

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Real Estate Assets	DATE: 07/10/2013
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SUBJECT: Lease Amendment between the City of San Diego and the YMCA of San Diego County located at 7877 Herschel Avenue, La Jolla CA

PRIMARY CONTACT (NAME, PHONE): Charmaine Gillis,619-236-6986 MS-51A	SECONDARY CONTACT (NAME, PHONE): Kristi Geitz, 619-236-7031 MS-51A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Barwick, James	7/11/2013
Liaison Office	CFO		
Equal Opportunity Contracting	DEPUTY CHIEF		
Comptroller	COO		
	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Authorize the Mayor to execute a Lease Amendment for a 25 year extension with the YMCA of San Diego County.

Determining that this action is categorically exempt from CEQA pursuant to State CEQA guidelines, Section 15301 (existing facilities.)

STAFF RECOMMENDATIONS:

Authorize the execution of the Amendment

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):

01

COMMUNITY AREA(S):

La Jolla Coastal

ENVIRONMENTAL IMPACT:

Categorically exempt from CEQA pursuant to State CEQA guidelines, Section 15301 (existing facilities.)

**CITY CLERK
INSTRUCTIONS:**

DO NOT RECORD OR FURTHER EXECUTE FOR SIGNATURES-Please call: Charmaine Gillis, Real Estate Assets Department (MS-51A), 619-236-6986 for document pick up. Thank you.

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 07/10/2013

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Lease Amendment between the City of San Diego and the YMCA of San Diego County located at 7877 Herschel Avenue, La Jolla CA

COUNCIL DISTRICT(S): 01

CONTACT/PHONE NUMBER: Charmaine Gillis/619-236-6986 MS-51A

DESCRIPTIVE SUMMARY OF ITEM:

The YMCA seeks a lease amendment for an additional twenty-five year term with the City as is required in their current Lease. The proposed extension will allow the Lessee to continue to use the premises as a nonprofit community center/YMCA at a nominal rental rate, update lease language in areas such as: insurance requirements, indemnification and Storm Water Best Management Practices.

STAFF RECOMMENDATION:

Authorize the execution of the Amendment

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

In 1987, the City of San Diego ("CITY") entered into a nonprofit lease agreement with the YMCA of San Diego County ("YMCA") for a period of twenty-five years with a right to extend for an additional twenty-five years of continuous use of the premises as a non-profit community center at a nominal rent. The YMCA requests an Amendment for the additional twenty –five year extension as was contemplated in the original agreement.

For the last 26 years, the YMCA Firehouse Community Center has been serving the local community inclusive of all incomes, ethnic and religious backgrounds, ages and abilities. They have and continue to provide activities and develop programs to benefit seniors, young children, teens and families, with a mission to build strong communities and strong families. This particular Center services an area over 60,000 households in the communities of La Jolla, University City, Sorrento Valley, North Pacific Beach and North Clairemont. An annual fundraiser is held to raise money to help offset costs of programs for those individuals and families who are economically challenged.

The new Lease Amendment will allow the City to update lease language in areas such as: insurance requirements, indemnification and Storm Water Best Management Practices. It will also allow the YMCA to continue to offer sports, leadership development, health and fitness enhancement and numerous social services to the community.

FISCAL CONSIDERATIONS:

The annual rent will go from zero to \$3,250.00 annually during the term of the agreement with annual Consumer Price Index adjustments.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This will be heard at LU&H prior to Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Approval of this 25 year Lease Amendment will allow the continuation and expansion of YMCA programs.

Barwick, James

Originating Department

Deputy Chief/Chief Operating Officer



**CITY OF SAN DIEGO FIRST AMENDMENT TO
NONPROFIT LEASE**

BY AND BETWEEN

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION

AND

YMCA OF SAN DIEGO,
A CALIFORNIA 501(C)(3) NONPROFIT PUBLIC BENEFIT CORPORATION

FIRST AMENDMENT TO NONPROFIT LEASE

This First Amendment to Nonprofit Lease agreement is entered into by and between by THE CITY OF SAN DIEGO, a California municipal corporation [CITY], and the YMCA OF SAN DIEGO COUNTY, a California nonprofit corporation [LESSEE], to be effective as of November 1, 2012 [Effective Date], when signed by the parties hereto and approved by the San Diego City Attorney.

RECITALS

- A. By that certain written Nonprofit Lease agreement dated March 9, 1987, filed in the Office of the City Clerk of San Diego as Document No. 269515 [the Lease or Lease Agreement], LESSEE leased from CITY the premises located at 7877 Herschel Avenue, La Jolla, California [the Premises], as more particularly described in the Lease.
- B. Pursuant to Section 2.03 of the Lease, LESSEE shall have the right of first refusal for one extension of the Lease for an additional term of twenty-five (25) years, subject to all the terms, covenants and conditions of the Lease, provided the current City Council determines that the LESSEE may continue to use the Premises as a nonprofit community center at a nominal rental rate, and provided LESSEE is not then in default of the Lease.
- C. The City Council has met and determined that it is in the best interest of the CITY to extend the term of the Lease for an additional twenty-five year term so that LESSEE may continue to use the Premises as a nonprofit community center/YMCA, at a nominal rental rate.
- D. The Lease is in full force and effect and CITY has no actual knowledge of any default or breach by LESSEE under the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, CITY and LESSEE hereby agree as follows:

AGREED UPON AMENDMENTS

1. SECTION 2: TERM

CITY and LESSEE hereby agree that from and after the Effective Date hereof, the following text shall be deemed inserted into the Lease as a new section, Section 2.05 Extension, which shall read as follows:

- 2.05 Extension. The term of this lease shall be extended, pursuant to the rights granted in Section 2.03 Right to Extend, above, for one additional term of twenty-five (25) years, which term shall commence on November 1, 2012, and terminate on October 31, 2037.

2. SECTION 3: CONSIDERATION

CITY and LESSEE hereby agree that from and after the Effective Date hereof, Section 3.01 Consideration is deleted in its entirety and the following text shall be deemed inserted into the Lease as a new Section 3.01, which shall read as follows:

3.01 Rent. LESSEE shall pay rent to CITY in the amount of Three Thousand Two Hundred Fifty Dollars (\$3,250) per lease year, paid annually in advance. LESSEE shall pay the rent for the first lease year within thirty (30) days after the Effective Date, and thereafter on each anniversary of the Effective Date. The rent shall be adjusted annually, upward only, based on increases in the Consumer Price Index (CPI) as provided below.

a. CPI Adjustments. On each anniversary of the Effective Date, the rent shall be adjusted upward only to reflect any increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California (the "CPI") based on the average of the then three most recently published monthly indices just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.

i. If rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.

ii. If the Department of Labor indices are no longer published, CITY may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then be the "CPI" under this Lease.

iii. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

b. CPI Adjustment Computation. The rent shall be calculated as follows:

The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:

The "base index" denominator for the calculation is 178.5. This is a fixed number representing the three (3) month average of the CPI indices for the months of July, August and September 2001.

The "current index" numerator for the calculation is a variable number that shall be the three (3) month average of the CPI indices for the months of July, August and September of the calendar year preceding the adjustment date.

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

Example Calculation

Current Index (Third Quarter 2011)	232.053
	÷
Base Index (Third Quarter 2001)	<u>178.8=</u>
Adjustment Multiplier	1.300

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

\$2,500.00	(Base Figure)
<u>X 1.300</u>	(Adjustment Multiplier)
\$3,250.00	(Adjusted Rent)

Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

- a. Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to the City Treasurer and be mailed to:

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

or hand delivered to:

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

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

3. SECTION 3: CONSIDERATION

CITY and LESSEE hereby agree that from and after the Effective Date hereof, Section 3.03 Unauthorized Use Charge, is deleted in its entirety and the following text shall be deemed inserted into the Lease as a new Section 3.03, which shall read as follows:

3.03 Unauthorized Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the premises that is not allowed by this lease and of which CITY had no prior knowledge, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this lease. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this lease.

4. SECTION 5: INSURANCE RISKS/SECURITY

CITY and LESSEE hereby agree that from and after the Effective Date hereof, Section 5.01 Indemnity, is deleted in its entirety and the following text shall be deemed inserted into the Lease as a new Section 5.01, which shall read as follows:

5.01 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its obligations under this lease, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any claims or liability arising from the sole gross negligence or intentional misconduct of CITY, its

elected officials, officers, employees, representatives, and agents.

5. SECTION 5: INSURANCE RISKS/SECURITY

CITY and LESSEE hereby agree that from and after the Effective Date hereof, Section 5.02 Insurance, is deleted in its entirety and the following text shall be deemed inserted into the Lease as a new Section 5.02, which shall read as follows:

5.02 Insurance. LESSEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:

- i. Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000);
 - ii. Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - iii. Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE's employees who are subject to this lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).
- a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies. LESSEE shall ensure that "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds on any insurance LESSEE requires of its consultants, contractors and subtenants, if any.
 - b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
 - c. Qualified Insurer(s). All insurance required by the terms of this lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- e. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this lease. LESSEE shall provide proof of continuing insurance at least annually during the term. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- f. Modification. To assure protection from and against the kind and extent of risk existing with the lease Uses or the premises, CITY, at its discretion, may require the revision of amounts and coverage at any time during the term by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to this lease or the premises.
- g. Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons and related to this lease or the premises. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- h. Causes of Loss – Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss – Special Form Property Insurance on all of LESSEE's insurable property related to this lease or the premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.

6. SECTION 7: GENERAL PROVISIONS

CITY and LESSEE hereby agree that from and after the Effective Date hereof, Section 7.01 Notices, is deleted in its entirety and the following text shall be deemed inserted into the Lease as a new Section 7.01, which shall read as follows:

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

If to LESSEE:

YMCA OF SAN DIEGO COUNTY
Attn: President
3708 Ruffin Road
San Diego, CA 92123

If to CITY:

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

SECTION 7: GENERAL PROVISIONS

CITY and LESSEE hereby agree that from and after the Effective Date hereof, the following three new sections shall be deemed inserted into the Lease as the new Section 7.18, Section 7.19 and Section 7.20, which shall read as follows:

- 7.18 Equal Benefits: LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of City-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this lease.
- 7.19 Disabled Access Compliance. LESSEE shall, as applicable to the premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- a. LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
 - b. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
 - c. LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

d. Where required by law, any improvements made to the Premises by LESSEE shall comply with municipal disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.

e. LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

f. LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

7.20 Water Quality Assurances: LESSEE shall comply with San Diego Municipal Code Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Stormwater Code (collectively, "Prevention Plan") and as approved by CITY under its Stormwater Management Program. Within the first thirty (30) days of the term, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control erosion and reduce the amount of "Pollutants," as defined by the Stormwater Code, and other sediments discharged from the premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY's satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith.

This First Amendment to Nonprofit Lease agreement, on file with the City Clerk as Document No. _____, is executed by CITY, acting by and through its Mayor, or his designee, and by LESSEE, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO, a California municipal corporation

Date _____

BY: _____
Name: _____
Title: _____

Date 2/1/2013

YMCA OF SAN DIEGO COUNTY
BY: [Signature]
Name: Baron Herdelm-Doherty
Title: President/CEO

Environmental Analysis Section Environmental Clearance:
Categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301 (Existing Facilities).

Date: March 12, 2012

BY: [Signature]
Name: Elizabeth Shearer-Nguyen
Title: Senior Planner

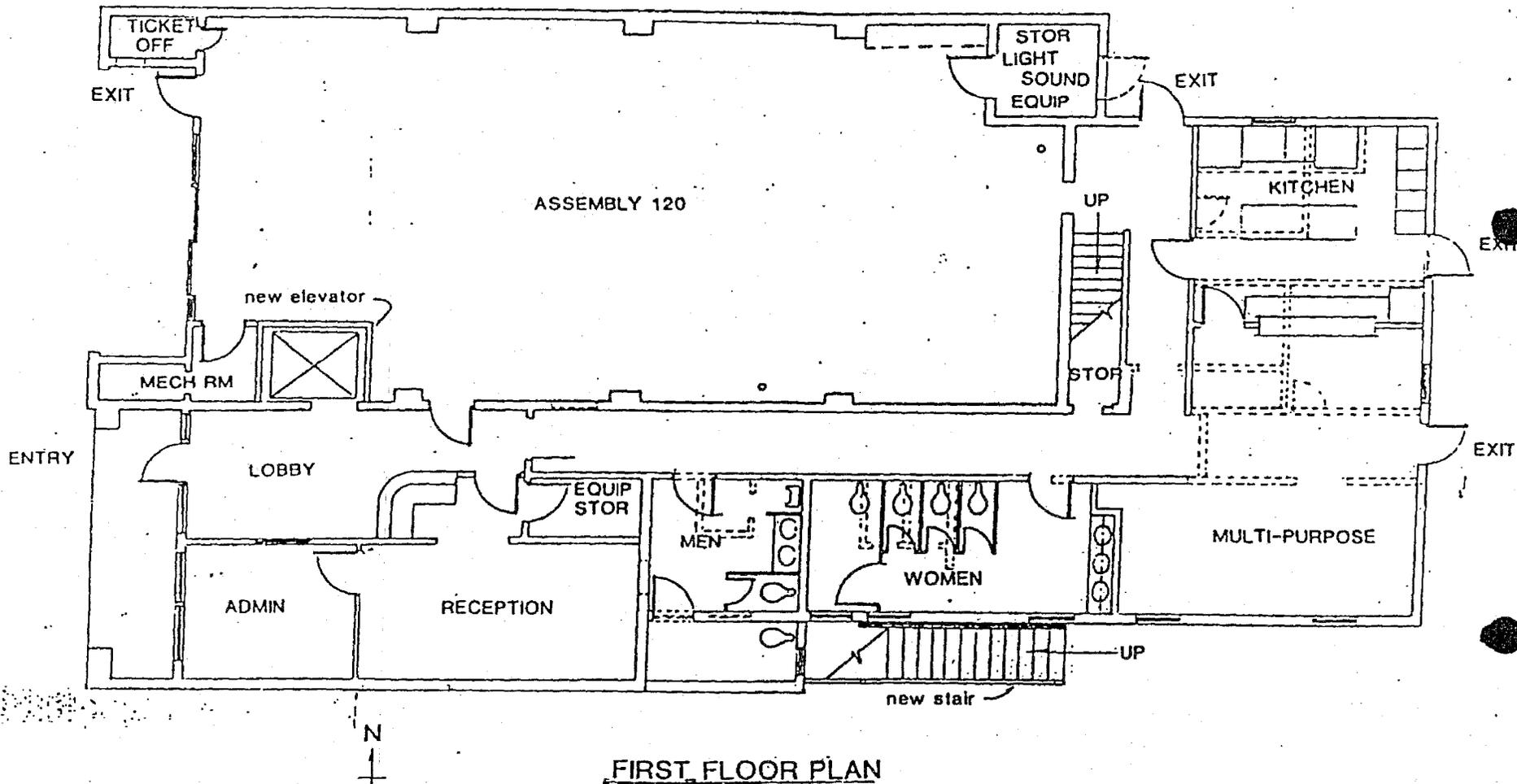
Approved as to form and legality this _____ day of _____, 20____.

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____

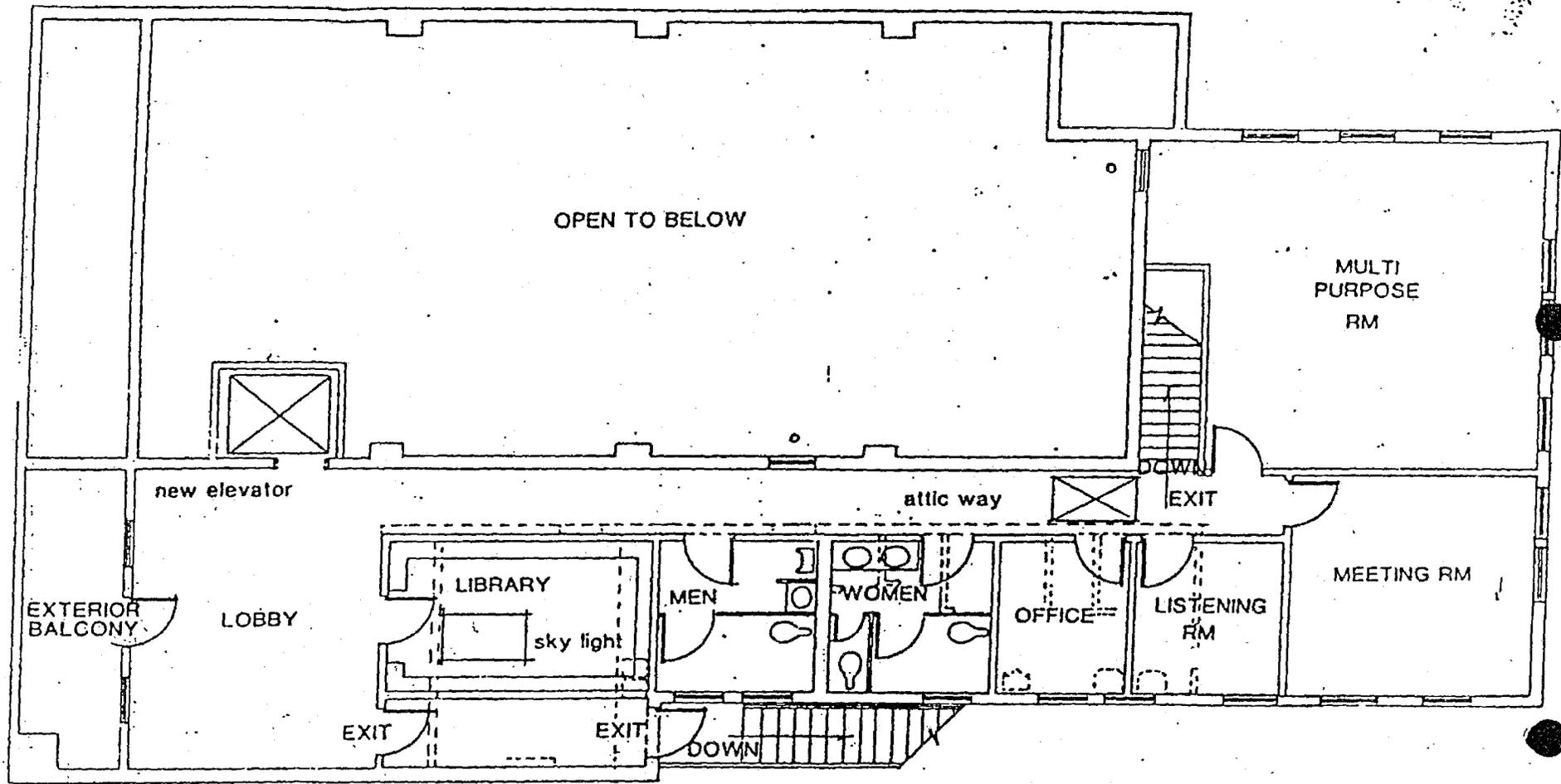
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Exhibit "A"



FIRST FLOOR PLAN

6-07-402



SECOND FLOOR PLAN

SECOND FLOOR PLAN

6-87-482

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
August 22, 2013

SUBJECT: Lease Amendment between the City of San Diego and the YMCA of San Diego County located at
7877 Herschel Avenue, La Jolla , CA

GENERAL CONTRACT INFORMATION

Recommended Consultant: YMCA (Non-Profit)

Amount of Action: \$ (lease annually based on CPI)

Funding Source: Lessee

Goal: N/A

SUBCONSULTANT PARTICIPATION

There is no subcontractor activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

YMCA San Diego County, submitted a Work Force Report for their San Diego County employees dated August 13, 2013, with a total of 4,222 employees. As a non-profit organization their Work Force Report is exempt for employment category goals.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

Authorize the Mayor to execute a Lease renewal for 25 years with the YMCA. The annual rent will go from \$0.00 (zero) to \$3,320.00 annually, with annual Consumer Price Index (CPI) adjustments.

RW

