"To enrich lives through effective and caring service"

Los Angeles County Beaches & Harbors
Caring for Your Coast

Stan Wisniewski
Director

Kerry Silverstrom
Chief Deputy

November 29, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL TO EXERCISE OPTIONS FOR THE LEASE TERMINATIONS OF A PORTION OF PARCEL 44U (PIER 44) AND ALL OF PARCEL 77W (77 DEL REY) - MARINA DEL REY (FOURTH DISTRICT) (4 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the recommended actions are categorically exempt under the California Environmental Quality Act pursuant to Class 1 of the County's Environmental Document Reporting Procedures and Guidelines.

2. Approve the exercise of the County's options to terminate Lease 6734 (Parcel 44U) as to a portion of Parcel 44U and Lease 11140 (Parcel 77W) in its entirety, at a total cost of $5.6 million, plus interest accruing at prime rate as of February 26, 2004, which through December 6, 2005 amounts to $529,334, to be funded in the amount of $1,393,334 from lease extension fee credits due from affiliates of the lessee of both parcels, Pacific Marina Venture, LLC (Lessee), and $4,736,000 from the Marina Accumulative Capital Outlay (ACO) Fund.

3. Authorize the Director of the Department of Beaches and Harbors (Department) to execute and deliver the required Notice of Exercise to Lessee.

4. Approve the 16th amendment to Lease 6734 (Amendment) substantially in the form attached hereto (Attachment 1), which excludes from the Parcel 44U leasehold those areas of the leasehold that are to be terminated, and authorize the Chair to execute the Amendment upon later presentation by the Department to the Executive Officer of the Board after approval as to form by County Counsel and execution by the Lessee.

5. Approve the Termination Agreement for Lease 11140 affecting Parcel 77W, substantially in the form attached hereto (Attachment 2), which will terminate Lease 11140, and authorize the Chair to execute the Termination Agreement upon later presentation by the Department to the Executive Officer of the Board after approval as to form by County Counsel and execution by the Lessee.

6. Authorize the Director of the Department to open escrow and execute escrow instructions and any other related documentation necessary to close escrow.

7. Approve the attached appropriation adjustment transferring $4,736,000 within the Marina ACO Fund from Services and Supplies to Other Charges to fund the buyout of the Parcel 44 and 77 leases.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of ground leases for Parcels 44U and 77W, each of which were originally entered into for terms of 60 years, and which have remaining lease terms of 17 years, 5 months, and 20 years, 8 months, respectively. Pacific Marina Venture, LLC, a Delaware limited liability company (Lessee), is the current lessee of both parcels.

On February 25, 2003, your Board entered into an Option Agreement and Joint Escrow Instructions (Agreement) with the Lessee to terminate all of the Parcel 77W lease and a portion of the Parcel 44U lease in order to return the property to full County control and use, so that the County may utilize all or portions of these parcels for the intended Chace Park expansion and significant boating and visitor-serving development. Your Board subsequently approved two amendments to the Agreement, both of which extended the option expiration dates.

The Agreement contains two separate options, denominated the First Option and the Second Option. While the First Option (for the landside of a portion of Parcel 44U and all of Parcel 77W) at a cost of $4.9 million may be exercised alone, the Second Option (for a portion of the waterside area of Parcel 44U) at a cost of

$700,000, which expires next month on December 14, 2005, may not be separately exercised, requiring the prior or contemporaneous exercise of the First Option as a condition of its exercise. Therefore, to preserve the County's ability to expand Chace Park and/or the opportunity for new boating and visitor-serving development, both the First and Second Options must be exercised now.

The County has up to two additional years after date of exercise in which to close the proposed transaction on the First Option property, and until June 14, 2006 to close the Second Option property. During the intervening period between exercise and closing, the Department intends to prepare and submit for your Board's approval a full operating, maintenance, and use plan for the areas to be acquired.

Implementation of Strategic Plan Goals

The proposed action promotes and furthers the Board approved Strategic Plan Goal of Service Excellence, as well as furthers the proactive implementation of the Board approved Marina del Rey Asset Management Strategy, in that it provides the County the ability to offer a site for expansion of the adjacent Chace Park facilities and enhanced areas for expanded boating and visitor-serving development.

