



**CITY OF SAN DIEGO
PUBLIC PURPOSE LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
a California municipal corporation**

AND

**COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION
a California Public Benefit Corporation**

CITY OF SAN DIEGO - PUBLIC BENEFIT LEASE
[4704 College Avenue, San Diego, CA 92115]

THIS CITY OF SAN DIEGO LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and COLLEGE AREA ECONOMIC DEVELOPMENT CORPORATION, a California public benefit corporation, as lessee, ("LESSEE"), to be effective as of the date when signed by the parties and approved by the San Diego City Attorney (the "Effective Date"), as follows:

RECITALS

- A. A Business Improvement District ("BID") is a type of assessment district in which business owners choose to be assessed a fee, which is collected on their behalf by the CITY, for use in promoting and improving the business area. The CITY established the College Area BID by Ordinance No. 0-18263 (New Series) on February 20, 1996.
- B. LESSEE operates and administers the College Area BID, providing general office administration, marketing, and other promotional support to generate business and to promote public improvement and beautification projects within the College Area BID ("BID Services"). As used in this Lease, "BID Services" shall be those services described and limited by that certain AGREEMENT dated March 21, 1996, by and between CITY and LESSEE as amended or replaced.
- C. LESSEE operates and administers the College Heights Maintenance Assessment District under contract with the City of San Diego, providing general office administration, marketing, and other promotional support to generate business and to promote public improvement and beautification projects within the College Area MAD ("MAD Services").
- D. CITY and LESSEE previously entered into a Right of Permit agreement ("Original Permit"), effective January 01, 2007 and terminated on December 31, 2009.
- E. CITY desires to lease the Premises to LESSEE, and LESSEE desires to lease the Premises from CITY as more specifically set forth below.
- F. This Lease is for a public purpose. LESSEE's mission is to provide a united voice for its members and give each business owner the ability to flourish ("Mission").
- G. LESSEE has requested this Lease for the purpose to continue offering LESSEE's mission to the community and to invest approximately Thirty Thousand (\$30,000) in repairs, upgrades and capital improvements to the Premises, as more particularly set forth in this Lease and described in **Exhibit D**.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

- 1. **Premises**. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY. "Premises" shall mean that certain improved real property located at 4704 College Avenue, San Diego, CA 92115, consisting of approximately five thousand one hundred eighty-four (5,184) square feet of land and one thousand five hundred thirty-four (1,534) square foot building, and as specifically set forth on the attached **Exhibit A: Lease Area**, attached hereto and by reference made part of this Lease, and that such square footage figure shall not be subject to revision except with an actual physical change in the Premises.

2. Allowed Uses. LESSEE shall use the Premises solely for the following purposes, and for no other purpose whatsoever without CITY's prior written consent: conducting business to provide small business owners with technical assistance with exposure for economic opportunities and use by College Area community groups for meetings and gatherings ("Allowed Uses"). CITY may approve in writing additional Allowed Uses ("Additional Allowed Uses") that are in compliance with the primary purpose of activities for the general public, from time to time and in CITY's sole discretion. Each and all Allowed Uses (including Additional Allowed Uses) shall be conducted in compliance with all applicable laws, rules, regulations, and directives of competent governmental authorities.

LESSEE shall use the Premises as allowed by this Lease to benefit its members, the community, and the general public to CITY's reasonable satisfaction and subject to LESSEE's Mission. LESSEE shall continuously use the Premises throughout the term of this Lease. The use of the Premises for any unauthorized purpose shall subject this Lease to termination at the sole discretion of the CITY.

3. Competent Management. LESSEE shall provide competent management of the Premises to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable for the management and operation of activities consistent with the Allowed Uses and in compliance with all applicable federal, state, CITY, and San Diego County laws, rules, regulations, and policies, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
4. CITY's Consent, Discretion. Whenever required under this Lease, CITY's consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his/her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
5. Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the Term, as defined in paragraph 12, of this Lease peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE on the Effective Date, or if LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss, burden, or resulting damages, but there may be determined and stated in writing by CITY a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises.
6. Reservation of Rights.
 - a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY.
 - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.

