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LOS ANGELES COUNTY
Department of Beaches & Harbors

Santos H. Kreimann
Acting Director

Kerry Silverstrom
Chief Deputy

October 28, 2008

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

Dear Supervisors:

AMENDMENT NO. 1 TO OPTION TO AMEND LEASE AGREEMENT NO. 75629
PARCEL 1S (FUEL DOCK) - MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)

SUBJECT

Request for approval of Amendment No. 1 to Option to Amend Lease Agreement for Parcel 1S (Fuel Dock) to grant a six-month extension of the date within which the Option must be exercised.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the Regional Planning Commission, acting on behalf of the County, has previously considered and adopted a negative declaration for the proposed landside redevelopment/replacement project contemplated by the Option to Amend Lease Agreement No. 75629 with respect to Parcel 1S (Fuel Dock), and that the Executive Officer of the Coastal Commission determined that the waterside redevelopment/replacement project involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and is consistent with the policies of section 30200, et seq. of the Coastal Act.

2. Authorize the Chair to execute Amendment No. 1 to Option to Amend Lease Agreement No. 75629, which reflects an extension of the date within which the Option must be exercised to May 2, 2009.

13837 Fiji Way • Marina del Rey • CA 90292 • 310.305.9503 • fax 310.821.6345 • internet: http://marinadelrey.lacounty.gov

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On May 2, 2006, your Board approved a five-year Lease Agreement ("Lease") with Del Rey Fuel, LLC, a California limited liability corporation ("Lessee"), to enable redevelopment of the Parcel 1S fuel dock facilities. Simultaneously, your Board approved an Option to Amend Lease Agreement ("Option Agreement"), which allows the Lessee to extend the term of the Lease by 55 years upon demonstration that the Lessee has satisfied all of the conditions for exercise contained in the Option Agreement, including receipt of all planning, zoning, environmental, and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project.

The Option had an original expiration date of November 2, 2007, but allowed for an extension of the Option period for additional periods of no greater than six months up to November 2, 2008 upon approval by the Director of the Department of Beaches and Harbors ("Director"). Two six-month extension periods were granted by the Acting Director, thus November 2, 2008 is the outside date by which Lessee must exercise its Option.

During the entitlement process, Lessee has worked diligently to obtain the necessary entitlements to permit the exercise of the Option, but, unfortunately, has encountered delays in securing financing for the project due to the current economic crisis. The County will not allow Lessee to exercise its Option if financing for the redevelopment work has not been secured. Accordingly, as the Option period will otherwise expire on November 2, 2008, we are recommending the Board's approval of the requested Amendment No. 1 ("Amendment") so as to allow for completion of financing arrangements. Approval of the Amendment will allow for faster completion of the project and greater benefit to the County than the delay in construction of the project that would otherwise result if the County instead renegotiated a new option agreement with the Lessee.

Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to secure its Option and proactively redevelop its leasehold improvements, which will result in fulfillment of approved Strategic Plan Goal Nos. 1 and 4, "Service Excellence" and "Fiscal Responsibility", respectively.

FISCAL IMPACT/FINANCING

The Amendment by itself has no fiscal impact as its sole purpose is to provide the Lessee with additional time to fulfill its financing requirement due to the current economic crisis. Lessee is currently paying an annual minimum rent of $137,499.96 and paid a total rent of $260,860 for the 2007-08 Fiscal Year. There will be no change to the minimum annual rent due to the Amendment, nor should the Amendment impact

the total rent that the County will receive from Parcel 1 for the 2008-09 Fiscal Year.

Operating Budget Impact

There is no operating budget impact as a result of this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the Lease for Parcel 1S commenced on May 10, 2006 and expires on April 30, 2011. If the Option is exercised and the Lease is extended, the term will expire on April 30, 2066.

On March 24, 2008, the Executive Director of the Coastal Commission, having determined that that the waterside redevelopment/replacement project involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and is consistent with the policies of section 30200, et seq. of the Coastal Act, waived the waterside Coastal Development Permit ("CDP") requirements for the project. On May 14, 2008, the Regional Planning Commission approved the landside CDP and Conditional Use Permit ("CUP") for the project, and the final appeal period for the landside CDP ended August 8, 2008 with no appeals. Final Design Control Board approval was obtained on August 28, 2008 and the building permit application was submitted on August 22, 2008, with approved building permits anticipated by the end of November 2008.

The attached Amendment will extend the time within which the Option must be exercised by Lessee by six months to May 2, 2009. If Lessee is unable or decides not to exercise its Option on or before May 2, 2009, Lessee shall have no further right to extend the Option.

County Counsel has approved the Amendment as to form.

