



PERMISSION DEPT
15 SEP 2001

01 SEP -7 AM 11:45
THE CITY OF SAN DIEGO

August 21, 2001

John Petersen, Executive Director
Timken Museum of Art
1500 El Prado, Balboa Park
San Diego, CA 92101

Attention: John Petersen

Re: Right of Entry Permit - Timken Museum of Art, Balboa Park
Construct new disabled ramp, landscape planters, repair roof and
upgrade interior bathrooms

The City of San Diego ("City") hereby grants permission to the Timken Museum of Art or its agent ("Permittee") to enter upon the above-referenced City-owned property, as delineated on the attached Exhibit "A," Construction Staging Area, herein after called the "Permit Area", to construct a new disabled ramp, landscape planters, repair the roof and upgrade the interior bathrooms as described in Exhibit "B" Improvement Plans, hereinafter referred to as "Project", upon the following terms and conditions:
and except as otherwise provided in this permit.

1. Permittee's use of the Permit Area shall be limited to the construction staging area delineated on the attached Exhibit "A". This permit is granted with the understanding and condition that Permittee's use of the Permit Area shall not interfere, in any way, with pre-existing users located in or around the Permit Area.
2. This permit shall be in effect upon execution hereof by City and Permittee and shall expire on January 1, 2002.
3. Permittee certifies that a policy of public liability and property damage insurance, in which "The City of San Diego" is named as an additional insured, has been secured in an amount of not less than \$1 million combined single limit liability with an occurrence claims form and that said policy shall be kept in force for the duration of this permit. A certificate of said insurance shall be filed with the City Park and Recreation Department upon execution of this permit.
4. Permittee agrees to defend, indemnify, protect, and hold the City, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Permittee's employees, guests, agents, or officers, which



Northern Parks Division

Park and Recreation • Community and Neighborhood Services • Balboa Park • San Diego, CA 92101

Tel (619) 525-8222 Fax (619) 525-8224

Mailing Address: 202 C Street, MS 35 • San Diego, CA 92101-3860

at the Timken Museum of Art,

cc
JP

arise out of or are in any manner directly or indirectly connected with the development or operation of the Permit Area or the work and operations to be performed ~~under this agreement~~, and all expenses of investigating and defending against same; provided, however, that Permittee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the City, its agents, officers, or employees.

5. Permittee agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Permittee's use of the Permit Area, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
6. All risks in connection with Permittee's use of the Permit Area and any damages to the improvements thereon, thereunder, or in the vicinity thereof shall be borne in full by Permittee.
7. Permittee shall not use the Permit Area in any manner which, in the opinion of the City Manager, creates a nuisance or disturbs the quiet enjoyment of persons in the surrounding area.
8. This permit is revocable at any time by the City. It is mutually agreed that the City shall not be obligated for any loss, financial or otherwise, which may be incurred by Permittee as a result of termination of this permit, and, further, that Permittee expressly waives any claim for expense or loss which Permittee might incur as a result of termination of this permit.
9. Permittee shall at its sole cost and expense comply with all the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Area.
10. Permittee shall not assign any rights granted by this permit nor any interest therein without the prior written approval of the City Manager. Approval of any such proposed assignment may be withheld in the sole and absolute discretion of the City Manager. Any assignment by operation of law shall automatically terminate this permit.
11. No signs, including commercial advertising related to sponsorship, shall be displayed on the Permit Area without prior written consent of the City Manager or his designee.