- d. Noninterference. CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to Premises or LESSEE's personal property located on the Premises directly caused by CITY's exercising of its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
7. Rates and Charges. LESSEE's charges for use of facilities on the Premises shall be in accordance with the rates and charges schedule set forth in **Exhibit B: Rates & Charges**, attached hereto. LESSEE shall not make any change to the rates and charges schedule without CITY's prior written approval in each instance, which approval may not be unreasonably withheld.
8. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.
9. Signs. LESSEE shall install and at all times during the Term maintain a CITY-approved sign identifying the Premises as CITY-owned and available for public use consistent with the terms of this Lease. The sign shall be installed by LESSEE at a location approved by CITY. Other than signage currently installed on the Premises, LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
10. Hours of Operation. LESSEE has established a regular schedule of days and hours of operation to best serve the public, attached hereto as **Exhibit C: Hours of Operation**. LESSEE shall not make any changes to its days and hours of operation without CITY's prior written consent.
11. CITY Use. CITY may use the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program. After each such use, CITY shall leave the Premises in the same condition found. Such use by CITY shall be at CITY's sole cost and expense.
12. Term. The term of this Lease ("Term") shall be three (3) years, commencing on the Effective Date. LESSEE or CITY may terminate this Lease for any reason with a six (6) month advance written notice.
13. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that LESSEE shall then pay to CITY fair market rent determined by an appraisal prepared by CITY's Real Estate Assets Department, in its sole discretion.
14. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after

CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

15. Rent. LESSEE shall pay to CITY rent in the amount of Three Thousand Eight Hundred Fifty-Two and 50/100 dollars (\$3,852.50) per year, paid annually in advance. LESSEE shall pay the rent for the first year of the Term within thirty (30) days of the Effective Date, and thereafter rent will be paid on or before each anniversary of the Effective Date. The rent shall be subject to adjustment annually as provided below.
 - a. CPI Adjustments. The rent is subject to adjustment on each anniversary of the Effective Date. The rent adjustment will be based on percentage increases in the Consumer Price Index (CPI) pursuant to the CPI Adjustment Computation below.
 - (i) The index used will be the CPI for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI, as determined by the CITY. If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
 - (ii) If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.
 - (iii) In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.
 - b. CPI Adjustment Computation. The rent for each adjustment period shall be calculated as follows:
 - (i) The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.
 - (ii) The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.
 - (iii) The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.
 - (iv) The "base figure" for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation

(CURRENT INDEX ÷ BASE INDEX) X BASE FIGURE = NEW RENT AMOUNT

Current Index (Third Quarter 2019)	275.105
	÷
Base Index (Third Quarter 2001)	178.5=
Adjustment Multiplier	1.541

The base figure is then multiplied by the adjustment multiplier to determine the new rent. Using the foregoing example, the adjusted rent is calculated as follows:

\$2,500.00	(Base Figure)
X 1.541	(Adjustment Multiplier)
\$3,852.50	(Adjusted Rent)

- c. Delinquent Payments. If LESSEE fails to pay the rent when due, LESSEE shall pay, in addition to the unpaid rent, five percent (5%) of the delinquent rent. If the rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is mutually agreed to by the parties to be appropriate to compensate CITY for loss resulting from the delinquent rent, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account. In no event shall the charge for the late payments of rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's default with respect to late payments nor prevent CITY from exercising any other rights and remedies available at law or in equity.

- d. Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to the City Treasurer and be mailed to:

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- e. Invoicing Courtesy. CITY may invoice LESSEE for amounts due under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Lease.

16. Gross Revenue. "Gross Revenue" shall mean all revenue derived from all uses of the Premises, including without limitation all revenue derived from any subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue.

Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state, or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; (c) goods returned to sources; (d) sums and credits received in the settlement of claims for loss of or damage to merchandise, to the extent previously reported as Gross Revenues; (e) cash refunds made to customers in the ordinary course of business; (f) interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit on sales and where not included in the merchandise sales price. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.

