

# Attachment A-1

## General Fund Impact of Winter Homeless Shelter at Golden Hall

### Lost Revenue

|   |                     |
|---|---------------------|
| Golden Hall Events 11/17/10 through 4/22/2011               | (216,785.00)        |
| Parking for Golden Hall Events 11/17/2010 through 4/22/2011 | (57,390.00)         |
| <b>Total Lost Revenue</b>                                   | <b>(274,175.00)</b> |

### Increased Expenses

|  |                     |
|--|---------------------|
| Electrical*  | (14,492.00)         |
| Gas*   | (1,434.00)          |
| Security (1 guard x127 days x 24 hours x 21.84/hr)       | (66,568.00)         |
| Carpet Replacement (only one estimate as of 11/1/2010)** | (90,000.00)         |
| Central Plant, Trash, Water and Sewer***                 |                     |
| <b>Total Increased Expenses</b>                          | <b>(172,494.00)</b> |

### Potential Savings

|   |                    |
|---|--------------------|
| Decrease in Concourse staff during shelter period                           | 46,000.00          |
| A/V related solely to Naturalization Ceremony (\$975 per event)             | 3,900.00           |
| Reduction in Janitorial Supplies if shelter uses 100% of their own supplies | 6,331.50           |
| <b>Total Potential Savings</b>  | <b>\$56,231.50</b> |

**Net Financial Effect** **(390,437.50)**

FY2011 Concourse/Parkade Budget is budgeted to transfer \$1,487,000 to the general fund.

The above impacts would cause the budget transfer to decrease to \$1,104,529.50

\*Electrical and Gas expense increase is based on average daily rate for 12 hours of use increasing to 24 hours of use for 4 month period.

\*\*Only one quote for carpet replacement was received, rough quote for three tiers of carpet pricing ranging from \$90,000 for "good", \$175,000 for "better" and \$260,000 for "best" carpet.

\*\*\*These utility costs average approximately \$3900 total per month, however with no historical data we were unable to determine the possible increase.

# Attachment A-2

## San Diego Concourse Estimated Event Revenue For November 2010 -- April 2011

| Date   | Event                         | Area(s)     | Sq Ft | Event Info                                    | Attendance | Revenue | Status                        |
|--|-------------------------------|-------------|-------|---|------------|---------|-------------------------------|
| <b>November 2010</b>                         |                               |             |       |   |            |         |                               |
| 11/17  | Naturalization Ceremony       | Golden Hall | 43k   | 3500+ seats, main stage, exterior line up, AV | 3500       | 6567    | Fully Executed/Pay in Arrears |
| 11/25  | Sal. Army Thanksgiving Dinner | Golden Hall | 43k   | 2500+ seats, staging, exterior line up        | 2500       | 4750    | Fully Executed/\$ Recvd       |
| November total estimated revenue \$11,317.00 |                               |             |       |   |            |         |                               |

|  |                                  |                        |      |   |                |       |                                 |
|--|----------------------------------|------------------------|------|---|----------------|-------|---------------------------------|
| <b>December 2010</b>                         |                                  |                        |      |   |                |       |                                 |
| 12/4   | Guadalupe Day                    | Golden Hall            | 43k+ | 3000+ seats, main stage, exterior plaza, AV           | 3000           | 4600  | Fully Executed/\$ Recvd         |
| 12/5.6                                       | City Council Inauguration        | Golden Hall            | 33k  | 2500+ seats, main stage, staging, AV, tbd             | 2500           | 0     | definite                        |
| 12/7   | San Diego Hospice Reception      | Main Lobby             | 10k  | reception equipment, grand piano                      | 500            | 1500  | Signed by Permittee Only        |
| 12/10,11                                     | NCA Cheerleading                 | Golden Hall, 250,206-9 | 53k+ | raised seating for 1100+, main stage, rigging, AV     | 2000 (per day) | 15000 | Sent to Permittee for Signature |
| 12/16  | Naturalization Ceremony          | Golden Hall            | 43k  | 3500+ seats, main stage, exterior line up, AV         | 3500           | 6567  | Fully Executed/Pay in Arrears   |
| 12/18  | Children's Holiday Party         | Golden Hall            | 33k+ | 1000+ seats, tables, main stage, exterior line up, AV | 5000           | 4750  | Fully Executed/\$ Recvd         |
| 12/19  | Multiple Scoliosis Holiday Party | Golden Hall            | 33k  | 700 banquet, main stage, AV                           | 700            | 6150  | Fully Executed/\$ Recvd         |
| 12/25  | Sal. Army Christmas Dinner       | Golden Hall            | 43k  | 2500+ seats, staging, exterior line up                | 2500           | 4750  | Fully Executed/\$ Recvd         |
| December total estimated revenue \$43,317.00 |                                  |                        |      |   |                |       |                                 |

