

San Diego Museum of Man

San Diego Museum of Man
Board of Trustees
2003-2004

OFFICERS

Mr. Valentine S. Hoy

(2nd 3 year term ends 6/05)

Luce, Forward, Hamilton & Scripps
600 West Broadway, Suite 2600
San Diego, CA 92101

President

Dr. James C. Selover

(1st 3 year term ends 6/06)

6927 Mimosa Drive
Carlsbad, CA 92009

1st Vice President

Mr. Alan Jaffe

(2nd 3 year term ends 6/03)

2424 Ellentown Road
La Jolla, CA 92037

2nd Vice President

Mr. Dale Yahnke

(1st 3 year term ends 6/03)

Dowling & Yahnke, Inc.
11988 El Camino Real, Suite 320
San Diego, CA 92130

Treasurer

Hon. Richard D. Huffman

(1st 3 year term ends 6/06)

750 B Street, Suite 500
San Diego, CA 92101

Secretary



1350 El Prado, Balboa Park, San Diego, California 92101-1681
Phone: (619) 239-2001, Fax: (619) 239-2749, E-mail: mail@museumofman.org

An educational, non-profit corporation founded in 1915 collecting for posterity and displaying the life and history of mankind.

Internal Revenue Service

Department of the Treasury

**P. O. Box 2508
Cincinnati, OH 45201**

Date: April 13, 2002

San Diego Museum of Man
1350 El Prado, Balboa Park
San Diego, CA 92101-1616

Person to Contact:

Carol Kraft - #31-01135
Customer Service Specialist

Toll Free Telephone Number:

8:00 a.m. to 6:30 p.m. EST
877-829-5500

Fax Number:

513-263-3756

Federal Identification Number:

95-1709290

Dear Sir:

This letter is in response to the Restated Articles of Incorporation filed with the state on December 4, 2001, and Amended and Restated Bylaws. We have added the information to your permanent records.

Our records indicate that a determination letter issued in October 1958 granted your organization exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code. That letter is still in effect.

Based on information subsequently submitted, we classified your organization as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in sections 509(a)(1) and 170(b)(1)(A)(vi).

This classification was based on the assumption that your organization's operations would continue as stated in the application. If your organization's sources of support, or its character, method of operations, or purposes have changed, please let us know so we can consider the effect of the change on the exempt status and foundation status of your organization.

Your organization is required to file Form 990, Return of Organization Exempt from Income Tax, only if its gross receipts each year are normally more than \$25,000. If a return is required, it must be filed by the 15th day of the fifth month after the end of the organization's annual accounting period. The law imposes a penalty of \$20 a day, up to a maximum of \$10,000, when a return is filed late, unless there is reasonable cause for the delay.

All exempt organizations (unless specifically excluded) are liable for taxes under the Federal Insurance Contributions Act (social security taxes) on remuneration of \$100 or more paid to each employee during a calendar year. Your organization is not liable for the tax imposed under the Federal Unemployment Tax Act (FUTA).

Organizations that are not private foundations are not subject to the excise taxes under Chapter 42 of the Code. However, these organizations are not automatically exempt from other federal excise taxes.

Donors may deduct contributions to your organization as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to your organization or for its use are deductible for federal estate and gift tax purposes if they meet the applicable provisions of sections 2055, 2106, and 2522 of the Code.

San Diego Museum of Man
95-1709290

Your organization is not required to file federal income tax returns unless it is subject to the tax on unrelated business income under section 511 of the Code. If your organization is subject to this tax, it must file an income tax return on the Form 990-T, Exempt Organization Business Income Tax Return. In this letter, we are not determining whether any of your organization's present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

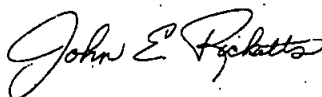
The law requires you to make your organization's annual return available for public inspection without charge for three years after the due date of the return. If your organization had a copy of its application for recognition of exemption on July 15, 1987, it is also required to make available for public inspection a copy of the exemption application, any supporting documents and the exemption letter to any individual who requests such documents in person or in writing. You can charge only a reasonable fee for reproduction and actual postage costs for the copied materials. The law does not require you to provide copies of public inspection documents that are widely available, such as by posting them on the Internet (World Wide Web). You may be liable for a penalty of \$20 a day for each day you do not make these documents available for public inspection (up to a maximum of \$10,000 in the case of an annual return).

Because this letter could help resolve any questions about your organization's exempt status and foundation status, you should keep it with the organization's permanent records.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

This letter affirms your organization's exempt status.

Sincerely,

A handwritten signature in cursive script, reading "John E. Ricketts".

John E. Ricketts, Director, TE/GE
Customer Account Services

RESTATED ARTICLES OF INCORPORATION
OF
SAN DIEGO MUSEUM OF MAN

The undersigned certify that:

1. They are the president and the secretary, respectively, of San Diego Museum of Man, a California Corporation.
2. The Articles of Incorporation of this corporation are amended and restated to read as follows:

I

The name of this corporation is SAN DIEGO MUSEUM OF MAN:

II

- A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.
- B. The specific purpose of this corporation is the increasing and diffusion of knowledge among all persons and to collect for prosperity and to display the life and history of mankind.

III

The name and address in the States of California of this corporation's agent for service of process is:

Dr. Douglas Sharon
Executive Director
San Diego Museum of Man
1350 El Prado
San Diego, CA 92101

This corporation is organized and operated exclusively for charitable purposes within the meaning of Section 501 (c)(3), Internal Revenue Code. Such purposes for which this corporation is organized are exclusively charitable within the meaning of Sections 501(c)(3), 2055, and 2522 of the Internal Revenue Code of 1986, as amended, and Sections 214 and 23701(d) of the California Revenue and Taxation Code.

V

- A. The property, assets, profits, and net income of this corporation are irrevocably dedicated to charitable purposes within the meaning of Sections 501(c)(3), 2055, and 2522 of the Internal Revenue Code of 1986 and Sections 214 and 2370(d) of the California Revenue and Taxation Code as such purposes are described in Article TWO above. No part of the net income or assets of this corporation shall inure to the benefit of any of its directors, trustees, officers, members, or to the benefit of any private person.

- B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

VI

Upon the dissolution or winding up of the corporation, its assets remaining after payment, provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3), Internal Revenue Code.

VII

This corporation shall have perpetual existence.

3. The foregoing amendment and restatement of Articles of Incorporation has been duly approved by the board of directors.
4. The corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

Dated: November 14, 2001

James C. Selover, President

Ida Rigby, Corporate Secretary

RESOLUTION OF THE BOARD OF TRUSTEES OF
SAN DIEGO MUSEUM OF MAN

A majority of the trustees of San Diego Museum of Man, a California nonprofit public benefit corporation, hereby adopt the following resolutions pursuant to §5211 of the California Corporations Code:

RESOLVED, that the Restated Articles of Incorporation presented to the Board of Trustees are adopted as the Amended and Restated Articles of Incorporation of this Corporation.

RESOLVED. That the Secretary is authorized and directed to execute a certificate of restatement of Articles of Incorporation ("Articles"), to file the Articles with the California Secretary of State in the form attached hereto as Exhibit A, to insert the Articles as certified in the minute book of this Corporation and to cause a similarly certified copy of such Articles to be maintained at the principal office of this Corporation for the transaction of its business.

RESOLVED, that the Secretary is authorized and directed to complete and file with the California Secretary of State a Statement by Domestic Nonprofit Corporation as required by §6210 of the California Corporations Code.

RESOLVED, that the officers of this Corporation are authorized and directed to execute such further documents and take such further action as they consider necessary or advisable to implement the purposes of these resolutions.

AMENDED AND RESTATED BYLAWS

SAN DIEGO MUSEUM OF MAN

September 12, 2001

San Diego Museum of Man
Amended and Restated Bylaws

ARTICLE I - OFFICES

SECTION 1. **PRINCIPAL OFFICE.** The principal office for the business of the corporation is hereby fixed and located in Balboa Park, at 1350 El Prado, San Diego, California 92101. The Board of Trustees is hereby granted full power and authority to change that principal office from one location to another in the County of San Diego.

SECTION 2. **OTHER OFFICES.** Branch or substitute offices may, at any time, be established by the Board of Trustees at any place or places the corporation is qualified to do business.

ARTICLE II - PURPOSES

SECTION 1. **PURPOSES.** This corporation is a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law of the State of California and is not organized for the private gain of any person. The purpose of this corporation is as set forth in the Articles of Incorporation of this corporation.

SECTION 2. **LIMITATIONS.** This corporation is a nonprofit, nonsectarian, nonracial, nonpolitical organization. No part of the corporation's net earnings will inure to the benefit of any member, trustee or private person. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

ARTICLE III - MEMBERSHIP

SECTION 1. **MEMBERS.** The corporation shall have no statutory or voting members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board of Trustees. All rights which would otherwise vest in members shall vest in the Trustees. Nothing in this article III shall be construed as limiting the right of the corporation to refer to persons associated with it or persons specified in Section 3 below as "Members" even though such persons are not members within the meaning of Section 5056 of the California Nonprofit Public Benefit Corporation Law, and reference to such

persons as Members shall not make them statutory members. The corporation may confer by amendment of its Articles of Incorporation or these Bylaws some or all of the rights of a member, as set forth in the California Nonprofit Public Benefit Corporation Law, upon any person or persons who do not have the right to vote for the election of Trustees or on a disposition of substantially all of the assets of the corporation or on a merger or on a dissolution or on changes to the Corporation's Articles of Incorporation or Bylaws, but no such person shall be a member within the meaning of Section 5056.