17. Inspection of Records. LESSEE shall keep and maintain accurate and complete records and accounts in accordance with generally accepted accounting principles consistently applied, showing all revenue derived from use of the Premises. LESSEE shall make such records and accounts available to CITY for inspection at all reasonable times. Such records and accounts shall be made available to CITY at the Premises during the Term and in a location within San Diego County after the expiration or earlier termination of this Lease. LESSEE shall maintain such records and accounts and make them available to CITY for inspection for five (5) years after the date such records are produced. Failure to maintain records, make them available for inspection, or provide summary schedules and supporting documentation requested by the CITY is a breach of this Lease and cause for termination, subject to LESSEE's right to cure pursuant to this Lease.
18. Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease and of which CITY has not given its prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.
19. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
20. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
21. Assignment and Subletting. LESSEE shall not assign this Lease or any right or interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, invitees, and guests of LESSEE, to use or occupy the Premises or any part thereof, without CITY's prior written consent 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 by another person. Any assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease be assignable as to the interest of LESSEE by operation of law without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consent to assignments and subleases. "Assignment" for the purposes of this section shall include any transfer of any ownership interest in this Lease by LESSEE, and if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders. As a condition to any consent to an assignment, sublease, or other grant of rights

related to the use and occupancy of the Premises, CITY may require that this Lease be revised to comply with current standard CITY lease requirements.

- a. CITY shall receive Fifty Percent (50%) of the gross revenue due to the LESSEE from any subleases, licenses agreements, management agreements, or operating agreements.
 - b. Approval of any assignment, sublease, license agreement, management agreement, or operating agreement shall be conditioned upon the assignee, sublessee, licensee, manager, or operator agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease.
 - c. Charter Section 225. Pursuant to San Diego City Charter Section 225, LESSEE and each of its subtenants, including sublessees and user groups, licensees, managers, or operators shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved or interested in this Lease, and in any sublease, assignment, license agreement, management agreement, or operating agreement and the precise nature of all interests of all such persons. Every person or entity proposed to have an interest in this Lease must be reviewed and approved by CITY, in its sole discretion.
22. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.
23. Default and Remedies.
- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
 - i. LESSEE fails to make any payment required under this Lease when due;
 - ii. LESSEE defaults in the performance of any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the default(s) within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion;
 - iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated a bankrupt;
 - v. LESSEE makes a general assignment for the benefit of creditors; or
 - vi. LESSEE uses the Premises for any unauthorized purpose.
 - b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- i. the worth at the time of award of any unpaid rent that was due at the time of termination;
- ii. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- iii. the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- iv. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses b(i) and b(ii), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause b(iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is noncurable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
 - e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises is publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.
24. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:
- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.
 - b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.

- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by it on the Premises in accordance with this Lease.
 - f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.
25. Indemnification & Hold Harmless. LESSEE will protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless will not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE will pay the CITY for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.
26. Insurance. Prior to the Effective Date, LESSEE shall have: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under the Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Lease may be treated as a material breach of contract by CITY. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Lease.
- a. Types of Insurance. At all times during the term of the Lease, the LESSEE shall maintain insurance coverage as follows:

- i. Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
 - ii. Commercial Automobile Liability. For all of LESSEE'S automobiles including owned, hired, and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
 - iii. Workers' Compensation. For all of LESSEE's employees who are subject to the Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
 - iv. Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.
- b. Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
 - c. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
 - d. Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under the Lease.

- i. Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured CITY and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEEs products, (c)

LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of CITY and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents, and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

ii. Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Additional Insured CITY of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of LESSEE.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

iii. Worker's Compensation Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for CITY.

- e. Reservation of Rights and Modification. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to CITY.

To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

- f. Additional Insurance. LESSEE may obtain additional insurance not required by the Lease.

