



DATE: June 17, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **AMENDMENTS TO THE PROPERTY LEASE AGREEMENT, TENANT IMPROVEMENT LOAN AGREEMENT AND PROMISSORY NOTE WITH THE CALIFORNIA SURF MUSEUM FOR ADDITIONAL WORK ON THE RENOVATION PROJECT AT 312 PIER VIEW WAY AND BUDGET TRANSFER AND APPROPRIATION**

SYNOPSIS

Staff recommends that the City Council and Community Development Commission approve amendments to the 10-year Property Lease Agreement, Tenant Improvement Loan Agreement, and Promissory Note with the California Surf Museum (CSM) increasing the agreement amounts by \$31,265 for administratively approved change orders, increasing the total loan amounts to \$606,380; approval of a budget transfer in the amount of \$575,115 to move the original funding within Redevelopment accounts; approval of a budget appropriation in the amount of \$31,265 from the Redevelopment Unallocated fund balance to Redevelopment operating funds to fund the additional work; and authorize the Executive Director/City Manager to execute the amendments.

BACKGROUND

On August 13, 2008, the City Council and Community Development Commission approved a Property Lease Agreement, Loan Agreement and Promissory Note with the CSM, in the amount of \$575,115 for renovation and façade enhancement to enable the CSM to relocate from 223 N. Coast Highway to the Premises. The Property Lease agreement is for a term of 10-years; the Loan Agreement and Promissory Note are to be forgiven over the first five years of the Lease.

Previously the 50-year-old Premises had been vacant since 2002 during which time the facility's infrastructure continued to deteriorate. During the course of construction unforeseen issues arose that required additional renovation outside the original scope of work, such as deteriorated plywood and cast-iron sewer lines that had collapsed.

ANALYSIS

CSM contracted for renovation of the Premises in the amount of \$575,115. The additional requested funds cover all CSM change orders accumulated over the course of the project totaling \$20,092 to the contractor. Structural issues and decaying roof panels led to a majority of changes. Additionally, it was necessary to install a required fire alarm monitoring system at a cost of \$2,900, which was previously omitted from approved plans. After the premises had opened for operation the 50-year-old cast-iron sewer laterals collapsed, requiring extensive underground work at a cost of \$12,285 to line the pipes with new polyurethane laterals, of which the Water Department paid \$5,000 in associated costs, leaving the Redevelopment portion at \$7,265. Additional peripheral costs, including a temporary toilet and resurfacing the floor, came to \$988. The \$31,265 in change orders was less than 6 percent of the original contract amount, which allowed staff to administratively approve the additional work.

Amendment 1 to the Property Lease Agreement will revise the Loan Obligation and Repayment section from \$575,115 to \$606,380; Amendment 1 to the Tenant Improvement Loan Agreement will revise the Tenant Improvement Loan amount from \$575,115 to \$606,380; and Amendment 1 to the Promissory Note will revise the opening paragraph describing the amount loaned to the CSM. The additional \$31,265 will be added to the original loan amount and will be included in the 5-year forgivable loan.

On August 13, 2008 Council approved a loan in the amount of \$575,115 for improvements to the California Surf Museum. Staff had originally requested an appropriation for the loan from Redevelopment Bond funds. However, in accordance with California Redevelopment Law's (CRL) tax restrictions on the use of bond funds for public and private partnerships, staff recommends substituting the bond funds with tax increment funds, necessitating the budget transfer within existing Redevelopment funds.

FISCAL IMPACT

A loan in the amount of \$575,115 to the California Surf Museum was approved on August 13, 2008. The funds were originally appropriated from Redevelopment bond funds (489) and transferred to the project account (591.879424). The Change Order in the amount of \$20,092 was administratively approved. The remaining Change Orders in the total amount of \$11,173, and the \$5,000 paid by the water department, were also administratively approved.

Based on the restricted use of bond funds as determined by CRL, staff is requesting tax increment funds be used in lieu of bond funds for the original loan of \$575,115. Additionally, the Change Orders were paid from current redevelopment operating funds (591.304050) in the amount of \$31,265. Staff is requesting an appropriation of \$31,265 from Redevelopment Unallocated fund balance (591.3301) for transfer to (591.304050.5241.58023) to reimburse the redevelopment operating account. The \$5,000 Water Department share was paid from Capital Improvement Projects - Miscellaneous Sewer Projects account (722.86.9780).

