

EXHIBIT "D"

AMENDED MEMORANDUM OF AGREEMENT AMONGST THE TENANTS OF THE NEW ELECTRIC BUILDING

THIS AMENDED MEMORANDUM OF AGREEMENT AMONGST THE TENANTS OF THE NEW ELECTRIC BUILDING ("Amended MOA") is made and entered into between the San Diego Historical Society, a nonprofit California corporation ("SDHS"); Museum of Photographic Arts, a nonprofit California corporation ("MOPA"); San Diego Model Railroad Museum, a nonprofit California corporation ("Railroad"); Committee of One Hundred, a nonprofit California corporation ("One Hundred"); and Balboa Art Conservation Center, a nonprofit California corporation ("Balboa Art") (collectively "Parties") who agree to the following.

1. RECITALS

1.1 The Parties have each entered in to individual agreements with the City of San Diego ("City") for museum and related purposes in the Casa de Balboa building.

1.2 SDHS entered into that certain April 20, 1981 agreement with the City for museum and related purposes in the Casa de Balboa building approved as Document No. RR-253882, which was amended by that certain First Amendment to Agreement dated May 31, 1983 approved as Document No. RR-258568 and that certain Second Amendment to Agreement dated February 25, 1985 approved as Document No. RR-262593 and extended by option on March 23, 2006 for an additional twenty-five year term ("Agreement").

1.3 Pursuant to that certain Memorandum of Agreement Amongst the Tenants of the New Electric Building attached as Exhibit D to the Agreement ("MOA"), the Parties formed the Electric Building Tenants Committee ("EBTC") to collectively provide for the efficient management and operation of the Casa de Balboa building's common area and management of other shared expenses ("Exhibit D").

1.4 The Parties desire to amend Exhibit D by clarifying common area costs and responsibilities and further defining the role of the EBTC.

FOR AND IN CONSIDERATION of the mutual covenants and agreements hereinafter contained, and for the reliance of the Parties hereto, the Parties agree as follows:

2. AMENDMENT

2.1 Conflict. Exhibit D is hereby amended in its entirety by deleting the original MOA attached to the Agreement and replacing it with this Amended MOA. If there is any conflict between the Agreement and this Amended MOA, the Agreement shall prevail.

3. PURPOSE

3.1 Work. The EBTC shall develop, efficiently manage, and operate the Casa de Balboa common area by providing common area maintenance, and facilitating the City's maintenance, repair and replacement of the common area's mechanical, electrical, ventilating and plumbing systems, including but not limited to what is outlined under "Joint Tenants' Responsibilities" in the Agreement's "Exhibit 'C' Maintenance Repairs Operating Agreement Permit Facilities" attached and incorporated herein as Exhibit 1 ("Work").

4. MEMBERSHIP

4.1 Members. The EBTC membership shall consist of one representative from each EBTC member organization. Each EBTC member shall have one vote. A quorum consists of a majority of the EBTC members. A simple majority vote shall rule on items put to a vote. Only those organizations that occupy the Casa de Balboa building under an agreement with the City are EBTC members. EBTC membership cannot be assigned or transferred without the written consent of the EBTC.

4.2 Chairs. Meeting Chairs will rotate among EBTC member organizations each year effective on July 1st of each year unless the term is otherwise extended ("EBTC Chair"). However, the Committee of One Hundred, which has no paid staff, shall be excused from assignment of the EBTC Chair. The EBTC Chair shall designate a secretary to take minutes. All meetings shall be governed by Robert's Rules of Order except as otherwise provided herein.

4.3 Agenda. Agenda items shall be submitted at least forty-eight (48) hours prior to the meeting. Agendas will be furnished to each EBTC member forty-eight (48) hours prior to the meeting.

4.4 Meetings. Any EBTC member may schedule a meeting to resolve issues with the approval of the EBTC Chair. EBTC members will meet as required to review and act on the agenda items brought before them.

4.5 Use. The common area shall be non-exclusive and open to all EBTC members and EBTC's members' invitees, guests, successors and assigns. EBTC members and EBTC's members' invitees, guests, successors and assigns shall request written permission seven (7) days in advance from EBTC for any exclusive use events or non-exclusive use events that shall occupy a substantial portion of the common area and impact the public's or EBTC members' access or use of the common area. Any EBTC member or EBTC members' invitees, guests, successors or assigns that causes or is responsible for damage to the common area shall be solely responsible for repairing, replacing, or paying for the damage within thirty (30) days of such damage with contractors reasonably approved by EBTC. EBTC shall reasonably hire contractors to perform the repairs or replacements if the EBTC member, or EBTC members' invitees, guests, successors or assigns fails to do so within thirty (30) days.

