

**RESOLUTION NO. 2002-799**

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF DEC - 3 2002

**RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF SACRAMENTO AND CROCKER ART MUSEUM ASSOCIATION AND APPROVING OTHER ACTIONS relating to THE CROCKER ART MUSEUM EXPANSION PROJECT**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. The City Manager is hereby authorized and directed to execute the attached Memorandum of Understanding (MOU) (Attachment A) with the Crocker Art Museum Association (CAMA) for the Crocker Art Museum Expansion Project (the "Project");
2. CAMA is authorized to execute and fund a Professional Services Agreement for the conceptual design of the Project identified as Task 1 in the Project Schedule (Exhibit II of the MOU), as provided in the MOU, with Gwathmey Siegel & Associates Architects (GSA) in the amount of \$300,000;
3. \$100,000 is appropriated from Administrative Contingency for a capital improvement project (Crocker Expansion Pre-Construction). The project will fund the Project Manager, City staff review and overhead through design development for the conceptual design of the Project, identified as Task 1 in the Project Schedule (Exhibit II of the MOU);
4. CAMA is authorized to issue a Request for Proposal (RFP) for the selection of a General Contractor to be retained by CAMA to perform pre-construction services during the design phase of the Project, as provided in the MOU. Given the uniqueness of the project, the MOU specifically calls out of the expansion to be delivered as a "design-assist-build" project modeled after the successful South Natomas Community Center "design-assist-build" project.

  
MAYOR

ATTEST:

  
CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO: 2002-799  
DATE ADOPTED: DEC - 3 2002

Attachment A

Memorandum of Understanding (MOU) **COUNCIL AGENDA MATERIAL**

for the

MTG. DATE 12-3-02 ITEM NO. 4.2  
FROM: CITY CLERK'S OFFICE

Crocker Art Museum Project

This Memorandum of Understanding (MOU) is made as of December \_\_\_\_, 2002, by and between the City of Sacramento ("City") and Crocker Art Museum Association ("CAMA") a nonprofit organization.

## RECITALS

WHEREAS, City and CAMA, as Co-Trustees, manage the Crocker Art Museum (Museum) jointly as established in the Crocker Trust Agreement of 1885, the 1992 Operating Agreement, and other CAMA and City Memoranda of Understanding; and

WHEREAS, City and CAMA desire to undertake a program to expand and renovate the Museum at the existing site; and

WHEREAS, CAMA has secured pledges in the amount of nearly \$18,000,000 for the design and construction of the Museum expansion; and

WHEREAS, CAMA and City, acting by and through the Redevelopment Agency of the City of Sacramento, have jointly funded a Master Plan, including the CEQA process, for the Museum Expansion and Renovation (the "Project"); and

WHEREAS, CAMA is represented by its Board of Directors who acts on behalf of CAMA; and

WHEREAS CAMA, after consulting with the City has retained an Architect (Gwathmey Siegel & Associates) to prepare the Master Plan; and

WHEREAS, City will authorize CAMA to execute all pre-construction agreements as provided for in this MOU; and

WHEREAS, City and CAMA will jointly approve and execute all construction contracts as provided for in this MOU; and

WHEREAS, City approvals of agreements and contracts, and any amendments thereto, shall be made either by the City Council or by the City Manager (or authorized representative), depending on the amount of such agreements, contracts or amendments, in accordance with applicable provisions of the Sacramento City Code, Chapter 3.60s and 3.64, attached hereto as Exhibit I; and

WHEREAS, CAMA has retained the services of a CAMA's Project Representative who will advise CAMA regarding all activities related to the design and future construction of the Project on behalf of CAMA; and

WHEREAS, City has retained the services of a Project Coordinator who will manage all activities related to the design and pre-construction of the Project on behalf of City; and

WHEREAS, CAMA and City will continue to be responsible for the joint administration of the Museum; and the existing Museum and the new building(s) will be owned and operated all pursuant to the Crocker Trust Agreement of 1885, the 1992 Operating Agreement, and other CAMA and City Memoranda of Understanding previously approved by City Council; and

WHEREAS, in order to assure each party's expectations associated with the Project, the City and CAMA desire to enter into this MOU to define their respective roles and responsibilities.

