

RESOLUTION NO. 2009-778

Adopted by the Sacramento City Council

July 21, 2009

APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD AMENDMENT TO CITY AGREEMENT 2002-215 BETWEEN THE CITY OF SACRAMENTO AND THE CROCKER ART MUSEUM ASSOCIATION (CAMA), DATED DECEMBER 3, 2002 AND LOAN AND SECURITY AGREEMENTS WITH CAMA FOR THE CONSTRUCTION OF THE CROCKER ART MUSEUM EXPANSION AND RENOVATION PROJECT.

BACKGROUND

- A. On May 23, 2006, City Council authorized the issuance of approximately \$150 million in 2006 bonds, authorized funding for the Tier I CRCIP projects and adopted policy directives (Resolutions 2006-364 through 367).
- B. On December 3, 2002, the City and CAMA entered into a Memo of Understanding (MOU), City Agreement 2002-215, where the City and CAMA set forth their respective roles and responsibilities regarding the Crocker Art Museum Renovation and Expansion project.
- C. On June 5, 2007, the City and CAMA entered into a First Amendment to the MOU, City Agreement number 2002-0215-1, to identify project funding and construction protocols.
- D. On December 4, 2007, the City and CAMA entered into a Second Amendment to the MOU, City Agreement number 2002-0215-2, to update the project budget to reflect the project Guaranteed Maximum Price (GMP) and to specify the parties' obligations to provide additional funding for the project.
- E. A Third Amendment is deemed necessary due to current economic conditions, as this may cause a delay in the collection and conversion of pledges by CAMA for project construction. The Third Amendment states that the City is willing to fund shortfalls caused by these economic conditions through a \$10 million line of credit to CAMA so that the construction of the project may proceed as scheduled. See Exhibit A for details.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Third Amendment to City Agreement 2002-215 between the City of Sacramento and the Crocker Art Museum Association is approved and the City Manager or his designee is authorized to execute the Third Amendment.
- Section 2. The City Manager or his designee is authorized to execute loan and security agreements between the City and the Crocker Art Museum Association related to a \$10 million Community Reinvestment Capital Improvement Program bond proceeds line of credit.

Table of Contents:

Exhibit A Third Amendment to Memorandum of Understanding Between the City of Sacramento and the Crocker Art Museum Association

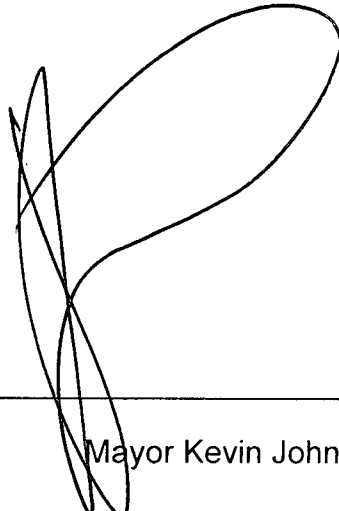
Adopted by the City of Sacramento City Council on July 21, 2009 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:

Dawn Bullwinkel

for Shirley Concolino, City Clerk
Resolution 2009-778

July 21, 2009



***2002-0215-3**

With: Crocker Art Museum Assoc
Title: Crocker Expansion and
Renovation
Authorization: Reso 2009-471

**THIRD AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SACRAMENTO
AND THE CROCKER ART MUSEUM ASSOCIATION**

This Third Amendment ("Third Amendment") to the Memorandum of Understanding, City Agreement Number 2002-215, dated December 3, 2002 ("MOU") between the City of Sacramento ("City") and Crocker Art Museum Association ("CAMA"), a California nonprofit organization is made as of July 22, 2009.

