

AMENDED AND RESTATED LEASE AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
THE TECH INTERACTIVE

REVISED - Section 8 revised after original posting

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS.....	4
SECTION 2. LOCATION AND DESCRIPTION OF THE FACILITY; RELINQUISHMENT OF SITE RIGHTS; CONSTRUCTION AND ACCEPTANCE OF EXPANSION FACILITY	8
SECTION 3. TERM; EARLY ACCESS.....	17
SECTION 4. RENT	18
SECTION 5. FACILITY STANDARDS	18
SECTION 6. TMI USE OF FACILITY	19
SECTION 7. CITY’S USE OF FACILITY	25
SECTION 8. OPERATIONS AND MAINTENANCE SUPPORT	27
SECTION 9. MAINTENANCE, REPAIR AND SECURITY OF FACILITY	28
SECTION 10. TMI OWNERSHIP OF FURNITURE, FIXTURES AND EQUIPMENT; MAINTENANCE OBLIGATIONS OF TMI.....	31
SECTION 11. NONDISCRIMINATION.....	31
SECTION 12. BOOKS, RECORDS AND ACCOUNTS	32
SECTION 13. BUDGETS, AUDITS	32
SECTION 14. AUTHORITY AND STATUS OF TMI; LIMITED RECOURSE	33
SECTION 15. INSURANCE.....	33
SECTION 16. RESTORATION FOLLOWING DAMAGE OR DESTRUCTION	34
SECTION 17. INDEMNIFICATION.....	39
SECTION 18. CONDEMNATION.....	42
SECTION 19. UTILITIES.....	45
SECTION 20. ASSIGNMENT.....	45
SECTION 21. TERMINATION OF LEASE	46
SECTION 22. DEFAULT	48
SECTION 23. SURRENDER OF FACILITY	49
SECTION 24. ALTERATIONS TO FACILITY	50
SECTION 25. TITLE TO PROPERTY/NOTICE OF POSSESSORY INTEREST TAXES.....	53
SECTION 26. PARKING.....	53
SECTION 27. RIGHT OF ENTRY	54

TABLE OF CONTENTS
(continued)

	Page
SECTION 28. WAIVER.....	54
SECTION 29. NOTICES.....	54
SECTION 30. APPROVALS	55
SECTION 31. AMENDMENTS TO THIS LEASE AND THE DDA.....	56
SECTION 32. VENUE.....	56
SECTION 33. FORCE MAJEURE	57
SECTION 34. GOVERNING LAW.....	57
SECTION 35. MCCABE HALL.....	57
SECTION 36. MISCELLANEOUS PROVISIONS.....	57

SCHEDULE OF EXHIBITS

- EXHIBIT A. DESCRIPTION AND DEPICTION OF ORIGINAL FACILITY AND PARKSIDE HALL
- EXHIBIT B. TMI'S USE OR PERMITTED USE
- EXHIBIT B-1. CURRENT THEATER, FOOD AND GIFT SHOP OPERATIONS AND SUBLEASED OR LICENSED SPACE IN THE ORIGINAL FACILITY AS OF THE EFFECTIVE DATE
- EXHIBIT C. ALLOCATION OF MAINTENANCE AND REPAIR ITEMS FOR ORIGINAL FACILITY
- EXHIBIT C-1. ALLOCATION OF MAINTENANCE AND REPAIR ITEMS FOR EXPANSION FACILITY
- EXHIBIT D. INSURANCE REQUIREMENTS
- EXHIBIT E. COMPLETED RESERVATION FORM

**AMENDED AND RESTATED LEASE AGREEMENT BETWEEN
THE CITY OF SAN JOSE AND
THE TECH INTERACTIVE**

THIS AMENDED AND RESTATED LEASE AGREEMENT (this “Lease”) is made and entered into this ____ day of _____, (“Effective Date”) by and between the CITY OF SAN JOSE, a municipal corporation (“City”) and THE TECH INTERACTIVE, a California nonprofit public benefit corporation (“TMI”).

RECITALS

A. City and TMI have entered into that certain Lease Agreement dated July 11, 1994, as amended by that certain First Amendment to Lease Agreement dated December 18, 2012 and as further amended by that certain Letter Agreement dated May 1, 2017 (collectively, the “Original Lease”), for a technology and innovation museum facility as more particularly defined therein (the “Original Facility”). The Original Facility is comprised of those areas which are described and depicted in Exhibit “A” attached hereto, which includes the interior space within the “Current Museum Building”, the interior space within “McCabe Hall”, the marked corridors, bathrooms and other space within the Civic National Center, together with the non-exclusive right of passage across the areas marked as “courtyard access to McCabe Hall” and “San Carlos access to McCabe Hall”. The interior area depicted on Exhibit A as the “blue corridor” is not included in the Original Facility as of the Effective Date of this Lease, but shall become part of the Original Facility by operation of this Lease pursuant to Section 2(A).

B. City and Insight King Wah, LLC, a California limited liability company (“Insight”) have entered into that certain Disposition and Development Agreement (the “Original DDA”) approved by City in its Resolution No. 78343 on August 29, 2017 and signed by the parties thereto on September 17, 2017 with an effective date of December 15, 2017. On June 26, 2018, the City consented to an assignment of the Original DDA from Insight to Museum Place Owner, LLC

(“Developer”). City and Developer have entered into that certain Amended and Restated Disposition and Development Agreement (the “DDA”) approved by City in its Resolution No. _____ on _____ and signed by the parties thereto on _____ with an effective date of _____ for the development and construction of a high density mixed use urban project (“Project”) on certain land owned by City and defined in the DDA as the “Site”. TMI has joined in the execution of the DDA for the limited purposes of agreeing to be bound by certain specified provisions thereof and to accept the benefit of certain other specified provisions thereof, all as is more particularly described therein. As contemplated in the DDA, the Project will contain, among other things, an expansion of the Original Facility in an approximate amount of sixty thousand four hundred seventy-five (60,475) square feet of exhibition, office, and retail space to be delivered to TMI in a “Warm Shell” condition as more particularly described in the Scope of Development attached as Attachment Number 3 to the DDA (the “Expansion Facility”). The Expansion Facility shall be located on a portion of the Site in what is currently the home of Parkside Hall, which Expansion Facility is defined in Section 103 of the DDA as the “Tech Expansion Space”.

C. Under the terms of the DDA, at Close of Escrow (as defined in the DDA), City will transfer to Developer all of its right, title and interest in and to the Site, including City’s fee interest in the land underlying what is currently the home of Parkside Hall. In order to transfer the Site to Developer, City and TMI shall terminate any agreements for TMI’s use of the Site and TMI will need to surrender, any space it is leasing or licensing in the Site to City on or before the Close of Escrow; provided, however, that, in the event that the City exercises its right of reverter pursuant to Section 607 of the DDA (“Right of Reverter”) or title to the Site is otherwise re-vested in the City, then TMI’s rights (including, without limitation, TMI’s development rights) with respect to the Site shall immediately be reinstated as more particularly provided in this Lease, but subject to

all rights of “Permitted Mortgagees” as more particularly provided in the DDA. From and after the Close of Escrow, Developer will proceed with the development and the construction of the Project, including the Tech Expansion Space, in accordance with the DDA. At the completion of the Project, Developer will be required to convey to the City fee simple title to the Expansion Facility, together with all necessary easements and rights for the use and occupancy of the Expansion Facility within the Project by City and TMI (which shall be comprised of such easements and rights included in the Common Area Governance Documents, as defined below) (“Tech Expansion Easements”). City will then lease to TMI the Expansion Facility as set forth in this Lease. City owns the Site and Original Facility, and will own the Expansion Facility from and after recording of the Grant Deed (Tech Expansion Space) as provided under Sections 103 and 211 of the DDA.

D. An expansion of the technology museum is significant and of importance to the City.

E. TMI is a California nonprofit public benefit corporation and qualified under Internal Revenue Code Section 501(c)(3). TMI was organized for the purpose of developing, operating, and maintaining the Facility in a manner that will enhance the City and best serve the needs of the community. TMI is governed by a Board of Directors which is composed of representatives of Silicon Valley industrial, governmental, social and charitable organizations.

F. City desires that TMI occupy, enjoy, operate and maintain the Facility for and on behalf of the City during the Term in a manner consistent with the provisions set forth in this Lease, and subject to all terms and conditions in the Common Area Governance Documents and the Parking Agreement. TMI has the necessary skill, background and expertise to operate and manage the Facility on behalf of the City and desires to do so.

G. The City and TMI hereby desire to amend and restate the Original Lease in its entirety and to incorporate the Expansion Facility and other areas into this Lease on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. Definitions.

Except as otherwise provided in this Lease, the capitalized terms used herein shall have the same meaning as defined in the DDA. The terms set forth below have the following meanings in this Lease, unless the context clearly otherwise requires:

- (1) “Acceptance” shall mean TMI’s acceptance in a writing delivered to City of the Expansion Facility, which shall occur as set forth in Section 2E.
- (2) “Acceptance Date” means the date upon which Acceptance has occurred.
- (3) “Chiller Yard” is more specifically described and depicted on Exhibit “A” attached hereto.
- (4) “City’s Fixed Use” is defined in Section 7A.
- (5) “City’s Flexible Use” is defined in Section 7B.
- (6) “City’s Directors” is defined in Section 6H.
- (7) “City Indemnitees” is defined in Section 17A.
- (8) “City Representatives” is defined in Section 17B(2).
- (9) “City’s Risk Manager” is defined in Section 15.
- (10) “Claims” is defined in Section 17A.
- (11) “Common Areas” shall mean the Chiller Yard, common lobbies, corridors, stairways and stairwells, escalators, elevators, foyers, electrical and telephone closets, mechanical rooms, restrooms, common walkways and sidewalks, common pipes, conduits, wires, mechanical,

plumbing, HVAC, sprinkler and life safety systems and appurtenant equipment within the Project, and other similar facilities used in common with the owner(s) and other tenant(s) and occupant(s) of the Project.

(12) “Current Museum Building” is described and depicted in Exhibit “A” attached hereto.

(13) “DDA” is defined in Recital B.

(14) “Developer” is defined in Recital B.

