



# REPORT TO COUNCIL City of Sacramento

# 5

915 I Street, Sacramento, CA 95814-2604  
www.CityofSacramento.org

Consent  
July 21, 2009

Honorable Mayor and  
Members of the City Council

**Title: Supplemental Agreements:** Community Reinvestment Capital Improvement Program (CRCIP)

**Location/Council District:** District 1, District 3

**Recommendation:** Adopt a **Resolution;** (1) Approving and authorizing the City Manager or his designee to execute the First Amendment to the Memorandum of Understanding (MOU) between the City and the Studios for the Performing Arts (City Agreement Number 2006-0798, dated July 25, 2006); (2) Approving and authorizing the City Manager or his designee to execute the Third Amendment to the MOU between the City and the Crocker Art Museum Association (City Agreement Number 2002-215, dated December 3, 2002); (3) Authorizing the City Manager or his designee to execute loan and security agreements with the Crocker Art Museum Association related to a \$10 million CRCIP bond proceeds line of credit for the construction of the Crocker Art Museum Expansion and Renovation Project.

**Contact:** Barbara E. Bonebrake, Director, Convention, Culture & Leisure, 808-8225; Rebecca Bitter, Program Manager, 808-5047

**Presenters:** N/A

**Department:** Convention, Culture and Leisure

**Division:** Administration

**Organization No:** 17001011

## Description/Analysis

**Issue:** On May 23, 2006, the City Council authorized the issuance of approximately \$150 million in 2006 Capital Improvement Revenue Bonds (CIRBs) as part of the Community Reinvestment Capital Improvement Program (CRCIP). The CRCIP included a number of financing sources including bond proceeds, Sacramento Housing and Redevelopment Agency (SHRA) funding, and the General Fund. Included in the CRCIP was funding for a new performing arts studio at 14<sup>th</sup> and H Street and the expansion of the Crocker Art Museum.



Studio for the Performing Arts: As part of the CRCIP the City Council approved the allocation of \$9 million in bond funds for the purchase of property at 725 14<sup>th</sup> Street and the City's contribution toward the construction of a performing arts facility. Additionally, the City Council authorized an additional \$5 million bridge loan to the Arts Organizations to be used for the construction of the project. The City Council approved acquisition of the Site on April 11, 2006 and allocated \$2.9 million in CRCIP funds to purchase the property and demolish existing improvements on the site.

On July 25, 2006, the City and the Arts Organizations entered into a MOU regarding the mutual obligations of the parties for the construction and funding of the project (City Agreement Number 2006-0798). On October 3, 2006, the Arts Organizations filed articles of incorporation to form the Studios Operating Company as a supporting organization exclusively for the benefit and support of the Arts Organizations. The purposes of the Studios Operating Company are to promote performing arts organizations and activities, and to lease and manage premises that house studios for performing arts organizations. In consideration of the formation of the Studios Operating Company, the parties have elected to include the Studios Operating Company as a party to this MOU.

The estimated cost to complete the construction of the project at the time the parties entered into the MOU was \$18 million. After preparation of the building plans by Dreyfuss & Blackford Architects, the estimated cost was revised to \$25.3 million. On March 13, 2007, the City Council approved a revision to the funding obligations and timelines imposed on the Arts Organizations in the MOU in order to address the revised cost estimate and to address fund raising challenges (Resolution 2007-151). On December 4, 2007, the City Council authorized staff to proceed with the construction document phase of the project (Resolution 2007-883).

Given the significance of the current economic challenges faced by our region the Arts Organizations' ability to raise the needed funds for this project have been significantly hampered. At this time the Arts Organizations would like to extend the date for commencement of the construction of the project for 3 to 5 years to permit them the time necessary to secure the pledges and funding necessary for completion of the project. Additionally, the Arts Organizations have agreed to include language in the MOU that would permit the City to use up to \$10 million in CRCIP funds earmarked for this project for the completion of other authorized CRCIP projects during the extension.

The Arts Organizations wish to amend the MOU to address these issues, incorporate the provisions of the intervening City Resolutions into the MOU, and add the Studios Operating Company as a party. See the MOU in Exhibit A on page 11 for further details.

Crocker Art Museum Association (CAMA) Expansion: On December 3, 2002, the City and CAMA entered into a MOU, where the City and CAMA set forth their respective roles and responsibilities regarding the Crocker Art Museum Renovation and Expansion Project (City Agreement Number 2002-215). On June 5, 2007, the City and CAMA entered into a First Amendment to the MOU to identify project funding and construction protocols (City Agreement 2002-0215-1). On December 4, 2007, the City and CAMA entered into a Second Amendment to the MOU to update the project budget to reflect the Guaranteed Maximum Price (GMP) and to specify the parties' obligations to provide additional funding for the project (City Agreement 2002-0215-2).

A Third Amendment is deemed necessary due to current economic conditions, which has resulted in delays in the collection and conversion of pledges by CAMA for project construction. The proposed 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 the Third Amendment to the MOU in Exhibit A on page 14 for details.

**Policy Considerations:** The amendments to City Agreements 2002-215 and 2006-798 are consistent with the City's goals to achieve sustainability and enhance livability in the community as well as reflecting the values of teamwork and fiscal responsibility.

**Environmental Considerations:** The proposed activity is not subject to environmental review under the California Environmental Quality Act ("CEQA"), California Code of Regulations, title 14, section 15060 because it is not a project under CEQA.

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** Approval of these Amendments allows for flexibility for valued non-profit organizations within the City.

**Financial Considerations:** The current economic challenges being faced by the Sacramento region have drastically impacted the ability of the City's non-profit partners to raise the matching funds originally anticipated for two of the City's Tier I CRCIP projects (Studios and Crocker). The approval of the amendments to the existing MOUs with these partners will allow for the: (1) successful completion of the Crocker Art Museum Expansion; (2) the utilization of borrowed CRCIP funds by CAMA with a plan for repayment that will allow for the Studios project to proceed when the economy recovers; and the time needed for both non-profit partners to continue fundraising efforts to complete these important community projects.

As proposed the funds currently budgeted for the construction of the Studios project will be used to fund a line of credit to CAMA in an amount up to \$10 million for the completion of the Crocker Museum expansion project. The line of credit being recommended for CAMA

includes terms that require the repayment of the loan within 5 years (see Exhibit A to Attachment 4) for terms and conditions). Additionally, the MOU for the Studios project includes terms that allow for the project to move forward when the matching fund requirements for project construction have been raised.

**Emerging Small Business Development (ESBD):** None. No goods or services are being purchased.

Respectfully Submitted by: Rebecca Bitter  
REBECCA BITTER  
Program Manager  
Convention, Culture and Leisure Department

Approved by: Barbara E Bonebrake  
BARBARA E. BONEBRAKE  
Director  
Convention, Culture and Leisure Department

Recommendation Approved:

Cassandra H.B. Jung  
for RAY KERRIDGE  
City Manager

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Background on Crocker Art Museum Expansion Project

The funding changes included in the MOU between the City and CAMA are as follows:

Sources of funding for the construction phase of the Project shall be according to the below Funding Plan. The funding sources identified in the Funding Plan shall be used to pay for Construction in the order in which they appear in the Funding Plan.

<b>Total Estimated Construction Costs as of June 2009</b>	<b>\$83,936,526</b>
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>
<b>Total Estimated Funding as of June 2009</b>	<b><u>\$74,900,000</u></b>
Anticipated Funding Shortfall as of June 2009	\$9,036,526
CRCIP Line of Credit	\$10,000,000
<b>Funding Available Prior to Project Completion</b>	<b>\$84,900,000</b>

The proposed budget for the CAMA project 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.

The City shall provide CAMA with a \$12 million 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 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 Funding Plan.

CAMA shall repay the CRCIP Loan and Line of Credit balance in accordance with the CRCIP Loan Documents, Line of Credit Documents and attached Repayment Schedules. 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.

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. 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.

Notwithstanding the Line of Credit Repayment Schedule, 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.

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.

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.

## Background on Studios for the Performing Arts (Studios) Project

The funding changes included in the MOU for the Studios for the Performing Arts project are as follows:

The project budget is currently estimated to be approximately \$25.3 million, including land acquisition, construction, and tenant improvements. The Arts Organizations, by their efforts and/or through the Studios Operating Company, shall be responsible for providing all funds to complete the project in excess of the funds provided by the City. The funding from the Arts Organizations must be transferred to the City or assured to the City's satisfaction, in its sole discretion, to be fully available as and when needed to fund the project costs, before the City will award the contract for project construction. If any part of the funding is not obtained or assured the project may either be: (i) terminated; (ii) reduced in scope so that the project's costs can be paid with funds that are then available; or, (iii) phased in order to meet the then current and anticipated future funding capacity.