12. Maintenance of the Permit Area shall be the sole responsibility of Permittee during the entire term of this permit.
13. Clean up of the Permit Area including parking lots, sidewalks and adjoining park land shall be sole responsibility of Permittee during the entire term of this permit. All areas to be cleaned and free of debris by 5:00 p.m. each and every day this permit is in effect.
15. Landscape Requirements and Protection:
 - A. Prior to commencement of work, the contractor shall photograph existing conditions of trees and surrounding landscape which could be mis construed as damage resulting from work. File these photographs with the Project Manager prior to commencement of work.
 - B. A tree preservation zone shall be established around the drip lines of trees/palms and tree/palm groves. The tree preservation zone shall be protected by construction fencing. Permittee shall prohibit traffic from crossing over root zones of trees/palms within tree/palm preservation zones. Permittee will not store any material or allow any traffic parking, at any time with tree/palm preservation zones other than for monitoring or maintaining the tree/palm itself.
 - C. When excavation near a tree/palm that is to be preserved must be done, damage shall be limited by proper root pruning techniques. The root pruning shall be completed before the installation of improvements, structures and grading are started.
 - D. Underground utility locations shall be located out of root zones. In cases where utilities must cross root zones, tunnels shall be utilized in lieu of trenches.
 - E. Existing landscape within the Permit Area shall be maintained by the contractor for the duration of the construction project. The plants must be irrigated on a regular basis. In some cases, berms may be built around tree/palm root zones to allow for deep penetration of water. The area shall be maintained weed and litter free and in a manner consistent with the Balboa Park maintenance standards.
 - F. No trees/palms will be pruned without approval of the Balboa Park Horticulturist or City Arborist. Any removal of plant material prior to construction must be approved in advance by the Balboa Park Horticulturist. All restoration landscape material must be approved by the

City Project Manager and the Balboa Park Horticulturist.

- G. Damaged landscape plants, turf, tree/palm and irrigation shall be repaired and replaced by contractor at the end of the project, but prior to acceptance of the project. Plants and trees/palms damaged beyond repair, shall be replaced with the same species and of the similar size and value at the contractor's expense. Replaced turf shall be installed as sod and not seed or sprigs.
- 16. At the completion of construction, Permittee shall be responsible for returning the Permit Area to its original condition subject to the satisfaction of the City Project Manager.
- 17. Permittee shall call a Preconstruction meeting with the City Project Manager to discuss all logistics, time lines, access, circulation and staging areas prior to a construction start. Permittee shall also call a Pre-maintenance walkthrough at 90% completion of the project and complete the punch list developed at that meeting. Permittee shall call a final project walkthrough at 100% project completion to begin the 90-day plant maintenance period.
- 18. Permittee shall provide a list of all contractors and subcontractors to City Project Manager including name, address, phone, email, fax and pager number.
- 19. Permittee shall designate an individual to serve as primary contact and liaison during construction.
- 20. Permittee shall contact "Dig Alert" at 1-800-422-4133 to determine location of all underground utilities prior to digging into the Permit Area. To locate park lights and irrigation, Permittee shall call Irrigation Manager, Nick Alesi at (619) 235-1179. To locate park electrical lines, Permittee shall call Park Electrician, Don Spangler at 232-2237, pager ID. 7421. To locate other street light wire locations, Permittee shall call 527-8051.
- 21. All construction work within the Permittee Area must be done by licensed contractors within the State of California.
- 22. One set of red line as-builts shall be provided to the City Project Manager at the Pre-maintenance walkthrough for approval. When the redline set is approved, then the Permittee shall transfer the information onto the mylar set and submit the revised mylar and three (3) complete sets of as-builts to the City Project Manager at the time of final acceptance.

23. Permittee shall be responsible for providing security for the Permit Area during the permit.
24. Construction is limited to Monday through Friday (No Weekends) 6:00 a.m. to 4:00 p.m. No work is to be performed on City Holidays as well. Exceptions to this item, including night time work, must be submitted in writing at least one week prior to a requested work date. The City will supply a schedule of special events and activities scheduled during the construction period to the Permittee.
25. Grading and compaction operations shall be done in such a manner that the existing surface drainage pattern will not be disrupted, and the final grades will not interfere with the existing flow pattern.
26. Irrigation of the Permit Area shall be the sole responsibility of Permittee during the entire term of this permit.
27. Due to the weight and height limit on the Cabrillo Bridge, all truck deliveries and equipment must be routed to the project site from Park Boulevard.
28. Any construction activities that will impact the animals at the Zoo, such as loud noises or night time activity, the Permittee will be responsible for contacting the Zoo Operations Department or the Zoo Security Department (after hours 557-3900) 36 hours in advance to notify them of these activities.
29. Any construction activities, such as concrete pours or crane operations, that might impact the other park institutions, the Permittee will be responsible for contacting the adjacent institutions 36 hours in advance to notify them of these activities.
30. The City shall remove and replace the existing park benches in the Permit Area. The Permittee shall be responsible for the existing park light standards in the Permit Area. The lights shall be protected with fencing or materials to prevent damage to the historic lights. Any damaged to the lights will be repaired by the Permittee.
31. The Permittee may close off the existing disabled parking in the Plaza de Panama lot for access to the Permit Area. The Permittee will then need to provide new disabled parking that is removed in the adjacent parking areas by using blue tape, paint and signage. The Permittee will be responsible for returning the parking lot to the pre-existing conditions when the project is complete. All curbs, concrete and asphalt that are damaged must be repaired by the Permittee at completion of the project.

