City of Culver City, California

City Council Agenda Item Report

Meeting Date: June 26, 2006	Item Number: A-3
AGENDA ITEM: Consideration of Culver City Cultural Affairs Foundation (501C3)	
Contact Person/Dept.: Susan Evans	Phone Number: 310-253-5702
Fiscal Impact: Yes [X] No []	General Fund: Yes [] No [X]
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (06/2206)	
Department Approval: Susan Evans (06/14/2006)	CAO Approval: Jerry B. Fulwood (06/21/2006)
City Controller Approval: Marlee Chang (06/21/2006)	

RECOMMENDATION:

Staff recommends the City Council approve the development and implementation of a 501(c)(3) entity (Foundation) to support the cultural affairs work program within the City of Culver City.

BACKGROUND:

On February 27, 2006, this item was brought to the City Council for consideration. During the meeting this item was continued so that staff could further address the following two items:

1) Who can serve as the CEO of the Foundation?; and
2) How can funds to the Foundation be limited from individuals doing business with the City in order to avoid any conflict of interest?

In addition to these two areas, Staff has also reviewed the status of the proposed Foundation as a component accounting unit of the City of Culver City and the need for the City and/or the Redevelopment Agency to provide start-up funds for the Foundation. Both additional items are also being discussed in this staff report.

DISCUSSION:

Designation of the Chief Executive Officer of the 501(c)(3)

In order to provide for an efficient operation of the Foundation, the Foundation's By-Laws provide for the designation of a Chief Executive Officer (CEO). During the initial consideration of this item by the City Council, there was significant discussion over the role of the CEO and whether or not the Community Development Director could serve in that capacity.

Because the proposed Foundation is closely associated with the City of Culver City in several ways, it is recommended the CEO be appointed by the City's City Manager. This would maintain consistency between the City's administrative structure and that of the Foundation.

Restriction on Donation Sources to Address Potential Conflicts of Interest

To address this area, the Foundation's By-Laws have been clearly amended so that the Foundation may only accept donations from other foundations in the form of grants. Private donations will not be accepted by this proposed foundation.

Component Accounting Unit Status

Accounting services for the City and Redevelopment Agency are provided through the City Treasurer's Office. Given the different relationship to a 501 (c)(3) and workload constraints within that department, staff submitted a copy of the revised Foundation By-Laws to the City's outside auditor – Lance, Soll and Lunghard, LLP with a request to analyze three questions:

(1) As proposed, would the 501(c)(3) become a component unit of the City of Culver City?
(2) If the answer to #1 is YES, then what impacts would that have on the ability of Lance Soll & Lunghard to provide auditing services and/or accounting/tax return preparation services for the 501(c)(3)?
(3) If possible, can you estimate any costs for these types of services to either the City or the 501(c)(3)?

In summary, Lance, Soll, and Lunghard opines that the Foundation would qualify as a "Component Unit" in accordance with pronouncement #14 of the Government Accounting Standards Board and, as such, the financial transactions of the Foundation would need to be included in the City's Comprehensive Annual Financial Report. Further, as a "Component Unit," the Foundation would need to be included in the audit process of the City's financial transactions.

The determination that the Foundation is a "component unit" and, therefore, must be included in the City's annual audit, does result in the fact that the City's Auditor would not be able to provide daily accounting services or tax return preparation services for the Foundation. Therefore, the Foundation will need to determine how these required services are obtained and how those services will be paid for. Lance, Soll, and Lunghard estimates those services to cost $2,500 annually.

Tax return preparation services for a 501(c)(3) are not services typically provided by a governmental accounting division, and provision of daily accounting services by Accounting is not currently included in the work/staffing plan of the division. It is difficult to estimate the time that may be necessary to validate the information provided by the Foundation to the

City for inclusion in the monthly financial reports since the size and the complexity of transactions is unknown at this time. A conservative estimate would be 2 hours per month of analysis on the part of Accounting staff to insure that the information presented to the City for inclusion in the financial reports is appropriate. Additionally, should the amount of grants awarded to the Foundation increase, this conservative estimate would also need to be increased.

Source of Start-Up Funds

Based upon the above conclusions, the Foundation will need some amount of start-up funds to be provided either by the City of Culver City or the Redevelopment Agency.

Staff recommends the Redevelopment Agency provide the needed start-up funds in the form of a loan to the Foundation. This allows the opportunity for the Agency to be repaid by the Foundation should the Foundation's efforts uncover a grant opportunity that includes dollars for administration of the Foundation. To ensure sufficient start-up monies are available, staff recommends a loan amount of $5,000.

Additional Modifications

In addition the following changes have been made as a result of direction given by the City Council on February 27, 2006:

- The bylaws being considered tonight have been modified to ensure that all wording is consistent with the Articles of Incorporation.
- An appointed member of the Board can only serve a two term limit up to eight years.
- At least semi-annually (not quarterly), the Foundation Treasurer shall submit a written report reflecting the current financial condition of the Foundation to the board.
- Language has been added to the liability of directors' portion of the bylaws (Article XII) to provide further protection for the Board of Directors.

FISCAL ANALYSIS:

It is anticipated the Foundation will meet infrequently, thereby minimizing the associated operational costs. However, the Foundation will be in need of accounting and tax return filing services. While these functions are expected to be modest during the Foundation's start-up, should the Foundation have great success in being awarded large sums of grant monies, the accounting and tax return functions will become more complex and time-intensive. The Foundation will need to determine how a contract accountant and tax return preparer should be engaged.

As mentioned above, staff is recommending the Agency loan the Foundation $5,000 as start-up funds for the first year of operations. The proposed budget for FY 2006/2007 for the Agency includes sufficient funds to preclude the need for a budget amendment.

ATTACHMENTS:

1) Draft Bylaws (reflecting the changes noted in this staff report)
2) Draft Articles of Incorporation

MOTION:

That the City Council:

Approve the By-Laws and authorize the development and implementation of a 501(c) (3) entity, including the filing of necessary Articles of Incorporation, to support the cultural affairs work program within the City of Culver City.