

REPORT OF GENERAL MANAGER

APPROVED
NOV 21 2011

NO. 11-306

DATE November 21, 2011

BOARD OF RECREATION
and PARK COMMISSIONERS

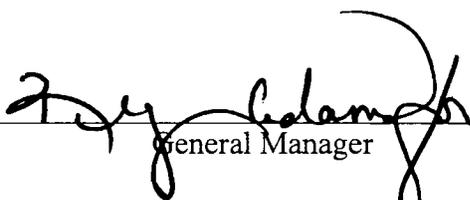
C.D. 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: THE GREEK THEATRE CONCESSION – ANNUAL PERFORMANCE
GUARANTEE PENALTY PAYMENT

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

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



General Manager

Approved _____

Disapproved _____

Withdrawn _____

RECOMMENDATION:

That the Board accept the one-time cash payment of \$135,803.82 and In-Kind Services to the Department, as detailed in the summary of this Report, as payment in-full for the 2009 and 2010 Performance Guarantee penalty.

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. (NGI) for the operation and maintenance of the Greek Theatre. The Concession Agreement includes a Performance Guarantee which requires that the annual gross revenue would not be less than \$15 million for the first concert season and would increase by 3% annually. The penalty for not meeting the Performance Guarantee is 20% of the amount under the guaranteed minimum.

For the 2009 and 2010 seasons, NGI was unable to meet the Performance Guarantee. On March 16, 2011, a letter was sent from the Department to NGI informing them about the Performance Guarantee penalty of \$493,789.40. On April 12, 2011, staff met with NGI to discuss the matter. Staff also reviewed the year-end financial documents and accounting adjustments previously submitted by NGI for calendar years 2009 and 2010. The accounting adjustments revise the gross revenue reported by NGI and the Performance Guarantee penalty is recalculated to be \$452,679.40.

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Period	Performance Guarantee	Actual Annual Gross Revenue	Performance Guarantee Shortfall	Penalty (20% of Shortfall)
2009	\$ 18,150,000	\$ 17,998,995	\$ 151,005	\$ 30,201.00
2010	\$ 18,600,000	\$ 16,487,608	\$ 2,112,392	\$ 422,478.40
Total Penalty:				\$ 452,679.40

Staff recommends that the Board accept a revised Performance Guarantee penalty of a one-time cash payment of \$135,803.82 and that consideration be given for \$576,102.65 of in-kind services that NGI has provided to the Department, the Greek Theatre, and the community over the term of the Concession Agreement.

One-Time Cash Payment

The one-time cash payment of \$135,803.82 represents the projected amount of rent that NGI would have paid had NGI met the Performance Guarantee:

2009 Performance Guarantee:	\$	18,150,000.00
2009 Gross Revenue:	\$	17,998,995.00
2009 Shortfall:	\$	151,005.00
Rent on 2009 Shortfall (6% of Shortfall):	\$	9,060.30
2010 Performance Guarantee:	\$	18,600,000.00
2010 Gross Revenue:	\$	16,487,608.00
2010 Shortfall:	\$	2,112,392.00
Rent on 2010 Shortfall (6% of Shortfall):	\$	126,743.52
TOTAL PROJECTED RENT ON SHORTFALL:	\$	135,803.82

In-Kind Services

During the term of the Concession Agreement, NGI has: 1) assumed costs for traffic operations originally provided at no cost by the Department of Transportation (DOT); 2) provided operational and maintenance staff for events which benefited the public, primarily schools, and for which the Department would have had to provide staff; 3) provided non-contractually required capital improvements; and 4) purchased a sound monitoring system to ensure compliance with noise requirements. The value of the in-kind services is as follows:

DOT Parking Costs:	\$	43,180.00
Event Subsidy (Bach, Rock and Shakespeare):	\$	170,287.00
Event Subsidy (High School Graduations):	\$	194,340.00
Event Subsidy (Cosmic Conjunction):	\$	11,408.00
Capital Improvement (Capacity Adjustment)	\$	47,408.65

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Capital Improvement (Plaza Bar):	\$	71,015.00
Sound Monitoring System:	\$	<u>38,464.00</u>
TOTAL IN-KIND SERVICES	\$	576,102.65

The one-time cash payment and in-kind services total \$711,906.47 and surpass the performance guarantee penalty of \$452,679.40.

New Venue (The Nokia Theatre)

The recommendation to review and reconsider the performance guarantee penalty is based on a new venue opening in the surrounding area, the Nokia Theatre, which has negatively impacted NGI's ability to meet the performance guarantee.