The transfer of \$575,115 from fund 591 to fund 489 will satisfy the restricted use of funds based on CRL and the \$31,265 in appropriated funds will reimburse the redevelopment operating account. The requested action will increase the loan to the California Surf Museum from \$575,115 to \$606,380.

INSURANCE REQUIREMENTS

The Lessee will be required to maintain the City's standard insurance requirements over the term of the lease.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

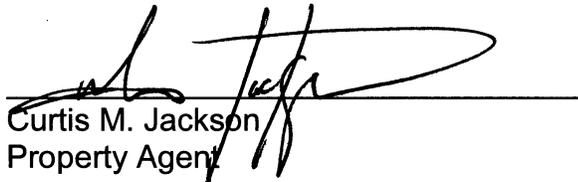
The referenced documents have been reviewed by the City Attorney and approved as to form.

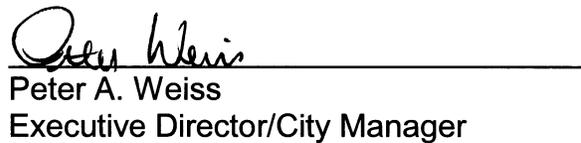
RECOMMENDATION

Staff recommends that the City Council and Community Development Commission approve amendments to the 10-year Property Lease Agreement, Tenant Improvement Loan Agreement, and Promissory Note with the California Surf Museum (CSM) increasing the agreement amounts by \$31,265 for administratively approved change orders, increasing the total loan amounts to \$606,380; approval of a budget transfer in the amount of \$575,115 to move the original funding within Redevelopment accounts; approval of a budget appropriation in the amount of \$31,265 from the Redevelopment Unallocated fund balance to Redevelopment operating funds to fund the additional work; and authorize the Executive Director/City Manager to execute the amendments.

PREPARED BY:

SUBMITTED BY:


Curtis M. Jackson
Property Agent


Peter A. Weiss
Executive Director/City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager



Jane McVey, Economic & Community Development Director



Kathy Baker, Redevelopment Manager



Douglas E. Eddow, Real Property Manager



Barbara Hamilton, Deputy City Attorney



Teri Ferro, Director of Financial Services



**AMENDMENT NO. 1 TO PROPERTY LEASE AGREEMENT BETWEEN
THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION
AND
THE CALIFORNIA SURF MUSEUM**

This Amendment to Property Lease Agreement (“Amendment”) is made this 10th day of June, 2009, by and between the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a municipal corporation, hereinafter called “CDC”, and the CALIFORNIA SURF MUSEUM, hereinafter called “Lessee”.

R E C I T A L S

WHEREAS, CDC and Lessee are the parties to that certain Property Lease Agreement, dated August 13, 2008, (“the Agreement”), wherein CDC, as landlord, permits Lessee to use and occupy that certain real property located at 312 Pier View Way Building (the “Premises”);

WHEREAS, Lessee requires additional funds in the amount of \$31,265 to complete the renovation of Premises for the operation of the California Surf Museum;

WHEREAS, CDC and Lessee mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Property Lease Agreement be modified as follows:

A G R E E M E N T

1. Section 1.05(c) of the original Agreement shall be and hereby is amended and modified to read:

c. Loan Obligation and Repayment. CDC agrees to loan Lessee the amount of Six Hundred Six Thousand Three Hundred Eighty Dollars (\$606,380) for the Lessee Work (the “Lessee Work Loan”) and shall provide Lessee with said loan proceeds pursuant to the terms and conditions as more specifically set forth in the Tenant Improvement Loan Agreement dated August 13, 2008, as amended by Amendment No. 1, attached hereto and by this reference made a part of this Lease. Further, in the event Lessee satisfies the Lessee Performance Standards, as more specifically set forth in Section 1.06 below, CDC agrees to forgive the Lessee Work Loan also as more specifically set forth in Amendment No. 1 to the Tenant Improvement Loan Agreement.