|   |                                      |                      |      |  |              |       |                               |
|---|--------------------------------------|----------------------|------|--|--------------|-------|-------------------------------|
| <b>January 2011</b>                         |                                      |                      |      |  |              |       |                               |
| 1/4,5                                       | Homeless Connect                     | Golden Hall          | 33k+ | 200 seats, tables, phone, internet, ext. line, tbd | 500          | 0     | definite                      |
| 1/8   | American Cheer & Dance               | Golden Hall          | 43k+ | 2000+ seats, main stage, AV                        | 5000         | 7250  | definite                      |
| 1/12-15                                     | Nielsen Business Media               | Golden Hall, Mig Rms | 33k  | tbd  | 3000 (total) | 18500 | definite                      |
| 1/22  | San Diego Christian Expo             | Golden Hall          | 33k  | booths, main stage, AV, tbd                        | 1500         | 6500  | definite                      |
| 1/26  | Naturalization Ceremony              | Golden Hall          | 43k  | 3500+ seats, main stage, exterior line up, AV      | 3500         | 6567  | Fully Executed/Pay in Arrears |
| 1/28,28                                     | 7 <sup>th</sup> Annual Women's Conf. | Golden Hall          | 43k  | 2000+ seats, main stage, rigging, AV, tbd          | 2000         | 12000 | definite                      |
| January total estimated revenue \$50,817.00 |                                      |                      |      |  |              |       |                               |

|  |                         |             |     |   |              |       |                               |
|--|-------------------------|-------------|-----|---|--------------|-------|-------------------------------|
| <b>February 2011</b>                         |                         |             |     |   |              |       |                               |
| 2/11-13                                      | Carismatica Hispanica   | Golden Hall | 43k | 3500+ seats, main stage, AV                   | 4000 (total) | 15000 | definite                      |
| 2/23   | Naturalization Ceremony | Golden Hall | 43k | 3500+ seats, main stage, exterior line up, AV | 3500         | 6567  | Fully Executed/Pay in Arrears |
| February total estimated revenue \$21,567.00 |                         |             |     |   |              |       |                               |

| Date | Event | Area(s) | Sq Ft | Event Info | Attendance | Revenue | Status |
|------|-------|---------|-------|------------|------------|---------|--------|
|------|-------|---------|-------|------------|------------|---------|--------|

**San Diego Concourse**  
**Estimated Event Revenue For November 2010 – April 2011**

**March 2011**

|         |                         |                        |      |   |                |       |                               |
|---------|-------------------------|------------------------|------|---|----------------|-------|-------------------------------|
| 3/5     | Women's Resource Fair   | Golden Hall, Mtg Rms   | 53k+ | chairs, tables, curtains, staging, AV         | 1500           | 7200  | definite                      |
| 3/12,13 | Rite of Election        | Golden Hall, Mtg Rms   | 43k+ | 2000+ seats, main stage, rigging, AV, tbd     | 2000 (per day) | 12000 | definite                      |
| 3/18,19 | Red Cross CPR Training  | Golden Hall, 250,206-9 | 33k  | seating, curtains, stanchions, AV, tbd        | 3500           | 11000 | definite                      |
| 3/23    | Naturalization Ceremony | Golden Hall            | 43k  | 3500+ seats, main stage, exterior line up, AV | 3500           | 6567  | Fully Executed/Pay in Arrears |
| 3/25-27 | Move Dance Productions  | Golden Hall            | 43k+ | 2500+ seats, main stage, rigging, AV          | 5000 (total)   | 15000 | definite                      |

**March total estimated revenue \$51,767.00**

**April 2011**

|         |                              |                      |      |                                      |              |       |          |
|---------|------------------------------|----------------------|------|--------------------------------------|--------------|-------|----------|
| 4/7-10  | Int'l Bicycle Frame Builders | Golden Hall, Mtg Rms | 43k+ | booths, main stage, AV, tbd          | 4500 (total) | 20000 | definite |
| 4/14-16 | Show Choir                   | Golden Hall, Mtg Rms | 43k+ | 2500+ seats, main stage, rigging, AV | 6000 (total) | 18000 | definite |