SECTION 2. DUES. The Board of Trustees shall adopt rules governing the time and manner by which dues shall be collected.

SECTION 3. LEVELS OF MEMBERSHIP. The Board of Trustees shall determine increases or decreases in levels of membership of individuals who are not members within the meaning of Section 5056. The Board shall establish levels of membership and the dues and contribution associated with those levels.

ARTICLE IV - TRUSTEES

SECTION 1. POWERS. Subject to limitations of the Articles of Incorporation, of the Bylaws, and of the laws of the State of California, and subject to the duties of Trustees as prescribed by these Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the Board of Trustees.

Without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the Trustees shall have the following powers, to wit:

(a) To select and to remove all the officers, Trustees, agents, and employees of the corporation; to prescribe such powers and duties for them as may not be inconsistent with law, or the Articles of Incorporation, or these Bylaws; to fix their compensation where applicable; and to require from them security for faithful service.

(b) To conduct, manage, and control the affairs of the business of the corporation and to make rules and regulations therefor not inconsistent with law or the Articles of Incorporation or with these Bylaws, as they may deem best.

(c) To change the principal office for the transaction of the business of the corporation from one location to another as provided in ARTICLE I of these Bylaws.

(d) To change the amount of dues from time to time to be paid by members.

(e) To borrow money and to incur indebtedness for the purpose of the corporation and to cause to be executed and delivered therefor, in the corporate name, promissory notes or other evidences of debt and instruments securing the payment of the same.

SECTION 2. NUMBER AND QUALIFICATIONS OF TRUSTEES. The authorized number of Trustees shall be not less than ten (10) and not more than thirty (30) until changed by a bylaw amending this section. Any person who meets the criteria established by the Nominating Committee shall be eligible for nomination to the Board of Trustees.

SECTION 3. TERM OF OFFICE. A Trustee shall hold office for a term of three years from the first day of July following the date of his election and shall be eligible for two consecutive three-year terms; a Trustee serving two consecutive three-year terms shall be ineligible for reelection to the Board for a period of one year. All Trustees shall hold office until their respective successors are elected and assume office.

SECTION 4. VACANCIES. Vacancies on the Board of Trustees may be filled by a majority of the remaining Trustees, although less than a quorum, or by a sole remaining Trustee. A vacancy or vacancies on the Board of Trustees shall be deemed to exist in the case of death or resignation of any Trustee, or if the authorized number of Trustees be increased, or if Trustees fail to elect new Trustees. A Trustee who fails to attend two consecutive meetings without due cause shall thereafter be removed by the Board of Trustees and that Trustee's position shall be declared vacant.

SECTION 5. PLACE OF MEETING. Regular meetings of the Board of Trustees shall be held at any place within the County of San Diego which has been designated from time to time by resolution of the Board or by written consent of a majority of the members of the Board. In the absence of such designation, regular meetings shall be held at the principal office of the corporation. Special meetings of the Board may be held either at a place so designated or at the principal office.

SECTION 6. ORGANIZATIONAL MEETING. Once a year the members of the Board of Trustees shall hold a meeting for the purpose of reorganization, election of officers and new Trustees presented by the Nominating Committee, establishment of a regular meeting time, and the transaction of other business.

SECTION 7. REGULAR MEETINGS. No fewer than six regular meetings of the Board of Trustees in any one year shall be held on such day in each month or on such day in such months as the Board of Trustees shall fix and determine by resolution; written notice of all such meetings shall be given to each member of the Board not fewer than five days preceding such meeting.

SECTION 8. SPECIAL MEETINGS. Special meetings of the Board of Trustees for any purpose or purposes shall be called at any time by the President, or if the President is absent or unable or refuses to act, by the Vice-President or by any two Trustees. Written notice of the time and place of special meetings shall be delivered personally to the Trustees or sent to each Trustee by mail or other form of written communication, charges prepaid, addressed to such Trustee at

such address as is shown on the records of the corporation. Special meetings of the Board shall be held upon four days notice by first-class mail or forty-eight hours notice delivered personally or by telephone or telegraph, and the notice shall state the purpose for which the meeting is called, and no other business shall be transacted at the meeting.

SECTION 9. NOTICE OF ADJOURNMENT. Notice of the time and place for holding an adjourned meeting need not be given to the absent Trustees if the time and place be fixed at the meeting adjourned, except that, if the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the absent Trustees.

SECTION 10. WAIVER OF NOTICE. The transactions of any meeting of the Board of Trustees, however called or wherever held, shall be as valid as though a meeting has been duly held after regular call and notice, if a quorum be present, and if either before or after the meeting, each of the Trustees not present signs a written waiver of notice or consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents, or approvals shall be filed with the corporation's records and made a part of the minutes of the meetings.

SECTION 11. QUORUM. The presence of one-third of the members of the Board of Trustees shall be necessary to constitute a quorum for the transaction of business except to adjourn. Every act or decision done or made by a majority of Trustees present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Trustees.

SECTION 12. ACTION WITHOUT MEETING. Any action required or permitted to be taken by the Board of Trustees under any provision of the Nonprofit Public Benefit Corporation Law of the State of California may be taken without a meeting if all the members of the Board shall individually or collectively consent in writing to such an action. Such written consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Trustees. For the purposes of this section only, "all members of the Board" shall not include any "Interested Trustee" as defined in Section 5233 of the Nonprofit Public Benefit Corporation Law.

SECTION 13. TELEPHONIC MEETINGS. Trustees may participate in a meeting through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in a meeting through the use of telephone or similar communications equipment shall constitute presence in person at such meeting.

SECTION 14. NONLIABILITY OF TRUSTEES AND OFFICERS. Pursuant to Section 5239 of the Nonprofit Public Benefit Corporation Law of the State of California, there shall be no personal liability to a third party on the part of a volunteer Trustee or volunteer Executive Committee officer (defined below) of this corporation caused by the Trustee's or

officer's negligent act or omission in the performance of that person's duties as a Trustee or officer, if all the following conditions are met:

- (a) The duties were performed in good faith;
- (b) The duties were performed in such a manner such Trustee or officer believes to be in the best interest of the corporation;
- (c) The duties were performed with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.

"Executive Committee officer" means the President, Secretary, Vice President, Treasurer or other executive officer who assists in establishing the policy of this corporation.

This limitation on the personal liability of a volunteer Trustee or officer does not limit the liability of this corporation for any damages caused by acts or omissions of a volunteer Trustee or volunteer officer, nor does it eliminate the liability of a Trustee or officer provided in Section 5233 or 5237 of the Nonprofit Public Benefit Corporation Law of the State of California in any action or proceeding brought by the Attorney General.

In order to obtain the full benefit of the limitation of liability set forth above, the Board of Trustees of this corporation and the volunteer Trustee or officer shall make all reasonable efforts in good faith to obtain liability insurance in the form of a general liability policy for this corporation or a Trustee and officer's liability policy.

"Volunteer" means the rendering of services without compensation.

"Compensation" means remuneration whether by way of salary, fee, or consideration for services rendered.

SECTION 15. INDEMNITY FOR LITIGATION. This corporation hereby agrees to exercise the power to defend and indemnify any person who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was a Trustee or officer of this corporation, to the full extent allowed under the provision of Section 5238 of the Nonprofit Public Benefit Corporation Law of the State of California relating to the power of a corporation to indemnify any such person. The amount of such indemnity shall be so much as the Board of Trustees determines and finds to be reasonable, or, if required by said Section 5238, the amount of such indemnity shall be so much as the court determines and finds to be reasonable.

SECTION 16. STANDARD OF CONDUCT. Pursuant to Section 5231 of the California Nonprofit Public Benefit Corporation Law a Trustee shall perform the duties of a Trustee, including duties as a member of any committee of the Board upon which the Trustee may serve, in good faith, in a manner such as the Trustee believes to be in the best interests of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Trustee, a

Trustee shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

- (a) One or more officers or employees of this corporation whom the Trustee believes to be reliable and competent in the matters presented;
- (b) Legal counsel, independent accountants or other professionals as to matters which the Trustee believes to be within such person's professional or expert competence; or
- (c) A committee of the Board upon which the Trustee does not serve, as to matters within the committee's designated authority, which committee the Trustee believes to merit confidence. Provided, that in any such case, the Trustee acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

SECTION 17. SELF-DEALING TRANSACTIONS. As used in this Section 17, a "self-dealing transaction" is any contract or transaction (i) between this corporation, firm or association in which one or more of the Trustees has a material financial interest, or (ii) between this corporation and a corporation, firm or association of which one or more of its Trustees are Trustees of this corporation (collectively, "Interested Trustee(s)"). Pursuant to Section 5233 of the Nonprofit Public Benefit Corporation Law of the State of California, no self-dealing transaction shall be void or voidable because such Interested Trustee(s) or corporation, firm or association are parties or because such Interested Trustee(s) are present at the meeting of the Board or committee which authorizes, approves or ratifies the self-dealing transaction if:

All material facts are fully disclosed to or otherwise known by the Board or committee and the Board or committee authorizes, approves, or ratifies the self-dealing transaction in good faith (without counting the vote of the Interested Trustee(s), and in the case of a self-dealing transaction described above, the Board or committee resolves and finds that the transaction is just and reasonable at the time it was authorized, approved or ratified; or

The person asserting the validity of the self-dealing transaction sustains the burden of proving that the transaction was just and reasonable as to the corporation at the time it was authorized, approved or ratified.

Interested Trustee(s) may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a transaction provided in this section 17.

