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**CITY OF SACRAMENTO -- COUNTY OF SACRAMENTO**



**APPROVED**  
OCT 31 2000  
OFFICE OF THE  
CITY CLERK

**October 10, 2000**

**TO:** Mayor, Member of the Sacramento City Council  
Sacramento County Board of Supervisors

**FROM:** Thomas Friery, City Treasurer  
Geoffrey Davey, County Chief Financial Officer  
Barbara Bonebrake, Director, City Culture and Leisure Services Department  
Andy Plescia, Director, City Economic Development Department

**SUBJECT: H STREET THEATER PROJECT UPDATE**

**LOCATION AND DISTRICT:** 1419 "H" Street  
City Council District 1  
Supervisorial District 1

**RECOMMENDATION:**

It is recommended that the Sacramento County Board of Supervisors and the Sacramento City Council adopt a resolution to:

- (1) Receive and file the update on the H Street Theater Project Renovation.
- (2) Approve the attached Business Terms Agreement (Appendices A, B & C) which has been executed by authorized representatives of the California Musical Theatre (CMT) and the Sacramento Theatre Company (STC) and incorporates the following changes to the original financing plan:
  - (a) Deletion of a short-term loan from the City for up to \$475,000.

- (b) Conceptually approve an extension of the City and County's annual commitment of \$66,000 each per year to the H Street Arts Partnership Fund (HTP Fund) for a period not to exceed the year 2020.
  - (c) Modify the existing agreement with STC and CMT to allow a payment out of the HTP Fund to be made without the matching requirement.
  - (d) Review changes to the original revenue projections.
  - (e) Incorporates a "lock-box" mechanism to assure all project-specific pledged revenues of the CMT and STC are captured, and if necessary, other revenues earned at the project site are available to meet the debt service.
- (3) Give direction to staff to proceed with the financing related to the project.

**CONTACT PERSON:**

Laura Sainz, City Economic Development Department, 264-2677

**FOR COUNCIL/BOARD OF SUPERVISORS MEETING OF:** October 31, 2000

**SUMMARY:**

In October of last year, the City Council and County Board of Supervisors conceptually approved the proposed improvements and financing plan for the H Street Theater Project. Since that time, there have been some changes to the financing plan for the project including:

- (1) Originally, the financing plan included a loan of up to \$475,000 for pre-construction expenses. This loan is no longer necessary.
- (2) In May 1997, the City and County conceptually approved joint funding totaling \$1,320,000 (\$66,000 each over the next ten years) to the H Street Theater Arts Partnership Fund (HTP Fund) for future ADA improvements, new construction and improvements to existing buildings. This commitment will need to be modified to extend the City and County's commitment until 2020 or when the bonds are paid off, whichever occurs first. The revenue is needed in order to support the payments on the bonds.
- (3) The HTP Fund agreement needs to be modified to allow a payment for pre-construction expenses to be made without matching funds.
- (4) The revenue projections originally submitted by California Musical Theatre (formerly the Sacramento Light Opera Association) have changed to reflect the Naming Rights Agreement as well as additional revenue from a new Concert Series. In addition, the Grant that was being proposed as potential revenue is no longer being considered.
- (5) Pledging of all CMT revenues earned at the project site to flow through a "lock-box" account to ensure that if CMT & STC project-specific pledged revenues fall short of meeting debt service requirements, that other CMT revenues earned at the site will be

available to pay debt service payments. This will enable us to avoid a call on the City and County's debt service guarantee on the bonds.

**COMMITTEE/COMMISSION ACTION:**

The project has been reviewed and approved by the Boards of Directors of the Sacramento Theatre Company and the California Musical Theatre.

**BACKGROUND INFORMATION:**

On October 5, 1999, the City Council and Board of Supervisors conceptually approved the H Street Theater Project improvements and financing plan. That conceptual approval included:

- (1) The City and County's joint participation in a capital improvement program at the City/County owned property at 1419 "H" Street.
- (2) A capital financing plan, including:
  - a) Establishment of a Joint Powers Authority (JPA);
  - b) A bond issuance to finance the improvements;
  - c) The commitment of new revenues by STC and CMT for debt service; and
  - d) The continuation of the existing City/County investment in the property.
- (3) The approval of a short-term loan from the City of up to \$475,000 for pre-construction expenses.
- (4) The establishment of a City Capital Improvement Project with authority to spend funds for first year project costs, if necessary.

Following conceptual approval, STC and CMT proceeded to explore the possibility of renovating the existing site. Both STC and CMT started collecting a facilities fee on their ticket sales in order to begin accumulating the revenue necessary to service the debt on potential bonds. This calendar year, CMT collected approximately \$294,000. STC has collected \$57,700 to date, and will continue to collect the fee through this season, which ends in November.