ENVIRONMENTAL DOCUMENTATION

On March 24, 2008, the Executive Director of the Coastal Commission issued a waiver of CDP requirements, having determined that that the waterside redevelopment/replacement project involves no potential for any adverse effect, either individually or cumulatively, on coastal resources and is consistent with the policies of section 30200, et seq. of the Coastal Act. ,On May 14, 2008, the Regional Planning Commission considered and adopted a negative declaration for the proposed redevelopment/replacement project contemplated by the Option and Lease prior to approving the landside CDP and CUP for the project, concluding that the proposed project will have no significant effect on the environment. The proposed Amendment No. 1 to Option to Amend Lease Agreement No. 75629 does not raise any new or different environmental impacts.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Please authorize the Executive Officer of the Board to send two copies of the executed Amendment to the Department of Beaches and Harbors.

Respectfully submitted,

for Santos H. Kreimann
Acting Director

SHK:ks

Attachments (1)

c: County Counsel

AMENDMENT NO. 1 TO OPTION TO AMEND LEASE AGREEMENT
PARCEL 1S – MARINA DEL REY SMALL CRAFT HARBOR
(LEASE NO. 75629)

THIS AMENDMENT NO. 1 TO OPTION TO AMEND LEASE AGREEMENT ("Amendment") is made and entered into as of OCTOBER 28, 2008 by and between COUNTY OF LOS ANGELES ("County") and DEL REY FUEL, LLC, a California limited liability company ("Lessee").

RECITALS

WHEREAS, County and Lessee entered into Lease Agreement (Lease No. 75629) dated May 2, 2006 (the "Lease"), pursuant to 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 1S; and

WHEREAS, County and Lessee entered into Option to Amend Lease Agreement dated May 2, 2006 (the "Option Agreement"), pursuant to which County granted to Lessee an option to extend the Term of the Lease through April 30, 2066 (the "Option") upon the terms and conditions set forth in the Option Agreement;

WHEREAS, the Option Agreement contains an "Option Expiration Date" requiring exercise of the Option by not later than the earlier of 45 days following the date of satisfaction of the Entitlement Conditions or 18 months following the date of the Option Agreement (such 18-month period is referenced in the Option Agreement as the "Outside Date");

WHEREAS, the Outside Date was able to be extended by the Director of the Department of Beaches and Harbors for individual extension periods of up to six months, but all such extensions could not extend the Outside Date beyond 30 months after the date of the Option Agreement, or November 2, 2008.

WHEREAS, the Acting Director of the Department of Beaches and Harbors has extended the Outside Date twice by two six-month extensions and can no longer extend the Outside Date beyond November 2, 2008, yet Lessee has been unable to secure financing for the Redevelopment Work and, thus, the County will not approve any attempt by Lessee to exercise its Option;

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Lessee agree as follows:

1. Capitalized Terms. All capitalized terms used in this Amendment and not otherwise defined herein shall have the same meanings given to such terms in the Option Agreement.

75629 Supplement No. 1

26 OCT 28, 2008

2. Extension of Outside Date. Section 2 of the Option Agreement is hereby deleted and replaced with the following:

> "Option Term. The Option shall be exercisable by Lessee during the period commencing on the date of this Agreement and expiring on that date (the 'Option Expiration Date') which is the earlier of (i) forty-five (45) days following the date of the satisfaction of the Entitlement Conditions (as defined below) and evidence of the acquisition by Lessee of financing approved by Director for the Redevelopment Work, or (ii) May 2, 2009 (the date set forth in this clause (ii) is referred to as the 'Outside Date')."

3. Additional Modification. Section 6.1 of the Option Agreement is deleted.

4. No Other Modifications. The Option Agreement remains in full force and effect, unmodified except as expressly set forth in this Amendment.

5. Counterparts. This Amendment may be signed in any number of counterparts. Each counterpart represents an original of this Amendment and all such counterparts shall collectively constitute one fully-executed document.

SIGNATURES ON FOLLOWING PAGE

75629 Supplement No. 1

IN WITNESS WHEREOF, County and Lessee have entered into this Amendment as of the date first set forth above.

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

DEL REY FUEL, LLC, a California limited liability company

By: _____
Gregory F. Schem, its Manager

ATTEST:

SACHI A. HAMAI,
Executive Officer of the Board of Supervisors

By: _____
Deputy

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.,
County Counsel

By: _____
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: _____

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

26 OCT 28 2008

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

COUNTY OF LOS ANGELES
BOARD OF SUPERVISORS

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County Counsel

By: ORIGINAL SIGNED
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

26 OCT 28 2008

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: ORIGINAL SIGNED

26 OCT 28, 2008