ARTICLE V - OFFICERS

SECTION 1. OFFICERS OF THE CORPORATION. The officers of the corporation shall be a President, a Vice-President, a Second Vice-President, a Secretary, and a Treasurer. The corporation may also have at the discretion of the Board of Trustees one or more additional Vice-Presidents, one or more Secretaries, and one or more Assistant Treasurers.

SECTION 2. ELECTION AND TERM OF OFFICE. The officers of the corporation shall be chosen annually by the Board of Trustees at their Organizational Meeting and shall hold office for the term of one year or until such officer or officers shall resign, shall be removed or shall otherwise be disqualified to serve, or until their successors shall be elected and qualified. In no case shall any individual hold the same office for more than three consecutive terms.

SECTION 3. REMOVAL AND RESIGNATION. An officer may be removed with or without cause by a majority of the Trustees at any regular or special meeting of the Board. Any officer may resign at any time by giving written notice to the Board of Trustees or to the President or to the Secretary of the corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 4. VACANCIES. A vacancy in any office because of death, resignation, removal, disqualification, or for any other cause shall be filled by the Trustees at any meeting at which a quorum is present.

SECTION 5. PRESIDENT. The President shall be Chairman of the corporation and shall, subject to the control of the Board of Trustees, have general supervision, direction, and control of the business and officers of the corporation. The President shall preside at all meetings of the Board of Trustees. The President shall be an ex officio member of all standing committees and shall have the general powers and duties of management usually vested in the office of President of an incorporated body and shall have such other powers and duties as may be prescribed by the Board of Trustees or by these Bylaws.

SECTION 6. VICE-PRESIDENTS. In the absence or disability of the President, the Vice-Presidents, in order of their rank, shall perform all the duties of the President and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Trustees or by these Bylaws.

SECTION 7. SECRETARY. The Secretary shall keep or cause to be kept a Book of Minutes at the principal office or such other place as the Board of Trustees may order of all meetings of the Trustees with the time and place of holding, whether regular or special, and if special, how authorized, the notice given thereof, the names of those present at Trustees' meetings. The Secretary shall give or cause to be given notice of all meetings of the members of the Board of Trustees required by the Bylaws and shall keep the seal of the corporation in safe

custody and shall have such other powers to perform such other duties as may be prescribed by the Board of Trustees or by these Bylaws.

SECTION 8. TREASURER. The Treasurer shall keep and maintain or cause to be kept and maintained adequate and correct accounts of the properties and business transactions of the corporation and disbursements. The books of account shall at all times be open to inspection by any member. The Treasurer shall deposit or cause to be deposited all moneys and other valuables in the name and to the credit of the corporation with such depositories as may be designated by the Board of Trustees. The Treasurer shall, subject to the limitations contained in these Bylaws, disburse or cause to be disbursed the sums of the corporation as may be ordered by the Board of Trustees, shall render to the President and Trustees whenever they request it an account of all the Treasurer's transactions as Treasurer and the financial condition of the corporation, and shall have such other powers to perform such other duties as may be prescribed by the Board of Trustees or by these Bylaws.

SECTION 9. EXECUTIVE DIRECTOR. An Executive Director shall be employed by the Board of Trustees. The Executive Director shall be the Chief Executive Officer of the corporation and shall plan, organize, direct, and coordinate the operations of the corporation. The Executive Director may also act as an assistant secretary and as an assistant treasurer of the corporation at the discretion of the Board of Trustees.

ARTICLE VI - COMMITTEES

SECTION 1. STANDING COMMITTEES. The following standing committees shall be appointed by the President of the corporation and each committee shall consist of a chairman and such number of members as the President shall fix and determine: 1) Finance & Personnel Committee, 2) Long Range Planning Committee, 3) Development Committee, 4) Nominating Committee, 5) Executive Committee, and 6) Bylaws Committee.

SECTION 2. OTHER COMMITTEES. Other committees shall be appointed by the President from time to time for such purposes as shall be required to properly and efficiently conduct the business and affairs of the corporation.

SECTION 3. APPOINTMENT OF COMMITTEES. The President of the Board of Trustees may appoint such committees as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this corporation. Any committee having authority of the Board shall consist of two (2) or more Trustees and shall not include as voting members any person who is not a Trustee.

SECTION 4. POWERS AND AUTHORITY OF COMMITTEES. The Board of Trustees may delegate any committee having the authority of the Board and any of the powers and the authority of the Board of Trustees in the management of the business and affairs of this corporation, except the following:

- (a) The approval of any action for which the Nonprofit Public Benefit Corporation Law of the State of California also requires the approval of members of a corporation, in which event the approval of the Board shall be required.
- (b) The filling of vacancies on the Board.
- (c) The amendment or repeal of Bylaws or the adoption of new Bylaws.
- (d) The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or reparable.
- (e) The appointment of committees of the Board or the members thereof.
- (f) The approval of any self-dealing transaction except as permitted in Article IV, Section 17 of these Bylaws.

SECTION 5. EXECUTIVE COMMITTEE. The Board of Trustees may appoint an Executive Committee. The Board of Trustees may delegate to the Executive Committee any of the powers and authority of the Board of Trustees in the management of the business and affairs of the corporation, except those enumerated in Section 4.

The Executive Committee may meet regularly or by telephone between the meetings of the full Board of Trustees, the decisions of the Executive Committee being subject to review by the Board at its next meeting.

If no regular meeting schedule is determined, the frequency, time and place of Executive Committee meetings shall be at the discretion of the Chair of the Executive Committee. A majority of the membership of the Executive Committee shall constitute a quorum.

The membership of the Executive Committee shall consist of the Officers of the Board, the committee chairs, and the President of the Board who may also serve as Chairperson of the Executive Committee.

The Executive Committee shall include all of the elected officers of the corporation and shall include at least two members of the Board of Trustees who are not serving as elected officers of the Board.

The secretary of the Board or the appointed secretary of the Executive Committee shall keep full minutes of the Executive Committee meetings and shall submit these minutes after each Executive Committee meeting to all members of the Board of Trustees.

ARTICLE VII - MISCELLANEOUS

SECTION 1. DISBURSEMENTS. All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness issued in the name of or payable to the corporation shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the Board of Trustees; provided, however, that all checks, drafts, or orders drawn on the corporation's funds in amounts equal to or under \$5,000, including payments to the Federal and State governments, shall be signed by not less than two signers, one of whom must be either the Executive Director or an officer of the corporation, and that all checks, drafts, or orders drawn on the corporation's funds in amounts over \$5,000 shall be signed by not less than two officers of the corporation, one of whom may be the Executive Director.

SECTION 2. FISCAL YEAR. The fiscal year of this corporation shall start on the first day of July of each year and end on the thirtieth day of June next following.

SECTION 3. PARLIAMENTARY PROCEDURE. Except where they are in conflict with these Bylaws, Robert's Rules of Order shall serve as a guideline for all meetings of the Board of Trustees; provided, however, an abstention shall not be counted as a negative vote, and further, a Trustee who is present at a meeting of the Board, or any committee thereof, at which action specified in subdivision (a) of Section 5237 of the California Nonprofit Public Benefit Corporation Law (relating to director's liability for distributions, loans, and guarantees) is taken and who abstains from voting shall be considered to have approved the action and shall be jointly and severally liable if such actions are approved.

ARTICLE VIII - AMENDMENTS

SECTION 1. AMENDMENTS. These Bylaws may be amended or repealed and new Bylaws adopted by the vote of the majority of the members of the Board of Trustees of this corporation.

SECTION 2. EFFECTIVE DATE. These bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Trustees of this corporation in adopting them provide that they are to become effective at a later date.

SECRETARY'S CERTIFICATE

I, the undersigned, do hereby certify:

1. That I am the duly-elected and acting Secretary of the San Diego Museum of Man, a California nonprofit public benefit corporation;
2. That the foregoing Amended and Restated Bylaws, comprised of 12 pages, including this page, constitute the amended and restated Bylaws of said corporation as duly adopted at the meeting of the Board of Trustees on September 12, 2001, with such revisions as were adopted and approved by a majority of the members of the corporation present and voting at the Special Members' Meeting held on July 21, 2001.

Ida Rigby
Corporate Secretary

ORIGINAL

DOCUMENT NO. RR-268699

FILED JUN 29 1957

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

INDEX
CITY OF SAN DIEGO
AND
SAN DIEGO MUSEUM OF MAN
AGREEMENT

<u>Section</u>	<u>Page</u>
RECITALS	1
I. MUSEUM AS LEGAL ENTITY	2
A. <u>Articles</u>	3
B. <u>Bylaws</u>	3
C. <u>Corporate Status</u>	3
D. <u>Office Holders</u>	3
E. <u>Board Resolutions</u>	3
F. <u>Miscellaneous</u>	3
II. PREMISES	3
A. <u>Description</u>	4
B. <u>Permitted Use</u>	4
C. <u>Obligation of Diligent Use</u>	4
D. <u>Ancillary Facilities</u>	4
III. TERM OF AGREEMENT	
A. <u>Term</u>	5
B. <u>Renegotiation</u>	5
C. <u>Option to Renew</u>	6
IV. CONSIDERATION	6
V. COVENANTS AND CONDITIONS	6
A. <u>Covenants by City</u>	6
1. <u>Quiet Possession</u>	6
2. <u>City Funds</u>	7
3. <u>Payments</u>	7
B. <u>Covenants by Museum</u>	7
1. <u>Operation of the Museum</u>	7
a. <u>City Policy</u>	7
b. <u>Board of Trustees</u>	7
2. <u>Admission Fees</u>	7
3. <u>Use of City Funds</u>	8
4. <u>Use of Proceeds</u>	8
5. <u>Annual Report</u>	8
6. <u>Financial Records</u>	9
7. <u>Accounting Procedures</u>	9
8. <u>Inspection of Records and Audit</u>	9
9. <u>Proposed Budget</u>	10
10. <u>Activities and Inventory</u>	10
11. <u>Personnel</u>	10