AND, THEREFORE, City and CAMA agree as follows:

1. Definitions. As used in this MOU: "Expansion" shall refer to the new addition, related modifications to the Herold Wing, and the bridge connection to the Gallery Building; "Renovation" shall refer to improvements to the Gallery and Mansion buildings including structural, mechanical and electrical improvements; "Project Schedule" shall refer to Exhibit II; and "Project" shall mean the Museum Expansion and the Renovation together.
2. Design and Pre-Construction Agreements. CAMA shall execute in its name all agreements and contracts required for design and pre-construction services for the Project. In the event CAMA elects to retain local Architectural services, CAMA shall conduct the selection through a competitive, qualification based selection process in which City will participate through representation on a selection panel comprised of CAMA and City representatives. All such agreements and contracts shall include insurance that meets the minimum insurance requirements set forth in Exhibit III attached hereto and shall require the contracting party to fully indemnify, defend and hold harmless the City, its officers and employees from any and all liabilities arising in connection with any negligent act or omission or willful misconduct in the performance of services thereunder. All agreements and contracts for the Project between CAMA and any other party shall require the review and approval of the City Manager (or authorized representative), provided that all agreements and contracts between CAMA and any other party equal to or exceeding a total dollar amount of \$100,000 shall require the review and approval of the City Council.
3. Construction Contract. The provisions of the Construction Contract and other construction specifications and documents prepared by the architect(s) shall be subject to City review and approval, and shall include: (i) provisions mandating compliance with all requirements applicable to the construction of a "public project" under the Sacramento City Code, as well as all other applicable laws and regulations, including without limitation the payment of prevailing wages and compliance with all applicable provisions of the Americans With Disabilities Act; and (ii) bonding, insurance and indemnity provisions as may be required by the City. The construction contract will be executed by the City and CAMA, as provided in this MOU.
4. Obligations of the Parties.
  - A. A Business Plan will be provided by CAMA for review and approval by the City Council. The Plan will contain an Operating Budget and a Capital Improvement Budget. The Operating Budget will project operating revenues and expenses for the three-year period commencing on the opening of the Expansion. The Capital Improvement Budget will project Expansion and Renovation costs and will provide a cash flow analysis demonstrating that sufficient funds will be available to complete the Project as designed. The Business Plan will discuss the efficacy of campaign pledges, enterprise opportunities to help offset new operating costs and other aspects normally identified in a Business Plan. The Business Plan must be approved by the City Council before construction of the Project is authorized to proceed.
  - B. CAMA's Board of Directors may delegate in accordance with CAMA By Laws, Project responsibilities to sub-committees or individuals at their sole discretion. CAMA reviews shall initially be the responsibility of the Building and Grounds Committee with approvals to be granted by the Executive Committee.
  - C. CAMA shall retain a Construction Manager/General Contractor (CM/GC) to participate in the design and pre-construction phases of the Project. CAMA and the City Council shall jointly approve the design deliverables from each Design Phase and thereafter authorize the architect(s) to proceed with the following design phase. The CM/GC shall provide standard pre-construction services, including construction cost estimates, projected schedules, constructability consultation and value engineering services for each design phase. The City Council and CAMA shall approve the cost estimates and design changes for each design phase before the architect is authorized to proceed with the following phase. CAMA shall select the GC/CM through a competitive, qualification-based selection process in which City shall participate through representation on the selection panel.

- D. CAMA, through its designers and CM/GC shall employ value-engineering practices throughout the design of the Project.
  - E. City reserves the right to retain, at City's expense, a value engineering firm to conduct an independent Construction Cost evaluation concurrent with that contracted for by CAMA and shown as Task items 7, 13 and 20 on the Project Schedule.
  - F. Amendments to the design agreements or the CM/GC design and pre-construction phase contract shall required the approval of the City Manager (or authorized representative), or the City Council as required in Exhibit I.
  - G. CAMA and the City shall agree upon all procedures to be used for bidding on construction of the Project.
  - H. After the design is completed, the provisions of the construction specifications and documents are approved by the City and bidding has been undertaken in accordance with the agreed upon bidding procedures, and the City and CAMA have approved all necessary funding arrangements, the City Council will consider whether to approve a written Amendment to the Construction Contract to add the construction phase and establish the amount to be paid and issue a Notice to Proceed to the CM/GC or to such other contractor as may be agreed upon by the City and CAMA. If the Amendment and Notice to Proceed are approved by the City Council in the exercise of its legislative discretion, the City and CAMA will execute the Amendment to the Construction Contract, before construction of the Project is authorized to proceed. Notwithstanding any provision hereof to the contrary, the City shall have no obligations or duties under this MOU with respect to the construction of the Project, unless and until the City Council approves and authorizes execution of the Amendment to the Construction Contract adding the construction phase and establishing the amount to be paid as provided herein.
  - I. Any changes in the cost of work of \$100,000 or more during Project construction shall require approval by CAMA and the City Council. All such changes will be by change order using the City's change order form.
  - J. CAMA and the City shall each use its best efforts to conform to the attached Project Schedule (Exhibit II). Both parties acknowledge that both donor pledges and construction costs may be materially affected if the schedule is not adhered to.
5. Regulatory Compliance. All Project approvals described in this MOU shall be subject to the preparation and approval of environmental documents as may be required under the California Environmental Quality Act or other applicable law or regulation, as well as compliance with all other applicable laws or regulations.
6. City Project Coordinator. The roles and responsibilities of the City's Project Coordinator are as follows:
- A. Project Coordinator's role is to facilitate project review and approval through Item 11 of Exhibit II by all City departments that include but are not limited to: Planning including Environmental Section, Design Review Preservation Board, Utilities, Public Works, Traffic, Facilities, Parking, Police, Fire and Building Departments.
  - B. Project Coordinator shall facilitate review and approval by the City Council as defined in the Project Schedule through Item 11 of Exhibit II.
  - C. Project Coordinator shall report to the Deputy City Manager or designee.
7. CAMA's Project Representative. The roles and responsibilities of CAMA's Project Representative are as follows:

- A. CAMA's Project Representative's role is to coordinate the preparation of all agreements and amendments to such agreements between CAMA and the Architect, CM/GC and any other consultants or contractors that may be required for the execution of the design and pre-construction work.
- B. CAMA's Project Representative shall transmit all agreements, a project description, requests for information from the City that may be required for the continuance of the project, and all submittals to City's Project Coordinator for distribution to City departments for review and comment.
- C. CAMA's Project Representative shall transmit all comments from City to CAMA and Architect or CM/GC.

8. City's Commitments.

- A. City shall designate this Project as a priority project and shall use its best efforts to expedite reviews within mutually agreed upon schedule. Each department shall have a point of contact assigned to the Project. Building Department plan check comments shall be returned within 4 weeks of the first submittal and 2 weeks after each subsequent submittal. Building permit(s) shall be issued within two weeks of final plan check approval.
- B. City shall provide projected costs of Plan Check(s), Building Permit(s), Inspections and any other fees or charges within 30 days of submittal of the approved Concept Plans for inclusion in the Business Plan. City will establish a Capital Improvement Project Budget for the purpose of funding the City's project manager, staff review and overhead costs through design development. (Item 12, Exhibit II)
- C. City's financial participation in the Project may include, but will not be limited to tax increment allocations, development of the off-site improvements, stabilization of the existing museum, or similar financial contributions. The amount and nature of City's financial participation shall be determined by the City Council in its sole legislative discretion as part of its annualized budget process, and such determination is not necessary for execution of this MOU. Nothing in this MOU shall be construed to pre-determine the City's financial participation or otherwise limit the City Council's budgetary authority.
- D. City, through its budget allocation process, shall establish a Capital Improvement Project (CIP) for City department reviews of the Project submittals through the completion of Item 11 of Exhibit II.
- E. City shall transition management of the Project at the completion of Item 11 of Exhibit II from the Community Services Group to the Department of Public Works. City, at that time, through its budget allocation process, shall establish a new CIP or amend the existing CIP.

9. Ownership of Expansion. City and CAMA acknowledge that the Project will become part of the 1885 Trust Agreement.

10. No Partnership Relationship. : It is understood and agreed that CAMA is an independent organization and that no relationship of employer-employee, partnership or joint venture exists between the parties hereto for any purpose whatsoever. Except as expressly provided in this MOU, CAMA and CAMA's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor to bind City to any obligations whatsoever. City shall not control the activities of CAMA, and City and City's personnel shall have no authority, express or implied, to act on behalf of CAMA in any capacity whatsoever as an agent, nor to bind CAMA to any obligations whatsoever.

11. Party Representatives. The representatives for the parties with respect to this agreement are:

For CAMA:  
 Lial Jones  
 Crocker Art Museum Association  
 216 "O" Street  
 Sacramento, CA 95814  
 916. 264.1054

FAX: 916.446.4563

For City:  
 Richard Ramirez  
 City Hall  
 915 I Street  
 Sacramento, CA 95814  
 916.264.7598  
 Fax 916.264.7618

Any notices or other communications authorized or required by this MOU, including notice of a change in a Party's representative, shall be delivered or sent to the representatives identified above.

12. Disputes. The parties shall attempt to resolve any disputes they may have in good faith, beginning with the City's Project Coordinator and the CAMA's Project Representative. Should they be unable reach resolution, they shall refer the dispute to the Director of the Museum and the Director of Public Works. Should the Directors be unable to reach resolution, they shall refer the dispute to the City Manager and President of the CAMA Board. Any dispute that is not resolved informally shall be referred to non-binding mediation before a mutually agreeable mediator. If the parties are unable to agree upon the mediator, the parties will request appointment of a mediator by the American Arbitration Association. Each party shall pay its own costs and be responsible to pay one-half of the mediator's costs.

