

STAFF REPORT*CITY OF OCEANSIDE*

DATE: March 5, 2014
TO: Honorable Mayor and City Councilmembers
FROM: Property Management
SUBJECT: **PROPERTY LEASE AGREEMENT WITH CALIFORNIA SURF MUSEUM**

SYNOPSIS

Staff recommends that the City Council approve Amendment 2 to the Property Lease Agreement with the California Surf Museum extending the term of the Lease for five years expiring January 31, 2019 for a minimum total revenue of \$6,000, and approving the option to extend the term of the lease for an additional five years expiring on January 31, 2024; and authorize the City Manager to execute the amendment.

BACKGROUND

On August 13, 2008, the City Council and Community Development Commission ("CDC") approved a Property Lease Agreement, Loan Agreement and Promissory Note with the California Surf Museum ("CSM"), in the amount of \$575,115 for renovation and façade enhancement ("Project") to enable the CSM to relocate from 223 N. Coast Highway to the 312 Pier View Way location ("Premises").

Additionally, CSM requested another \$31,265, which the CDC approved in June 2009, bringing the total loan amount to \$606,380. On March 16, 2011, the CDC quitclaimed the property to the City of Oceanside ("City").

ANALYSIS

The Property Lease Agreement ("Lease") was for a term of five years with a condition that CSM has the right to a five year extension under the same terms and conditions of the Lease provided CSM satisfies the terms of the Lease. CSM has satisfied the terms of the Lease to the City's satisfaction over the previous five years, and requested to extend the Lease for the additional five years, with an expiration date of January 31, 2019.

CSM is currently requesting to amend the Lease to include an additional five year extension option that would expire on January 31, 2024.

FISCAL IMPACT

Fair market rent for the Premises is between \$60,000 to \$75,000 annually; however, CSM pays an annual lease payment of \$1,200 to General Fund Account No. 1101.4351.0009. The

programs, services and activities provided by CSM constitute the majority of consideration paid by CSM for the use of the Premises. Nonetheless, the terms of the Lease require CSM to pay for the maintenance and utility costs associated with the Premises.

If in the future CSM generates significant income from operations and/or grants associated with the Premises, CSM and the City will meet and discuss negotiating a fair and reasonable rent for use of the Premises.

INSURANCE REQUIREMENTS

CSM 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

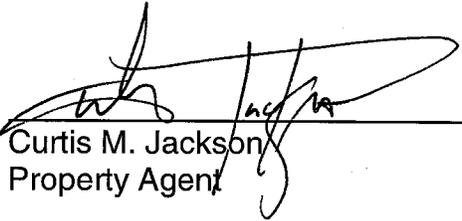
The referenced documents have been reviewed by the City Attorney and approved as to form.

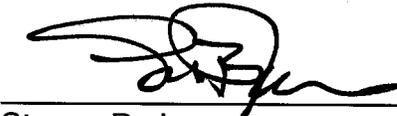
RECOMMENDATION

Staff recommends that the City Council approve Amendment 2 to the Property Lease Agreement with the California Surf Museum extending the term of the Lease for five years expiring January 31, 2019 for a minimum total revenue of \$6,000, and approving the option to extend the term of the lease for an additional five years expiring on January 31, 2024; and authorize the City Manager to execute the amendment.

PREPARED BY:

SUBMITTED BY:


Curtis M. Jackson
Property Agent


Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager



Douglas E. Eddow, Real Property Manager



James R. Riley, Financial Services Director



**AMENDMENT NO. 2 TO PROPERTY LEASE AGREEMENT
BETWEEN
THE CITY OF OCEANSIDE
AND
THE CALIFORNIA SURF MUSEUM**

This Amendment No. 2 to the Property Lease Agreement ("Amendment No. 2") is made this 5th day of March, 2014, by and between the CITY OF OCEANSIDE, a California charter city, as successor in interest to the Oceanside Community Development Commission ("CDC"), hereinafter called "City", and the California Surf Museum, hereinafter called "Lessee".