The Parties intend to fund the project as follows:

City CRCIP Financing: The City shall contribute \$9 million as well as the \$5 million Bridge Loan from the proceeds of the CRCIP bond issue, minus the proceeds which have to date been reserved and/or expended by the City for the Studios project. Some of the project-Designated Proceeds have been used to acquire the Site and prepare construction documents for the project. The Arts Organizations agree that, while the Arts Organizations continue their capital campaign to raise funds to finance the remaining project costs, the City may direct up to \$10 million of the project-designated proceeds to fund other CRCIP projects for a period of not less than 3, but not more than 5 years.

Bridge Loan: The City will contribute a maximum sum of \$5 million from the proceeds of the CRCIP bond issue as a Bridge Loan, to be repaid by the Studios Operating Company, together with interest and the cost of bond issuance. Excluding interest earned during the Excusal Period, interest earned by the City on the \$5 million CRCIP bond proceeds shall operate as a credit against the Arts Organizations' Bridge Loan debt service. Bridge Loan payments shall be made to the City by the Studios Operating Company in the amount of approximately \$350,000.00 per year, payable on a monthly basis in the form of lease payments, starting upon the commencement of the facility lease between the City and the Studios Operating Company.

Arts Organizations Contributions: The Arts Organizations shall contribute the balance of the funding required to complete the construction of the project. Subject to potential changes in scope and/or phasing of the project as may be agreed to by the Parties, the contributions are currently estimated at \$11.3 million. Contributions shall be transferred to the City or legally binding pledges to the Arts Organizations to fund the project shall be presented to the City in

amounts not less than \$1.5 million per year until the \$11.3 million, or the total amount then necessary to complete the construction of the project, as solely determined by the City, has been transferred to the City or committed to fund the project.

Trust Account: The City shall establish an interest-bearing trust account at a financial institution selected by the Arts Organizations and approved the City Treasurer's Office for the deposit and maintenance of the Contributions. 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 Arts Organizations and the project.

The City shall provide an accounting of all CRCIP grant funds expended to date and remaining to be invested by the City for the project. Thereafter, the City shall provide an account reconciliation for all CRCIP funds expended and/or committed for the project and all funds held in the Account and Pool A for the project, on a quarterly basis prior to the award of the contract, and then on a monthly basis after the award of the contract and commencement of construction, to the Arts Organizations representatives. Any Contributions and interest earned thereon remaining at the end of the Construction Phase or upon termination of this Agreement shall be used to prepay the Bridge Loan or returned to the Arts Organizations, as applicable, within thirty (30) days of either event less any amounts owed to the City in connection with the project.

Project funding obligations are as follows and shall be used in the order presented below:

- (i) \$ 9 million City CRCIP proceeds
- (ii) \$ 5 million Bridge Loan
- (iii) \$11.3 million Arts Organizations Contributions, or the amount required to complete the project and satisfy all obligations under the construction contract.

If the project is commenced sooner than June 1, 2014, then the funding obligations for the project shall be funded pro rata by and from the above funding sources, based on the relative share of funding for the project to be provided by each source.

## **RESOLUTION NO. 2009-**

Adopted by the Sacramento City Council

### **APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE FIRST AMENDMENT TO CITY AGREEMENT 2006-798 BETWEEN THE CITY OF SACRAMENTO AND THE STUDIOS FOR THE PERFORMING ARTS (STUDIOS), DATED JULY 25, 2006.**

#### **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. As part of the Community Reinvestment Capital Improvement Program (CRCIP) the Studios for the Performing Arts project was established and \$9 million in grant funds as well as a \$5 million Bridge Loan to the Arts Organizations for the construction of the project on a parcel acquired by the City at 725 14<sup>th</sup> Street. The City Council approved acquisition of the Site on April 11, 2006 and allocated \$2.9 million in CRCIP funds to purchase the property and demolish existing improvements on the Site.
- C. On July 25, 2006, the City and the Arts Organizations entered into a MOU, City Agreement 2006-798 regarding the mutual obligations of the Arts Organizations for the construction and funding of the related CRCIP project. On October 3, 2006, the Arts Organizations filed articles of incorporation to form the Studios Operating Company as a supporting organization exclusively for the benefit and support of the Arts Organizations.
- D. The estimated cost to complete the construction of the project at the time the Parties entered into the MOU was \$18 million. After preparation of the project building plans by Dreyfuss & Blackford Architects, the estimated cost was revised to \$25.3 million.
- E. On March 13, 2007, the City Council adopted Resolution 2007-151, in which City Council revised the funding obligations and timelines imposed on the Arts Organizations in the MOU in order to address the revised cost estimate and the difficulties gathering pledges for the project.
- F. On December 4, 2007, City Council adopted Resolution 2007-883, in which City Council authorized staff to proceed with the construction document phase of the project.
- G. An amendment to City Agreement 2006-798 is necessary as the current recession has significantly hampered the Arts Organizations' ability to gather pledges to meet their funding obligations for the project. The Arts Organizations desire to complete this project but would like to extend the date for commencement of the construction of the project between 3 to 5 years to permit the Arts Organizations to secure pledges and funding necessary for the completion of the project and to permit the City to use up to \$10 million

in CRCIP funds earmarked for this project for the completion of other authorized CRCIP projects during the extension. See Exhibit A for details.

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

Section 1. The First Amendment to City Agreement 2006-798 between the City of Sacramento and the Studios for the Performing Arts is approved and the City Manager or his designee is authorized to execute the First Amendment.

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Exhibit A First Amendment to Memorandum of Understanding Between the City of Sacramento and the Studios for the Performing Arts

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING  
STUDIOS FOR THE PERFORMING ARTS**

This First Amendment ("First Amendment") to the Memorandum of Understanding, City Agreement Number 2006-0798, dated July 25, 2006 ("MOU") between the **CITY OF SACRAMENTO** ("City") and the **CALIFORNIA MUSICAL THEATRE, THE SACRAMENTO BALLET, THE SACRAMENTO OPERA COMPANY, and SACRAMENTO PHILHARMONIC ORCHESTRA ASSOCIATION, INC.**, (collectively, "Arts Organizations"), and the **STUDIOS FOR THE PERFORMING ARTS OPERATING COMPANY** ("Studios Operating Company") is made as of June \_\_\_\_\_, 2009. The City and the Arts Organizations and the Studios Operating Company shall be referred to herein collectively as the "Parties" and individually as "Party".

**RECITALS**

- A. On April 18, 2006, the City Council approved a Community Reinvestment Capital Improvement Program ("CRCIP") which established the Studios for the Performing Arts Project ("Project") and \$9 million in grant funds as well as a \$5 million bridge loan ("Bridge Loan") to the Arts Organizations for the construction of the Project on a parcel acquired by the City at 725 14<sup>th</sup> Street ("Site"). The City Council approved acquisition of the Site on April 11, 2006 and allocated \$2.9 million in CRCIP funds to purchase the property and demolish existing improvements on the Site.
- B. On July 25, 2006, the City and the Arts Organizations entered into the MOU regarding the mutual obligations of the Parties for the construction and funding of the Project.
- C. On October 3, 2006, the Arts Organizations filed articles of incorporation to form the Studios Operating Company as a supporting organization exclusively for the benefit and support of the Arts Organizations. The purposes of the Studios Operating Company are to promote performing arts organizations and activities and to lease and manage premises (like the Project) that house studios for performing arts organizations. In consideration of the formation of the Studios Operating Company, the Parties have elected to include the Studios Operating Company as a party to this MOU.
- D. The estimated cost to complete the construction of the Project at the time the Parties entered into the MOU was \$18 million. After preparation of the Project building plans by Dreyfuss & Blackford Architects, the estimated cost was revised to \$25.3 million.
- E. On March 13, 2007, the City Council adopted City Resolution number 2007-151, in which City Council revised the funding obligations and timelines imposed on the Arts Organizations in the MOU in order to address the revised cost estimate and the difficulties gathering pledges for the Project. These revisions were:

Requirement	To Commence
\$5 million in pledges	Design Development Phase
\$7 million in pledges	Construction Documents Phase
\$11.3 million in pledges and 50% of Pledges converted to cash and transferable to or controlled by the City	Prior to the issuance of request for bids
\$11.3 million in cash to City	Prior to awarding contract

- F. On December 4, 2007, the City Council adopted City Resolution number 2007-883, in which City Council authorized staff to proceed with the construction document phase of the Project.
- G. The current recession has significantly hampered the Arts Organizations' ability to gather pledges to meet their funding obligations for the Project.
- H. The Parties desire to complete this Project but would like to extend the date for commencement of the construction of the Project for between 3 to 5 years to permit the Arts Organizations to secure pledges and funding necessary for the completion of the Project and to permit the City to use up to \$ 10 million in CRCIP funds earmarked for this Project for the completion of other authorized CRCIP Projects during the extension.
- I. The Parties desire to amend the MOU to address these issues, incorporate the provisions of the intervening City Resolutions into the MOU, and add the Studios Operating Company as a party.

