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

This First Amendment ("First 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 nonprofit organization is made as of _____, 2007.

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 April 18, 2006, the Mayor and City Council approved the final Tier I and Tier II projects lists for implementation under the Community Reinvestment Capital Improvement Program (the "CRCIP"). The Project was included as a Tier I project.

C. On April 18, 2006, in conjunction with the Project's designation as a Tier 1 project under the CRCIP, the Mayor and City Council approved a detailed funding plan (the "Plan") for the Project.

D. The Plan includes a $12 million loan provided through the CRCIP (the "CRCIP Loan") from the City to CAMA to help fund the construction of the Project.

E. The Plan includes the sale and/or development of those parcels identified as Assessor Parcel Number 006-0135-030, owned by the Redevelopment Agency of the City (the "Agency"), and Numbers 006-0135-028 and 006-0135-029, owned by the City (collectively referred to herein as "Lot X"), for the benefit of the Project. The Plan further designates the proceeds of the sale of Lot X as a funding source for the Project.

F. On August 15, 2006, the City and Agency adopted Resolution Numbers 2006-607 and 2006-045, respectively, wherein Lot X was declared a surplus property and available for disposal.

G. On October 17, 2006, the City adopted Resolution Number 2006-766, wherein the City approved an Exclusive Authorization of Sale Agreement (the "Agreement") with Grubb & Ellis Company ("Broker"). The Agreement appoints Broker as the City's exclusive agent to market Lot X on behalf of the City for a six-month period, ending April 17, 2007. This agreement has been extended for an additional three-month period, ending July 31, 2007.

H. Pursuant to the MOU, CAMA agreed to execute in its name all agreements for the design and pre-construction phases of the Project, subject to City approval.

These agreements include (1) the "Agreement Between Owner and Architect" (the "Gwathmey Siegel Agreement") between CAMA and Gwathmey Siegel & Associates Architects, LLC, that the City Council authorized CAMA to execute on February 3, 2004 through the adoption of Resolution number 2004-078, and (2) the "Standard Form of Agreement Between Owner and Construction Manager" between CAMA and Rudolph and Sletten, Inc., ("Construction Manager") that the City Council authorized CAMA to execute on March 20, 2007 through the adoption of Resolution number 2007-162. The latter agreement, including any amendments approved by the City, CAMA, and the Construction Manager, is hereinafter referred to as the "Construction Contract".

I. Pursuant to the MOU, CAMA and City also agreed that after the City and CAMA had approved all necessary funding arrangements for the Project, the City Council would consider whether to approve a written amendment to the Construction Contract to add the construction phase of the Project. Such amendment would authorize commencement of the Project construction phase and would designate the City as the Project "Owner" under the Construction Contract during the construction phase of the Project.

J. In order to meet the expectations regarding the Project, the City and CAMA desire to enter into this First Amendment to further define their respective roles and responsibilities.

NOW, THEREFORE, City and CAMA amend the MOU as follows:

1. Section 18 is added to the MOU 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, including any amendments to the Plan 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 B udget. The proposed budget for the Project is attached as Exhibit B and incorporated herein, including any amendments to the Project Budget approved by the City and CAMA ("the Project Budget"). The Project Budget reflects the City's current estimate of all Construction costs and expenditures and represents the parties understanding of the totality of all anticipated Construction costs and Project expenditures.

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) The Guaranteed Maximum Price ("GMP") under the proposed amendment to the Construction Contract is at least five percent (5%) greater or less than the total Estimated Construction Cost ("ECC") stated in the Project Budget; or 2) The

net proceeds from the sale of Lot X (see section 20, below) are at least five percent (5%) greater or less than $20 million; or 3) Seventy-five percent (75%) of the contingency funding identified in the Project Budget has been depleted; 4) Actual City 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; or 5) any other event occurs that materially effects the Project.

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 and shall be used by the City exclusively for completion of the Project. It is agreed that the City shall have the right to authorize disbursements from the Account and that the Account shall be segregated from the City's general funds. The interest earned on the Account shall be for the sole benefit of the Project. In no event shall the City use the earned interest or the funds in the Account for any purpose unrelated to the Project.

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. Within 30 days after final payment to the Construction Manager and after the resolution of all claims, the City shall direct that all amounts remaining in the Account be distributed to CAMA.

F. Construction Funding Obligations.

1) CAMA. CAMA shall deposit $12.5 million into the Account within 10 days after the City Council and the CAMA board approves this First Amendment. CAMA shall deposit an additional $14.1 million into the Account no later than September 14, 2007. These funding obligations may not be satisfied through the use of any of the CRCIP Loan proceeds.

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.

G. Use and Management of Account. City and CAMA agree that funds maintained in the Account 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."