**April total estimated revenue \$38,000.00**

|   |  |  |  |  |  |  |                     |
|---|--|--|--|--|--|--|---------------------|
| <b>Total estimated event related revenue for November 2010 through April 2011</b> |  |  |  |  |  |  | <b>\$216,785.00</b> |
|---|--|--|--|--|--|--|---------------------|

**Note :** A *definite status* indicates that the client has been informed in writing that their hold is secure. If the hold is challenged, the client is contacted to confirm interest and solicit a deposit. Most of the definite holds for the Golden Hall are annual events that have already commenced event planning .



## Additional Considerations

- Lost revenue from any events canceling due to the Winter Shelter may result in annual losses as the events may not ever return.
- Potential of additional loss of six Naturalization Ceremonies due to breaking their contract would result in loss of \$39,402 in event revenue and \$8,400 in parking revenue (additional \$47,802).
- There is a potential for lost revenue from events throughout the year as they may determine that a hold or a signed contract for an event in Golden Hall may not be honored by the City.
- Many of the events that have “definite” holds on Golden Hall for their upcoming events have already advertised the location as their event site. Additionally events such as the NCA Cheerleading event traditionally bring participants from out of town that may have already booked flights and hotel rooms.
- Potential for lost revenue from surrounding businesses that pay rent to the City such as the coffee cart, café by CAB entrance, Downtown Johnny Brown’s. These businesses pay percentage rent to the City and rely partially on events to bring in customers. The owner of the Coffee Cart has stated in a letter to the Mayor and Council that the impacts of the shelter could mean the end of her business.
- The loss of events in Golden Hall will have a severe negative impact on the six hourly employees that will have reduced hours as the Concourse will rely mainly on the full time staff during the shelter period. Four hourly employees could lose an estimated 75-120 hours per month and two hourly employees could lose an estimated 0-60 hours per month.
- If a “hold” is put on Golden Hall in anticipation of holding a shelter there next year, potential revenue will be lost since the dates will be unavailable for anyone to book even if the shelter is ultimately sited somewhere else.
- Should the shelter entrance be restricted to First Avenue a lift would need to be rented/acquired in order to allow ADA access as the ADA access is currently from the doors that open to the Civic Center Plaza Area.
- Fundraising events by the Civic Theater users that normally utilize a tent in the Civic Center Plaza area could be impacted resulting in a loss of funds for the organizers.
- Many of the events scheduled for Golden Hall are community related events that may not be able to afford re-locating to another site (Children’s Holiday Party, Salvation Army Thanksgiving and Christmas Dinners, etc.)
- City Library staff working in Plaza Hall that currently use the restrooms in the main lobby of Golden Hall will have to arrange access to the restrooms in the Print Shop. Disabled access to restrooms in the main lobby will still need to be maintained and

available for the library during daytime hours to ensure ADA compliance. Due to security concerns some sort of alarm would need to be installed on the doors between the library space and the main lobby so that library employees could be alerted should someone accidentally access their work area from the main lobby.

- The potential cost associated with litigation/settlement with the contracted events is unknown.




THE CITY OF SAN DIEGO  
MAYOR JERRY SANDERS

M E M O R A N D U M

DATE: October 28, 2010

TO: Council President Hueso and Members of the City Council

FROM: Jay M. Goldstone, Chief Operating Officer 

SUBJECT: Request for Recommendations for Alternative Venues for Events Displaced by use of Golden Hall as a Temporary Homeless Winter Shelter

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As requested by the City Council on October 22, 2010, the San Diego Housing Commission staff is gathering information from City staff in order to evaluate the feasibility of utilizing the City-owned Concourse for the Temporary Homeless Winter Shelter for the 2010-2011 season. To assist the Housing Commission, staff has prepared a list of events (Attachment A) that would need to be cancelled or moved if the Concourse is used for the shelter. The City Council requested that alternative venues for these events be analyzed.

To that end, I have directed the Departments of Park & Recreation, Libraries, and the San Diego Convention Center to review the list of events and identify any and all facilities that may accommodate any of the listed events and their availability.