(15) “Exhibit” or “Exhibits” means any display, artifact or assembly intended to attract and engage the TMI audience in informal learning experiences. Exhibits may be interactive (involving physical activity or more than one sense), or passive (e.g., text and photographs). Exhibits may be attached to building floors, walls, or ceilings, may be free standing or may be moveable. Exhibits may include but are not limited to artifacts, signs, text, art and graphics, photographs, models, cabinets, integral lighting, computers, structural supports, utility connectors and other appurtenances which are a necessary part of the Exhibit.

(16) “Exhibit and Program FF&E” means all furniture, fixtures and equipment essential to the showing or operation of an Exhibit or Program.

(17) “Expansion Facility” is defined in Recital B.

(18) “Facility” is defined in Section 2.

(19) “Facility Board Room” means the Board of Directors Meeting Room in the Facility.

(20) “FF&E” means furniture, fixtures, equipment and personal property (including, without limitation, all camera, security and audio-visual equipment located in the Facility) furnished for installation or use in the Facility (including that currently in use in McCabe

Hall, Exhibit and Program FF&E, and Restricted FF&E) and any replacement furniture, fixtures and equipment required due to obsolescence or normal wear and tear. “FF&E” shall not include any furniture, fixtures and equipment located at the Facility prior to TMI’s initial occupancy of the Original Facility.

(21) “Fixed FF&E” means all FF&E which is affixed in any manner to the Facility. Fixed FF&E specifically includes, but is not limited to: the IMAX projector, screen, and seating in the theater; any and all attached kitchen equipment and related facilities; and any wet labs installed in the Premises. All public art (not purchased by TMI), whether affixed or not, is considered Fixed FF&E.

(22) “Fixed Use Reservations” is defined in Section 7A.

(23) “Hazardous Materials” means (i) petroleum, (ii) asbestos, (iii) urea formaldehyde, (iv) polychlorinated biphenyls, (v) radioactive materials, (vi) radon gas, or (vii) any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restrictive hazardous waste,” or “toxic substances” or words of similar impact under any applicable federal, state or local statutes, ordinances, orders, rules and regulations.

(24) “Initial Improvements” is defined in Section 3C.

(25) “Material Alterations” is defined in Section 24A.

(26) “McCabe Hall” is described and depicted in Exhibit “A” attached hereto.

(27) “Non-Fixed FF&E” means all FF&E which is not Fixed FF&E.

(28) “Normal Business Hours” mean TMI’s hours of operation as published on TMI’s website.

(29) “Operations and Maintenance Payment” is defined in Section 8A.

(30) “Original Facility” is defined in Recital A.

(31) “Original Lease” is defined in Recital A.

(32) “Parking Agreement” shall have the meaning given in Section 110 of the DDA and, except as otherwise provided in this Lease, shall be in substantially the form set forth in Attachment No. 7 to the DDA.

(33) “Parkside Hall” is described and depicted in Exhibit “A” attached hereto.

(34) “Permitted Use” or “TMI Use” is defined in Section 6A.

(35) “Program” means an informal learning presentation for a TMI audience facilitated or guided by staff or volunteers or teachers. A program may include lectures, demonstrations, classroom and laboratory teaching, seminars, competitions, private events, and public addresses. Programs may involve small or large groups. Many programs are designed for school groups and are regularly scheduled and identified in printed museum publications; others are scheduled less frequently, are based on demand, or are one-time experiences. Some programs take place in exhibit spaces, classrooms, laboratories, meeting rooms, public spaces or off-site.

(36) “Project” shall have the meaning given in Section 103 of the DDA.

(37) “Project Garage” shall have the meaning given in Section 103 of the DDA.

(38) “REA” means that certain Reciprocal Easement Agreement referenced in Section 205 of the DDA.

(39) “Replacement Cost” means the cost to replace property at its then current price, without deduction for depreciation.

(40) “Restricted FF&E” means FF&E which (i) are leased by TMI, (ii) are on loan to TMI or (iii) have been given or bequeathed to TMI with restrictions on transferability. As of the Effective Date, Restricted FF&E consists of the following items: Body Worlds Decoded

Specimens, NASA Equipment in Exploration Gallery, Tsunami Capsule in Exploration Gallery, Cisco Spark Board in Bowers Institute, Adobe Wet Brush Software, Zodzjo Printers/Copiers (3) in McCabe, and Artwork in Body Worlds Decoded.

- (41) “Site” is defined in Section 102 of the DDA.
- (42) “Taking” is defined in Section 18.
- (43) “Term” is defined in Section 3A.
- (44) “TMI Board” is defined in Section 6H.
- (45) “TMI Indemnitees” is defined in Section 17B.
- (46) “TMI Representatives” is defined in Section 17A(2).
- (47) “Warm Shell” is defined in Attachment Number 3 to the DDA.

SECTION 2. **Location and Description of the Facility; Relinquishment of Site Rights; Construction and Acceptance of Expansion Facility.**

A. The Original Facility and, upon Acceptance by TMI of the Expansion Facility as set forth in Section 2E below, the Expansion Facility will together constitute a permanent facility comprised of, among other things, a technology museum, large screen theater and associated uses, including any replacements which may be constructed or installed from time to time (the “Facility”). From and after Acceptance by TMI of the Expansion Facility, the interior of the area depicted on Exhibit A as the “blue corridor” shall also constitute a part of the Original Facility. Further, on or before Acceptance by TMI of the Expansion Facility, and, at no additional cost to TMI, TMI shall have the non-exclusive right to use in common with the other owner(s), tenant(s) and occupants of the Project, the Common Areas, which right shall be evidenced as the Tech Expansion Easements. The terms and conditions of the Tech Expansion Easements, including the manner in which the Common Areas are maintained and operated, shall be set forth in the REA (the “Common Area Governance Documents”), the terms and conditions of which Common Area

Governance Documents shall provide TMI with all rights reasonably necessary to use the Facility consistent with this Lease, shall provide for a level of maintenance and operation which is at least consistent with the manner in which the common areas of other comparable buildings and projects are maintained and operated, but otherwise consistent with this Lease, shall provide reasonable notice, cure and performance rights to TMI (which rights shall be exercisable by TMI provided the same are approved and coordinated with City, which approval or coordination shall not be unreasonably withheld or delayed), and shall not make TMI in any way responsible for any maintenance or operation costs of such Common Areas. TMI has reviewed and approved the form of the DDA, including without limitation the Parking Agreement and Common Area Governance Documents attached thereto, and agrees that such forms satisfactorily address all matters which are the subject thereof, and City agrees it shall not consent to amend the DDA, Parking Agreement or Common Area Governance Documents except as is described in Section 31, below.

B. As generally described in Recital C, on or before the Close of Escrow, TMI shall timely execute, if required by the title company at Close of Escrow, the title company's form of relinquishment deed reasonably acceptable to City and TMI, and timely execute such other documents and take such other actions as are reasonably requested by City, in order to evidence TMI's relinquishment of any and all rights it (or third parties claiming through TMI) may have to the Site ("Relinquished Rights") and to physically vacate and surrender the Site to City on or before the Close of Escrow, in order to permit Developer to undertake and complete the Project in accordance with the DDA.

C. Notwithstanding the foregoing, the City shall cause Developer to (1) terminate (a) that certain Power Purchase Agreement dated March 7, 2008 between Solar Star and TMI and amended October 10, 2008 (collectively the "PPA"), (b) that certain Lease Agreement dated June

17, 2008 between the City and TMI, TMI's estate thereunder being further subleased by TMI to Solar Star (such Lease and sublease being collectively referred to herein as the "Lease"), and (c) PG&E and Sun Power Interconnect Agreement ("Interconnect Agreement") executed September 30, 2008 (the PPA, the Lease and the Interconnect Agreement are hereinafter collectively referred to as the "Solar Star Agreements") (which shall terminate upon the issuance of the Developer's approved demolition permit for Parkside Hall ("Solar Agreements Termination Date") and shall not terminate on or before the Close of Escrow), and (2) complete the removal of the solar system as set forth herein. Developer may provide notice of its intent to remove the solar system at any time after the issuance by the City of a demolition permit with respect to the improvements on Parkside Hall and satisfaction of any requirements of Solar Star to terminate the PPA, including payment of the Termination Value (as defined in the PPA). City shall cause the Developer to comply with the PPA related to system removal, coordinate the timing of and work to remove the solar system with TMI, and use commercially reasonable efforts to perform the system removal work so as to minimize the disruption to the operation of TMI. With the consent of TMI and the City (not to be unreasonably withheld, conditioned or delayed), the Developer may abandon in place portions of the solar system where (i) removal is cost prohibitive and (ii) abandonment in place does not materially and adversely effect the use or operation of TMI. All costs and expenses to remove the solar system shall be borne by the Developer, including, but not limited to, the physical removal of all components of the solar system, the repair of any damage to TMI caused by such removal (however, the Developer shall not be required to repair any damage to any portion of Parkside Hall which is ultimately going to be demolished), and any buy-out price for solar panel system components and/or termination fee/liquidated damages payable to Solar Star under the Solar Star Agreements which are required by the terms thereof to terminate the same.

Notwithstanding the forgoing, the Developer shall not be responsible for any amounts which are payable under the Solar Star Agreements prior to the Solar Agreements Termination Date or as a result of the City's or TMI's negligence or willful misconduct. The Developer shall bear the cost of preparing any documents (including amendments to or assignments of the Solar Star Agreements) in connection with the removal of the system, but each of the City and TMI shall bear their own costs in connection with their review of any such documents, including the fees and expenses of their legal counsel.

TMI shall cooperate therewith to minimize amounts payable by Developer under the Solar Star Agreements and the removal of the solar system; provided that neither the City nor TMI shall be required to incur any liability in doing so, but shall be required to bear their own legal and administrative costs, and title to any purchased system components or associated rights shall accrue to Developer from and after the Solar Agreements Termination Date to the extent the same would otherwise accrue to TMI as provided in the Solar Star Agreements. Furthermore, if any physical work is required in the electrical distribution panel servicing the Original Facility as a result of the solar panel system removal as contemplated in this Lease, City shall cause these costs and expenses to be paid by Developer under and pursuant to the DDA.