2. Section 19 is added to the MOU to read as follows:

"19. CRCIP Loan.

A. Procee ds. The City shall provide CAMA with a $12 million CRCIP Loan to fund the Construction. The CRCIP loan proceeds shall be maintained by the City in a City account and used to fund the Project in the order in which the CRCIP Loan appears in the Plan.

B. CRCIP Loan Documents. CAMA shall enter into customary loan documents with the City in a form approved by the Office of the City Attorney for the repayment of the CRCIP loan obligation memorialized in the Repayment Schedule, attached hereto as Exhibit C. The customary loan documents will include a security agreement in which CAMA capital campaign pledges will constitute security under the agreement. The 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. CRCIP Loan Repayment. CAMA shall repay the City according to the terms of the loan documents. The City shall maintain an accurate accounting of the CRCIP Loan, including the outstanding balance, interest accrued, and payments made, and shall provide CAMA with a copy of this accounting within 30 days of each payment. Interest earned on the $12 million CRCIP bond proceeds shall operate as a credit against the Crocker CRCIP loan debt service. In the event CAMA fails to make payment(s) as required by the 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. Reserve. CAMA shall maintain a cash reserve in the Account in an amount equal to an average of two (2) bi-annual payments under the Repayment Schedule 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 into the Account as they are received until the required cash reserve balance is achieved.

2. Pledge Reporting. CAMA shall submit a monthly capital campaign schedule to the City until the CRCIP Loan is repaid. The schedule shall include pledges received, pledges converted into cash, past due pledges, and a projection of pledges to be received.

D. 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, CAMA has not drawn the full amount of the CRCIP loan, any remaining balance shall be transferred to CAMA for the purchase of Project furniture, fixtures or equipment.

E. Prohibite d 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 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 indebtedness memorialized in the Repayment Schedule."

3. Section 20 is added to the MOU to read as follows:

"20. Lot X.

A. Sale Proc eeds. City shall, pursuant to the Plan and resolutions passed by the City and Agency, make a good faith effort to sell Lot X at fair market value for the benefit of the Project. If the City sells Lot X, the net proceeds of such sale shall be maintained by the City and used to fund a portion of the Construction. Any interest earnings on the net proceeds shall be maintained by the City and shall accrue and be used for the benefit of the Project.

B. City Responsibility. City agrees it shall fully defend and indemnify and hold harmless CAMA, its officers, directors, and employees, and each and every one of them from and against any and all actions, damages, liability, and claims of any type arising from the sale of Lot X by City.

4. Section 21 of the MOU is added to read as follows:

"21. Construction Protocol.

A. Project Owner. The City is the "Owner" of the Construction Project and as such, will have the sole power and authority to communicate with the Construction Manager, make all decisions regarding the construction phase of the Project, and all decisions arising from or related to the Construction Contract, subject to the

provisions in section 21.C below and as expressly provided in the Construction Contract.

B. City Reporting Require ments. City representatives shall meet with the Museum Director and CAMA's Project Manager on a regular basis to discuss contract administration matters, such as: subcontractor selection, change orders and construction change directives, approval of payment applications, review and approval of the schedule and any changes thereto, submittals, rejection of work, review of the project for substantial and final completion, creation and satisfaction of punch lists, and direction on Architect's interpretations.

C. CAMA Authorization of Contract Change Orders to Construction Project.

1. The City shall confer with the Museum Director and CAMA's Project Manager in good faith prior to its approval of any Construction Contract change orders of $25,000 or more, regardless of source of funding ("Change Orders"). Change Orders of $25,000 or more shall require CAMA's approval as follows: The Museum Director and/or the CAMA Project Manager are authorized to approve Change Orders valued between $25,000 and $100,000; CAMA's Building's and Grounds Committee is authorized to approve Change Orders more than $100,000 and less than $250,000; and the approval of CAMA's Board of Directors shall be required for all Change Orders of $250,000 or more.

2. CAMA shall designate from time to time a single representative ("Representative") who will be responsible for the receipt of City requests for approval of proposed Change Orders and for responding to all such requests. CAMA shall provide the name and contact information for the Representative prior to the date of commencement of Project Construction and CAMA shall notify the City any time CAMA designates a new Representative. CAMA agrees that the City has the right to rely on the representations made by CAMA's Representative.

3. CAMA's Representative shall have the following periods of time in which to either convey CAMA approval of a proposed Change Order or present an alternative proposal to the City: a) Change Orders valued between $25,000 and $100,000 - 48 hours; b) Change Orders more than $100,000 and less than $250,000 – 14 days; and c) Change Orders of $250,000 or more - 30 days. If the City determines, in its reasonable judgment, that the progress of work under the construction schedule would be delayed and/or additional costs would be incurred as a result of the review periods described in clauses (b) or (c) above, the City may require that CAMA respond to any proposed Change Order in a shorter period of time. If CAMA's Representative fails to approve a proposed Change Order or present an alternative proposal within the time limits prescribed herein, the Change Order shall be deemed approved.