RECITALS

- A. City and CAMA entered into the MOU wherein City and CAMA set forth their respective roles and responsibilities regarding the Crocker Art Museum Renovation and Expansion Project (the "Project").
- B. On June 5, 2007, the City and CAMA entered into a First Amendment to the MOU, City Agreement number 2002-0215-1, to identify Project funding and construction protocols.
- C. On December 4, 2007, the City and CAMA entered into a Second Amendment to the MOU, City Agreement number 2002-0215-2 to update the Project budget to reflect the Project Guaranteed Maximum Price ("GMP") and to specify the parties' obligations to provide additional funding for the Project.
- D. Current economic conditions may cause a delay in the collection and conversion of pledges by CAMA for Project construction.
- E. The City is willing to fund shortfalls caused by these economic conditions through a \$ 10 million line of credit to CAMA so that the construction of the Project may proceed as scheduled.

NOW, THEREFORE, based on the facts set forth in the foregoing recitals, the City and CAMA amend the MOU as follows:

1. Section 18 of the MOU is amended and restated in its entirety to read as follows:

"18. Funding for Project Construction Phase.

- A. Project Funding. Sources of funding for the construction phase of the Project ("Construction") shall be according to the Plan, attached hereto as Exhibit A and incorporated herein, as amended and approved by the City and CAMA. The funding sources identified in the Plan shall be used to pay for Construction in the order in which they appear in the Plan.
- B. Project Budget. The proposed budget for the Project is attached as Exhibit B and incorporated herein, as amended and approved by the City and CAMA. ("the

Project Budget"). The Project Budget reflects the City's current estimate of all Construction costs and represents the parties' current understanding of the totality of all anticipated Construction costs for the Project.

- C. Meet and Confer Requirements. City and CAMA shall promptly meet and confer in good faith for the purpose of amending the Plan, Project Budget and MOU if: 1) seventy-five percent (75%) of the contingency funding identified in the Project Budget has been depleted; 2) any other event occurs that materially affects the Project; or 3) actual City Project Management and Staff Labor Costs are at least five percent (5%) greater or less than the City Project Management and Staff Labor Costs identified in the Project Budget.
- D. Construction Account. CAMA shall select a financial institution approved by the City Treasurer's Office. The Treasurer's Office will establish an interest-bearing trust account (the "Account") at this institution for the deposit and maintenance of CAMA funds to be used for Construction. The Account shall be in the name of the City, but shall expressly provide that it is held in trust for the benefit of the Project. The City shall have the right to authorize disbursements from the Account for the purpose of investing these funds in the City's Pool A investment account ("Pool A") and to pay the costs of Construction. City shall maintain a separate accounting of any Account funds invested in Pool A. Any interest earned on the funds invested in Pool A and on the Account shall be used for the sole benefit of the Project. In no event shall the City use the Account funds invested in Pool A, the earned interest on such investment, or the funds or interest earned on the Account for any purpose unrelated to the Project. For purposes of determining the Funds Available for Disbursement only, the remaining balance of CRCIP Loan and Line of Credit proceeds described in section 19.A shall be deemed to be included in the Account.
- E. City Accounting. The City shall provide an Account reconciliation to CAMA's Project manager on a monthly basis, commencing in the month following creation of the Account and ending when final payment is made to the Construction Manager under the Construction Contract and all other claims related to the Project have been resolved. The Account reconciliation shall specify, among other things, the "Funds Available for Disbursement" as defined in section 7.1.1 of the Construction Contract, the cost of work performed pursuant to the Construction Contract for the same month, as specified in section 7.1.1, and the amount, if any, that the cost of work exceeds the Funds Available for Disbursement, such amount hereinafter referred to as a "Deficit". Within 30 days after final payment to the Construction Manager and after the resolution of all claims pertaining to Construction, the City shall transfer any CAMA funds in Pool A, including any interest thereon, from Pool A to the Account and thereafter direct that all amounts remaining in the Account be distributed to CAMA.

F. Construction Funding Obligations.

1) CAMA.