D. For the avoidance of doubt, the "Relinquished Rights" include all rights of TMI under Section 3E of the Original Lease to expand the Original Facility, all rights of TMI under the Interconnect Agreement and the Solar Lease and all rights of Solar Star under any of the Solar Star Agreements (which rights shall only terminate on the Solar Agreements Termination Date), together with any other rights of TMI or third parties claiming through TMI to occupy or use the Site, however otherwise documented or appearing, including without limitation the right of passage across the area depicted on Exhibit A as the "courtyard access to McCabe Hall" (which

shall thereafter no longer constitute a part of the Original Facility). In the event that, for any reason, Developer fails to undertake and/or complete the Project in accordance with the DDA, and the DDA expires or is terminated and the City exercises its Right of Reverter and title to the Site is re-vested in City or title to the Site is otherwise re-vested in City (the date upon which such re-vesting occurs shall be the “Re-Instatement Date”), unless Parkside Hall has been demolished or otherwise rendered substantially unusable (as determined by City in City’s reasonable discretion), until such time as City desires to redevelop the Site, TMI shall have the right to lease Parkside Hall and the right of passage across the area depicted on Exhibit A as the “courtyard access to McCabe Hall”, subject to a specific written lease to be negotiated between TMI and City at such time. Following such Re-Instatement Date, at such time as City desires to redevelop the Site, TMI shall have the right to participate in the redevelopment of the Site through expansion of the technology museum on terms which are substantial and long-term, subject to a specific written plan to be negotiated between TMI and City at such time. Subject to the foregoing, as applicable, City and TMI shall meet and confer in good faith for sixty (60) days following the Re-Instatement Date in order to determine the terms and conditions of TMI’s lease of Parkside Hall; thereafter, at such time in the future as the City determines, in its sole discretion, to redevelop the Site, City and TMI shall meet and confer in good faith to determine under what terms and conditions TMI shall participate in the redevelopment of the Site, and in such event, TMI’s right to the redevelopment of the Site shall be appropriate and proportionate to the nature, condition, scope and size of redevelopment then proposed by the City (which shall be informed, in part, by the relationship of the Expansion Facility to the Project). Further, as of the Re-Instatement Date, unless otherwise then agreed by City and TMI, this Lease shall be automatically deemed to be amended as follows:

- i) the Term shall expire on September 30, 2053, ii) all references to the Expansion Facility shall

be deleted, and references to the Facility shall mean and refer to only the Original Facility, and iii) all references to the DDA, Parking Agreement and Common Area Governance Documents shall be deleted, and City and TMI shall cooperate in good faith to execute a further written amendment to this Lease to memorialize such amendments (together with, if applicable, any lease rights to Parkside Hall which the parties have negotiated) within one hundred twenty (120) days following the Re-Instatement Date. The parties recognize that it is possible that there may occur defaults by the Developer under the DDA which do not result in the exercise of the Right of Reverter by the City, or do not result in the immediate termination of the DDA by the City, and that the City retains sole discretion to determine when and under what conditions it exercises the Right of Reverter or terminates the DDA, and agree that in the event the City elects to terminate the DDA without exercising the Right of Reverter (or, if the Close of Escrow has not yet occurred at the time of termination) upon the date such termination is effective this Lease shall also be automatically deemed to be amended and the parties shall cooperate in good faith to execute a further written amendment to this Lease to memorialize such amendments all as provided above within one hundred twenty (120) days following the effective date of such termination. In the event the Developer defaults in its obligations to complete the Project in accordance with the DDA and the Site remains in a physical condition which materially adversely impacts the use and/or operations of the Original Facility or which materially restricts or reduces access to the Original Facility, the City shall undertake commercially reasonable efforts to cause such adverse impacts to be mitigated. Finally, in the event the DDA is terminated and City receives all or any portion of Developer's Deposit (as defined in the DDA) as a result of such termination, TMI shall be entitled to receive fifty percent (50%) of the amount so received by City to reimburse out-of-pocket expenses reasonably incurred by TMI for planning, or negotiation or document preparation, in

connection with the Project, which reimbursement shall be made within ten (10) days after presentation to City of evidence thereof in form reasonably acceptable to City.

E. “Acceptance” of the Expansion Facility shall occur upon the latest of all of the following to occur: (1) recordation of the Grant Deed (Tech Expansion Parcel); (2) issuance by City of the Certificate of Compliance (as set forth in the DDA) for the Expansion Facility; (3) completion by Developer of the Punch List Items (as defined in the DDA); and (4) when all the systems servicing the Expansion Facility and necessary for TMI’s operation of the Expansion Facility in accordance with the terms hereof (which shall include the mechanical, water, plumbing, electrical, HVAC, sprinkler and life safety systems forming part of the base building systems for the Expansion Facility) have passed testing and shall be balanced, commissioned and in good working order. As a condition to Acceptance, City shall facilitate TMI’s inspection of the Expansion Facility no later than 7 days after Developer provides City a Completion Notice (as defined in the DDA) for the Expansion Facility Phase (as defined in the DDA). As a further condition to Acceptance, City agrees that it shall not issue the Certificate of Compliance for the Expansion Facility Phase nor shall it otherwise accept the Expansion Facility from Developer unless and until TMI gives City written notice confirming that conditions (3) and (4) to Acceptance have been satisfied. Acceptance, as described and referred to in this section, relates to the delivery of the Expansion Facility being delivered in the “Warm Shell” manner described in the DDA and does not include any tenant improvements or other post-Acceptance work undertaken by TMI.

F. TMI acknowledges that, under the DDA, Developer is obliged to coordinate and cooperate with TMI (and City acknowledges and agrees that it shall ensure that the Developer coordinates and cooperates with TMI) in connection with the design and construction of the Project to the extent it concerns the Expansion Facility or otherwise affects the operations of TMI. City

and TMI shall cooperate in good faith to ensure that such coordination and cooperation occur, and that both City and TMI provide input to Developer concerning the design of the Expansion Facility and ongoing TMI operations, to allow construction of the Project to proceed in a timely manner, which coordination and cooperation (together with obligations of Developer regarding maintenance of insurance and other construction period-related matters) is more fully described in the DDA. Such coordination and cooperation, as described and referred to in this section, relates to the design and construction of the Expansion Facility being delivered in the “Warm Shell” manner described in the DDA and does not include any tenant improvements or other post-Acceptance work undertaken by TMI. In connection with the foregoing, in the event that, prior to Acceptance, there is a breach by any design consultant, architect, contractor, supplier or materialman of any of their respective contracts or warranties thereunder and/or negligence in the performance of its duties thereunder which impacts the Expansion Space (collectively, “Defective Design/Construction”), City shall enforce or cause Developer to enforce any and all of Developer’s or City’s (as the case may be) rights and/or remedies against such designers, architects, contractors, suppliers or materialmen, so that such Defective Design/Construction is remedied within thirty (30) days of receipt of written notice thereof by TMI; provided, however, if the nature of the Defect Design/Construction is such that it cannot be cured within such thirty (30) days, then City shall commence to cure or cause Developer to commence to cure any Defective Design/Construction within such thirty (30) days and thereafter shall diligently and in good faith prosecute the same until the cure is effected.

G. As of the date first set forth above, the term “Common Area” as defined above, includes the Chiller Yard, which Chiller Yard is more specifically described and shown in red in Exhibit “A” attached hereto, which Chiller Yard serves primarily as a loading area for shared use

only by TMI and the occupant, currently Team San Jose, of the building adjacent to the Original Facility, namely the Civic Auditorium, with TMI to coordinate the shared use. TMI and its agents, employees, licensees and invitees shall have the right to use the Chiller Yard for the purpose of the operation of the Facility. Prior to the Effective Date, City installed a mechanical chiller system (“Chiller System”) to serve the Civic Auditorium, which Chiller System is located within the portion of the Chiller Yard as is more particularly shown in teal on Exhibit “A” attached hereto. TMI shall not have any obligation or liability with respect to the Chiller System or the area shown in teal on Exhibit “A” attached hereto, including, without limitation, the installation, operation, maintenance, repair or replacement of the Chiller System or any equipment or facilities relating thereto, or have any obligation to provide or arrange for any services relating to the Chiller System and the City shall bear all costs therefor. The parties acknowledge and agree that City, its permittees and the lawful occupants of the Civic Auditorium shall have the right to vehicular and pedestrian access across the Chiller Yard, for (1) the purpose of operating, maintaining, repairing and replacing the Chiller System, and (2) other purposes related to the operation of the Civic Auditorium; provided, City, its permittees and the lawful occupants of the Civic Auditorium shall provide to TMI such prior written notification which is reasonably possible under the circumstances in connection with exercising any such access rights and coordinate with TMI in order to minimize any adverse affect of such exercise on TMI’s access to or use of the Chiller Yard.

H. The Facility shall also include TMI’s right to use the Tech Expansion Easements (as this term is defined in Recital C above) as provided herein. On or before completion of the Project, City shall enter into and record or cause to be recorded the Common Area Governance Documents.

SECTION 3. **Term; Early Access.**

A. Subject to the provisions of Section 21, the term shall expire on _____, 207_, which is fifty-five (55) years from the Effective Date, unless sooner terminated pursuant to this Lease (the “Term”).

B. The parties acknowledge that the Expansion Facility has not been built as of execution of this Lease. As described in the DDA, TMI shall have the right to enter the Expansion Facility prior to Acceptance, it being understood that such entry shall be pursuant to all of the terms and conditions of this Lease, including, without limitation, City’s and TMI’s respective indemnity and insurance obligations contained in Sections 15 and 17 below, but excluding TMI’s obligation to pay rent, additional rent or any other charges, such as utilities (as such rent, additional rent or any other charges are applicable to the Expansion Facility), from and after the date on which City has received from Developer access rights to the Expansion Facility, for the limited purposes (if any) described in the DDA, but TMI shall not have any right to possession of the Expansion Facility until Acceptance. TMI’s early access and entry into the Expansion Facility pursuant to this Section 3B shall not be deemed an Acceptance by TMI of the Expansion Facility under Section 2D above.

C. TMI shall have the right to perform, from and after Acceptance as defined above, initial tenant improvements (the “Initial Improvements”) within the Expansion Facility in accordance with Section 24 below, which Initial Improvements (together with any other work of construction, alteration, demolition, installation, or repair which is undertaken by TMI under this Lease) shall be undertaken in accordance with prevailing wage, additional construction-related insurance and other requirements. To the extent permitted under the DDA, TMI and City shall cooperate in coordinating the construction of the Initial Improvements with City’s delivery of the

Expansion Facility to TMI in Warm Shell condition. TMI shall complete the Initial Improvements and installation of Exhibits, in phases, in accordance with the schedule set forth in Section 6E below.