13. Term and Termination.

- A. The term of this MOU shall begin on the date that it is approved by both parties, and this MOU shall remain in effect until the Project is completed or this MOU is terminated in accordance with the provisions of paragraph 13.B below; provided that any termination of this MOU shall not terminate the parties' rights and obligations under paragraphs 15, 16 and 17 of this MOU.
- B. Either party may terminate this MOU in the event of a material breach by the other party, if the non-breaching party provides the other party not less than thirty (30) days written notice of such breach and the other party fails to cure the breach within such thirty-day period. If the breach cannot reasonably be cured in 30 days, no right to terminate shall exist if the party commences and thereafter diligently pursues the cure to completion.

14. Insurance Requirements.

- A. During the entire term of this MOU, CAMA shall maintain the following insurance:
  - 1) Commercial General Liability; \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
  - 2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
  - 3) Workers' Compensation and Employers' Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per accident.
- B. Deductibles and Self-Insured Retentions. Any deductibles or self insured retentions must be declared to and approved by the City.
- C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:
  - 1) General Liability and Automobile Liability Coverages:

- a. City, its officials, and employees shall be covered as insured as respects: liability arising out of activities performed by or on behalf of CAMA; products and completed operations of CAMA; premises owned, leased or used by CAMA. The coverage shall contain no special limitations on the scope of the protection afforded to City, its officials, employees or volunteers.
- b. CAMA's insurance coverage shall be primary insurance as respects City, its officials, and employees. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of CAMA's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, or employees.
- d. Coverage shall state that CAMA's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2) All coverage: Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior written notice has been mailed to City. In addition, CAMA agrees that it shall maintain required limits of liability as required by this Memorandum of Understanding. In the event coverage is cancelled or non-renewed for any reason other than nonpayment of premium, thirty (30) days prior written notice will be given to the City. CAMA further agrees that it shall not increase any deductibles or self-insured retentions on any such policy except after thirty (30) days written notice has been given to City and City Approves such an increase.

- D. Acceptability of Insurers. Insurance shall be placed with insurers with a Bests' rating of no less than A:VII. This requirement, however, shall be waived for Worker's Compensation Coverage provided by a state approved source, including the State Fund.
- E. Verification of Coverage. CAMA shall furnish City with certificates of insurance showing compliance with the above requirements and with original endorsements affecting all coverages required by this Agreement. The certificates and/or endorsements shall set forth a valid policy number for City, and shall indicate the Issue Date, Effective Date and Expiration Date. The certificates and endorsements for each insurance policy shall be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements shall be forwarded to the CITY representative named in paragraph 10 of this MOU.
- F. City maintains insurance through its self-insurance program.

15. Indemnity. Each party (The "Indemnifying Party") shall fully indemnify and save harmless the other party, its officers employees, agents, and volunteers, and each and every one of them, (the "Indemnified Party") from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to reasonable attorney's fees and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Indemnifying Party, its officers, employees, volunteers, consultants, subconsultants, contractors, subcontractors or agents, in connection with the performance or nonperformance of this MOU, or activities related to the Project, whether or not the Indemnified Party, its officers or employees reviewed, accepted or approved any service or work product performed or provided by Indemnifying Party, and whether or not such Liabilities are litigated, settled or reduced to judgment. CAMA's obligation under this section shall be limited to the insurance and deductibles that CAMA is required to maintain under Section 14 above.
16. Obligation to Defend. The Indemnifying Party shall, upon the Indemnified Party's request, defend at the Indemnifying Party's sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of the Indemnifying Party, its officers, employees, volunteers, consultants, subconsultants, contractors, subcontractors or agents in connection with the performance or nonperformance of this Agreement, MOU or activities related to the Project, whether such action, claim, suit, cause of action or portion thereof is

well founded or not. CAMA's obligation under this section shall be limited to the insurance and deductibles that CAMA is required to maintain under Section 14 above.

7. General Conditions. If any portion of this MOU or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this MOU shall not be affected thereby and shall be enforced to the greatest extent permitted by law. No waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this MOU, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. Neither party may assign this MOU without the written consent of the non-assigning party, and any attempted or purported assignment without such consent shall be void and of no effect. All Exhibits referred to in this MOU and attached hereto are made a part of this MOU as if set forth in full at this place. This MOU shall be binding on the successors and authorized assigns of the parties.

**CITY OF SACRAMENTO**

**Crocker Art Museum Association**

By \_\_\_\_\_  
Robert P. Thomas,  
City Manager

By \_\_\_\_\_  
Roger Berry,  
President

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy City Attorney