- (a) CAMA shall deposit \$12.5 million into the Account within 10 days after the City Council and the CAMA board approves the First Amendment. CAMA shall deposit an additional \$14.5 million into the Account no later than November 14, 2007. During the Construction Phase of the Project, CAMA shall deposit into the Account an additional \$7.8 million in cash converted pledges within forty-five (45) days of its receipt of the cash. Notwithstanding the forgoing, nothing shall prohibit CAMA from depositing additional cash converted pledges into the Account during the Construction Phase of the Project. The City may draw against the non-revolving Line of Credit described in Section 19.A during the Construction Phase of the Project in an amount necessary to fund the remaining Construction costs in accordance with the provisions of the MOU. In no event shall the Line of Credit be used for any purpose other than the funding of Construction.
- (b) If the City's monthly Account reconciliation provided pursuant to subsection E above, indicates a Deficit in any month, CAMA shall deposit the amount of the Deficit into the Account not later than the 10th day of the following month.
- (c) The funding obligations in subsections (a) and (b) may not be satisfied through the use of any of the CRCIP Loan proceeds described in Section 19.A below.
- (d) If the City fails to enter into the Construction Phase Amendment to the Construction Contract by December 18, 2007, CAMA funding made pursuant to subsection (a) and any interest earned thereon, less all State grant monies used for the Project, shall be returned to CAMA no later than January 15, 2008.

2) City. The City's funding obligations are stated in the Plan. The City shall separately maintain these funds in a City account. The City shall provide an accounting of these funds to CAMA's Project Manager on a monthly basis.

3) The provisions of this subsection F shall be supplementary to, and shall not limit or otherwise modify the rights and obligations of the parties as specified in Section 7.1.1 of the Construction Contract.

G. Use and Management of Account. With the exception of the first loan payment referenced in Section 19.D, City and CAMA agree that CAMA funds maintained in the Account and in Pool A shall be used solely for the purpose of funding Construction and to satisfy CAMA's funding obligations under the Plan. City shall

have the sole authority to make all disbursements of funds from the Account, subject to the provisions in Section 21 below.

H. Prior Contracts. The cost of the work provided for under the contracts authorized prior to approval of the Construction Phase Amendment, as described in Recitals E, F and H, of the Second Amendment to the MOU, constitutes part of the Project costs to be funded as provided in the MOU, the First and Second Amendments to the MOU and this Third Amendment.”

2. Section 19 of the MOU is amended and restated in its entirety to read as follows:

“19. CRCIP Loan and Line of Credit.

A. CRCIP Proceeds. The City shall provide CAMA with a \$12 million CRCIP loan (“CRCIP Loan”) to fund Construction, contingent on the City’s execution of the Construction Phase Amendment to the Construction Contract. The City shall also extend to CAMA a non-revolving CRCIP line of credit of up to \$10 million (“Line of Credit”) to provide additional funding for the Construction Phase of the Project and to fulfill CAMA’s funding obligations herein. The CRCIP Loan and Line of Credit proceeds shall be maintained by the City in a City account and disbursed by the City in accordance with the provisions of the MOU and in the order in which the CRCIP Loan and Line of Credit appear in the Plan.

B. CRCIP Loan Documents. CAMA and the City shall enter into customary loan documents in a form approved by the Office of the City Attorney for the repayment of the CRCIP Loan obligation (“CRCIP Loan Documents”). The CRCIP Loan Documents shall include a security agreement in which CAMA capital campaign pledges constitute security under the agreement. The CRCIP Loan Documents shall be executed by the City and CAMA before City Council approves the amendment to the Construction Contract, adding the Construction Phase of the Project.

C. Line of Credit Documents. CAMA and the City shall enter into customary line of credit documents (“Line of Credit Documents”) approved by the Office of the City Attorney for the repayment of the outstanding Line of Credit balance. The Line of Credit Documents shall include a security agreement in which CAMA capital campaign pledges constitute security under the agreement. The Line of Credit Documents shall be executed at the time the parties enter into this Third Amendment.