- g. Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
27. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photos, and other pertinent information.
28. Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises, at LESSEE's sole cost and expense, to its prior condition within a reasonable time; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the proceeds from the insurance required by this Lease. LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage.
29. Acceptance of Premises. By signing this Lease, LESSEE represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances, as defined in this Lease.
30. Maintenance. Throughout the Term, LESSEE shall, at LESSEE's sole cost and expense, maintain the entire Premises, all to CITY's standards for similar CITY-owned properties and in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY and in compliance with all laws, including without limitation performing all regular maintenance, repair, and replacements, and all maintenance, repair, and services to the structural components of improvements on the Premises.
31. Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter the Premises, for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. LESSEE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency situations, CITY may at all reasonable times, but only upon reasonable prior notice to LESSEE, enter and inspect the Premises and the operations conducted on the Premises. If entry or inspection by CITY discloses

that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the sole expense of LESSEE, and LESSEE shall pay promptly any and all costs incurred by CITY in having necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

32. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
33. Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of and activities on the Premises.
34. Payment Bond. Prior to the commencement of any work on the Premises, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction on the Premises to satisfy claims of material suppliers and of mechanics and laborers employed on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements on the Premises are accepted by CITY and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.
35. Performance/Construction Bond. If LESSEE constructs improvements on the Premises, LESSEE shall in each instance deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated design and construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
36. Prevailing Wages. By signing this Lease, LESSEE certifies that it is aware of the wage provisions described herein and shall comply with such provisions before commencing any and all work on the Premises.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair,

and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair, and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

- a. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
- b. Copies. Copies of such prevailing rate of per diem wages are on file at the CITY's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
- c. Wage Rates. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.
- d. Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
- e. Payroll Records. LESSEE, its contractors and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City. In addition to submitting weekly certified payroll records to the City, for contracts entered into on or after April 1, 2015, Contractor and their subcontractor shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
- f. Apprentices. LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices.

LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

- g. Working Hours. LESSEE and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight (8) hours a day and forty (40) hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than one and one-half (1½) times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- h. Required Provisions for Subcontractors. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- i. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."
- j. Labor Compliance Program. CITY has its own Labor Compliance Program as authorized in August 2011 by the DIR. CITY will instruct LESSEE to withhold contract payments pursuant to the agreement between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by CITY or other governmental entity, or it has been established after an investigation by CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
- k. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A bidder or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded." By submitting a bid or proposal to the CITY, LESSEE is certifying that it has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of subcontractor registration to the CITY upon request.
 - i. A LESSEE's inadvertent error in listing a contractor or subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is

- registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- ii. A contract entered into with any bidder or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, bidder, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- l. Stop Order. For LESSEE, its contractors or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
- m. List of all Subcontractors. The CITY may ask LESSEE for the most current list of contractors and subcontractors (regardless of tier), along with their DIR registration numbers, utilized pursuant to this Lease at any time during the Term, and LESSEE shall provide the list within ten (10) working days of the CITY's request. Additionally, LESSEE shall provide the CITY with a complete list of all subcontractors utilized pursuant to this Lease (regardless of tier), within ten working days of the completion of the work, along with their DIR registration numbers.
- n. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et seq. The only recognized exemptions are listed below:
- i. Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1.)
- ii. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4.)
- iii. List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required above. (Labor Code section 1773.3.)
37. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
38. Taxes. Subject to the provisions of Article XIII, Sections 3(d) and (e) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before

delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon or levied by reason of the business or other LESSEE activities related to the Premises. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.

39. Ownership of Improvements; Removal of Improvements and Personal Property.

- a. Improvements. During the Term of the Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
 - b. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Subject to applicable California law, any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
 - c. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by competent CITY staff.
 - d. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
40. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

41. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.
- a. Release and Hazardous Substances. For purposes of this Lease, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. For purposes of this Lease, "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
 - b. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
 - c. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
 - d. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
 - e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous

substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any hazardous substance being released on, from, or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.
42. Asbestos Disclosure. Portions of the structural components of the improvements on the Premises may contain asbestos. If so, LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.
43. Asbestos. If either CITY or LESSEE makes improvements, alterations, or repairs to the improvements on the Premises, the party causing such improvements, alterations, or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the improvements on the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
44. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and

condition, which will run with the land, that LESSEE or any person claiming under or through LESSEE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, or occupancy of the Premises or in the selection, location, number, use, or occupancy of tenants, subtenants, or vendees in the Premises.