2. Exhibit "D" of the Property Lease Agreement shall be and hereby is amended and modified by Amendment No.1 to the Tenant Improvement Loan Agreement dated June 10, 2009, attached to this Amendment.

3. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.

4. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

5. All provisions in the Agreement that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

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[Signatures on Next Page]

6. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the respective entities of the CDC and Lessee.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Amendment to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CDC

THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION

Date _____

By: _____
Executive Director

APPROVED AS TO FORM:

By: *Pauline Hamilton, ASST.*
General Counsel

LESSEE

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 5/22/09

By: *Michael A. Burner Sr.*
Name: MICHAEL A. BURNER SR.
Title: DIRECTOR

Date 5/22/09

By: *Jack H. Francis*
Name: JACK H. FRANCIS
Title: DIRECTOR

NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 5/22/04 before me, Curtis Jackson, Notary Public

personally appeared Michael Burner & Jack Francis

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

**AMENDMENT NO. 1 TO THE TENANT IMPROVEMENT LOAN AGREEMENT
BETWEEN
THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION
AND
THE CALIFORNIA SURF MUSEUM**

This Amendment to the Tenant Improvement Loan Agreement ("Amendment") is made this 10th day of June, 2009, by and between the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, a municipal corporation, hereinafter called "CDC", and the CALIFORNIA SURF MUSEUM, hereinafter called "Surf Museum".

RECITALS

WHEREAS, CDC and the Surf Museum are the parties to that certain Tenant Improvement Loan Agreement, dated August 13, 2008, ("the Agreement"), wherein CDC loaned to the Surf Museum \$575,115 for the construction of the improvements to that certain real property located at 312 Pier View Way Building (the "Premises");

WHEREAS, the Surf Museum requires additional funds in the amount of \$31,265 to complete the improvements of Premises for the operation of the California Surf Museum;

WHEREAS, CDC and the Surf Museum mutually desire to amend and modify certain terms and conditions of the Agreement as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Tenant Improvement Loan Agreement be modified as follows:

A G R E E M E N T

1. Section 1 of the original Agreement shall be and hereby is amended and modified to read:

1. **Tenant Improvement Loan.** Subject to Surf Museum's performance of all of the terms, covenants and conditions set forth herein, the CDC hereby agrees to loan to the Surf Museum, and the Surf Museum agrees to borrow from the CDC, the sum of Six Hundred Six Thousand Three Hundred Eighty Dollars (\$606,380) (the "Improvement Loan") for

the construction of the Improvements to the Premises. CDC shall make the Improvement Loan to Surf Museum from available funds in the CDC's 591.879454.5241 Trust Fund, which shall be disbursed to Surf Museum as provided herein.

2. Exhibit "A" of the Agreement shall be and hereby is amended and modified by Amendment No.1 to the Promissory Note dated June 10, 2009, attached to this Amendment.

3. Exhibit "B" of the Agreement shall be and hereby is amended and modified in its entirety by replacing it with a modified Exhibit "B" dated August 13, 2008, attached to this Amendment.

4. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Agreement.

5. The provisions of this Amendment shall control over any inconsistent provisions of the Agreement.

6. All provisions in the Agreement that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

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7. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the respective entities of the CDC and the Surf Museum.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

CDC

THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION

Date _____

By: _____
Executive Director

APPROVED AS TO FORM:

By: Carl Hamilton, ABST.
General Counsel

Borrower

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 5/22/09

By: Michael A. Burner Sr.
Name: MICHAEL A. BURNER SR
Title: DIRECTOR

Date 5/22/09

By: Jack H. Francis
Name: JACK H. FRANCIS
Title: DIRECTOR

NOTARY ACKNOWLEDGMENTS OF BORROWER'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 5/22/09 before me, Curtis Jackson, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Michael Bumer & Jack Francis
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~are subscribed to the within instrument and acknowledged to me that he/~~she~~they executed the same in his/~~her~~their authorized capacity(ies), and that by his/~~her~~their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Title or Type of Document: _____

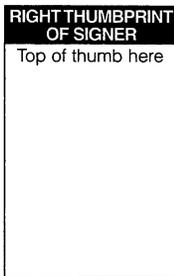
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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

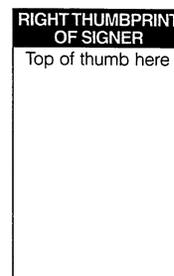
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

**AMENDMENT NO. 1 TO THE PROMISSORY NOTE TO
THE OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION
FROM
THE CALIFORNIA SURF MUSEUM**

This Amendment to the Promissory Note ("Amendment") is made this 10th day of June, 2009, by the CALIFORNIA SURF MUSEUM, hereinafter called "Borrower".