**NOW, THEREFORE**, based on the facts set forth in the foregoing recitals, City and the Arts Organizations amend the MOU, and the Studios Operating Company agrees to become a Party to the MOU and to be bound hereto, as amended hereby, as follows:

1) Section 3 of the MOU is amended and restated in its entirety to read as follows:

- “3. **Project Budget.** The Project budget, attached hereto as Exhibit A, (“Project Budget”) is currently estimated to be approximately \$25.3 million, including land acquisition, construction, and tenant improvements. The Project Budget is contingent upon the funding for the Project described in Section 5 below. The Arts Organizations, by their efforts and/or through the Studios Operating Company, shall be responsible for providing all funds to complete the Project in excess of the funds provided by the City. The funding from the Arts Organizations required under Section 5 must be transferred to the City or assured to the City’s satisfaction, in its sole discretion, to be fully available as and when needed to fund the Project costs, before the City will award the contract for Project construction. If any part of the funding is not obtained or assured as provided in Section 5, the Project may either be: (i) terminated in

accordance with Section 21 below; (ii) reduced in scope so that the Project's costs can be paid with funds that are then available; or, (iii) phased in order to meet the then current and anticipated future funding capacity."

2) Section 5 of the MOU is amended and restated in its entirety to read as follows:

"5. **Funding for Project.** The Parties intend to fund the Project as follows:

A. City CRCIP Financing: The City shall contribute \$9 million as well as the \$5 million Bridge Loan from the proceeds of the CRCIP bond issue, which proceeds have to date been reserved and/or expended by the City for the Project (the "Project-Designated Proceeds"). Some of the Project-Designated Proceeds have been used to acquire the Site and prepare construction documents for the Project. The Arts Organizations agree that, while the Arts Organizations continue their capital campaign to raise funds to finance the remaining Project costs, the City may direct up to \$10 million of the Project-Designated Proceeds to fund other CRCIP projects for a period of not less than 3 but not more than 5 years from the date this First Amendment is made, subject to the following:

(i) Notwithstanding section 5.B below, the Arts Organizations shall be excused from making any principal, interest or other payments on the Bridge Loan for the period commencing on the date this First Amendment is made and ending on the commencement of the facility lease referred to in Section 15 below ("Excusal Period"). Thereafter, repayment by the Arts Organizations of the Bridge Loan shall be made in accordance with section 5.B below. In addition, interest earned on the Project-Designated Proceeds during the Excusal Period shall be retained by the City.

(ii) The City shall continue to maintain ownership of the Site solely for the Project and shall not use or pledge the Site for any other project; and

(iii) When the Arts Organizations obtain cash and legally binding pledges in the amount then deemed necessary by the City, in its sole discretion, to fund the construction of the Project (based on then estimated construction costs and potential changes in scope and/or phasing of the Project as may be agreed to by the Parties), the Arts Organizations may give the City written notice that it is ready to proceed with the construction of the Project. Such notice may be given to the City at any time after January 1, 2013 and before December 31, 2014. If the Arts Organizations are successful in raising their share of funding needed to proceed with construction earlier than January 1, 2013, the Arts Organizations may request that the City consider, in its sole discretion, its ability to provide its share of funding and proceed with the Project in advance of this schedule. Subject to the City's confirmation, in its sole discretion, that the Arts Organization have raised the cash and legally binding pledges in the

amount necessary to complete the construction of the Project, the City will then use its best efforts to restore the remaining balance of the Project-Designated Proceeds by June 1, 2014, or as needed to fund its share of the cost of Project construction in the order stated in the funding plan set forth in Section 5G below.

- B. Bridge Loan. The City will contribute a maximum sum of \$5 million from the proceeds of the CRCIP bond issue as a Bridge Loan, to be repaid by the Studios Operating Company, together with interest and the cost of bond issuance. Excluding interest earned during the Excusal Period, interest earned by the City on the \$5 million CRCIP bond proceeds shall operate as a credit against the Arts Organizations' Bridge Loan debt service. Bridge Loan payments shall be made to the City by the Studios Operating Company in the amount of approximately \$350,000.00 per year, payable on a monthly basis in the form of lease payments, starting upon the commencement of the facility lease between the City and the Studios Operating Company under an agreement for the lease of the Project facility referred to in Section 15 below ("Facility Lease Agreement").
- C. Arts Organizations Contributions. The Arts Organizations shall contribute the balance of the funding required to complete the construction of the Project ("Contributions"). Subject to potential changes in scope and/or phasing of the Project as may be agreed to by the Parties pursuant to Section 3 above, the Contributions are currently estimated at \$11.3 million. Contributions shall be transferred to the City or legally binding pledges to the Arts Organizations to fund the Project shall be presented to the City in amounts not less than \$1.5 million per year from the date this First Amendment is made until the \$11.3 million, or the total amount then necessary to complete the construction of the Project, as solely determined by the City, has been transferred to the City or committed to fund the Project. Based on current construction market conditions and potential modifications to the scope and phasing of the Project, the Parties acknowledge that the actual Contributions may be different than this amount.
- D. Trust Account: The City shall establish an interest-bearing trust account (the "Account") at a financial institution selected by the Arts Organizations and approved the City Treasurer's Office for the deposit and maintenance of the Contributions. 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 Arts Organizations and the Project. Not later than thirty (30) days after this First Amendment is made, subject to the Arts Organizations reserving an initial fund raising and accounting reserve of approximately \$150,000, the Arts Organizations shall transfer all of the remaining Contributions in their possession and/or control at that time into the Account. Subject to additional deposits of not more than \$25,000 per annum to replenish the fundraising and accounting reserve, on a quarterly basis, the Arts Organizations shall deposit all additional cash it receives for the Project

into the Account during the prior quarter. The City shall have the right to transfer Contributions from the Account to the City's Pool A investment account ("Pool A"), so long as such Contributions can be held and secured in Pool A in a manner that preserves the funds in trust for the Project and the Arts Organizations and establishes a priority position in these funds, notwithstanding the commingling of such deposits with other pooled funds, for the benefit of the Project and the Arts Organizations superior to any other claims by creditors or competing interests that may be asserted against Pool A. The City shall maintain a separate accounting of any Contributions invested in Pool A. Any interest earned on the funds invested in the Account and Pool A shall be used solely to fund the "Construction Phase" of the Project, as defined in subsection E below. The Arts Organizations' obligation to deposit Contributions into the Account shall terminate when its funding obligations under this Agreement have been met and the Construction Phase of the Project has ended. The City is authorized to draw from the Account during the Construction Phase. Subject to the provisions of the Facility Lease Agreement and any requirement therein for the City to obtain construction draw approval from the Arts Organizations, the City shall have the sole authority to make all disbursements from the Account.

- E. Project Construction Phase. The Construction Phase of the Project shall commence upon award of the construction contract and end when final payment under the construction contract is made and all other claims related to the Project have been resolved. The City will not award the contract for the Construction Phase of the Project unless and until, in its sole discretion, it finds the accumulated Contributions (including interest earnings) held in the Account and Pool A, together with any financial assurances (such as letters of credit or other such funding guarantees) provided by the Arts Organizations and/or the Studios Operating Company, acceptable to the City in its sole discretion, assuring that the Arts Organizations' remaining share of funding will be available when needed, together with City funding (including City funding to be provided by the City hereunder), are sufficient to fund the Construction Phase when and as needed. In addition, in the event the City identifies any shortfalls in funding required to pay the costs of construction during the Construction Phase of the Project, including shortfalls caused by change orders approved by the City and the Arts Organizations, the Arts Organizations shall promptly deposit into the Account the amount of (or additional financial assurances to cover) any such shortfalls upon the demand by the City. If the City is not satisfied that all funding is or will be available for the completion of the Construction Phase of the Project, and the City terminates the MOU in accordance with Section 21 below, the City shall pay back to the Arts Organizations the Contributions remaining in the Account and/or held in trust in Pool A, together with interest earned on the Contributions, less any amounts owed to the City in connection with the Project. To the extent required by any of their donors, upon any return of the Contributions by the City, the Arts Organizations shall be responsible

for either returning to such donors a proportionate share of the returned Contributions or obtaining permission from such donors to use their share of the returned Contributions for alternative facilities or opportunities for the Arts Organizations.