In order to ensure a complete search, please forward to my office any recommended facilities that you believe should be evaluated that are not included in the departments currently being searched. Time is obviously running low for search and evaluation, so I would request that any suggestions be made by 5:00 p.m. Friday, October 29 in order for staff to fully evaluate them before your scheduled hearing on Wednesday, November 3<sup>rd</sup>.

Thank you for your attention to this important matter.

CC: Jan Goldsmith, City Attorney  
David Jarrell, Deputy Chief Operating Officer  
James Barwick, Director, Real Estate Assets  
Rick Gentry, President, San Diego Housing Commission  
Andrea Tevlin, IBA

## Attachment C-2

**From:** LoMedico, Stacey [mailto:SLomedico@sandiego.gov]

**Sent:** Thursday, October 28, 2010 8:43 AM

**To:** Rath, Phil; Carol Wallace; Barrow, Deborah

**Cc:** Benjamin, Amy; Carrol Vaughan; Rick Gentry; Barwick, James; Geitz, Kristin; Casey, Kevin; Goldstone, Jay; Jarrell, David; Dubick, Julie; Steven Johnson; Wormser, Carolyn

**Subject:** RE: URGENT - Survey of City-controlled space for possible use by events relocated from Golden Hall

Good morning,

The P&R Dept does not have facilities within our inventory to accommodate such large events. The largest facilities we have would be various gyms (ave. 10,000 sq ft), including Balboa Park Municipal Gym which has programming and special event permitting throughout the year. In Balboa Park we have the Recital Hall (5,400 sq ft, 250 maximum capacity), the War Memorial Auditorium (3,159 sq ft, 250 maximum capacity) and the Balboa Park Club (12,960 sq ft, 500 maximum capacity). The two events listed on the attached calendar which has only 500 persons we might have been able to accommodate, but the Club is already booked for those dates.

If you need more information please let us know.

Stacey LoMedico

City of San Diego Park and Recreation Director

202 C Street - MS37C, San Diego CA 92101

619.236-6643/Fax 619.525.8220

## Attachment C-3

**From:** Barrow, Deborah [mailto:DBarrow@sandiego.gov]  
**Sent:** Thursday, October 28, 2010 11:08 AM  
**To:** Rath, Phil; Carol Wallace; LoMedico, Stacey  
**Cc:** Benjamin, Amy; Carrol Vaughan; Rick Gentry; Barwick, James; Geitz, Kristin; Casey, Kevin; Goldstone, Jay; Jarrell, David; Dubick, Julie; Steven Johnson; Wormser, Carolyn  
**Subject:** RE: URGENT - Survey of City-controlled space for possible use by events relocated from Golden Hall

Hello Phil,

The Library does not have any facilities to accommodate such large groups. Our biggest is the new Logan Heights Library, which will hold approx. 300.

Sorry...

Deborah

Deborah L. Barrow  
Library Director  
San Diego Public Library  
820 E. Street  
San Diego, CA 92101  
(619) 236-5870  
(619) 236-5878 Fax  
Dbarrow@sandiego.gov

San Diego Concourse  
 Estimated Event Revenue For November 2010 – April 2011

Attachment C-4

| SDCC Available | Proposed SDCC Space        | SDCCC Daily Rental | SDCC Total Rental |
|----------------|----------------------------|--------------------|-------------------|
| Yes            | Hall A (48,000 gsf)        | \$ 7,600.00        | \$ 30,400.00      |
| Yes            | Hall A (48,000 gsf)        | \$ 7,600.00        | \$ 15,200.00      |
| No             |                            |                    |                   |
| No             |                            |                    |                   |
| Yes            | Hall A (48,000 gsf)        | \$ 7,600.00        | \$ 7,600.00       |
| No             |                            |                    |                   |
| Yes            | Hall A (48,000 gsf)        | \$ 7,600.00        | \$ 15,200.00      |
| No             |                            |                    |                   |
| Yes            | Ballroom 20 (40,000 gsf)   | \$ 10,000.00       | \$ 10,000.00      |
| No             |                            |                    |                   |
| Yes            | Ballroom 20CD( 20,000 gsf) | \$ 5,000.00        | \$ 5,000.00       |
| No             |                            |                    |                   |
| Yes            | Room 28A-E (8,400 gsf)     | \$ 2,625.00        | \$ 5,250.00       |
| No             |                            |                    |                   |
| No             |                            |                    |                   |
| Yes            | Hall D (58,725 gsf)        | \$ 9,200.00        | \$ 9,200.00       |
| Yes            | Hall H (64,000 gsf)        | \$ 10,100.00       | \$ 10,100.00      |
| No             |                            |                    |                   |
| No             |                            |                    |                   |
| Yes            | Hall A (48,000 gsf)        | \$ 7,600.00        | \$ 7,600.00       |