RECITALS

WHEREAS, Borrower has executed that certain Promissory Note, dated August 13, 2008 ("the Note"), pursuant to that certain Loan Agreement wherein the Oceanside Community Development Commission ("CDC") loaned to the Borrower \$575,115 for the construction of improvements to that certain real property located at 312 Pier View Way (the "Premises");

WHEREAS, the Borrower requires additional funds in the amount of \$31,265 to complete the improvements of Premises for the operation of the California Surf Museum;

WHEREAS, CDC and the Borrower mutually desire to amend and modify certain terms and conditions of the Note as more particularly set forth in this Amendment.

NOW, THEREFORE, in consideration of which and other valuable consideration set forth herein, the parties hereto do mutually agree that the Note be modified as follows:

AGREEMENT

1. Intro of the original Note shall be and hereby is amended and modified to read:

\$606,265.00

FOR VALUE RECEIVED, THE CALIFORNIA SURF MUSEUM, a California nonprofit corporation (the "Borrower"), promises to pay to the OCEANSIDE COMMUNITY DEVELOPMENT COMMISSION, (the "CDC"), or order, at the CDC's office at 300 North Coast Highway, Oceanside, California or at such other place as the CDC may designate in writing, the sum of Six Hundred Six Thousand Three Hundred Eighty and No/100 Dollars (\$606,380), which represents the "Improvement Loan

Amount" pursuant to the Loan Agreement executed by the CDC and the Borrower dated as of August 13, 2008 (the "Loan Agreement"), as amended by Amendment No. 1 dated June 10, 2009. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement. Provisions for reduction in the principal balance hereof are set forth in Section 3 of this Promissory Note. Payments shall be made in currency of the United States of America which at the time of payment is lawful for the payment of public and private debts.

2. Unless otherwise defined, or the context otherwise indicates, the terms as used herein have the meaning defined in the Note.

3. The provisions of this Amendment shall control over any inconsistent provisions of the Note.

4. All provisions in the Note that are not addressed and amended in this Amendment shall remain in full force and effect, and are hereby ratified and reaffirmed.

5. The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity, and authority enter into and to execute this Amendment on behalf of the Borrower.

IN WITNESS WHEREOF, the Borrower for itself, its heirs, executors, administrators, successors, and assigns does hereby agree to the full performance of the covenants herein contained and has caused this Amendment to be executed by setting hereunto Borrower's authorized signatures on the day and year respectively written herein below.

Borrower

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 5/22/09

By: Michael A. Buerger Sr.
Name: MICHAEL A. BUERGER SR.
Title: DIRECTOR

Date 5/22/09

By: Jack H. Francis
Name: JACK H. FRANCIS
Title: DIRECTOR

NOTARY ACKNOWLEDGMENTS OF BORROWER'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego }

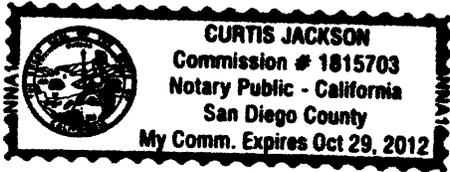
On 5/22/09 before me, Curtis Jackson, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Michael Burner & Jacke Francis
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature [Handwritten Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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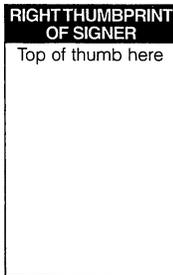
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Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

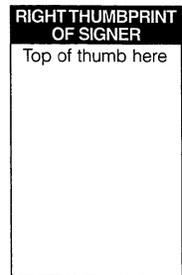
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- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
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- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____