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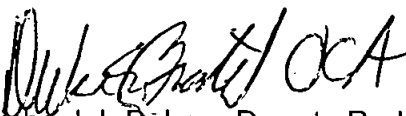
32. The Permittee must create and maintain a safe pedestrian zone around the Permit Area. If necessary the Permittee will provide pedestrian and vehicular traffic safety flag men or traffic controllers during certain operations such as deliveries and concrete pours.
33. The Permittee shall comply with the Clean Water Act and prevent construction debris from entering into the existing storm drain systems. The construction project shall 1) use dry clean-up methods for spills and outdoor cleaning, 2) vacuum, sweep and use rags or dry absorbents, 3) properly label, store and dispose of hazardous wastes, 4) rake, sweep dust, litter and sediment and properly dispose in construction trash receptacles, 5) use mops when water is needed to clean, and 6) locate the nearest storm drains and take measures to ensure that construction debris will not enter or be discharge into them.
34. This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing facilities).

Please acknowledge your agreement to the foregoing terms and conditions on the enclosed copy of this letter and return it to the City Park and Recreation Department, together with your insurance certificate at your earliest convenience. Mail to the attention of Robin Shifflet, at:

City of San Diego
Park and Recreation Department
Northern Parks Division
202 'C' Street, MS# 35
San Diego, CA 92101

If you should require additional information or have any questions, please call Robin Shifflet, City Project Manager, at (619) 525-8231.

Sincerely,


Michael J. Behan, Deputy Park and Recreation Director

RS/rs

Attachments: Exhibit "A" Construction Staging Area
Exhibit "B" Proposed Project

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THE ABOVE IS ACKNOWLEDGED AND ACCEPTED THIS 24 DAY OF August, 2001.

Date 8/24/01

Timken Museum of Art

By [Signature]

Printed Name John Petersen

Title Executive Director

Date 8-28-01

PARK AND RECREATION DEPARTMENT

By [Signature]

Joan Williams
Acting Park & Rec Dir

APPROVED as to form and legality this 30th day of August, 2001.

CASEY GWINN, City Attorney

By [Signature]

[Signature]
Deputy City Attorney

BOA PARK

DIEGO The "Construction staging area" is located inside the boundaries of the fence indicated.