Hall space not available due to scheduled maintenance in Halls  
 space not available due to scheduled maintenance in Halls, Ballrooms  
 As this is a ctered event, rental can be waived with a F&B guaranteee

**San Diego Concourse**  
**Estimated Event Revenue For November 2010 -- April 2011**

| Yes (2nd Option) | Hall A (48,000 gsf) | \$ | 7,600.00  | \$ | 15,400.00  | Space is available on a second option |
|------------------|---------------------|----|-----------|----|------------|---------------------------------------|
| Yes              | Hall H (64,000 gsf) | \$ | 10,100.00 | \$ | 20,200.00  | Space is available on a second option |
| Yes              | Hall F (54,000 gsf) | \$ | 8,500.00  | \$ | 9,500.00   | Hall G is orphan hall                 |
| No               |                     |    |           |    |            |                                       |
| No               |                     |    |           |    |            |                                       |
| Yes              | Hall F (54,000 gsf) | \$ | 8,500.00  | \$ | 25,500.00  |                                       |
| Yes              | Hall A (48,000 gsf) | \$ | 7,600.00  | \$ | 7,600.00   |                                       |
| Yes              | Hall C (92,000 gsf) | \$ | 14,800.00 | \$ | 14,800.00  |                                       |
| Yes              | Hall H (64,000 gsf) | \$ | 10,100.00 | \$ | 30,300.00  |                                       |
|                  |                     |    |           | \$ | 238,850.00 |                                       |

## Attachment C-5

**From:** Weinrick, Janice  
**Sent:** Tuesday, November 02, 2010 11:31 AM  
**To:** Casey, Kevin; Benjamin, Amy  
**Cc:** Rath, Phil; Goldstone, Jay; Barwick, James  
**Subject:** RE: Memo from Jay Goldstone re: Winter Homeless Shelter

Locations for homeless shelter:

The Agency does not have any buildings other than the old Housing Commission office that would be large enough.

As to alternative venues for tenants:

The Agency the Balboa and Lyceum theaters at Horton Plaza - but the Agency has leased them to operator and the Agency is not involved in the scheduling or leasing. There are three activity/event centers at Liberty Station, but one is managed by McMillin and the other two by the NTC Historic Foundation. The Agency is not involved in the scheduling or leasing of these facilities. The Agency also owns a roller rink in Linda Vista that is leased to and operated by a private party.

Janice

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GERVAÍS • WATSON LLP

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November 2, 2010

*Via Electronic Mail*

Kristi Geitz  
City of San Diego Real Estate Services Division  
1200 Third Ave., Suite 1700  
San Diego, CA 92101

Dear Ms. Geitz:

This firm represents Todd Alexander, owner of Downtown Johnny Brown's restaurant and bar located in the San Diego Civic Center Concourse. As you know, the San Diego City Council has decided to locate the winter homeless shelter in Golden Hall, which is also in the Civic Center Concourse immediately adjacent to Downtown Johnny Brown's. My client has requested that you add his name to the list of business owners and civic leaders who are opposed to this decision by the City Council.

The opening of a homeless shelter in this location could have a significant detrimental impact on the businesses and other organizations located in and around the Civic Center. Please be advised that if the City follows through with its plan to open the winter homeless shelter in this location, and it leads to a decline in revenues and/or safety and security related losses for Mr. Alexander's business, my client will be forced to look to the City of San Diego for compensation. We hope that the City will reconsider this ill advised plan before any damage is done.

Please feel free to contact me should you have any questions regarding my client's position on this matter.