RECITALS

WHEREAS, CDC and Lessee entered into that certain Property Lease Agreement, dated August 13, 2008 ("Lease") for the real property located at 312 Pier View Way ("Premises"); which Agreement was amended by Lease Amendment No.1 dated June 17, 2009 ("Amendment No. 1");

WHEREAS, the CDC executed a quitclaim deed conveying the CDC's interests in the Premises to the City of Oceanside, which quitclaim deed was recorded in the Official Records of San Diego County, California on March 22, 2011;

WHEREAS, the Lease provides for an initial five (5) year term, plus one (1) renewal option to extend the term of the Lease for five (5) years; Lessee has elected to exercise the renewal option, and City has confirmed the extension of the Lease term to January 31, 2019;

WHEREAS, Lessee has requested another renewal option to potentially extend the term of the Lease for an additional five (5) years;

WHEREAS, City and Lessee mutually desire to amend and modify certain terms and conditions of the Lease 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:

AGREEMENT

1. Subsection 2.03 Extension of Term of SECTION 2: TERM is deleted in its entirety and replaced with the following language:

2.03 Extension of Term. Lessee may extend the term of this Lease for the Premises for an additional five (5) years for the period February 1, 2019 through

January 31, 2024, provided Lessee is not in default or breach of any term, condition, or covenant of this Lease. In order to exercise this option, Lessee must give written notice of its election to extend the term to the City Manager no later than ninety (90) days prior to the expiration of the initial term of this lease. If Lessee is not in default or breach of any term, condition or covenant of this Lease, the City Manager is authorized to confirm the five (5) year extension.

Should the five (5) year option be exercised, Lessee may request an extension of term on an annual basis thereafter, provided Lessee is not in default or breach of any term, condition, or covenant of this Lease.

To request the annual extension of the term Lessee must provide the City Manager with its written request no later than ninety (90) days prior to the expiration of the term of this Lease, provided Lessee is not in default or breach of any term, condition, or covenant of this Lease. The City Manager or designee will notify the Lessee not later than thirty (30) days after receipt of such request whether such request will be recommended to the City Council for approval. Recommendation by the City Manager does not constitute City Council approval of the extension request. The City Manager, as the City Council's authorized representative, shall, in his or her sole discretion, have the authority to deny any such request. Any such denial shall be sent to Lessee not later than thirty - (30) days from receipt of the request for extension. The City Council, at its sole discretion, may approve or deny the extension of the term of this Lease. In the event the City Council is unable to consider the renewal request in sufficient time as to provide Lessee with thirty (30) days notice of termination in the case of denial, the Lease shall be extended for a period not to exceed thirty (30) days, to allow for such thirty (30) day notice of termination.

2. SECTION 3: CONSIDERATION is amended by adding the following language:

3.08 Available Funding. Notwithstanding Section 3.02 above, City and Lessee acknowledge that Lessee may have the opportunity throughout the term of the Lease to seek grants to provide operating funds for the Premises. Lessee agrees to make reasonable efforts to apply for available grants which would specifically allow or not restrict Lessee from utilizing a portion of the grant funds for operations ("Grants") at the Premises rather than solely on Lessee's programs. Should said funds become available at any time during the Lease term, City and Lessee shall reasonably determine whether there are sufficient funds in the Grants for the imposition of a fair and reasonable monthly rental amount under this Lease during the period of time that the funds are provided under the Grant. If applicable, said monthly rental amount will be paid to City in accordance with the terms set forth in Section 3.02 above.

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 City 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.

CITY OF OCEANSIDE

Date _____

By: _____
City Manager

APPROVED AS TO FORM:

By: *Matthew Hamilton*, 1985
City Attorney

LESSEE

THE CALIFORNIA SURF MUSEUM
a California non-profit corporation

Date 2-25-14

By: *Jack H. Francis*
Name: JACK H. FRANCIS
Title: VICE PRESIDENT

Date 2/25/14

By: *Daryl Dick*
Name: DARYL DICK
Title: DIRECTOR

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)

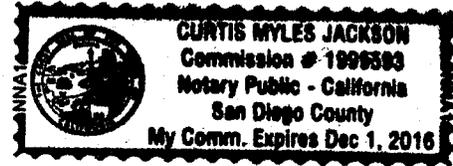
County of San Diego)^{SS.}

On 2/25/14 before me, Curtis Jackson, Notary Public
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Jack H. Francis and Daryl Dick
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.

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for 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

Signer's Name: _____

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

Signer Is Representing: _____