On May 9, 2002, prior to the execution of the Concession Agreement, a letter was sent from the Department to representatives of NGI that 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).

In 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.

Prior to the opening of the Nokia Theatre, the Greek Theatre and the Gibson Amphitheatre competed for the primary concert market in the Los Angeles area. Attachment B shows that during the four years prior to the Nokia Theatre opening (2003 – 2006), 52% of total ticket sales were attributed to the Greek Theatre and 48% were attributed to the Gibson Amphitheatre. The four years after the opening of the Nokia Theatre (2007- 2010), 36% of total ticket sales were attributed to the Greek Theatre, 31% were attributed to the Gibson Amphitheatre, and the 33% were attributed to the Nokia Theatre.

The effect of the Nokia Theatre on both the Greek Theatre and Gibson Amphitheatre was immediate and is expected to be permanent.

Concession Performance

NGI has worked hard to ensure that the Greek Theatre is a world class operation. From 2001 to 2010, the Greek Theatre has been recognized by the Annual Pollstar Magazine Awards as the Best Small Outdoor Venue (except for 2002). Pollstar also recognized Rena Wasserman, the Greek Theatre General Manager, as the "Facility Executive of the Year" for 2009 and 2010.

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NGI has worked cooperatively with the Department to ensure impact of concert events to the surrounding community is minimal, hosts community meetings to improve operations, and has partnered with the Department on concerts benefiting the Griffith Park Recovery efforts in 2007. It should also be noted that the overall performance by NGI has surpassed the minimum contractual requirements (Attachment C). Between the beginning of the first contract season in 2002 and the end of the concert season in 2010:

1. The cumulative Performance Guarantee target totaled \$151,200,000 and the actual gross revenue totaled \$175,172,677.
2. The cumulative Minimum Annual Rent requirement totaled \$10,800,000 and the actual rent paid to the Department totaled \$13,298,191.

The acceptance of the one-time cash payment of \$135,803.82 ensures that the Department receives the same compensation had NGI met the Performance Guarantee and the acceptance of the In-Kind Services allows consideration for the negative effect of the Nokia Theatre.

FISCAL IMPACT STATEMENT:

The additional one-time payment of \$135,803.82 will be deposited into the Department's General Fund (Fund 302 Department 88 Revenue Source 4150 Work Order RAPX0210).

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

**BOARD OF RECREATION AND
PARK COMMISSIONERS**

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**DEPARTMENT OF
RECREATION AND PARKS**
200 N. MAIN ST.
13TH FLOOR
LOS ANGELES, CA 90012

(213) 473-5868
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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

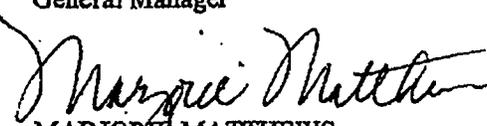
Dear Mr. Papiano:

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,

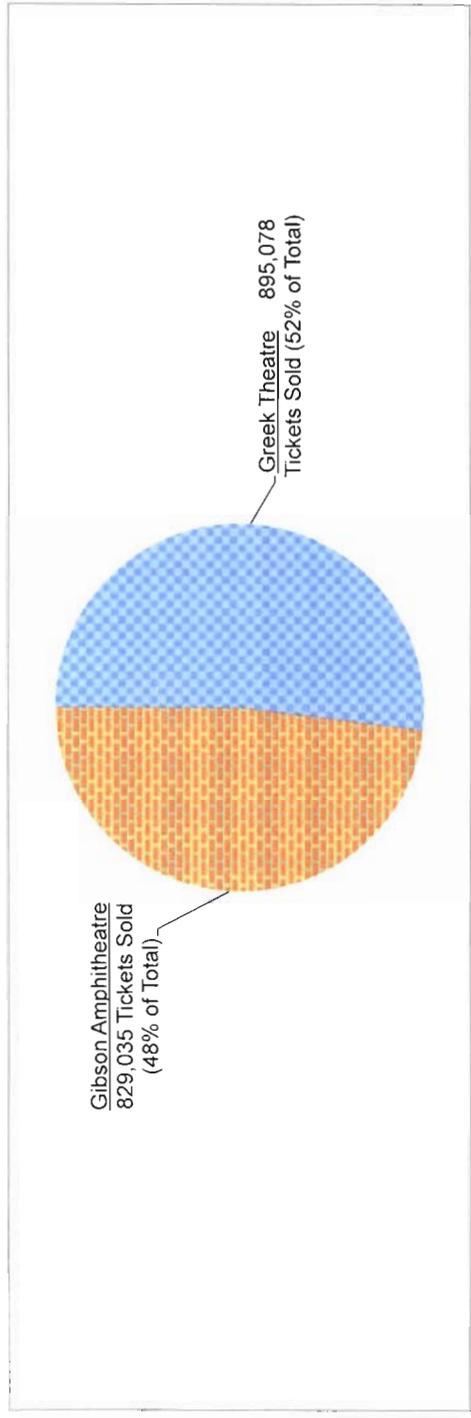
ELLEN OPPENHEIM
General Manager


MARJORIE MATTHEWS
Executive Officer

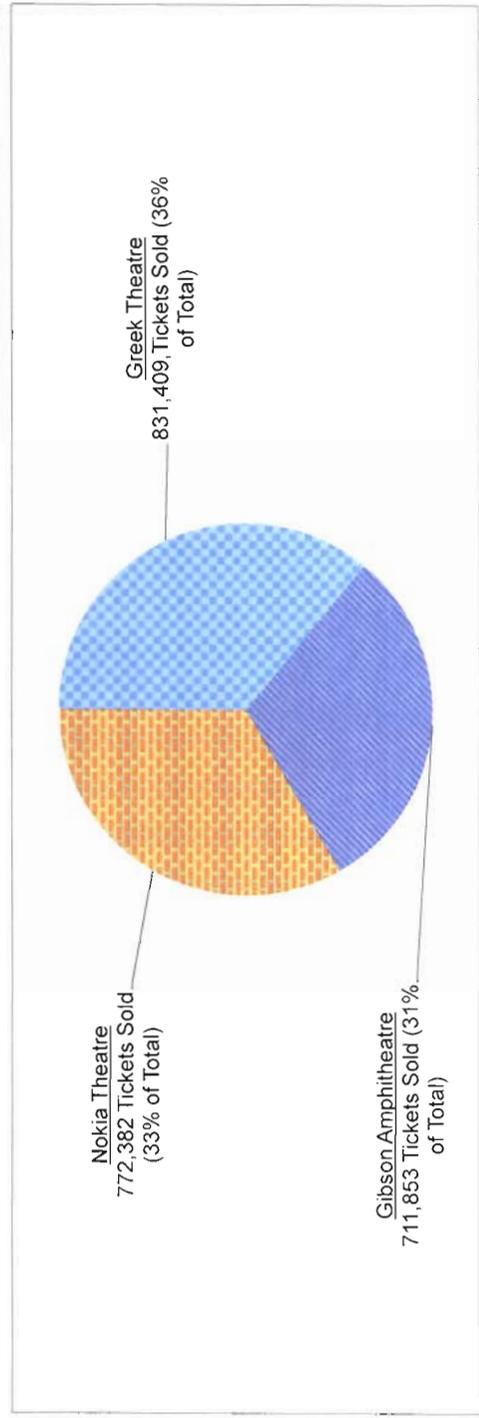
cc: Board of Recreation and Park Commissioners
Pete Echeverria
Mark Brown

DEPARTMENT OF RECREATION AND PARKS
THE GREEK THEATRE CONCESSION - COMPARISON OF TOTAL TICKET SALES
BETWEEN 2003 AND 2010

Venue	2003		2004		2005		2006		4 YEAR TOTAL	
	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold
Greek Theatre	190,286	48.96%	238,271	63.14%	248,248	48.30%	218,271	49.14%	895,076	51.92%
Gibson Amphitheatre	198,358	51.04%	139,074	36.86%	265,689	51.70%	225,913	50.86%	829,034	48.08%
TOTALS	388,644	100.00%	377,345	100.00%	513,937	100.00%	444,184	100.00%	1,724,110	100.00%



Venue	2007		2008		2009		2010		4 YEAR TOTAL	
	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold	No. of Ticket Sold	% of Total Tickets Sold
Greek Theatre	275,893	51.98%	207,869	32.59%	181,004	30.77%	166,642	29.83%	831,408	35.90%
Gibson Amphitheatre	186,776	35.19%	165,053	25.87%	172,514	29.32%	187,509	33.57%	711,852	30.74%
Nokia Theatre	68,135	12.84%	264,967	41.54%	234,811	39.91%	204,468	36.60%	772,381	33.35%
TOTALS	530,804	100.00%	637,889	100.00%	588,329	100.00%	558,619	100.00%	2,315,641	100.00%



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

Year	PERFORMANCE GUARANTEE		
	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

	ANNUAL RENT PAYMENT		
	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