




Office of the City Manager

CONSENT CALENDAR
December 11, 2007

To:  Honorable Mayor and Members of the City CouncilFrom:  Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development Department

Subject: Lease Amendment: 2118 Milvia Street

RECOMMENDATION

Adopt first reading of an Ordinance authorizing the City Manager to execute a lease amendment with N.E.W. Milvia Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD for real property located at 2118 Milvia Street for the purpose of leasing 3,774 square feet of additional office space for the Planning and Development Department for the approximate period Jan. 18, 2008 and continuing through August 31, 2011 with an option to extend for an additional three year period. Upon execution of the lease amendment, the Planning and Development Department will occupy the whole building at 2118 Milvia Street.

FISCAL IMPACTS OF RECOMMENDATION

The additional space will result in increased monthly rent as shown on the table below. The prorated increase for FY 2008 is \$48,339 and the annual increase for FY 2009 is \$109,065.

Period	Existing Lease		Add'l. Space		Revised Monthly Lease		
	Rent per sq. ft.	Monthly Lease	Rent per sq. ft.	Monthly Rent			
Year 1	Sept. 1, 2006 - Aug. 31, 2007		2.23	\$42,997.95	-	\$ -	\$ 42,997.95
Year 2	Sept. 1, 2007 - Dec. 31, 2007		2.30	\$44,287.88	-	\$ -	\$ 44,287.88
	Jan. 1, 2008 - Jan. 17, 2008		2.30	\$24,286.90	-	\$ -	\$ 48,292.29
	Jan. 18, 2008 - Jan. 31, 2008 ¹		2.30	\$20,000.98	2.35	\$4,004.41	
	Feb. 1, 2008 - Aug. 31, 2008		2.30	\$44,287.88	2.35	\$8,866.90	\$ 53,154.78
Year 3	Sept. 1, 2008 - Aug. 31, 2009		2.37	\$45,616.52	2.42	\$9,133.08	\$ 54,749.60
Year 4	Sept. 1, 2009 - Aug. 31, 2010		2.44	\$46,985.01	2.49	\$9,397.26	\$ 56,382.27
Year 5	Sept. 1, 2010 - Aug. 31, 2011		2.51	\$48,394.56	2.56	\$9,661.44	\$ 58,056.00

Other provisions of the existing lease, including paying the Proportionate Share of Project Operating Costs shall apply for the additional space.

¹ Estimated commencement date – 30 days after second reading of the authorizing Ordinance.

Funding is unavailable in the FY08 budget to cover this lease amendment. Therefore, to cover seven and a half months of increased rent, \$66,073 will be withdrawn from the PSC fund balance (fund 833) through the second amendment to the Appropriation Ordinance. Funding for FY 2009 and subsequent years will be included in the annual budget.

The Lease Amendment will be expended from budget code 833-8301-463-5010 and Contract Management System (CMS) No. is UB86I.

CURRENT SITUATION AND ITS EFFECTS

The Planning and Development Department has leased its current premises at 2118-2120 Milvia Street (hereafter referred to as 2118 Milvia Street) for the past 11 years. The premises were significantly modified to accommodate the needs of the Department. 3,774 feet on the second floor of the building had been leased to a private party who recently vacated the space. The Planning and Development Department has increased in size over the past 4 years by approximately 8 FTE. Some of this staff is temporary to accommodate major initiatives such as the Downtown Plan and modifications to the West Berkeley Plan. Other staff has been granted by the City Council to improve customer service in all sectors of the Department, including Permit Technicians for the Permit Center, Plan Checkers for the Building and Safety Division, and planners to reduce time for discretionary permits and improve service in regard to condominium conversion. As a result of these staffing additions, staff has absorbed some new requirements (such as sewer lateral permitting) while significantly improving customer service and timelines for permits, including significant reductions in discretionary permit timelines. In addition to these staff increases, the City Manager has recently assigned 5 members of the City's sustainability team to the Department and requires that they vacate their space in the Housing Department and move to the Planning Department. Given the priority placed on sustainability initiatives, we expect increases in that group in the coming years. Because of this increase in staff, there is no longer sufficient space in the department to accommodate its needs, and staff is currently located in space that is either unsuitable or very crowded.

