



Meeting Date: 11/18/08

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/Consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Suzanne Quitariano *SQ* Agenda Item No. I-6
 Reviewed By: City Manager *KCB* Holmberg *HA* City Attorney Finance *JK* Other N/A

DATE: October 30, 2008

TO: Community Development Commission

FROM: Curtis P. Cannon, Community Development Director
 Community Development Department *Curtis P. Cannon*

SUBJECT: Supplemental Lease Agreement to be Entered into Between the Community Development Commission (“CDC”) and the United States Government by and Through the GSA (“the Social Security Administration”)

RECOMMENDATION

That the Community Development Commission:

1. Approve and authorize the Chairman of the CDC to execute the Supplemental Lease Agreement (the “Lease”) (Agreement #A-7111) between CDC and the Social Security Administration located at 315 North Fifth Street in substantially the form presented at this meeting or with such non-substantive changes and amendments as may be approved by the Community Development Director and CDC Counsel.
2. Authorize the Community Development Director, on behalf of the CDC, to sign all documents necessary and appropriate to carry out and implement the Lease.

DISCUSSION

As part of the on-going efforts to revitalize downtown Oxnard, on August 8, 2008, the CDC purchased that certain property located at 425 and 445 South B Street and 315 North Fifth Street, Oxnard, California (“Property”) from Oxnard Plaza Associates, LLC. The Property is currently occupied by two tenants, the Social Security Administration, and Southern California Gas Company (the “Gas Company”). The existing lease with the Social Security Administration terminated on October 31, 2008 and is now in hold over on a month-to-month basis until the Supplemental Lease Agreement is signed. The existing lease with the Gas Company is set to terminate on October 31, 2011.

The CDC plans to continue the Property's existing use as a multi-tenant office and retail building for the next several years, while redevelopment alternatives are considered.

After such period, CDC may elect to either:

1. Demolish interior tenant improvements to create new retail space for restaurant use, or;
2. Engage in subsequent development for reuse of the site to be decided upon in the near future, possibly through a Request for Proposal (RFP).

The CDC purchased the Property subject to the above referenced leases with the Social Security Administration and the Gas Company. The Social Security Administration has expressed its desire to extend its lease term for an additional three years. The Lease is a full service gross lease whereby total rent is comprised of the combination of base rent and operating expenses for the leased premises. The attached Lease (Attachment 1) contains the terms by which the Social Security Administration and the CDC will consider extending the current lease.

The following is a comparison of the financial terms of the current lease and proposed Lease:

<u>Current Lease</u>	<u>Proposed Lease</u>		
Total Annual Rent: \$153,863.76	Period	Total Annual Rent	
	Year 1	November 1, 2008 to October 31, 2009	\$181,593.95
	Year 2	November 1, 2009 to October 31, 2010	\$184,913.98
	Year 3	November 1, 2010 to October 31, 2011	\$188,333.61

FINANCIAL IMPACT

The proposed total rent is estimated to provide \$181,593.95 in revenue by the end of the first twelve months of the Lease to the Redevelopment Central City Revitalization Project Area Fund 402. Net revenue after operating expenses are paid is estimated to be \$110,667.55.

SQ

Attachment #1 – Supplemental Lease Agreement

GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE SUPPLEMENTAL LEASE AGREEMENT	SUPPLEMENTAL AGREEMENT No. 19	DATE
--	-------------------------------------	------

ADDRESS OF PREMISES: 315 North 5 th Street Oxnard, CA 93010	TO LEASE NO. GS-09B-94942
--	---------------------------

THIS AGREEMENT, made and entered into this date by and between: Oxnard Community Development Commission

whose address is: 214 S. C Street
Oxnard, CA 93030-5712

hereinafter called the Lessor, and the UNITED STATES OF AMERICA, hereinafter called the Government:

WHEREAS, the parties hereto desire to amend the above Lease.

NOW THEREFORE, these parties for the considerations hereinafter mentioned covenant and agree that the said Lease is amended effective November 1, 2008:

This Supplemental Lease Agreement (SLA) #19 is to extend the lease for a period of three (3) years, to establish a new rental rate, to reestablish the base rate for operating costs, and to require full compliance with the Architectural Barriers Act Accessibility Standards (ABAAS).