*Environmental Review*

In addition to collecting a facilities fee, CMT also started the environmental review process for the proposed project. CMT has been working with the City to complete the required Environmental Impact Review. The project is in the middle of the process, as the draft EIR has been issued and is in the 45-day review period. The remaining schedule is projected to be as follows:

Final EIR Issued:	11/28/00
Planning Commission review and final action on EIR and variance for setback:	12/7/00
Design Review Board review and approval of final design:	12/20/00
City Council review and approve items listed below:	1/2/01
Board of Supervisors review and approve items listed below:	1/9/01
Joint Powers Authority to approve bond issuance:	By 2/15
Bond Issuance:	3/1/01

*City Council Action*

At the January 2, 2001 City Council meeting City Council is expected to review and approve the following:

- (1) Environmental Impact Review (EIR Certification);
- (2) Business Agreement between STC and CMT;
- (3) Formation and approval of a JPA with the County for bond issuance;
- (4) Bond authorization and approval of related bond documents; and
- (5) Exiting agreements that need to be recorded on the property deed.

At the January 9, 2001 County Board of Supervisors meeting the Board is expected to review and approve the following:

- (1) Business Agreement between STC and CMT;
- (2) Formation and approval of a JPA with the County for bond issuance;
- (3) Bond authorization and approval of related bond documents; and
- (4) Exiting agreements that need to be recorded on the City and County's property deed.

*Business Terms Agreement*

The City Treasurer and County Chief Financial Officer have, with the assistance of Bond Counsel, the Bond Underwriter, and staff from the City's Culture and Leisure Services and Economic Development Departments, negotiated a Business Terms Agreement (Attached as Appendices A, B & C) which details the economic terms of the project, including the delineation of project-specific revenues pledged over the life of the bonds. Following is a summary of the changes to the financing terms from the original terms conceptually approved for the project in October 1999:

- (1) The City and County approved a \$475,000 short-term loan for pre-construction expenses. This loan is no longer necessary as the pre-construction expenses were funded through the HTP account and CMT.
- (2) The need to conceptually approve the extension of the City and County's annual commitment to the HTP Fund. In May 1997, the City and County conceptually approved joint funding totaling \$1,320,000 - \$66,000 each over the next ten years into the HTP Fund. These funds were to be used for ADA and other improvements. This commitment will need to be modified to extend the City and County's commitment until 2020 or when the bonds are paid off, whichever occurs first. This is necessary in order to ensure there is adequate revenue to service the bond debt and to enhance the coverage in order to market the bonds at the lowest possible interest rate and insure bond holder repayment.
- (3) The HTP Fund agreement needs to be modified to allow a payment for pre-construction expenses to be made without matching funds. CMT has contributed \$250,000 to pre-construction expenses, which have been matched by the HTP Fund. The final payment of

pre-construction expenses, estimated to be \$96,000 will need to come from the Fund without a matching portion from CMT. This will allow CMT to deposit the facilities fees collected to date in the reserve fund for the bonds.

- (4) The revenue projections originally submitted by CMT have changed. The new revenue sources include the Wells Fargo Naming Rights Agreement as well as additional revenue from a proposed Concert Series. The Concert Series will be a series of 15 concert dates taking place over a three-week period at the beginning of the summer starting in 2004. In addition, the \$250,000 grant from a private foundation that CMT was going to try to secure is no longer an option.

The changes in the projected revenue sources are summarized in the table below:

Changes in Projected Revenue Sources for H Street Theater Renovation Project		
Revenue Source	Projected in October 1999	Projected in October 2000
Ticket Facilities Fee on Tickets Sold by CMT	\$364,000 annually	\$300,000 Yrs 2000-2001 \$342,000 Yrs 2002-2020
Music Circus Expanded Season Facilities Fee	No expanded season planned.	\$96,000 annually Yrs 2003-2020
Naming Rights Agreement	\$200,000 annually for ten years	\$127,500 annually for ten years
Name a Seat Campaign	\$200,001 for the first three years	\$600,000 for the first five years
Grant	\$250,000 one time	\$0
Concert Series Facilities Fee	No concert series planned.	\$90,000 annually, starting in 2004

- (5) In addition to the above changes in projected revenue there is also an agreement to use a lock box mechanism that will capture all CMT revenues from performances at the project site. If the pledged project related revenues are collected at a rate sufficient to meet the debt service then non-project related revenues will immediately flow back to CMT. However, if the pledged project related revenues are not collected at a rate sufficient to meet the debt service additional funds will be held in order to meet the required bond payment. Project related revenues in excess of what is needed to service the bond payment will go to a reserve fund that will build up in order to cover any shortfall in debt payments as well as allow CMT and STC to pay off the bonds early, if possible.