D. CRCIP Loan and Line of Credit Repayment. CAMA shall repay the CRCIP Loan and Line of Credit balance in accordance with the CRCIP Loan Documents, Line of Credit Documents and the “Repayment Schedules” set forth in Exhibits C and D hereto. The City shall maintain an accurate accounting of the CRCIP Loan and outstanding Line of Credit, including the outstanding balances, interest accrued, and payments made, and shall provide CAMA with a copy of these accountings

within 30 days of each payment. Interest earned on the \$12 million CRCIP bond proceeds shall operate as a credit against the CRCIP Loan. The City acknowledges that CAMA may pay the loan payment due on November 23, 2007 from CAMA funds in the Account. In the event CAMA fails to make payment(s) as required by either Repayment Schedule, the City may withhold operating funds allocated under the Crocker Trust or as otherwise allocated by the City until such delinquent amounts are paid, and/or take any other actions the City deems appropriate.

- 1) CRCIP Loan Reserve. CAMA shall maintain a cash reserve in a reserve account controlled by the City in an amount equal to an average of two (2) bi-annual payments under the CRCIP Loan Repayment Schedule attached as Exhibit C hereto, at all times during of the term of the CRCIP Loan, excluding the last year thereof. CAMA shall establish this reserve by depositing fifty percent (50%) of cash-converted capital campaign pledges, not otherwise required to be deposited into the Account, into the City reserve account as they are received until the required cash reserve balance is achieved.
- 2) Line of Credit Pay Down. Notwithstanding the Line of Credit Repayment Schedule attached as Exhibit D hereto, commencing on January 1, 2011, CAMA shall make additional payments to the City in repayment of the outstanding Line of Credit principal balance from cash-converted capital campaign pledges. These payments shall be made within forty-five (45) days of its receipt of the cash.
- 3) Pledge Reporting. CAMA shall submit a monthly capital campaign schedule to the City until the CRCIP Loan and Line of Credit balance are repaid. The schedule shall include pledges received, pledges converted into cash, past due pledges, and a projection of pledges to be received.

E. Remaining CRCIP Loan Draws. If, upon final payment to the Construction Manager under the Construction Contract and after resolution of all other claims related to the Project, the City has not expended the full amount of the CRCIP Loan on the Project, any remaining balance shall be transferred to CAMA for the purchase of Project furniture, fixtures or equipment, or other Project costs.

F. Prohibited Indebtedness or Guaranties, Reporting Requirements.

- 1) Prior to the date City Council approves the amendment of the Construction Contract to add the Construction Phase of the Project, CAMA shall provide evidence acceptable to the City: 1) that it does not have any outstanding accounts payable for services rendered under the design and pre-construction phases of the Project; and 2) of the estimated remaining financial obligations by CAMA under the design and pre-construction phases of the Project.

2) CAMA shall not incur the following obligations or indebtedness's secured by the campaign pledges used to secure the CRCIP Loan and Line of Credit without the prior written approval of the City: a) line of credit acquisitions or increases or any line of credit secured by any capital campaign pledges; b) security agreements or other encumbrances secured by any capital campaign pledges; c) assignments secured by any capital campaign pledges; or d) loans secured by any capital campaign pledges. CAMA shall not guarantee the payment of indebtedness of any other person or entity, which guarantee is secured by any capital campaign pledges without the prior written consent of the City. These prohibitions shall remain in effect until all of CAMA's obligations under this MOU have been satisfied, including repayment of the CRCIP Loan and Line of Credit indebtednesses memorialized in the Repayment Schedules."

The terms and provisions of the MOU, as amended, shall remain in full force and effect, provided that in the event of any inconsistencies between this Third Amendment, the MOU or the First or Second Amendments to the MOU, the provisions of this Third Amendment shall prevail.