- F. City Accounting. Not later than thirty (30) days after the execution of this First Amendment, and prior to the deposit by the Arts Organization of the Contributions into the Account, the City shall provide an accounting of all CRCIP grant funds expended to date and remaining to be invested by the City for the Project. Thereafter, the City shall provide an account reconciliation for all CRCIP funds expended and/or committed for the Project and all funds held in the Account and Pool A for the Project, on a quarterly basis prior to the award of the contract, and then on a monthly basis after the award of the contract and commencement of construction, to the Arts Organizations representatives identified in Section 16 of the MOU, commencing in the month following the creation of the Account and ending when final payment is made under the construction contract and all other claims related to the Project have been resolved. Any Contributions and interest earned thereon remaining at the end of the Construction Phase or upon termination of this Agreement pursuant to Section 21 below shall be used to prepay the Bridge Loan or returned to the Arts Organizations, as applicable, within thirty (30) days of either event less any amounts owed to the City in connection with the Project.
- G. Project Funding Plan. Project funding obligations are as follows and shall be used in the order presented below:

- (i) \$ 9 million City CRCIP proceeds
- (ii) \$ 5 million Bridge Loan
- (iii) \$11.3 million Arts Organizations Contributions, or the amount required to complete the Project and satisfy all obligations under the construction contract.

If the Project is commenced sooner than June 1, 2014, then the funding obligations for the Project shall be funded pro rata by and from the above funding sources, based on the relative share of funding for the Project to be provided by each source.”

- 3) Section 14 of the MOU is amended and restated in its entirety to read as follows:

**“14. Project Schedule; Good Faith.** The Parties intend to complete the Project within eighteen (18) months from the award of the contract for the Construction Phase of the Project. The City shall prepare a Project schedule for review and comment by the Arts Organizations. The Project schedule shall include the dates of completion of Project phases. The Parties agree to act in good faith at all times by being responsive during discussions and negotiations, and adhering to the Project schedule, expediting the process where possible. Where conflicts or disagreements arise, the Parties shall

meet and confer in good faith for the purpose of resolving their disagreements. The City shall follow the Project schedule which will be revised only if necessary."

4) Section 15 of the MOU is amended and restated in its entirety to read as follows:

**"15. Facility Lease Agreement, Loan Documents.**

- A. Facility Lease Agreement. The Arts Organizations shall make Bridge Loan payments through the payment of rent under a Facility Lease Agreement in which the City will lease the completed Project to the Studios Operating Company which will, in turn, sublease portions of the Project to each of the Arts Organizations. The Facility Lease Agreement is not intended solely for the purpose of repayment of the Bridge Loan, but rather will include other terms and conditions. The Arts Organizations agree that the Facility Lease Agreement will include a term that the Arts Organizations and/or Studios Operating Company shall contribute to, and maintain, a capital reserve account to be used for extraordinary and substantial repairs and replacements above and beyond regularly-scheduled maintenance of the facility.
- B. Promissory Notes. Each of the Arts Organizations shall enter into customary loan documents with the City for the repayment of its applicable share of the Bridge Loan, including promissory notes, ("Loan Documents") in forms approved by the Office of the City Attorney.
- C. Execution of Documents. The Facility Lease Agreement between the City and the Studios Operating Company and the Loan Documents between the City and the Arts Organizations shall be executed by the Parties before the City issues a Request for Proposals or similar form of solicitation for Project construction."

5) Section 16 of the MOU is amended and restated in its entirety to read as follows:

- "16. Notices.** All notices under the MOU shall be given to the other Parties at the addresses set forth below or such other addresses as the Parties may designate.

CITY OF SACRAMENTO  
Rebecca Bitter, Program Manager  
Convention, Culture and Leisure Department  
1030 15<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814  
916.808.8160

CALIFORNIA MUSICAL THEATRE  
Executive Producer  
1510 J Street, Suite 200  
Sacramento, CA 95814  
916.446.5880

THE SACRAMENTO BALLET  
Executive Director  
1631 K Street  
Sacramento, CA 95814  
916.552.5800

SACRAMENTO OPERA COMPANY  
Executive Director  
P.O. Box 161027  
3811 J Street  
Sacramento, CA 95816  
916.737.1000

SACRAMENTO PHILHARMONIC ORCHESTRA ASSOCIATION, INC.  
Executive Director  
3418 Third Ave  
Sacramento, CA 95817  
916.732.9045

STUDIOS FOR THE PERFORMING ARTS OPERATING COMPANY  
President  
1510 J Street, Suite 200  
Sacramento, CA 95814  
916.446.5880"

6) Section 21 of the MOU is amended and restated in its entirety to read as follows:

**"21. General Intent, MOU Termination.**

**A. No Liability.** The Parties recognize that, throughout the planning process contemplated by this MOU, issues will be raised that require consensus and resolution by the Parties. Similarly, there may be a need to enter into additional agreements during the planning process on various issues. While there can be no guarantee that consensus will be achieved, or agreements reached, the Parties agree to communicate and collaborate as necessary and appropriate, and to use reasonable, good faith efforts to achieve consensus and reach agreement. Failure to achieve consensus or agreement shall not be considered a breach of this MOU, and shall not give rise to a claim or cause of action by any of the Parties for damages of any kind, including but not limited to claims for costs, reimbursement of expenses or damages of any kind, including consequential damages such as lost profits.

**B. Termination of MOU.**

- i) This MOU can be terminated and the Project abandoned for any reason prior to the issuance of a Request for Proposals or similar form of solicitation for Project construction by the City. The termination shall not be considered a breach of this MOU, and shall not give rise to a claim or cause of action by either Party for damages of any kind, including but not limited to claims for costs, reimbursement of expenses or damages of any kind, including consequential damages such as lost profits.
  - ii) The City may terminate this MOU if the Arts Organizations do not meet any of the funding obligations set forth in Section 5 to the MOU and the Arts Organizations fail to meet such funding obligations within one hundred eighty (180) days after receipt of written notice from the City of its intent to terminate the MOU due to such failure.
  - iii) The City may terminate this MOU in the event the Arts Organizations fail to give the notice required under section 5.A.iii of the MOU by December 31, 2014."
- 7) Except as modified by this First Amendment, the remaining terms and conditions of the MOU shall remain in full force and effect. In the event of any inconsistencies between this First Amendment and the MOU, the provisions of this First Amendment shall prevail.

**CITY OF SACRAMENTO,**  
A Municipal Corporation

APPROVED AS TO FORM:

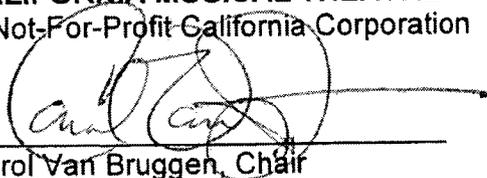
\_\_\_\_\_  
Ray Kerridge  
City Manager

\_\_\_\_\_  
Angela Casagrande  
Deputy City Attorney

ATTEST:

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

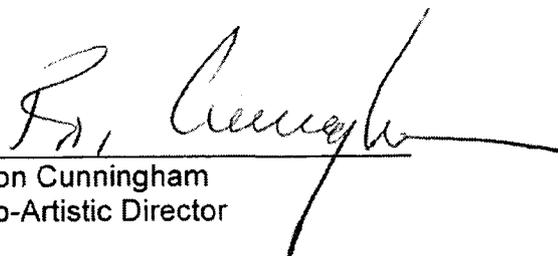
**CALIFORNIA MUSICAL THEATRE**  
A Not-For-Profit California Corporation

  
\_\_\_\_\_  
Carol Van Bruggen, Chair  
Board of Directors

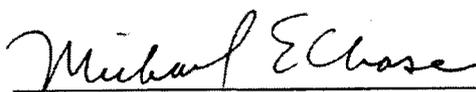
  
\_\_\_\_\_  
Richard Lewis  
Executive Producer

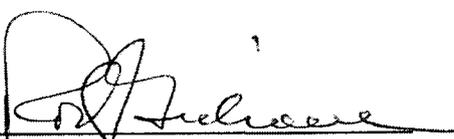
**THE SACRAMENTO BALLET**  
A Not-For-Profit California Corporation

  
Wahida Sharman, President  
Board of Directors

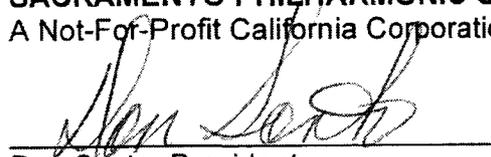
  
Ron Cunningham  
Co-Artistic Director

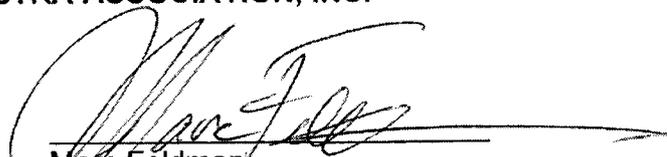
**THE SACRAMENTO OPERA COMPANY**  
A Not-For-Profit California Corporation

