TO:  HONORABLE CITY COUNCIL
FROM:  CITY MANAGER      DEPARTMENT: ADMINISTRATIVE SERVICES
DATE:  MAY 14, 2007   CMR: 131:07
SUBJECT:  ROTH BUILDING, 300 HOMER AVENUE – REJECT $300,000 CONTRIBUTION CONDITION - APPROVAL OF OPTION AGREEMENT AND LEASE, AND CONSIDERATION OF ADDENDUM TO THE ENVIRONMENTAL IMPACT REPORT (EIR) FOR THE SOUTH OF FOREST AREA COORDINATED PLAN

RECOMMENDATION
The Palo Alto History Museum (Museum) is requesting the addition of a condition to the attached Option Agreement and Lease that the City contribute up to $300,000 for the cost of repairing Roth building leaks and drainage problems. Staff recommends that Council reject this request. If Council approves this condition, staff recommends that Council: 1) authorize the Mayor to execute the Option Agreement and Lease, amended according to Council direction; and 2) consider the Addendum to an Environmental Impact Report (EIR) for the South of Forest Avenue Coordinated Area Plan (SOFA CAP).

BACKGROUND
In April 2000, the City Council approved the $1,957,000 purchase of the Roth Building and its 0.41 acre site for potential development as a “public facility or alternative use if a public facility is not feasible,” in conjunction with the South of Forest Avenue Coordinated Area Plan (SOFA CAP).

In acquiring the Roth Building, the City entered into a development agreement with the Palo Alto History Museum (PAMF). The development agreement required that the City complete demolition and removal of the non-historic wings by July 2003. The purpose of the demolition was to provide for additional park space and provide a buffer of approximately 100 feet between the historic Roth Building and a residential development project being undertaken by Summerhill Homes immediately south of the Roth Building. On March 4, 2002, the Council: 1) approved the demolition of the basement/wings associated with the non-historic 1947 addition; 2) approved the temporary retention of the spine of the 1947 addition; and 3) reviewed and commented on the summary of a request for proposals from non-profit organizations to lease and renovate the Roth Building. On May 20, 2002, the Council approved a Request for Proposals (RFP) and directed staff to solicit proposals for the lease of the Roth Building. On May 12, 2003, Council approved the permanent retention of the spine. In response to the RFP, one
proposal, from the Palo Alto History Museum (Museum), was received on November 25, 2003. On December 8, 2003, Council dedicated the park space, excluding the .41-acre Roth Building site. In December 2003, the Roth building non-historic wings were demolished. Seismic bracing of the spine was completed in April 2004. On March 1, 2004, the Council accepted the proposal submitted by the Museum and directed staff to prepare the Option Agreement and Lease Agreement and complete the environmental review. On July 10, 2006, Council approved: 1) creation of Capital Improvement Program (CIP) Project PF-07011, Roth Building Maintenance; and 2) the Budget Amendment Ordinance (BAO) in the amount of $415,000 to provide an appropriation for CIP Project PF-07011, Roth Building Maintenance. The funding was requested to provide interim measures to prevent further deterioration of the building until the Museum takes over the site. The interim measures included perimeter drainage and the installation of a temporary ventilation/dehumidification system. The perimeter drainage and installation of the dehumidification system have been completed.

**DISCUSSION**

Following Council’s acceptance of the Museum proposal in April 2004, staff sent the Museum a draft Option Agreement. The draft was in accordance with the terms of the Council-approved Request for Proposals, which was attached to and an integral part of the proposal submitted by the Museum. In February 2006, staff received the Museum’s proposed changes to the draft Option Agreement. Since that time, staff has been in negotiations with the Museum.

**Museum Request for $300,000 City Contribution**

The attached Option Agreement and Lease includes the terms and conditions agreed upon by the Museum and staff with the exception of the Museum’s requested condition that the City contribute up to $300,000 for repairing leaking and drainage problems at the Roth building. The Museum’s contractor has recently estimated that the cost to refurbish the Roth building will be $7.2 million, including $150,000 to $300,000 to repair leaking and drainage problems. If approved by Council, the contribution would occur at the appropriate time during renovations following execution of the lease. The $300,000 would be above and beyond the $415,000 allocated in the CIP approved in July 2006 for City repairs and maintenance to the Roth building. One of the requirements of the 2002 RFP was that improvements, maintenance and operation of the property be at no cost to the City. Staff has consistently taken the position that no additional costs be incurred. The Roth Building was not included in the Infrastructure Management Plan and there are no other funds identified for this request. In addition, staff is concerned that funding the repairs would establish a precedent for additional demands for City contributions to public/private entities, such as Lytton Plaza, the Art Center Foundation and the Junior Museum. Therefore, staff is recommending Council reject the Museum’s condition. If Council does decide to proceed with the funding request, staff would return with a budget amendment at a future date.