Best Regards,

Nicolas J. Watson  
Gervais Watson LLP

10636 Scripps Summit Court, Suite 102  
San Diego, California 92131  
858-549-1497  
Fax: 858-549-1743  
[www.gwlawllp.com](http://www.gwlawllp.com)

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** November 1, 2010

**TO:** Honorable Mayor and City Council

**FROM:** City Attorney

**SUBJECT:** Remedies For Potential Breach of Contract as Result of City Council's Decision to Use Golden Hall as Fiscal Year 2011 Emergency Winter Shelter

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**INTRODUCTION**

On October 22, 2010, during a special meeting of the City Council, the Council voted to designate Golden Hall as the Fiscal Year 2011 Emergency Winter Shelter. Golden Hall would be used for the Winter Shelter from sometime in November or December 2010 to the end of March 2011, with approximately one month's time needed afterward for repairs and refurbishing before it can be used for events.

Golden Hall is reserved for 31 events between November 1, 2010 and April 30, 2011, including holiday parties, fundraising events for charities and nonprofit organizations, conventions, conferences, expositions, cheerleading and martial arts competitions, and monthly naturalization ceremonies by the United States District Court, pursuant to San Diego Concourse License & Service Agreements (License Agreements). Many of these events have been scheduled many months in advance. To confirm a reservation for an event, a person or entity wishing to use Golden Hall (Licensee) signs two copies of the License Agreement and deposits a license fee and charges for ancillary services provided by the City for the event, such as the rental of tables, chairs, audiovisual equipment, and telecommunications. Once the City receives the signed License Agreements and the license fee and ancillary service charges, the Director of Real Estate Assets and the City Attorney sign the License Agreements, which then become legally binding on both the Licensee and the City.

As of the date of this memorandum, License Agreements have been signed and payment made for twelve events. Fifteen other scheduled events are listed as "definite" by the Real Estate Assets Department (READ), for which the Licensees have requested a reservation for a particular date and in some cases have placed deposits to secure the dates, although no License Agreements have been signed by either the licensees or the City. In addition, there are also four License Agreements for use of Golden Hall during the time that Golden Hall would be used as the Winter Shelter, that have been signed by the licensees but that the City has not yet signed. READ has calculated the City's total estimated event revenue from license fees and ancillary service charges as \$289,102 for all events scheduled for the period of November 1, 2010 to April 30, 2011, including those events listed as "definite." Of the \$289,102 in total estimated event revenue, \$126,902 has been paid for the sixteen events that have signed License Agreements (whether signed by the Licensee and City, or just by the Licensee).

You have asked what the City's potential exposure to litigation for alleged breach of contract would be. This Office cannot opine as to the likelihood of litigation. However, at present, the total maximum amount of license fees and ancillary service charges that would be refunded to the Licensees would be \$126,902 for events where the Licensees have signed the License Agreements and paid the license fees and ancillary service charges. Also, the Licensees may have incurred additional costs for the events upon the reservation of an event date or the signing of a License Agreement, such as the rental of equipment, the hiring of caterers, photographers, announcers, and the like, and advertising and promotions expenses. All of these additional costs may be sought as damages in litigation.

## DISCUSSION

### **I. IF LICENSE AGREEMENTS FOR GOLDEN HALL ARE NOT SIGNED BY THE CITY, THOSE PROSPECTIVE LICENSEES WOULD NOT PREVAIL IN A BREACH OF CONTRACT CLAIM AGAINST THE CITY**

Four License Agreements for use of Golden Hall have been signed by the Licensees. However, the City has not signed those License Agreements. The terms of the License Agreements signed by the licensees state that the License Agreements shall "be effective as of the date of execution by CITY . . . when signed by the parties and approved by the San Diego City Attorney."

California law specifies that "[i]f a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to." Cal. Civ. Code § 1582. When the understanding and agreement between two parties is that the proposed contract is to be written and signed by both parties, the signing by only one party will not create a binding contract. *Spinney v. Downing*, 108 Cal. 666, 668 (1895). The License Agreement, as noted above, states that it shall take effect "when signed by the parties." Therefore, if the prospective Licensee signs the License

Agreement but the City does not, the City is not legally bound by it, and the prospective Licensee would not prevail in a claim against the City for breach of contract.<sup>1</sup>

## II. A LICENSEE MAY BE ENTITLED TO COMPENSATORY DAMAGES IF THE CITY BREACHES A LICENSE AGREEMENT

There are two forms of remedies available for the breach of a contract: monetary damages, to compensate the innocent party for money lost because of the other party's breach; and specific performance, which is to compel the breaching party to perform its obligations under the contract. The primary remedy for breach of contract is the payment of monetary damages, to compensate for the losses suffered by a party. Cal. Civ. Code § 3300. The remedy of specific performance is available only if the payment of money is inadequate to remedy the harm suffered. *Morrison v. Land*, 169 Cal. 580, 586 (1915); *Palo Alto-Menlo Park Yellow Cab Co. v. Santa Clara County Transit Dist.*, 65 Cal. App. 3d 121, 132-33 (1976).

