

DATE ISSUED: December 5, 2002 REPORT NO. 02-294

ATTENTION: Honorable Mayor and City Council
Docket of December 10, 2002

SUBJECT: Transfer of the Baggage Building and REA Site at the Sante Fe Depot by
Catellus Development Corporation to the City of San Diego and the
City=s Lease of the Premises to the San Diego Museum of Contemporary
Art

REFERENCE: 1. Transfer Agreement between the City, Catellus, Museum and
Redevelopment Agency.
2. Lease between City and Museum (including Amtrak Sublease).

SUMMARY

Issues - Should the City Council approve the Transfer Agreement between the City, Catellus, Museum and Redevelopment Agency and the Lease between the City and the Museum?

Manager=s Recommendation - Authorize the City Manager to execute the Transfer Agreement and the 88+ year lease with the Museum of Contemporary Art, San Diego, a California non-profit public benefit corporation.

Other Recommendations - None.

Fiscal Impact - There are no costs to the City for the transfer of the Baggage Building or the REA Site to the City and all costs of the improvements to the Baggage Building are either Catellus costs (base building improvements, seismic, etc.) or Museum costs (interior) and construction of the New Addition and driveway on the REA Site are Museum or Amtrak costs.

BACKGROUND

In 1993 the City and Agency executed an Amended and Restated Development Agreement and an Amended and Restated Owner Participation Agreement, respectively, with Catellus which revised development entitlements first granted in 1983 to Catellus's predecessor for the approximately 17 acres in the environs of the Santa Fe Depot. The 1993 Agreements revised the 1983 Agreements to accommodate transit-related needs of MTDB and NCTD and updated the development entitlements to bring them into conformance with the Centre City Community Plan adopted in 1992. Under the terms of the Catellus Development/Owner Participation Agreements, as amended over time, Catellus is required, by December 7, 2003, to seismically retrofit and complete base building improvements to the Baggage Building and to then transfer title to the Baggage Building to the City or to any governmental agency or non-profit entity designated by the City for use as a museum or other cultural use. Catellus is obligated to install new curb, gutter, sidewalks, etc. on the entire Kettner frontage.

The transfer of the Baggage Building for a cultural use at a minimum must include the building itself, its colonnade, the land under the building and the colonnade, an access easement through the Breezeway connecting the Baggage Building to the Depot itself, and street frontage along Kettner Boulevard for the length of the Baggage Building.

Catellus's obligations for the level of improvements to the Baggage Building include seismic retrofit for cultural use, and Ashell improvements@ including stub-out of electricity, water, sewer and telephone to the interior; structurally sound walls and roof; curb, gutter and sidewalk improvements on the Kettner frontage; and repair of the facade. Obligations of the user of the Baggage Building, therefore, would be typical tenant improvements and specialized improvements for the new use.

In early 2000, CCDC issued AA Solicitation of Letters of Interest for Use of the Baggage Building at the Santa Fe Depot@. The Solicitation was mailed to more than ninety non-profit cultural groups suggested by the City's Commission for Arts and Culture and received press coverage in the *San Diego Union-Tribune*.

Among the respondents to the Solicitation was the Museum of Contemporary Art. On February 26, 2001 the Redevelopment Agency entered into an Exclusive Negotiation Agreement (ENA) for the Museum's occupancy of the Baggage Building. The ENA acknowledged that the Museum also planned to approach Catellus with respect to Catellus's donation of the adjacent REA property to the Museum for its development in conjunction with the Baggage Building. The ENA further acknowledged that Amtrak had an on-going interest in the use of the Santa Fe Depot and the building to be constructed on the REA property and that the Agency and the Museum would work cooperatively with Amtrak to determine if a portion of any new building constructed by the Museum on the REA property could provide adequate long-term Aback of the house@ space needed by Amtrak.

DISCUSSION

Transfer Agreement

The Transfer Agreement provides for Catellus's transfer of fee interest in the Baggage Building and the REA Site to the City of San Diego. All costs of the transfer are paid by either Catellus (for the Baggage Building) or shared by Catellus and the Museum (for the REA Site). Prior to the transfer, Catellus would have completed required toxic remediation, seismic retrofit and base building improvements to the Baggage Building and the demolition of the building and toxic remediation of the REA Site.