To better accommodate existing staff and address the needs of recently assigned staff, the Department is requesting approval to lease the additional space in the building that has become available.

BACKGROUND

In 1995 the City entered into a 10 year Lease Agreement with Nora Wagner for a portion of the building at 2118 Milvia Street, for the purpose of establishing a permit center and consolidation of the Planning and Development Department. The Department occupied the space in late 1996. The lease agreement provides an option for the City to renew the lease for two (2) three year terms. However, the City was able to negotiate for a five-year term for its first extension in 2006. In addition, the city had a

first right of refusal to expand to the additional space on the second floor should it be vacated by the existing tenant.

RATIONALE FOR RECOMMENDATION

The Department has grown over the past 4 years and is out of space to accommodate its needs. Maintaining all staff in a single building is a critical part of maintaining a unified permit center, and maximizing the synergies of the complementary divisions in the Department. The addition of the sustainability group strengthens the City's ability to coordinate land use, building development and transportation initiatives to meet the goals of Measure G. The proposed lease rate for the additional space is only slightly higher than the rate for the remainder of the building, but is still lower than comparable rates elsewhere in Downtown and will allow the landlord to absorb the costs of minor improvements requested by the Department to make the space more usable. The lease period for the additional space coincides with the remainder of the building.

ALTERNATIVE ACTIONS CONSIDERED

None considered.

CONTACT PERSON

Dan Marks, Director, Planning and Development Department, 981-7401

Attachments:

1: Ordinance

Exhibit A: Second Lease Amendment – 2118 Milvia Street

ORDINANCE NO. -N.S.

LEASE AMENDMENT WITH N.E.W. MILVIA PROPERTY, LLC, THE SUCCESSOR IN INTEREST TO NORA E. WAGNER, TRUSTEE UTD FOR REAL PROPERTY LOCATED AT 2118 MILVIA STREET FOR THE PURPOSE OF LEASING ADDITIONAL OFFICE SPACE FOR THE PLANNING AND DEVELOPMENT DEPARTMENT FOR THE PERIOD MARCH 1, 2008 AND CONTINUING THROUGH AUGUST 31, 2011

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. FINDINGS

That the City Manager is hereby authorized for and on behalf of the City to execute a Lease Amendment for a period of approximately 3 years, 6 months with an option to extend for additional three year period as set forth in the Lease Amendment, marked Exhibit A, a copy of which is attached hereto and made a part hereof.

Section 2. AUTHORIZATION FOR CITY MANAGER TO ENTER INTO LEASE AMENDMENT AT 2118 MILVIA STREET.

The City Manager is hereby authorized to execute a Lease Amendment with N.E.W. Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD for real property located at 2118 Milvia Street. The lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "**Second Amendment**") is made _____, 2007 and entered into by and between N.E.W. Milvia Property, LLC, the successor in interest to NORA E. WAGNER, TRUSTEE UTD DATED JULY 27, 1989 ("**Landlord**") and City of Berkeley ("**Tenant**"), with reference to the following facts:

RECITALS

A. Landlord and Tenant entered into that certain Office Lease, including Addenda #1 and #2, dated November 6, 1995 (the "**Lease**"). Pursuant to the Lease, Landlord leased to Tenant the premises consisting of approximately 19,260 rentable square feet on the first and third floors and a portion of the second floor of the building (the "**Original Premises**") located at 2118 Milvia Street, Berkeley, California ("**The Building**"). Landlord and Tenant entered into a First Amendment to the Lease, dated August 31, 2006, which extended the Lease Term and among other things, confirmed the Rent, Base Year for Operating Expenses and Property Taxes (the "**First Amendment**").

B. The Lease and the First Amendment contain a provision allowing Tenant to lease the remaining space on the second floor of The Building consisting of approximately 3774 square feet ("**Additional Second Floor Space**"), if and when it became available.