4. Notwithstanding the requirements for approval of Change Orders as set forth in this Section 21, the City may direct or approve changes to the work without CAMA's prior approval when, in the reasonable judgment of the City, exigent circumstances require immediate action on any such change. In such event, the City shall promptly notify CAMA's Representative of such action, which notice shall include supporting documentation in reasonable detail for such action.

5. Where CAMA presents an alternative proposal to the City, it shall be accepted by the City, subject to the following conditions: a) The City received the alternative proposal from CAMA's Representative within the time limits prescribed in subsection C.3; b) The proposed alternative is feasible in the judgment of the City and the Construction Manager; and c) If the cost of the alternative proposal exceeds the cost of the City's proposal, CAMA shall deposit the difference in cost into the Account prior to the City's approval of any Change Orders related to the alternative proposal.

6. The terms of the Construction Contract shall control over any conflicting provisions of this section.

D. CAMA shall assign the Construction Phase (a partial assignment) of the Gwathmey Siegel Agreement to the City within five (5) business days after CAMA receives written notice that the City has approved the Construction Phase amendment.

5. Section 4.K is added to the MOU to read as follows:

"K. CAMA agrees that it shall be responsible for any and all costs associated with the acquisition and installation of Project furniture, fixtures and equipment that are not included within the scope of services provided under the Construction Contract."

6. Section 4.A of the MOU is amended to read as follows:

"A. CAMA shall submit Phase I and Phase II Business Plans for review and approval by the City Council. The Plans will contain an Operating Budget and a Capital Improvement Budget. The Operating Budget will project operating revenues and expenses for the three-year period commencing on the opening of the Expansion. The Capital Improvement Budget will project Expansion and Renovation costs and will provide a cash flow analysis demonstrating that sufficient funds will be available to complete the Project as designed. The Business Plans will discuss the efficacy of campaign pledges, enterprise opportunities to help offset new operating cost and other aspects normally identified in a Business Plans. The Business Plans must be approved by the City Council before construction of the Project is authorized to proceed. As of the date of this First Amendment, City Council has already approved the Phase I Business Plan. CAMA shall submit the Phase II Business Plan to the City Council for approval no later than June 5, 2007.

7. Section 1 of the MOU is amended to read as follows:

"Definitions. As used in this MOU: "Expansion" shall refer to the new addition, replacement of the Herold Wing, and the connections to the Gallery Building. "Renovation" shall refer to improvements to the Gallery and Mansion buildings, including structural, mechanical and electrical improvements, and "Project" shall mean the Museum Expansion and the Renovation together."

Except as amended herein, the terms and provisions of the MOU shall remain in full force and effect, provided that in the event of any inconsistencies between this First Amendment and the MOU, the provisions of this First Amendment shall prevail.

CITY OF SACRAMENTO

By Cassandra H. B. Jennings

Cassandra Jennings, Assistant City Manager for Ray Kerridge - 5/30/07

CROCKER ART MUSEUM ASSOCIATION

By Tom Weborg 5/30/07

Tom Weborg, President

ATTEST:

City Clerk

APPROVED AS TO FORM:

Angela Cassagnoda 5/30/07

Deputy City Attorney

Crocker Project Construction Phase Funding Plan*

Total Estimated Construction Costs as of May 1, 2007:	**71,605,418**	
CRCIP "City Grant"	2,000,000	
State of California Proposition 40 Grant	2,000,000	
SHRA Tax Increment	1,000,000	
SHRA's Downtown Bond	8,000,000	
Sacramento County CAMA Grant	2,500,000	
CAMA Contribution from CRCIP Loan Proceeds	12,000,000	
Proceeds from sale of Lot X	20,000,000	**
CAMA Cash	24,105,418	
Total Estimated Funding:	**71,605,418**	

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

***This is an estimate only and will be amended upon the disposition or development of the property*

Project Budget*

Contract Award	$61,252,410
Project Management/Construction Consultants	$3,409,086
Outside Agency Fees	$329,432
Project Contingency	$5,420,915
City Permits/Fees	$471,669
City Project Management & Staff Labor Costs	$524,000
Project Management Contingency	$197,906
Total Estimated Construction Costs:	**$71,605,418**

**Construction Estimates bases on April 2007 data*

DRAFT

Equal Semi-Annual Payments with Estimated Interest Earnings

Crocker Museum Expansion

Debt Service Schedule (Semi-Annual Payments)

	Month	Year	Actual Bond Debt Service Schedule				Amended for Equal Semi-Annual Payments			
			Interest	Principal	Debt Service[1]	FY Debt Service	Equal Semi Annual Payments	Estimated Interest Earnings[2 3]	Adjusted Semi Annual Payments	Balance
										$ 12,890,000.00
4.00%	December	2006	$ 244,855.76	$ -	$ 244,855.76		$ 510,362.01	$ 281,000.00	$ 229,362.01	$ 12,890,000.00
4.00%	June	2007	$ 265,506.25	$ -	$ 265,506.25	$ 510,362.01	$ 792,256.25	$ 290,000.00	$ 502,256.25	$ 12,890,000.00
4.00%	December	2007	$ 265,506.25	$ 1,075,000.00	$ 1,340,506.25		$ 792,256.25	$ 285,000.00	$ 507,256.25	$ 11,815,000.00
4.00%	June	2008	$ 244,006.25	$ -	$ 244,006.25	$ 1,584,512.50	$ 790,356.25	$ 292,000.00	$ 498,356.25	$ 11,815,000.00
4.00%	December	2008	$ 244,006.25	$ 1,115,000.00	$ 1,359,006.25		$ 790,356.25	$ 148,000.00	$ 642,356.25	$ 10,700,000.00
4.00%	June	2009	$ 221,706.25	$ -	$ 221,706.25	$ 1,580,712.50	$ 790,106.25		$ 790,106.25	$ 10,700,000.00
4.00%	December	2009	$ 221,706.25	$ 1,160,000.00	$ 1,381,706.25		$ 790,106.25		$ 790,106.25	$ 9,540,000.00
4.00%	June	2010	$ 198,506.25	$ -	$ 198,506.25	$ 1,580,212.50	$ 791,406.25		$ 791,406.25	$ 9,540,000.00
4.00%	December	2010	$ 198,506.25	$ 1,210,000.00	$ 1,408,506.25		$ 791,406.25		$ 791,406.25	$ 8,330,000.00
4.00%	June	2011	$ 174,306.25	$ -	$ 174,306.25	$ 1,582,812.50	$ 790,040.63		$ 790,040.63	$ 8,330,000.00
3.75%	December	2011	$ 174,306.25	$ 1,255,000.00	$ 1,429,306.25		$ 790,040.63		$ 790,040.63	$ 7,075,000.00
3.75%	June	2012	$ 150,775.00	$ -	$ 150,775.00	$ 1,580,081.25	$ 790,225.00		$ 790,225.00	$ 7,075,000.00
4.00%	December	2012	$ 150,775.00	$ 1,305,000.00	$ 1,455,775.00		$ 790,225.00		$ 790,225.00	$ 5,770,000.00
4.00%	June	2013	$ 124,675.00	$ -	$ 124,675.00	$ 1,580,450.00	$ 788,625.00		$ 788,625.00	$ 5,770,000.00
4.00%	December	2013	$ 124,675.00	$ 1,355,000.00	$ 1,479,675.00		$ 788,625.00		$ 788,625.00	$ 4,415,000.00
4.00%	June	2014	$ 97,575.00	$ -	$ 97,575.00	$ 1,577,250.00	$ 787,593.75		$ 787,593.75	$ 4,415,000.00
4.25%	December	2014	$ 97,575.00	$ 1,410,000.00	$ 1,507,575.00		$ 787,593.75		$ 787,593.75	$ 3,005,000.00
4.25%	June	2015	$ 67,612.50	$ -	$ 67,612.50	$ 1,575,187.50	$ 786,075.00		$ 786,075.00	$ 3,005,000.00
4.50%	December	2015	$ 67,612.50	$ 1,470,000.00	$ 1,537,612.50		$ 786,075.00		$ 786,075.00	$ 1,535,000.00
4.50%	June	2016	$ 34,537.50	$ -	$ 34,537.50	$ 1,572,150.00	$ 784,768.75		$ 784,768.75	$ 1,535,000.00
4.50%	December	2016	$ 34,537.50	$ 1,535,000.00	$ 1,569,537.50	$ 1,569,537.50	$ 784,768.75		$ 784,768.75	$ -
	Total		$ 3,403,268.26	$ 12,890,000.00	$ 16,293,268.26	$ 16,293,268.26	$ 16,293,268.26	$ 1,296,000.00	$ 14,997,268.26	$ -

Notes:

1 Actual Debt Schedule for Crocker Museum Expansion Project

2 For Cost of Carry and Interest Earnings, actual Pool A investment rates from June 2006 to March 2007 are used, and a forecast

3 Assumes Draw downs of $12 M proceeds after August 2008. (bridge loan proceeds drawn down prior to August 2008. may significantly effect debt schedule)