SECTION 4. **Rent.**

TMI shall pay annual rent of one dollar (\$1.00) on the first business day of each January occurring during the Term. In addition to the one dollar (\$1.00) annual rental amount, the consideration to be received by City under this Lease consists of TMI's performance of the obligations set forth in this Lease. TMI will not, however, be required to make any payments under the Common Area Governance Documents, the Master CC&Rs or related owners' association (a "Project Owners' Association"), the planned Community Facilities District, or other arrangement arising out of or in connection with the Project, unless TMI is a party to such agreement and such agreement expressly requires TMI to make any such payments. TMI shall not be required participate in any Project Owners' Association.

SECTION 5. **Facility Standards.**

TMI shall operate and manage the Facility to fulfill the following objectives to the greatest extent possible:

- A. To provide the highest quality of technology and science programming to visitors to, and residents of, the City of San Jose in support of the "TMI Mission" as shown in Exhibit "B" attached hereto and incorporated herein by this reference;
 - B. To make the Facility available to the public as more fully described in Section 6;
- and
- C. To maintain a capable, experienced professional staff to operate the Facility in a first-class manner.

SECTION 6. **TMI Use of Facility.**

A. TMI shall have the obligation and the exclusive right to provide the programs and services and all other income and non-income generating uses at the Facility as more particularly described in Exhibit “B” (“TMI Mission”, “TMI Use” or “Permitted Use”) and all related uses thereto. Notwithstanding the generality of the foregoing, TMI’s rights to use the Facility shall be subject to the further limitations provided in Sections 6B, C and D, below.

B. Without the prior approval of the City Council of the City of San Jose: (i) except for theater, food service and gift shop operations (which theater, food service and gift shop operations shall not be larger than the size, in the aggregate, of such theater, food service and gift shop operations existing as of the Effective Date (“Current Theater, Food and Gift Shop Operations”)), or as may be otherwise approved in writing in advance by the City Manager) and short-term temporary events (not to exceed fifteen (15) days per event) (“Special Events”), there shall be no subleasing or licensing of any space permitted on the first or second floors of the Current Museum Building, nor use on the first or second floors of the Current Museum Building for uses other than education-based uses which are available to the generally admitted public, and (ii) excluding Current Theater, Food and Gift Shop Operations (or as otherwise approved in writing in advance by the City Manager) and Special Events, in no event shall TMI enter into any sublease or license for space within the Facility which would result in more than thirty percent (30%) of the gross square footage in the Facility being subleased and/or licensed at any given time. A description of all space within the Facility which is used for Current Theater, Food and Gift Shop Operations, or which is subleased or licensed (other than for Special Events), as of the Effective Date, including identification and size of space and user/use type, is attached hereto as Exhibit B-1. Each subleasing or licensing of space within the Facility shall be made expressly subject to the

provisions of this Lease which are applicable thereto and subordinate to all provisions of this Lease. At least fifteen (15) days' prior to entering into any new subleasing or licensing (other than Special Events, as described above), or modifying (except for Special Events extensions thereof) any existing subleasing or licensing, of space within the Facility, TMI shall report the same in writing to City, together with such information the City may request in regard thereto and a certification by TMI that such subleasing or licensing fully complies with all of the requirements set forth above. For clarity, the requirement in the preceding sentence is a reporting requirement and does not give City any consent rights over such subleasing or licensing transactions by TMI.

C. Notwithstanding the foregoing, TMI shall be entitled to enter into any services, operating and/or management agreements for all or any portion of the Expansion Facility without the consent of the City Council of City of San Jose or the City Manager so long as such agreements include the services and operations for the gift shop, food service, janitorial, summer camps and any of TMI's Special Events. In the event TMI desires to enter into any services, operating and/or management agreements for all or any portion of the Expansion Facility for uses that do not include the uses set forth in the preceding sentence, TMI shall obtain prior approval from the City Manager, which City Manager's approval shall not be unreasonably withheld. In the event TMI desires to enter into any services, operating and/or management agreements to outsource full management of TMI's operations in the Facility to a third-party, TMI shall obtain the prior approval from the City Council of San Jose, which approval shall not be unreasonably withheld. In no event shall any such services, operating and/or management agreements be subject to the subleasing and licensing restrictions set forth in this Section 6.

D. No use of the Facility which could result in an increase in the nature or scope of liabilities to the City over those liabilities generally existing prior to the Effective Date of this

Lease shall be permitted without the prior written consent of the City Manager, which consent shall not be unreasonably withheld and may be made subject to such limitations or conditions as City considers necessary or appropriate.

E. TMI shall be permitted to use the Facility for uses that are not Permitted Uses, other than those specifically enumerated on the second page of Exhibit “B” hereto, only upon the prior written approval of the City Manager, which approval shall not be unreasonably withheld. The City hereby acknowledges and agrees that the use of the Facility (as permitted under the terms of this Lease) do not violate the use provisions of the Common Area Governance Documents.

F. TMI shall be required to operate continuously during the Term throughout the entire Facility, except for any closure reasonably required (i) in connection with construction of improvements to the Facility, or for repair, maintenance or alterations to the Facility, (ii) in connection with changeover of Exhibits or uses within the Facility, (iii) for the time it may take to improve, alter or close the Original Facility in connection with the Initial Improvements to the Expansion Facility; provided, however, the Original Facility shall close only if (a) more than 30% of the gross square footage is materially impacted during construction of the Expansion Facility, in which event, the Original Facility shall re-open no later than twelve (12) days after such impact stops, or (b) more than 30% of the gross square footage Level 1 of the Original Facility shall be renovated in connection with the Initial Improvements to the Expansion Facility; provided, however, (i) such closure shall not last for longer than one (1) year after the commencement of such renovation to the Original Facility and (ii) such closure shall not include the other levels of the Original Facility (other than Level 1) if temporary access to those other levels of the Original Facility is commercially feasible during such renovation; or (iv) for the time it may take to raise funds to initially improve the Expansion Facility, so long as the Expansion Facility is improved

and open to the public for the Permitted Uses, subject to “economic recession” (defined to mean two consecutive quarters of decline in U.S. gross domestic product, but not to exceed a total of eighteen months); provided, however, City shall reasonably approve of any request by TMI for an additional extension beyond a total of eighteen months) and Force Majeure, in accordance with the following schedule: (1) 25% of the gross square footage of the Expansion Facility no later than 2 years after Acceptance, and completion of all punch list items in the Expansion Facility (together “Trigger Date”); (2) 50% of the gross square footage of the of the Expansion Facility no later than 3 years after the Trigger Date; (3) 75% of the gross square footage of the Expansion Facility no later than 4 years after the Trigger Date; and (4) 100% of the gross square footage of the Expansion Facility no later than 5 years after the Trigger Date; provided, however, that any given portion of the Expansion Facility may be closed without cause so long as in the aggregate no more than thirty percent (30%) of the gross square footage of the Expansion Facility is thereby closed for longer than one-hundred eighty (180) days in any given calendar year. Any without cause closure (or failure to complete and open, as the case may be) of: i) the Expansion Space in violation of the sentence immediately above, or ii) any portion of the Original Facility for longer than one-hundred eighty (180) days in any given calendar year (except as otherwise provided for in this Section 6), shall constitute a non-curable default under this Lease and shall entitle City to either terminate this Lease as to the applicable space, or in its entirety, as determined in its sole discretion.

G. Provided that Tenant obtains the applicable sidewalk permits and complies with City ordinances, rules, and regulations pertaining to any proposed use of areas of adjacent public sidewalks in conjunction with Tenant's operations, Tenant’s operations may include such areas; maintenance of such areas shall be the sole responsibility of the Tenant.

H. TMI shall operate the Facility and conduct activities at the Facility in a prudent and business-like manner, with due concern for the safety of the public and TMI staff members and volunteers, and in compliance with all applicable laws and governmental regulations and the terms and conditions of this Lease.

I. Without limiting the generality of the foregoing, TMI shall hold meetings of its Board of Directors (the “TMI Board”), including any subcommittees charged with advising on the operation of the Facility, in accordance with applicable law. TMI shall notify City’s Director of Office of Cultural Affairs and City’s Director of Real Estate or their designees (“City’s Directors”) of any meetings of the TMI Board at which modifications to the Facility, proposed changes to this Lease or maintenance standards shall be recommended to the TMI Board. City’s Directors shall be afforded the opportunity to attend and participate only in those portions of TMI Board meetings at which modifications to the Facility or proposed changes to this Lease or maintenance standards are discussed and/or considered.

J. If TMI charges admission fees and fees for use of the Facility, such fees shall be established in amounts which encourage use by the general public consistent with TMI requirements for operating and maintaining the Facility. TMI shall annually file a written report with the City’s Directors of the fee schedules pertaining to the use of the Facility. All fees charged by TMI for use of, or admission into, the Facility, shall be expended only for purposes related to the TMI Use.

K. TMI shall have the sole and full responsibility for managing, monitoring and supervising all use of the Facility pursuant to this Section 6, except City’s exclusive use of the Facility pursuant to Section 7.

L. All use of the Facility shall be subject to the terms and conditions of this Lease, including without limitation Section 11 (nondiscrimination).

M. From time to time TMI will establish such reasonable rules and regulations to govern the use and operation of the Facility as TMI shall deem necessary or desirable in order to assure the level, quality and character of the Facility operation required by this Lease.

N. The exclusive use of the Facility by City as permitted under Section 7 of this Lease shall not constitute a breach of the obligation imposed on TMI by this Section 6.

O. TMI shall have the right, at its sole cost and expense, to install signage on the exterior of the Expansion Facility, subject only to compliance with City's then-applicable Sign Ordinance (which, as of the Effective Date, is set forth in Title 23 of the San Jose Municipal Code), including any applicable permitting requirements.

P. City shall take all commercially reasonable efforts to minimize any interference with TMI's use of and access to the Facility during any development, improvement or alteration of the Facility or any other space within the Project or at the Site by City, which may occur from time to time and at any time during the Term. TMI shall receive at least fifteen (15 days) advance written notice of any planned interference with TMI's use of and access to the Facility by City. City shall coordinate such alterations and alteration schedule with TMI so as to minimize interference with TMI's use of and access to the Facility and such alterations shall not commence without the prior written consent of TMI, which consent shall not be unreasonable withheld or delayed. City shall not be responsible for Developer's interference with TMI's use of or access to the Facility; provided, however, that: (i) prior to Acceptance, any such interference shall be governed by the terms and conditions of the DDA, and (ii) following Acceptance, any such interference shall be governed by the terms of the REA, and City shall use commercially

reasonable efforts to endeavor to cause Developer to perform its obligations with respect to such interferences as provided thereunder.