**FINANCIAL CONSIDERATIONS:**

*Analysis of Bond Structure*

The financing plan being proposed for the H Street Theater Project is designed to help STC and CMT meet their long-term capital improvement goals while minimizing the risk to the City and

County. The City Treasurer and County Chief Financial Officer have performed an initial analysis of alternative bond structures.

The original bond amount proposed in 1999 for a 20 year bond maturity was \$8.15 million (See Attached - Table 1). As shown in Table 1, this particular financing plan assumed that the first two years of construction were going to be paid for out of incoming revenues, not the bond proceeds.

Table 2 describes the currently proposed bond issuance of \$11.4 million, which allows incoming project related revenue to build up in the reserve account in order to assure a safeguard for future debt service. In addition, the overall cost of the project has grown, from a total of \$8.2 million in October 1999 (including both pre-construction and construction costs) to approximately \$8.9 million today, including \$596,000 in pre-construction expenses and \$8.36 million in construction costs. The cost of the project has gone up due to an increase in construction costs in the region and design changes that resulted from meetings with the neighborhood and the Design Review Board. The City and County's commitment continues to be \$66,000 per year each until 2020 max.

Table 3 shows the revenues committed to servicing the bond debt. Based on the ticket revenue projections given by CMT and STC, the revenue available to pay off the debt service is adequate. If the ticket revenue collected is at least 74% of what has been projected, the bonds can be paid in the 20-year period. If the ticket revenue collected is 100% or more of what has been projected, the bonds will be paid in 14 years or earlier.

In addition, the City and County have secured a lock-box mechanism that will capture all revenues related to CMT performances held at the project site as security, in case project related revenues fall short. The current bond scenario also allows for a reserve fund, which will have at least one-year's worth of debt service payments in case all captured revenue falls short.

#### **ENVIRONMENTAL CONSIDERATIONS:**

The H Street Theater Project is in the midst of an EIR. A Notice of Preparation was issued and the draft EIR is now being circulated for public comment. The 45-day public comment period ends on November 3<sup>rd</sup>. In addition, the project has been presented to the Design Review Board twice for comments and will be returning for a final vote on the proposed design in December of this year.

#### **POLICY CONSIDERATIONS:**

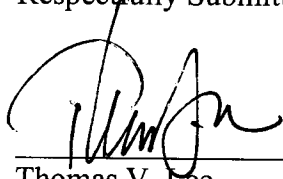
In January of 1997, the Regional Performing Arts Center and Conference Facility Study indicated a desire to support and improve existing performing arts facilities in the downtown area. The H Street Theater Project is consistent with that study's findings. This proposal is also consistent with City policy to support activities that facilitate joint City/County cooperation and improve City/County property that will enrich the community through cultural and entertainment activities. 85% of the debt is funded by the two non-profit theaters. The project is also consistent with the County's traditional use of TOT revenues to support cultural activities for the entire

community. In addition, the improvement of City/County property will aid in drawing new audiences to the facilities, contributing to the revitalization of Downtown, including more pedestrian traffic being drawn to the City's Lot C, which will feature ground floor retail that supports the theater activities across the street. Finally, the financial conditions placed on STC and CMT to develop outside sources of revenues will contribute to their economic stability while minimizing financial risk to the City and County.

**ESBD CONSIDERATIONS:**

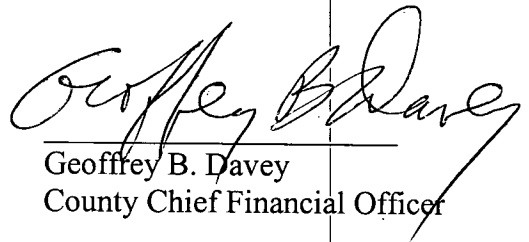
All purchases and contract requirements will fall under the City's ESBD requirements.

