



**CITY OF SAN DIEGO
LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION**

AND

THE PUTNAM FOUNDATION, INC.
A CALIFORNIA NONPROFIT 501(c)(3) PUBLIC BENEFIT CORPORATION

DOCUMENT NO. **RR-312497**
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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO
NONPROFIT PUBLIC BENEFIT LEASE

[1500 El Prado, Balboa Park, San Diego, CA 92101]

THIS LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation, as lessor ("CITY"), and THE PUTNAM FOUNDATION dba TIMKEN MUSEUM OF ART, a California nonprofit 501(c)(3) public benefit corporation, as lessee ("LESSEE"), to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

R E C I T A L S

- A. CITY is the owner of that certain real property located at: 1500 El Prado, San Diego, California, and commonly known as the Timken Museum of Art building in Balboa Park ("Premises"), as shown in **Exhibit "A"**, **Exhibit "B"**, and **Exhibit "C"** Premises, attached to this Lease and by this reference made part of this Lease.
- B. On July 31, 1962, the City leased the Premises to the LESSEE, by that certain lease agreement filed in the Office of the San Diego City Clerk as Document No. RR-171884 on July 24, 1962, which expired on October 16, 2015 ("Original Lease"). LESSEE has been a holdover tenant under the Original Lease since its expiration.
- C. CITY desires to lease the Premises to LESSEE to operate and maintain the Premises, as more specifically set forth in this Lease.

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

I. USES

- 1. Premises. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY.
 - a. Premises Modification. To accommodate a planned ADA-required alteration to the current location of the sidewalk northwest of the Timken Museum of Art building, connecting the Plaza de Panama area with the Botanical Building area, CITY and LESSEE agree to, if necessary, amend this Lease to reflect any alteration to the Premises area, which may be accomplished without additional CITY Council approval. CITY shall not be liable to LESSEE for any diminution in overall Premises area due to this alternation and shall not be responsible for any lost revenue due to the construction of said sidewalk alteration. LESSEE agrees to such ADA-required relocation of the northwest boundary of the Premises, provided such relocation does not create a substantial adverse impact on LESSEE's ability to perform or conduct the Allowed Uses described in this Lease.
- 2. Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean

management practices generally considered acceptable for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

3. Allowed Uses. It is expressly agreed that the Premises is leased to LESSEE solely and exclusively for the operation and maintenance of an art museum ("Museum"), and those incidental uses related to operating the Museum, as may be approved in writing by CITY. In addition, subject to this section I (3), LESSEE is allowed to operate a gift shop and coffee cart on the Premises. Operation of the Museum, the gift shop and the coffee cart shall be referred to collectively as the "Allowed Uses." Additionally, LESSEE may showcase sculptures outside the Museum building, but within the Premises with prior written approval of the CITY, in each instance, which shall not be unreasonably withheld. LESSEE shall not utilize the Premises for any purpose other than the Allowed Uses without first obtaining CITY's prior written consent. LESSEE shall not exclude the general public or interfere with the public's right to the use and enjoyment of the Premises; provided, however, that reasonable restrictions and regulations may be made in order to carry on the Allowed Uses in an orderly and proper manner.
 - a. Gift Shop. As part of the Allowed Uses LESSEE may operate a gift shop ("Gift Shop") on the Premises and sell to the general public non-alcoholic beverages, Museum related gifts, light refreshments, and packaged food items. The items for sale in the gift shop shall include articles primarily related to subjects on display or activities conducted in the Museum, including, but not limited to books, periodicals and related artifacts.
 - b. Coffee/Snack Cart. Upon CITY's prior written approval, LESSEE is also authorized under the Allowed Uses to operate a coffee/snack cart ("Coffee/Snack Cart") outside the Museum building, but within the Premises, and sell to the general public non-alcoholic beverages, light refreshments, and packaged food items. Lessee may place tables and chairs close to the Coffee/Snack Cart. The operation of the Coffee/Snack Cart shall be considered an accessory use. No signs, displays or advertising related to this accessory use shall be visible from any area outside the Premises without prior written approval of the CITY. Such approval shall not be unreasonably withheld. Should LESSEE request to be the direct operator of the Coffee/Snack Cart then LESSEE shall pay monthly to CITY a sum of money equal to ten percent (10%) of the gross revenue from all income earned by LESSEE's operation of the Coffee/Snack Cart. CITY will use its best efforts to use the income received from LESSEE for the benefit of Balboa Park, as determined by CITY in its sole discretion.
4. CITY Use. Provided CITY provides LESSEE with thirty (30) days written notice and subject to LESSEE's standard terms and conditions for third-party use of the Premises, the Premises shall be available to CITY for civic events and special programs, free of charge, except when LESSEE has scheduled events or programs. After every CITY use,

the Premises shall be left in the same condition found, and LESSEE shall not be required to incur any additional costs by reason of CITY use.

5. Public Use. The general public shall not be wholly or permanently excluded from any portion of the Premises. Lessee may develop reasonable restrictions for use of the Premises provided they are consistent with the rights of the general public and are designed to allow Lessee to use the Premises for the purposes specified herein. Lessee agrees that all activities conducted on the Premises will be as stated in section I (3) Allowed Uses, hereof.
6. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan, or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.
7. CITY's Consent, Discretion. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided herein. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein.
8. City Council Action Required. LESSEE acknowledges that this Lease is expressly conditioned on the San Diego City Council's (the "City Council") prior authorization to enter into and execute this Lease ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's modification of the final terms and conditions of this Lease, or the City Council's failure to grant the Council Authorization.
9. Quiet Enjoyment. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the Term peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE at commencement of the Term, or if LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable, nor shall CITY be liable to LESSEE for any loss or resulting damages.
10. Signs. Signage that has been approved by CITY prior to the Effective Date and currently installed on the Premises may remain in place. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost.