CITY OF SACRAMENTO

CROCKER ART MUSEUM ASSOCIATION

By Cassandra H. B. Jennings

By Tom Weborg
Tom Weborg, President

Cassandra H. B. Jennings, Assistant City Manager
For: Ray Kerridge, City Manager, July 22, 2009

ATTEST:

City Clerk

APPROVED AS TO FORM:

Angele Casagrande
Senior Deputy City Attorney

ATTEST:

Dawn Bullwinkel
City CLERK 7-24-09

Crocker Art Museum Expansion Project
Third Amendment to MOU

Crocker Project Construction Phase Funding Plan*

Total Estimated Construction Costs as of June, 2009	\$83,936,526
CRCIP "City Grant"	2,000,000
State of California Proposition 40 Grant	2,000,000
Deferred Maintenance for Chiller	100,000
SHRA Tax Increment	1,000,000
SHRA's Downtown Bond	8,000,000
CAMA Contribution from CRCIP Loan Proceeds	12,000,000
City Contribution from CRCIP Proceeds	15,000,000
CAMA Cash Contribution – pre-construction period	27,000,000
CAMA Cash Converted Pledges – construction period	<u>7,800,000</u>
Total Estimated Funding as of June, 2009	<u>\$74,900,000</u>
Funding Shortfall as of June, 2009	\$9,036,526
CRCIP Line of Credit	\$10,000,000
Funding Available Prior to Project Completion	\$84,900,000

**Funding sources are listed in the order of their intended use.*

Exhibit A to Third Amendment to MOU

Project Budget*

GMP Contract Award	\$74,489,026
Off-Site Construction Award	3,340,000
Prop 40 Grant Work	1,862,000
Project Management/Consultants	2,200,500
Permits and Fees	1,400,000
Project Contingency	645,000
Project Deferrals	<u>0</u>

Total Estimated Construction Costs: \$83,936,526

Construction Estimates based on November, 2007 data

Exhibit B to Third Amendment to MOU

Repayment Schedule

<u>INSTALLMENT</u>	<u>INTEREST RATE</u>	<u>DUE DATE</u>	<u>INTEREST</u>	<u>PRINCIPAL</u>	<u>PAYMENT DUE</u>
1	4.00%	Dec. 1, 2006	\$244,855.76		*\$ 244,855.76
2	4.00%	June 1, 2007	\$ 265,506.25		*\$ 265,506.25
3	4.00%	Nov. 23, 2007	\$ 265,506.25	\$1,075,000.00	\$1,340,506.25
4	4.00%	May 23, 2008	\$ 244,006.25		\$ 244,006.25
5	4.00%	Nov. 24, 2008	\$ 244,006.25	\$1,115,000.00	\$1,359,006.25
6	4.00%	May 25, 2009	\$ 221,706.25		\$ 221,706.25
7	4.00%	Nov. 24, 2009	\$ 221,706.25	\$1,160,000.00	\$1,381,706.25
8	4.00%	May 25, 2010	\$ 198,506.25		\$ 198,506.25
9	4.00%	Nov. 24, 2010	\$ 198,506.25	\$1,210,000.00	\$1,408,506.25
10	4.00%	May 25, 2011	\$ 174,306.25		\$ 174,306.25
11	3.75%	Nov. 24, 2011	\$ 174,306.25	\$1,255,000.00	\$1,429,306.25
12	3.75%	May 25, 2012	\$ 150,775.00		\$ 150,775.00
13	4.00%	Nov. 23, 2012	\$ 150,775.00	\$1,305,000.00	\$1,455,775.00
14	4.00%	May 24, 2013	\$ 124,675.00		\$ 124,675.00
15	4.00%	Nov. 22, 2013	\$ 124,675.00	\$1,355,000.00	\$1,479,675.00
16	4.00%	May 23, 2014	\$ 97,575.00		\$ 97,575.00
17	4.25%	Nov. 24, 2014	\$ 97,575.00	\$1,410,000.00	\$1,507,575.00
18	4.25%	May 25, 2015	\$ 67,612.50		\$ 67,612.50
19	4.50%	Nov. 24, 2015	\$ 67,612.50	\$1,470,000.00	\$1,537,612.50
20	4.50%	May 25, 2016	\$ 34,537.50		\$ 34,537.50
21	4.50%	Nov. 24, 2016	\$ 34,537.50	\$1,535,000.00	\$1,569,537.50