FISCAL IMPACT/FINANCING

The buyout for the Parcels 44U and 77W lease options in the total amount of $5.6 million, with interest accruing at the prime rate as of February 26, 2004, which amounts to $529,334 as of December 6, 2005, will be funded by the Marina ACO Fund in the amount of $4,736,000, with the balance of $1,393,334 funded by lease extension fee credits due to the County from affiliates of Lessee with respect to Parcel 95 ($100,000), Parcel 97 ($493,334), and Parcel 140 ($800,000).

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Second Amendment to the Option Agreement acknowledged that the Santa Monica Windjammers Yacht Club (SMWYC), lessee of adjacent Parcel 47, was negotiating with the Lessee on the assignment of all of the Second Option property (a portion of the waterside area of Parcel 44U) and all or part of the Parcel 44U portion of the First Option property in anticipation of relocating its facilities to accommodate the future expansion of Chace Park. SMWYC has been advised of our intent to recommend to your Board exercise of the First and Second Options and, further, that the only way the County will thereafter be able to transfer the property will be via the open competitive request for proposals (RFP) process.

Parcel 77W is improved with a small boat repair operation, dry boat storage and customer parking, and currently provides docking space for FantaSea One, one of the charter boats of FantaSea, otherwise a subtenant of Parcel 125l. The landside portion of Parcel 44U subject to return to the County is improved with two stand-alone office buildings together containing a total of approximately 14,000 square feet, one that serves as the Lessee's property management building and the other under the control of a property management company selling condominiums outside but adjacent to the Marina. The waterside portion of Parcel 44U subject to return to the County contains 159 boat slips. Until the lease termination transactions are closed, the current uses of the property will not change. The Department intends to develop plans for expansion of the County's adjacent Chace Park and may recommend that all or a portion of the acquired Parcel 44U property be offered for utilization by a not for profit yacht club, subject to an RFP process.

The combined purchase price for the First and Second Options is supported by an appraisal that confirms the fair market value of the First and Second Option properties is equal to or greater than the combined Option price.

The Option Agreement also provides that certain documents will be deposited into escrow, which documents include the Amendment (16th Amendment to the Parcel 44U lease) and the Termination Agreement for Parcel 77W. There may also be other documents requiring the County's execution identified during the escrow. All such documents, in addition to the Amendment, Termination Agreement and the Exercise Notice to be signed by the Department Director, will be reviewed by County Counsel for approval as to form.

The termination of the leasehold for Parcel 77W and amendment of the Parcel 44U lease are authorized by Government Code sections 25907 and 25536.

At its meeting of November 9, 2005, the Small Craft Harbor Commission unanimously endorsed the Director's recommendation that your Board approve the exercise of the options.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions is categorically exempt under the California Environmental Quality Act pursuant to Class 1 of the County's Environmental Document Reporting Procedures and Guidelines. The Department has no current plans to modify the existing uses of the facilities on Parcels 77W and 44U that will come under direct County ownership. At such time as a development plan is proposed, appropriate environmental documentation will be prepared.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES OR PROJECTS

As above noted, during the intervening period between exercise and closing, the Department intends to prepare and submit for your Board's approval a full operating, maintenance, and use plan for the areas to be acquired. Such plan will include staffing requirements to operate facilities acquired by the County, maintenance and capital costs for the docks, and an estimate of additional revenues from the operation of the docks and facilities that can be used to defray any additional costs to operate and maintain such facilities.

CONCLUSION

The Department will provide copies of the 16th Amendment to Lease 6734 and the Termination Agreement for Lease 11140 to the Executive Officer of the Board for execution by the Chair, after execution by the Lessee. Please return an approved copy of this letter to the Department.

Respectfully submitted,

Stan Wisniewski, Director

SW:PW:CM:SI:ms

Attachments (3)

c: Chief Administrative Officer
Executive Officer, Board of Supervisors
County Counsel

2570

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BOARD OF SUPERVISORS OFFICIAL COPY

COUNTY OF LOS ANGELES

REQUEST FOR APPROPRIATION ADJUSTMENT

DEPT'S. NO. 055

DEPARTMENT OF BEACHES AND HARBORS

11 15 05

AUDITOR-CONTROLLER.
THE FOLLOWING APPROPRIATION ADJUSTMENT IS DEEMED NECESSARY BY THIS DEPARTMENT. WILL YOU PLEASE REPORT AS TO ACCOUNTING AND AVAILABLE BALANCES AND FORWARD TO THE CHIEF ADMINISTRATIVE OFFICER FOR HIS RECOMMENDATION OR ACTION.