11. Reservation of Rights.

- a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY.
- c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of maintenance and repairs to the Premises as provided in this Lease.

II. **TERM**

1. Term. The term of this Lease ("Term") shall be twenty (20) years, commencing on the first day of the calendar month following the execution of this Lease by the Mayor, or his designee, and approval by the City Attorney.
2. Option Term. LESSEE has the option to extend the Term for two (2) periods of five (5) years ("Option Term(s)") each effective immediately following expiration of the then-current term. Each option may be exercised, if at all, by LESSEE giving written unconditional notice of exercise of the option to CITY at least six (6) months, but no more than one (1) year, prior to expiration of the then-current term. All terms and conditions of this Lease applicable to the regular term shall apply to the option terms. Any Option Term(s) exercised by the LESSEE will include an amendment to the Lease, without need for further City Council approval, to add only any then current City lease requirements.
3. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that LESSEE shall then pay to CITY the then current market rent for the Premises as determined by qualified staff of CITY's Real Estate Assets Department, in its sole discretion; however, in no event shall the rent be reduced below the rent in effect at the expiration or earlier termination of this Lease.
4. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, but in no event later than thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed

conclusive evidence of the termination of this Lease and of all of LESSEE's rights in and to the Premises.

III. CONSIDERATION

1. Rent. LESSEE shall pay to CITY rent in the amount of Three Thousand Five Hundred Ninety-Seven Dollars and Fifty Cents (\$3,597.50) per year, paid annually in advance. LESSEE shall pay the rent for the first year of the Term within thirty (30) days of the Effective Date, and thereafter on or before each anniversary of the Effective Date. The rent shall be adjusted annually as provided below.
 - a. CPI Adjustments. On each anniversary of the Effective Date, the rent shall be adjusted, upward only, to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/ Riverside/Orange County, California (the "CPI") based on the average of the three then-most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.
 - i. If a rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
 - ii. If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.
 - iii. In no event shall any adjusted rent be less than the rent in existence immediately prior to the adjustment date. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.
 - b. CPI Adjustment Computation. The rent for each adjustment period shall be calculated as follows:
 - i. The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below.
 - ii. The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.
 - iii. The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

- iv. The “base figure” for purposes of calculating the annual adjustment shall be a fixed amount of two thousand five hundred dollars (\$2,500).

Example Calculation

Current Index (Third Quarter 2017)	256.884
	÷
Base Index (Third Quarter 2001)	178.5=
Adjustment Multiplier	1.439

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

\$2,500.00	(Base Figure)
X 1.439	(Adjustment Multiplier)
\$3,597.50	(Adjusted Rent)

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

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

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

or hand delivered to:

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

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment

is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt. LESSEE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- e. Invoicing Courtesy. CITY may invoice LESSEE for amounts due under this Lease. However, any such invoicing shall be deemed a courtesy only; LESSEE shall make all payments under this Lease on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount due under this Lease.
2. Sublease Income. In addition to any rent and fees set forth above, LESSEE shall pay monthly to CITY a sum of money equal to fifty percent (50%) of the gross revenue from all sublease income earned by LESSEE from subleases approved by CITY, or part thereof, consented to by CITY, regardless of actual receipt by LESSEE and excluding any Common Area Maintenance (CAM) charges charged by LESSEE. CITY will use its best efforts to use sublease income received from LESSEE for the benefit of Balboa Park, as determined by CITY in its sole discretion.
3. Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed under this Lease, and from any use or unauthorized sublease which has not received prior written consent, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be treated as "rent" under this Lease, but shall not satisfy or supplant any rent otherwise due. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question and shall not waive any of CITY's rights under this Lease.
4. Use of Proceeds. LESSEE agrees that all income and proceeds received by LESSEE from the operation of the Premises, including the Gift shop and Coffee/Snack Cart, shall be utilized for purposes of the continued operation, maintenance and improvement of the Premises and for purposes incidental thereto. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.
5. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after its fiscal year end. The financial report shall include an operating statement and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, which covers the period between the last annual report and the expiration or termination date of this Lease.
6. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied,

including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years, including after termination or expiration of this Lease.

7. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice at the Premises or other suitable location mutually agreed upon by the parties. LESSEE shall maintain all records and accounts for a minimum period of five (5) years, including after termination or expiration of this Lease. CITY may, at any time and without need for cause, conduct an audit of LESSEE's books, statements, documents, records, and financial data. CITY may also demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.
8. Proposed Budget. On July 1st of each year during the Term, LESSEE shall deliver to CITY one (1) copy of documents evidencing LESSEE's proposed programs, business plan, and fiscal status of LESSEE for the next year. Without limiting the generality of the foregoing, these documents shall include (i) a copy of LESSEE's proposed programs; (ii) a copy of a detailed operating budget showing expected sources of revenue and the nature of all proposed expenditures, including compensation for the director and each staff member of LESSEE; and (iii) an adequate reserve account for maintenance of the Premises in an amount comparable to other charitable non-profit organizations with similar maintenance requirements for facilities of a similar size and nature. Such documents shall be in form and content reasonably satisfactory to CITY.