Catellus's conditions to the transfer of the REA Site include:

If Catellus determines that the cost to remediate contamination on the REA Site is excessive (more than \$500,000), Catellus may decline to undertake the remediation, and the Museum may elect to pay the additional costs for Catellus to perform the work, or not. If not, the REA Site would not be transferred to the City for incorporation into the Museum's use of the Baggage Building, and no space would be made available to Amtrak by the Museum.

Upon the transfer of the REA Site to the City, the grant deed would provide that the property be used as a museum or other cultural use except that Amtrak's sublease of approximately 2,725 sq. ft. of the building to be constructed on the REA Site (and its use of the loading dock and 14-wide driveway) would be a permitted use.

If the Museum did not perform its development obligations pursuant to its lease with the City and the REA Site remained unimproved, Catellus could exercise a right of reversion to the REA Site (but not to the Baggage Building).

Non-Profit Lease

The City would provide a long-term lease of the Baggage Building and REA Site to the Museum. The proposed lease includes the following terms:

The lease would become effective when a series of conditions precedent had been met, including the Museum providing evidence to CCDC of all necessary permits and construction contracts and of all funds necessary to rehabilitate the Baggage Building and construct the new building, and to furnish, open and operate the Museum for its initial 12-month operating period. Sources of funds to the Museum are anticipated to be on-hand cash donations, a bank loan secured by the pledges of donors and, subject to the conditions described below, funds provided by the State of California (Caltrans Rail) to Amtrak to pay its obligations under its sublease.

The Museum may not record any debt against any portion of the leased premises, including any encumbrance against the improvements installed on or within the leased premises.

The Museum must present its financing and the lease would become effective concurrently with Catellus's completion of its work and conveyance of the properties to the City (no later than December 7, 2003). The Museum must commence its rehabilitation/construction activities within 30 days of closing the transfer of the properties and the effective date of the lease.

The expiration of the term of the lease would be July 31, 2091, a date co-terminus with the expiration date of the Museum's private lease at America Plaza, across Kettner Boulevard. This extraordinarily long lease term is justified by the unique circumstances of this transaction. First, one option contemplated under the Catellus Development / Owner Participation Agreements would have been a direct transfer of the site to the Museum. Under this scenario, the City would have received no ownership interest in the property, only a right of reversion if the Museum use terminated. With a lease to the Museum, the City retains the underlying fee. Second, the Museum has negotiated the transfer of additional property from Catellus, the REA site, which will also be owned in fee by the City and subject to the lease. Third, the Museum will be building a new building and rehabilitating the Baggage Building at no expense to the City, which will both revert to the City at the end of the lease at the City's option. Finally, the Museum has also agreed to accommodate Amtrak operations within the new building via a sublease.

The City may terminate the lease at anytime should the Museum default under the terms of the lease. Defaults include not improving the properties in conformance with the schedule of performance and scope of development and not operating the properties as a contemporary art museum featuring art exhibitions and public programs exploring contemporary art forms and media.

Amtrak is a permitted sublessee of the Museum (see the description of the physical development, below). The City would agree to continue Amtrak's sublease if the Museum lease were terminated following the issuance of a certificate of occupancy for the new building and prior to July 31, 2091. Amtrak may terminate its sublease at anytime with 90 days prior notice.

At the City's option, all building improvements and improvements pertaining to the realty on both properties become City-owned property upon expiration or termination of the lease, subject to Amtrak's sublease.

The lease required rent is a one time payment of \$88. In addition, the Museum shall pay an annual Administrative Cost of \$2,500, commencing on the Approval Date, subject to annual CPI adjustments. Catellus is required to complete certain improvements to the Baggage Building pursuant to the Development/Owner Participation Agreements with the City/Agency. All other costs of the rehabilitation of the Baggage Building and the construction of the new building, the installation of all fixtures and equipment and furnishings, and all on-going expenses, maintenance and repairs, etc. are the Museum's costs (with Amtrak paying its allocable costs associated with the new building).

Public liability insurance in the initial amount of \$3 million is required, together with insurance to cover 100% replacement costs of improvements.