PROPOSED LOCATION OF TEMPORARY CONSTRUCTION FENCE

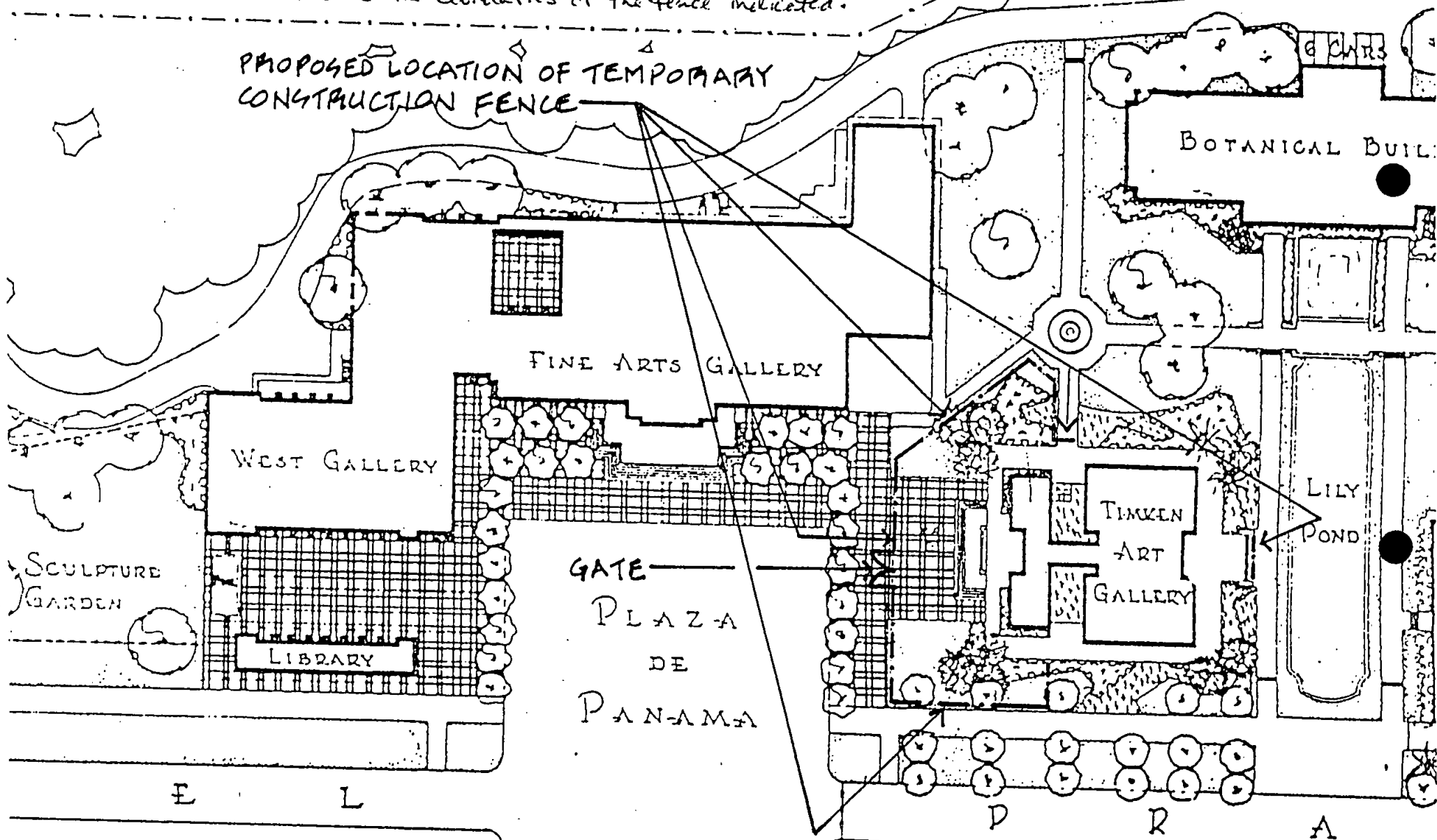


EXHIBIT 'A'

ARCHITECTS MOSHER/DREW/WATSON/FERGUSON 8.2.01

THIS AGREEMENT made this 31 day of July,
1962 at San Diego, California by and between the City of
San Diego, a Municipal corporation, hereinafter called the
"CITY", and The Putnam Foundation, a non-profit California
corporation, hereinafter called the "FOUNDATION";

W I T N E S S E T H:

It is the desire of the City Council to improve the
recreational, cultural and educational facilities in Balboa
Park and to encourage the development and public use of said
park. The FOUNDATION owns valuable works of art now on ex-
hibition in important public galleries in other cities, and
upon the conditions and agreements herein contained is willing
to construct and has the means to construct an art gallery in
Balboa Park and bring its works of art to San Diego and place
them on exhibition in such gallery. The parties believe that
this will enhance the cultural facilities of the park, that it
is a proper use thereof, and will be for the best interests of
the CITY and its people;