Paragraphs 3, 9, and 12 are deleted in their entirety and the following substituted therefore; Paragraphs 20 - 28 are added:

3. The Government shall pay the Lessor annual rent as follows:

	Period	Total Annual Rent
Year 1	November 1, 2008 to October 31, 2009	\$181,593.95
Year 2	November 1, 2009 to October 31, 2010	\$184,913.98
Year 3	November 1, 2010 to October 31, 2011	\$188,333.61

Rent checks shall be made payable to:

Oxnard Community Development Commission
214 South C Street
Oxnard, CA 93030

9. TO HAVE AND TO HOLD the said premises and their appurtenances for the term beginning on May 16, 1995 through October 31, 2011, subject to termination rights as may be hereinafter set forth (the "Term").

12. Pursuant to Paragraph 3.6, "Operating Costs", the base rate for purposes of operating cost escalation is established at \$9.14 per net usable square foot per annum for the net usable square feet under the lease. Base Operating annual rent is established at \$70,926.40. The total annual rental for Years 2 and 3 in Paragraph 3 above shall be adjusted accordingly to reflect any and all increases in operating costs pursuant to Paragraph 3.6 of the Solicitation For Offers and this paragraph 12.

(CONTINUED ON ATTACHMENT TO SUPPLEMENTAL LEASE AGREEMENT #19 CONSISTING OF 2 PAGES)

All other terms and conditions of the lease shall remain in force and effect.

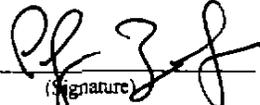
IN WITNESS WHEREOF, the parties subscribed their names as of the above date.

LESSOR: Oxnard Community Development Commission

BY _____ (Signature) _____ (Title)

IN THE PRESENCE OF (witnessed by :)
 _____ (Signature) _____ (Address)

UNITED STATES OF AMERICA, General Services Administration, Public Buildings Service.

BY  _____ (Signature) _____ (Title)
 Contracting Officer
 GSA, PBS, RED

20. ACCESSIBILITY (FEB 2007)

The building, leased space, and areas serving the leased space shall be accessible to persons with disabilities in accordance with the Architectural Barriers Act Accessibility Standard (ABAAS), Appendices C and D to 36 CFR Part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10). To the extent the standard referenced in the preceding sentence conflicts with local accessibility requirements, the more stringent shall apply.

21. REMEDIES CULMULATIVE

Each right and remedy of Lessor and Lessee provided for in this amended Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this amended Lease except as otherwise limited by this amended Lease, and the exercise or the beginning of the exercise by Lessor or Lessee of any one or more of the rights or remedies provided for in this amended Lease, except as otherwise limited by this amended Lease, shall not preclude the simultaneous or later exercise by Lessor or Lessee of any or all other rights or remedies provided for in this amended Lease, except as otherwise limited by this amended Lease.

22. EXPIRATION: TERMINATION

At the expiration or earlier termination of this amended Lease, Lessee shall surrender to Lessor possession of the leased premises free and clear of all liens, encumbrances and mortgages other than those, if any, created by Lessor, those which both extend beyond the Term of this amended Lease and were expressly approved in writing by Lessor.

23. LESSEE'S WAIVER AND ACKNOWLEDGMENT

For purposes of this amended Lease, the term "Relocation Benefits" shall mean: just compensation for the acquisition, taking or threatened taking of property interests in the leased premises (land, building, fixtures, equipment, improvements and loss of goodwill); costs for payment of goodwill or loss of goodwill as provided under any applicable law; and any additional costs incurred to settle or pay claims of inverse condemnation, or judgments in inverse condemnation; costs for relocation assistance and benefits pursuant to all applicable state and local relocation laws, including without limitation, the California Relocation Assistance Law (Government Code §7260 *et seq.*) and the implementing regulations thereto and local implementing regulations thereto, and all applicable federal relocation laws, including, without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4201-4655, and 49 CFR part 24), acquisitions and eminent domain laws (Government Code § 7267 *et seq.* and Code of Civil Procedure § 1240.000 *et seq.*) and any other applicable federal, state or local enactment, regulation or practice providing for relocation assistance and benefits, acquisition and/or compensation for property interests (including without limitation goodwill and furnishings, fixtures and equipment, leasehold bonus value, and moving expenses); and any and all related claims.

Lessee acknowledges that Lessor has a financial stake in whether such Relocation Benefits would have to be paid or not, and would not permit Lessee to continue to occupy the leased premises after October 31, 2008, if, by so doing, Lessee were to become eligible for Relocation Benefits, but Lessor would permit Lessee to continue to occupy the leased premises under this amended Lease only if Lessee agrees to waive its right to receive Relocation Benefits in the event Lessee becomes eligible for such Relocation Benefits.

