

**MEMORANDUM OF UNDERSTANDING
FOR USE OF THE CITY CAFE FAÇADE
BY COMMISSION FOR ARTS AND CULTURE**

This Memorandum of Understanding for Use of the City Cafe Facade ("MOU") is entered into by the **Economic Development Department**, ("CITY") and **Commission for Arts & Culture** ("DEPARTMENT") for the purpose of setting forth the terms on which the Commission for Arts and Culture shall be permitted to use the City Cafe's Facade.

CITY agrees to permit DEPARTMENT to use the façade of the City Cafe located adjacent to the City Administration Building at 202 C Street in San Diego, California 92101 to conduct DEPARTMENT'S business on the following terms and conditions:

1. Premises. The façade of the City Cafe as shown on the attached Exhibit A ("Premises").
2. Use of Premises. The use of the Premises shall be limited to DEPARTMENT installing, exhibiting, maintaining, and deinstalling artwork on the Premises.
3. Term of Agreement. The initial term of this MOU shall be six (6) months commencing on June 1, 2024 and shall expire on November 30, 2024, unless DEPARTMENT requests a termination as provided in Section 4.
4. Early Termination. This MOU may be terminated by either party with ninety (90) days prior written notice to the other party.
5. Holdover. Any holding over by DEPARTMENT after expiration or termination shall not be considered a renewal or extension of the MOU. The use of the Premises after expiration or termination of this MOU constitutes a month-to-month use, and all other terms and conditions of this MOU shall continue in full force and effect.
6. Rent. N/A
7. Accident Reports. DEPARTMENT shall report to CITY any accident causing more than ten thousand dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses, and other pertinent information.
8. Prohibited Uses. DEPARTMENT may not do the following, unless approved in writing in advance by CITY: (a) utilize the Premises for anything but the use stated in Paragraph 2; (b) make any alterations or changes to the Premises except for the installation, exhibition, maintenance and deinstallation of artwork and artwork signage; (c) effect any non-

five thousand dollars (\$5,000) per instance; (d) allow or permit any liens or encumbrances to be placed on the Premises; (e) utilize the Premises in any manner which may create a health, safety or fire hazard. In the event of an emergency, repairs amounting to more than five thousand dollars (\$5,000) may be made by DEPARTMENT and must be reported in writing to CITY within forty-eight (48) hours after the emergency.

9. Possession by Department. CITY has made no promise to alter or improve the Premises or made any representation concerning the condition thereof. By taking possession of the Premises, DEPARTMENT acknowledges the Premises are in good order and condition and agrees to take possession "as is." DEPARTMENT will maintain the Premises in good condition and repair and will not cause or permit the Premises to be damaged or defaced. With the exception of the installation of graphics and signage, DEPARTMENT will make no alterations or additions to the Premises without CITY'S prior written consent. DEPARTMENT will return the Premises at the expiration of the term (or when appropriate at the end of each usage) in as good condition and repair as when DEPARTMENT received the Premises as the case may be, normal wear and tear excepted.
10. Amendment of Agreement. No amendment, modification or alteration of this MOU will be valid unless it is in writing and signed by all parties.
11. Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter Premises for the purpose of viewing and ascertaining the condition of the Premises, or to protect its interest in the Premises, or to inspect the operations conducted on the Premises. In the event that such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after ten (10) days written notice to DEPARTMENT, to have any necessary maintenance work done at the expense of DEPARTMENT. DEPARTMENT agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition.
12. Improvements/Alterations. Except for the installation of graphics and signage, no improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by DEPARTMENT without prior written approval by the City. Further, DEPARTMENT agrees that major structural or architectural design alterations to approved improvements, structures or installations may not be made on the Premises without prior written approval by the City and that such approval shall not be unreasonably withheld. This provision shall not relieve DEPARTMENT of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations.
13. Compliance with Law. DEPARTMENT shall at all times in the construction, maintenance, occupancy, and operation of the Premises comply with all applicable City of San Diego

Council Policies, all applicable City of San Diego Administration Regulations, all applicable laws, statutes, ordinances, and regulations of CITY, county, state, and federal governments at DEPARTMENT'S sole cost and expense. In addition, DEPARTMENT shall comply with any and all notices issued by the City or his authorized representative under the authority of any such law, statute, ordinance or regulation. .