Respectfully Submitted,

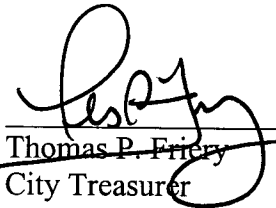


Thomas V. Lee  
Deputy City Manager

Respectfully Submitted,

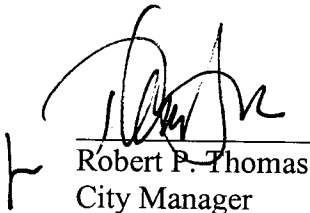


Geoffrey B. Davey  
County Chief Financial Officer



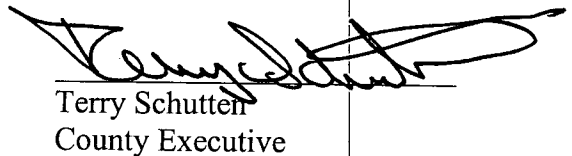
Thomas P. Fricry  
City Treasurer

RECOMMENDATION APPROVED:



Robert P. Thomas  
City Manager

RECOMMENDATION APPROVED:



Terry Schutten  
County Executive

**TABLE 1**  
**October 1999 - Financing Plan for H Street Theater Project**

<b>Total Construction Budget</b>	<b>\$ 8,237,999</b>
Construction Expenses to be Paid for out of City Loan and HTP Fund	<u>(878,571)</u>
Balance of Construction Budget	<b>\$ 7,359,428</b>
<b>Balance of Construction Budget</b>	<b>\$ 7,359,428</b>
Total Revenue to be Collected & Paid out in 2000 & 2001*	<u>(1,794,653)</u>
Net Balance of Construction Budget	<b>\$ 5,564,775</b>
<b>Net Balance of Construction Budget</b>	<b>\$ 5,564,775</b>
Less Interest Earnings	<u>(586,791)</u>
Balance due for Construction	<b>\$ 4,977,984</b>
<b>Breakdown of Bond Issuance Costs</b>	
Balance due for Construction	\$ 4,977,984
Reserve Fund	815,000
Capitalized Interest Fund	934,242
City Loan Repayment (with interest)	504,287
Property Note Payment	668,221
Cost of Issuance	<u>250,268</u>
<b>Total Bond Issuance</b>	<b>\$ 8,150,002</b>

\*This includes \$400,000 in Naming Rights Revenue, \$133,333 in Name-A-Seat Revenue, \$250,000 in a Foundation Grant, \$728,000 in ticket facilities fees, \$132,000 in city/county contribution, and \$151,320 in the property note repayment.

Note: These numbers are estimates based upon market rates on a specific date. The actual numbers will depend on market conditions when the bonds are issued.

**TABLE 2**  
**October 2000 - Financing Plan for H Street Theater Project**

The total bond issuance will be approximately \$11.4 million broken out as follows:

**Breakdown of Bond Issuance Costs**

Construction Budget	\$8,360,000
Reserve Fund	\$965,000
Capitalized Interest Fund	\$1,000,000
Property Note Payment	\$600,000
Cost of Issuance	\$475,000
<b>Total Bond Issuance</b>	<b>\$11,400,000</b>

Note: These numbers are estimates based upon market rates on a specific date. The actual numbers will depend on market conditions when the bonds are issued.

TABLE 3

DATE	CITY/ COUNTY CONTRIB.	CASH FLOW FROM LAND PAYOFF	CMT FACILITY CHARGE	CMT CHARGE EXP. SEASON	CMT CHARGE CONCERT SER.	STC FACILITY CHARGE	CMT FROM OPERATING FUNDS	NAMING RIGHTS	NAME-A-SEAT CAMPAIGN	MISC. CAMPAIGN	TOTAL FUNDS
3/1/01			300,000.00			89,272.00		127,500.00	125,000.00	50,000.00	691,772.00
3/1/02	132,000.00	121,056.00	300,000.00			91,000.00		127,500.00	175,000.00	50,000.00	996,556.00
3/1/03	132,000.00	121,056.00	342,000.00			91,000.00		127,500.00	150,000.00	50,000.00	1,013,556.00
3/1/04	132,000.00	121,056.00	342,000.00	96,000.00		91,000.00		127,500.00	100,000.00	50,000.00	1,059,556.00
3/1/05	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00	50,000.00		1,124,556.00
3/1/06	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,074,556.00
3/1/07	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,074,556.00
3/1/08	132,000.00	90,792.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,044,292.00
3/1/09	132,000.00		342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			953,500.00
3/1/10	132,000.00		342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			953,500.00
3/1/11	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/12	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/13	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/14	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/15	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/16	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/17	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/18	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/19	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/20	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
3/1/21	132,000.00		342,000.00	96,000.00	90,000.00	90,000.00	75,000.00				735,000.00
<b>TOTAL</b>	<b>2,640,000.00</b>		<b>7,098,000.00</b>	<b>1,728,000.00</b>	<b>1,530,000.00</b>	<b>908,272.00</b>	<b>1,275,000.00</b>	<b>1,275,000.00</b>	<b>600,000.00</b>	<b>200,000.00</b>	<b>18,071,400.00</b>