  
Michael E. Chase, President  
Board of Directors

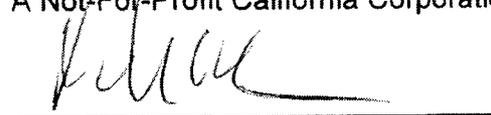
  
Rod Gideons  
Executive Director

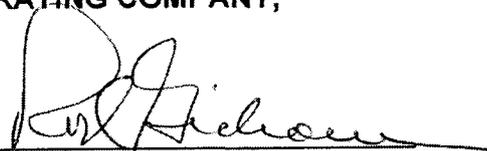
**SACRAMENTO PHILHARMONIC ORCHESTRA ASSOCIATION, INC.**  
A Not-For-Profit California Corporation

  
Dan Santo, President  
Board of Directors

  
Marc Feldman  
Executive Director

**STUDIOS FOR THE PERFORMING ARTS OPERATING COMPANY,**  
A Not-For-Profit California Corporation

  
Richard Lewis, President

  
Rod Gideons, Secretary

## **RESOLUTION NO. 2009-**

Adopted by the Sacramento City Council

### **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

**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 \_\_\_\_\_, 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 10<sup>th</sup> 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 \_\_\_\_\_  
Ray Kerridge, City Manager

By Tom Weborg  
Tom Weborg, President

ATTEST:

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

APPROVED AS TO FORM:

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

ATTEST:

\_\_\_\_\_  
City CLERK

**Crocker Project Construction Phase Funding Plan\***

<b>Total Estimated Construction Costs as of June, 2009</b>	<b>\$83,936,526</b>
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>
<b>Total Estimated Funding as of June, 2009</b>	<b><u>\$74,900,000</u></b>
Funding Shortfall as of June, 2009	\$9,036,526
CRCIP Line of Credit	\$10,000,000
<b>Funding Available Prior to Project Completion</b>	<b>-\$84,900,000</b>

*\*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

Dated: 7/1/2009  
 Delivered: 7/1/2009

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

1  
 SLA ACT/ACT SEMI 7/6  
 BondRule

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		5,150,275.00	5,000,000.00
			<b>\$5,000,000.00</b>		<b>\$1,478,458.97</b>	<b>\$0.00</b>	<b>\$6,478,458.97</b>	

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

Dated: 7/1/2009  
 Delivered: 7/1/2009

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

SLA ACT/ACT SEMI 7/6  
 BondRule

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		5,000,000.00	5,000,000.00
			<b>\$5,000,000.00</b>		<b>\$0.00</b>	<b>\$0.00</b>	<b>\$5,000,000.00</b>	

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

## LINE OF CREDIT AGREEMENT

**THIS LINE OF CREDIT AGREEMENT** ("Line of Credit Agreement") is made as of July \_\_, 2009, by and between the CITY OF SACRAMENTO, a Municipal Charter Corporation ("City"), and the CROCKER ART MUSEUM ASSOCIATION, a non-profit organization ("CAMA").

### RECITALS:

- A. The City and CAMA entered into a Memorandum of Understanding, City Agreement Number 2002-215, dated December 3, 2002 ("MOU"), which sets forth their respective roles and responsibilities regarding the Crocker Art Museum Renovation and Expansion Project ("Project").
- B. Pursuant to the First Amendment to the MOU, dated June 5, 2007, the City approved a funding plan for the Project (the "Funding Plan"), including a \$12 million CRCIP loan (the "CRCIP Loan") from City to CAMA to help fund construction of the Project. The City and CAMA entered into standard loan documents to memorialize this loan.
- C. Current economic conditions may cause a delay in the collection and conversion of pledges by CAMA for Project construction.
- D. The City is willing to fund shortfalls caused by these economic conditions through a \$10 million line of credit ("Line of Credit") to CAMA from proceeds of the CRCIP bond issue so that the construction of the Project may proceed as scheduled.
- E. The parties have executed a Third Amendment to the MOU ("Third Amendment") concurrently with the execution of this Line of Credit Agreement which includes the extension of the Line of Credit and an amendment to the Funding Plan.
- F. The City and CAMA now desire to enter into this Line of Credit Agreement and to be bound by the terms and conditions stated herein.

**NOW, THEREFORE, the parties hereto agree as follows:**

**Section 1 Effective Date.** This Line of Credit Agreement shall be effective as of the day and year first herein-above written ("Effective Date").

**Section 2 Line of Credit.** Pursuant to the Third Amendment, the City agrees to extend up to a \$10 million non-revolving Line of Credit to CAMA for the purpose of funding construction of the Project. Line of Credit draws shall be made by the City to fund Project construction in the order stated in the Funding Plan. Concurrent with the execution of this Line of Credit Agreement, CAMA agrees to deliver to City a promissory note payable to the City (the "Promissory Note"). CAMA also agrees to execute a related Security Agreement concurrent with this Line of Credit Agreement, in which CAMA capital campaign pledges will constitute security under the Security Agreement

(the "Security Agreement"). The Line of Credit balance shall be repaid by CAMA to the City as specified in the Line of Credit repayment schedule set forth in the Promissory Note ("Repayment Schedule").

**Section 3 Interest.**

- (a) **Interest Earned.** Interest earned on the Line of Credit proceeds shall be retained by the City.
- (b) **Interest Owed.** As set forth in the Repayment Schedule, interest owed on outstanding Line of Credit balances up to \$5 million shall accrue at an annual percentage rate of .0% and interest owed on Line of Credit balances over \$5 million shall accrue at an annual percentage rate of 6.011%,

**Section 4 CAMA Commitment; Delinquent Payments.** CAMA agrees to meet its obligations as set forth in the MOU and any amendments thereto, this Line of Credit Agreement, and the Security Agreement. In the event CAMA is delinquent in making any payment(s) as required by the Repayment Schedule, City shall have the option of (i) using the Security Agreement Collateral to make such payment to cure the delinquency, or (ii) withholding operating funds allocated under the Crocker Trust or as otherwise allocated by City to make such payment to cure the delinquency, and/or may take any other actions City deems appropriate. If the City uses the Security Agreement Collateral to make such payment, CAMA shall replenish the Collateral within 30 days from when the Collateral is used for such payment. Any funds the City uses under this Section 4 to cure delinquent payments shall be an amount sufficient to pay the delinquent debt service plus any additional interest and late charges required under the Promissory Note.

**Section 5 Repayment Schedule.** As set forth in the Repayment Schedule, interest on the outstanding Line of Credit balance shall be paid to the City semi-annually at the rate of 0% per annum on the first \$5 million in cumulative draws (the "Non-Interest Bearing Principal") and 6.011% per annum on all additional draws in excess of \$5 million (the "Interest Bearing Principal"). 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 not otherwise encumbered under the MOU. These payments shall be made within forty-five (45) days of CAMA's receipt of the cash. On or before June 1, 2014, CAMA shall pay to the City the total outstanding Line of Credit principal balance, including any unpaid interest thereon. CAMA may repay all or a portion of the Line of Credit balance, without penalty, at any time prior to the due date of any of the repayment installments reflected in the Repayment Schedule. All payments made by CAMA hereunder shall be credited in the following order: (a) first to accrued interest until such amounts are paid in full, (b) second to the Interest Bearing Principal, and (c) then to the Non-Interest Bearing Principal.

**Section 6 Line of Credit Funds.** It is the intent of City and CAMA that until expended for Project construction costs, the Line of Credit proceeds shall be retained by the City in a segregated City account.

**Section 7 Term of Line of Credit.** The City's obligation to draw on the Line of Credit to fund Project construction shall end upon final payment to the Construction Manager under the Construction Contract and after resolution of all other claims related to the Project have been resolved, or upon the draw of the entire \$10 million Line of Credit, whichever occurs first.

**Section 8 Prohibited Indebtedness or Guarantees.** CAMA shall not incur the following obligation or indebtedness secured by the capital campaign pledges used to secure the Line of Credit without the prior written approval of 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.

In addition, 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 City. These prohibitions shall remain in effect until all of CAMA's obligations under the MOU, and any amendments thereto, and this Line of Credit Agreement have been satisfied, including repayment of the Line of Credit indebtedness memorialized in the Repayment Schedule.

**Section 9 Repayment Preference.** CAMA shall make the payments specified in the Promissory Note when due in preference to and with priority over payments that then may be due and owing by CAMA to any other creditor holding a past due or delinquent claim against CAMA. In the event that CAMA files a voluntary petition for bankruptcy or has an involuntary petition for bankruptcy filed against it, institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors, makes an assignment for the benefit of its creditors, or mortgages, pledges, assigns, or transfers any accounts receivable or other property in trust or for security without the written consent of City, then CAMA shall have been deemed to grant City a first position priority over creditors holding claims against CAMA at the time such matters occur.