IV. IMPROVEMENTS, MAINTENANCE, ALTERATIONS, AND REPAIRS

1. Ownership of Property. At all times during the Term, the Premises, including any permanent improvements thereto, shall be the absolute property of CITY. Title to any equipment loaned or furnish by CITY shall be retained by CITY and title to all other personal property owned by LESSEE shall be retained by LESSEE.
 - a. Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

- b. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove personal property as required by this Lease, whether removal is done by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by the Real Estate Assets Department, in its sole discretion.
 - c. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
2. Maintenance. Maintenance of the Premises is the joint responsibility of LESSEE and CITY as set forth in **Exhibit "D"**. All repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition shall be performed in an expeditious manner as needed, and in compliance with all applicable laws. With regard to CITY's obligations for maintenance, the Mayor shall propose in the CITY's annual budget that funds be made available for anticipated repairs and maintenance responsibilities. However, failure by the Mayor to propose adequate funds or failure by the City Council to approve a budget with funds adequate to perform such maintenance and repair responsibilities shall not constitute a default under this Lease, and CITY shall not be responsible for any damage or liability which may result or be alleged to result from failure to provide such adequate funds. When CITY is informed of maintenance or repair requirements by LESSEE, the Mayor shall use good faith efforts to request, if necessary, that the City Council authorize the expenditure of funds to perform such maintenance or repairs. Failure by CITY to provide funding in any particular fiscal year, or at the request of the Mayor, shall not result in any liability for alleged or actual damages on the part of CITY.
3. Entry and Inspection. CITY reserves and shall always have the right, but not the obligation, to enter said 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. If entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition and requires maintenance in accordance with Lessee's responsibilities contained with **Exhibit "D"**, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the sole expense of LESSEE, and LESSEE shall pay within thirty (30) days any and all costs incurred by CITY in having necessary maintenance work done in order to keep the Premises in a decent, safe, healthy, and sanitary condition. If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE

shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

4. Utilities. LESSEE shall order, obtain, and pay for electricity for, including service and installation charges, in connection with the operation of and activities on the Premises. CITY shall provide water and sewer utilities for the Premises.
5. Improvements/Alterations. LESSEE will not construct or install any improvements, structures, or installations on the Premises, or otherwise improve or alter the Premises without the CITY's prior written approval. All proposed improvements, structures, or installations must comply with all CITY design and material standards and be consistent with the historical designation, park character, and use of the Premises. Prior to undertaking any alterations or construction, LESSEE must, at its sole cost and expense, comply or secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to such alterations or construction in the Premises. Additionally, once completed, LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense or maintenance responsibilities for any of LESSEE's improvements or alterations to the Premises. Lessee shall be responsible for any damage to adjacent City property incurred as a result of Lessee performing any improvements or alterations to the Premises, and shall repair, or cause to be repaired any damaged City property. Prior to the commencement of any improvements or alterations on the Premises, Lessee shall be required to have City approve its contractor, and proposed construction contract and plans (including methods of ingress and egress over and through City property).

Notwithstanding the foregoing, with prior written approval by City, which shall not be unreasonably withheld, and subject to all requirements of Municipal, State and Federal authorities' statutory and regulatory requirements, LESSEE may, at its own cost and expense, during the Term make or cause to be made those certain alterations or improvements to the Premises known as the underground expansion beneath portions of the Premises, including without limitation, under the existing Museum building and extending into the plaza in front of the Museum building, including decorative pavement on the Museum Plaza, as described below ("Underground Expansion Project").

- a. Plaza de Panama Project. LESSEE acknowledges that CITY is planning physical improvements to the Plaza de Panama within Balboa Park ("Plaza de Panama Project") adjacent to the Premises. Lessee further acknowledges that the Plaza de Panama Project currently includes but is not limited to CITY's installation of new decorative concrete paving surfaces within the Premises in front of the museum building ("Museum Plaza").

When CITY proceeds with construction of the Plaza de Panama Project, LESSEE must allow CITY to proceed with all construction work (including all preconstruction

work) and must coordinate with CITY to facilitate completion of the Plaza de Panama Project. CITY agrees not to unreasonably interfere with LESSEE's use and occupancy of the Premises during construction of the Plaza de Panama Project and will provide LESSEE with notice prior to commencement of work. LESSEE shall not be entitled to any abatement of Rent for any portion of the Premises utilized during the Plaza de Panama Project. LESSEE agrees and acknowledges that under no circumstances will LESSEE be permitted to perform construction work, including but not limited to the any work in the Museum Plaza during CITY's work on the Plaza de Panama Project.

Should CITY approve, and LESSEE begin, construction of the Underground Expansion Project before CITY begins construction improvements in the Museum Plaza in connection with the Plaza de Panama Project then CITY and LESSEE agree that LESSEE, subject to CITY's prior written approval of the Underground Expansion, shall have the option to install new decorative concrete paving surfaces at the existing plaza in front of the Museum Plaza. In such event, CITY shall not install any decorative pavement or any other improvement on the Premises as part of the Plaza de Panama Project.

Should LESSEE proceed with the Underground Expansion Project after CITY completes the Plaza de Panama Project then LESSEE shall be responsible for all costs and expenses associated with repairing/replacing all work performed by City in the Museum Plaza, including replacement of the decorative concrete paving surfaces, as part of Underground Expansion Project. LESSEE's Museum Plaza decorative concrete paving surface may include light wells and may differ slightly from the Plaza de Panama Project, provided such different decorative concrete paving surface is approved by CITY and is consistent with Balboa Park Central Mesa Precise Plan requirement to complement the Plaza de Panama Project Prado paving.

6. Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed, and/or a payment bond pursuant to Civil Code section 9550. A performance bond may be a corporate surety bond or other security satisfactory to CITY. The performance bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. If required, a payment bond shall comply with the requirements of Civil Code section 9554. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
7. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes

improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises or any part thereof, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

8. Prevailing Wages. Prevailing wage rates apply to this Lease. LESSEE shall comply with State prevailing wage laws, including, but not limited to, those requirements set forth in attached **Exhibit E**.
9. Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.
10. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, embargoes, or other causes beyond the reasonable control of the party required to perform the act that party shall be excused from performing the act for a period equal to the period of the prevention or delays. Provided, however this provision shall not apply to obligations to pay rent as required by this Lease. In the event LESSEE or CITY claims the existence of such a delay, the party claiming a delay shall notify the other party in writing within ten (10) calendar days after the beginning of any claimed delay.
11. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substance or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any Hazardous Substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board, pertaining to Hazardous Substances. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a Hazardous Substance or hazardous waste.

- a. Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of Hazardous Substances.
- b. Hazardous Substance. Hazardous Substance shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- c. Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises (collectively, "LESSEE's operations") results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- d. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. Upon CITY's request, LESSEE shall deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- e. Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's Operations, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- f. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE

shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- g. Environmental Assessment. Upon reasonable cause to believe that LESSEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

V. ASSIGNMENTS, DEFAULTS AND REMEDIES

1. Assignment and Subletting.

- a. LESSEE shall not assign this Lease or any interest therein and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without CITY's prior written consent in each instance. A consent to assignment, subletting, occupation, or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without CITY's consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest in this Lease, be assignable as to the interest of LESSEE by operation of law, without the written consent of CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consents to assignments and subleases. Assignment for the purposes of this section shall include any transfer of any ownership interest in LESSEE by any partners, principals, or stockholders, as the case may be, from the original partners, principals, or stockholders of LESSEE. As a condition to such consent by CITY in each instance, CITY may require that the Lease be revised to comply with current standard CITY lease requirements.

- b. Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. Further, each sublessee shall agree that its sublease shall be subject and subordinate to each and every provision of this Lease. Pursuant to City Charter section 225, any prospective assignee or subtenant shall make full and complete disclosure of the name and identity of each and every person or entity directly or indirectly involved in this Lease, and the precise nature of all interests of all such persons. Each and every person or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.
2. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises, by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent.
3. Default and Remedies.
 - a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
 - i. LESSEE fails to make any payment required under this Lease when due and fails to cure the default within five (5) days following written notice thereof from CITY;
 - ii. LESSEE defaults in the performance of any covenant, term or condition required by this Lease, other than those requiring payment to CITY, to be performed by LESSEE and fails to cure the default within thirty (30) days following written notice thereof from CITY, or if any such default is not curable within thirty (30) days, fails to commence to cure the default(s) within thirty (30) days and diligently pursue the cure to completion;
 - iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated as bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.
 - b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

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

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

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:
 - i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE and to mortgagee or beneficiary;
 - ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of such early payoff of the related obligations. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

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

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
 - e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for any default shall not waive any other right or remedy for the same default, or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a default, or take prompt action to require the cure of any default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.
4. Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of

eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as follows:

- a. Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.
- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- c. Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- d. Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. However, LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE, if any. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- e. Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest LESSEE may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.
- f. No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

VI. INDEMNIFICATION AND INSURANCE

1. Indemnification and Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or LESSEE's occupancy, use, development,

maintenance, restoration, or improvement of the Premises or any areas outside the Premises used or occupied by LESSEE from time to time, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the sole negligence or willful misconduct of CITY and its elected officials, officers, employees, representatives, and agents. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the CITY elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the CITY for all costs related thereto, including, without limitation, attorneys' fees and costs.

2. Insurance. Prior to the Effective Date LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Lease.

- 2.1 Types of Insurance. At all times during the Term, LESSEE shall maintain insurance coverage as follows:

- 2.1.1 Commercial General Liability. Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

- 2.1.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.

2.1.3 Workers' Compensation. For all of LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

2.1.4 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or located at the Premises in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.

3. Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
4. Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
5. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
6. Required Endorsements. The following endorsements to the above policies of insurance are required:

6.1 Commercial General Liability Insurance Endorsements.

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

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

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

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

6.2 Automobile Liability Insurance Endorsements.

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

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

6.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

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

7. **Additional Insurance.** LESSEE may obtain additional insurance not required by this Lease.
8. **Excess Insurance.** All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
9. **Accident Reports.** LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a

statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

10. Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance at the Premises, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the proceeds from the insurance required by this Lease.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

VII. GENERAL PROVISIONS

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

If to LESSEE:

TIMKEN MUSEUM OF ART
Attention: Executive Director
1500 El Prado, Balboa Park
San Diego, California 92101

If to CITY:

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

Any party entitled or required to receive notice under this Lease may, by via notice, designate a different address to which notices shall be sent.

2. Compliance with Law. LESSEE shall at all times in the occupancy, use, operation, development, maintenance, restoration and improvement of the Premises comply with

all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation.

3. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act (CPRA). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
4. Equal Opportunity and Contracting. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the CITY, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
5. Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308 as amended from time to time, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
6. Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
 - a. LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE

shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

- b. Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
7. Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with California Government Code, sections 11135-11139.5; the Federal Rehabilitation Act of 1973, section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); Title 24 of the California Code of Regulations (i.e., the "Building Code"), and all other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. When a conflict exists between these laws, the most restrictive requirement must be followed by LESSEE. LESSEE's compliance shall include but not necessarily be limited to the following:
 - a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
 - d. Where required by law, any improvements made to the Premises by LESSEE shall comply with all applicable building codes and disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
 - i. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.
 - ii. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.
8. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CAsp). Further pursuant to California Civil Code section 1938(e), CITY is required to

state: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

9. Restriction on Plastic Food Containers. LESSEE shall not provide to its customers any prepared, takeout, or supplied/resale food in polystyrene foam packaging, nor shall LESSEE obtain or keep any such customer food packaging at or on the Premises. LESSEE's food packaging for all foods shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the Premises. No biodegradable or compostable packaging is to be used by LESSEE unless with the prior written approval of CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverage to be consumed off of the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to LESSEE for either preparing food or beverages on site or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE shall also limit its distribution of plastic bags to its customers.
10. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. LESSEE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance

programs; and

- iv. The penalties that may be imposed upon employees for drug abuse violations.
 - c. LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-lessees and contractors, shall be individually responsible for their own drug-free workplace program.
11. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
12. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
13. Water Quality Best Management Practices. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

14. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin,

ancestry, familial status, or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

15. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
16. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
17. Supercedure. As of the Effective Date, this Lease shall supersede and annul all prior leases, right of entry permits, or other agreements with respect to the Premises by and between CITY and LESSEE.
18. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
19. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
20. Entire Agreement and Understanding. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in the Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions.
21. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
22. Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its reasonable discretion.

23. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
24. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
25. Relocation Payments. LESSEE understands and agrees that it shall not be entitled to any relocation payments, "government project" related benefits, inverse condemnation damages, or any other compensation or award of damages whatsoever from CITY available in law or equity upon termination of this Lease or upon CITY's exercise of any right(s) stated in this Lease, unless expressly stated otherwise herein.
26. Related Governmental Actions and Approvals. By entering into this Lease, CITY is not obligating itself to LESSEE or to any other government agent, board, commission, or agency with regard to any other discretionary action relating to development or operation of the Premises. Discretionary action includes, but is not limited to, rezoning, variances, environmental clearances, or any other governmental agency approvals which may be required for the development and operation of the Premises. LESSEE shall be solely responsible for processing all land use, development, and construction approvals required for the use, development, or occupancy of the Premises. This Lease shall not be interpreted by any government decision-maker to override or dictate the outcome of any findings required for any permit or development approval.
27. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

[REMAINDER THIS PAGE LEFT BLANK INTENTIONALLY – SIGNATURE PAGE FOLLOWS]

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

THE PUTNAM FOUNDATION, a California
nonprofit 501(c)(3) public benefit corporation

BY: [Signature]

Name: Megan W. Pogue

Title: Executive Director

Date: February 25, 2019

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: [Signature]

Name: Cybele Thompson

Title: Director, Real Estate Assets

Date: 6/18/19

Approved as to form this 20th day
of June, 2019

[Signature]
MARA W. ELLIOTT, City Attorney

BY: [Signature]

Name: David Powell

Title: Deputy City Attorney

Exhibit A: Premises – Legal Description

Exhibit B: Premises – Lease Boundary Plat

Exhibit C: Premises – Lease Boundary Overlay

Exhibit D: Maintenance Responsibilities

Exhibit E: Prevailing Wage Requirements

EXHIBIT "A" - PREMISES

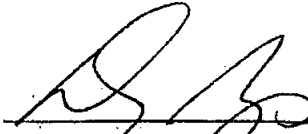
LEGAL DESCRIPTION

THAT PORTION OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MISCELLANEOUS MAP THEREOF NO. 36, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY NOVEMBER 14, 1921 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH BEARS SOUTH 9°38'02" WEST, 3296.12 FEET FROM A LEAD AND TAG IN CONCRETE SIDEWALK STAMPED "CITY SD ENG", BEING POINT 167 PER RECORD OF SURVEY NO. 14492 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY MARCH 31, 1994; THENCE FROM SAID POINT SOUTH 00°10'04" WEST, 147.82 FEET; THENCE NORTH 89°58'57" WEST, 206.17 FEET; THENCE NORTH 00°00'15" EAST, 41.00 FEET; THENCE NORTH 89°54'00" WEST, 15.00 FEET; THENCE NORTH 00°19'38" EAST, 87.53 FEET; THENCE SOUTH 89°46'02" EAST, 27.53 FEET; THENCE NORTH 41°12'19" EAST, 42.52 FEET; THENCE NORTH 55°32'23" EAST, 30.79 FEET; THENCE NORTH 52°48'32" EAST, 7.46 FEET; THENCE SOUTH 66°10'53" EAST, 19.62 FEET; THENCE SOUTH 69°20'57" EAST, 18.38 FEET; THENCE SOUTH 83°51'41" EAST, 13.19 FEET; THENCE NORTH 85°15'35" EAST, 23.56 FEET; THENCE NORTH 77°28'24" EAST, 39.41 FEET; THENCE SOUTH 58°58'32" EAST, 6.55 FEET; THENCE SOUTH 25°19'22" EAST, 25.67 FEET; THENCE SOUTH 70°03'31" EAST, 7.90 FEET TO THE POINT OF BEGINNING.

THE HEREINABOVE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 0.806 ACRES, MORE OR LESS.

COORDINATES, BEARINGS AND DISTANCES, AS STATED HEREIN, ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (EPOCH 1991.35) ZONE 6 AS SHOWN ON RECORD OF SURVEY NO. 14492.


DOUGLAS B. STROUP
HUNSAKER & ASSOCIATES SAN DIEGO, INC.