C. The Additional Second Floor Space has become available and Tenant desires to add the Additional Second Floor Space to the Lease, as amended by the First Amendment. Landlord is willing to add the Additional Second Floor space and will agree to paint it and provide new carpeting and make the modifications as outlined in the bid from Greene Builders, Inc. dated November 27, 2007 ("**Tenant Improvement Work**"), attached as Exhibit A. By adding the Additional Second Floor Space, Tenant will occupy 100% of the Building,

D. The Parties acknowledge that this Second Amendment must be submitted for approval to the City Council of the City of Berkeley. Therefore, the effective date of the Second Amendment is the date 30 days after the second reading of the authorizing Ordinance, or the date the Landlord has completed the Tenant Improvement Work, whichever is later ("**Effective Date**").

AGREEMENT

NOW, THEREFORE, in consideration of Landlord's agreement to add the Additional Second Floor Space to the Lease and for other good and valuable consideration recited above, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. New Definition of the Premises. The Premises, as that term is used in the Lease, as amended by the First Amendment and this Second Amendment, shall hereinafter include the Additional Second Floor Space. Landlord and Tenant confirm that as a result, Tenant is the sole occupant of the Building. All terms and conditions which heretofore applied to Tenant and its tenancy, shall apply to, and include, the Premises.

2. Condition of the Additional Second Floor Space. Tenant shall and does accept the Additional Second Floor Space in its "as is" condition, subject only to the Landlord's duty, prior to the Effective Date, to complete the Tenant Improvement Work, consistent with the paint color and carpeting identified on Exhibit A of the First Amendment (to wit: Paint color "Waltz #09208 and Carpet Patcraft Strut Your Stuff #10109). Should Tenant not thereafter exercise its option to renew the Lease for the three year term commencing upon the expiration of the First Extension Term, Landlord may require Tenant to restore the wall removed under item #3 of the bid from Greene Builders, Inc., as referenced in Exhibit A.

3. New Base Rent for the Additional Second Floor Space. The Base Rent for the Additional Second Floor Space shall be \$0.05 more per square foot than the Base Rent for the remainder of the Premises, as established by the First Amendment to Lease, in the following amounts which are to be paid in the same time and manner as set forth in the Lease and the First Amendment to Lease.

Tenant shall pay the Monthly Installment of Base Rent for the Additional Second Floor Space as required by Paragraph 5.1, during the First Extension Term, in the amounts as follows:

September 1, 2006- Effective Date	\$n/a
Effective Date – August 31, 2008	\$8,866.90
September 1, 2008 – August 31, 2009	\$9,133.08
September 1, 2009 – August 31, 2010	\$9,397.26
September 1, 2010 – August 31, 2011	\$9,661.44

4. Excess Expenses for the Additional Second Floor Space. The Base Year applicable to the Additional Second Floor Space, as defined by Paragraph 2.b of the Lease, as amended, shall be January 1, 2006 through December 31, 2006. Tenant shall pay its Proportionate Share of the Excess Expenses as set forth in the Lease and Lease Addendum No. 2 using January 1, 2006 through December 31, 2006 as the Base Year. For clarification, because Tenant will occupy 100% of the Building, beginning on the Effective Date, Tenant's Proportionate Share of the Excess Expenses will increase from 83.6% to 100%. Tenant shall make monthly payments after the Effective Date reflecting the increased Proportionate Share of the Excess Expenses in compliance with Paragraph 5.3(b)(2) of the Lease.

5. Brokerage Fees. Tenant represents and warrants to Landlord that Tenant has not dealt with any real estate broker or agent in connection with this Second Amendment. Landlord represents and warrants to Tenant that the only real estate broker or agent Landlord has dealt with in connection with this Second Amendment is Colliers International, and that Landlord shall pay a brokerage fee to Colliers International pursuant to a separate written agreement between Landlord and Colliers International. Tenant shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Landlord from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this Second Amendment or

its negotiation by reason of any act of Tenant. Landlord shall, to the fullest extent allowed by law, defend, indemnify and hold harmless Tenant from and against any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any real estate broker, finder or agent in connection with this Second Amendment or its negotiation by reason of any act of Landlord.