12.	Compliance with Law	10
13.	Equal Opportunity	11
14.	Nondiscrimination	11
15.	Risks	12
16.	Insurance	12
	a. Public Liability and Property Damage	12
	b. Fire, Extended Coverage and Vandalism	13
	c. Waiver of Subrogation	13
	d. Conditions	13
	e. Modification	14
	f. Accident Reports	14
	g. Failure to Comply	14
17.	Indemnification	15
18.	Surrender of Premises	15
19.	Improvements, Repairs and Alterations	16
20.	Removal of Improvements	16
21.	Labor and Materialmen's Bond	17
22.	Maintenance	18
	a. Building and Structural Improvements	18
23.	Waste, Damage or Destruction of Premises	19
24.	Disputes	20
25.	Taxes	21
26.	Utilities	21
27.	Signs	21
28.	City Use of Facilities	21
C.	<u>Restrictive Conditions</u>	
	1. Ownership of Property	21
	2. Entry and Inspection	22
	3. Right to Assign	22
	4. Reservation for City Use	23
	5. Time Is Of The Essence	23
	6. Waiver	24
	7. Merger	24
	8. Remedies of City	24
	9. Holding Over	25
	10. Administration and Notice	25
	11. Political Activities	26
	12. Promotional Activities	26
	13. Public Access	27
VI.	ENTIRE UNDERSTANDING	27

AGREEMENT

SAN DIEGO MUSEUM OF MAN

This AGREEMENT with the San Diego Museum of Man is executed by and between the CITY OF SAN DIEGO, a municipal corporation in the County of San Diego, State of California, hereinafter called "City," and the SAN DIEGO MUSEUM OF MAN, a California nonprofit corporation, hereinafter called, "Museum."

RECITALS

A. WHEREAS, in Balboa Park in the City of San Diego, City owns buildings known as the San Diego Museum of Man, which are more fully described on Exhibit "A" attached hereto and incorporated herein by reference; and

B. WHEREAS, the Charter of the City of San Diego, Section 55, authorizes the City to execute agreements with respect to the use of recreational, cultural and educational facilities; and

C. WHEREAS, the Charter of the City of San Diego, Section 64, makes provision for the appropriation of monies for the support of institutions of an educational, scientific, historical or cultural character; and

D. WHEREAS, since 1915 the Museum has operated an anthropological museum on the Premises, which museum has been devoted to educational programs, historical and cultural displays, scientific research and the preservation of artifacts. The Museum has been, and is, open to the public and actively participates in educational programs sponsored by the City; and

E. WHEREAS, City recognizes that the operation and maintenance of an anthropological museum in Balboa Park by Museum will provide an invaluable asset to the City as a tourist attraction and a beneficial recreational and educational facility for the residents of the City; and

F. WHEREAS, Museum will operate exhibits in buildings in the public interest, and will maintain and expand their exhibits and research material at no capital cost to the City; and

G. WHEREAS, it is in the best interest of City that Museum, being well-qualified and competent, manage and operate the Premises in the manner herein set forth; and

H. WHEREAS, on March 18, 1969, Museum and City entered into an agreement for the management and operation of an anthropologically-oriented museum in Balboa Park. The 1969 agreement is on file in the Office of the City Clerk as Document No. 727646; and

I. WHEREAS, on July 2, 1979, Museum and City entered into an agreement whereby the provisions of the 1969 agreement were supplemented. The 1979 agreement is on file in the Office of the City Clerk as Document NO. 747485; and

J. WHEREAS, on February 28, 1985, Museum and City entered into an interim agreement relative to an extension of the terms of the 1979 agreement pursuant to Ordinance No. O-16249.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, City and Museum agree as follows:

I. MUSEUM AS LEGAL ENTITY.

Museum shall deposit with the City Manager by December 15, of each year duly certified copies of documents evidencing its existence as a

legal entity. Without limiting the generality of the foregoing, such documents shall include the following:

A. Articles. A copy of the Articles of Incorporation certified by the Secretary of State of the State of California; provided that if said Articles have been filed once with the City, then Museum shall only deposit with the City Manager any amendment to the Articles filed by the Museum, certified by the Secretary of State.

B. Bylaws. A copy of the Bylaws of the Museum certified to be correct by the Secretary of the Museum; provided that if its Bylaws have been filed once with the City, then the Museum shall only deposit with the City Manager any amendments to the Bylaws of the Museum certified to be correct by the Secretary of the Museum.

C. Corporate Status. A certificate executed by the Secretary of State of the State of California certifying that the Museum is authorized to transact business within the State of California.

D. Office Holders. A certificate executed by the Secretary of the Museum evidencing the names of all persons holding an office in the Museum, together with the terms of such offices.

E. Board Resolutions. A copy of resolution of the Board of Directors of the Museum, certified by its Secretary, authorizing the officers to execute this agreement on behalf of the Museum.

F. Miscellaneous. Such other records, documents or papers as may be required by the City Manager to assure that the Museum is a valid and viable organization with a continuing existence.

II. PREMISES.

A. Description. City hereby delivers possession to Museum, and Museum accepts possession from City, of those certain Premises together with all appurtenances thereto (hereinafter called the "Premises"), situated in the City of San Diego, County of San Diego, State of California, more particularly described and illustrated in Exhibit "A," attached hereto and incorporated herein by this reference.

B. Permitted Use. Museum shall use the Premises exclusively for an anthropological museum and related purposes. Museum shall not exclude the general public or interfere with the public's right to the use and enjoyment of Balboa Park and its facilities; provided, however, that reasonable restrictions and regulations may be made in order to operate the Museum and related activities in an orderly and proper manner.

Museum may operate a gift shop on the Premises and sell to the general public nonalcoholic beverages, light refreshments, packaged food items, tobacco, novelties, and articles which primarily relate to subjects on display or activities conducted in the Museum, including, but not limited to, books, periodicals and related artifacts. In addition, upon receipt of a written request which details the types of beverages to be sold, the time, and the conditions of sale, the City Manager may approve the sale of selected alcoholic beverages exclusively to visitors to the Museum subject to approval by the Alcoholic Beverage Control Board.

C. Obligation of Diligent Use. Museum covenants to use the Premises for the above-specified purpose and to diligently pursue said purpose through-out the term hereof.

D. Ancillary Facilities. Subject to the written approval of the City Manager, or his designated representative, which approval shall not be unreasonably withheld, Museum may permit an ancillary use of the

Premises, or any part thereof, on occasions to corporations, organizations or individuals, provided that such events are in keeping with uses permitted pursuant to provisions of Section II.B. of this agreement and for purposes incidental to the Museum's primary use. Museum may also enter into ancillary use agreements of limited space within the Premises to organizations or associations when such use is in the best interest of the City and the Museum and consistent with Section II.B. of this agreement. Museum may charge a fee for such uses subject to the prior written approval of the City Manager. Any such usage of the Premises shall be subject to the terms of this agreement.

III. TERM OF AGREEMENT

A. Term. The term of this agreement shall be twenty-five (25) years commencing upon the first day of the calendar month following execution by the City Manager.

B. Renegotiation. The provisions of this agreement shall be subject to renegotiation every five (5) years during the term of the agreement, including any extensions thereof. These renegotiation opportunities shall be referred to as "renegotiation intervals." Renegotiation shall be initiated upon written notice given either by City or Museum to the other not less than one (1) year prior to the particular renegotiation interval. Renegotiation shall be directed solely toward effecting alterations in the terms and conditions of this agreement to reflect any significant unanticipated change in circumstances which has occurred during the preceding interim period, and such renegotiations shall

not operate to increase the consideration for this agreement, terminate this agreement or shorten the term thereof.

C. Option To Renew. City hereby grants to Museum an option to renew this agreement for an additional period of twenty-five (25) years upon the expiration of the term of this agreement. Said renewal shall be made on the same terms, covenants, and conditions as expressed herein and subject to the same exceptions and reservations as contained herein.

This option shall be exercised only by written notice, duly given and delivered, setting forth Museum's election to exercise said option. Said notice of Museum's exercise of this option to renew shall be given no more than one hundred eighty (180) days and no less than one hundred fifty (150) days prior to expiration of the term hereof.

IV. CONSIDERATION

In consideration of City entering into this agreement with Museum, Museum agrees to operate, for the public benefit, an anthropological museum and related services under the terms, covenants and conditions contained herein. Said museum shall be open to the general public a minimum of six (6) days per week, 10:00 a.m. to 4:30 p.m. including weekends but excluding legal holidays. A board of directors or trustees shall be elected by Museum to establish policy and govern the corporation.

V. COVENANTS AND CONDITIONS

A. Covenants by City.

1. Quiet Possession. City expressly agrees that Museum, upon fulfilling its obligations and performing all of the covenants and conditions of this agreement, shall and may, at all times during the term hereof, peaceably and quietly have, hold and enjoy the Premises.

2. City Funds. During the term of this agreement, City shall provide funds to help defray the cost of operation of the Premises and the Museum in amounts to be determined annually by the City Council. Except as expressly set forth herein, this agreement and the occupation of the Premises by the Museum do not obligate City to perform any work or repairs or to expend any monies whatsoever except to the extent that monies may be appropriated by the City Council.

3. Payments. Funds provided to the Museum by City for the operation of the Premises and the Museum shall be paid to Museum in twelve (12) equal monthly installments during each fiscal year.