Specific performance is available in cases involving the breach of a contract for the *sale* or *lease* of real estate, as the traditional doctrine is that each parcel of land and each interest in land are unique and that monetary damages are an inadequate remedy for the inability to acquire a particular lot or parcel. Cal. Civ. Code § 3387; *Pike v. Hayden*, 97 Cal. App. 2d 606, 612 (1950) (specific performance available in breach of contract to lease service station and café). Specific performance is a remedy for breach of a license, but only when the license is granted orally and the licensee has made improvements upon the land under license. *Flickinger v. Shaw*, 87 Cal. 126 (1890).

The License Agreements for the use of Golden Hall are *licenses*, not leases. A license is mere permission to enter onto one's land for a specific purpose and time, whereas a lease gives the lessee or tenant "the exclusive possession of the premises against all the world, including the owner . . ." *Howard v. County of Amador*, 220 Cal. App. 3d 962, 972 (1990). Unlike a sale or a lease, the License Agreement transfers no interest in Golden Hall from the City to the Licensee, because on the date that Golden Hall is used for the licensee's event, the Licensee's activities are limited to what is specified in the License Agreement and the City controls all other functions. *See Golden West Baseball Co. v. City of Anaheim*, 25 Cal. App. 4th 11, 34 (1994) (agreement between city and owners of Angels baseball team for use of Anaheim Stadium was a license and not a lease, because baseball team occupied stadium on sporadic basis and its activities were limited to "exhibiting baseball games"). Since the License Agreements are in writing and do not involve the Licensees making improvements to Golden Hall, specific performance will likely not be available as a remedy for breach of contract, and monetary damages would be the only remedy, unless some extraordinary circumstances are shown that we are not currently aware of.

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<sup>1</sup> The same reasoning would apply to licensees whose events are listed as "definite," since those events do not have License Agreements signed by the licensees.

Monetary damage awards are of three kinds: compensatory damages to compensate for loss; punitive damages to punish for especially willful and malicious behavior; and nominal damages which are a symbolic award of a tiny amount where there is no appreciable detriment to the plaintiff. Cal. Civ. Code §§ 3274, 3294, 3360. Punitive damages are not allowed as a remedy for breach of contract, even if the breach was willful or fraudulent. Cal. Civ. Code § 3294; *Chelini v. Nieri*, 32 Cal. 2d 480 (1948). Therefore, any recovery for breach of the License Agreements would be limited to compensatory or nominal damages. Since nominal damages are merely symbolic (albeit symbolic of a judgment that the contract was breached), this memorandum will focus on compensatory damages.

For damages to be recovered for a breach of contract, they must be “clearly ascertainable in both their nature and origin.” Cal. Civ. Code § 3301. If an injured party can establish with reasonable certainty the amount of profit or benefits it would have obtained from performing its obligations under the contract, then the lost profits or benefits can be recovered as damages. *Noble v. Tweedy*, 90 Cal. App. 2d 738 (1949). Difficulty in determining the amount of damages does not relieve the breaching party from liability for breach of contract. *Sobelman v. Maier*, 203 Cal. 1, 11-12 (1927). The lost profits, in the case of the licensees of Golden Hall, could include lost revenue from unsold tickets and cancelled reservations, minus expenditures incurred by the licensees.

In the alternative, a party can seek recovery of its own expenditures made in anticipation of, or preparation for, performance under the contract. This type of compensatory damages can be sought if a claim for lost profits cannot be established with reasonable certainty as to the amount. *Cederberg v. Robison*, 100 Cal. 93, 97 (1893); *Walpole v. Prefab Mfg. Co.*, 103 Cal. App. 2d 472, 489 (1951). One cannot recover for both lost profits and expenditures, as that would produce a windfall from a breach of contract that would not be available if the contract had not been breached. *Cederberg*, 100 Cal. at 98. The lost expenditures for an event at Golden Hall could include the license fee and ancillary services, costs of hiring guest speakers and announcers, advertising and promotions costs, and nonrefundable fees paid to vendors for supplying the event (i.e., caterers, musicians, disc jockeys, photographers, florists, and the like). Compensatory damages awards for many of the events would be calculated on a lost-expenditures basis since many of the Licensees are nonprofit organizations and government agencies, which are limited to recovering their costs and barred from trying to operate at a profit.