Exhibit C to Third Amendment to MOU

Date: 7/1/2009
 Delivered: 7/1/2009

Debt Service Repayment Schedule
\$5MM CAMA Loan 6% TIC

I
 SLA ACT/ACT SEMI 7/6
 Bond Rule

Period	Coupon Date	Int Calc Day Cnts	Principal Payment	Effective Coupon Rate	Interest Payment	Credit Enhancements	Periodic Debt Service	Outstanding Balance
1	12/1/2009			6.01100	125,983.97		125,983.97	5,000,000.00
2	6/1/2010			6.01100	150,275.00		150,275.00	5,000,000.00
3	12/1/2010			6.01100	150,275.00		150,275.00	5,000,000.00
4	6/1/2011			6.01100	150,275.00		150,275.00	5,000,000.00
5	12/1/2011			6.01100	150,275.00		150,275.00	5,000,000.00
6	6/1/2012			6.01100	150,275.00		150,275.00	5,000,000.00
7	12/1/2012			6.01100	150,275.00		150,275.00	5,000,000.00
8	6/1/2013			6.01100	150,275.00		150,275.00	5,000,000.00
9	12/1/2013			6.01100	150,275.00		150,275.00	5,000,000.00
10	6/1/2014		5,000,000.00	6.01100	150,275.00		150,275.00	5,000,000.00
			\$5,000,000.00		\$1,478,458.97	\$0.00	\$6,478,458.97	

True Interest Cost (TIC)	6.0110000	Face Value of Bond Issue	\$5,000,000.00
Arbitrage Yield Limit (AYL)	0.0000000	Accrued Interest (+)	\$0.00
Average Life	4.9180328	Original Issue Premium/Discount (+)	\$0.00
		Underwriter Discount (+)	\$0.00
		Lump-sum credit enhancements (-)	\$0.00

Note: This schedule assumes a maximum borrowing amount and will be revised to reflect the true borrowing amount and borrowing date

Date: 7/1/2009
 Delivered: 7/1/2009

Debt Service Repayment Schedule
\$5MM LOC - No Interest

SLA ACT/ACT SEMI 7/6
 Bond Rule

Period	Coupon Date	Int Calc Day Cnts	Principal Payment	Effective Coupon Rate	Interest Payment	Credit Enhancements	Periodic Debt Service	Outstanding Balance
1	12/1/2009			0.00000	0.00		0.00	5,000,000.00
2	6/1/2010			0.00000	0.00		0.00	5,000,000.00
3	12/1/2010			0.00000	0.00		0.00	5,000,000.00
4	6/1/2011			0.00000	0.00		0.00	5,000,000.00
5	12/1/2011			0.00000	0.00		0.00	5,000,000.00
6	6/1/2012			0.00000	0.00		0.00	5,000,000.00
7	12/1/2012			0.00000	0.00		0.00	5,000,000.00
8	6/1/2013			0.00000	0.00		0.00	5,000,000.00
9	12/1/2013			0.00000	0.00		0.00	5,000,000.00
10	6/1/2014		5,000,000.00	0.00000	0.00		0.00	5,000,000.00
			\$5,000,000.00		\$0.00	\$0.00	\$5,000,000.00	

True Interest Cost (TIC)	0.0000000	Face Value of Bond Issue	\$5,000,000.00
Arbitrage Yield Limit (AYL)	0.0000000	Accrued Interest (+)	\$0.00
Average Life	4.9180328	Original Issue Premium/Discount (+)	\$0.00
		Underwriter Discount (+)	\$0.00
		Lump-sum credit enhancements (-)	\$0.00

Note: This schedule assumes no interest payments with a repayment due in June 2014

EXHIBIT D TO THIRD AMENDMENT TO MOU