**Section 10 Acceleration of Repayment.** At the option of City or the holder of the Promissory Note, the Promissory Note shall become immediately due and payable, without further notice or demand, upon the occurrence at any time of any of the following events:

- (a) Default in the payment of any installment due under the Repayment Schedule which is not cured within 30 days;
- (b) Violation of any of the prohibitions set forth in the Security Agreement;
- (c) The filing by CAMA of a voluntary petition for bankruptcy, or if CAMA is named as a debtor under an involuntary petition for bankruptcy;
- (d) CAMA institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors;
- (e) CAMA makes an assignment for the benefit of its creditors; or
- (f) The representations or warranties set forth in this Line of Credit Agreement cease to be true by or before the date CAMA executes this Line of Credit Agreement.

**Section 11 Accounting and Reports.** The parties shall provide the following:

- (a) CAMA shall report quarterly to City, from the date of this Line of Credit Agreement, regarding its then-existing financial status, which shall include expenditures and receipts during the reporting period, current balances, assets and liabilities and such other information as the City may require. In addition, CAMA shall submit a monthly capital campaign schedule to City until the CRCIP Line of Credit is fully repaid. The schedule shall include pledges received, pledges converted into cash, past due pledges, and a projection of pledges to be received.
- (b) City shall maintain an accurate accounting of the Line of Credit, including the outstanding balance, interest accrued, and payments made, and shall provide CAMA with a copy of this accounting and an invoice not less than 30 days prior to the due date of each interest installment payment.

**Section 12 Representations.** CAMA represents and warrants as follows: (a) the Crocker Art Museum Association is a non-profit corporation validly formed and in good standing under California law and (b) the person or persons signing on behalf of CAMA has or have the authority to bind the organization to the terms of this Line of Credit Agreement, the Promissory Note, and the related Security Agreement.

**Section 13 Administration.** No delay, failure or discontinuance of City in exercising any right, power or remedy under this Line of Credit Agreement or any of the Line of Credit documents shall affect or operate as a waiver of such right, power or remedy; nor shall any single or partial exercise of any such right, power or remedy preclude, waive, or otherwise affect any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any

kind by City of any breach of or default under any of the Line of Credit documents must be in writing and shall be in effect only to the extent set forth in such writing.

**Section 14 Applicable Law.** This Line of Credit Agreement and the Promissory Note, and any other documents executed pursuant to this Line of Credit Agreement shall be governed by and construed in accordance with the laws of the State of California.

**Section 15 Notices.** All notices, requests and demands which either party is required or may desire to give to the other party must be in writing delivered to each party at the address set forth below or to such other address as any party may designate by written notice to the other. Each notice, request or demand shall be deemed given or made as follows: (a) if sent by hand delivery, upon delivery; (b) if sent by mail, upon the earlier of the date of receipt or five (5) days after deposit in the U.S. Post, first class and postage prepaid; or (c) if sent by facsimile transmission, upon receipt. Notices shall be delivered to the following addresses:

City of Sacramento  
City Manager's Office  
915 I Street, 5<sup>th</sup> Floor  
Sacramento, California 95814

Crocker Art Museum Association  
Director's Office  
216 "O" Street  
Sacramento, California 95814

**Section 16 Assigns.** This Line of Credit Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties; provided, however, that City and CAMA may not assign or transfer their interests hereunder without the prior written consent of the other party.

**Section 17 Third Parties.** This Line of Credit Agreement is made and entered into for the sole protection and benefit of the parties hereto and their respective successors and assigns, and no other person or entity shall be a third party beneficiary of, or have any direct or indirect cause of action or claim in connection with this Line of Credit Agreement, the Promissory Note, or any other related document to which it is not a party.

**Section 18 Severability.** The invalidity, illegality, or unenforceability of any portion of this Line of Credit Agreement shall not affect the remainder, and any invalid, illegal, or unenforceable portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.

**Section 19 Entire Agreement.** This Line of Credit Agreement and each of the Line of Credit documents concurrently executed herewith constitute the entire agreement between City and CAMA with the respect of this extension of Line of Credit to CAMA and supersede all prior negotiations, communications, discussions and correspondence concerning the subject matter hereof. This Line of Credit Agreement may be amended or modified only in writing executed by each of the parties hereto.

**Section 20 Attorney's Fees.** In the event of a breach of this Line of Credit Agreement or in the event the Promissory Note is not paid when due, whether at maturity or by acceleration, CAMA shall pay all costs of collection of the Line of Credit Amount including, but not limited to, reasonable attorneys' fees, whether or not suit is filed. Additionally, CAMA shall reimburse City for all attorneys' fees and costs incurred in enforcing any judgment arising from or out of this Line of Credit Agreement or the Promissory Note which shall not merge into said judgment and may be added to the judgment and substantiated by supplemental cost bill.

**Section 21 Agreement Contingent.** This Line of Credit Agreement and the related Promissory Note and Security Agreement executed concurrent herewith, shall be effective only if the Third Amendment to the MOU is approved by the City Council.

DATED: \_\_\_\_\_

CITY OF SACRAMENTO

By: \_\_\_\_\_  
City Manager

DATED: \_\_\_\_\_

CROCKER ART MUSEUM ASSOCIATION

By: \_\_\_\_\_  
Director

By: Tom Weber  
President

APPROVED AS TO FORM:

Senior Deputy City Attorney

ATTEST:

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

## SECURITY AGREEMENT

1. **Grant of Security Interest.** In consideration of the Line of Credit extended to CROCKER ART MUSEUM ASSOCIATION ("Borrower") by the CITY OF SACRAMENTO ("City") under the Line of Credit Agreement executed concurrently with this Security Agreement (the "Line of Credit Agreement"), Borrower hereby grants and transfers to City a security interest in the Collateral. The security interest herein granted in the Collateral is in addition to any right City has under the Line of Credit Agreement to withhold operating funds allocated under the Crocker Trust or as otherwise allocated by City, and to use said funds to cure delinquent Line of Credit payments, or any other rights City has under the Line of Credit Agreement to enforce repayment of the Line of Credit.

2. **Definitions.** As used in this security agreement:

"Collateral" means all right, title, and interest of Borrower now owned or hereafter acquired in and to any capital campaign donor pledge moneys and interest earnings thereon.

"Indebtedness" means Borrower's obligations, obligations representing the purchase price of property other than accounts payable arising in connection with the purchase of inventory on terms customary in the trade, and obligations under leases that would be capitalized in accordance with generally accepted accounting principles.

"Lien" means any security interest, mortgage, pledge, lien, attachment, claim, charge, encumbrance, agreement retaining title, or lessor's interest covering the collateral.

"Obligations" means all existing and future indebtedness and liability of Borrower to City relating to the Crocker Art Museum Renovation and Expansion Project described in City Agreement 2002-215, dated December 3, 2002, and the amendments thereto, including all obligations under the Line of Credit Agreement, and attorney fees and costs incurred by City in enforcing this Security Agreement or collecting payment under it.

"California Commercial Code" means the Uniform Commercial Code as may, from time to time, be enacted and in effect in the State of California.

"Line of Credit" means the non-revolving \$10 million Line of Credit extended by City to Borrower from moneys City acquired from revenue bonds for City's Community Reinvestment Capital Improvement Program ("CRCIP"), made pursuant to the Line of Credit Agreement.

Terms defined in the California Commercial Code not otherwise defined in this Security Agreement are used in this Security Agreement as defined in that Code on the date of this agreement.

**3. Representations and Warranties.** Borrower represents and warrants with respect to the Collateral generally that:

(a) Borrower is a non-profit corporation, duly organized, validly existing, and in good standing under the laws of the State of California, and has all necessary authority to conduct its business wherever it is conducted.

(b) Borrower has been authorized to execute and deliver this Security Agreement. The Security Agreement is a valid and binding obligation of Borrower, which creates a perfected, first-priority security interest enforceable against the Collateral in which Borrower now has rights, and/or will create a perfected, first-priority security interest enforceable against the Collateral in which Borrower later acquires rights, when Borrower acquires those rights.

(c) Neither the execution and delivery of this Security Agreement, nor the taking of any action in compliance with it, will (1) violate or breach any law, regulation, rule, order, or judicial action binding on Borrower, any agreement to which Borrower is a party, or Borrower's articles of incorporation or bylaws; or (2) result in the creation of a lien against the Collateral except that created by this Security Agreement.

(d) There is no default or potential default of Borrower with respect to the Obligations.

(e) Borrower is the owner of all donor pledge moneys provided as Collateral.