14. Hazardous/Toxic Waste. For the purposes of this MOU and this provision, a release of hazardous substances shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated herein.

If DEPARTMENT knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Premises, DEPARTMENT shall give written notice to the City within ten (10) days of receipt of such knowledge or cause for belief. Provided, however, if DEPARTMENT knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, DEPARTMENT shall notify the City immediately upon receipt of this knowledge or belief and shall take all actions necessary to alleviate such danger. DEPARTMENT will notify the City immediately of any notice of violation received or initiation of environmental actions or private suits relative to the Premises. In addition, DEPARTMENT shall not utilize or sell any hazardous substance on the property without the prior written consent of CITY.

15. Asbestos Disclosure. CITY discloses to DEPARTMENT that portions of the structural components of the Premises may contain asbestos. DEPARTMENT acknowledges having received notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. DEPARTMENT shall disclose to the appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915.

16. Asbestos.

- a. Improvement and Repair - CITY and DEPARTMENT agree that the party who undertakes the improvements and repairs, as provided for in this Agreement, shall also be responsible for any asbestos removal, management or containment and all asbestos costs associated with such improvements.
- b. General Guidelines - Such asbestos removal or management shall be conducted in accordance with all applicable laws and as approved by CITY.

CITY reserves the right to inspect any work undertaken by DEPARTMENT pursuant to this MOU and to station supervisory personnel at the work site, at CITY'S sole discretion, to ensure that DEPARTMENT'S obligations are carried out. Both parties shall coordinate any repair and improvements with each other and, except in the event of an emergency, the party undertaking a repair shall provide prior written notice to the other within fifteen (15) days of undertaking said repair.

- c. Asbestos Disturbance - The party responsible for any disturbance of asbestos-containing materials shall be responsible for all costs caused by their respective action.

17. Notices.

- a. Any notice required or permitted to be given pursuant to this MOU shall be in writing and may be served personally or by United States mail, postage prepaid, addressed to DEPARTMENT at the Premises or at such other address designated in writing by DEPARTMENT:

Commission for Arts & Culture
Attn: Christine Jones, Chief of Civic Art Strategies
1200 Third Avenue - Suite 924
San Diego, CA 92101

and to CITY as follows:

Department of Real Estate and Economic Development
Attn: Director
1200 Third Avenue, Suite 1700
M.S. 51A
San Diego, CA 92101

- b. Any party entitled or required to receive notice under this MOU may designate a different address to which notices shall be sent.

18. Assignment and Subletting. DEPARTMENT shall not assign this MOU, or any interest, and shall not sublet the Premises, or any part or any right or privilege pursuant to the MOU or allow any other person, except employees, agents, and guests of DEPARTMENT to use or occupy the Premises, or any part, without the prior written consent of the City or his designee, in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting occupation or use. Any assignment, subletting occupation or use without such consent shall be void and shall, at the option of CITY, terminate this MOU. This MOU shall not, nor shall any interest contained in this MOU, be assignable as to the interest of

DEPARTMENT by operation by law, without the written consent of the Mayor or his designee.

19. CITY Approval. The approval or consent of CITY, wherever required in this MOU, shall mean the written approval or consent of the City or his designee, unless otherwise specified.

IN WITNESS WHEREOF, this Agreement shall be effective as of the Effective Date.

CITY OF SAN DIEGO – Commission for Arts & Culture

By: _____

Date: 5/2/24

THE CITY OF SAN DIEGO, a California municipal corporation

By: _____
Lucy Contreras
Deputy Director,
Real Estate and Lease Administration
Economic Development Department

Date: 05/14/24

EXHIBIT A
City Café at 202 C Street

