\$ 23,972,677

Minimum Annual Rent	Annual Rent Payment Paid to RAP	Annual Rent Surplus / Shortfall
\$ 1,200,000	\$ 1,695,038	\$ 495,038
\$ 1,200,000	\$ 1,200,000	\$ -
\$ 1,200,000	\$ 1,492,894	\$ 292,894
\$ 1,200,000	\$ 1,508,990	\$ 308,990
\$ 1,200,000	\$ 1,416,922	\$ 216,922
\$ 1,200,000	\$ 1,841,044	\$ 641,044
\$ 1,200,000	\$ 1,651,362	\$ 451,362
\$ 1,200,000	\$ 1,291,941	\$ 91,941
\$ 1,200,000	\$ 1,200,000	\$ -
\$ 10,800,000	\$ 13,298,191	\$ 2,498,191

Total Performance Guarantee Shortfall for 2009 and 2010: \$ (2,263,397)
 Performance Guarantee Penalty (20% of Shortfall): \$ (452,679)