(f) All Collateral is genuine, free from liens, adverse claims, setoffs, default, prepayment, defenses and conditions precedent of any kind or character, except as heretofore disclosed in writing to City.

(g) Where the Collateral consists of rights to payment, all such rights to payment comply with all applicable laws concerning form, content and manner of preparation and execution, including, where applicable, Federal Reserve Regulation Z and any State consumer credit laws, and all persons obligated thereon have authority and capacity to contract and are bound as they appear to be.

(h) No Financing Statement or security agreement covering any of the Collateral, and naming any secured party other than City, is on file in any public office.

(i) All statements contained herein are true and correct.

**4. Covenants of Borrower.**

**A. General Covenants.** Borrower covenants in general as follows:

(a) To pay the Obligations to City when they are due.

(b) To pay all expenses, including attorney fees, incurred by City in the perfection, preservation, realization, enforcement, and exercise of City's rights under this Security Agreement.

(c) To indemnify City against loss of any kind, including reasonable attorney fees, caused to City by reason of its interest in the Collateral.

(d) To conduct Borrower's business efficiently and without voluntary interruption.

(e) To preserve all rights and privileges held by Borrower's business.

(f) To pay all taxes when due.

(g) To notify City promptly in writing of any default, potential default, or any development that might have a material adverse effect on the Collateral.

(h) To give City notice of any litigation that may have a material adverse effect on the Borrower's business.

(i) Not to change the name or place of Borrower's business without first notifying City in writing.

(j) To execute and deliver such documents as City deems necessary to create, perfect and continue the security interests contemplated hereby.

(k) Not to change Borrower's chief place of business or the places where Borrower keeps any of Borrower's books and records concerning the Collateral without first giving City written notice of the address to which Borrower is moving same.

**B. Covenants with Regard to the Collateral.** Borrower covenants with regard to the Collateral as follows:

(a) Not to sell, assign, transfer, or otherwise dispose of the Collateral.

(b) Not to permit liens on or otherwise encumber the Collateral.

(c) To execute and deliver to City all financing statements and other documents that City requests, in order to maintain a first perfected security interest in the Collateral.

(d) To furnish City reports relating to the Collateral as required by the Line of Credit Agreement.

(e) To use reasonable diligence in collecting the capital campaign donor pledges.

(f) Not to commingle the capital campaign pledge moneys that are required to be deposited in the Reserve Account with any of Borrower's other funds.

(g) To keep complete and accurate records of the capital campaign pledge moneys, in accordance with generally accepted accounting principles.

(h) To permit City and its designees at all reasonable times to inspect Borrower's books and records relating to the Collateral and to audit and make copies or extracts from such books and records.

(i) To provide any service and perform any other acts necessary to keep the capital campaign pledge moneys free and clear of defenses, rights of setoff, and counterclaims.

(j) Not to sell, offer to sell, hypothecate, assign or otherwise transfer the Collateral, or any part thereof, or any interest therein, without the prior written consent of City.

(k) Not to permit any lien on the Collateral, except in favor of City.

(l) To pay when due all fees and other charges in connection with any Collateral.

(m) To do all acts which may be necessary to maintain, preserve and protect all Collateral.

**5. Powers of City.** Borrower appoints City its attorney in fact to perform any of the following powers, which are coupled with an interest and are irrevocable without City's consent, until termination of this Security Agreement, and may be exercised from time to time by City's officers and employees, or any of them, whether or not Borrower is in default:

(a) To perform any of Borrower's obligations under this Security Agreement or the Line of Credit Agreement in Borrower's name or otherwise.

- (b) To give notice of City's rights in the Collateral, enforce the same and make extension agreements with respect thereto.
- (c) To release security.
- (d) To release persons liable on the Collateral and compromise disputes in connection therewith, and to surrender security, all as City determines in its sole discretion when acting in good faith based on information known to it when it acts.
- (e) To prepare, execute, file, record or deliver notes, assignments, schedules, designation statements, financing statements, continuation statements, termination statements, statements of assignment, applications for registration or like papers to perfect, preserve or release City's interest in the Collateral.
- (f) To receive, open and read mail addressed to Borrower.
- (g) To take cash, instruments for the payment of money and other property to which City is entitled in payment of Obligations.
- (h) To verify facts concerning the Collateral by inquiry of obligors thereon, or otherwise, in its own name or a factitious name.
- (i) To endorse Borrower's name on instruments, documents or other forms of payment or security that come into City's possession, for the payment of money.
- (j) To make withdrawals from and to close accounts with any financial institution, wherever located, into which capital campaign pledge moneys may have been deposited, and to apply funds so withdrawn to payment of the Indebtedness.
- (k) To prepare, execute, and deliver insurance forms; to adjust insurance claims; to receive payment under insurance claims, and to apply such payments, at City's sole option, toward repayment of the Indebtedness or replacement of the Collateral.
- (l) To do all acts and things and execute all documents in the name of Borrower or otherwise, deemed by City as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder.

## **6. Default.**

**A. "Default" Defined.** In addition to events specified in the Line of Credit Agreement and Promissory Note, any of the following shall constitute an "Event of Default" under this Security Agreement:

(a) Borrower fails to pay any Obligations, or any portion thereof, to City when due, at stated maturity, on accelerated maturity, or otherwise.

(b) Borrower fails to make any deposits or remittances required by this Security Agreement or the Line of Credit Agreement.

(c) Borrower commits any breach of this Security Agreement, the Line of Credit Agreement, or any present or future rider or supplement to those agreements.

(d) Any warranty, representation, or statement, made by or on behalf of Borrower in or with respect to this Security Agreement or the Line of Credit Agreement is false.

(e) There is a seizure or attachment, or a levy on, the Collateral.

(f) Borrower ceases operations, is dissolved, terminates its existence, or becomes insolvent or unable to meet its debts as they mature.

(g) Borrower does any of the following:

(1) Applies for or consents to the appointment of a receiver, trustee, liquidator, or custodian of itself or of a substantial part of its property.

(2) Is unable, or admits in writing its inability, to pay its debts generally as they mature.

(3) Makes a general assignment for the benefit of its creditors or any of them.

(4) Is dissolved or liquidated in full or in part.

(5) Commences a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect, or consents to any relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it.

(6) Takes any action for the purpose of effecting any of the foregoing.

(h) Proceedings for the appointment of a receiver, trustee, liquidator, or custodian of the Borrower or of all or a substantial part of its property, or an involuntary case or other proceedings seeking liquidation, reorganization, or other relief with respect to the Borrower or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect are commenced and an order for relief is entered or such a proceeding is not dismissed or discharged within 60 days of commencement.

**B. When a Default Occurs.** When a default occurs, Borrower must:

(a) Make all records relating to the Collateral available as City directs.

(b) Allow City, its representatives, and its agents to enter the premises where all or any part of the Collateral, the records, or both may be, and remove any or all of it; provided that Borrower shall be entitled to make and retain copies thereof.

**C. Borrower's Waivers.** If Borrower is in default, Borrower waives any right to require City to:

(a) Proceed against any other person.

(b) Proceed against or exhaust any security held by Borrower or any other person.

(c) Pursue any other remedy in City's power.

(d) Make any presentments or demands for performance, or give any notices of nonperformance, protests, notices of protest or notices of dishonor in connection with any obligations or evidences of Indebtedness held by City as security, or in connection with any obligations or evidences of Indebtedness which constitute in whole or in part the Indebtedness secured hereunder, or in connection with the creation of new or additional Indebtedness.

**7. Remedies of City.** Upon the occurrence of any Event of Default, City shall have and may exercise without demand any and all rights, privileges, powers and remedies granted to a City upon default under the California Uniform Commercial Code or otherwise available to City by law, including without limitation the right to contact all persons obligated to Borrower on any Collateral and to instruct such persons to deliver all such Collateral directly to City. The rights, privileges, powers and remedies of City shall be cumulative. No delay, failure or discontinuance of City in exercising any right, power, privilege or remedy hereunder shall affect or operate as a waiver of such right, power, privilege or remedy; nor shall any single or partial exercise of any other right,

power, privilege or remedy preclude, waive or otherwise affect any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. Any waiver, permit, consent or approval of any kind by City of any default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing. While Borrower is in default: (a) Borrower will deliver to City from time to time, as requested by City, current lists of Collateral; (b) Borrower will not dispose of any Collateral except on terms approved by City; (c) Borrower will assemble and deliver all Collateral, and books and records pertaining thereto, to City at a reasonably convenient place designated by City; and (d) City may, without notice to Borrower, take possession of any Collateral not already in its possession.