SECTION 7. **City's Use of Facility.**

A. City shall have the right to reserve and use the Facility for City's exclusive use as specified in this Section for public purposes, whether by City employees or departments or by third parties nominated by City ("City's Fixed Use"). The parties may by mutual agreement increase or decrease City's use of the Facility. Other than the Completed Reservation (as defined below), City shall not be required to provide any further documentation to TMI in connection with City's Fixed Use; provided, however, that third parties nominated by City, shall provide evidence of insurance or self-insurance as may be reasonably required by TMI for their use of the Facility and shall execute TMI's standard agreement with respect to their occupancy or use of the Facility ("Standard Use Agreement") as a condition to such use. City and TMI agree that City shall have no liability or other responsibility arising out of or in connection with any such third party's use of the Facility under this Section 7A.

City shall have the right, at no cost to City, to reserve the Facility for up to twelve (12) dates each year during the Term ("Fixed Use Reservations") for City purposes as follows: eight (8) events in the lobby/atrium, meeting rooms and/or other common or multi-purpose areas of the Facility and four (4) events in the entire Facility. City shall make Fixed Use Reservations by submittal to TMI of a completed reservation in substantially the form of Exhibit "E" to this Lease ("Completed Reservation"), which Completed Reservation shall be promptly countersigned by TMI and returned to City. For purposes of this Section 7A, "no cost" shall mean that the City shall not pay for the cost of entrance fees or for TMI staff, equipment and any other expenses associated with normal and customary services available to groups and the general public using the Facility

during Normal Business Hours, regardless of whether the City's Fixed Use occurs before, during or after such Normal Business Hours. City shall pay TMI all TMI direct costs which are in addition to expenses associated with normal and customary services and which are required to provide the Facility for City's Fixed Use; provided such costs are specifically enumerated on the Completed Reservation which has been countersigned by TMI and returned to City. All Fixed Use Reservations shall be submitted to TMI through the office of the City Manager. City shall provide TMI with at least 45 days' advance notice of each date that City desires to schedule and TMI shall be obligated to reserve the Facility for the date(s) City desires unless another reservation previously has been made for the date(s) that City has selected. If another reservation has previously been made, TMI shall make every reasonable effort to accommodate City's use on the dates requested and shall offer alternative dates if accommodation is not possible. When possible, City shall endeavor to provide advance notice in excess of forty-five (45) days. City's use of the Facility pursuant to this Section 7A shall not prevent Facility's use by the public during Normal Business Hours.

B. In addition to City's Fixed Use as specified above, City shall have the right to use, from time to time, the atrium/lobby, meeting rooms and/or other publicly accessible common or multi-purpose areas for City purposes, whether by City employees or departments or by third parties nominated by City, subject to reasonable written notice and TMI's right to cancel such use for a fee-paying user ("City's Flexible Use"). As set forth in this Section 7B, TMI may reasonably restrict City's Flexible Use and access to public areas. City's Flexible Use shall be reserved in the same manner and subject to the same terms and conditions as are set forth above with respect to City's Fixed Use.

C. TMI acknowledges that City (or third parties nominated by City) may use the Facility Board Room from time to time and shall make reasonable efforts to accommodate such City use consistent with the normal business activities of TMI, which use shall also be reserved in the same manner and subject to the same terms and conditions as are set forth above with respect to City's Fixed Use, except as set forth in Section 7D below.

D. City's Flexible Use and City's use of the Facility Board Room during Normal Business Hours shall be at no cost to City. "No cost" for these uses shall mean that the City shall not pay for the cost of entrance fees or for TMI staff, equipment and any other expenses associated with normal and customary services available to groups and the general public using the Facility during Normal Business Hours. However, City shall pay for all staff, equipment and other expenses necessary to provide the Facility for City's Flexible Use and/or provide the City the use of the Facility Board Room (i) for City's use which occurs before or after Normal Business Hours and (ii) which are in addition to expenses associated with normal and customary services and which are required in connection with City's Flexible Use or City's use of the Facility Board Room, provided such costs are specifically enumerated on the Completed Reservation which has been countersigned by TMI and returned to City.

SECTION 8. Operations and Maintenance Support.

A. City shall pay to TMI **One Million Three Hundred and Nine Thousand Seven Hundred and Fifty Dollars (\$1,309,750.00)** annually for operations and maintenance support (the "Operations and Maintenance Payment"). Such annual payment shall be prorated for any partial year at the end of the Term of this Lease. City shall remit all such amounts in a timely manner, in equal quarterly installments, on a fiscal year basis no later than the 15th day of the first month of each quarter. TMI shall expend the Operations and Maintenance Payment for operation and

maintenance of the Facility. City shall take such action as may be necessary to include the Operations and Maintenance Payment in its annual budget. The Operations and Maintenance Payment will be increased annually each fiscal year (July 1 through June 30) by the Consumer Price Index distributed by the Bureau of Labor Statistics for All Urban Consumers for the San Francisco, Oakland and San Jose Area (“Index”), not to exceed three percent (3%) annually. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

B. Beginning with Fiscal Year 2012-2013, the City established a Cultural Facilities Capital Maintenance Matching Fund (the “Fund”) for the benefit of cultural facilities. Five percent (5%) of the Operations and Maintenance Payment to TMI was annually redirected into the Fund and the City matched the five percent (5%) annually, subject to appropriation of funds by the City Council. Beginning in Fiscal Year 2019-2020, Fifty-Five Thousand Two Hundred and Fifty Dollars (\$55,250.00) of the Operations and Maintenance Payment to TMI shall annually be redirected into the Fund and City shall match this amount annually, subject to appropriation of funds by the City Council. Funds for TMI must be accounted for separately in the Fund. Either party may terminate this Subsection B upon 10 days’ written notice to the other, without terminating this Lease. All funds remaining in the Fund at that time shall remain the funds of the City to be used by the City for capital repairs and replacements at the Facility, at its discretion, subject to appropriation of funds by the City Council.

SECTION 9. Maintenance, Repair and Security of Facility.

A. Subject to the allocation of responsibility for certain maintenance and repair obligations as set forth in Sections 9C and 9D, TMI shall provide at its sole cost and expense

janitorial and maintenance services to the Facility necessary to maintain the Facility in a clean and serviceable condition for viewing and touring by the public.

B. TMI shall provide and maintain at its sole cost and expense an electronic security system and security services at the Facility. TMI shall have sole responsibility and bear all expense related to activating the system and responding to any and all alarm calls from the electronic system and from security services. City and TMI shall have the responsibility for the maintenance and repair of items for the Original Facility as allocated in Exhibit “C”, attached hereto and incorporated here by this reference. City and TMI shall have the responsibility for the maintenance and repair of items for the Expansion Facility as allocated in Exhibit “C-1”, attached hereto and incorporated here by this reference. To the extent that City’s maintenance and repair items for the Expansion Facility as set forth in Exhibit “C-1” are Developer’s responsibility under the Common Area Governance Documents, City shall fulfill its obligations with respect thereto by fulfilling Developer’s responsibilities or by causing the Developer to fulfill those responsibilities. In the event that a Defective Design/Construction is discovered on or after Acceptance, City shall, within thirty (30) days of receipt of written notice from TMI, either: (1) cause Developer to enforce any and all of Developer’s rights and/or remedies against such designers, architects, contractors, suppliers or materialmen, so that such Defective Design/Construction is remedied within thirty (30) days of receipt of written notice thereof by TMI; provided, however, if the nature of the Defect Design/Construction is such that it cannot be cured within such thirty (30) days, then City shall cause Developer to commence to cure within such thirty (30) days and thereafter diligently and in good faith prosecute the same until the cure is effected; (2) in the case of Defective Design/Construction which only impacts the Expansion Space, and where the City has elected to take an assignment (if assignable) of any of Developer’s Design/Construction remedies (including

any warranties) from Developer, the City shall exercise such rights and remedies to cure such Defective Design/Construction within such thirty (30) days; provided, however, if the nature of the Defect Design/Construction is such that it cannot be cured within such thirty (30) days, then City shall commence to cure or cause to cure any Defective Design/Construction within such thirty (30) days and thereafter shall diligently and in good faith prosecute the same until the cure is effected; or (3) in the case of Defective Design/Construction which only impacts the Expansion Space, and where the City has elected to take an assignment (if assignable) of any of Developer's Design/Construction remedies (including any warranties) from Developer, the City may then in turn assign such rights or remedies (including any such warranties) to TMI and thereafter TMI shall exercise such rights and remedies to cure such Defective Design/Construction. The City shall ensure that all warranties and remedies associated with correcting Defective Design/Construction are, as described above, assignable to the City and to TMI. Any and all such enforcement or assignment, as described and referred to in this section, relates to the design and construction of the Expansion Facility being provided in the "Warm Shell" manner described in the DDA and does not include any tenant improvements or other post-Acceptance work undertaken by TMI. City shall take all commercially reasonable efforts to minimize any interference with TMI's use of and access to the Facility during any maintenance, repair or replacement of items by City pursuant to this Lease. City shall not be responsible for Developer's interference with TMI's use of or access to the Facility; provided, however, that any such interference shall be governed by the terms of the REA, and City shall use commercially reasonable efforts to cause Developer to perform its obligations with respect to such interferences as provided thereunder.

C. Notwithstanding anything to the contrary in this Section 9, City's maintenance and repair obligations with respect to the Facility shall be subject to available funding, as determined

pursuant to the City’s budget and appropriation process. Prior to January 15 of each year of the Term, TMI shall submit to City a proposed maintenance and repair plan for the City’s next five (5) fiscal years, which shall describe the work anticipated to be required to be performed by City hereunder during such period. Thereafter, City and TMI meet and confer in good faith to prioritize such work and develop a proposal for the inclusion thereof in the City’s then current budget and appropriation process.

SECTION 10. TMI Ownership of Furniture, Fixtures and Equipment; Maintenance Obligations of TMI.