45. ADA Accessibility Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use, and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance will include without limitation the following:

LESSEE shall not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

LESSEE shall include language in each sublease which indicates the sublessee's agreement to abide by the provisions of this section 45. LESSEE and each of its sublessees will be individually responsible for their own ADA employment programs.

LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

Where required by law, all improvements, fixtures, structures, or installations on the Premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at LESSEE's sole expense.

LESSEE's failure to comply with the accessibility requirements of this section 45 or submitting false information in response to these accessibility requirements, or both, will be a default of this Lease.

46. CASp - Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASp). Further, pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility

standards within the premises.”

47. Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

Attention: Executive Director
College Area Economic Development Corporation
4704 College Avenue
San Diego, California 92115

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A
San Diego, California 92101

48. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration, and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE’s sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE’s fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation.
49. California Public Records Act (“CPRA”). CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the CPRA. If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY with such notice specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE’s sole expense, any action brought against CITY resulting from CITY’s nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs. CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY’s disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.

LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS
ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES,
AND AGENTS FOR ANY BURDEN, EXPENSE, OR LOSS THAT LESSEE

INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE
OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.

50. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other laws, rules, and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender identity, gender expression, sexual orientation, disability, medical condition, or place of birth. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code Sections 22.3501-22.3517, as amended from time to time]. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions, as well as the mandatory language required by San Diego Municipal Code Section 22.2704, to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
51. Equal Benefits. LESSEE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits will be a default of this Lease.
52. Equal Pay Ordinance. Unless an exception applies, LESSEE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- a. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to Lessee. LESSEE will require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- b. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
53. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and

- b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. LESSEE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - c. LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.
54. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
55. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
56. Water Quality – Best Management Practices. City and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).
- Therefore, LESSEE will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a). It is ultimately LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
57. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
58. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
59. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such

persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.

60. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
61. Entire Agreement and Understanding. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties to this Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
62. Legal Proceedings. If any party brings an action or proceeding against another party under this Lease, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorneys' fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against LESSEE relating to LESSEE's leasehold or otherwise in connection with this Lease, and CITY intervenes therein, becomes a party, or is made a party thereto, LESSEE shall pay all of CITY's expenses thereof, including without limitation costs and attorneys' fees.
63. Controlling Law and Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California or the District Court for the Southern District of California.
64. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
65. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole reasonable discretion.
66. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of CITY-owned properties like the Premises.
67. Use of Proceeds. LESSEE shall use all net revenue received from the operation of the Premises in a fiscally responsible manner, consistent with other organizations performing work reasonably similar to LESSEE, for the continued operation, maintenance, and improvement of the Premises

and purposes incidental thereto. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.

- a. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after the end of its fiscal year. The financial report shall include an operating statement, any revenue generated in excess of operating costs, and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, and covering the period between the last annual report and the expiration or termination date of this Lease.
- b. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years, including after termination or expiration of this Lease.
- c. Financial Statements. Within sixty (60) days after the termination of this Lease, LESSEE shall, at its sole cost and expense, deliver to CITY a statement of annual LESSEE income for the Term, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and deductions categorized by type. The statement shall be signed by an officer, general partner or principal of LESSEE attesting to the accuracy and completeness thereof, which shall be legally binding upon LESSEE. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such financial statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. If LESSEE submits any statements or information clearly marked confidential or proprietary, CITY shall protect and treat the same with confidentiality to the extent permitted by law and in conformity with the CPRA. Should LESSEE request confidentiality and non-disclosure regarding any statement or information, LESSEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information in the event CITY receives a request under the CPRA. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the CPRA. In the event CITY elects to withhold any requested information based on LESSEE's request to withhold such requested information, LESSEE shall defend, at LESSEE's sole expense, any legal actions or challenges seeking to obtain from CITY any information requested under the CPRA that CITY may have withheld at LESSEE's request. Furthermore, LESSEE shall release, indemnify, and hold CITY, and its elected officials, officers, and employees, harmless for or from any claim or liability, and defend any action brought against CITY, resulting from CITY's disclosure or non-disclosure of any information requested pursuant to the CPRA.
- d. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, financial data, and supporting documents open at all reasonable times for CITY's inspection and audit upon reasonable notice. Upon reasonable prior notice, CITY may inspect and

audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises, as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. Failure to maintain records, make them available for inspection, or provide summary schedules and supporting documentation requested by the CITY is a breach of this Lease and cause for termination, subject to LESSEE's right to cure pursuant to this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. Notwithstanding anything to the contrary contained herein, CITY's right to audit the books and operations shall expire on the date five (5) years from the end of Term. CITY may conduct an audit of LESSEE's books, statements, documents, records, and financial data, or demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.

- e. Proposed Budget. At least forty-five (45) days after each fiscal year-end of LESSEE's during the Term, LESSEE shall deliver to CITY five (5) copies each of documents evidencing LESSEE's proposed programs and business plan for the next fiscal year. Such documents shall in form and content reasonably satisfactory to CITY. Electronic correspondence to the CITY of such report is acceptable.
 - f. Activities Report. At least forty-five (45) days prior to each fiscal year-end of LESSEE's during the Term, LESSEE shall deliver to CITY evidence, in form and content reasonably satisfactory to CITY, that each of the following is true (any or all of which shall be automatically amended to reflect any and all changes to the requirements of CP-700-08 section C, NON-COMMERCIAL, NON-PROFIT LEASES AND AGREEMENTS):
 - (i) The Premises are available for use by the public in a manner consistent with and subject to LESSEE's Mission;
 - (ii) LESSEE selects its members on a first-come basis and in accordance with LESSEE's rules or bylaws approved by CITY;
 - (iii) If LESSEE charges its members for services which compete with services offered by commercial enterprises, such charges are comparable to the prices charged by commercial enterprises, and all such services are necessary to the operation of the Premises;
 - (iv) LESSEE is incorporated as a nonprofit organization under the laws of the State of California, and qualifies as such under the statutes of the State of California and the Federal Department of Internal Revenue; and
68. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions

which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

69. Supersedes Prior Agreements. Upon the Effective Date, CITY and LESSEE hereby terminate the Original Permit as of the Effective Date of this Lease. It is mutually agreed that this Lease shall supersede any and all prior agreements between the parties, and their predecessors in interest, related to all or any portion of the Premises, including the Original Permit. The Original Permit shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.
70. Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow LESSEE's development and use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
71. Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's development or capital improvement plans for the Premises, and failure of the CITY or City Council to approve any plans or grant any required permits for development or capital improvements shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. LESSEE shall obtain and maintain throughout the term of this Lease all legally required permits and licenses for the construction of improvements and the operation of its business on the Premises including as applicable, but not limited to, California Coastal permits, or building permits.

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

College Area Economic Development Corporation, a
California corporation

Date:

BY:

Name: Paul Russo

Title: Board President

Date: January 15, 2020

THE CITY OF SAN DIEGO, a California municipal
corporation

Date:

BY:

Name: Cybele Thompson

Title: Director, Real Estate Assets

Date: 1/12/20

ENVIRONMENTAL ANALYSIS SECTION:

This activity is Categorically Exempt from CEQA pursuant to State CEQA
Guidelines Section 15301 (Existing Facility).

Date:

2/18/2020

By:

Name:

HEIDI VONBLUM

Title:

Program Manager

Approved as to form this 24th day of February, 2019.

MARA W. ELLIOTT City Attorney

BY:

Name: Kathy J. Steinman

Title: Deputy City Attorney

Exhibit A: Lease Area

Exhibit B: Rates & Charges

Exhibit C: Hours of Operation

Page 31

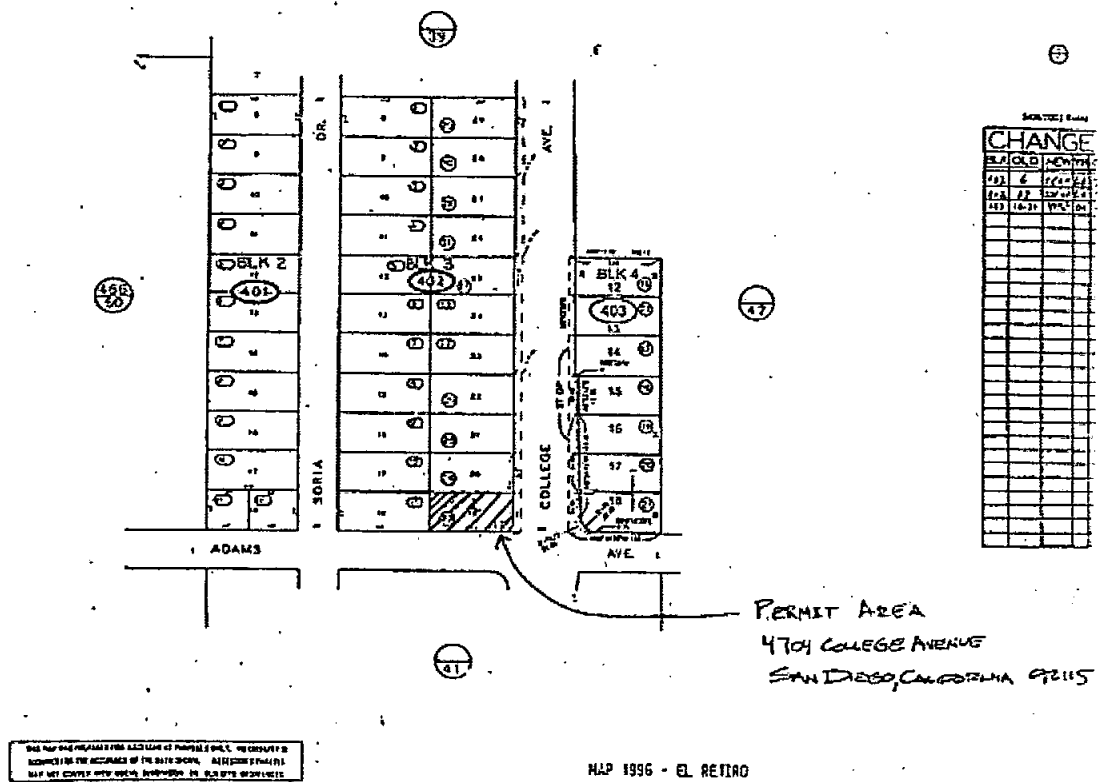


Exhibit B: Rates & Charges

College Area Economic Development Corporation Lease Fees and Dues 2020

The College Area Economic Development Corporation allows the use of the facilities on the premises by other College Area community groups. The use is allowed at no charge and only with an employee of the College Area Economic Development Corporation present during the meeting.

Exhibit C: Hours of Operation

Monday – Friday from 7:00 am –9:00 pm and, Saturday and Sunday from 7:00 am to 7:00 pm.

Holidays:

New Year's Day
President's Day
Memorial Day
Easter
Independence Day
Labor Day
Thanksgiving
Christmas Day



Date of Notice: January 27, 2020

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION PLANNING DEPARTMENT

PROJECT NAME/NUMBER: College Area Economic Development Corporation

COMMUNITY PLAN AREA: College Area

COUNCIL DISTRICT: 9

LOCATION: 4704 College Ave., San Diego, CA 92115

PROJECT DESCRIPTION: Renewal of 3-year lease between The City of San Diego (lessor) and the College Area Economic Development Corporation (lessee).

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego

ENVIRONMENTAL DETERMINATION: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities)

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee.

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION:

The City of San Diego conducted an environmental review that determined the project would not have the potential for causing a significant effect on the environment pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use. The exceptions listed in CEQA Guidelines Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effects on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action; and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code.

CITY CONTACT: Jayne Vanderhagen, Supervising Property Agent

MAILING ADDRESS: Real Estate Assets Department, 1200 Third Avenue, Suite 1700, MS 51A, San Diego, CA 92101

PHONE NUMBER: 619-236-6210

On **January 27, 2020**, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Contact listed above.

Applications to appeal CEQA determination to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**February 10, 2020**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 1/27/20

REMOVED: 2/11/2020

POSTED: A. Santos-Davidson