6. Conditions. This Second Amendment is conditional on Tenant complying with all of the terms and conditions set forth in the First Amendment with respect to payments of Arrearages, Additional Rent and Tenant's payment of Operating Expenses.

7. Governing Law. This Second Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

8. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall constitute an original hereof and all of which shall constitute one and the same document.

9. Modifications. This Second Amendment, and the Lease it amends, may only be modified pursuant to a written agreement signed by both Landlord and Tenant.

10. Enforceability/Conflicts. Landlord and Tenant acknowledge and agree that the Lease, as modified by the First Amendment, remains in full force and effect, unchanged except as expressly provided for in this Second Amendment. In the event of a conflict between the terms of this Second Amendment and the terms of the Lease, as modified by the First Amendment, the terms of this Second Amendment shall govern. Landlord and Tenant agree that capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Lease.

11. Authority. The undersigned each represents they are authorized to execute this Second Amendment and have, as required, received due authority as appropriate.

12. Lease. Except as herein modified, the provisions of the Lease, as modified by the First Amendment, remain in force and effect; other than as set forth in that certain Settlement and Release effective March 15, 2007 by and between Landlord and Tenant; provided, however, if this Second Amendment is not confirmed by the City Council by February 29, 2008, this Second Amendment may be withdrawn and Tenant will no longer retain any rights to Lease the Additional Second Floor Space, Landlord having fully and completely fulfilled its obligations to present the Space to Tenant for acceptance and Tenant having failed to accept the Space.

(Continued on the following page)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment as of the date first written above.

LANDLORD:

N.E.W.Milvia Property, LLC

By: _____
Nora E. Wagner, it Manager Member

TENANT:

City Of Berkeley

By: _____
Print Name: _____
Title: _____

GREENE BUILDERS INC.

44 Montgomery Street, Suite 1255, San Francisco, CA 94104
 Office: 415-399-9222 Fax: 415-399-9228
 CA Lic. # 827518

2118 Milvia Street, Berkeley, CA

Lease Improvements / 2ND Floor Vacant Space

Proposal dated - November 27, 2007

ITEM #	DESCRIPTION	AMOUNT	TOTAL
ITEM # 1			
	Corner Office Modifications		
	Project mngt./Supervisor/general requirements	665	
	Soft Demo	375	
	Door & frame salvage	225	
	Drywall partitions	1,975	
	Wall bracing	95	
	Reinstall door & frame with new trim	425	
	Prime new drywall	175	
	Acoustic ceiling - open/close & minor repairs	185	
	Electrical - Relocate light switch & L.F. re-connects	1,250	
	GC & electrical permit fee allowance	1,250	
	Final clean-up	200	
	GRT	13	
	GC Fees & GI Insurance	853	
			7,686
ITEM # 2			
	Open Area Soft Demo		
	Project mngt./Supervisor/general requirements	300	
	Acoustic ceiling - open/close & minor repairs	185	
	Soft Demo - excludes shear wall - non-struct. Only	1,550	
	Demo scar repairs	250	
	Electrical outlet relocation	575	
	GC electrical permit fees	450	
	GRT	8	
	GC Fees & GI Insurance	386	
			3,702
ITEM # 3			
	Half height wall demo		
	Project mngt./Supervisor/general requirements	816	
	Soft demo on OT	1,950	
	Low height wall bracing	555	
	Over-head bracing - jack wall & adjacent hand lid	880	
	Drywall repairs	1,670	
	Wood trim with reveal	1,080	
	Additional painting - corridor & ceiling on OT	675	
	Replace lock-set with latch-set	125	
	Electrical relocates	575	
	GC & electrical permit fee allowance	650	
	GRT	16	
	GC Fees & GI Insurance	1,048	
			10,040
	Total of Items # 1, 2 & 3		\$21,428