A. All FF&E and Exhibit and Program FF&E shall be the property of TMI during the Term and any extensions and the Non-Affixed FF&E and Exhibit and Program FF&E shall remain the property of TMI upon expiration or sooner termination of this Agreement; provided, however, that TMI shall take reasonable efforts to have all lessors or donors of Restricted FF&E permit City to use such Restricted FF&E on the same terms and conditions provided to TMI in the event of termination of this Lease. On or before the expiration of the Term of this Lease or the earlier termination of this Lease, TMI shall only be required to remove from the Facility the Non-Affixed FF&E and Exhibit and Program FF&E and shall surrender the Facility to the City in the same condition as received, ordinary wear and tear, condemnation, damage and destruction covered by Section 16 as further set forth in Section 21 below.

B. TMI shall, at its sole cost and expense, maintain and repair and replace all FF&E located within the Facility in accordance with Exhibits “C” and “C-1”. TMI shall, at its sole cost and expense, construct, install, maintain and repair all Exhibits, Programs, and Exhibit and Program FF&E during their useful lives.

C. For the avoidance of doubt, all elements of the Facility other than Non-Fixed FF&E and Exhibit and Program FF&E, including without limitation Fixed FF&E, the Initial

Improvements and any existing or future improvements thereto (that are not Non-Affixed FF&E and Exhibit and Program FF&E), shall be and remain the property of City from and after installation.

SECTION 11. Nondiscrimination.

A. During the Term TMI shall comply with the requirement that there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, color, age religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in the use, occupancy, tenure or enjoyment of all or any portion of the Facility, and TMI, or any person claiming under or through it, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the use or occupancy of the Facility or any part thereof.

B. Any contracts for the use or occupancy of the Facility shall contain substantially the following clause:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, sex, color, age religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in the use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of licensees, vendees or invitees in the premises.”

SECTION 12. Books, Records and Accounts.

TMI shall keep and maintain at its office complete and accurate books, records, and accounts related to the operation of the Facility. TMI shall retain such records at its offices for not less than three (3) years from the end of each period for which said books and records are kept. Such books, records and accounts shall be kept and maintained in accordance with generally accepted accounting principles (GAAP), which shall be consistently applied. All such books,

records and accounts shall be open to and available for inspection by the City, its auditors or other authorized representatives during Normal Business Hours upon reasonable advance written notice in accordance with Section 29.

SECTION 13. **Budgets, Audits.**

A. TMI shall submit, for the review and analysis of City’s Directors, TMI’s annual budget for the Facility, and any subsequent budget revisions. Prior to adoption of the annual budget by the Board, TMI shall provide City with an opportunity to review the proposed budget for the ensuing fiscal year. TMI will not be required to deliver any documents to City in connection with such review. The final annual budget as approved by the Board shall be submitted to City not later than two weeks after adoption.

B. Within 240 days after the expiration of each of its fiscal years, TMI shall deliver to City an audited statement, duly certified by an independent certified public accountant, of TMI’s books, records, and accounts for TMI, including the Facility, for that fiscal year.

C. The budgets, financials and statements submitted to City by TMI pursuant to this Section are submitted for purposes of this Lease only and do not alter or change any other City requirement to which TMI is subject that is not directly required by this Lease.

SECTION 14. **Authority and Status of TMI; Limited Recourse.**

A. TMI represents and warrants that the individuals who execute this Lease on behalf of TMI are duly authorized by TMI; and that TMI has the authority to enter into this Lease.

B. TMI further represents and warrants that TMI is a California not-for-profit corporation and that it possesses tax-exempt status under both state and federal law. TMI shall maintain its tax-exempt status under both state and federal law for the Term.

C. The officers and directors of TMI shall have no personal liability under this Lease. City shall not have any recourse against the personal assets of the officers or directors of TMI as a result of a breach of the Lease or as a result of any loss, damage, claim or liability of City arising out of or in connection with the Lease.

SECTION 15. Insurance.

City shall maintain all-risk property insurance coverage insuring the Original Facility (no contents coverage) for the Replacement Cost thereof in conformity with City's property insurance program, as it may exist from time to time, with a commercially reasonable deductible as shall be determined by the City's Risk Manager. Notwithstanding the foregoing, in the event City no longer maintains a City-wide property insurance policy, unless otherwise agreed between the parties, City may elect to cease to maintain any property insurance for the Original Facility and Expansion Facility and self-insure any obligations described above in any manner which City deems prudent. City shall maintain, and shall use commercially reasonable efforts to endeavor to cause Developer to maintain, property insurance insuring the Expansion Facility and other elements of the Project as is required by the Common Area Governance Documents. Upon written request, City shall provide access to TMI of its current property policies.

TMI shall have and maintain at its sole cost and expense the insurance policies described in Exhibit "D" attached hereto and incorporated herein by this reference. All such policies, endorsements, certificates and/or binders shall be subject to City's Risk Manager's reasonable approval as to form and content. Such requirements are subject to amendment from time to time (as necessary to reflect changing conditions or markets, provided such amendments do not require TMI to maintain insurance more than insurance maintained by comparable tenants leasing comparable spaces in comparable projects) or waiver in the reasonable discretion of City's Risk

Manager, such discretion to be exercised in writing. As used herein, “City’s Risk Manager” means the City Manager or their designee.

SECTION 16. Restoration Following Damage or Destruction.

City and TMI release each other and their respective agents, employees, successors, assignees and subtenants from all liability for injury to any person or damage to any property that is caused by or results from a risk which is actually insured against, which is required to be insured against under this Lease, or which would normally then be covered by the standard form of all risk commercial property insurance, without regard to the negligence or willful misconduct of the entity so released. City and TMI each shall use its best efforts to cause each insurance policy it obtains to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy. If such insurance policy cannot be obtained with such waiver of subrogation, or if such waiver of subrogation is only available at additional cost and the party for whose benefit the waiver is not obtained does not pay such additional cost, then the party obtaining such insurance shall immediately notify the other party of that fact. The foregoing waiver of subrogation shall apply regardless of whether or not an indemnification of a party to this Lease, given pursuant to this Lease, would otherwise make that party liable for a loss, damage, injury, cost, liability or claim.

A. In the event of damage or destruction of all or part of the Facility from casualty or natural disaster, City shall be obligated to restore the Facility, but only to the extent that insurance proceeds are available or assigned to or received from the City by the Developer or Developer’s insurer for restoration of the Facility and only with respect to those elements for which City has unit replacement responsibility under Exhibit “C” hereto. The amount of City’s “self-insurance” or “deductible” shall be deemed insurance proceeds for the purpose of determining whether

sufficient insurance proceeds are available for restoration of the Facility, but only to the extent that any such “self-insurance” or “deductible” would not otherwise be funded by insurance TMI is required to maintain (or otherwise maintains) under this Lease and any deductibles or retentions thereunder, which shall be the obligation of TMI. At City’s sole discretion, City may augment insurance proceeds with other funds available to City. Similarly, TMI may augment insurance proceeds with available funds in TMI’s sole discretion. Any restoration shall conform as closely as practicable to the original design, materials and finishes of the Facility (“Restoration”) and City shall commence Restoration immediately once all available funds are secured and diligently proceed to endeavor to complete the Restoration within two hundred seventy (270) days from receipt of all available funds.

B. If the insurance proceeds for Restoration of the Facility are not sufficient to complete the Restoration, the parties shall obtain an estimate of the total cost of the Restoration as soon as reasonably possible and the following shall apply:

(1) If the difference between the insurance proceeds and the total cost of the Restoration (the “Insurance Shortfall”) is less than or equal to ten percent (10%) of the then total Replacement Cost of the Facility, the parties shall use diligent good faith efforts to fund the Insurance Shortfall. If the parties are unable to raise the Insurance Shortfall within one (1) year following the event of damage or destruction, either party shall be entitled to terminate this Lease in accordance with the procedure for termination set forth in Section 21A(3), subject to the provisions of Section 16(B)(3) below. If the parties raise the Insurance Shortfall within one (1) year following the event of damage or destruction or if the parties do not terminate this Lease as set forth in the preceding sentence, City shall commence the Restoration once all available funds

are secured and diligently proceed to endeavor to complete the Restoration within two hundred seventy (270) days from receipt of all available funds.

(2) If the Insurance Shortfall is more than ten percent (10%) of the then total Replacement Cost of the Facility and neither party is willing or able to supply the additional funds necessary to complete the Restoration within one (1) year following the event of damage or destruction, either party may terminate this Lease in accordance with the procedure set forth in Section 21A(3), subject to the provisions of Section 16(B)(3) below. If the parties raise the Insurance Shortfall within one (1) year following the event of damage or destruction or if the parties do not terminate this Lease as set forth in the preceding sentence, City shall commence the Restoration immediately once all available funds are secured and diligently proceed to endeavor to complete the Restoration within two hundred seventy (270) days from receipt of all available funds.

(3) Special Elections. If City elects to terminate the Lease pursuant to subsections (B)(1) or (B)(2) above, TMI may, in its sole and absolute discretion but subject to such limitations and/or conditions as City may deem reasonably necessary or appropriate, elect to either make such Restoration within a reasonable time (but not to exceed one year from receipt of City's written notice to terminate the Lease pursuant to Sections (B)(1) or (B)(2)) and in such event City shall assign to TMI all insurance proceeds (whether such proceeds are self-insurance proceeds, received by City's insurer, Developer or Developer's insurer) and this Lease shall continue in full force and effect. TMI's election to make such Restoration must be evidenced by written notice to City within ninety (90) days after receipt by TMI of the City's written notice to terminate the Lease. If TMI elects not to make such Restoration within such ninety (90) days, then this Lease shall terminate in accordance with the procedure set forth in Section 21A(3). Notwithstanding

anything to the contrary herein, in the event the Developer acquires fee title interest in the Tech Expansion Space Parcel (as this term is defined under the Common Area Governance Documents) as set forth under Section 5.7 of the Common Area Governance Documents and this Lease is terminated as to the Expansion Facility, City shall pay to TMI to the lesser of (i) fifty percent (50%) of the purchase price for Developer's purchase of the Tech Expansion Space Parcel; or (ii) the cost to relocate TMI into a new location at the time of the casualty.

C. Notwithstanding any desire or election by either party to Restore, either party, in its sole discretion may elect to terminate this Lease by written notice to the other if such damage or destruction: (a) occurs during the last two (2) years of the Term, or (b) in the terminating party's reasonable opinion, results in a remainder of such size, function or configuration so as to render the continued operation of or access to the unrestored Facility as then constituted impractical or infeasible, and such Restoration cannot be or has not been completed within one (1) year from receipt of all available funds.