NOW, THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. The CITY will make available for the use of the
FOUNDATION a site in that portion of Balboa Park immediately
east and south of the existing Fine Arts building and bounded
on the south by El Prado and on the east by the lily pond; it
hereby grants to the FOUNDATION the right to construct or
cause to be constructed thereon an art gallery substantially
in accordance with the plans and drawings prepared by the
FOUNDATION'S architects on file in the office of the City
Clerk as Document Number 632906. Said plans contain a
plat showing the exact location of the building. Hereinafter
in this agreement, the building which the FOUNDATION may build
will be referred to as the "art gallery".

2. In order to make the aforesaid site available for such use, the CITY at its own expense will cause the demolition and removal of the existing building and such other structures, trees and shrubbery as will interfere with the construction, maintenance, care and use of the art gallery. It is agreed that all eucalyptus trees which are so situated that leaves, branches and bark therefrom will with regularity fall upon the art gallery will be removed. The CITY will commence such demolition within forty-five (45) days after receiving written notice from the FOUNDATION that it is ready to proceed with the erection of the art gallery provided that simultaneously with the delivery of such notice the FOUNDATION deposits with the CITY the sum of Twenty-five Thousand Dollars (\$25,000) in cash or the equivalent thereof in securities satisfactory to the City Manager to be held by the CITY subject to the conditions hereinafter provided.

As a part of the CITY'S undertaking to make the site available for the construction and use of the art gallery, it will at its own expense bring the sewer and all the necessary public utilities to that location.

3. If the erection of the art gallery is not commenced within a period of six (6) months after the completion of the demolition work to be performed by the CITY as provided in the preceding paragraph, and if the art gallery is not completed within a period of thirty (30) months after the construction thereof is started, and the delay in starting or completion is not caused by strikes, lock-outs, unavailability of material, fire, war, or other causes entirely beyond the control of the FOUNDATION, the CITY may by written notice to the FOUNDATION terminate all rights given and granted to the FOUNDATION by this agreement and may permanently retain and apply to its own

use said sum of Twenty-five Thousand Dollars (\$25,000) or the securities so deposited with it and any income therefrom. All rights and obligations of the FOUNDATION hereunder will also terminate if the FOUNDATION does not serve the notice and deposit the cash sum or securities provided by paragraph 2 hereof within one (1) year after the execution of this agreement. After the CITY has started to prepare the site for the erection of the art gallery, it shall continue such work to completion within a reasonable period subject only to delays caused by any of the contingencies applicable to the FOUNDATION in completing the art gallery.

4. The FOUNDATION will pay all costs of constructing the art gallery including architects' and engineers' fees. The CITY will not make any charge to the FOUNDATION for a building permit to erect the art gallery. When completed the art gallery will become the exclusive property of the CITY subject to the rights of occupancy and use by the FOUNDATION as hereinafter provided. After the art gallery has been completed and all construction costs, including architects' and engineers' fees, have been paid by the FOUNDATION, the CITY upon written demand will promptly return to the FOUNDATION the sum of Twenty-five Thousand Dollars (\$25,000) or the securities and income therefrom, if any, deposited with the CITY as contemplated by paragraph 2 hereof.

5. The FOUNDATION has represented to the CITY that the Timken Foundation of Canton, Ohio will furnish a substantial part of the funds to be used in the construction of the art gallery. Both parties are aware that the existing Fine Arts Building in Balboa Park was erected and presented to the CITY by members of the Timken family. It is, therefore, agreed and deemed appropriate that the new building will permanently

1 bear the name "Timken Gallery", "Timken Art Gallery", or some other such name embodying the word "Timken", and that such name may be inscribed on the interior or exterior of the building, or evidenced by a suitable plaque.

6. When and if the art gallery is constructed and completed, the CITY hereby grants to the FOUNDATION a permit for the exclusive use and occupancy thereof for a period of fifty (50) years from the date of such completion, which such use and occupancy will be subject to the following conditions:

(A) The building will be used only for a public art gallery for the display of works of art and such other incidental uses and purposes as are usually and customarily related to a public art gallery.