B. Covenants by Museum.

1. Operation of the Museum.

a. City Policy. The policies established by Museum for the operation of the Premises shall conform to the general policies established by City for the use and operation of its cultural and educational facilities in Balboa Park.

b. Board of Trustees. A Board of Trustees (the "Board") shall be elected by the Museum. The activities and affairs of the Museum shall be conducted and all of its powers shall be exercised by or under the direction of the Board. The Board will, however, hire an officer to act as general manager and chief executive officer of the Museum who shall be authorized by the Board to handle the day-to-day affairs and business of the Museum.

2. Admission Fees. The Museum shall have the right to charge reasonable admission fees; however, at least one day per month shall be designated by the Museum as a day when no fees for general admission shall be charged, except for special showings, exhibitions and events

within the Museum. The schedule of admission fees, including admission fees for special showings, exhibitions and events within the Museum, shall be subject to prior written approval by the City Manager.

3. Use of City Funds. City funds shall not be used for acquisition of exhibition objects, educational programs, scientific publications, field trips and research other than that which has as its object the preparation of exhibits. In accordance with City policies, City funds may be expended for utilities, custodial, demonstration and guard services, materials and personnel engaged in preparing Museum exhibits for public display, the continuing maintenance of such public exhibits in proper condition and such research as may be necessary to prepare exhibits for display in a scientific manner. City funds may also be used for administrative and office personnel and for salaries of curators and others engaged in the normal operation of the Premises. The Museum shall not use, directly or indirectly, any of the funds received from City under this agreement for any political or religious activities whatsoever.

4. Use of Proceeds. The Museum agrees that all income and proceeds received by the Museum from the operation of the Premises shall be utilized for purposes of the continued operation, maintenance and improvement of the Premises and for purposes incidental thereto. Certification of the Museum's compliance with the requirements of this section shall be specifically set forth in the Museum's audited financial statements as provided for herein.

5. Annual Report. On or before March 15th of each year of this agreement, the Museum shall submit to the City Manager a financial report, certified by an independent certified public accountant, for the previous fiscal year. Said financial report shall include an operating

statement and a report of net worth, and shall be in a form satisfactory to City and be subject to review and audit by the City Auditor. The final report shall be within ninety (90) days of the expiration date of this agreement, and shall cover the period between the last report and the said expiration date.

6. Financial Records. Museum shall keep, or cause to be kept, true, accurate and complete records, 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 Museum's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices and receipts. Documents supporting a profit and loss statement shall be retained by Museum until an audit of Museum's records is conducted by City, or until a period of three (3) years has elapsed, whichever occurs first.

7. Accounting Procedures. Museum shall use such accounting procedures as shall be recommended or approved by City. Revisions or changes in Museum's accounting procedures shall be approved by City's Auditor and Comptroller.

8. Inspection of Records and Audit. All books, statements, documents, records and financial data of Museum shall be open at all times for inspection and audit by City upon reasonable notice. Further, City may conduct, at its expense, an audit of all books, statements, documents, records and financial data of Museum, or demand and receive from Museum, at City's expense, the results of a complete audit as conducted by a certified public accountant in the event that (i) the Museum's executive director, or other managing agent, is discharged for

cause; (ii) a majority in the membership of the Museum's Board of Trustees resigns; or (iii) the purposes for which the Museum was created are so materially or substantially changed as to frustrate the purpose of this agreement.

9. Proposed Budget. The Museum shall have deposited with the City Manager by December 15 of each year copies of documents evidencing the proposed programs and financial status of the Museum for the year for which support is required. Without limiting the generality of the foregoing, such documents shall include (i) a copy of the Museum's proposed programs, and (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures.

10. Activities and Inventory. The Museum shall submit to the City Manager at the close of each fiscal year (i) a general report of the Museum's activities for the year, and if applicable and if requested by the City Manager, (ii) an inventory of any furnishing and other personal property owned by the City which are in the custody of the Museum, in a form reasonably required by and satisfactory to the City.

11. Personnel. All personnel provided for in the annual budget for operating the Premises shall be employed by and be the employees of the Museum. Said personnel shall not be subject in any way to the control of City, except as provided herein.

12. Compliance with Law. Museum agrees to and shall, at its sole cost and expense, comply and secure compliance with all the requirements of all municipal, state, county, and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, or the operations conducted thereon, and shall faithfully observe, and

secure observance with, in the use of the Premises, all municipal ordinances and state and federal statutes now in force or which may hereafter be in force. The judgement of any court of competent jurisdiction, or the admission of Museum or any sublessee or permittee in any action or proceeding against them or any of them, whether City be a party thereto or not, that Museum, sublessee or permittee has violated any such ordinance or statute in the use of the Premises shall be conclusive of that fact as between City and the Museum.

13. Equal Opportunity. Museum agrees to and shall take affirmative action to improve employment opportunities of minorities and women. When applicable, Museum agrees to abide by the City's Equal Opportunity Program as it now or hereafter exists. A copy of the program, effective as the date of this agreement, is on file in the Office of the City Clerk and by this reference is incorporated herein. Minorities are presently defined as Hispanic, Black, Filipino, American Indian and Asian/Pacific Islander. The goal of this program shall be the attainment of the employment of minorities and women in all areas of employment in a total percentage approximately equal to the total level of minority and women employment as established by the City for its Equal Opportunity Program each year.

14. Nondiscrimination. The Museum agrees to and shall not discriminate in any manner against any person or persons on account of age, race, marital status, sex, religious creed, color, ancestry, national origin, physical handicap or medical condition in the Museum's use of the Premises, including, but not limited to, the providing of goods, services, facilities, privileges, advantages and accommodations, and the obtaining and holding of employment.

15. Risks. The Museum agrees to and shall not use, or permit the Premises, or any part thereof, to be used, in any manner or for any purpose, other than the purpose set forth above. Unless included within the said purpose or necessarily incident thereto, no use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the building or buildings belonging to City located on the Premises or cause a cancellation of any insurance policy covering said building or buildings, or any part thereof, nor shall any article which may be prohibited by the standard form of fire insurance policy be or be permitted to be kept, held, stored, used or sold in or about the Premises. Museum, at Museum's sole cost and expense, shall comply with any and all requirements pertaining to the Premises of any insurance organization or company, necessary for the continued maintenance of reasonable fire, public liability, and property damage insurance, covering said buildings and appurtenances.

If the operation under this agreement results in an increase (or decreased) risk in the opinion of the City Manager, then the Museum agrees that the maximum limits hereinafter designated shall be changed accordingly upon request by the City Manager. A compliance certificate will be issued by the City Manager upon the effective date of this agreement.

16. Insurance. The Museum shall take out and maintain at all times during the term of this agreement the following insurance at its sole expense:

a. Public Liability and Property Damage. Insurance in the amount of not less than ONE MILLION (\$1,000,000) COMBINED SINGLE LIMIT LIABILITY with an Occurrence claims form. This policy shall be a standard comprehensive liability policy covering injury or damage, including death,

suffered by any party or parties, from acts or failures to act by City or the Museum, on or in connection with the use or operation of the Premises.

b. Fire, Extended Coverage and Vandalism. The Premises and any personal property owned by the City located thereon shall be insured for fire loss by inclusion within the City's umbrella policy for all City buildings. Museum artifacts and contents, other than City property, shall be insured by the Museum at its discretion and expense and all insurance proceeds therefrom shall be payable exclusively to the Museum.

c. Waiver of Subrogation. The City and the Museum, as well as anyone claiming through or under them by way of subrogation, hereby waive any right of action that it or they may later acquire against the other for loss or damage to its or their property, property in which it or they may have an interest, or the Premises, where such loss is caused by any risk for which insurance is called for under this agreement.

d. Conditions. All insurance policies will name the City as an additional insured, protect the City against any legal costs in defending claims and will not terminate without thirty (30) days prior written notice to the City. All insurance companies must be satisfactory to the City and licensed to do business in California. All policies will be in effect on or before the first day of the term of this agreement, except "course of construction fire insurance," which shall be in force on commencement of all authorized construction on the Premises and full applicable Fire Insurance coverage shall be effective upon completion of each insurable improvement. A copy of all insurance policies will remain on file with City during the entire term of this agreement. At least thirty (30) days prior to the expiration of each policy, Museum shall

furnish a certificate(s) showing that a new or extended policy has been obtained which meets the terms of this agreement.

e. Modification. City, at its reasonable discretion, may require the revision of amounts and coverages at any time during the term by giving Museum sixty (60) days prior written notice. City's requirements shall be designed to assure protection from and against the kind and extent of risk existing on the Premises. Museum also agrees to acquire, if needed, additional insurance for new improvements in order to meet the requirements of this agreement.

f. Accident Reports. Museum shall report to City any accident causing more than Ten Thousand Dollars (\$10,000) worth of property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

g. Failure to Comply. If Museum, after reasonable written notice from City, fails or refuses to take out and maintain the required insurance, or fails to provide the proof of coverage, City has the right to obtain the insurance. Museum shall reimburse City for any such premiums paid with interest at the maximum allowable legal rate then in effect in California. City shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer or insurers and rate of interest. Said reimbursement and interest shall be paid by Museum on the first (1st) day of the month following the notice of payment by the City.

Notwithstanding the preceding provisions of this subsection g, if Museum fails or refuses to take out or maintain insurance as required in

this agreement, or fails to provide the proof of insurance, City has the right to declare this agreement in default and City shall be entitled to exercise all legal remedies in the event of such default.