D. TMI, and not City, shall bear sole responsibility for the repair and installation of tenant improvements, FF&E, and those other elements for which it has unit replacement responsibility under Exhibit "C" (collectively, the "TMI Repair Elements") after any event of damage or destruction. If TMI reasonably determines that the insurance proceeds and any other funds available for repair and installation of TMI Repair Elements after an event of damage or destruction are not sufficient to ensure the continued operation of the Facility for the Permitted Use, and this Lease has not otherwise been terminated as provided above, then the obligation of TMI to operate the Facility and complete repair and replacement of the TMI Repair Elements shall be suspended for a period not exceeding three (3) years following the event of damage or destruction. TMI shall diligently engage in fund raising activities to fund the repair and/or

installation of the TMI Repair Elements. If TMI does not notify the City within two (2) years following the event of damage or destruction that it has sufficient funds to complete the repair and installation of the TMI Repair Elements to a level which will ensure the operation of the Facility for the Permitted Use within three (3) years following the event of damage or destruction, then either party may terminate this Lease in accordance with the procedure set forth in Section 21A(3). Notwithstanding the generality of the foregoing, TMI shall exercise its rights under this sub-Section in a time and manner which does not unreasonably limit City's rights to utilize insurance proceeds to Restore, which obligation to Restore shall be suspended until TMI notifies City that it has sufficient funds to complete the repair and installation of the TMI Repair Elements and is irrevocably committed to proceed therewith.

E. During any period in which the parties are attempting to fund a deficiency in insurance proceeds as described in this Section 16, any insurance proceeds being held by City or TMI shall be used only to the extent necessary to secure and provide for public safety at the Facility.

SECTION 17. Indemnification.

A. TMI shall indemnify, defend, protect and hold harmless City and City's officers, directors, agents and employees (collectively the "City Indemnitees"), from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively, "Claims") which may be imposed upon or incurred by or asserted against City Indemnitees by reason of any of the following occurrences during the Term except (i) to the extent caused by the negligence or willful misconduct of any of the City Indemnitees, or (ii) to the extent caused by any breach of this Lease by any of the City Indemnitees, or (iii) except as provided otherwise in any written use or occupancy agreement between TMI and

any of the City Indemnitees (but only in the event that the terms of any such use or occupancy have been approved in writing in advance by the City’s Directors), or (iv) any Claims to the extent caused by the acts or omissions of Developer or any of its agents, contractors, servants, employees, operators, licensees or invitees or any other third-party over whom TMI (or TMI Representatives, as defined below) has no authority or control, or (v) to the extent caused by the acts or omissions of any other tenants or owners (or their respective agents, contractors, servants, employees, licensees or invitees) renting or owning space in the Project, respectively:

(1) Any work or thing done in, on, or about the Facility or Common Area of the Project, by or at the direction of TMI or TMI Representatives including, without limitation, the installation of any FF&E, or any alteration to the Facility; or

(2) Any use, possession, occupation, operation or management of the Facility or Common Area of the Project or any part thereof by TMI or any of its agents, contractors, servants, employees, operators, sublessees, licensees or invitees (collectively, “TMI Representatives”); or

(3) Any negligence or willful misconduct on the part of TMI or any TMI Representatives; or

(4) Any accident, injury or damage to any person or property occurring in the Facility; or

(5) Any failure on the part of TMI or TMI Representatives to perform or comply with any of the terms, provisions, warranties, covenants and conditions contained in this Lease, to be performed or complied with by TMI.

B. City shall indemnify, defend, protect and hold harmless TMI and its officers, directors, agents and employees (collectively, the “TMI Indemnitees”) from and against all Claims

which may be imposed upon or incurred by or asserted against any of the TMI Indemnitees by reason of any of the following occurrences during the Term except (i) to the extent caused by the negligence or misconduct of any of the TMI Indemnitees or (ii) to the extent caused by any breach of this Lease by any of the TMI Indemnitees or (iii) any Claims to the extent caused by the acts or omissions of Developer or any of its agents, contractors, servants, employees, operators, licensees or invitees or any other third-party over whom City (or City Representatives, as defined below) has no authority or control:

(1) Any work or thing done in, on or about the Facility or Common Area of the Project by or at the direction of City or City Representatives.

(2) Any entry, use or occupancy of the Facility or Common Area of the Project or any part thereof by City or any of its agents, contractors, servants, employees, licensees or invitees (collectively, "City Representatives"). (For the avoidance of doubt, neither the Developer nor those over whom the Developer has authority or control shall constitute a City Representative.)

(3) Any negligence or willful misconduct on the part of City or any City Representatives.

(4) Any failure on the part of City or any City Representatives to perform or comply with any of the terms, provisions, warranties, covenants and conditions contained in this Lease, to be performed or complied with by City.

(5) Any Claims which may be imposed upon or incurred by or asserted against TMI Indemnitees which in any way arises out of the construction, development, management and/or operation of the Project, including, but not limited to, claims of negligent or defective design or construction, regardless of whether any such liability occurs before or after the City issues the final Certificate of Compliance (as defined in the DDA) with respect to the Project.

(6) Any Claims which may be imposed upon or incurred by or asserted against TMI Indemnitees (i) which shall occur within and/or arise out use of or access to the Chiller Yard (as shown in red on Exhibit A), Chiller System (as shown in blue on Exhibit A) to the extent caused by the City or any of its agents, contractors, servants, employees, operators, licensees, tenants, lawful occupants or invitees, or (ii) which in any way arises out of the Chiller System.

C. City and TMI promptly shall give one another written notice of any Claim which might entitle either of them to indemnification pursuant to this Section and upon such notice, City or TMI, as applicable, shall immediately defend the other at its sole cost and expense by counsel reasonably acceptable to the other party; provided, however, that TMI acknowledges that representation in any such matter by the City Attorney's Office shall be acceptable to TMI.

D. The provisions of this Section shall survive expiration or sooner termination of this Lease.

SECTION 18. Condemnation.

Any exercise by a governmental or other permitted authority, other than City, of the power of eminent domain, or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation, against the Facility or Common Area of the Project (the "Taking") shall be controlled by the provisions of this Section.

A. If there is a Taking of the whole Facility, then this Lease shall terminate as of the date of such Taking.

B. If any portion of the Facility or Common Area of the Project is taken by condemnation so as to effect a partial Taking, then this Lease shall remain in full force and effect as to the portion of the Facility remaining immediately after the partial Taking; provided, however,

that in the event that, in either party's reasonable opinion, a partial Taking results in a remainder of such size, function or configuration so as to render the restoration, continued operation of or access to the Facility as then constituted impractical, unreasonable or infeasible, either party may, at its option, terminate this Lease in accordance with the procedure set forth in Section 21A(2).

C. In the event of a partial Taking which does not result in a termination of this Lease, the City, subject to funding availability, shall restore the Facility as nearly as possible to its condition and character immediately prior to such partial Taking as diligently as practical after such partial Taking, except for any reduction in area caused thereby; provided, however, City shall endeavor to restore within three hundred seventy-five (375) days after such partial Taking. City and TMI shall endeavor to fund the restoration costs from condemnation proceeds and from other reasonably available sources of funding. If the parties are unwilling or unable to fund such restoration within one hundred fifty (150) days after such partial Taking, TMI may terminate this Lease in accordance with the procedure set forth in Section 21A(2). If TMI does not terminate this Lease in accordance with the previous sentence, then City and TMI shall continue to endeavor to fund the restoration costs from condemnation proceeds and from other sources of funding; provided, however, if the parties are unable to fund such restoration within three (3) years after such partial Taking, either party may terminate this Lease in accordance with the procedure set forth in Section 21(A)(2).

D. Awards or other payments on account of a partial or total Taking of the Facility which result in a termination of this Lease shall be as follows.

(1) All condemnation proceeds shall be held by City in escrow on behalf of City and TMI. As soon as reasonably practicable, and to the extent of such condemnation proceeds and other sources of funding which are reasonably available, in the event that a restoration of the

Facility is infeasible and TMI does not elect to terminate the Lease in accordance with subsections (B) or (C) above, City shall endeavor to acquire an alternative site located in downtown San Jose comparable to the Facility upon which shall be constructed a new facility to be leased and operated by TMI for the remainder of the Term upon the same terms and conditions of this Lease to the extent reasonably practicable. All condemnation proceeds shall be made available to acquire the alternative site, construct the new facility, and install all exhibits needed to operate such facility for the Permitted Use in such a manner as to achieve the objective of establishing an alternative museum facility as comparable to the Facility as possible under the circumstances prevailing at the time. The City and TMI shall cooperate in good faith to achieve the objective set forth in this paragraph.

(2) Notwithstanding the generality of the foregoing, in the event that: (i) for reasons beyond City's reasonable control and despite diligent efforts, City cannot acquire a site meeting the requirements set forth herein within a reasonable period, as mutually determined by the parties; (ii) the parties are not able, following reasonable efforts, to fund construction of an alternative facility meeting the requirements set forth herein; or (iii) for reasons beyond the reasonable control of City and TMI, an alternative site has not been acquired and a binding agreement entered into between the parties for the development and lease of the alternative facility which agreement confers substantially the same benefits and establishes essentially the same obligations as are created by this Lease within three (3) years following the date of Taking, the condemnation proceeds shall be allocated one-hundred percent (100%) to City, except for any portion thereof which is attributable to tenant improvements, FF&E or personal property which were acquired with TMI's funds, or TMI's relocation costs and business interruption, which shall be paid to TMI.

E. If the whole or any part of the Facility shall be Taken temporarily, this Lease shall remain in effect and, only in the event and to the extent that TMI continues to operate the Facility during the period of such temporary Taking, TMI shall be entitled to receive for itself such portion or portions of any award made for such use with respect to the period of the Taking which is within the Term, with all remaining portions of any such award shall be allocated to City. If a temporary Taking remains in force at the expiration or earlier termination of the Term, TMI shall be excused from any surrender obligations set forth under this Lease. If a temporary Taking is either of the whole Facility or is a partial Taking and of the scope described in Section 18B, and either would extend for a period of three (3) years, or for any shorter period which extends beyond the Term, either party may terminate this Lease, and the awards shall be allocated as provided in Section 18D.