Amtrak would be able to obtain its sublease by providing funds to the Museum as follows:

Prior to July 1, 2003 Amtrak will be required to pay to the Museum a total of \$250,000. Prior to July 1, 2004 Amtrak will be required to pay to the Museum \$700,000 either in a lump sum or in monthly installments at 7% interest over a five year period (which can be accelerated and paid with no penalty). The Museum is obligated to provide to Amtrak approximately 2,725 square feet of space in the new building on the REA Site and the 14' driveway for the term of the Museum's lease with the City. Caltrans Rail has agreed to be Amtrak's source of financing for the sublease.

If Amtrak does not provide the funding to the Museum as required, the Museum is released from its obligation to sublease and the Museum would occupy the space formerly allocated to Amtrak.

Baggage Building

The 13,680 GSF Baggage Building, along with the 6,635 GSF exterior Colonnade, is architecturally well suited for the Museum's exhibition program. The building will be seismically upgraded and improved in other ways by Catellus as required by the Development/Owner Participation Agreements. The physical characteristics of the historic Baggage Building--38-foot peaked ceilings supported by steel trusses, generous open spaces and high clerestory windows stretching the length of the building's east and west sides--are ideal for the display of large-scale sculpture, site-specific and installation art, film and video screenings and readings. The three large rooms beneath the main roof will remain, delineated by the existing masonry and hollow clay tile walls that originally defined an open passageway through the building. The space below the lower roof along Kettner Boulevard will be used for Museum Entry and smaller, more intimate room-like galleries. These spaces acknowledge the existing building's structural grid in their layout and proportions.

A new concrete slab sufficient to accommodate the increased structural loads associated with large-scale, contemporary sculpture will be installed in the Baggage Building. The existing masonry walls on the interior will be cleaned, re-pointed and painted. A new steel skeleton will provide an armature for the installation of temporary walls when required for specific exhibitions. All exposed steelwork, both existing and new, will be painted to complement adjacent surfaces. New building systems (mechanical, lighting and electrical) will be carefully integrated into the existing building's structure. The large spaces will maintain the industrial character of the existing building.

The smaller spaces along Kettner Boulevard will be more finished in appearance. Finished white walls and ceilings, appropriate for the display of paintings, drawings and photographs are conceived as inserted liners. Building systems will be concealed creating simple, clean spaces

for the display of the art. These continuous liners will break in appropriate locations to reveal the existing building's fabric.

The rehabilitation of the Baggage Building and the construction of the new Addition will meet the Secretary of the Interior's Standards for the Treatment of Historic Properties as evaluated by Architect Milford Wayne Donaldson.

New Addition

The existing REA building is to be replaced with a new, three-story Addition for the Museum's ancillary program - education classroom and studio, art handling and woodshop, Museum offices - as well as space for Amtrak's use. A screened mechanical terrace occupies a portion of the roof and will conceal any rooftop equipment. The mechanical terrace is set back on the east side by 10 feet, on the south side by 5 feet, on the west side by 10 feet, and on the north side by 8 feet. Amtrak is provided with a dedicated space for storage and equipment on the ground floor with direct access onto the track platforms. The ground floor's extension into a portion of vacated B Street is to allow the Museum to provide Amtrak's required square footage and to accommodate a shared loading dock. The height of the Addition is 54 feet to the top of the parapet and 58 feet to the top of the mechanical equipment screen.

The Addition's exterior will be sheathed in insulated panels of painted corrugated metal. Glazing is either a glass storefront system with clear, low-E, insulated glass units or panels of translucent channel glass. The clear glass allows views to the exterior; the translucent glass allows for the transmission of the light to the interior.

AREA SUMMARY

	Museum	Amtrak	Shared	SUBTOTAL
BAGGAGE BUILDING	13,680	-----	13,680	
COLONNADE			6,635 SF	6,635
	Museum	Amtrak	Shared	SUBTOTAL
NEW ADDITION				
Basement	1,470	-----	-----	1,470
Ground Floor	2,345	2,725	695	5,765
Second Floor	4,280	-----	-----	4,280
Third Floor	4,280	-----	-----	4,280
Rooftop/Mechanical	155	-----	-----	155
		New Addition Subtotal		15,950

ALTERNATIVE

Allow Catellus to convey the Baggage Building and the REA site directly to any governmental agency or non-profit entity designated by the City for use as a museum or other cultural use.

Respectfully submitted,

William T. Griffith
Real Estate Assets, Director

Approved: Bruce Herring
Deputy City Manager