**RFP and Museum Proposal**

The general intent and terms of the Council-approved RFP were to lease the 17,000 square foot Roth Building under a long-term lease to a non-profit group or organization that: could improve, maintain and operate the property for a use that provides public benefit and/or fills a public need; preserves and maintains the historic significance of the property; is compatible with adjacent park use; and does not adversely impact the residential neighborhood. In addition,
improvements, maintenance and operation of the property are to be at no cost to the City. The RFP specifies that preference be given to non-profit groups located in or serving Palo Alto and requires public access to the Roth Building restrooms by users of the park. It also strongly encourages the provision of a community meeting room as part of the project. The proposal criteria listed in the RFP and upon which the Museum proposal was evaluated by staff and the Council are summarized in Attachment A. For additional information on the terms of the RFP and details of the Museum proposal and its evaluation, refer to CMR:152:04 dated March 1, 2004.

**Option Agreement and Lease**

Under the attached Option Agreement and Lease, the Museum is granted a two-year period to satisfy the specified conditions prior to exercising the option and entering into the lease. The major option conditions the Museum must satisfy are as follows:

1. Pay the option purchase price ($5,000).
2. Submit schematic plans within twelve (12) months of the commencement of the Option Agreement.
3. Receive approval of its development plans from the Joint Architectural Review/ Historic Resources Board for SOFA 1 projects, Planning and Transportation Commission and City Council. The development plans will include specific details of the interior and exterior historic preservation and maintenance features to be included in the development of the property.
4. Receive approval of any land use permits or approvals required to implement the proposed use and improvements. The proposed use and improvements will require approval of a conditional use permit and a variance for parking.
5. Receive approval of a long term maintenance plan and schedule for the building from the City Manager or his designee.
6. Satisfy the Director of Administrative Services that the Museum has sufficient finances or financial commitments to implement the project as approved by the City and furnish the Director of Administrative Services with evidence that sufficient financial security will be available to construct the project.

One option condition to be satisfied by the City is the requirement that the City maintain the property in its current condition, subject to special requirements consisting of the improvements to the building approved by Council on July 10, 2006.

Major conditions of the Lease include a term of 40 years and an annual rent of $1.00 per year. Required services and uses include: restoration, preservation and improvement of the Roth Building; operation of a local history museum; the provision of a restroom available to the public using the adjacent park; and a community meeting room available for use by neighborhood groups. Permitted uses include administrative offices and storage, fundraising activities to
support the required services, and periodic rental of space for fundraising purposes. Improvements required by the lease are those improvements approved by the City during the option period. With the exception of the public restroom, which the City will maintain, the Museum is responsible for all maintenance of the property, including the outside areas on the northwestern and southwestern sides of the Roth Building. Subleasing is permitted subject to the City’s approval and in accordance with City codes and ordinances.

Changes and Additions to Option and Lease Agreements
The terms of the attached Option Agreement and Lease are consistent with those of the Museum proposal and its attached option to lease accepted by the Council in 2004, except for the changes and additions discussed below. Attachment B includes a more detailed summary of the conditions of the option and the terms of the proposed lease with changes/additions noted in boldface.

Proposed changes to the Option Agreement include extending the schematic plan timeline and the addition of specific requirements for City maintenance during the option term. The time requirement for the Museum to submit its schematic plans has been extended from 6 months to 12 months, as staff felt the Museum’s request for more time to submit its schematics was reasonable. Requirements for City maintenance consist of: the maintenance and improvements approved by Council on June 5, 2006; maintaining trees on the property; securing the property; and repairing damage caused by vandalism.

A major change to the Lease is the term of 40 years. The Council-approved RFP specified a 30-year term with no options to renew. In its 2004 proposal, the Museum requested two changes to RFP provisions, one of which was a request for an option to renew at the end of the 30-year lease term, so that donors could be assured of a permanent home for their artifacts and the long-term benefit of their financial contributions. Staff did not support the requested change and Council did not approve it based on the fact that the 30-year term was already longer than that of other City leases. The Museum has now requested a 40-year term in order to meet its fundraising objectives and makes the following case in support of its request. The Museum claims that the 40-year term is necessary to qualify for federal investment tax credits, which many large donors require. Also, even without use of investment tax credits, major donors are not willing to commit significant funds or artifacts without some guaranty of at least relative permanence. In addition, the project estimated costs are $7.2 million, which far exceeds costs of any other project sponsored by a non-profit leasing City property.