5/01/2018
P.L.S. 8553

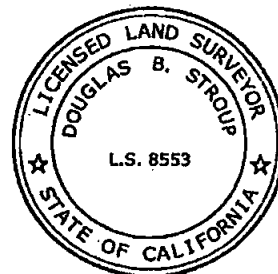
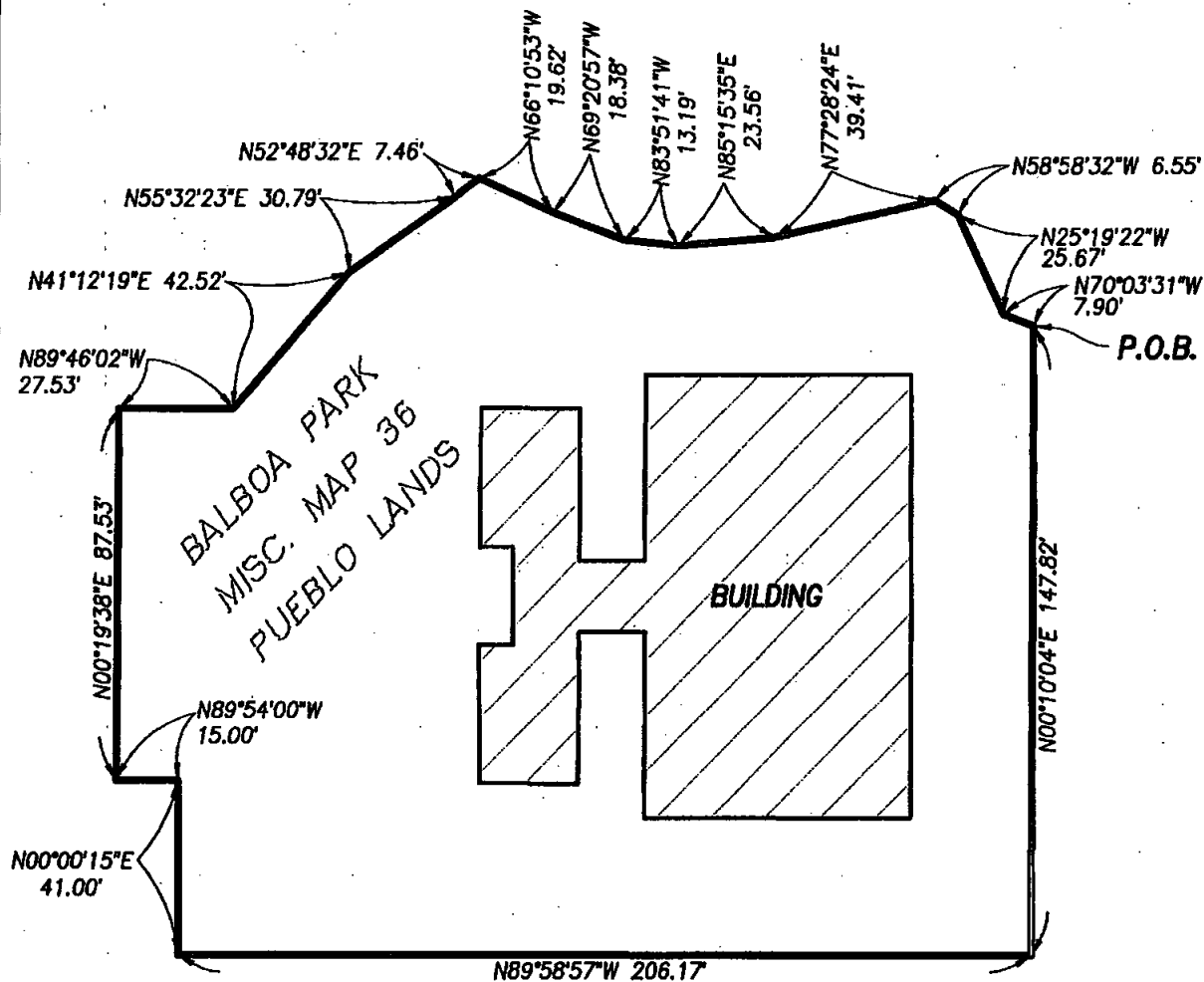
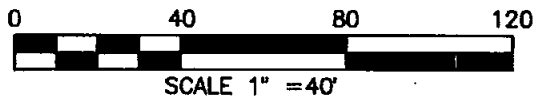