5. MANAGEMENT

5.1 Managing Agent. EBTC Chair shall act as the managing agent for EBTC under this Amended MOA and shall: i) manage and oversee SDHS as Fiscal Agent, as defined below, for the EBTC; ii) manage and be the point of contact for contractor under the food services operation agreement ("Food Contractor") for the common area café ("Food Agreement"); iii) manage and be the point of contact for the Custodian, as defined below, and building maintenance person and other contractors and employees; and, iv) be the primary contact with the City under this Amended MOA.

5.2 Food Agreement. EBTC shall: i) attempt to resolve issues and problems under the Food Agreement; ii) enforce the Food Agreement; iii) require the Food Contractor provide adequate insurance under the Food Agreement naming EBTC, EBTC members, the City and others as additional insureds; and iv) act as the approving authority for all major decisions under the Food Agreement.

5.3 Maintenance Person. EBTC shall hire and manage a janitor to clean and maintain the common areas, including the restrooms ("Custodian"), and a maintenance person to do the Work ("Maintenance Person"). The Custodian and Maintenance Person may be hired as an independent contractor under SDHS's independent contractor policies.

5.4 Standard. EBTC and EBTC Chair shall act professionally and in good faith consistent with industry standards to manage and enforce this Amended MOA.

6. FISCAL AGENT

6.1 Fiscal Agent. EBTC member SDHS shall serve as fiscal agent of the EBTC under this Amended MOA and shall: i) bill monthly each EBTC member and the Food Contractor the Work Fees, as defined below, and costs and fees for the Custodian and other contractors and employees; ii) disburse Work Fees to pay the Custodian, contractors and employees; iii) collect the monthly license fee for the Food Agreement; iv) file the food services operation license fee income for tax purposes; and v) provide monthly reports and account statements to the EBTC ("Fiscal Agent"). SDHS shall not be responsible for initiating or executing policies or procedures, or incurring costs that have not been agreed upon by all Parties. EBTC shall pay SDHS a fee of \$300.00 a month to compensate SDHS for acting as the Fiscal Agent. This fee shall be increased on January 1 of each year by the Consumer Price Index ("CPI") percentage capped at five (5%) percent per year unless CPI is deflationary in which case the proceeding year's rate continues.

6.2 Cost Allocation. Each EBTC members and the Food Contractor shall share equally and pay monthly one-sixth (1/6) of all Work Fees except that each EBTC member shall pay their applicable share of HVAC, electricity and gas, as separately metered, based on each member's percentage of square footage as such square footage is reflected on Exhibit 2 ("Work Fees").

6.3 Billing. SDHS shall send monthly invoices to each EBTC member and the Food Contractor that shall include a statement of amounts collected and paid to date as well as an invoice for the amounts being billed that month. Each EBTC member and Food Contractor is responsible for promptly paying their monthly invoice to SDHS within thirty (30) days of receipt. EBTC member invoices that are not paid within thirty (30) days shall have one and a half (1.5%) percent of the invoice amount, or fifty (\$50) dollars, whichever amount is greater, added as a penalty fee.

7. INSURANCE AND INDEMNIFICATION

7.1 General Liability. Throughout the term of this Amended MOA, each EBTC member shall obtain and maintain, on their own behalf, general liability insurance coverage in the amount of not less than two million (\$2,000,000.00) dollars for the common area or, the amount required for each EBTC member per their agreement with the City, whichever is greater. Each EBTC's policy shall list the City, Fiscal Agent, and all other EBTC members as well as the City's, Fiscal Agent's and EBTC's members' officers, directors, employees, agents, successors and assigns as additional insureds. Each EBTC member shall report in writing to the EBTC Chair any incident that might reasonably result in an insurance claim for that EBTC member no later than twenty-four (24) hours after the incident occurred or as soon as reasonably practical. Each EBTC member shall also carry the appropriate liability insurance on that portion of the building that it occupies or, the amount required for each EBTC member per their agreement with the City, whichever is greater, and shall confirm proof of such insurance upon request by any EBTC member.

7.2 Indemnity. Each EBTC member shall indemnify, defend and hold harmless the City, Fiscal Agent, and each EBTC member as well as the City's, Fiscal Agent's and EBTC's members' officers, directors, employees, agents, successors and assigns from and against any and all claims, demands, actions, causes of action, losses, liabilities, judgments, liens, rights, costs and expenses, including without limitation, attorney's fees and costs that may arise directly or indirectly by reason of the City, Fiscal Agent, or each EBTC member as well as the City's, Fiscal Agent's and EBTC's members' officers, directors, employees, agents, successors and assigns for breach or default under this Amended MOA except such indemnification shall not extend to any negligent or willful acts or omissions of the City, Fiscal Agent, and each EBTC member as well as the City's, Fiscal Agent's and EBTC's members' officers, directors, employees, agents, successors and assigns.

7.3 SDHS Indemnity. In consideration for being the Fiscal Agent under the EBTC, each EBTC member hereby releases SDHS and SDHS's officers, directors, employees, agents, invitees, successors, and assigns from and against any and all claims, demands, actions, causes of action, losses, liabilities, judgments, liens, rights, costs and expenses, including without limitation, attorney's fees and costs that may arise directly or indirectly by reason of SDHS and, or SDHS's officers, directors, employees, agents, invitees, successors, and assigns breach or default of SDHS's roles as Fiscal Agent under this Amended MOA except such indemnification shall not extend to any gross negligence or willful acts or omissions of SDHS and, or SDHS's officers, directors, employees, agents, successors, and assigns.

7.4 Liens. SDHS agrees that it will pay, or cause to be paid, Work Fees without delay or default and shall do its best, in accordance with professional industry standards to keep the building free and clear of all mechanic's liens and other liens filed or asserted on account of the Work, on behalf of EBTC or persons claiming under it ("Liens"). EBTC and EBTC members' officers, directors, employees, agents, invitees, successors, and assigns shall indemnify, defend and hold SDHS and SDHS's officers, directors, employees, agents, invitees, successors, and assigns free and harmless against any and all liability, loss, damage, cost, attorneys' fees and all other expenses on account of any liens for work performed or materials or supplies furnished by a contractor for persons claiming under it.

7.5 Survival. Any lawsuit in contract or tort must be filed within three (3) years from the date of termination or expiration of the Amended MOA.

8. ARBITRATION

8.1 Procedure. Any dispute, claim or controversy between the Parties arising out of or relating to this Amended MOA or the default, breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in San Diego County, before one arbitrator who is a retired judge. The arbitration shall be administered by JAMS pursuant to the current Comprehensive Arbitration Rules and Procedures or, in the alternative, JAMS Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The Parties hereby expressly retain all judicial rights to discovery. The judgment of the arbitrator shall be final and binding.

8.2 Allocation of Fees and Costs. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.

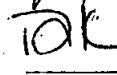
8.3 NOTICE. BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE AMENDED MOA DECIDED BY MUTUAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY ON APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. EACH PARTY ACKNOWLEDGES THAT AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

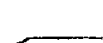
WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL BINDING ARBITRATION.

 *Initials for SDHS*

 *Initials for Balboa Art*

 *Initials for One Hundred*

 *Initials for MOPA*

 *Initials for Railroad*

9. NOTICE. Any notice that an EBTC member is required or may desire to give shall be sent a minimum of fourteen (14) days in advance unless otherwise provided herein, shall be in writing and may be sent by personal delivery, by mail, by facsimile, or electronic mail: i) by United States registered or certified mail, return receipt requested, postage prepaid; ii) by facsimile with confirmed receipt; iii) by electronic mail; or iv) by Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows (subject to the right of a owner to designate a different address for itself by notice similarly given):

To:

SDHS

Aurora Zabish
Business Manager
San Diego History Center
1649 El Prado, Suite 3
San Diego, CA 92101
Office: 619-232-6203 x107
Facsimile: 619-814-0166
Cell: 858-967-1847
Email: azabish@sandiegohistory.org

To:

Railroad

John Rotsart
Executive Director
San Diego Model Railroad Museum, Inc.
1649 El Prado Suite #4
San Diego, CA 92101
Facsimile: 619-696-0239
Cell: 619-985-1945
Phone: 619-696-0199
E-mail: Jrotsart@SDMRM.org

To:

MOPA

Vivian Kung Haga
Deputy Director
Museum of Photographic Arts
1649 El Prado
San Diego, CA 92101

Facsimile: 619-238-8777
Telephone: 619-238-7559 X205
Email: haga@mopa.org

To: **One Hundred**
Tom Jackson
Committee of 100
Board of Directors
3354 Hawk Street
San Diego, CA 92103
Home: (619) 299-7218
Cell: (619) 865-9234
Email: axjax@cox.net

Copy: J. Michael Kelly, MD
President, Committee of 100
4354 Randolph Terrace
San Diego, CA 92103
Home: (619) 295-6841
Cell: (619) 981-4521
Email: j.michael.kelly@cox.net

To: **Balboa Art**
Janet Ruggles
Executive Director and Chief Conservator of Paper
P.O. Box 3755
San Diego, CA 92163
Facsimile: 619-236-0141
Telephone: 619-236-9702
Email: jruggles@bacc.org

Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be. Any such notice not so given shall be deemed given upon receipt of the same by the owner to whom the same is to be given. Any notice given by facsimile shall be given upon confirmed receipt of transmission. Any notice given by electronic mail shall be given when properly sent. Two forms of notice are required to be given to One Hundred.

10. GENERAL PROVISIONS

10.1 Assignment. This Amended MOA is personal to each EBTC member. No EBTC member shall assign or transfer any of its rights or obligations to be performed under this Amended MOA without the prior written consent of EBTC. Subject to the foregoing restriction on assignment and subcontracting, this Amended MOA shall be binding upon and inure to the benefit of the Parties hereto, their successors and permitted assigns.

10.2 Sublease. The EBTC shall not sublet any portion of the Casa de Balboa building, or any right or privilege appurtenant, or allow any other person, except employees, agents, and guests of EBTC, to use or occupy the Casa de Balboa building without City's prior written consent, in each instance. City's consent to any subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent subletting, occupation, or use by another person. Any subletting without City's consent shall be void.

10.3 Jurisdiction. This Amended MOA shall be governed by the laws of the State of California, without regard to conflicts of law principles.

10.4 Entire Amended MOA; Modification. This Amended MOA constitutes the entire agreement between the Parties and supersedes all prior oral or written negotiations and agreements between the Parties with respect to the subject matter hereof. No modification, variation or amendment of this Amended MOA shall be effective unless made in writing and signed by the Parties.

10.5 Waiver. The rights and remedies of the Parties to this Amended MOA are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Amended MOA or the documents referred to in this Amended MOA will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege. To the maximum extent permitted by applicable law: (i) no claim or right arising out of this Amended MOA or the documents referred to in this Amended MOA can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Parties; (ii) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (iii) no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Amended MOA or the documents referred to in this Amended MOA.

10.6 Severability. In the event that any of the terms, conditions or provisions of this Amended MOA are held to be illegal, unenforceable or invalid by any court of competent jurisdiction, the remaining terms, conditions or provisions hereof shall remain in full force and effect.

10.7 Attorneys Fees. In the event any party to this Amended MOA commences any legal action, including arbitration, or otherwise, concerning any aspect of this Amended MOA or any tort cause of action, including but not limited to the interpretation or enforcement of any of its provisions or because of any alleged dispute, breach, default, or misrepresentation in connection with any aspect or provision of this Amended MOA, or for a declaration of a party's rights or obligations hereunder, or for any other judicial remedy, the prevailing party shall be entitled to recover its reasonable attorneys' fees and all other costs and expenses incurred in

connection with the action or proceeding, including without limitation expert witness fees, court reporter fees, collection expenses, and the costs of appeal, in addition to any other relief that party may be entitled, whether or not such action proceeds to judgment. The award of attorneys' fees shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, include the full amount of costs, expenses, and attorneys' fees incurred in good faith.

10.8 Authority. The persons signing this Amended MOA represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

10.9 Exhibits. The exhibit attached hereto is hereby incorporated herein by this reference.

SIGNATURES NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Amended MOA on the last date signed by a signature below ("Effective Date").

Balboa Art Conservation Center,
a 501(c)(3) corporation

Janet Reysen
Signature

Executive Director

Title

November 4, 2011
Date

San Diego History Center,
a 501(c)(3) corporation

Charlotte Agum
Signature

Executive Director

Title

11/4/11
Date

San Diego Model Railroad Museum, a
501(c)(3) corporation

Signature

Executive Director

Title

Date

Committee of One Hundred,
a 501(c)(3) corporation

Mike
Signature

President
Executive Director

Title

11/7/2011
Date

Museum of Photographic Arts,
a 501(c)(3) corporation

Rebecca Klechko
Signature

Executive Director

Title

11/4/11
Date

EXHIBIT 1

**EXHIBIT 'C' MAINTENANCE REPAIRS OPERATING AGREEMENT PERMIT
FACILITIES**

EXHIBIT 2

WORK FEES

Approximate space reflected in square footage which does not include the footprints of the hallways, stairwells, or elevator, only the offices, workshops, and labs.

MOPA-	33,000
SDHS-	49,500
Railroad-	23,439
Balboa Art-	3,360
Food Contractor-	550
One Hundred-	500