(B) If at any time during said fifty (50) years, for a period of six (6) consecutive months, the building is not so used and if such failure is not the result of extended remodeling, fire or other damage to the building rendering it unfit for use, or the result of war, invasion or rebellion, or serious threats thereof, then the CITY, after giving sixty (60) days' written notice to the FOUNDATION may terminate all rights granted by the CITY under this agreement provided the FOUNDATION does not put the art gallery to use as a gallery during such sixty (60) day period. The provisions of this sub-paragraph shall not apply to the initial opening of the art gallery following the completion of the building, it being agreed that the FOUNDATION may have a period of not to exceed nine (9) months in which to acquire, assemble and install the furniture, furnishings and works of art necessary for the first opening of the gallery.

(C) The art gallery shall be used only for lawful purposes, and the FOUNDATION shall see that its agents, employees, and others conform to all laws and ordinances and the lawful

orders of any and every public authority pertaining to the City of San Diego and to Balboa Park and its use. The FOUNDATION will not deny entrance to the gallery to persons because of race, color or creed. The FOUNDATION may in its sole judgment determine the days and hours on which the gallery shall be opened to the public and may exclude any person or persons whose appearance, conduct, public reputation or behavior in the opinion of the FOUNDATION constitutes a threat or hazard to the safety and protection of works of art, or to any persons who interfere with other persons' use and enjoyment of the gallery and the orderly operation thereof. This shall include the right to regulate and limit the number of persons who may have entrance to or occupy the art gallery at any given time.

7. The FOUNDATION, except as otherwise herein provided, agrees to maintain the interior of the art gallery so long as it is in the possession thereof subject to reasonable and ordinary wear and usage without cost to the CITY. It also agrees to pay all costs directly attributable to the operation of the gallery such as guards and security personnel, secretaries, guides and janitors; also all charges for telephone, gas, electricity and other public utilities. If any of these charges are at any time serviced by master meters which also service other institutions, buildings or activities in Balboa Park, or if they are acquired by the CITY at wholesale rates not available to the public, the FOUNDATION shall have the advantage thereof so that it will not be charged more than other park operations for like services.

The CITY will maintain the complete exterior of the art gallery including plate glass, roof, sidewalks and approaches thereto, also landscaping and planting adjacent thereto and any cultivated areas within the building. It is

recognized that the building and gallery as planned will be an attractive feature of the Park, and that the standards of maintenance and quality of the landscaping should be in keeping therewith. The CITY will maintain the plumbing, air-conditioning, heating, humidity control equipment and machinery, but if it does not have regularly employed personnel competent to perform any particular work, the necessary workmen will be employed by the FOUNDATION.] The FOUNDATION will not be obligated to pay to the CITY any rent, fee, license, tax or other charge of any kind for the occupancy and use of the building or the maintenance and operation of the art gallery therein.

8. The FOUNDATION assumes no obligation to use or occupy the art gallery for any particular period of time and may at any time after first giving ninety (90) days' written notice to the CITY, elect to discontinue the operation of the gallery, remove its property therefrom and vacate the building and surrender all rights thereunder. In that event, the rights of the CITY will be limited to those set forth in paragraph 6 hereof. The FOUNDATION does not intend to give, grant or convey any title, interest or right of ownership or possession in any paintings, works of art or other personal property which it may from time to time place in the art gallery. This shall apply equally to all works of art owned by others which are loaned or delivered to the FOUNDATION for use or display in the art gallery or are entrusted to it for safekeeping. It is expressly agreed that the FOUNDATION expects to retain such legal title to all objects placed in the art gallery, and no implied gift shall result from the fact that they remained therein for an extended period of years.