EXHIBIT "B" - PREMISES



LEGEND

- P.O.B.** INDICATES POINT OF BEGINNING
-  INDICATES LEASE LINE
GROSS AREA: 0.806 ACRES, MORE OR LESS

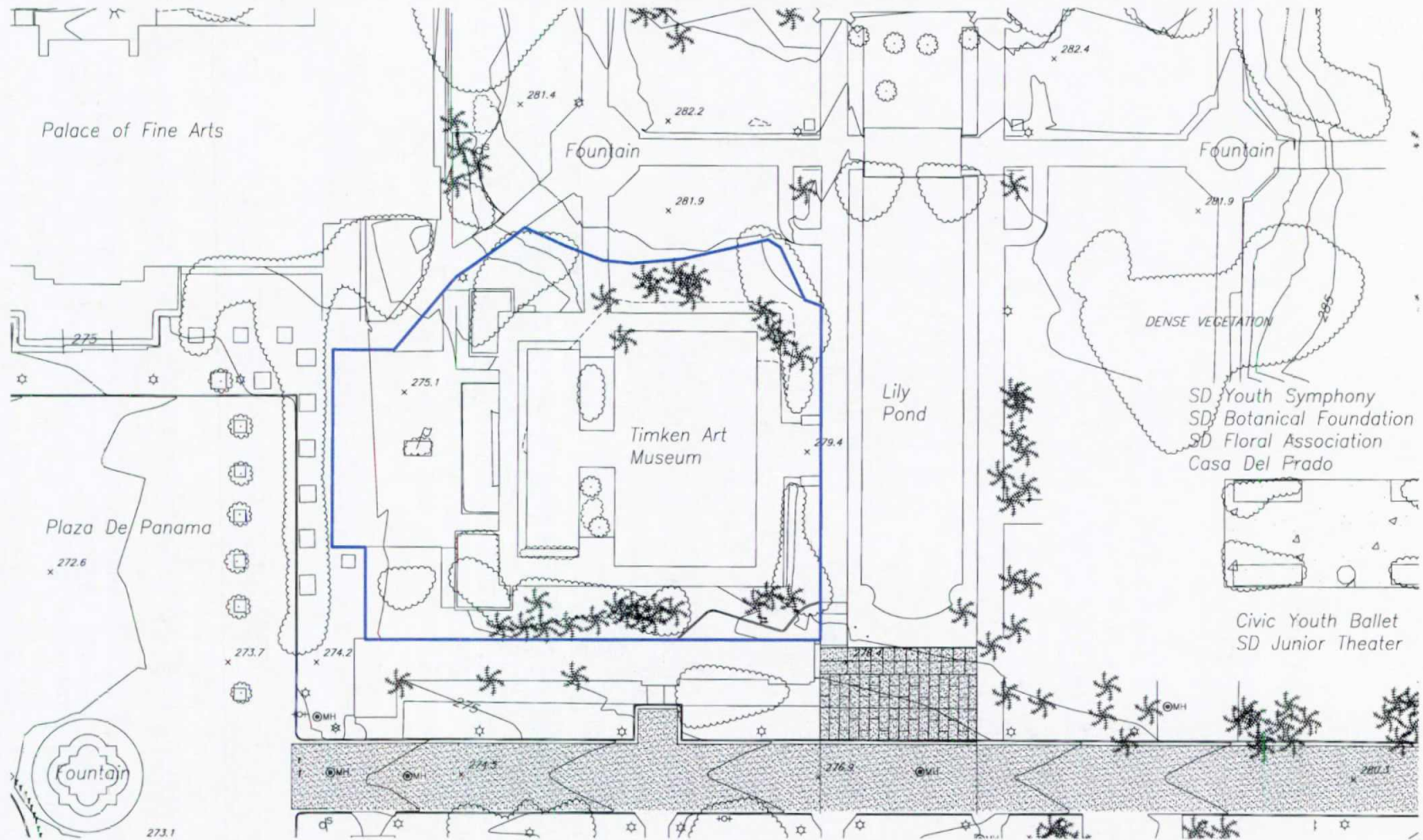


**HUNSAKER
& ASSOCIATES
SAN DIEGO, INC.**

9707 Waples Street (858)558-4500
San Diego, CA 92121

R:\1498\Map\Exhibits\Plot Legal\1489 Plot Exhibit B.dwg May-01-2018:08:41 W.D. 3482-0001

TIMKEN ART MUSEUM
LEASE BOUNDARY EXHIBIT



H & A
**HUNSAKER
& ASSOCIATES**
SAN DIEGO, INC.

PLANNING 9707 Waples Street
ENGINEERING San Diego, Ca 92121
SURVEYING PH(619)558-4500 - FX(619)558-1414

0 30 60 90
SCALE 1" = 30'

EXHIBIT "D"

TIMKEN MUSEUM BUILDING MAINTENANCE RESPONSIBILITIES

<u>System/Area</u>	<u>CITY'S Responsibilities</u>	<u>LESSEE'S Responsibilities</u>
Fire Suppression System	All maintenance, update and replacement, as required by law of fire suppression system, sprinkler systems, and/or other permanently installed systems in the building.	Check and observe daily. Report problems to City. Maintain all portable and/or temporary systems, extinguishers, hoses and nozzles, sensors and alarms, etc.
Alarms	None.	Observe. Maintain and repair all sensors, alarms, wiring, etc., for security and fire alarm systems, including heat, smoke, motion, intrusion, etc.
Security	Exterior building envelope, including exterior locks, emergency boarding up and repair of doors and windows.	All other security including lock installation and maintenance and minor repair.
Displays and Additions	Approval of hookups and modifications of all types.	All installation, removal, and maintenance and minor repair.
Elevators/Dumbwaiters	None.	All maintenance and repair. Obtain and maintain permits, inspections, etc.
Floors/Floor Coverings	None.	All maintenance and repair.
Windows/Glass	All glass in permanent windows and doors.	All glass in temporary partitions, displays, etc. All tinting film on windows.
Doors, Walls, Ceilings, Roof and Metal Shades	All permanent exterior items.	All interior items and additions or modifications to existing equipment, structures, systems, displays, temporary installations, and window coverings (film, shades, blinds, drapes).
Plumbing/Electrical/HVAC	None.	All maintenance and repair of all plumbing, electrical and HVAC equipment to include major components and sub systems, including but not limited to: water heaters, electric panels, chillers, pumps, package units, and fans.

Custodial	None.	All, including providing paper products, soap, light bulbs and tubes. Cleaning of courtyard and areas adjacent to building.
Vandalism	All City-owned items and permanent exterior structures, including windows.	All interior structures, temporary installations, collections, equipment, and displays owned by LESSEE.
Pest control	None.	All pest control.
Paint	All exterior painting and interior historical treatments.	All other interior painting.

The above division of maintenance responsibilities notwithstanding, CITY'S obligation to perform maintenance of the premises is limited to availability of funds pursuant to Section IV 2 hereof.

EXHIBIT "E"

PREVAILING WAGE REQUIREMENTS

By signing this Lease, LESSEE certifies that he or she is aware of the wage provisions described herein and shall comply with such provisions before commencing any work.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Lease is subject to State prevailing wage laws. For construction work performed under this Lease cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Lease cumulatively exceeding \$15,000, LESSEE, its contractors and subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

1. Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

2. Penalties for Violations. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage

rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

3. Payroll Records. LESSEE, its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE, its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE, its contractors and subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.