A Licensee has an obligation to mitigate its loss and avoid foreseeable loss. The party who is injured by a breach of contract must do everything reasonably possible to mitigate its loss and reduce the damages caused by the other party, and not sit by and let the damages pile up; otherwise, no money can be awarded as damages. *Spurgeon v. Drumheller*, 174 Cal. App. 3d 659, 665 (1985) (would-be buyer cancelled real estate sale contract, after which owners removed property from the market and sued for breach of contract; verdict for owners reversed because owners failed to mitigate damages). However, if reasonable efforts at mitigation were made but proved to be unsuccessful, then compensatory damages can be recovered. *Dutra v. Cabral*, 80 Cal. App. 2d 114,

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122 (1947). If the party could have foreseen the harm and avoided the harm by using reasonable effort and without undue expense, compensatory damages are not available for that harm. *Henrici v. S. Feather Land & Water Co.*, 177 Cal. 442, 449 (1918) (farmer's lawsuit against irrigation company for failure to provide water under contract, resulting in damage to crops; judgment for farmer reversed on grounds that farmer could have avoided loss by paying irrigation company's slightly-increased water rates instead of letting his crops die). However, the issue of avoidance of harm does not exist in this case, because the Licensees could not have foreseen the City Council's decision to designate Golden Hall as the Winter Shelter.

### CONCLUSION

In the event that the City does not sign the License Agreements for events that are to be held at Golden Hall during the time that Golden Hall is to serve as the Winter Shelter, those prospective Licensees would not prevail in a claim against the City for breach of contract. As for those License Agreements that have been signed by both the Licensees and the City, the available remedy that could be awarded in a breach of contract lawsuit would likely be compensatory monetary damages, either for lost profits or expenditures. As of the date of this memorandum, there are \$126,902 in already-paid license fees and ancillary service charges that might have to be refunded. There may also be additional costs that may have already been incurred by the Licensees for third-party services associated with the event, including food, entertainment, and promotional costs, that may also be sought as damages.

JAN I. GOLDSMITH, CITY ATTORNEY

By

\_\_\_\_\_  
David L. Herman  
Deputy City Attorney

DLH:hm  
MS-2011-1

cc: James Barwick, Director, Real Estate Assets  
Andrea Tevlin, Independent Budget Analyst

## ATTACHMENT F

### Golden Hall Walk Through Inspection

October 27, 2010

#### Attendees:

San Diego Housing Commission Staff  
Bob McElroy & Alpha staff  
Fire Marshall staff  
Lucy Hernandez & Angela Nazareno (Contract Administration)  
Amy Benjamin (Mayor's office)  
Rick Schnell (HOT Team)  
John Montoya (City Maintenance)  
Lyle Mardis (Concourse Manger)  
Rick Romio (Golden Hall Facilities Manager)  
Johnny Mitchell (invited)  
Brock Jones, ADA

#### Preliminary Findings:

1. Fire Safety: Golden Hall does not have fire sprinklers
2. Security: Multiple entrances/exits at Golden Hall would require additional monitoring to maintain control of "off limits" areas.
3. Potential Damage to Interiors: Golden Hall floor area is 23,700 square feet; all available spaces are carpeted. Winter shelter clients and activities work best on hard surfaces that are easily cleaned. Carpet replacement would probably be needed.
4. Designated Smoking Areas would be needed outside; increases need for security personnel.
5. Handicapped Accessibility: First Avenue entrance is only accessible by stairs. A commercial grade portable power lift (and staff to monitor/operate) would be needed. Concourse entrance could be used for wheelchairs and clients with mobility limitations, and would trigger security needs.
6. Placement of Accessory Containers and Trailers: trash dumpsters, outside lighting (additional cost) and the shower trailer plus ADA accommodations must be placed at the site. First Avenue could not accommodate all necessary equipment. No room for mobile medical unit (40 foot trailer). Possible safety issue if power lines cross sidewalk.
7. Clients' storage needs for personal belongings.