**8. Disposition of Collateral.** Upon the transfer of all or any part of the Indebtedness relating to the Line of Credit, City may transfer all or any part of the Collateral and shall be fully discharged thereafter from all liability and responsibility with respect to any of the foregoing so transferred, and the transferee shall be vested with all the rights and powers of City hereunder with respect to any of the foregoing so transferred; but with respect to any Collateral not so transferred, City shall retain all rights, powers, privileges and remedies hereby given. Any proceeds of any disposition of any of the Collateral or proceeds, or any part thereof, may be applied by City to the payment of expenses incurred by City in connection with the foregoing, including reasonable attorneys' fees and the balance of such proceeds may be applied by City toward the payment of the Indebtedness relating to the Line of Credit in such order of application as City may from time to time elect.

**9. Costs, Expenses and Attorneys' Fees.** Borrower shall pay to City the full amount of all payments, advances, charges, costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of City's in-house counsel), made or incurred by City in exercising any right, power, privilege or remedy conferred by this Security Agreement or in the enforcement thereof, including any of the foregoing incurred in connection with any bankruptcy proceeding relating to Borrower, including without limitation the seeking of relief from or modification of the automatic stay, the negotiation and drafting of a cash collateral order, or any proceeding in bankruptcy relating to the valuation of the Collateral and/or proceeds. All of the foregoing shall be paid to City by Borrower immediately and without demand, together with interest at a rate per annum equal to five percent (5%).

**10. Disclosure of Information.** Borrower acknowledges that City has the right to sell, assign, transfer, negotiate or grant participations in all or any part of, or any interest in, any Indebtedness of Borrower to City and any obligations with respect thereto, including this Security Agreement. In connection therewith, City may disclose all documents and information which City now has or hereafter acquires relating to Borrower and this Security Agreement, whether furnished by

Borrower, or otherwise. City shall also have the right to comply with the Public Records Act, Government Code Sections 6450, et seq.

**11. Successors, Assigns; Governing Law.** This Security Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties and shall be governed by and construed in accordance with the laws of the State of California.

**12. Borrower's Proceedings Under Bankruptcy Act.** To the extent permitted by law: (i) Borrower agrees that it will not voluntarily undertake any proceedings under any chapter of the Bankruptcy Act without giving thirty (30) days' prior written notice to City of its intent to do so; and (ii) City shall have the right in its sole and exclusive discretion, within ten (10) days from receipt of such notice, to undertake full operational control of Borrower's business operations, in addition to exercise of any and all other rights provided for under this Security Agreement. Giving the notice specified in this paragraph shall constitute an event of default in addition to those events specified in paragraph 6.

**13. Mitigation of Damages.** In the event Borrower fails to make payments of principal and interest when due, and in the event City elects to undertake full operational control of Borrower's business operations under paragraph 12, all income received by City from the operation of such business shall be credited to the account of Borrower following payment to City of costs and expenses of operating the business of Borrower. City shall use its best efforts to mitigate its damages and conduct Borrowers' business consistent with the terms of the Crocker Trust Agreement. Subject to the provisions of paragraph 1, under no circumstances does this Security Agreement give to City any entitlement to the principal assets of Borrower.

**14. Notices.** Notices under this Security Agreement are considered to be served (a) three days after they are deposited in the United States mail, with prepaid first-class postage, addressed as follows; or (b) on receipt if served by facsimile:

City of Sacramento	Crocker Art Museum Association
City Manager's Office	Director's Office
915 I Street, 5 <sup>th</sup> Floor	216 "O" Street
Sacramento, California 95814	Sacramento, California 95814

Either party may change its address for service of notice, by notice to the other.

**15. Severability of Provisions.** If any provision of this Security Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity,

without invalidating the remainder of such provision or any remaining provisions of this Security Agreement.

16. **City Waiver Limitation.** No waiver by City of any breach or default will be a waiver of any breach or default occurring later. A waiver will be valid only if it is in writing and signed by City.

17. **Survival of Representations and Warranties.** Borrower's representations and warranties made in this Security Agreement will survive its execution, delivery, and termination.

18. **Entire Agreement.** This Security Agreement is the entire agreement and supersedes any prior agreement or understandings between City and Borrower relating to the Collateral.

IN WITNESS WHEREOF, this Security Agreement has been duly executed this \_\_\_ day of July, 2009.

DATED: \_\_\_\_\_

City of Sacramento

By: \_\_\_\_\_

City Manager

DATED: \_\_\_\_\_

Crocker Art Museum Association

By: \_\_\_\_\_

Director

By: Tom Weberg

President

APPROVED AS TO FORM:

*Angela Casagrande*  
Senior Deputy City Attorney

ATTEST:

\_\_\_\_\_  
City CLERK

## PROMISSORY NOTE

\$10,000,000.00

Sacramento, California  
Date: As of July \_\_, 2009

FOR VALUE RECEIVED, the undersigned, the CROCKER ART MUSEUM ASSOCIATION, a California non-profit corporation ("Payor"), promises to pay to the CITY OF SACRAMENTO ("Payee"), or order, at 915 I Street, New City Hall, Room 1214, Sacramento, California 95814, or at such other place as the holder hereof may from time to time designate in writing, the principal sum of TEN MILLION DOLLARS (\$10,000,000.00) (the "Line of Credit"), together with interest on the unpaid principal balance of this Promissory Note ("Note"), calculated at the rate of zero (0%) per annum on the first \$5 million in cumulative draws (the "Non-Interest Bearing Principal") and six and 011/100 percent (6.011.%) per annum on all additional draws in excess of \$5 million (the "Interest Bearing Principal"). Interest installments shall be due and payable in accordance with the "Repayment Schedule", Exhibit D to the Third Amendment to the MOU, City Agreement number 2002-215-3 ("Third Amendment"). Payor may repay all or a portion of the Line of Credit balance, without penalty, at any time prior to the due date of any of the repayment installments reflected in the Repayment Schedule. All payments made by Payor hereunder shall be credited in the following order: (a) first to accrued interest until such amounts are paid in full, (b) second to the Interest Bearing Principal, and (c) then to the Non-Interest Bearing Principal.

- 1) This Note is conditioned on the Third Amendment and the Line of Credit Agreement executed concurrently herewith.
- 2) Payments on the outstanding principal balance due on this Note shall commence on January 1, 2011 in accordance with the Third Amendment and the Line of Credit Agreement. The remaining principal balance and accrued unpaid interest on this Note shall be due and payable in full on or before June 1, 2014. Any interest or principal not paid when due shall bear interest at four percent (4%) per annum until paid.
- 3) Interest shall accrue on the outstanding principal balance at the rates set forth above ("Interest Rate"). Interest shall continue to accrue during such time any portion of the principal amount remains outstanding.
- 4) At the option of the holder hereof, this Note shall become immediately due and payable, without further notice or demand, upon the occurrence at any time of any of the following events:
  - (a) Default in the payment of any installment due hereunder which is not cured within 45 days;

- (b) Violation of any of the prohibitions set forth in the Security Agreement executed concurrently with this Note;
  - (c) The filing by Payor of a voluntary petition for bankruptcy or if the Payor is named as a debtor under an involuntary petition for bankruptcy;
  - (d) Payor institutes any proceeding under any bankruptcy or insolvency laws relating to the relief of debtors;
  - (e) Payor makes an assignment for the benefit of its creditors; or
  - (f) The representations or warranties set forth in the Line of Credit Agreement executed concurrently with this Note cease to be true by or before the date Payor executes this Note.
- 2) If this Note is not paid when due, whether at maturity or by acceleration, Payor, and every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, promise to pay all costs of collection, including, but not limited to, reasonable attorneys' fees, whether or not suit is filed hereon. Additionally, the holder hereof shall be entitled to reimbursement for all attorneys' fees and costs incurred in enforcing any judgment arising from or out of this Note which shall not merge into said judgment and may be added to the judgment and substantiated by supplemental cost bill.
- 3) Payor, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, waive presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and notice of any kind with respect to this Note or any guarantee of it.
- 4) Principal and interest shall be payable in lawful money of the United States.
- 5) This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.
- 6) This Note may be prepaid at any time without penalty.
- 7) A late charge of four percent (4%) of any installment not paid within ten (10) days of the due date thereof shall be paid to Payor in addition to any other amount(s) due under this Note.
- 8) The rights, duties, and obligations of Payor and Payee hereunder shall be binding upon and inure to the benefit of their respective successors,

representatives, receivers, trustees, and assigns, if any, provided, however, that Payor and Payee may not assign or transfer their interests hereunder without the prior written consent of the other party.

12. This Note is not a negotiable instrument.

"PAYOR"

DATED: \_\_\_\_\_

CROCKER ART MUSEUM  
ASSOCIATION

By: \_\_\_\_\_

Director \_\_\_\_\_

By: \_\_\_\_\_

President Tom Weber