Early Termination

9. The FOUNDATION agrees to take out and maintain public liability insurance with an insurance carrier, incorporated or authorized to do business in California, to protect

Insurance

against loss for liability imposed by law for damages to property or on account of bodily injury, including death resulting therefrom, suffering or alleged to be suffered by any person or persons whatsoever, resulting directly or indirectly from any act or activities of the FOUNDATION or any person or persons acting for the FOUNDATION or under the FOUNDATION'S control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from acts or activities of the FOUNDATION or any person or persons acting for the FOUNDATION or under the FOUNDATION'S control or direction. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this agreement in the amounts of not less than One Hundred Thousand Dollars (\$100,000) for one person injured in one accident, and not less than Five Hundred Thousand Dollars (\$500,000) for more than one person injured in one accident, and not less than Ten Thousand Dollars (\$10,000) with respect to any property damage. If the FOUNDATION does not keep such insurance in full force and effect, the CITY may take out the necessary insurance and shall be reimbursed for the cost thereof by the FOUNDATION. Provisions of this paragraph as to the maintenance of insurance shall not be construed as limiting in any way the extent to which the FOUNDATION may be held responsible for the payment of damages to persons or property resulting from its activities or the activities of any person or persons for which it is otherwise responsible.

During the term of this agreement, the FOUNDATION agrees to defend in the name of, and on behalf of, the CITY, all claims or suits for damages and all fixed costs and interest on all such legal proceedings and pay all sums which the

CITY may become liable to pay as damages imposed upon it by law arising out of accidental bodily injury or death suffered, or alleged to have been suffered, by any person while within or upon the premises which are the subject of this agreement.

The obligations imposed upon the FOUNDATION by this paragraph are subject to the following conditions:

(A) This agreement shall not apply to any injury or death caused by any employee of the CITY;

(B) The CITY shall not voluntarily assume any liability or incur any expenses or settle any claims without the prior written consent of the FOUNDATION;

(C) The FOUNDATION shall, on or before the commencement of construction of the art gallery, deliver to the Property Department of the CITY a certificate of bodily injury and property damage liability insurance issued by a company licensed in the State of California to transact such business, indicating that the FOUNDATION has bodily injury and property damage liability insurance as required in this paragraph, and indicating that the policy has been endorsed and does otherwise cover the contractual liability imposed by this agreement, and that the insurance company shall notify the Property Department if said policy be terminated or limited in any manner prior to the termination date specified in the certificate.

10. The FOUNDATION may, at its own expense, make any alteration or changes in the building or cause to be made, built or installed there, structures, signs, fixtures, equipment or other improvements necessary or desirable for the FOUNDATION'S use of said building and may alter and repair any such structures, or other improvements; provided, however, that such alterations and changes shall not be made and such structures and other improvements shall not be built and installed

and major repairs thereto shall not be made as will affect the exterior design and architecture except in accordance with plans and specifications previously submitted to the City Manager and approved, in writing, by him. The FOUNDATION will at all times save the CITY free and harmless and indemnify it against all claims for labor or materials furnished for or in connection with any and all work, change or improvements in or upon the building pursuant to this section.

IN WITNESS WHEREOF, this agreement is executed by THE CITY OF SAN DIEGO, acting by and through its City Manager, pursuant to Resolution No. 171884 of its City Council, and by THE PUTNAM FOUNDATION by its officers specifically authorized to do so by Resolution of its governing board.

THE CITY OF SAN DIEGO

By

E. A. Bow
City Manager

Assistant

THE PUTNAM FOUNDATION, a non-profit corporation

By

Walter Jones
President

By

A. J. Little
Secretary-Treasurer

I HEREBY APPROVE the form and legality of the within agreement this 31 day of July, 1962.

ALAN M. FIRESTONE, City Attorney

By

Alan M. Firestone

RESOLUTION No. 171884

JUL 24 1962

ADOPTED ON

BE IT RESOLVED by the Council of The City of San Diego as follows:

That the City Manager do, and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with The Putnam Foundation, covering the use by Foundation of a site in a portion of Balboa Park for construction of an art gallery, under the terms and conditions set forth in the form of agreement on file in the office of the City Clerk as Document No. 642925.

Presented by

APPROVED: ALAN M. FIRESTONE, CITY ATTORNEY

By

City Attorney

AMP:jv:7/11/62