

AMENDED AND RESTATED LEASE AGREEMENT

BY AND BETWEEN

THE CITY OF OCEANSIDE

AS LESSOR

AND

THE OCEANSIDE MUSEUM OF ART

AS LESSEE

Pier View Way, Oceanside, CA 92054

Dated: _____

**AMENDED AND RESTATED LEASE AGREEMENT
BETWEEN THE CITY OF OCEANSIDE, CALIFORNIA AND
THE OCEANSIDE MUSEUM OF ART**

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**AMENDED AND RESTATED LEASE
BETWEEN THE CITY OF OCEANSIDE, CALIFORNIA AND
THE OCEANSIDE MUSEUM OF ART**

This Amended and Restated Lease (this "Agreement") dated _____, 2025 (the "Effective Date"), being the date of the Oceanside City Council's approval of this Agreement, is entered into by and between the City of Oceanside, a California municipal corporation, hereinafter referred to as "Lessor" or "City", and Oceanside Museum of Art, a California non-profit public benefit corporation, hereinafter referred to as "Lessee" or "OMA", providing for the lease of that certain real property below-described, hereinafter referred to as the "Premises". OMA and the City hereinafter may be referred to as the "Parties" or to each individually, as the "Party".

RECITALS

A. City is the owner of that certain real property currently referred to as Assessor Parcel Number 147-109-01-00, constituting the City-owned block surrounded by those public streets currently named Pier View Way, Ditmar Street, N. Nevada Street, and Civic Center Drive, located in the City of Oceanside, San Diego County, California, as approximately depicted on attached and incorporated **Exhibit "A-1"**, hereinafter referred to as the **"City Parcel"**.

B. On or about June 28, 1995, City and OMA's predecessor in interest, the Oceanside Cultural Arts Foundation, Inc. ("**OCAF**"), entered into an agreement providing for the City to lease to OCAF, a certain portion of the City Parcel, being, that certain building known as the **"Former City Hall Building"** in the southwest corner of the City Parcel having the address of 704 Pier View Way (formerly "Third Street") in Oceanside, CA (the **"Original Lease"**).

C. The Original Lease was subsequently assigned by OCAF to OMA, and thereafter, on or about November 7, 2001, the Original Lease was amended by City and OMA in the **First Amendment to Lease** (the **"First Amendment"**). The First Amendment notes that the original term of the Original Lease commenced October 6, 1997.

D. The First Amendment expanded the leased premises to include the land adjacent to the Former City Hall Building on which OMA was to construct, and construction was completed in 2008 of the two-story building of approximately 16,000 square feet. The First Amendment also provided lease provisions for OMA to expand the leased premises to include the adjacent, former Fire Station #1 located at 714 Pier View Way (the **"Fire Station Property"**) on certain terms and conditions precedent, if satisfied by OMA, once the City had vacated the Fire Station Property, and it was understood that significant renovations would need to be made to the Fire Station Property to adapt it for OMA's purposes.

E. A **Second Amendment to Lease** dated September 20, 2017 ("**Second Amendment**") was entered into by the Parties which provided conditions for the City to match funds donated to the museum in years 2017, 2018 and 2019, and it replaced the Conditions Subsequent in the Original Lease. The matching of funds provided for in the Second Amendment was satisfied by the City in full.

F. In September, 2024, the Fire Station Property was vacated by the City. OMA has engaged architects, engineers and consultants to engineer the design and construction of proposed renovations to the Fire Station Property to preserve the historical significance of the building structure, and plans are currently in preparation to renovate the Fire Station Property and bring it into compliance with current environmental and seismic standards.

G. The Original Lease, the Assignment to OMA of the Original Lease, the First Amendment and the Second Amendment shall collectively hereinafter be referred to as the "**Prior Lease**".

H. In accordance with the terms of the Prior Lease, the Parties now desire to amend the Prior Lease with this Agreement to provide for the expansion of the leased premises to include the Fire Station Property and its renovation, pursuant to the terms and conditions set forth herein, and to address the Parties' respective rights and obligations as amended under this Agreement as provided for below.

I. It is the Parties' intention that this Agreement shall amend and replace the Prior Lease in its entirety, and that in the event of any conflict or inconsistency between this Agreement and the Prior Lease, this Agreement shall control.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the City and OMA hereby agree as follows:

AGREEMENT

1. INCORPORATION OF RECITALS

1.1 The terms and provisions of the foregoing Recitals A through I are incorporated herein, (including the attached and incorporated "**Exhibit "A-1"**"), as though set forth in full herein.

2. PREMISES

2.1 Premises. City hereby leases to OMA and OMA hereby leases from City, on the terms, covenants and conditions provided herein, that certain portion of the City Parcel fronting Pier View Way as approximately depicted in attached and incorporated **Exhibit "A-2"**, which shall be

comprised of the following three (3) properties: the **"Former City Hall Property"**, the **"Central Pavilion Property"** and the **"Fire Station Property"** upon satisfaction by OMA of the requirements set forth in Section 16 to include the Fire Station Property, collectively hereinafter referred to as the **"Premises"**, which are more particularly described below and approximately delineated on **Exhibit "A-2"**.

(a) The **"Former City Hall Property"** consists of the Former City Hall Building containing approximately 5,196 square feet with an arcade or patio out-front containing approximately 657 square feet, (for a total of 5,853 square feet) and the surrounding property and its appurtenances, walkways, driveways, alley, stairways, landscaping and improvements located on the southern portion of the assigned physical address of 704 Pier View Way, as approximately delineated as **"Property "A"** on **Exhibit "A-2"**.

(b) The **"Central Pavilion Property"** consists of that certain two-story building constructed by OMA in 2008 (the **"OMA Building"**) with approximately 16,000 square feet (including a basement of approximately 4,576 square feet) and which shares the physical address of the Former City Hall Building of 704 Pier View Way, and its surrounding property, including the walkways, patios, stairs, paths, landscaping and other exterior improvements as approximately delineated as **"Property "B"** on **Exhibit "A-2"**.

(c) The **"Fire Station Property"** (if the conditions precedent are satisfied to include it in the Premises pursuant to Section 16 of this Agreement) consists of that certain two-story former Fire Station containing approximately 9,176 square feet, (including a basement of approximately 492 square feet) (the **"Fire Station Building"**), and its surrounding property located at 714 Pier View Way, including the walkways, landscaping, driveways, surrounding appurtenances and improvements within the boundaries of the Fire Station Property as approximately delineated as **"Property "C"** on **Exhibit "A-2"**.

2.2 Clarification regarding Parking. For purposes of clarification, there is no parking available within the Premises for OMA's guests or patrons, though there is availability for one (1) vehicle to be parked to accommodate deliveries at the back of the Former City Hall building on the Former City Hall Property (**"Property "A"**) at the end of the alley as approximately shown on **Exhibit "A-2"**.

3. TERM

3.1 Commencement. The initial term of this Agreement (the **"Initial Term"**) shall be deemed to have commenced on October 6, 1997 (the **"Commencement Date"**) and shall extend fifty-five (55) years from the Commencement Date to terminate **October 5, 2052** (the **"Termination Date"**) unless sooner terminated or extended pursuant to any provisions of this Agreement.

3.2 Conditional Options to Extend the Term. OMA may request two (2) successive, conditional options to extend the Term of this Agreement beyond the Termination Date. OMA's requests

shall be subject to and conditioned upon the City Council's review and approval of each request, to be determined in City Council's sole and independent discretion.

(a) The **First Conditional Option to Extend**, if approved, would be for a period of twenty-two (22) years, commencing October 6, 2052 and extending through and including October 5, 2074 (the "**First Extended Term**").

(b) The **Second and Final Conditional Option to Extend**, if approved, would be for one (1) additional period of twenty-two (22) years, commencing October 6, 2074 and extending through and including October 5, 2096 (the "**Second Extended Term**").

Collectively, the Initial Term, the First Extended Term and the Second Extended Term may hereinafter be generally referred to as the "**Term**".

3.3 City Approval Process.

(a) Approval Process for Requests to Extend Term. OMA may request **two (2) successive extensions** of the Term of this Agreement with each, not to exceed twenty-two (22) years, pursuant to Section 3.2 (a) and 3.2 (b), provided that OMA is not in default or breach of any term, condition, or covenant of this Agreement, both at the time of OMA's requesting and at the time of commencement of the Extended Term. Each of OMA's requests to extend the Term of this Agreement shall be subject to review by the City pursuant to Government Code Section 37380, taking into consideration the then current market conditions and any capital improvements completed by OMA at its expense. OMA shall provide City with its written request each time to extend the Term of the Agreement, **no later than one-hundred eighty (180) days prior to the expiration date of the then existing Term of the Agreement.**

(b) The City Manager or City Manager's designee shall notify OMA **no later than sixty (60) days after receipt of a request to extend the Term**, whether such request will be presented to the City Council for approval, and at such time the City Manager or its designee shall provide OMA with the rental amount, if any, which the City is willing to accept for OMA's use and occupation of the Premises during the requested Extended Term. In no event shall the rental rate be less than that required during the preceding Term. City Manager or its designee's failure to provide the new rental amount within said time frame shall not defeat City's ability to make adjustments to the rental rate. Recommendation by the City Manager does not constitute City Council or City approval of the extension request. The City Manager in his/her capacity as the City's authorized representative, shall, in his/her sole discretion, have the authority to deny any such request. Any such denial shall be sent to OMA no later than **one hundred sixty (160) days from receipt of the request for extension.**

(c) In no event shall the Term of this Agreement be extended in excess of **forty-four (44) years** beyond the current Termination Date of this Agreement of **October 5, 2052**, without the mutual written agreement of the Parties and the approval of the City Council.

(d) The City Council, in its sole discretion, may approve or deny the extension requests for the Term of this Agreement. In the event the City Council is unable to consider a renewal request in sufficient time as to provide OMA with **ninety (90) days'** notice of termination in the case of denial, this Agreement shall be extended for a period not to exceed **ninety (90) days**, to allow for such **ninety (90) days'** notice of termination.

3.4 Holdover. Except as otherwise expressly provided for in this Agreement, any holding over by OMA after expiration or termination of this Agreement shall be strictly prohibited, and shall not be considered as a renewal or extension of this Agreement.

3.5 Surrender of Premises.

(a) On the last day of the Term hereof, or on any sooner termination, OMA shall deliver the Premises to City in good working order and condition, broom clean, ordinary wear and tear excepted, and free and clear of all liens and encumbrances created by OMA. OMA may, and City may require OMA to, at OMA's sole cost and expense, remove from the Premises its machinery, trade fixtures, and trade equipment (other than those which are so affixed to the Premises that they cannot be removed without material damage thereto which, without limitation, includes all heating and air conditioning equipment). OMA's signs, decorative lighting fixtures and other personal property within the Premises, hereafter referred to as "OMA's Property", may be removed, so long as each can be removed without material damage to the Premises, and OMA shall repair all damage to the Premises resulting from such removal.

(b) City shall have a period of ninety (90) days following any delivery of the Premises within which to give OMA written notice of any defaults by OMA under this Section 3.5. City's failure to give such notice shall be deemed an acknowledgment that OMA has complied with all its covenants and a waiver and release by City of all claims against OMA arising out of or under this Section 3.5.

3.6 Permits and Licenses. OMA agrees to obtain and maintain in good standing and in regulatory compliance during the Term of this Agreement at its sole cost and expense, all local, county, state and federal permits and licenses required for the operation of all permitted uses, programs and events to be conducted by OMA at the Premises, including but not limited to a Business License from the City of Oceanside, a County of San Diego Health Permit ("Health Permit") and a California Alcoholic Beverage Control License ("ABC License"), if required for OMA's uses and operations, to allow OMA exclusively to serve alcoholic beverages of beer, wine and liquor at the

Premises. The ABC License shall be in the name of OMA, and no events of any kind offered at the Premises by City or by other third parties will be allowed to serve or make available alcoholic beverages of any kind unless such services are provided through OMA directly, for which OMA may charge any other third parties (excluding the City) a fee at its discretion. Notwithstanding the foregoing, should OMA determine that it will not be obtaining an ABC license for the Premises, then OMA shall be required to hire a third-party company with a current ABC license for any event where alcoholic beverages will be served. The Health Permit must also be in the name of OMA and specific to any café or restaurant use on a portion of the Premises. A copy of any and all local, state or federal permits or licenses acquired by OMA which are required for the proposed uses of the Premises shall be kept on Premises at all times and shall be reasonably accessible and produced by OMA and/or their agents upon demand.

4. RENT

4.1 City hereby acknowledges and agrees that, during the Initial Term of this Agreement, the services and cultural benefits provided for the City of Oceanside, its residents and the surrounding communities by OMA in its programs at the Premises, along with OMA's commitment for maintenance of the Premises, as provided for herein, shall be deemed sufficient, valuable consideration, to be received from OMA for its use of the Premises in accordance with the terms, covenants and conditions of this Agreement. Accordingly, during the Initial Term, OMA shall not be required to make any monetary payments to City for its use and occupancy of the Premises.

5. USE

5.1 Use.

(a) Permitted Uses. The Premises shall be used and occupied only as the Oceanside Museum of Art (including its administrative offices, a museum gift shop, a cafe/restaurant and appurtenant facilities) which museum will collect, care for, and exhibit works of art, and which will be a cultural art center at which programs will be offered and held to encourage all of the arts, including art classes, workshops, OMA fundraising events, and similar programs, in addition, to use for a venue rental program for weddings, retirement parties, and corporate events. OMA shall obtain and keep current, any and all required permits that may be required for its permitted uses, prior to its use of the Premises in accordance with the terms hereof, and OMA shall provide City copies of any of the required permits upon City's request. OMA shall not use the Premises or any portion thereof, for any other purpose or purposes whatsoever without, in each instance, obtaining City's prior written consent. Accordingly, as additional consideration for this Agreement, OMA covenants to use and occupy the Premises solely for the establishment,

operation, and maintenance of an art museum open to the public on a nondiscriminatory basis as more particularly set forth below.

(b) Prohibited Uses.

(i) Political Activity. The Premises shall not be used for political activities. Political activities are defined as activities primarily focused on publicly endorsing or actively campaigning for or against the nomination or election of any person to any public office (partisan or non-partisan), or for the adoption or defeat of any ballot measure. This definition shall not include political activities that take place outside the Premises, or incidental lobbying for legislation consistent with expressed goals of OMA as set out in its bylaws. This restriction shall not apply to public forums or open debate by candidates, or to such forums for proponents and opponents of election issues. The City Manager shall, in his/her sole discretion, determine whether a particular activity constitutes "political activity" under this Section.

(ii) OMA shall not use or permit the use of the Premises in any manner that will tend to create a nuisance or disturb others within the community.

(iii) OMA shall not allow any activity to be conducted on the Premises or store any material on the Premises that will increase premiums for or violate the terms of any insurance policy maintained by or for the benefit of the City. In no event shall any explosive, radioactive, or dangerous materials be stored at the Premises.

(iv) OMA shall not charge fees except reasonable admission fees, membership fees, venue use fees, educational, or program fees to cover costs of maintenance and operation of the museum, including but not limited to acquisition of art and provision of programs.

(v) OMA shall not hold any special event that would require use of any City-owned property located outside the boundaries of the Premises, and/or use the Premises for a use that has not been specified in this Agreement as a "Permitted Use", unless a special event permit has been issued to OMA pursuant to Chapter 30A (Special Event Permits) of the Oceanside City Code, or any applicable successor City ordinance, rule or regulation in effect at the time of each event.

5.2 Signage.

(a) Signage. OMA shall not erect or display any signs, banners, pennants, flags, posters, decorations, marquees, awnings, or similar devices or advertising at the Premises without the prior written consent of the City Manager or its designee, which consent shall not be unreasonably withheld, and any such signage shall conform to all City ordinances and regulations. If any

unauthorized item is found on the Premises, OMA shall remove the item at its expense within twenty-four (24) hours of written notice thereof by City, or City may thereupon remove the item at OMA's cost. Furthermore, OMA shall not affix any approved signage or banners to the stucco walls of any portions of the Former City Hall Property or the Fire Station Property, nor shall the erection of approved items be performed that would cause damage to the surfaces or structures to which they would be affixed. Any damages to the surfaces within the Premises that are caused by OMA's display of items shall be promptly repaired at OMA's cost and expense.

(b) Public Art Displays. From time to time, OMA may submit written requests to the City for permission to display public art work on the outside of the buildings within the Premises, so long as such public art is in compliance with applicable City codes. OMA shall comply with all requirements of any City-approved requests for such public displays of art work. Any damages caused in OMA's display of such artwork shall be repaired promptly upon removal at OMA's sole cost and expense.

5.3 Admission Fees.

(a) OMA shall provide free museum admission to children under age eighteen (18) as well as active duty military personnel and their families.

(b) OMA shall provide free museum admission to students and their accompanying teachers of the Oceanside Unified School District (excluding scheduled programs, busing expenses and art supplies expenditures for the hands-on programs).

5.4 Condition of Premises. OMA acknowledges that neither City nor any agent of City has made any representation or warranty as to the suitability of the Premises for the conduct of OMA's business. It is expressly understood by the Parties that OMA shall be responsible for all due diligence, planning, procurement of entitlements and improvements necessary to place the Premises in a condition suitable for OMA's uses permitted under this Agreement.

5.5 Access to Facilities. OMA shall permit the City, its agents, and other employees to have access to and to enter the Premises at all reasonable times to inspect the Premises for any purpose connected with the City's duties relative to the repair, improvement, care, and maintenance of any portions of the Premises, or for any other purpose reasonably connected with the City's interest as owner of the Premises and to perform any work or other acts found necessary on such inspection pursuant to the terms of this Agreement.

5.6 OMA's control of the content of programs and displays. OMA shall have exclusive control of the content of programs and displays. Nothing in this Agreement shall be construed to permit the City to determine a condition of default based on the content of any display or program.

6. DAMAGE OR DESTRUCTION

6.1

(a) OMA shall notify the City of any fire or other damage that occurs within the Premises. The notice to the City required under this section shall be in writing and given within one (1) business day of the occurrence requiring the notice by (1) personal delivery; (2) public or private mail for next business day delivery; or (3) by facsimile or email with a confirmation of transmission, provided that on the same day the sender places in the public or private mail for next business day delivery, a copy of that same notice.

(b) If the Premises are damaged by fire or any cause which puts any portion of the Premises into a condition that is not decent, safe, healthy and sanitary, the Parties agree to meet within thirty (30) days following the casualty to discuss the casualty event's causes and remediations. OMA may terminate the Agreement by giving written notice to the City within sixty (60) days following the casualty, in which case, the Agreement shall be terminated as of the date of such notice. If OMA does not terminate the Agreement within sixty (60) days following the casualty, OMA may elect to rebuild, repair and restore the Premises at OMA's cost, by giving written notice to City within sixty (60) days following the casualty. If OMA does not give such notice within said sixty (60) days of its intention to repair, rebuild and restore the Premises, then the City may modify the Agreement to remove the portion of the Premises where the damage occurred. If OMA timely elects to repair, restore and rebuild the Premises and does not commence such repair or restoration within one hundred eighty (180) days after giving notice of its intention to repair and restore, City may modify this Agreement to remove the damaged portion of the Premises by giving written notice to OMA at any time prior to OMA's commencement of such repair and restoration.

(c) The deadlines for performance stated above in Section 6.1(b) shall be subject to the force majeure provisions of Section 19.17.

7. MAINTENANCE, REPAIRS AND ALTERATIONS

7.1 OMA's Obligations. OMA shall be responsible to promptly and diligently, at its own cost and expense, throughout the Term of this Agreement, maintain, repair and replace, unless expressly specified that replacement is not required by OMA as needed, in good, safe, working order and condition, the following:

(a) OMA's Obligations pertaining to the Former City Hall Property, Property "A" on Exhibit "A-2":

(i) The **non-structural, interior** portions of the Former City Hall Building, including, but not limited to the walls, the ceilings, all plumbing, all electrical, all interior painting, the interior and exterior doors and windows, and excepting the HVAC system serving the Former City Hall Building which HVAC system shall be maintained by the City.

(ii) OMA shall not be responsible for maintaining the structure of the driveway/alleyway and the walkways, adjacent and behind the Former City Hall Building.

(iii) Cleaning the exterior, surrounding portions of the Former City Hall Building, including the front, back and sides of the exterior of the Former City Hall Building, to keep the outside and surroundings within the boundaries of the Former City Hall Property free of any trash, excrement and/or debris, including the areas of the walkways, and driveway/alleyway.

(iv) If any original/historic, exterior doors or windows require replacement due to deterioration or vandalism, OMA shall notify City and the City shall perform the replacement at City's cost. It is the responsibility of OMA to notify City, as promptly as possible, if such areas become a safety concern, so City may address the matter promptly.

(v) Any equipment and materials replaced by OMA in performing its obligations under this Section 7.1, other than those items permanently affixed to the Premises, shall belong to OMA and OMA may retain for itself all proceeds from any disposition thereof.

(b) OMA's Obligations pertaining to the Central Pavilion Property, Property "B" on Exhibit "A-2":

(i) The **entire structural and non-structural interior** of the Central Pavilion Building/aka the OMA Building, with all improvements, including but not limited to, the walls, the ceilings, the flooring, the plumbing, all the electrical, all interior and exterior doors and windows, any required painting, and including the HVAC system which serves the OMA Building;

(ii) The **entire structural and non-structural exterior** of the Central Pavilion Building/aka the OMA Building, with all improvements, including but not limited to, the patio, the roof(s), the roof membrane(s), the walkways, pathways, exterior walls surrounding the pathways and walkways, all around and within the boundaries of the Central Pavilion Property,

all required painting, and the HVAC system which serves the Central Pavilion Building/aka the OMA Building;

(iii) Any elevator(s); and

(iv) Keeping the entire outside areas within the Central Pavilion Property boundaries, including in and around and between the buildings and walkways within the Central Pavilion Property, free of any trash, excrement and/or debris.

(c) OMA's Obligations pertaining to Fire Station Property, Property "C" on attached Exhibit "A-2" which obligations shall commence on the date that OMA has satisfied the Conditions Precedent in Section 16 for including the Fire Station Property as part of the Premises:

(i) The **non-structural, interior** portions of the Fire Station Building including, but not limited to, the walls, the ceilings, all plumbing, all electrical, all interior painting, the interior and exterior doors and windows, and excepting the HVAC system serving the Fire Station Building which HVAC system shall be maintained by the City;

(ii) During the Initial Term of this Agreement (until October 5, 2052), OMA shall be responsible for paying fifty percent (50%) of any and all extra costs necessary for ongoing maintenance and/or repair of the Fire Station Building elevator, as determined by the City in its sole discretion. Such costs shall be paid to the City within thirty (30) days of OMA's receipt of an invoice therefor. Should this Agreement be extended beyond the Termination Date of the Initial Term, OMA shall be solely responsible for any and all extra ongoing maintenance and repair costs of the elevator in the Fire Station Building for any Extended Term. (See Subsections 7.2(c)(iii) through 7.2(c)(vi) for City's responsibilities pertaining to the Fire Station Building elevator.)

(iii) Cleaning and maintaining the outside areas surrounding the Fire Station Building within the Fire Station Property boundaries, including the walkways and trash areas and the areas between the buildings, free of any trash, excrement and/or debris;

(iv) The areas outside the Fire Station Building, including the areas, in and around the alley between the Central Pavilion Property and the Fire Station Property; and

(v) If any of the original/historic exterior doors or windows of the Fire Station Building require replacement due to deterioration or vandalism, OMA shall notify City and permit the City to perform the replacement at City's cost. It is the responsibility of OMA to notify City, as promptly as possible, if such area becomes a safety concern, so City may address the matter promptly.

7.2 City's Obligations. City shall be responsible for promptly and diligently, at its own cost and expense, throughout the Term of this Agreement, maintaining, repairing and replacing, except as expressly provided otherwise to the contrary, as needed, in good working order and condition, the following:

(a) City's obligations pertaining to the Former City Hall Property, Property "A" on Exhibit "A-2":

- (i) The **structural and non-structural exterior** of the Former City Hall Building, including the roof, the roof membranes and the painting of the exterior surfaces;
- (ii) The **structural interior** of the Former City Hall Building;
- (iii) The landscape maintenance of landscaping within the boundaries of the Former City Hall Property located outside the Former City Hall Building as approximately delineated on **Exhibit "A-2";**
- (iv) The **structure** of the walkways, paths, and the delivery driveway/alley behind the Former City Hall Building, and the surrounding walls around the paths and walkways within the Former City Hall Property boundaries;
- (v) Replacement at City's cost of any original/historic, exterior windows or doors that require replacement due to deterioration or vandalism; and
- (vi) The HVAC system that serves the Former City Hall Building.

(b) City's obligations pertaining to the Central Pavilion Property which includes the Central Pavilion/OMA Building, Property "B" on Exhibit "A-2":

City shall have no obligation for any maintenance, repair or replacement of any portions of the Central Pavilion Property, including the Central Pavilion Building/aka the OMA Building, or for any improvements within the Central Pavilion Building and any improvements within the Central Pavilion Property, now, or in the future, in any respect, except that the City shall perform landscaping maintenance of the landscaping surrounding the Central Pavilion Building within the Central Pavilion Property boundaries.

(c) City's obligations pertaining to the Fire Station Property, Property "C" on attached Exhibit "A-2":

(i) The **structural and non-structural exterior** of the Fire Station Building including the roof, the roof membranes and the painting of the exterior surfaces;

(ii) The **structural interior** of the Fire Station Building;

(iii) City shall be responsible at City's cost for contracting with an elevator service company to provide basic scheduled elevator maintenance service for the elevator in the Fire Station Building. The services are provided on a regular and systematic schedule to adjust, clean and lubricate as necessary, all covered components of the elevator. Such contract shall not include, among other things, the provision of needed parts, materials, and/or labor to keep the elevator operational, which costs shall be handled as extra costs pursuant to Subsection 7.1(c)(ii) above and Subsection 7.2(c)(iv) below.

(iv) During the Initial Term of this Agreement (until October 5, 2052), City shall be responsible for paying fifty percent (50%) of any and all extra costs necessary for ongoing maintenance and/or repair of the Fire Station Building elevator, as determined by the City in its sole discretion. The City will invoice OMA for such costs, which invoice shall be paid by OMA within thirty (30) days of OMA's receipt thereof. Should this Agreement be extended beyond the Termination Date of the Initial Term, OMA shall be solely responsible for all extra ongoing maintenance and repair costs of the elevator in the Fire Station Building thereafter for any Extended Term.

(v) City shall be responsible for paying the ongoing 5-year elevator re-certification expense;

(vi) City shall be responsible for replacement of the elevator in the Fire Station Building, if replacement is required;

(vii) The landscape maintenance of landscaping within the boundaries of the Fire Station Property outside the Fire Station Building as approximately delineated on **Exhibit "A-2"**;

(viii) The structure of the walkways, paths, and surrounding walls around the paths and walkways within the Fire Station Property boundaries;

(ix) Replacement of any original/historic exterior windows and doors requiring replacement due to deterioration or vandalism; and

(x) The HVAC system that serves the Fire Station Building.

7.3 OMA expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford OMA the right to make repairs at the City's expense because of the City's failure or delay to maintain any portion of the Premises in good order, condition, and repair.

7.4 Except as to the obligations of City which are specified in subsection 7.2 to maintain, repair, and replace as needed, the specific portions of the Former City Hall Property and the Fire Station Property, and any improvements thereon referenced therein, the City shall not be obligated to make any other repairs, alterations, improvements, or additions, or to perform any other work whatsoever in, to, or upon any portion of the Premises, its improvements or contents, now, or at any time hereafter, during the Term of this Agreement, regardless of cause.

7.5 City shall have the right but not the obligation to perform any of OMA's maintenance obligations referenced above in subsection 7.1, if OMA fails to fully perform any of them, and to invoice OMA for the cost of City's performing such work which shall be paid by OMA to City within thirty (30) days of invoice-receipt. As a condition to City's performing any of OMA's maintenance obligations under this Section 7.5, City shall provide OMA prior written notice of OMA's default in performing the required maintenance, and OMA shall have thirty (30) days from OMA's receipt of such notice to complete the required maintenance, but if the required maintenance will require longer to complete, OMA shall notify City in writing thereof, and the Parties shall meet and confer and agree upon a reasonable date thereafter by which OMA shall complete the required maintenance, or City shall have the option but not the obligation to complete the maintenance and bill back the costs to OMA for completing the repairs or maintenance to be paid City within thirty days' of invoice receipt.

8. ALTERATIONS, IMPROVEMENTS AND ADDITIONS

8.1 Alterations & Prior Written Consent. OMA shall not, without the City's prior written consent, make any alterations, improvements or additions in, on or about the Premises, except as set forth below:

Non-structural alterations to the interior of the buildings within the Premises which will not exceed a total cost of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000)** to complete, shall not require prior written consent from the City.

8.2 Any and all alterations, improvements or additions to the Premises (including both interior and exterior) shall be at OMA's sole cost and expense, except as otherwise expressly provided for in this Agreement.

8.3 If, during the Term hereof, any change, alteration, addition or correction shall be required by any law, rule or regulation of any governmental authority to be made to any portion or all of the Premises by reason of OMA's occupancy or use of the Premises, City shall first give its written consent thereto, not to be unreasonably withheld, and such change, alteration, addition, or correction shall then be made by OMA at its sole cost and expense.

If any such change, alteration, addition, or corrections shall be required for any reason, other than by reason of OMA's use or occupancy of the Premises, the responsibility and costs of such change, alteration, addition, or corrections shall be the City's as to the Former City Hall Property and the Fire Station Property, but not as to the Pavilion Property which shall be the responsibility of OMA.

8.4 Liens. OMA shall keep the Premises free and clear from any and all liens, claims, and demands for work performed, materials furnished, or operations conducted on the Premises. As a condition to giving its consent to any proposed alterations, City may require that OMA remove any or all of said alterations at the expiration or sooner termination of this Agreement's Term and restore the Premises to its condition as of the date of OMA's occupation of the Premises. Prior to construction or installation of any alterations, City may require OMA to provide City, at OMA's sole cost and expense, a lien and completion bond in a form acceptable to City and in an amount equal to one and one-half times the estimated cost of such alterations, to insure City against any liability for mechanic's and materialmen's liens and to insure completion of the work. Should OMA make any alterations without the prior written consent of City, OMA shall remove the same at OMA's expense upon demand by the City.

8.5 Construction Work.

(a) All construction work required or permitted to be done by or on behalf of OMA shall be performed by a licensed contractor in a good and workmanlike manner and shall conform in quality and design with the Premises and shall not diminish the value of the Premises in any way whatsoever.

(b) All such construction work shall be performed in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Premises. OMA or its agents shall secure all licenses and permits necessary therefor.

(c) Before any and all vendors and/or contractors commence performing any work on or within the Premises, OMA shall require each vendor or contractor to carry liability and other insurance of an appropriate type that will be adequate in amount to protect the City from any and all risks of the scope of work being performed which shall name the City, its Mayor and councilmembers, appointed boards and commissions, officials, officers, employees, agents,

volunteers, and insurance carriers, (individually and collectively hereinafter referred to as the "City Parties"), as an additional insured. OMA agrees to provide City with evidence of the required insurance and endorsements in a form satisfactory to City, before any work is commenced.

(d) Bonds. OMA shall require its contractor(s) to provide the following bonds if the total contract price exceeds \$25,000, or if any amendment to such contract causes the total contract price to exceed \$25,000. Before commencement of performance of work, contractor shall provide payment and performance bonds in the amounts listed below:

(i) A Performance Bond in a sum not less than one hundred percent (100%) of the total contract price, to guarantee faithful and timely performance of all work, in a manner satisfactory to the City, and further to guarantee that all materials and workmanship will be free from original or developed defects.

(ii) A Payment Bond that meets the requirements of California Civil Code section 9554, in a sum not less than one hundred percent (100%) of the total contract price, to satisfy claims of material suppliers, mechanics and laborers employed by contractor on the work that is the subject of this Agreement.

8.6 Claims. OMA shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for OMA, at or for use in the Premises, which claims are or may be secured by any mechanics' or materialmen's lien(s) against the Premises or any interest therein. OMA shall give City not less than ten (10) days' notice prior to the commencement of any work in or on the Premises, and City shall have the right to post notices of non-responsibility in or on the Premises as provided by law.

8.7 City Property at Term Expiration. All alterations, improvements, and additions which may be made in, on, or to the Premises shall become the property of the City and shall remain upon and be surrendered with the Premises at the expiration of the Term, unless OMA obtains prior written approval from City to remove them at OMA's cost, at the expiration of the Term.

8.8 No Implied Consent. Nothing in this Agreement shall be deemed or construed in any way as constituting the consent or request of City, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any favor or the furnishing of any materials for any specific alteration, addition, improvement, or repair in, on, or to the Premises or any part thereof that would give rise to the filing of any lien against the Premises or any part thereof.

8.9 Restrictions Against Removal of Improvements. OMA shall not remove any improvements in, on, upon, or comprising a portion of the Premises nor waste, destroy, or modify any such improvements except as permitted by this Agreement. All such improvements at the expiration of the term or sooner termination of this Agreement shall, without compensation to OMA, remain City's property free and clear of all claims to or against them by OMA or any third person, and OMA shall defend and indemnify City against all liability and loss arising from such claims against the City.

9. DESIGN, FINANCE, RENOVATION AND CONSTRUCTION OF FIRE STATION PROPERTY

9.1 OMA shall be solely responsible to raise funds (over and above the City's contributions) necessary for the design and renovation of the Fire Station Property, hereinafter to be referred to as the "Project". In addition to the provisions of Section 8 and other applicable provisions of this Agreement, work on the Project shall be subject to the specific requirements set forth in this Section 9.

9.2 Selection of Architect and Architectural Design Fees.

(a) OMA selected the architectural firm of Safdie Rabines Architects ("SRA"), a nationally renowned architectural firm, to prepare the architectural plans and specifications, and the selection was approved by the City.

(b) The City agreed to contribute up to one-half of the architectural design fees up to a maximum, not to exceed **SIX HUNDRED THOUSAND DOLLARS (\$600,000)**, through a separate Reimbursement Agreement between OMA and the City dated June 5, 2024. This Reimbursement Agreement is for the actual and reasonable costs of the design work which shall include schematic and construction drawings in biddable form for the improvement of the Fire Station Building suitable for OMA's use, to include, completing certain architectural, structural, electrical, mechanical, plumbing, historical preservation and other design work for the renovation, rehabilitation and seismic upgrades of the historic Fire Station Building, in compliance with all applicable codes, laws and regulations, in accordance with that agreement.

9.3 The Seismic Upgrade Report. OMA and City entered into an Agreement For Reimbursement of Costs for preparation of a seismic upgrade report for the conversion of the Fire Station Property dated June 23, 2023 (the "Seismic Reimbursement Agreement") in which OMA agreed to retain and pay a qualified professional to perform the studies and analysis necessary to produce the seismic report in compliance with all laws, codes and regulations and according to the standard of care for structural engineering services. OMA retained the Owen Group LP to perform structural engineering services and to prepare a seismic report for the seismic upgrade

of the Fire Station Building (the "Seismic Report"). In accordance with the terms and conditions of the Seismic Report Reimbursement Agreement, the City agreed to reimburse OMA for up to fifty percent (50%) of the actual cost of the Seismic Report not to exceed **FORTY-ONE THOUSAND FIVE HUNDRED SEVENTY DOLLARS (\$41,570)** (the "Reimbursable Amount for Seismic Report"), and City has completed payment of this reimbursement to OMA.

9.4 Hazardous Materials/Environmental Assessment.

(a) City retained Forensic Analytical Consulting Services ("FACS") to perform a Pre-Renovation Asbestos, Lead and Mold Survey of the Fire Station Building (the "Environmental Survey"). Pursuant to the City's Professional Services Agreement with FACS dated August 20, 2024, a total of **TWELVE THOUSAND FORTY-EIGHT DOLLARS (\$12,048)** has been paid to FACS in the full amount by the City without contribution from OMA for the Environmental Survey.

(b) Through this Agreement, City agrees to perform the hazardous materials remediation of the Fire Station Property at City's cost, pursuant to the Environmental Survey, which remediation shall be completed prior to OMA taking possession of the Fire Station Property as a portion of the Premises.

9.5 Design, Finance and Construction. OMA is required to adhere to the Milestone Project Schedule attached in **Exhibit "B"** which includes adherence to all columns shown therein.

(a) The final Schematic Design Plans and the final Design Development Plans for the construction of the Project shall be submitted to the City for final approval by or before the dates provided in **Exhibit "B"**. In addition, the design and construction process shall also comply with all necessary permits and environmental review procedures of the City. It is required that OMA satisfy each funding milestone associated with the Project in order to consider an item complete, as indicated in **Exhibit "B"**. The City, as Landlord, shall review and approve all phases of the design and construction, prior to OMA's submittal of any documentation to the City as the regulatory body for processing and further approval.

(b) The architectural designs, specifications and plans to be procured by OMA from SRA shall implement a historic restoration of the exterior of the Fire Station Building acceptable to City in its sole and independent discretion. The interior of the Fire Station Building may be redesigned to accommodate OMA's needs; provided, however, both the exterior and interior renovations, including any landscaping remodeling, and the historic design review shall be subject to the City's established approval process and subject to the final approval by the City, as Landlord, and as required by the City as the regulatory body.

(c) OMA shall demonstrate to City, OMA's ability to finance the Project, before commencing construction, pursuant to the Milestone Project Schedule and the Estimated Project Budget, attached hereto as Exhibits "B" and "C", in accordance with the following procedure:

Prepared plans and specifications along with a cost estimate shall be presented to the City, along with copies of donor-executed pledge forms (to be collected and maintained by OMA) to substantiate to the City that OMA has raised sufficient capital in accordance with Section 16 (Conditions Precedent) in satisfaction of the requirements of Exhibits "B" and "C".

(d) OMA is required to obtain competitive bids for all work to be performed on the Project pursuant to a bidding process to be reviewed and approved by the City. All contracts and information regarding work on the Project must be maintained by OMA and available to City upon request to verify the bidding processes utilized by OMA for the Project. OMA must submit the plans and specifications for the Project to the City Engineer for approval (by affixing his or her signature to the plans and specifications), which approval must be secured prior to releasing any notice inviting bids for construction of the Project.

(e) OMA is required to construct the Project utilizing prevailing wages; therefore, OMA shall ensure that every contractor doing work on the Project complies with State Labor Code Requirements as set forth in Exhibit 1 attached hereto. Pursuant to State Labor Code requirements, all contractors shall comply with the General Prevailing Wage Determination Made by the Director of Industrial Relations as set forth in Exhibit 2 attached hereto ("State Prevailing Wages"). All contractors on the Project must certify that they are registered with the Department of Industrial Relations ("DIR") and qualified to perform public work pursuant to Labor Code Section 1725.5.

(f) Before OMA may commence construction of the Project, OMA shall procure and provide to City, evidence of Builder's Risk Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and with no coinsurance penalty provisions.

(g) OMA shall provide annual progress reports to the City during the capital campaign, which shall include information on the progress of the renovation of the Fire Station Property, and shall be due to the City no later than June 30 annually.

(h) Pursuant to the "Milestone Project Schedule", OMA shall not proceed with any event milestone without first accomplishing its related funding milestone.

(i) Furthermore, should OMA fail to reach any "Funding or Date Milestone" related to the Project pursuant to Exhibit "B", the Parties shall meet and confer to discuss a mutually agreeable adjusted schedule. Failure of the Parties to reach such agreement within ninety (90) days of the missed Milestone shall thereby give the City the option to terminate those portions of this Agreement related to the Fire Station Property and to exclude it from the Premises.

9.6 Development Fees.

(a) The City agrees to absorb and not charge OMA for the following processing fees and associated deposits, pertaining to all local (City controlled) and customary development permit processing and inspection fees associated with and necessary to entitle and construct the Project, including but not limited to the following fees:

- Application Processing Fees, including Conditional Use Permits, Variance, Development Plan Review
- Environmental Impact Review Fee
- Building Department Plan Check Fees
- Building Department Permit Fees
- Energy Plan Check and Permit Fees
- ADA Plan Check and Permit Fees
- Engineering Department Plan Check and Permit Fees, including Grading, Improvement, Erosion Control (SWPPP), Traffic Control and Landscape Plan Fees
- Encroachment Permit Fees
- Right of Way Permit Fees

(b) OMA agrees to pay at its sole cost and expense, the following impact fees which shall be charged to OMA and not absorbed or waived by the City:

- Public Facilities Fees
- Traffic / Thoroughfare Fees
- Drainage and Flood Control Fees
- Wastewater Buy-in-Fees

(c) OMA agrees to pay any and all other fees not controlled by the City, including but not limited to Oceanside Unified School District fees and San Diego County Water Authority fees.

10. **FUNDING**

10.1 City Funding Committed and/or Completed.

(a) The City conducted and paid for the Environmental Survey in the amount of **TWELVE THOUSAND FORTY-EIGHT DOLLARS (\$12,048.00)**, and paid fifty percent (50%) of the total cost of the Seismic Study commissioned by OMA with City's share for said report totaling **FORTY-ONE THOUSAND FIVE HUNDRED SEVENTY DOLLARS (\$41,570.00)** for the Fire Station Property.

(b) The City has committed, through a Reimbursement Agreement between OMA and the City dated June 5, 2024, to reimburse OMA up to a maximum of **SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)** for payments to Safdie Rabines Architects ("SRA") for certain architectural, structural, electrical, mechanical, plumbing, historical preservation and other design work for the renovation, rehabilitation and seismic upgrades of the Fire Station Building to include schematic and construction drawings in biddable form for improvement of the Fire Station Building as set forth in that Reimbursement Agreement.

(c) Pursuant to Sections 9.2, 9.3 and 9.4(a) of this Agreement as outlined in Subsection 10.1(a) above, the City, as of the date of this Agreement, has entered into agreements to fund up to a total of **SIX HUNDRED FIFTY-THREE THOUSAND SIX HUNDRED EIGHTEEN DOLLARS (\$653,618.00)**, and of that amount, the City has paid to date, a total of **FIFTY-THREE THOUSAND SIX HUNDRED EIGHTEEN DOLLARS (\$53,618.00)**.

(d) In addition, as identified in Section 9.4(b), City, as owner of the Fire Station Property, has committed to contract directly and pay for the hazardous materials remediation work called for by the Environmental Survey of FACS.

10.2 Future Funding. The City has committed and agreed to fund a total of **ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,500,000.00)** for the Project, including its existing commitment to fund **SIX HUNDRED FIFTY-THREE THOUSAND SIX HUNDRED EIGHTEEN DOLLARS AND NO/00 DOLLARS (\$653,618.00)** as set forth in Section 10.1(a) and (b) above. The balance of **EIGHT HUNDRED FORTY-SIX THOUSAND THREE HUNDRED EIGHTY-TWO DOLLARS AND NO/100 DOLLARS (\$846,382.00)**, shall be utilized by OMA as follows:

Payment to SRA for increase in Fire Station Property Plans:	\$252,814
Elevator Purchase/Installation	\$500,000
Balance available to OMA (for Construction Costs)	<u>\$ 93,568</u>
Remaining Balance of City Commitment:	\$846,382

OMA may request payment from the City of the "Remaining Balance of the City Commitment" for the specific uses above, in whole or in part, at any time after OMA has complied with both Sections 16.2 and 16.3.

OMA shall provide City a complete accounting of the expenditures incurred related to the "Remaining Balance of City Commitment" with supporting back-up documentation satisfactory to the City, evidencing that the work and materials incident to these items have been completed and approved by the City, submitting verifiable, paid receipts and full waivers and releases from all contractors and subcontractors associated with such expenditures. Said documentation shall be submitted to the City within nine (9) months from the date the funds are released to OMA. This time frame may be extended by the City Manager, upon written request from OMA.

11. ESTOPPEL CERTIFICATES

11.1 City shall have a period of thirty (30) days following receipt from OMA of an estoppel certificate request pertaining to the status of OMA's compliance with the terms and conditions of this Agreement, within which to give OMA written notice of any defaults by OMA. City's failure to respond to the estoppel certificate within such time, however, shall not be deemed an acknowledgment that OMA has complied with all covenants under the Agreement, and in no event shall the City's failure to respond within such time be deemed a waiver and release by City of all claims against OMA arising out of or under this Agreement.

12. INSURANCE RISKS AND INDEMNITY

12.1 Indemnity.

(a) To the greatest extent allowed by law, OMA agrees to indemnify and hold harmless the City Parties from all losses, claims, suits, demands, expenses, subrogations, attorneys' fees or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen from any cause or causes whatsoever relating to the occupancy or use of the Premises. The foregoing shall not apply to the sole negligent acts of the City Parties. The amount and type of insurance coverage requirements set forth in this Agreement or any other agreement between the Parties will in no way be construed as limiting the scope of indemnity provided for by this section.

(b) To the greatest extent allowed by law, City agrees to indemnify and hold harmless OMA, its officers, employees, and volunteers (hereinafter referred to as the "OMA Parties") from all losses, claims, suits, demands, expenses, subrogations, attorneys' fees, or actions of any kind and nature resulting from personal injury to any person (including bodily injury and death) or damages to any property, arising or alleged to have arisen from events which occur outside of the Premises on any property owned or controlled and maintained by the City other than risks associated with the condition of the Premises. The foregoing shall not apply to the sole negligent acts of the OMA Parties. Nothing in this Section shall be construed to prevent the City from requiring OMA to obtain insurance to cover risks of loss associated with agreements for use of

parking facilities or special events or to execute indemnification agreements with respect to such facilities or events.

12.2 Insurance. Without limiting OMA's indemnification obligations provided for herein, prior to the Effective Date of this Agreement, OMA shall obtain, provide and maintain at its own expense during the Term of this Agreement, policies of insurance with the endorsements of the type, amounts, terms and conditions described in the **Insurance Requirements** attached hereto as Exhibit "D" which are incorporated herein by reference.

13. TAXES

13.1 Payment of Property Taxes. Pursuant to Revenue and Taxation Code Section 107.6, OMA is hereby put on notice that this Agreement may create a possessory interest as defined in the California Revenue and Taxation Code. Such possessory interest may be subject to property taxation if created, and OMA, as the party in whom the possessory interest is vested (if created) may be subject to the payment of property taxes levied on such interest.

13.2 Personal Property Taxes. OMA shall pay prior to delinquency (and OMA shall furnish City with satisfactory evidence thereof) all taxes assessed against and levied upon OMA's Property, trade fixtures, furnishings, signs, equipment, and all other personal property of OMA contained in or on the Premises or elsewhere. When possible, OMA shall cause said OMA's Property, trade fixtures, furnishings, signs, equipment, and all other personal property to be assessed and billed separately from the real property and improvements of the City.

14. GOVERNMENT REGULATIONS

14.1 Governmental Regulations. OMA shall, throughout the Term of this Agreement, at OMA's sole cost and expense, promptly comply with all laws, ordinances, notices, orders, rules, regulations, and requirements of all local, state, and federal governments and any other regulatory body now or hereafter constituted exercising similar functions, relating to the entirety of the Premises, foreseen or unforeseen. Without limiting the generality of the foregoing, OMA shall keep in force at all times all licenses, consents, and permits necessary for the lawful use of the Premises for the purposes herein provided and OMA shall pay all taxes, personal and other property taxes, income taxes, license fees, and other taxes which are or may be assessed, levied, or imposed upon OMA in connection with OMA's operation of its business upon the Premises. OMA shall likewise observe and comply with the requirements of all policies of public liability, fire, and other policies of insurance at any time in force with respect to the Premises.

15. UTILITIES

15.1 OMA shall pay for all utilities and services supplied to the Premises without exception, together with any taxes and assessments thereon, including but not limited to gas, heat, light, power, telephone, high speed internet and cable services, water, sewer fees, water consumption fees, including irrigation landscape water, trash collection, wastewater flow charges, City waste services, and solid waste collection. In no event shall the City be liable for an interruption or failure in the supply of any of the foregoing utilities to the Premises. As it pertains to trash collection for the Premises, City shall allow OMA to deposit trash within City dumpsters located on the City Parcel; however, should the City at its sole discretion determine that the number of trash pick-ups per week must be increased at this location due to a direct increase in OMA's expansion of uses offered at the Premises, then City shall begin billing-back OMA, each month, a pro-rata share of the additional trash costs. Should stand alone trash services be required for the Premises, OMA will be required to contract and pay directly to Waste Management for such services.

16. CONDITIONS PRECEDENT

16.1 Attached hereto as Exhibit "B" is a "Milestone Project Schedule" pertaining to the renovation of the Fire Station Property. Also attached hereto as Exhibit "C" is an "Estimated Project Development Schedule", pertaining to the development and renovation of the Fire Station Property.

16.2 It is a Condition Precedent to the effectiveness of the inclusion of the Fire Station Property as a portion of the Premises in this Agreement, that OMA shall have raised sufficient capital and provided evidence thereof, reasonably satisfactory to the City that OMA has available, no less than Seventy Percent (70%) of the total direct costs as identified on Exhibit "C" for its construction and renovation of the Fire Station Property. Fully executed donor-pledges provided to City for payment within the anticipated times needed for the funds shall be deemed the same as cash.

16.3 It shall be a Condition Precedent to the Fire Station Property being included as a part of the Premises, that OMA shall have prepared plans and specifications which have been approved by City as Landlord, and by the City as the regulatory body pertaining to the renovation and construction of the Project, and that OMA shall have obtained a building permit authorizing the commencement of construction and provided City the required evidence of the Builders Risk Insurance addressed in Subsection 9.5(f), which insurance must be in place before OMA may start construction of the Project.

17. CONDITIONS SUBSEQUENT

17.1 Each of the items set forth in Subsection 17.5 below shall constitute a Condition Subsequent and the occurrence of any one of such Conditions at any time shall empower the City with the right to terminate this Agreement.

17.2 The determination that any such Condition Subsequent has occurred shall be determined by City Council, and notice shall be provided to OMA thereof, within not less than thirty (30) days of such determination. OMA shall have an opportunity to cure the determination of an occurrence of a Condition Subsequent within thirty (30) days after receipt of such notice.

17.3 If not cured by OMA, the determination by the City Council that a Condition Subsequent has occurred shall be binding and absolute upon OMA subject only to review by a court of competent jurisdiction on the ground that the decision is arbitrary, capricious and not supported by substantial evidence in the record.

17.4 Neither Party shall be liable for the failure of or delay in performing obligations set forth in this Agreement, and neither shall be deemed in breach of its obligations if such failure or delay is due to natural disasters or any causes beyond the reasonable control of either Party.

17.5 The Conditions Subsequent to this Agreement are as follows:

(a) OMA fails to conduct on the Premises, eight (8) art exhibitions or art shows during each full calendar year.

(b) OMA fails to keep the Premises open to the public at least one thousand five hundred (1,500) hours during each full calendar year of the Term of the Agreement.

(c) OMA fails to attract a minimum of eight thousand five hundred (8,500) verifiable visitors to the Premises during each full calendar year of the Term of the Agreement. For purposes of this subsection, the term "visitors" shall include, but shall not be limited to, general museum visitors, public and private special event attendees, school children and their teachers, and program, class, and workshop participants.

17.6 Periodic Review of Conditions Subsequent:

The conditions subsequent shall be reviewed during the fifth year of the Agreement term and each five years thereafter, or more frequently, should it be deemed necessary in the City's sole and independent discretion upon written notice to OMA of proposed changes additions, deletions or modifications. If the City determines that reasonable changes, additions, deletions or modifications to the conditions subsequent are warranted, it shall give written notice of each proposed change, addition, deletion or modification to OMA. Thereafter, the Parties shall in good faith meet to negotiate the terms of an appropriate amendment to the Conditions Subsequent to this Agreement. The Parties shall thereafter, enter into an Amendment to the Agreement which shall be presented to City Council for approval relating to any change in the terms of this Agreement. OMA shall not unreasonably withhold its consent to a proposed change, addition,

deletion or modification of a condition subsequent. Pursuant to the foregoing, the first review period shall occur no later than September 30, 2030.

18. REPORTS

18.1 OMA shall prepare and deliver to the City an annual performance report showing:

(a) the activities, events and days and hours of operation for the prior Year, including the prior year's annual financial statement, to be due to the City annually by June 1st.

(b) an operational calendar and schedule of events, including proposed or anticipated events, for the coming calendar year, to be due to the City annually by March 1st.

(c) the annual operating budget for the coming year to be due to the City annually by March 1st.

19. MISCELLANEOUS PROVISIONS

19.1 Notices. Unless another provision of this Agreement establishes a specific method of giving notice, any notice herein required or permitted must be in writing and either delivered in person or deposited in the United States Postal Service mail, postage prepaid, registered or certified mail, return receipt requested, and properly addressed at the following addresses:

To OMA:

Oceanside Museum of Art
Attn: Executive Director
704 Pier View Way
Oceanside, CA 92054

To City:

City Manager
City of Oceanside
300 North Coast Hwy
Oceanside, CA 92054

With a copy to:

City of Oceanside
Property Management
Attn: Real Estate Manager

300 N. Coast Highway
Oceanside, CA 92054
vgutierrez@oceansideca.org

Notices shall be deemed to have been served within seven (7) days after the same has been deposited in the United States Post Office, and the time stated in any notice shall be computed from the time the notice is deemed served upon the party to whom it is addressed. Either party may furnish to the other a different mailing address and designate another individual upon whom all notices may be served as herein provided.

19.2 Assignment and Subletting. This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of OMA's duties be delegated, without the express written consent of the City, which shall not be unreasonably withheld or conditioned. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

19.3 Governing Law. The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City.

OMA shall be responsible for complying with all Local, State, and Federal laws, whether or not said laws are expressly stated or referred to herein.

19.4 Binding Effect. This Agreement and the terms, provisions, promises, covenants and conditions hereof shall be binding upon and shall inure to the benefit to the Parties hereto and their successors and assigns.

19.5 Entire Agreement. This Agreement comprises the entire integrated understanding between City and OMA concerning the use and occupation of the Premises, and supersedes all prior negotiations, representations, agreements and the Prior Lease. No prior agreement or understanding pertaining to any such matter shall be of any force or effect. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

19.6 Corporate Authority. Each individual executing this Agreement on behalf of OMA, a corporation, represents and warrants that he is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation, and that this Agreement is binding upon said corporation

in accordance with its terms. OMA shall, prior to the execution of this Agreement, deliver to City a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement by the signatory(ies) who will be executing this Agreement on behalf of OMA.

19.7 Quiet Possession. City agrees that OMA, upon performing the covenants and conditions of this Agreement, shall quietly have, hold and enjoy the Premises during the term hereof.

19.8 Hazardous Substances. No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the Premises or other premises and the improvements thereon; provided, however, that if anything done by OMA causes an increase in the rate of insurance on the Premises, OMA may, at its option, pay such increase and OMA shall not thereafter be considered in default under this Agreement.

19.9 Potentially Hazardous Conditions. No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude OMA from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

19.10 Intentionally Deleted.

19.11 City Use of Premises. City shall be entitled to reserve the use of the OMA facilities to host non-political events based on facility availability. OMA requires thirty (30) days advance notice to schedule events and City shall provide OMA reimbursement for staffing, security, and cleaning. Catering and entertainment shall be the responsibility of the City.

19.12 City Approval. The City Manager shall be the City's authorized representative in the interpretation and enforcement of all services performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing OMA in accordance with this Agreement, on matters

which do not result in a change to this Agreement, the City Manager delegates authority to the Real Estate Manager of the Property Management Division.

19.13 Defaults and Termination. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within **thirty (30) days** of the notice.

If the defaulting party fails to cure the default within **thirty (30) days** of the notice, or if more than **thirty (30) days** are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within **ten (10) days** of the notice, the demanding party may terminate this Agreement upon written notice of the defaulting party.

City may also terminate this Agreement upon written notice to OMA in the event that OMA has previously been notified by City of OMA's default under this Agreement and OMA, after beginning to cure the default, fails to diligently pursue the cure of the default to completion, or OMA shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law, or OMA shall be adjudicated a bankrupt, OMA fails to perform any obligations under this Agreement, or OMA shall make a general assignment for the benefit of creditors.

Upon termination, City may immediately enter and take possession of the Premises. Further, City shall also have any other available legal and/or equitable remedies permitted by law.

19.14 Severability. Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

19.15 Agreement Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the Parties hereto.

19.16 Nondiscrimination. OMA agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in OMA's use of the Premises.

19.17 Force Majeure. If the performance of any of the obligations of this Agreement (other than the payment of rent) shall be subject to delay due to acts of God (including storms, floods, earthquakes or other casualty), inability to obtain labor or materials due to governmental restrictions, civil commotion, war, invasion, terrorist acts and any other event or circumstance

beyond the reasonable control of the performing party ("Force Majeure"), the time or times for performance of the covenants, provisions, and agreements of this Agreement shall be extended for the period of the delay (including any time reasonably required to recommence performance due to such delay). The affected party shall notify the other party of the Force Majeure event within thirty (30) days of knowledge of its occurrence and shall use diligent efforts to carry out its agreements as soon as reasonably possible. Notwithstanding the foregoing, financial inability to pay, or the unavailability of funds shall not be deemed Force Majeure in any event, and, neither party may rely on its own acts or omissions or the acts or omissions of its employees or agents as grounds for delay in its performance.

19.18 Grease Trap Interceptors. If applicable for OMA's use of the Premises, OMA shall be responsible for installing, cleaning, sanitizing, disposal of associated debris, and ongoing maintenance of any grease trap/interceptor ("Grease Traps") installed within the Premises at OMA's sole cost and expense. The Grease Trap shall be maintained by a professional service that specializes in Grease Trap maintenance. The minimum cleaning frequency of the Grease Trap is every ninety (90) days. OMA shall do so more frequently depending upon the overall usage of the Premises. OMA is responsible for all costs associated therewith, including but not limited to any fines or penalties assessed by any type of agency due to failure to follow the proper protocol and maintenance procedures for the Grease Trap.

19.19 Signatures.

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of OMA and the City.

19.20 Time is of Essence. Time is of the essence on all of the terms, covenants, conditions and provisions of this Agreement.

19.21 Dispute Resolution.

(a) Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall, prior to litigation, be first submitted to mediation, the cost of which shall be borne equally by the Parties.

(b) No suit shall be brought on this contract unless all statutory claims filing requirements have been met.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

20. EXECUTION

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date first above written.

LESSEE:

Oceanside Museum of Art, Inc.,
a California non-profit public benefit
corporation

By: _____

Maria Mingalone, Executive Director

LESSOR:

City of Oceanside,
a California municipal corporation

By: _____

Jonathan Borrego, City Manager

Approved as to form:

Oceanside City Attorney

[NOTARY ACKNOWLEDGEMENT OF LESSEE'S SIGNATURE AND CERTIFICATION OF
SIGNING AUTHORITY MUST BE ATTACHED]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Diego

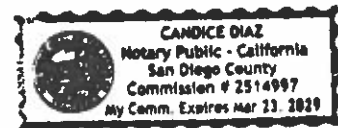
On November 24, 2025 before me, Candice Diaz, Notary Public
(insert name and title of the officer)

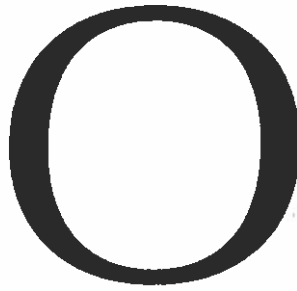
personally appeared Maria Mingalone,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Candice Diaz (Seal)





September 17, 2025

Re: Authorization Statement for Signatories from the Governing Body
Oceanside Museum of Art

The Executive Committee of the Oceanside Museum of Art hereby authorizes either Executive Director, Maria Mingalone or Board President, Allyson Handley to sign the lease agreement with the City of Oceanside on behalf of the organization.

Scott Bruckner, TITLE
Secretary, Board of Directors
Oceanside Museum of Art

Date

EXHIBIT "A-1"
The City Parcel
(Assessor Parcel Number 147-109-01-00)



Exhibit "A-2"

Premises:

Property "A": The Former City Hall Property, address: 704 Pier View Way

Property "B": The Central Pavilion Property, address: 704 Pier View Way

Property "C": The Fire Station Property, address: 714 Pier View Way

(Property "C" is not added to Premises until OMA's satisfaction of Section 16)

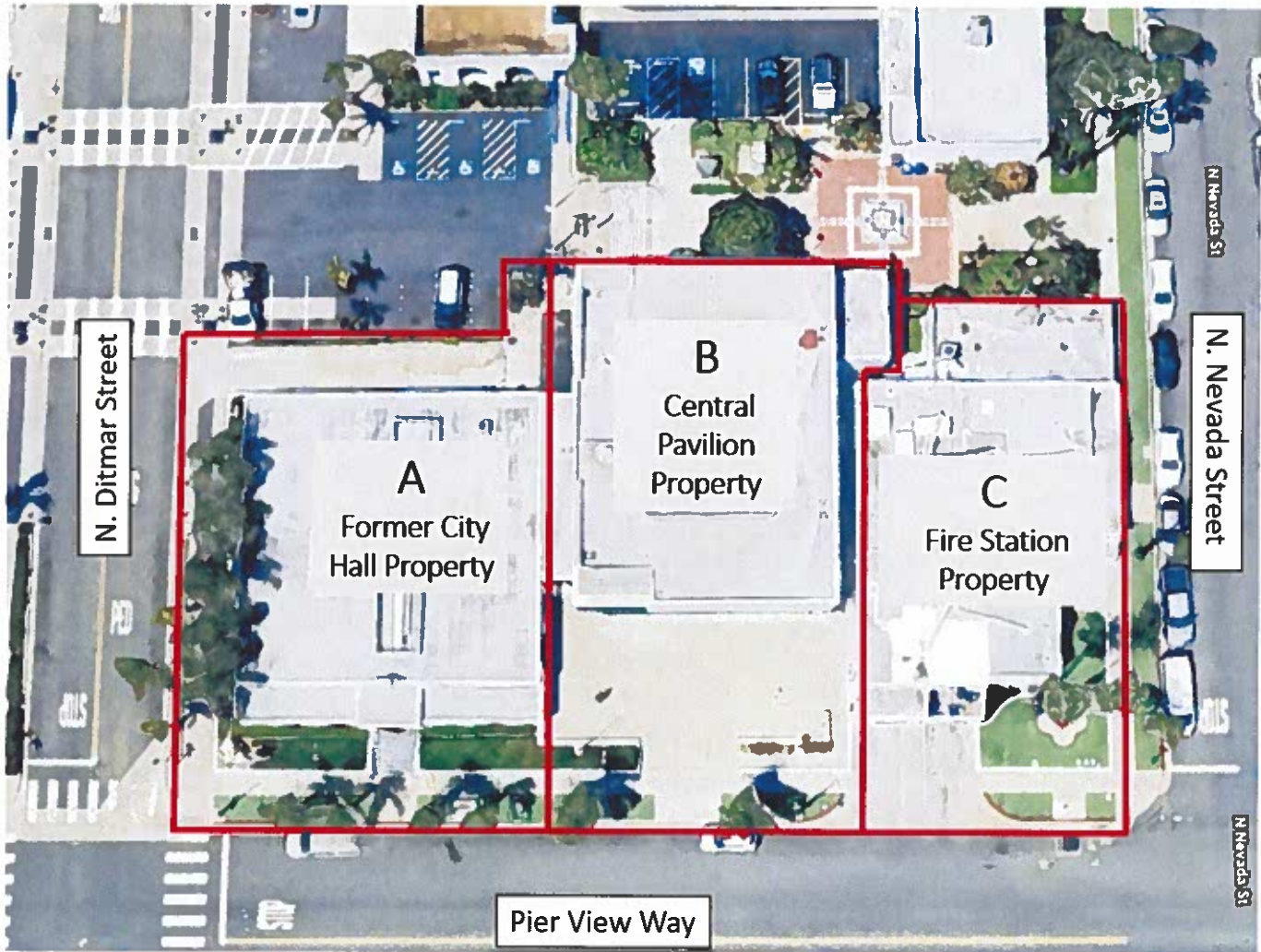


EXHIBIT "B"**Estimated Milestone Project Schedule****For Planning, Renovation & Reconstruction of Fire Station Property**

DATE MILESTONE	FUNDING MILESTONE	EVENT MILESTONE
June 30, 2024	\$1,000,000	(1) Sign architectural contract and submit to City [COMPLETED]
November 30, 2024	\$1,500,000	(2) Obtain Environmental/Hazardous Material Assessment & seismic Upgrade Report [COMPLETED]
January 30, 2026	\$2,000,000	(3) Submit Schematic Design Plans to City for approval
May 30, 2026	\$4,000,000	(4) Submit Design Development Plans to City for approval
October 31, 2026	50% of current Total Direct Costs Estimate	(5) Submit Construction Documents to City for approval and apply for Building Permit. Begin formal bidding process
April 30, 2027	70% of current Total Direct Costs Estimate	(6) Obtain Building Permit, Select General Contractor, Finalize Construction Contract and Commence Construction
June 30, 2028	100% of current Total Direct Costs Estimate	(7) Construction completed and Certificate of Occupancy obtained

NOTE: Each Event Milestone shall not be deemed satisfied unless the funding for that Milestone has been accomplished by the noted date and the event has been completed by such noted date.

EXHIBIT "C"
Estimated Project Development Budget

1) Construction Costs	
Seismic Retrofit	\$830,000
Construction (HazMat, site work, modification to existing buildings)	\$6,309,381
Subtotal Construction Costs	\$7,139,381
2) Furniture, Fixtures and Equipment	
	\$400,000
3) Landscaping, Paving and Fencing	
	\$429,542
Subtotal Construction and other Building "Hard" Costs	\$7,968,923
4) Architectural and Professional Fees	
Architectural	\$695,066
Historic Preservation	\$58,230
Structural Engineering	\$196,433
Mechanical, Electrical and Plumbing	\$197,667
Civil Engineering	\$78,870
Landscape Design	\$105,500
Fire/Life Safety code	\$25,365
Accessibility	\$17,650
Fire Sprinkler/Fire Alarm (Basis-of-Design Only)	\$28,660
AV / Acoustical / Security Design	\$64,960
Dry Utility Design	\$13,290
Hazardous Materials	\$10,000
Cost Management	\$32,270
Food Service Design (if required for Café)	\$10,000
Information Technology	\$30,000
As-Builts of Existing Structural components	\$20,000
Seismic Design	\$121,667
Geotechnical	\$75,000
Inspections and Commissioning	\$30,000
Permitting	\$24,000
Estimated Reimbursable Out-of-Pocket Professional Costs	\$23,372
	\$1,858,000
5) Contingencies (20% of Lines 1 and 4)	
	\$1,507,876
6) Escalation Factor (12% of Lines 1 through 5)	
	\$1,179,201
Total Direct Costs (Lines 1 through 6)	
	\$12,514,000

NOTE: This Exhibit "C" is an estimate of the cost to build the Project as of the date of this Agreement and it shall be updated and revised at each Date Milestone listed in Exhibit "B".

EXHIBIT "D"
Insurance Requirements

1. **Provision of Insurance.** Without limiting Lessee's indemnification of the City Parties, Lessee shall procure and maintain for the duration of the Term of this Agreement, policies of insurance against claims for injuries to persons or damages to property which may arise from or in conjunction with Lessee's operation and use of the Premises, with the endorsements described herein, of the type, in the amounts, terms and conditions described below, in a form satisfactory to City. The costs of such insurance and endorsements shall be borne by Lessee. Lessee agrees to provide City with the insurance and endorsements in accordance with the requirements set forth herein. If Lessee uses existing coverage to comply and that coverage does not meet these requirements, Lessee agrees to amend, supplement or endorse the existing coverage.
2. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' A. M. Best's rating of no less than A: VIII in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorneys' Office.

3. **Insurance Coverage Requirements.**

A. **Commercial General Liability Insurance (CGL).**

Including products & completed operations, property damage, bodily injury & personal & advertising injury with the following minimum limits:

Combined Single Limit Per Occurrence no less than	\$2,000,000
With General Aggregate limits no less than	\$4,000,000

Lessee shall maintain commercial general liability insurance, and if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from Premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract. The commercial general liability insurance must include coverage for sexual abuse/molestation and corporal punishment. If the policy does not include this coverage, Lessee shall procure separate coverage as noted below.

B. **Automobile Liability Insurance.**

Combined Single Limit	\$1,000,000
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Lessee shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Lessee arising out of Lessee's use of the Premises under this Agreement or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- | | |
|---|------------------|
| C. <u>Workers' Compensation Insurance.</u> | Statutory Limits |
| Employers Liability Insurance Per Accident | |
| For bodily injury or disease not less than | \$1,000,000 |

- D. **Property Insurance.**
 Insuring against all risks of loss to the Premises, including all buildings, structures, improvements and contents, on and within the Premises, providing coverage against vandalism, theft, fire, flood & mechanical breakdown at full replacement cost with no coinsurance penalty provision.

The policy must be written on an "all risks" replacement cost basis, excluding earthquake and shall name the City as a Loss Payee for its interest in the Premises.

- E. **Umbrella or Excess Insurance Policy.**
 Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage as least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Lessee's primary and excess liability policies are exhausted.

- | | |
|--|-------------|
| F. <u>Sexual Abuse & Molestation Liability Insurance (SAM).</u> | |
| Per Occurrence | \$1,000,000 |
| General Aggregate | \$2,000,000 |

4. Endorsements Required to Be Provided CITY. Separate endorsements to the insurance referenced above shall be required as follows:

- A. **Additional Insured.** The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on each of the liability policies required in this **Exhibit "D"**

including all CGL, all Excess or Umbrella liability, and SAM liability insurance.

B. Waiver of Subrogation. Lessee hereby grants to City a waiver of any right to subrogation which any insurer of Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect these waivers of subrogation, but this provision applies regardless of whether or not the City has received the required endorsements.

C. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

D. Primary and Non-Contributory. For any claims related to this Agreement, the Lessee's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 12 19 as to the City, its officers, officials, employees, agents and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of Lessee's insurance and shall not contribute with it.

E. Loss Payee. Lessee's Property Insurance required hereunder shall name the City as a Loss Payee for City's interest in the Premises and Lessee shall provide City a Loss Payee endorsement on the Property Insurance coverage required above that supports this status.

5. Additional Agreements Between the Parties. The Parties hereby agree to the following:

A. Evidence of Insurance. Lessee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with hard copies of the required endorsements specified above. Insurance certificates and endorsements must be approved by the City Attorneys' Office (or City's Risk Manager) prior to the Effective Date of this Agreement. Current certification of insurance and endorsements will be kept on file with City during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

B. City's Right to Revise Requirements. City reserves the right at any time during the term of this Agreement to change the amounts, the types of insurance and the endorsements required by giving Lessee sixty (60) calendar days' advance written notice of such change.

C. Enforcement of Agreement Provisions. Lessee acknowledges and agrees that any actual or alleged failure on the part of City to inform Lessee of Lessee's non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

D. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Exhibit "D" are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not

intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

- E. **City Remedies for Non-Compliance.** If Lessee or any contractor of Lessee fails to provide and maintain insurance as required in this Agreement, then City shall have the right, but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Lessee's right to proceed until proper evidence of insurance is provided.
- F. **Timely Notice of Claims.** Lessee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Lessee's operations or performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- G. **Lessee's Insurance.** Lessee shall also procure and maintain, at its own cost and expense, any additional kinds of insurance which, in its own judgment, may be necessary for its proper protection and prosecution of its operations and work.
- H. **Available Excess Insurance.** If Lessee maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- I. **Accident Reporting.** Lessee shall, within 72 hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.

EXHIBIT 1 AND EXHIBIT 2
EXHIBIT 1: STATE LABOR CODE REQUIREMENTS

Throughout **Exhibit 1**, the term "Labor Code" shall mean the "California Labor Code", "Contractor" shall refer to any contractor retained to perform work on the Project described in Section 9 of this Agreement, and "Agency" refers to the City of Oceanside.

E1.1 Prevailing Wages

- a. Pursuant to Labor Code Section 1774, the CONTRACTOR, and any subcontractor under him, shall pay all workers employed on this project not less than the wages specified in the General Prevailing Wage Determination Made By The Director Of Industrial Relations in effect on the date of the invitation for bids for this project. The Prevailing Wage Determination is referred to on **Exhibit 2**. Additional copies of this Prevailing Wage Determination are on file with the Project Manager at the Engineering Division of the Development Services Department, 300 North Coast Highway, Oceanside, CA 92054, and shall be made available to any interested party on request.
- b. Pursuant to Labor Code Section 1775, the CONTRACTOR shall, as a penalty to the AGENCY, forfeit not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for such work or craft in which such worker is employed, for any public work done under the contract by him or her or by any subcontractor under him or her. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the CONTRACTOR's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the CONTRACTOR in meeting his or her prevailing wage obligations, or the CONTRACTOR's willful failure to pay the correct rate of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the CONTRACTOR had knowledge of his or her obligations under the Labor Code. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate shall be paid to each worker by the CONTRACTOR.
- c. To the extent that there is insufficient money due to a CONTRACTOR to cover penalties forfeited and amounts due, the AGENCY shall notify the Division of Labor Standards Enforcement of the violation. The Division of Labor Standards Enforcement, if necessary with the assistance of the AGENCY, may maintain an action in any court of competent jurisdiction to recover the penalties and the amounts due provided for herein. Such action shall be commenced not later than ninety (90) days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or

some part thereof was performed, or not later than ninety (90) days after acceptance of the public work, whichever last occurs. No issue other than that of the liability of the CONTRACTOR for the penalties allegedly forfeited and amounts due shall be determined in the action, and the burden shall be upon the CONTRACTOR to establish that the penalties and amounts demanded in such action are not due.

- d. Out of any money withheld, recovered, or both, there shall first be paid the amount due each worker, and if insufficient funds are withheld, recovered, or both to pay each worker in full, the money shall be prorated among all workers.

E1.2 Legal Day's Work

- a. Pursuant to Labor Code Section 1810 et seq., eight (8) hours labor on this project shall constitute a legal day's work.
- b. Work performed by employees of CONTRACTORS in excess of eight (8) hours during any one (1) calendar day, and forty (40) hours during any one (1) calendar week, shall be permitted on this project only upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one half (1½) times the basic rate of pay, and upon prior written consent of the Engineer.
- c. The CONTRACTOR shall, as a penalty to the AGENCY, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week in violation of the Legal Day's Work requirements of Labor Code Section 1810 et seq.
- d. To the extent that there is insufficient money due to a CONTRACTOR to cover penalties forfeited and amounts due, the AGENCY shall notify the Division of Labor Standards Enforcement of such violation. In the case of a worker claiming the difference between the prevailing wage rate and the amount paid him, the AGENCY shall first give the notice mentioned in Section 1190.1 of the Code of Civil Procedure. The Division of Labor Standards Enforcement, if necessary with the assistance of the AGENCY, may maintain an action in any court of competent jurisdiction to recover the penalties and the amount due provided for herein. Such action shall be commenced not later than ninety (90) days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than ninety (90) days after acceptance of such public work, whichever last occurs. No issue other than that of the liability of the CONTRACTOR for the penalties allegedly forfeited and amounts due shall be determined in such action, and the burden shall be upon the CONTRACTOR to establish that the penalties and amounts demanded in such action are not due.

- e. Out of any money withheld or recovered or both, there shall first be paid the amount due each worker and if insufficient funds are withheld or recovered or both to pay each worker in full the money shall be prorated among all such workers.

E1.3 Payroll Records

Pursuant to Labor Code Section 1776, the CONTRACTOR shall be responsible for compliance with the following requirements:

- a. The CONTRACTOR and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- b. The payroll records enumerated under subdivision (a) above, shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the AGENCY, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the AGENCY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs or preparation by the Division of Labor Standards Enforcement, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the CONTRACTOR.
- c. Each CONTRACTOR shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within ten (10) days after receipt of a written request.

- d. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the AGENCY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the CONTRACTOR awarded the contract or performing the contract shall not be marked or obliterated.
- e. The CONTRACTOR shall inform the AGENCY of the location of the CONTRACTOR's principal office for the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.

As of the date of this contract, the CONTRACTOR's principal office is that which is set forth on the agreement being entered into.

- f. The Director of Industrial Relations shall adopt rules consistent with the California Public Records Act (California Government Code Section 6250 et seq.) and the Information Practice Act of 1977 (California Civil Code Section 1798 et seq.) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this Section.
- g. Pursuant to Labor Code Section 1777, any CONTRACTOR, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of the requirements of the Payroll Records Section is guilty of a misdemeanor.

Additionally, any officer, agent, or representative of the AGENCY who willfully violates any provision of this article is guilty of a misdemeanor.

- h. In the event that the CONTRACTOR does not comply with the Payroll Record requirements stated above, the CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in which respects the CONTRACTOR must comply with the Payroll Requirements. Should noncompliance still be evident after the twenty (20) day period, the CONTRACTOR shall, as a penalty to the AGENCY, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

E1.4 Travel and Subsistence Pay

- a. The CONTRACTOR shall be responsible for compliance with the requirements of Labor Code Section 1773.8.

- b. Pursuant to Labor Code Section 1773.8, each CONTRACTOR and any subcontractor under him, shall pay all workers employed on this project such travel and subsistence payments as are defined in the applicable collective bargaining agreements executed by the representative of any craft, classification or type of worker needed to perform this Contract.
- c. The CONTRACTOR shall be responsible for contacting the Department of Industrial Relations in order to obtain copies of all applicable collective bargaining agreements which have been filed at least thirty (30) days prior to the call for bids on this project.

E1.5 Apprentices

- a. Pursuant to Labor Code Section 1777.5, the CONTRACTOR shall be responsible for compliance with all requirements in this "Apprentices" Section.
- b. Nothing in this Section shall prevent the employment of properly registered apprentices upon public works.
- c. Every such apprentice shall be paid the standard wage to apprentices under the regulations of the craft or trade at which he or she is employed only at the work of the craft or trade to which he or she is registered.
- d. Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code are eligible to be employed on public works. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training.

When the CONTRACTOR or any subcontractor under him or her, in performing any of the work under the contract or subcontract, employs workers in any apprenticeable craft or trade, the CONTRACTOR and subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the site of the public work for a certificate approving the CONTRACTOR or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area of industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject CONTRACTOR or subcontractor, shall arrange for the dispatch of apprentices to the CONTRACTOR or subcontractor in order to comply with this Section. Every CONTRACTOR and subcontractor shall submit contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the craft or trade in the area of the site of the public work to ensure equal

employment and affirmative action in apprenticeship for women and minorities. CONTRACTORS or subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen who shall be employed in the craft or trade on the public work may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this Section, in no case shall the ratio be less than one (1) hour of apprentices work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the Land Surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

- e. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the Land Surveyor classification. The CONTRACTOR shall employ apprentices for the number of hours computed as above before the end of the contract. However, the CONTRACTOR shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.
- f. The CONTRACTOR or subcontractor, if he or she is covered by this Section, upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the CONTRACTOR that he or she employs apprentices in such craft or trade in the state on all of his or her contracts on an annual average of one (1) hour of apprentice work for every five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1 to 5 hourly ratio as set forth in this Section. This Section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or forty (40) hours per week, shall not be used to calculate the hourly ratio required by this Section.
- g. "Apprenticeable craft or trade," as used in the Section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a contractor from the 1 to 5 ratio set forth in this Section when it finds that any one (1) of the following conditions is met:

- (1) Unemployment for the previous three (3) month period in the area that exceeds an average of fifteen percent (15%).
 - (2) The number of apprentices in training in such area exceeds a ratio of 1 to 5 (1:5).
 - (3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis, or on a local basis.
 - (4) Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that, training cannot be provided by a journeyman.
- h. When exemptions are granted to an organization which represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.
 - i. The CONTRACTOR, or any subcontractor under him or her, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any craft or trade in the area of the site of the public work, to which fund or funds other contractors in the area of the site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The CONTRACTOR or subcontractor may add the amount of such contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code Section 227.
 - j. All decisions of the joint apprenticeship committee under this Section are subject to the provisions of Labor Code Section 3081.
 - k. Pursuant to Labor Code Section 1777.7, in the event that a CONTRACTOR willfully fails to comply with the apprenticeship requirements of Labor Code Section 1777.5, such CONTRACTOR, both individually and in the name of the business entity under which the CONTRACTOR or subcontractor is doing business, shall:

- (1) Be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of noncompliance is made by the Administrator of Apprenticeship, and;
 - (2) Forfeit as a civil penalty in the sum of fifty dollars (\$50.00) for each calendar day of noncompliance. Notwithstanding the provision of Labor Code Section 1727, upon receipt of such a determination the AGENCY shall withhold from contract progress payments then due or to become due such sum.
- l. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council.
 - m. Any funds withheld by the AGENCY pursuant to this Section shall be deposited in the AGENCY General Fund.
 - n. The interpretation and enforcement of Labor Code Sections 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

E1.6 Discrimination Prohibited

Pursuant to Labor Code Sections 1735 and 1777.6, the CONTRACTOR shall not discriminate in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of such persons, except as provided in Labor Code Section 3077 and California Government Code Section 12940.

EXHIBIT 2

STATE PREVAILING WAGE RATES

GENERAL PREVAILING WAGE DETERMINATION

MADE BY THE DIRECTOR OF INDUSTRIAL RELATIONS

THAT IS IN EFFECT ON THE DATE THAT THE

INVITATION FOR BIDS IS FIRST PUBLISHED

Copies of this determination are available at www.dir.ca.gov/dlsr and are on file with the AGENCY staff, and shall be made available for the review of any interested party upon request.