17. Indemnification. Museum at all times shall defend, relieve, indemnify, protect and save City and any and all of its boards, officers, agents and employees harmless from any and all claims and demands, actions, proceedings, losses, liens, costs, judgements, civil fines and penalties of any nature whatsoever in regard to or resulting from the Museum's use of the Premises, including, but not limited to, expenses incurred in legal actions, death, injury or damage that may be caused directly or indirectly by:

a. Any unsafe or defective condition in or on the Premises of any nature whatsoever, which may exist by reason of any act, omission or neglect caused by the Museum, or any use or occupancy by the Museum of the Premises,

b. Any operation, use or occupation conducted by the Museum on the Premises,

c. Any act, omission or negligence on the part of Museum, its employees, agents, assigns, invitees, licensees, or

d. Any failure by Museum to comply or secure compliance with any of the terms or conditions of this agreement.

18. Surrender of Premises. Museum agrees to and shall use ordinary care for the preservation, safety and good condition of the Premises and the improvements constructed thereon, and shall, on expiration or sooner termination of the term hereof, surrender the Premises in good condition, reasonable wear and tear excepted. City and Museum acknowledge

that as of the commencement of the term hereof the Museum is maintaining the Premises in good and satisfactory condition.

19. Improvements, Repairs and Alterations. Museum shall not make any major alterations or structural changes in the Premises, or cause to be made, built or installed thereupon, any permanent improvements except in accordance with plans and specifications previously submitted to the City Manager and approved in writing which approval will not be unreasonably withheld. Such improvements will be consistent with the Historical Designation, park character, and uses of the Premises and adjacent areas. Museum agrees to take good care of the Premises, fixtures and appurtenances, and of all alterations, additions and improvements to any of them, and to perform janitorial services within the buildings located on the Premises and to keep the interior of said buildings in a safe, clean and sanitary condition at all times. Interior decoration and alterations for the accommodation of Museum shall be the responsibility of Museum.

20. Removal of Improvements. City agrees that all trade fixtures installed by Museum in accordance with the provisions herein provided shall be and remain the property of Museum, and Museum agrees that all improvements of a permanent nature, including heating system, air conditioning (if any), and plumbing shall be and remain the property of City. Museum shall have the right to remove, at Museum's expense, such fixtures and improvements belonging to Museum, prior to expiration or sooner termination of this agreement, provided that any damage to City's property or improvements shall be repaired and the Premises left in good order and condition. In the event Museum does not so remove said fixtures and improvements prior to the expiration of this agreement, City may

remove, or sell, or destroy the same at the expense of Museum, and Museum shall pay to the City the reasonable cost of any such removal, sale or destruction, together with the reasonable cost of repair of damages to City's property or improvements resulting from such removal, sale or destruction. At the option of City, any property, real or personal, not so removed by Museum shall be deemed abandoned.

21. Labor and Materialmen's Bond. Museum will save City free and harmless, defend and indemnify it against all claims and liability caused by actions of Museum, for labor and materials in connection with improvements, repair or alterations to the Premises caused by Museum, and the cost of defending against such claims, including reasonable attorneys' fees.

In the event that improvements, repairs or alterations are constructed on the Premises by someone other than the City or an authorized agent of the City or an authorized agent of the City and Museum working together, then the Museum shall file with City a bond, conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used in said construction in the amount of the estimated cost of the improvement, alteration, or repair as determined by the City Manager. The bond shall be acknowledged by Museum as principal and by a corporation as surety licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company.

In the event that a lien is recorded under the California Code of Civil Procedure against the Premises and the lien holder attempts to perfect such lien by a lawsuit and the Museum shall have failed to comply with the requirements of this paragraph, this agreement shall at City's

option terminate thirty (30) days after service of summons in such lawsuit upon the City and subsequent notice in writing from City to Museum of such lawsuit and such lack of a bond; provided, however, that the City Manager shall have the right to continue this agreement in full force and effect by notifying the Museum in writing of his or her election to do so; and provided further that this agreement shall not terminate if, within said thirty (30) period, Museum shall provide adequate security to the City indemnifying the City for any liability that it may incur as a result of such litigation.

22. Maintenance. Museum agrees to assume responsibility for the operation of said Premises. Maintenance of the Premises will be the joint responsibility of Museum and City as follows:

a. Building and Structural Improvements. Museum agrees to perform all routine maintenance of the interior of buildings located on the Premises as specified in Exhibit "B" hereof, and janitorial maintenance of those adjacent areas of the Premises for which the Museum has the nonexclusive right to use, throughout the term hereof without expense to City unless otherwise specified herein, and to perform all repairs and replacements necessary to such maintenance and to preserve said Premises in a decent, safe, healthy and sanitary condition in a manner satisfactory to City and in compliance with all applicable laws.

City agrees to perform basic building maintenance, including painting thereof on permanent and structural features, exterior walls, roofs, and external structures. A detailed division of these maintenance services between City and Museum is described in Exhibit "B" attached hereof, and made a part hereof by this reference. City and Museum may choose to provide some of their maintenance responsibility by contract

with a third party and, where mutually agreeable, may merge the responsibilities of each party into a single contract with costs to be prorated as appropriate. All building maintenance done by or under the direction of Museum shall be done by personnel qualified in their respective trades.

The Museum shall be responsible for any new installation and maintenance of any improvements, alterations or additions to the facilities by and for the use or convenience of Museum.

23. Waste, Damage or Destruction of Premises. Museum shall give prompt notice to City of any material damage to the Premises within ten (10) days of such damage occurring. Museum shall not commit or suffer to be committed any waste or injury, or any public or private nuisance on the Premises. Museum 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 damaged in whole or in part by any cause, excluding fire or other insured risk, so as to render the Premises unfit for the purposes set forth in this agreement, and said damages are repairable within a reasonable time in the opinion of the City Manager, City may elect to repair said damages so as to restore said Premises to a condition which is fit for said purposes. If in the assessment of the City Manager the cost of repair is too great or the repairs cannot be accomplished within a reasonable period of time, the City shall notify the Museum and the Museum through its representatives shall have a reasonable period of time to meet with representatives of the City to determine whether the Museum and City can work out a mutually acceptable program for accomplishing and financing any such repairs and reconstruction. If the

City has not elected to make repairs and, following discussions, the City and the Museum have not mutually agreed upon a proposal to accomplish and finance such repairs, then either party may terminate this agreement upon written notice to the other party.

The City shall have no obligation to repair, replace or renew any fixtures, equipment, improvements or property belonging to Museum which have been damaged or destroyed as a result of an event causing damage to or destruction of the Premises.

In the event the Premises are damaged in whole or in part by fire or any other insured risk, City shall be obligated to apply the proceeds of any such insurance to the repair or reconstruction of the Premises, provided that Museum elects to join in such repair or reconstruction. Upon receipt of notice of the amount of said insurance proceeds, City shall thereupon give Museum written notice of the amount thereof, and Museum shall notify City within fourteen (14) days of the receipt thereof of its intentions as to such repairs or reconstruction. In the event that such insurance proceeds are insufficient to repair or reconstruct the Premises, the parties shall meet and confer through their representatives to work out a mutually acceptable program for the financing and payment of such excess amounts. In the event that such a satisfactory program cannot be agreed to, then either party may terminate this agreement upon written notice to the other party.

24. Disputes. Museum agrees to refer all disputes as to the interpretation of this agreement, or the rights and duties of the parties hereto, to the City Manager for resolution. Nothing herein contained shall be considered to be a derogation of any rights whatsoever which either party hereto has, or shall have, under any applicable charters, laws,

ordinances, regulations or judicial or administrative decisions or rulings of the state of California or the City of San Diego.

25. Taxes. As further consideration for the execution of this agreement, Museum agrees to pay and discharge, before delinquency, all taxes, assessments and fees, if any, assessed or levied upon Museum or the Premises during the term of this agreement and arising out of Museum's use or occupation of the Premises.

26. Utilities. Except for such installation of utilities as City herein expressly agrees to provide, and except for certain exterior lights that are provided at the request of City Manager but are metered through the Museum, Museum shall order, obtain and pay for all utilities, and service and installation charges in connection therewith, and said utilities shall be installed underground.

27. Signs. All exterior signing and other identification of the Premises shall be subject to approval of the City Manager.

28. City Use of Facilities. Museum shall make the Premises available for City use for special events on a not-to-interfere basis or interruption of the daily or special operations of the Museum when requested by City Manager in writing not less than thirty (30) days before each such event. Said use shall be at no cost to City except for actual expense incurred by Museum in connection with the event, which shall be reimbursed by City to Museum.

C. Restrictive Conditions.

1. Ownership of Property. At all times during the term of this agreement, the Premises, including the permanent improvements covered by Section V.B.20, shall be the absolute property of City. Title to all artifacts, exhibits and research material, anthropological collections,

scientific works, library materials, and the like (except those on loan) shall be the sole and exclusive property of Museum. Title to any equipment loaned or furnished by City shall be retained by City, and title to all other personal property owned by Museum shall be retained by Museum.

2. Entry and Inspection. City reserves and shall always have the right, at all reasonable times, 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. In the event that such entry or inspection by City discloses that the Premises are not in a decent, safe, healthy and sanitary condition, City shall have the right, after ten (10) days written notice to Museum, to have any necessary maintenance work done for and at the expense of Museum and Museum hereby agrees to pay within thirty (30) days of receipt of an invoice from City any and all costs incurred by City in having such necessary maintenance work done in order to keep the Premises in a decent, safe, healthy and sanitary condition. Further, 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, after ten (10) days advance written notice to the Museum require Museum to file with the City a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy and sanitary. Said bond shall be in amount adequate in the opinion of City to correct the said unsatisfactory condition. Museum shall pay the cost of said bond. The rights in this section shall not create any obligations on City or increase obligations elsewhere in this agreement imposed on City.