Lessee acknowledges that Lessor would not extend the term of the Lease beyond the expiration date of October 31, 2008 except for Lessee's waiver of Relocation Benefits, and that Lessee's waiver of such Relocation Benefits is a material inducement to Lessor to extend the term of the Lease and execute this amended Lease.

Therefore, in order to induce Lessor to permit Lessee to continue to occupy the leased premises pursuant to the terms of this Amended Lease, Lessee hereby forever knowingly, intelligently and voluntarily waives, disclaims and releases Lessor and its officers, board members, employees, agents and contractors, from any claims for Relocation Benefits in the event Lessee were to move from the Leased Premises as the result of (i) the execution of that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into between Lessor and Oxnard Plaza Associates, LLC, a California limited liability company, dated July 8, 2008; (ii) a written notice of intent to acquire, or the acquisition of the leased premises, by any person having an agreement with or acting on behalf of the Lessor; (iii) Lessor's decision to terminate Lessee's tenancy in accordance with this amended Lease; or (iv) any other action by which Lessee would become eligible for such Relocation Benefits.

This waiver shall bind Lessee and its successors and assigns, and is for the benefit of the Lessor, its officers, board members, employees, agents and contractors, and their respective successors and assigns.

Revised SLA Number 19

LESSOR INITIAL:

GOV'T INITIAL: PT

000036

The parties acknowledge that this amended Lease, including, without limitation, this paragraph 23, has been negotiated based upon negotiations at arms' length.

PR

GOV'T INITIAL

LESSOR INITIAL

24. SEVERABILITY

Should any part, term, portion or provision of this amended Lease, or the application thereof to any person or circumstances be held to be illegal or in conflict with any governmental restrictions, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances shall be deemed severable and the same shall remain enforceable and valid to the fullest extent permitted by law.

25. HOLDING OVER

Any holding over by Lessee after the expiration of the Term shall be construed as a tenancy from month to month and shall be subject to all of the terms and conditions which are provided for in this amended Lease except that the Rent shall be in an amount equal to 150% of the Rent in effect immediately prior to the expiration of the Term. The amount listed does not include consequential damages.

26. WAIVER AND RELEASE

Effective on the Effective Date of this amended Lease, Lessee waives, releases and discharges Lessor and the City of Oxnard ("City") and their respective successors and assigns, officers, members, directors, shareholders, and Representatives (as defined below) from and against any and all debts, duties, obligations, liabilities, suits, claims, demands, penalties, fines, causes of action, damages, losses, costs and expenses, including, without limitation, attorneys' fees and expenses ("Claims") Lessee may have at any time against the Lessor or City or their respective Representatives of whatever kind or nature in any way connected with the leased premises during any period of time after the Effective Date of this amended Lease, except to the extent such Claims arise from the gross negligence or willful misconduct by the Lessor or City (as applicable). Lessee expressly waives the benefits of Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor."

The waiver and release provided in this paragraph 26 shall survive the termination of the amended Lease.

27. POSSESSORY INTEREST TAXES

Lessor is a public entity, and as such, Lessor's underlying fee in the leased premises is, or may be, exempt from property tax assessments. In accordance with California Revenue and Taxation Code Section 107.6(a), Lessor states that by entering into this amended Lease, a possessory interest subject to property taxes may be created. Lessor and Lessee believe that Lessee is not subject to payment of a possessory interest tax herein, however, in the event such a tax becomes applicable, Lessee or any other party in whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest.

28. LESSOR'S RIGHTS OF INSPECTION

Lessor and its Representatives shall have the right during business hours, upon not less than seventy-two business hours written notice to Lessee (except that in the case of an emergency, the existence of which shall be determined by Lessor in its reasonable discretion, no advance notice shall be required) to enter upon the leased premises for purposes of inspecting the same and exercising its rights under this amended Lease, provided that such inspections shall not unreasonably interfere with Lessee's business activities and shall be conducted during the operating hours of Lessee. Lessor shall be escorted by an employee, representative or agent of Lessee at all times during such inspections. Inspections conducted by the Lessor shall be limited to three (3) times per month, except that in the case of an emergency, the existence of which shall be determined by Lessor in its reasonable discretion, (i) there shall be no limitation on total number of inspections, and (ii) an inspection as a result of an emergency shall not be counted towards Lessor's permitted total for the given month in which the emergency inspection occurred.

Revised SLA Number 19

LESSOR INITIAL:

GOV'T INITIAL: PR

Attachment #1
Page 3 of 3

000037