ADJUSTMENT REQUESTED AND REASONS THEREFOR

3 - VOTE
FY 2005 - 2006

Sources:
Beaches & Harbors
Services and Supplies
MA2-BH-65296-2000
$4,736,000

Uses:
Beaches & Harbors
Other Charges
MA2-BH-65296-5500
$4,736,000

Justification:
To transfer funds from Services and Supplies to Other Charges to buyout the leases for Parcels 44 and 77.

Elizabeth Scanlon

CHIEF ADMINISTRATIVE OFFICER'S REPORT

REFERRED TO THE CHIEF ADMINISTRATIVE OFFICER FOR— ACTION

✓ RECOMMENDATION

AUDITOR-CONTROLLER BY Helen Fuy

No. 186 NOV. 16 2005

APPROVED AS REQUESTED ✓ AS REVISED

November 16 19 2005 [signature] for: DEJ

CHIEF ADMINISTRATIVE OFFICER

APPROVED (AS REVISED): BOARD OF SUPERVISORS 19

ATTACHMENT 1

Form of Lease Amendment

AMENDMENT NO. [16] TO LEASE NO. 6734
PARCEL NO. 44U – MARINA DEL REY

THIS AMENDMENT TO LEASE is made and entered into this _____ day of _____.

BY AND BETWEEN — COUNTY OF LOS ANGELES, hereinafter referred to as "County"

AND — PACIFIC MARINA VENTURE, LLC, hereinafter referred to as "Lessee".

WITNESSETH

WHEREAS, on the fourth day of April, 1963, the parties hereto, or their predecessors in interest, entered into Lease No. 6734, under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, commonly known as Parcel 44U, which leasehold premises (the "Premises") are more particularly and legally described in Exhibit "A" attached to and incorporated in said Lease, as amended (the Lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, the parties desire to terminate the Lease as to a portion, but not all, of the Premises;

NOW, THEREFORE, in consideration of the mutual agreements, covenants and conditions contained herein, the parties, and each of them, agree as follows:

1. Exhibit "A" to the Lease is hereby deleted and replaced with Exhibit "A" attached hereto and incorporated herein, and into the Lease, by this reference. Without limiting the foregoing, the Lease is hereby amended to provide that the Premises no longer include the property described on Exhibit "B" attached hereto and incorporated herein by this reference.

2. Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges their respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, authorized this Amendment to Lease to be subscribed by the Director of the Department of Beaches and Harbors, and the Lessee has executed the same.

LESSEE:

PACIFIC MARINA VENTURE, LLC

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

COUNTY OF LOS ANGELES

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By: _____
Deputy

EXHIBIT A

DESCRIPTION OF PARCEL 77

ATTACHMENT 2

Form of Termination Agreement

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:

_____

_____

_____

Attn: _____

Space above this line for Recorder's use

TERMINATION AGREEMENT
(County Lease No. 11140; Parcel 77W – Marina del Rey)

THIS TERMINATION AGREEMENT (this "**Agreement**") is made as of _____, 200_ by and between **COUNTY OF LOS ANGELES** ("**County**") and **PACIFIC MARINA VENTURE, LLC,** a Delaware limited liability company ("**Lessee**"), with reference to the following facts:

RECITALS

A. County and Lessee are parties to Lease No. 11140 (the "**Lease**"), pursuant to which Lessee leases from County certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 77W and more particularly described on Exhibit A to this Agreement. The Lease is more particularly described on Exhibit B to this Agreement.

B. County and Lessee desire to terminate the Lease as provided in this Agreement.

NOW, THEREFORE, with reference to the foregoing Recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, County and Lessee hereby agree as follows:

1. Termination. The Lease is hereby terminated.

2. Survival of Certain Rights. Nothing in this Agreement shall in any way affect any rights, obligations or liabilities of County or Lessee under the Lease that are to survive the termination of the Lease pursuant to the terms thereof or that arise out of any events that occurred during the term of the Lease, and each of County and Lessee hereby reserves any and all such rights. Notwithstanding the foregoing, County shall not require Lessee to remove any works, structures or other improvements from the premises covered by the Lease, and County

hereby waives any provisions of the Lease that would otherwise permit County to compel Lessee to do so.

3. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of the Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

4. Exhibits. All of the Exhibits attached to this Agreement are incorporated into and are a part of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

COUNTY: COUNTY OF LOS ANGELES

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By: _____
Deputy

LESSEE: PACIFIC MARINA VENTURE, LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPPTION FOR PORTION OF 44U

TO BE PROVIDED