3. Right to Assign. Museum shall not assign this agreement, or any interest there, nor suffer any other person (the agents,

officers and employees of City excepted) to occupy or use the Premises without the express, prior written consent of the City Manager. A consent to one assignment, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, occupation or use by another person. Any such subsequent assignment without such consent shall be void, and shall, at the option of City, terminate this agreement. This agreement shall not, nor shall any interest therein, be assignable, as to the interest of Museum, by operation of law, without the prior written consent of the City Manager.

4. Reservation for City Use. City hereby reserves all rights, title and interest in any and all gas, oil, minerals and water, upon or beneath the Premises. City shall have the right to enter upon the Premises for the purpose of drilling, operating and maintaining such installations as are necessary or desirable for the development of said gas, oil, mineral and water rights or for making repairs to or developing the municipal services of City; provided, however, that Museum's occupation and use of the Premises shall not be substantially interfered with or interrupted. City hereby reserves the right to grant and use such easements or establish and use such rights-of-way over, under, along and across the Premises for utilities, thoroughfares, or access as it may deem advisable for the public good.

5. Time Is of the Essence. Time is of the essence for each and every term and provision of this agreement and this agreement shall insure to the benefit of and be binding upon the parties hereto and their successors as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations and agreements in this agreement shall extend to and bind any assigns of Museum.

6. Waiver. The waiver by City of any breach of any term covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of consideration hereunder by either party shall not be deemed to be a waiver of any preceding breach by the other party of any term, covenant or condition of this agreement, nor shall any failure on the part of a party to require or exact full and complete compliance with any of the covenants, conditions or agreements of this agreement be construed as in any manner changing the terms hereof or to stop a party from enforcing the full provisions hereof, nor shall the terms of this agreement be changed or altered in any manner whatsoever other than by written agreement of City and Museum.

7. Merger. The voluntary or other surrender of this agreement by Museum, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing assignments, or may, at the option of City, operate as an assignment to it of any and all such assignments.

8. Remedies of City. In the event (a) that Museum shall default in the performance or fulfillment of any covenant or condition herein contained in Museum's part to be performed or fulfilled and Museum shall fail to cure such default within thirty (30) days following the service on Museum of a written notice from City specifying the default or defaults complained of and the date on which Museum's rights hereunder will be terminated as hereinafter provided if such default or defaults is or are not cured, or (b) that Museum shall file a voluntary petition in bankruptcy, or (c) that Museum shall be adjudicated as bankrupt, or (d)

that Museum shall make a general assignment for the benefit of creditors, then and in either or any of the said events, City may, at its option, without further notice or demand upon Museum or upon any person or persons claiming by, through or under Museum, immediately cancel and terminate this agreement and terminate each, every and all of the rights of Museum and of any and all persons claiming by, through or under Museum in or to the Premises and in or to the further possession thereof and may thereupon enter into and upon the Premises and to repossess the same and expel Museum and any and all persons claiming by, through or under Museum. The rights and remedies of City as hereinabove set forth are cumulative only and shall in no way be deemed to limit any of the other provisions of this agreement or otherwise deny to City any right or remedy at law or in equity which City may have or assert against Museum under any law in effect at the date hereof or which may hereafter be enacted or become effective; it being the intent hereof that the rights and remedies of City, as hereinabove set forth, shall supplement or be in addition to or in aid of the other provisions of this agreement and of any right or remedy at law or in equity which City may have against said Museum.

9. Holding Over. The occupancy of the Premises after the expiration of the term of this agreement shall be construed to be a tenancy month to month and may be terminated by either party, upon thirty (30) days advance written notice. All other terms and conditions of this agreement shall continue in full force and effect.

10. Administration and Notice. Control and administration of this agreement is under the jurisdiction of the City Manager of the City of San Diego and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this agreement

or by law to be given or served upon City may be given or served by letter deposited in the United States mails, postage prepaid, and addressed to the City Manager, City of San Diego, Attention: Park and Recreation Director, 202 "C" Street, San Diego, California 92101, or at such other address as the City Manager, in writing, specifies. Any notice or notices provided for by this agreement or by law to be given or served upon Museum may be given or served by depositing in the United States mails, postage prepaid, a letter addressed to the Museum whose address is 1350 El Prado, Balboa Park, San Diego, California 92101, or at such other address of which the City has received written notice, or may be personally served upon said Museum or any person hereafter authorized by Museum to receive such notice. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes upon the principals of the parties so served upon personal service or forty-eight (48) hours after mailing in the manner required herein.

11. Political Activities. As provided in the "permitted uses" provisions of this agreement, the Premises shall be used exclusively for the purposes specified. The Premises shall not be utilized for the purpose of working or campaigning for the nomination or election to any public office, be it partisan or nonpartisan. Provided, however, that the Museum shall not be precluded from providing a forum for open public debate by candidates such as occurs at a "candidate forum" and similar events.

12. Promotional Activities. The Premises shall not be utilized to promote individuals, activities and/or enterprises unrelated to the Museum's purposes without the specific written approval of the City Manager or designated representative. This section will not act to prohibit the promotion of the Museum, its works, exhibits, collections,

materials or displays, or a tasteful acknowledgment of donors and/or sponsors which is consistent with Balboa Park character and setting. Printed promotional materials featuring the Premises may include reasonable acknowledgment of donors and sponsors and may include limited advertisement of activities at other locations that are consistent with the stated purposes of this agreement.

13. Public Access. The general public shall not be wholly or permanently excluded from these Premises or any portion thereof. Museum may develop reasonable restrictions for the use of the facility provided that they are consistent with the rights of the general public, and are designed to enable Museum to use the Premises for the purposes herein granted. Museum shall open the Premises to the public during normal operating hours as specified in Section IV, CONSIDERATION.

VI. ENTIRE UNDERSTANDING.

Upon approval of the City Council of City, this agreement will constitute the full and complete understanding between the parties with respect to the matters covered herein. All other agreements are null and void.

IN WITNESS WHEREOF, this agreement is executed by the City, acting by and through its City Manager, pursuant to Resolution No. R 268699, authorizing such execution, and the Museum has caused this agreement to be executed, and its corporate name and seal to be affixed by the proper officers.

Dated this 29th DAY OF June, 1987

THE CITY OF SAN DIEGO

By: Dayl Gipsy

ASSISTANT TO THE CITY MANAGER

SAN DIEGO MUSEUM OF MAN, a
California nonprofit corporation

By: Douglas Sharon

Director and Chief Executive Officer

By: Steven Wall

President

APPROVED as to form and legality this 27 day of July, 1987.

JOHN W. WITT, City Attorney

By: [Signature]

Deputy City Attorney

JJK/mm 4/8/87

INCLUDES ALL LAND IMPROVEMENTS
WITHIN A LINE AROUND THE MUSEUM OF
MAN IN BALBOA PARK ONE (1) FOOT
OUTSIDE THE BUILDING'S EXTERIOR SUR-
FACE. HATCHED AREA NOT INCLUDED
IN LEASE AGREEMENT.