4. Apprentices. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. LESSEE, its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

6. Required Provisions for Contracts and Subcontracts. LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Lease."

8. Labor Compliance Program. The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. LESSEE shall withhold contract payments pursuant to the contract between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.

9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

9.1. A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.

9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.

9.3. By signing this Lease, LESSEE certifies that he or she has verified that all contractors and subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed contractors and subcontractors to the CITY at the time of execution of this Lease or upon request.

10. Stop Order. For LESSEE or its contractor(s) or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor(s) or unregistered subcontractor(s) on ALL public works until the unregistered contractor(s) or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. List of all Subcontractors. The CITY may ask LESSEE for the most current list of contractors or subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) working days of the CITY's request. LESSEE shall notify CITY of any contractors or subcontractors, including their DIR registration numbers, which have not previously performed work on this Permit prior to said contractors or subcontractors performing work on this Lease. Additionally, LESSEE shall provide the CITY with a complete list of all contractors or subcontractors utilized on this Lease (regardless of tier), within ten (10) working

days of the completion of the work authorized by this Lease, along with their DIR registration numbers. LESSEE shall withhold final payment to contractor(s) until at least 30 days after this information is provided to the CITY.

12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. LESSEE shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

12.1. Registration. LESSEE will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the CITY, but will not be required to be submitted online with the DIR directly. LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).

12.3. List of all Subcontractors. LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

(R-2019-614)

RESOLUTION NUMBER R- 312497DATE OF FINAL PASSAGE JUN 06 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A TWENTY YEAR NON-PROFIT LEASE AGREEMENT WITH THE PUTNAM FOUNDATION, DBA TIMKEN MUSEUM OF ART, FOR THE OPERATION AND MAINTENANCE OF THE CITY-OWNED PROPERTY LOCATED AT 1500 EL PRADO, SAN DIEGO, CALIFORNIA 92101, COMMONLY KNOWN AS THE TIMKEN MUSEUM OF ART

WHEREAS, the City of San Diego (City) owns that certain parcel of real property located at 1500 El Prado, Balboa Park, San Diego, California 92101 (Property), commonly known as the Timken Museum of Art (Museum), which is approximately .806 acres of real property that has been improved with the approximately 10,376 square foot Museum; and

WHEREAS, the City has continuously leased the Property to the Putnam Foundation dba the Timken Museum of Art (Lessee) since July 31, 1962 to operate the Museum; and

WHEREAS, Lessee has now requested a twenty-year non-profit lease for Property to continue operating the Museum (Lease); and

WHEREAS, the Lease requires the Lessee to operate the Museum as an art museum and to offer free admission to the Museum, as well as free educational programs to the public, such as free lectures, docent tours, and other related programs; and

WHEREAS, pursuant to the Lease, Lessee shall pay City a yearly non-profit rent of \$3,597.00 (Rent), which will be adjusted each year based upon the CPI index; and

WHEREAS, in addition to the Rent, Lessee shall also pay to the City fifty percent of any subtenant income received by the Lessee for subleases of the Property, as well as ten percent of

gross revenue received from the operation of a coffee/snack cart at the Property, if operated directly by the Lessee; and

WHEREAS, the market value of the Property subject to this Lease was determined by an independent appraiser to be \$3,150,000; and

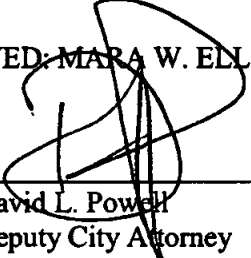
WHEREAS, City staff has created the Balboa Park lease revenue general ledger account to deposit the revenues received from the Lease with the intention of using those funds for Balboa Park maintenance and operations; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain twenty-year non-profit lease between the City of San Diego and the Putnam Foundation, dba the Timken Museum of Art, as more fully set forth in Document No. RR- 312497 on file with the City Clerk.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is directed to deposit the rents and revenues derived from the Lease into the General Fund (Fund 100000), specifically the Balboa Park lease revenue general ledger account (No. 418036).

APPROVED: MARA W. ELLIOTT, City Attorney

By



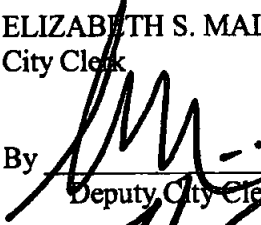
David L. Powell
Deputy City Attorney

DLP:jdf
04/10/19
Or.Dept: Real Estate Asset
Doc. No.: 1980723

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 04 2019.

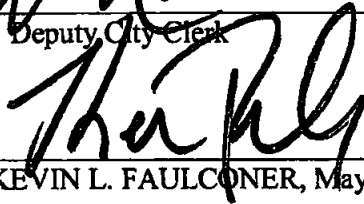
ELIZABETH S. MALAND
City Clerk

By


Deputy City Clerk

Approved: 6/6/19

(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 04 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☐	☐	☒	☐
Mark Kersey	☐	☐	☒	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage JUN 06 2019

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

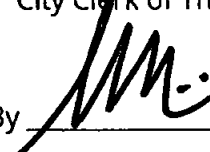
KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312497

Passed by the Council of The City of San Diego on June 4, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, CATE, SHERMAN, MORENO, GOMEZ.**

NAYS: **NONE.**

NOT PRESENT: **MONTGOMERY, KERSEY.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312497**, approved on **June 4, 2019**. The date of final passage
is **June 6, 2019**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy