

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: 08/14/2013
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SUBJECT: Lease renewal between the City of San Diego and the YMCA of San Diego County located at 5505 Friars Road, San Diego, CA

PRIMARY CONTACT (NAME, PHONE): Charmaine Gillis, 619-236-6986	SECONDARY CONTACT (NAME, PHONE): Kristi Geitz, 619-236-7031
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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	8/19/2013
Financial Management	CFO		
Equal Opportunity Contracting	DEPUTY CHIEF		
Liaison Office	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

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

Authorize the Mayor or his designee to execute a lease renewal for 30 years 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):	06
COMMUNITY AREA(S):	Mission Valley Community
ENVIRONMENTAL IMPACT:	This action is 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: 08/14/2013

ORIGINATING DEPARTMENT: Real Estate Assets

SUBJECT: Lease renewal between the City of San Diego and the YMCA of San Diego County located at 5505 Friars Road, San Diego, CA

COUNCIL DISTRICT(S): 06

CONTACT/PHONE NUMBER: Charmaine Gillis/619-236-6986

DESCRIPTIVE SUMMARY OF ITEM:

The YMCA seeks a new lease renewal for a thirty year term with the City. The proposed lease renewal will allow the Lessee to erect a solar power system at a cost of \$3.73 million, and the lease will include updated 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 1980, the City of San Diego ("CITY") entered into a ground lease agreement with the YMCA of San Diego County ("YMCA") for the purpose of constructing, operating and maintaining a YMCA community center. The current lease is due to terminate in 07/28/30. A new lease with a longer term is required by the YMCA in order to commit to a solar power purchase agreement, which will amount to an estimated \$3,730,000 installation of a new clean energy solar power system. This state of the art solar power system will be located on canopies in the parking lots and will provide additional shade. This project will enable the YMCA to further enhance their services by freeing up operating funds for programs instead of energy costs. Additionally the YMCA recently renovated the fitness center and locker rooms at a cost of \$1,637,512, bringing the total cost of all proposed improvements to \$5,367,512.

For the last 33 years, the YMCA on Friars Road has been serving the local community, continuing to upgrade and enhance the facilities for the benefit of the members and the greater San Diego Community.

The new lease will provide the City with updated lease language in areas such as: insurance requirement; indemnification; and Storm Water Best Management Practices.

FISCAL CONSIDERATIONS: The rent will go from \$100.00 to \$3,320.00 for the first year, and then adjusted with annual Consumer Price Index (CPI) adjustments for the balance of the lease term. The rent revenue will be deposited to the general fund 10000.

EQUAL OPPORTUNITY CONTRACTING INFORMATION: 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: 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 30 year Lease will allow the YMCA to erect a solar power system, expand facilities and continue to provide services to the community.

Barwick, James
Originating Department

Deputy Chief/Chief Operating Officer



**CITY OF SAN DIEGO
PUBLIC PURPOSE GROUND LEASE**

BY AND BETWEEN

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

AND

**YMCA OF SAN DIEGO COUNTY,
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION**

CITY OF SAN DIEGO PUBLIC PURPOSE GROUND LEASE

[YMCA, APN 449-

THIS CITY OF SAN DIEGO PUBLIC PURPOSE GROUND LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and YMCA OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation ("LESSEE"), as lessee, to be effective as of September 1, 2013 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY and LESSEE are parties to that certain LEASE AGREEMENT, filed in the Office of the San Diego City Clerk as Document RR-767831 on March 17, 1976, as amended by that certain First Amendment filed in the Office of the San Diego City Clerk as Document RR-280640 on September 14, 1992 (the "1980 Lease").
- B. Under the 1980 Lease, CITY ground leases to LESSEE that certain land comprising approximately 8.820 acres and located at 5505 Friars Road, San Diego, California 92110 (the "Premises," as shown in Exhibit A: Premises, attached hereto). The Premises were leased to LESSEE for the purpose of constructing, operating and maintaining a YMCA community center, as shown on the approved General Development Plan filed in the Office of the San Diego City Clerk as Document No. 764325, for recreational, health, social, educational and cultural uses by YMCA members and the general public, and for no other purpose (the "Allowed Uses").
- C. LESSEE has requested a new, thirty (30) year ground lease of the Premises to continue operation of a community center, to erect a solar power system, and to renovate the fitness center and locker rooms at the Premises, all of which is expected to benefit the community for many years in the future.
- D. CITY and LESSEE have agreed to terminate the 1980 Lease and to enter into this Lease.
- E. This Lease is for a public purpose. LESSEE's mission is to improve the quality of human life for the general public and to help all people realize their fullest potential through development of the spirit, mind and body. LESSEE's goal is to strengthen their community by providing programs to its members and the general public for youth development, healthy living and social responsibility.

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

1. City Council Action Required. This Lease is expressly conditioned on City Council approval and authorization, which may or may not be granted. CITY shall not be obligated for any loss or burden, financial or otherwise, incurred by LESSEE as a result of the City Council's failure to grant such approval and authorization. LESSEE expressly waives any

claim for expense or loss which LESSEE incurs as a result of the failure to obtain the City Council's approval and authorization.

2. Termination of 1980 Lease. CITY and LESSEE hereby terminate the 1980 Lease as of the Effective Date of this Lease. The 1980 Lease shall be of no further effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.
3. Premises. Under the terms and conditions of this Lease, CITY leases the Premises to LESSEE and LESSEE leases the Premises from CITY.
4. Allowed Uses. LESSEE shall use the Premises solely for the following purposes and or no other purpose whatsoever without CITY'S prior written consent ("Allowed Uses"): a) operation of a community and recreational center; b) renovation and maintenance of the buildings and improvements in support of the community and recreational center; c) providing programs in healthy living, well-being, fitness, social services, sports and recreation, education/ leadership skills; and d) cultural uses. All of the Allowed Uses shall be at LESSEE'S sole cost and expense. LESSEE covenants and agrees to use the Premises throughout the Term hereof for the Allowed Uses and to diligently and regularly conduct the Allowed Uses and all business thereon.
 - a. Maintenance. LESSEE shall, at LESSEE's sole expense, maintain the Premises in a decent, safe, healthy, and sanitary condition and to CITY's standards for similar CITY-owned properties, all to CITY's reasonable satisfaction.
 - b. Parking. LESSEE shall, at LESSEE's sole expense, maintain all parking lots on the Premises in a decent, safe, healthy, and sanitary condition and to CITY's standards for similar CITY-owned properties, all to CITY's reasonable satisfaction.
 - c. Benefit. LESSEE shall use the Premises as allowed by this Lease to benefit the general public to CITY's reasonable satisfaction.
 - d. Continuous Use. LESSEE shall continuously use the Premises throughout the term of this Lease.
5. Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
6. CITY's Consent, Discretion. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"),

unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.

7. Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss, burden, or resulting damages.
8. Reservation of Rights.
 - a. Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
 - b. Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
 - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
 - d. Noninterference. CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to Premises or LESSEE's personal property directly caused by CITY's exercising of its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
9. Governmental Approvals. By entering into this Lease, neither CITY nor the City Council is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, maintenance or restoration of the Premises or improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
 - a. LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any rehabilitation of the Premises or any improvements thereon, or any aspect thereof. Furthermore, CITY does not represent, warrant or guarantee any future approval of any rehabilitation or any aspect thereof by the City of San Diego, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.
10. Rates and Charges. LESSEE's rates and charges for use of facilities on the Premises shall not exceed those generally considered reasonable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses.

11. Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan, or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate.
12. Public Use. The general public shall have access to the Premises and the facilities and activities thereon, subject to LESSEE's hours of operation, payment of reasonable, fair value membership and or usage fees generally and reasonably applied as in similar-type community center operations, and other reasonable and nondiscriminatory restrictions.
13. Signs. LESSEE shall comply with all sign and banner regulations of the San Diego Municipal Code. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent in each instance. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
14. Operation of Facilities. LESSEE shall establish and maintain a regular schedule of days and hours of operation to best serve the public, including both YMCA members and nonmembers.
15. CITY Use. Upon reasonable prior notice, CITY may use the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program. After each such use, CITY shall leave the Premises in the same condition found. Such use by CITY shall be at CITY's sole cost and expense.
16. Term. The term of this Lease ("Term") shall be thirty (30) years, commencing on the Effective Date.
17. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that LESSEE shall then pay to CITY fair market rent determined by an appraisal prepared by CITY's Real Estate Assets Department.
18. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and all improvements, structures, and fixtures thereon, and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises and all aspects thereof.

19. Rent. LESSEE shall pay to CITY Rent in the amount of Three Thousand Three Hundred Twenty Dollars (\$3,320) 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 federal Bureau of Labor Statistic's Consumer Price Index for "All Urban Consumers" for Los Angeles/ Riverside/Orange County, California (the "CPI") based on the average of the published monthly indices for the then-preceding July, August, and September 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 an 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, nor shall it affect or modify LESSEE's obligation to pay any adjusted rent due.

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 2012)	237.034
	÷
Base Index (Third Quarter 2001)	<u>178.5=</u>
Adjustment Multiplier	1.328

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 1.328</u>	(Adjustment Multiplier)
\$3,320.00	(Adjusted Rent)

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

- c. 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.

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

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

or hand delivered to:

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

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

20. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
21. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
22. Assignment and Subletting. LESSEE shall not assign, sublease, or license any rights granted by this Lease or any interest in this Lease without CITY's prior written consent. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent in each instance. CITY reserves the right to impose reasonable conditions on its consent in each instance, including the payment of additional consideration to CITY. LESSEE shall pay all reasonable fees required by CITY for processing requests for consents to assignments and subleases. As a condition of consent, CITY may require that this Lease be revised to comply with then-current standard CITY lease requirements.

"Assignment" shall include without limitation the transfer of any interest in this Lease or, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.

Approval of any assignment or sublease shall be conditioned upon the assignee or sublessee agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every

provision of this Lease. Pursuant to City Charter section 225, LESSEE and, if applicable, each of its assignees and subtenants, shall make a full and complete disclosure of the name and identity of each and every person or entity directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Each and every person or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

23. Sublease Income and Licensing Activity Rent. In addition to the Rent and any other fees or amounts due CITY under this Lease, CITY may condition any consent on and demand from LESSEE an amount up to the full amount of all monetary consideration received by LESSEE for any sublease, licensing activity, or other allowance to use or occupy the Premises, or the fair market value equivalent of any such activity or allowance whether or not monetary consideration is actually received by LESSEE. Such additional consideration shall be due and payable as Rent, pursuant to the Rent payment schedule provided herein.
24. Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease and for which CITY has not provided express, written consent to, 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.
25. Encumbrance. LESSEE shall not encumber this Lease, its leasehold estate, or any improvements on the Premises by deed of trust, mortgage, chattel mortgage, or other security instrument without CITY's prior written consent in each instance. Any encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest.
26. Default and Remedies.
 - a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
 - i. LESSEE fails to make any payment required under this Lease when due;
 - ii. LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;

- iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated a bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.
- b. Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:
- i. the worth at the time of award of any unpaid rent that was due at the time of termination;
 - ii. the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
 - iii. the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
 - iv. any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
 - v. all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

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

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the

mortgagee or beneficiary uses reasonable diligence to pursue a cure. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- i. CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE and to mortgagee or beneficiary;
- ii. CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

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

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or

remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

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

28. 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 at the Premises pursuant to 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 established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.
29. Insurance. LESSEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:
- (1) 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);
 - (2) 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
 - (3) 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 Use 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.
 - i. Self-Insured. LESSEE represents and warrants that it is self-insured against workers' compensation claims in accordance with applicable law, and shall pay all claims related thereto as is otherwise required by this Lease. Upon request, LESSEE shall deliver to CITY evidence of its ability to self-insure.
30. Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and

clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises to their prior condition within a reasonable time.

31. Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
32. Entry and Inspection. LESSEE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency situations, CITY may at all reasonable times, but only upon reasonable prior notice to LESSEE, enter and inspect the Premises and the operations conducted on the Premises.
33. Utilities. LESSEE shall order, obtain, and pay for all utilities and service and installation charges in connection with the operation of the Premises.
34. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the Premises without CITY's prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
35. Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.
36. Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the

property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

37. Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.

38. Ownership of Improvements; Removal of Improvements and Personal Property.

a. Improvements. LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY, and LESSEE shall execute and deliver all necessary and appropriate documents, materials and other items reasonably needed to effect such transfer of ownership to CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

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

- c. Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by an appraisal prepared by competent CITY staff.
 - d. CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.
39. Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.
40. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.
- a. Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.
 - b. Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises (LESSEE's Operations) results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of competent governmental authority.

- c. Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- d. Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities resulting from LESSEE's Operations at the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.
- f. Environmental Assessment. Upon reasonable cause to believe that LESSEE's Operations resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and

estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental.

41. 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
Attention: President
5505 Friars Road
San Diego, CA 92110

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

42. Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to City copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises).
43. California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
44. Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of

San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

45. 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.
46. 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. 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.
 - e. 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.
 - 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.

46. Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- a. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. LESSEE's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - c. LESSEE shall include in each of its sublicenses and contracts related to this Permit language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.
47. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participated in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.
48. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
49. Water Quality Assurances. LESSEE shall comply with San Diego Municipal Code Chapter 4, 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.

50. Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use or occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
51. Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
52. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
53. Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
54. No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
55. Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.
56. Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

57. Conformity to Industry and Public Standards. LESSEE acknowledges and agrees that the Premises is publicly-owned and held in trust for the benefit of CITY's citizens. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its sole reasonable discretion. The policies established by LESSEE for the operation of the Premises shall conform to applicable industry standards and reflect CITY expectations for the use and operation of similar CITY-owned properties.
58. Use of Proceeds. LESSEE shall use all revenue received from the operation of the Premises in a fiscally-responsible manner, relative to other organizations reasonably similar to LESSEE, for the Allowed Uses and the operation, maintenance, and improvement of the Premises as set forth in this Lease. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.
- a. Annual Report. LESSEE shall deliver to CITY an annual financial report for each of LESSEE's fiscal years during the Term, certified by an independent certified public accountant. LESSEE shall deliver each such financial report within one hundred twenty (120) days after each of its fiscal years end. The financial report shall include an operating statement and a report of net worth, shall be in a form reasonably satisfactory to CITY, and shall be subject to CITY's review and audit. Within one hundred twenty (120) days after the expiration or earlier termination of this Lease, LESSEE shall deliver to CITY a final financial report that complies with the above requirements for an annual financial report, and covering the period between the last annual report and the expiration or termination date of this Lease.
- b. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally-accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years.
- c. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice. CITY may conduct an audit of LESSEE's books, statements, documents, records, and financial data, or demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.

- d. Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:
- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
 - (b) LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.
- e. Underpayment and Overpayment. Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.
- f. Proposed Budget. At least forty-five (45) days prior to the end of each annual anniversary of the Effective Date during the Term, LESSEE shall deliver to CITY one (1) copy of documents evidencing LESSEE's proposed budget, programs and business plan for the next fiscal year. Such documents shall be in form and content reasonably satisfactory to CITY.
- g. Activities and Inventory. LESSEE shall deliver to CITY annual reports of LESSEE's programs on the Premises.

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59. Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

YMCA OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation

BY: [Signature]
Name: Brian Herdorn
Title: President/CEO

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

San Diego City Council Authorizing Resolution No. R- _____ Date of Final Passage: _____

Environmental Analysis Section Environmental Clearance: _____

Date : _____

BY: _____
Name: _____
Title: _____

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: _____
Name: _____
Title: _____

Exhibit A: Premises

I:\Support Staff Group\WPO\2013\GILLIS\PUBLIC PURPOSE LEASE- YMCA 5505 FRIARS.docx

Exhibit A: Premises

[TO FOLLOW BEHIND THIS PAGE]



P310CS001

FRIARS

FRIARS RD

Q308GM001

Q308GM008

Q308GM007

Q308GM011

Q308R0002

Q308R0012

Q308R0007

TAYLOR ST

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:
August 22, 2013

SUBJECT: Lease renewal between the City of San Diego and the YMCA of San Diego County located at
5505 Friars Road, San Diego, 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 30 years with the YMCA. The annual rent will go from \$100.00 to \$3,320.00 annually, with annual Consumer Price Index (CPI) adjustments.

RW