APPENDIX A

**Parcel A**

**Parcel B**

City & County

SLOA

*Site Lease - A*

*Site Lease - B*

JPA

*Facility Lease*

City & County

*Sublease Agreement*

SLOA & STC

## Appendix B

### Description of Proposed Structure of Financing

The following paragraphs describe the proposed structure of financing (the "Financing") for the H Street Theater Project (the "Project") which was conceptually approved by resolution of the City Council of the City of Sacramento and the Board of Supervisors of the County of Sacramento adopted on October 5, 1999 and September 27, 1999, respectively:

1. **Site Leases.** The City and County own Parcel A (1419 H Street). California Musical Theater (CMT) owns Parcel B (1422 G Street). All existing leases involving Parcel A and Parcel B will be terminated simultaneously with the execution and delivery of the Financing leases described herein (i.e. the closing of the Financing). Under separate Site Leases, the City and County will lease Parcel A to a joint powers authority created by the City and County (the "JPA") and CMT will lease Parcel B to the JPA.<sup>1</sup> The JPA appoints the City and the County to cause the Project to be constructed and installed.
2. **Facility Lease.** The JPA will lease Parcel A and Parcel B to the City and the County under a Facility Lease. The City and the County will each be responsible for 50% of the total lease payments under the Facility Lease from their general funds based on use and occupancy of Parcel A and Parcel B. The total lease payments required under the Facility Lease will equal the debt service obligations on the Certificates of Participation (COPs).<sup>2</sup> The City and County agree to construct and install the project as agent of the JPA and acknowledge that the City and County have delegated to CMT and STC, pursuant to the Sublease Agreement, described in Paragraph 3, below, the authority to enter into contracts for the construction and installation of the Project with certain conditions.
3. **Sublease Agreement.** The City and County, as sublessors, will sublease Parcel A and Parcel B to STC and CMT under a Sublease Agreement which shall contain substantially the same terms as those set forth in the existing subleases between the City and CMT and STC which are to be terminated in connection with the Financing, with the following principal revisions: (i) the Sublease Agreement shall provide for lease payments sufficient to cover the debt service obligations on the Certificates of Participation; (ii) the Sublease Agreement shall contain provisions obligating CMT and STC to act as agents for the City and County to jointly administer and contract for construction and installation of the Project; and

<sup>1</sup> Both Site Leases will be structured as capital leases for tax purposes and will effectively transfer title to Parcel A and Parcel B to the JPA. The Facility Lease will also be structured as a capital lease and will transfer title to the City and County. The Sublease Agreement will be structured as a true lease with respect to Parcel A and a capital lease with respect to Parcel B. This will accomplish one of the goals of the financing to have title remain as originally held by the parties. Accordingly, title to Parcel A will remain with the City and County and title to Parcel B will remain with CMT.

<sup>2</sup> A recent change in law will allow the JPA, at its option, to issue Bonds instead of COPs for the Financing.

(iii) the Sublease Agreement shall also contain covenants relating to the Project construction and other business related covenants. While STC will be a party to the Sublease Agreement, its payment obligations under that agreement shall be limited to the funds obtained by STC from the facilities fees (see Appendix C, part C, (3) (a)). STC will not be the lessee of Parcel B. To the extent that CMT pays the lease payment required under the Sublease Agreement in amounts sufficient to pay the debt service obligation on the Certificates of Participation, the City's and County's obligations to pay lease payments required under the Facility Lease to the Bond Trustee as assignee of the JPA will be credited. To the extent that CMT's payments are insufficient to pay the required debt service obligation on the Certificates of Participation, the City and County will pay any deficiency on a 50/50 basis.

4. **Certificates of Participation.** Certificates of Participation will be delivered to the Bond Trustee evidencing the right to receive payment from the City and the County under the Facility Lease. The JPA will assign its rights under the Facility Lease to the Trustee. In consideration of the assignment, the Trustee will pay the net proceeds of the Certificates of Participation to the JPA and the JPA will use the proceeds for construction of the Project improvements, and refinancing the private mortgage on Parcel B.
5. **Deed of Trust.** CMT will provide a deed of trust on its fee interest in Parcel B to the City and the County to secure CMT's obligation under the Sublease Agreement.
6. **STC Guaranty.** STC will guaranty CMT's obligations under the Sublease Agreement. STC's obligations under the guaranty will be limited to the revenues STC receives from the facilities fee.

## Appendix C

The following paragraphs describe the stages for funding the financing (the "Financing") required to complete the H Street Theater Project (the "Project") and the conditions precedent which must be satisfied in order for the Financing to occur:

### A. DESCRIPTION OF THREE STAGES OF FUNDING

Action by the City and County is required for three separate stages of funding to CMT and STC (together, the "Arts Partnership"). Each stage has its own set of pre-conditions that must be met before money is made available. The three stages are:

- (1) **Release of up to \$476,829 currently held by the City in the HTP FUND for the Arts Partnership (the "HTP Fund Release.")** Pursuant to a Funding Agreement dated as of May 1, 1997 (the "Funding Agreement"), and subject to certain terms and conditions contained therein, the City and County have each agreed to contribute \$66,000 each fiscal year during the term of the Funding Agreement to a fund managed by the Department of Community and Visitor Services and referred to as the "HTP Fund." The Funding Agreement also sets forth procedures whereby an "Arts Partnership" comprised of CMT and STC may draw upon the HTP Fund to pay the cost of approved Project improvements as well as debt service for any Project Financing. The public funds contributed pursuant to the HTP Fund, together with accrued interest, presently total approximately \$476,829. Upon satisfaction of the pre-conditions described below, those accumulated HTP Funds shall be disbursed to the Arts Partnership on the condition that the funds be used solely to pay for approved pre-construction Project expenses. Under its present terms, the Funding Agreement ends on May 6, 2007.
- (2) **Delivery of the COPs.** The construction funding for the Project will come from the delivery of Certificates of Participation ("COPs")<sup>1</sup> by the Joint Powers Authority ("JPA") to be formed by the City and County. The JPA will cause the proceeds of the COPs to be used to construct the Project improvements, and refinance the private mortgage currently on Parcel B. Please refer to Appendix A and Appendix B for a description of the COPs financing structure.
- (3) **Continued Disbursements from the HTP Fund.** In addition to the HTP Fund disbursement described in Part A (1), above, pursuant to the terms of the Funding Agreement, as extended pursuant to Part B (1), below, the Arts Partnership may draw on the HTP Fund for payment of costs of approved Project improvements and/or for debt service for the COPs. This may cause the amounts on deposit in the HTP Fund to be yield restricted to yield on COPs.

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<sup>1</sup> A recent change in law will allow the JPA, at its option, to issue Bonds instead of COPs for the Financing.

**B. PRE-CONDITION FOR THE RELEASE OF ACCUMULATED HTP FUNDS:**

Before any funds accumulated in the HTP Fund are released to the Arts Partnership pursuant to Part A (1), above (i.e., the first stage of Project funding), the following two pre-conditions must be satisfied:

- (1) **Agreement to the Pre-Conditions.** The Arts Partnership must agree to the pre-conditions for the delivery of the COPs contained in this Appendix C.
- (2) **Pre-construction Expenses and Documentation of Pre-Construction Expenses Already Incurred:** The Arts Partnership must deliver to the City and County for approval by both: (i) invoices or other documentation acceptable to the City Manager and the County Executive documenting project pre-construction expenses incurred through the date of the submittal, together with (ii) a budget for anticipated remaining pre-construction Project expenses.

**C. PRE-CONDITIONS FOR THE DELIVERY OF COPS**

- (1) **Amendment of the Funding Agreement.** The Funding Agreement will be amended as follows:
  - (a) The City and County obligation to make annual contributions of \$66,000 each will be extended beyond its current termination date of May 6, 2007 to the year in which any COPs delivered for the theater improvements mature or are paid off, but in no event later than Fiscal Year 2020-2021. If no COPs are delivered, the current termination date of May 6, 2007 will remain in effect.
- (2) **Agreement to business points for the COPs.** Set forth below in this Appendix C are the business points (some of which will be contained in the COP documents) relating to the Arts Partnership's obligations and protections for the general funds of the City and the County:
  - (a) Both CMT and STC have imposed and have been collecting a surcharge, called a "facilities fee" on tickets sold for CMT and STC performances at the Project property. This does not include tickets sold for private, fund raising events not open to the general public. Since January 2000, STC has collected a facilities fee of \$2.50 per ticket sold and CMT has collected a facilities fee of \$3.00 per ticket sold. CMT shall be obligated to continue to collect the facilities fees until the COPS or any subsequent debt issuance to refinance the COPs, have been redeemed or mature. STC shall be obligated to collect the facilities fees for a term ending December 31, 2009.
  - (b) The obligation to pay the City and County lease payments under the Sublease Agreement is an obligation of CMT. STC will guaranty the

lease payments under the Sublease Agreement from amounts collected from the STC facilities fee.

- (c) A binding obligation has been received by CMT from Wells Fargo Bank for the Naming Rights for a minimum of \$127,500 per year for ten years. The City Manager, County Executive, and Bond Counsel must review and accept the Naming Rights Agreement prior to sale of the COPs.
- (d) CMT's Name-a-Seat campaign must secure pledges to generate \$600,000 over five years. In securing pledges for future year payments, CMT must utilize a pledge form acceptable to the City and County. The City and County will not accept the form if it does not create an enforceable obligation for those pledging to actually make future year payments.
- (e) The respective facilities fees of both CMT and STC, the CMT Naming Rights revenues, CMT Name-a-Seat revenues, the CMT expanded season facilities fee, and the CMT concert series facilities fee will collectively be referred to as "Project Related Revenues." In addition, certain CMT operating funds and certain CMT miscellaneous campaign funds are also required as revenue sources to repay the debt service on the COPs. Please see attached Schedule 1 which identifies "Project Related Revenues" as well as other mandatory sources of revenues and minimum amounts to be collected.
- (f) CMT is obligated to use any Project Related Revenue related to any of its productions on Parcel A and B or as defined in the attached Schedule 1 to make lease payments to the City and County under the Sublease Agreement. Though CMT and STC expect that Project Related Revenues, as defined above, will be sufficient to make the payments required under the Sublease Agreement, CMT must agree to pledge and assign all of its revenue related to any of its productions held on Parcel A and B to Sublease payments in order to protect the City and the County against the possibility of a shortfall in Project Related Revenues.
- (g) A lock-box mechanism must be in place for all Project-Related Revenues. All Project Related Revenues from STC and CMT, as received, will be placed in lock-box at a bank for the benefit of the JPA, the City, and the County. The full amount of Project Related Revenues collected to date should be transferred to the lock box account immediately on formation of the JPA.
- (h) All parties will agree upon a schedule for the receipt of Project Related Revenues. Project Related Revenues should be collected at a rate sufficient to make the next payment pursuant to the Sublease Agreement (the "Sufficiency Rate" - see attached Schedule 2). Upon delivery of the COPs, all revenues of CMT related to any of its productions on Parcel A

and B will also flow through a lock box bank. As long as Project Related Revenues and other revenues identified on Schedule 1 have been received at least as fast as the Sufficiency Rate, all non-Project Related Revenues will flow immediately out of the lock box bank to CMT. If revenues are received more slowly, however, the lock box bank will retain a portion of revenues as necessary to return the rate of accumulation to the Sufficiency Rate.

- (i) To the extent that Project Related Revenues exceed Sublease payments in any year, the excess will be retained by the Bond Trustee as a reserve against lease payment shortfalls in future years. If the reserve becomes large enough, it will be used to fully defease or prepay the COPs. This revenue may be subject to yield restriction.
- (j) CMT and STC will, as agent for the City and County, cause the theater improvements to be constructed. This will be accomplished through a guaranteed maximum price contract. The improvements will be constructed by a contractor paying prevailing wages and selected pursuant to a bid process. Construction will be managed by a construction manager approved by the City and County.
- (k) While the COPs are outstanding, CMT may not incur any additional debt or similar obligation, other than contracts necessary for performances, without the prior written approval of the City and County. Debt is described as the borrowing of funds versus contractual agreements necessary in the ordinary course of business. Existing debt instruments will also need to be reviewed by bond counsel.
- (l) The Arts Partnership must provide all materials reasonably requested for due diligence by the City and County.
- (m) Counsel to CMT and STC must deliver opinions acceptable to the City and County with respect to, among others things, the 501(c)(3) status of CMT and STC, the authority of CMT and STC to enter into the agreements contemplated by these Financing arrangements and the enforceability of the obligations of CMT and STC under such agreements.
- (n) Existing leases between the City and CMT/STC will be terminated and replaced by the Sublease Agreement and other Project documentation described in Appendix B in order to accommodate the delivery of the COPs. Unless otherwise required for the marketing of the COPs, the operating arrangements between the parties in the new leases will be consistent with those contained in the existing leases.
- (o) The costs of issuance in excess of the amount that can be paid from the COPs will be paid by Project Related Revenues collected to date.

- (3) **Execution of an agreement between CMT and STC.** CMT and STC must enter into the agreement, approved by the City and County. The agreement must be prepared by CMT and STC and should include at least the following provisions:
- (a) Provisions obligating STC to impose and collect the facilities fee of at least \$2.50 per ticket sold for STC performances other than special fund raising events not open to the general public at the Project site for a term ending December 31, 2009.
  - (b) Provisions relating to the joint administration of the construction of the Project improvements;
  - (c) Provisions obligating CMT to assume any STC management duties outlined in the STC/City Management Agreement and to continue the use of the STC theater site for theatrical presentations in the event that STC ceases operations;
  - (d) Provision defining what constitutes "cessation of operations" by STC;
  - (e) Provisions making the JPA, the City and the County third party beneficiaries of STC's obligations to CMT;
  - (f) Provisions requiring approval of any amendments to the CMT/STC Agreement by the City Manager and County Executive.
- (4) **Once all pre-conditions are met, the City and County expect to be able to complete the COP financing as expeditiously as possible, subject to expiration of the CEQA appeals/challenge period.** The steps necessary to complete the financing and the costs incurred once that process begins require that the City and County have lead time to provide funding once the Arts Partnership has met all preconditions.

SCHEDULE 1  
Appendix C

DATE	CITY/ COUNTY CONTRIB.	CASH FLOW FROM LAND PAYOFF	CMT FACILITY CHARGE	CMT CHARGE EXP. SEASON	CMT CHARGE CONCERT SER.	STC FACILITY CHARGE	CMT FROM OPERATING FUNDS	NAMING RIGHTS	NAME-A-SEAT CAMPAIGN	MISC. CAMPAIGN	TOTAL FUNDS
3/1/01			300,000.00			89,272.00		127,500.00	125,000.00	50,000.00	691,772.00
3/1/02	132,000.00	121,056.00	300,000.00			91,000.00		127,500.00	175,000.00	50,000.00	996,556.00
3/1/03	132,000.00	121,056.00	342,000.00			91,000.00		127,500.00	150,000.00	50,000.00	1,013,556.00
3/1/04	132,000.00	121,056.00	342,000.00	96,000.00		91,000.00		127,500.00	100,000.00	50,000.00	1,059,556.00
3/1/05	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00	50,000.00		1,124,556.00
3/1/06	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,074,556.00
3/1/07	132,000.00	121,056.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,074,556.00
3/1/08	132,000.00	90,792.00	342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			1,044,292.00
3/1/09	132,000.00		342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			953,500.00
3/1/10	132,000.00		342,000.00	96,000.00	90,000.00	91,000.00	75,000.00	127,500.00			953,500.00
3/1/11	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/12	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/13	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/14	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/15	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/16	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/17	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/18	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/19	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/20	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
3/1/21	132,000.00		342,000.00	96,000.00	90,000.00		75,000.00				735,000.00
<b>TOTAL</b>	<b>2,640,000.00</b>		<b>7,098,000.00</b>	<b>1,728,000.00</b>	<b>1,530,000.00</b>	<b>908,272.00</b>	<b>1,275,000.00</b>	<b>1,275,000.00</b>	<b>600,000.00</b>	<b>200,000.00</b>	<b>18,071,400.00</b>

**Appendix C**  
**Schedule 2 - The Sufficiency Rate**

The Sufficiency Rate Schedule will be calculated after the bonds have been sold. It will be a schedule that shows, as of the end of every month, how much money needs to be in the lock box to ensure that by the time debt service is due (which will occur every six months) there will be sufficient funds to pay debt service. The schedule will reflect the timing and amount of debt service payable to investors and the pattern of cash flow received by CMT and STC. Funds in the lock box (other than Project-Related Revenues) in excess of what the Sufficiency Rate Schedule requires will flow back to CMT.

**APPROVED**  
2000-10-31  
OCT 31 2000  
OFFICE OF THE  
CITY CLERK

**RESOLUTION NO.**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF \_\_\_\_\_

**RESOLUTION ON THE UPDATE TO THE H STREET  
THEATER PROJECT AND CHANGES TO THE  
PROPOSED FINANCING PLAN**

BE IT HEREBY RESOLVED BY THIS CITY COUNCIL THAT:

1. The City Council will receive and file the update on the H Street Theater renovation project.
2. The City Council approves the attached Business Terms Agreement (Appendices A, B & C) which has been executed by authorized representatives of the California Musical Theatre (CMT) and the Sacramento Theatre Company (STC) and incorporates the following changes to the financing plan:
  - (a) A deletion of the short-term loan from the City for up to \$475,000.
  - (b) Conceptual approval of an extension of the City's annual commitment of \$66,000 per year to the H Street Arts Partnership Fund for a period not to exceed the year 2020.
  - (c) Modification of the existing agreement with STC and CMT to allow a payment out of the HTP Fund to be made without the matching requirement for pre-construction expenses only.
  - (d) Changes to California Musical Theater's project related revenue projections.
  - (e) A lock box mechanism to assure all project-specific pledged revenues of the CMT and STC are captured.
3. The City Manager is authorized to move forward with the financing plan for the H Street Theater Project.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

FOR CITY CLERK USE ONLY

RESOLUTION NO: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_