Additional terms and provisions of the attached Lease which were not anticipated or included in the RFP or the Museum proposal approved by Council include the following additional rights of the Museum to:

1. Charge admissions fees for Museum visitors. The proposal accepted by Council stated that the museum was to be open to the public free of charge. Memberships to the Museum were proposed to be sold and fees for museum programs were to be reasonable and competitive. The attached Lease requires all activities to be open to the public; however, in addition to membership fees, it permits the
Museum to charge a fee for admission to the museum to members and non-members for any and all activities.

2. Suspend operations for up to an aggregate 180 days if finances require.
   The Museum’s proposal included hours of operation from 11-4, Friday through Sunday. The attached Lease does not specify hours of operation. It also permits the Museum to temporarily close to conduct repairs, make alterations, change exhibits, and observe holidays. It also allows the Museum to suspend operations for up to an aggregate of 180 days in any 3 year period if for any reason the organization is financially unable to operate the museum.

3. Rent to for-profit organizations for corporate fundraising events.
   In addition to providing a community meeting room available to neighborhood groups (strongly encouraged in the RFP), the Museum proposal anticipated subleasing space in the Roth Building for office use by local non-profits, for residential use by a caretaker, director or curator, and for the purpose of providing a gift shop/bookstore and/or a small café in the facility. It also proposed temporary rentals to community groups or individuals for meeting rooms. Rentals and subleasing for these purposes are permitted in the attached Lease. In addition, language has been added which permits the Museum to: 1) periodically rent space to for-profit organizations for corporate events unrelated to the required services and uses for the purpose of fundraising to support the required services and uses; and 2) sublease up to 25% percent of the property to a for-profit food service operator and/or a for-profit gift/book shop operator. All rental and subleased uses are subject to City codes and regulations and must be in support of the Museum’s obligation to provide the required services and uses. These uses must not interfere with the obligation of the Museum to provide the required services, activities and uses. Subleased uses are also subject to approval by the City Manager. Concerning the community meeting room to be made available to neighborhood groups, it should be noted that the Museum’s proposal specified that the availability of the room not be dependent upon the Museum’s hours of operation; however, this is not specifically required in the attached Lease.

The attached Lease also includes added maintenance obligations for both the City and the Museum which were not anticipated in the RFP or Museum proposal. In addition to the Museum’s request that the City maintain and clean the public restroom, which was accepted by the Council, the lease now requires the City to maintain the restroom water and sewer lines, provide separate utility service, pay for the public restroom utilities and be responsible for property damage and personal injury in the restroom. The RFP and Museum proposal anticipated that the Museum would maintain the landscaping in the courtyard area. In addition to the courtyard, the attached lease requires the Museum to maintain the northwestern and southwestern sides of the Roth building, including the sidewalk.

**NEXT STEPS**
If directed by Council, staff will revise Option Agreement (Attachment C) and Lease to include the additional condition of the City’s contribution and return to Council with a Budget Amendment Ordinance to fund the repairs up to $300,000. The two-year option term will begin
upon the execution of the option by the City, and the Museum will begin the process of fulfilling option conditions. When the conditions have been met, the lease will be executed and construction of the approved improvements and operation of the museum will commence. Once the option conditions have been met, and assuming no substantial changes are made to the proposal or the form of lease during the development approval process, the lease will be executed by both parties without returning to Council. Council will have the opportunity to review and approve the detailed plans for the project during the option period.

RESOURCE IMPACT
The City of Palo Alto purchased the Roth Building at a cost of $1,957,000 and spent an additional $950,000 to retain the spine. The cost to the City for improvements and maintenance allocated in the July 2006 CIP is $415,000. The proposed improvements, maintenance and operation of the property during the lease term will be at no cost to the City with the exception of the cost of maintenance and utilities for the restroom open to the park public and, if approved by Council, up to $300,000 to repair the leaks and drainage system. The estimated annual cost to the City for restroom maintenance and utilities is $25,000 to $30,000. Estimated cost for providing the service box is $2,700. If approved, the $300,000 would come from the Budget Stabilization Reserve. The estimated value of the proposed tenant improvements is $7.2 million. It is important to note that while the development and operation is to be at no cost to the City; the City will receive a nominal $1 per year in lease revenue for the facility.

POLICY IMPLICATIONS
The proposed option to lease is consistent with City policy and with prior Council approval with the exception of the changes discussed above.

ENVIRONMENTAL REVIEW
Council has considered the Environmental Impact Report (EIR) for the South of Forest Area Coordinated Area Plan (SOFA CAP). Attached for Council consideration is an Addendum to the EIR for SOFA CAP (Attachment D) prepared for this project. During the option period, the optionee will also be required to fully comply with all provisions of CEQA as they may apply to the specific development plans.

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ATTACHMENTS
Attachment A: Summary of RFP Evaluation Criteria
Attachment B: Summary of proposed option to lease
Attachment C: Option Agreement
Attachment D: Addendum to EIR for the SOFA CAP

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