

November 7, 2016

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Resolution authorizing execution of the Funding Agreement with Performing Arts Center Eastside (“PACE”) for Tateuchi Center for period of 2016-2066.

FISCAL IMPACT

The action sought this evening will not have an immediate fiscal impact upon the City. This intermediate step of proceeding to negotiate a Funding Agreement for Council approval at a later date will commit the parties to specific obligations. The City will be obliged to reimburse PACE \$20 million in 2020 for capital costs of construction of the Tateuchi Center if PACE meets its obligation of securing adequate funding for the project by September 2017 and completes construction by October 2020.

STAFF CONTACTS

Lori Riordan, City Attorney, 452-7220
City Attorney’s Office

Dan Stroh, Planning Director, 452-5255
Planning and Community Development

Toni Call, Finance Director, 452-7863
Finance Department

POLICY CONSIDERATION

In 2006 the City Council adopted Cultural Arts Funding Principles to guide its future investments and decision-making on requests from cultural arts organizations. Proponents seeking funding from the City Council outside of the Arts Commission grants process must demonstrate that they meet the funding principles which are as follows:

- Must have a sustainable long-term financial model, including strong private sector financial commitment;
- Must clearly define public benefit to be received in exchange for investment (for example, ownership interest in an asset, scholarships, public access to the facility at low or no cost to low income and disabled persons);
- Should provide for City involvement in financial oversight;
- Must be an investment in a facility, or for support of the operation of the facility. Cannot fund fundraising activities.

BACKGROUND

In late 2013 PACE representatives approached the City seeking new funding for the Tateuchi Center, the performing arts facility proposed for construction in downtown Bellevue. The City had previously entered into a Funding Agreement with PACE to provide \$2 million in funding for PACE to aid in covering the costs of architectural and engineering services for the design of the facility. This Funding Agreement was entered into in 2009.

The request for additional funding made in 2013 was for substantial additional funds, as a catalyst to incentivize substantial public and private investment still needed to fund construction of the facility. In early 2014 Council passed Resolution 8695 setting out a framework for collaborating with PACE to “advance public and private efforts to secure a major performing arts facility, the Tateuchi Center, in Bellevue for the benefit of the community and the entire Eastside.” This collaborative process included public outreach, comparison of the PACE model with other performing arts facilities in the region, identification of financing options, an economic benefits study and a feasibility study for the facility and its proposed programming.

The process culminated in Council’s adoption, in May 2015, Resolution No. 8914, stating the “City’s intention to make a capital investment of up to \$20 million in the Tateuchi Center under certain conditions,” and directing negotiation of a contract with PACE. The Resolution also contained a list of the conditions to be negotiated as follows:

- Securing a substantial real property interest in the Tateuchi facility as security for the investment, together with an obligation to repay the investment if the facility is not operated as a public performing arts center for 50 years;
- Providing the public investment on a “last-dollars” in basis, that is, dependent upon PACE first securing the balance of funding necessary for the project, by September, 2016;
- Inclusion in the project of an education center with a flexible configuration that can adapt to a wide variety of programming and studio theatre presentations;
- Timely completion of the project;
- Securing 50 years of public programming commitments from PACE consistent with the terms of the 2009 20-year agreement between the City and PACE;
- PACE’s completion of a programming study including local public engagement to ensure programming desirable to the public;
- Limitations on the commercial or unrelated use of the facility consistent with current law relative to PACE’s state property tax exemption;
- The City, PACE and Bellevue Convention Center entering into a facilities cooperation framework; and
- No commitment to funding of operations; and such other terms and conditions deemed appropriate and consistent with the City’s established principles for investing in cultural facilities.

Between May and December 2015, City staff and consultants negotiated with PACE and its representatives to reach agreement on a Term Sheet that has served as the foundation for drafting of a formal Funding Agreement.

The Term Sheet formally approved by Council on December 14, 2015 includes all of the conditions contained in Resolution No. 8914. Some specific elements include:

- A firm \$20 million (as opposed to “up to”) City investment contingent upon execution by PACE of all required preconditions;
- A proposed property interest recorded in favor of the City in the form of a recorded restrictive covenant secured by a deed of trust;

- PACE's obligation to operate the Tateuchi Center as a performing arts facility for 50 years or to reimburse the City on a pro rata basis if it ceases to operate sooner;
- City obligation "last-dollar in" following completion of construction;
- Timely completion of project by October 2019;
- Inclusion of an education center available for a variety of programming;
- Access by the City for public events up to five times annually;
- Collaboration with the Convention Center regarding programming;
- Programming study and completion of a business plan;
- Limitations on commercial use of the facility; and
- No funding from City for operations.

The draft Funding Agreement negotiated over these past several months includes all of these conditions, as well as additional provisions that are consistent with the Council's Cultural Arts funding principles, and the existing Funding Agreement between the City and PACE (which will be superseded by this Agreement) such as regular financial reporting and access to programming for the public, low income and disabled persons.

On October 17, 2016 staff presented the draft Funding Agreement to Council along with the request from PACE to extend the dates for performance of its fundraising obligation, completion of construction and other benchmarks associated with securing the City's interest in the real property and the Center's programming. Council gave direction at that time to accept PACE's requests for additional time and bring forward the final Agreement for approval on an upcoming consent agenda. Consistent with discussion on October 17, 2016, PACE has agreed to more frequent fundraising reports during the period leading up to the September 2017 deadline as reflected in the terms of the final Funding Agreement proposed for Council approval. Once PACE has achieved the funding benchmark and proceeded to construction, fundraising reports would once again be provided every six months until substantial completion of the project.

EFFECTIVE DATE

If approved, this Resolution becomes effective immediately upon Council adoption.

OPTIONS

- 1) Approve Resolution authorizing the City Manager or his designee to execute the certain Funding Agreement with Performing Arts Center Eastside ("PACE") for Tateuchi Center for period of 2016-2066.

- 2) Do not approve Resolution and give alternative direction to staff.

RECOMMENDATION

Option 1

MOTION

Move to adopt Resolution No. 9181 authorizing execution of the Funding Agreement with Performing Arts Center Eastside ("PACE") for Tateuchi Center for period of 2016-2066.

ATTACHMENTS

Draft Funding Agreement with PACE 2016-2066

Proposed Resolution No. 9181

AVAILABLE IN COUNCIL DOCUMENT LIBRARY

Attachments A-D to Funding Agreement