EXHIBIT-A

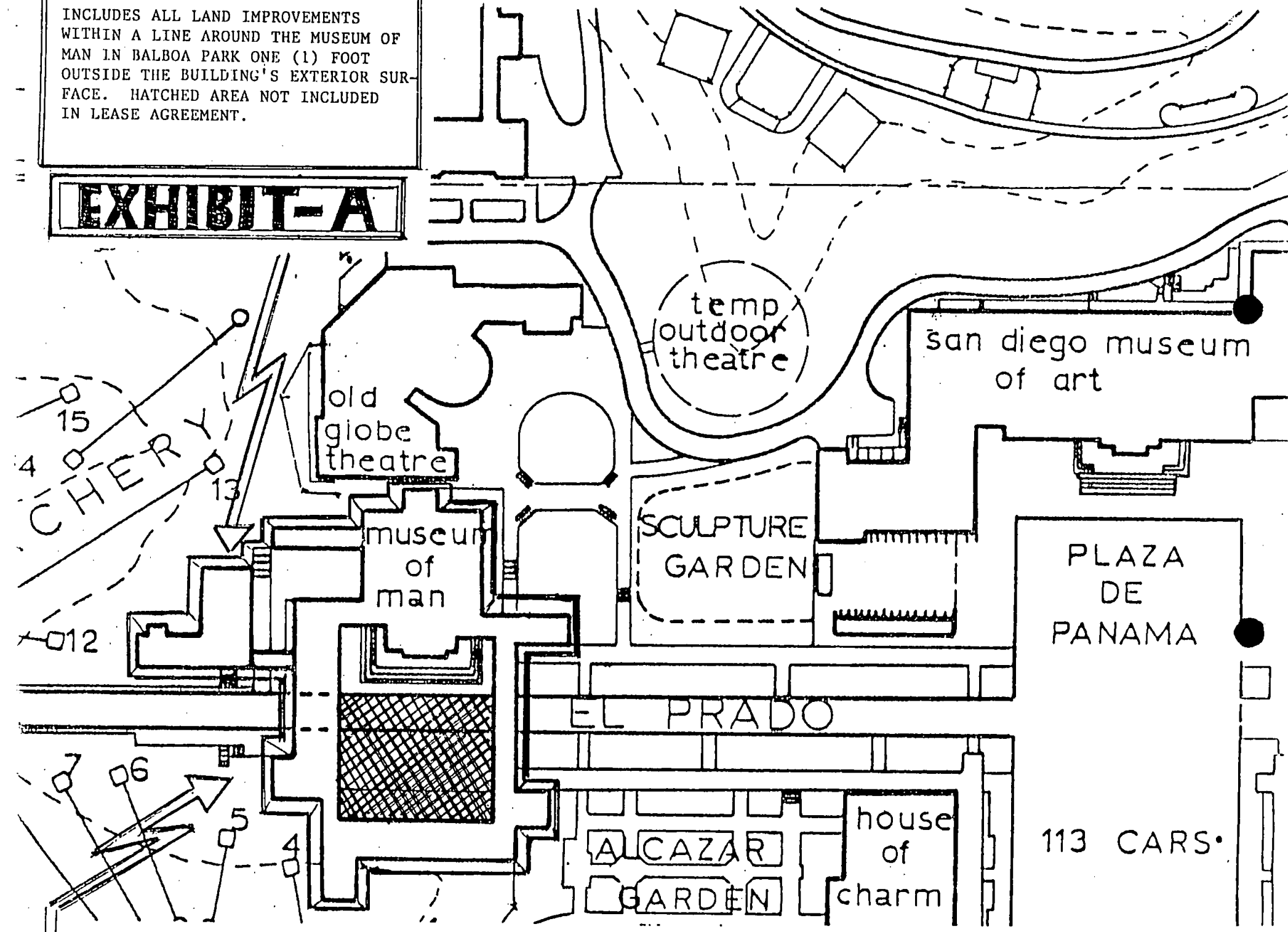


EXHIBIT "B"

AGREEMENT
MUSEUM OF MAN MAINTENANCE REPAIRS

<u>System/Area</u>	<u>City's Responsibilities</u>	<u>Museum's Responsibilities</u>
Electrical/Lighting and Power	Wiring, conduit, Breakers, light fixtures (as a complete item). All permanent exterior lighting, including lamps, security lights, and safety fixed lights. EXCLUDES decorative or movable lights used in outdoor displays.	Troubleshoot to identify problem as feasible. Replace switch and outlet plates, fixture lenses and bulbs, ballasts and tubes. All specialized exhibit lighting and service, including decorative or movable lights used in outdoor displays.
Emergency Electrical System and Lighting	Central circuit. Repair parts and/or system wiring, conduit, generator, fixtures, controls, batteries, etc. Periodic operational check-out.	Preventive maintenance of batteries. Check generator and emergency lighting system weekly.
Heating, Ventilation and Air Conditioning	All equipment, controls, filters, water treatment, etc.	Check and observe daily. Identify and report problems to the City and maintain operational log.
Plumbing	All pipes, valves, and plumbing fixtures, hot water heaters, etc., in the water service system EXCLUDING leaky faucets. All waste and vent systems, roof drains, etc., including pipe replacement INCLUDING the clearing of blockages.	Check and observe daily. Identify and report problems to the City. Clean leaves and other debris from roof drains.
Fire Suppression System	All maintenance of the permanently installed system for the protection of the building.	Check and observe daily. Report problems to City. Maintain all portable and/or temporary systems, extinguishers, hoses and nozzles, sensors, alarms, etc.
Alarms	None.	All sensors, alarms, wiring etc., for security and fire alarm system. Including heat, smoke, motion, intrusion systems.

<u>System/Area</u>	<u>City's Responsibilities</u>	<u>Museum's Responsibilities</u>
Security	Exterior building envelope including aid in emergency situations such as boarding windows, repairing doors and locks, etc.	All other security including lock installation and maintenance.
Displays and Additions	Approval of hookups and modifications of all types.	All installation, removal and maintenance.
Elevators/Dumbwaiters	All maintenance. Obtain and maintain permits, inspections, etc.	Check and observe daily. Identify and report problems to the City.
Floors/Floor Coverings	All permanent floors, concrete, wood, cork, vinyl tile and sheet vinyl.	Temporary floor coverings such as carpet and repairs to floor when carpet is removed.
Windows/Glass	All glass in windows and doors installed by City.	All glass in partitions, displays, etc. All tinting film on windows.
Doors, Walls, Ceilings, Roof and Metal Shades	All permanent items installed by City	Any additions or modifications to existing equipment, structures or systems, displays and temporary installations, window coverings (film, shades, drapes).
Custodial	None.	All, including providing paper products, soaps, light bulbs and tubes. Cleaning adjacent to structure.
Vandalism	All exterior, including window and courtyard.	Interior vandalism repair.
Paint	All exterior painting, including the exterior walls of the inner courtyard.	All interior painting of permanent and other walls which are part of displays.

Passed and adopted by the Council of The City of San Diego on
JUN 29 1987 by the following vote:

YEAS: Wolfsheimer, Cleator, McColl, Jones, Struiksma, Gotch,
McCarty, Ballesteros, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Deigo, California

By JUNE A. BLACKNELL
Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 268699 passed and
adopted by the Council of The City of San Deigo, California, on
JUN 29 1987

CHARLES G. ABDELNOUR
City Clerk of The City of San Deigo, California

(SEAL)

By June A. Blacknell
Deputy

(R-87-2378)

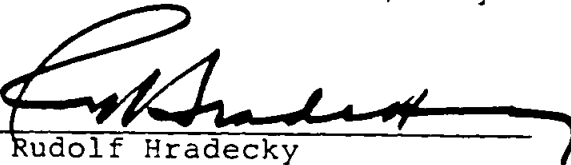
RESOLUTION NUMBER R- 268699

ADOPTED ON JUN 29 1987

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a lease agreement with San Diego Museum of Man, for providing a public museum of Anthropology and Archaeology, under the terms and conditions set forth in the Lease Agreement on file in the office of the City Clerk as Document No. RR- 268699 .

APPROVED: John W. Witt, City Attorney

By



Rudolf Hradecky
Deputy City Attorney

RH:mrh
05/13/87
Or.Dept:Pk.&Rec.
R-87-2378
Form=r.auagr



U. S. TREASURY DEPARTMENT

WASHINGTON 25

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON 25, D. C.

AND REFER TO

T:R:EO:1

SM

San Diego Museum Association
Balboa Park
San Diego, California

OCT 24 1955

Gentlemen:

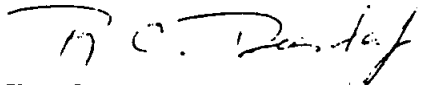
We have received a copy of your revised By-Laws which were adopted at your board meeting on May 10, 1955.

In a ruling dated January 14, 1952 it was held that you are exempt from Federal income tax under section 101(6) of the Internal Revenue Code of 1939 (which corresponds to section 501(c)(3) of the Code of 1954).

Inasmuch as the revised by-laws show no change in the character of your organization, the purposes for which you were formed or your method of operation inconsistent with the provisions of section 501(c)(3) of the 1954 Code our ruling of January 14, 1952 remains in effect.

The District Director of Internal Revenue, San Diego, is being advised of this action.

Very truly yours,


Acting Chief, Exempt Organizations Branch

\$6,000,000

**Variable Rate Demand Certificates of Participation
Evidencing Proportionate Interests of the Holders
Thereof in Installment Payments to be Paid by the
County of San Diego
From Purchase Payments to be Received From
the San Diego Museum of Art**

**CITY MANAGER CONSENT TO LEASE ASSIGNMENT
IN CONNECTION WITH PROPOSED FINANCING**

The undersigned is delivering this Certificate in connection with the participation of the San Diego Museum of Art (the "Museum") in the issuance of the above captioned Variable Rate Demand Certificates of Participation ("Certificates") evidencing proportionate interests of the holders thereof in installment payments to be paid by the County of San Diego (the "County"). The Certificates will be sold to Bank of America Securities, LLC (the "Underwriter") pursuant to that certain Certificate Purchase Agreement (the "Certificate Purchase Agreement") dated March 29, 2000 by and among the Museum, the County, and Underwriter. The proceeds of sale of the Certificates will be used by the Museum to undertake the construction, renovation, remodeling and/or equipping of improvements to certain portions of the City's property in Balboa Park (the "Leasehold Estate") which are leased to the Museum pursuant to that certain San Diego Museum of Art Lease Agreement dated February 12, 1990 (the "Lease"), and filed on that same date with the City Clerk as Document No. RR-2750126. In order to facilitate the issuance and sale of the Certificates by the County, the Museum desires to sell its Leasehold Estate to the County, and immediately purchase the Leasehold Estate back from the County.

Section 4.02 of the Lease prohibits assignment of the Lease or any interest therein without the prior written consent of the City Manager. The City Manager hereby consents to the Museum's sale of its Leasehold Estate to the County with simultaneous sell-back by the County to the Museum, all in connection with the issuance and sale of the Certificates. The Certificate financing transaction between the Museum and the County does not require any additional, separate approval by the City.

Further, we hereby confirm that there is no breach or default, nor state of facts or conditions which, with notice, the passage of time, or both, would result in a breach or default on the part of either of the City or the Museum under the Lease. To the best of our knowledge, there is no claim, controversy, dispute, quarrel or disagreement existing between the City and Museum with respect to the Lease. The City has no claim of any nature against the Museum with respect to the Lease or the Museum's possession and use of the Leasehold Estate. The Lease is in full force and effect in accordance with its terms and is a binding obligation of the City.

In relying upon this consent, the Museum represents that (1) the City shall have no obligation whatsoever, contingent or otherwise, for any monetary obligation or other dispute arising from the financing transaction, (2) that the Museum shall defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims arising from the financing transaction, and (3) the Museum shall name the City as an additional insured on any insurance policy that is required to be obtained pursuant to the financing transaction.

Very truly yours,

Michael T. Uberuaga
City Manager