F. City shall notify TMI in writing within 10 days after City's receipt of any notice of the commencement of the exercise of the power of eminent domain or other similar power by any governmental or other permitted authority or any attempt to purchase or otherwise acquire the Facility or any part thereof. City shall fully inform TMI of all matters relating to negotiations or litigation regarding any Taking of the Facility.

SECTION 19. Utilities.

TMI shall arrange for and pay when due any and all noncapital charges for utility services to operate the Facility, including but not limited to telephone service. City shall use all commercially reasonable efforts to require the Developer to design and install the utilities for the Expansion Facility as stand-alone systems; provided, however, if it is commercially unreasonable to design and install stand-alone systems for the Expansion Facility, City shall cause Developer to

separately meter all utilities servicing the Expansion Facility and TMI shall be responsible to pay only for its actual usage of such utilities based on meter readings, without premium or mark-up.

SECTION 20. **Assignment.**

A. TMI has demonstrated skill and expertise upon which City has relied in the approval of this Lease. Because of these qualifications, which assure the operation and management of the Facility in the manner desired by City, any change in the identity and control of the operator and manager of the Facility are of particular concern to the community and to City. Accordingly, TMI shall not assign, or attempt to assign, all or any part of or interest under this Lease (whether directly or indirectly) without the prior written approval of City, which approval shall not be unreasonably withheld, but may be subject to such terms and conditions as City may determine necessary or appropriate to ensure that the operation and management of the Facility shall thereafter continue to be undertaken in the best interests of the community and City. No voluntary or involuntary successor in interest of TMI shall acquire any rights or powers under this Lease except as expressly set forth in this Section. For the avoidance of doubt, the foregoing, limitation on assignment applies to assignments of the Lease only; no other assignment, transfer or conveyance of any interest in or under this Lease shall be permitted, except as provided in Section 6, above.

B. City may assign from time to time all or any of its rights, title and interest in and to the Facility and this Lease, upon any terms and conditions consistent with the terms of this Lease. City shall notify TMI in advance (upon no less than three (3) months prior notice) of the effective date of any such assignment.

SECTION 21. **Termination of Lease.**

A. This Lease may be terminated as follows:

(1) Upon written notice given by either party if the other party defaults and the nondefaulting party has the right to terminate this Lease pursuant to Section 22B.

(2) Upon written notice given by either party if there is a Taking of all of the Facility or if there is a partial or temporary Taking and such party has the right to terminate this Lease pursuant to Section 18.

(3) Upon written notice by either party if all or a portion of the Facility or Common Area of the Project is damaged or destroyed by casualty or natural disaster and such party has a right to terminate this Lease pursuant to Section 16.

(4) By City, upon 12 months' written notice to TMI, if City is unable to perform its obligations under this Lease due to the unavailability of funding, as determined in the sole discretion of the City, and, despite their diligent good faith efforts during the 12-month notice period, City and TMI are unable to obtain such funding.

(5) By TMI, upon twelve (12) months' written notice to City, if TMI is unable to perform its obligations under this Lease due to the unavailability of funding, as determined in the sole discretion of TMI and, despite their diligent good faith efforts during the 12-month notice period, TMI and City are unable to obtain such funding.

(6) By City, upon written notice, if TMI shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, provided, however, that if such event is dischargeable City shall not have the right to terminate this Lease based on the occurrence of such event until the expiration of the 60-day period immediately following such event without discharge of such event.

(7) By City, upon written notice, if a petition or answer proposing the adjudication of TMI as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof.

(8) By City, upon written notice, if a receiver, trustee or liquidator of TMI or of all or substantially all of the property of TMI shall be appointed in any proceeding brought by TMI, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought by a third party against TMI, or if TMI shall acquiesce in or consent to such appointment, or if TMI shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution, provided, however, that if any of the foregoing events is dischargeable City shall not have the right to terminate this Lease based on the occurrence of such event until the expiration of the 60-day period immediately following such event without discharge of such event.

(9) By City, if TMI fails to expend the Operations and Maintenance Payment, or any portion thereof, in accordance with Section 8 and TMI does not cure such failure within 90 days after receipt of written notice from City of such failure.

(10) By City, if TMI fails to maintain its federal or state tax-exempt status and TMI does not cure such failure within 90 days after receipt of written notice from City of such failure.

B. Any termination pursuant to Sections 21A (2), (3), (4), (5), (6), (7), or (8) above shall not be deemed a termination on account of default and such termination shall be the only remedy available to the terminating party. Without limiting the generality of the foregoing, such terminating party shall have no further rights or remedies against or liability to the other party in the event of termination pursuant to Sections 21A (2), (3), (4), (5), (6), (7), or (8) above, provided

that each party has made any diligent good faith efforts required in connection with the termination right.

SECTION 22. **Default.**

A. Failure by either party to perform any provision of this Lease within the time specified therefor shall constitute a default if such failure to perform is not cured within 30 days after written notice by the non-breaching party is received by the breaching party. If the failure to perform by its nature cannot be cured within 30 days, the breaching party shall not be in default if it commences to cure within such 30-day period and diligently and in good faith continues until cure is effected, which in any event shall not be more than 90 days, unless the time required to cure is greater than such period and the non-breaching party approves such longer period to cure in writing, which approval shall not be unreasonably withheld or delayed.

B. In the event of a default, the nondefaulting party, at its option, may terminate this Lease pursuant to Section 21(A)(1) and/or may exercise any and all legal remedies, including without limitation suit for damages or specific performance.

SECTION 23. **Surrender of Facility.**

Upon the expiration of the Term or earlier termination of this Lease pursuant to Section 21:

A. Except as otherwise set forth in the next sentence, TMI shall surrender the Facility to City in the same condition as received, ordinary wear and tear, condemnation, damage and destruction covered by Section 16, and Hazardous Materials not introduced to the Facility by TMI or TMI Representatives, excepted, clean and free of debris, and free of any liens or encumbrances placed on the Facility by TMI during the Term and not approved or caused by City. Notwithstanding the foregoing, TMI shall not be required to remove any of the Initial

Improvements, other improvements or alterations to the Facility, including, without limitation, Material Alterations.

B. TMI shall remove from the Facility, at TMI's sole cost and expense, all personal property and Non-Fixed FF&E and Exhibit and Program FF&E then belonging to TMI. Except as otherwise set forth in Section 10, TMI shall also remove or cause to be removed any Restricted FF&E. The parties agree that City shall have no obligation to ascertain the owners of personal property or exhibit materials not belonging to TMI and shall have no obligation to return such property and materials. TMI's obligation under this Section shall survive expiration or sooner termination of this Lease.

C. Any Non-Fixed FF&E, Exhibit and Program FF&E and personal property, including Restricted FF&E (except as otherwise set forth in Section 10) not removed by TMI within 120 days after such expiration or earlier termination of this Lease shall be deemed abandoned by TMI and shall, to the extent permitted by law and without compensation to TMI, then become City's property, free and clear of all claims to or against it by TMI, and may be disposed of by City by private sale or other means as required by law.

D. If for any reason TMI shall retain possession of the Facility, or any part thereof without City's prior written consent following the date TMI is required to surrender the Facility to City pursuant to this Lease, then TMI shall pay to City for each day of such retention an amount equal to twenty-five percent (25%) of the then present fair market rental value of the Facility, as determined in the reasonable judgment of City.

SECTION 24. Alterations to Facility.

A. Alterations, Initial Improvements and/or Other Tenant Improvements. TMI shall not undertake the Initial Improvements or make any Material Alterations to the Facility without

the prior written consent of City, which consent shall not be unreasonably withheld or delayed. “Material Alterations” shall mean structural changes; changes to the exterior appearance of the Facility; changes in permanent floor and permanent wall surfaces; changes in the lobby and atrium (excluding changes in Exhibits); and changes in major components of electrical, HVAC and other building systems. Any alteration to the Facility shall be done with materials of an equal quality and durability to those in which the Facility was originally constructed or renovated, shall be consistent with the design of the Facility as originally constructed or renovated, shall be accomplished at the sole cost and expense of TMI (including, without limitation, undertaking any further alterations to the Facility which may be triggered thereby) and, if subject to City’s approval, shall be accomplished in accordance with any reasonable conditions imposed upon City’s consent. TMI shall not be required to pay any plan check and inspection fees for any alterations, Initial Improvements or other tenant improvements to the Facility; provided, however, that all alterations, Initial Improvements or other tenant improvements whether or not subject to City’s approval under this Section, shall be subject to all other applicable permitting requirements.

Notwithstanding the requirements for City’s consent, as provided above, TMI may make Material Alterations for Exhibits or Programs without the prior written consent of City so long as such Material Alterations are temporary in nature (defined to mean twelve (12) months or less) and do not adversely impact or materially alter the structural components or building systems, as shall have been determined and confirmed in advance by the DPW Director, as defined below. TMI shall repair and take all actions to return the Facility to substantially its pre-existing condition at the end of such temporary period.

City’s Director of Public Works (“DPW Director”) is the “building official” (as such term is used in the City’s Municipal Code) for purposes of any regulatory permitting by the City of

alterations or other improvements to the Facility. Alterations or other improvements for which a City permit is required pursuant to applicable law are referred to herein as “Permit Work”; alterations or other improvements which do not constitute Permit Work are referred to herein as “Non-Permit Work”. Prior to undertaking any Permit Work at the Facility, TMI shall apply to and receive from the DPW Director all applicable City permits for such work, in accordance with such procedures as shall be generally established from time to time by City.

Prior to undertaking the Initial Improvements or any other alteration work, regardless of whether Permit Work or Non-Permit Work, TMI shall deliver to the DPW Director a detailed description of the scope thereof, in form and content acceptable to the DPW Director, and the DPW Director shall have approved the same unless such approval is not otherwise required under this Section 24. The DPW Director shall not unreasonably withhold approval thereof, and shall provide a written response to the request within thirty (30) days after receipt; provided, however, that failure to receive a written approval shall be deemed an approval. The DPW Director’s approval may be based upon such conditions as the DPW Director deems necessary.

TMI shall, at its own cost and expense, procure and provide a payment bond in an amount equal to not less than One Hundred Percent of the cost estimate of the Initial Improvements or any Material Alteration, as approved by the City, to cover the costs of materials and labor, supplies and equipment used for such work, to guarantee and assure the prompt payment of same and to protect City from all liens or liability arising from such construction. The surety furnishing the bond shall be an admitted surety and the legal form of the bond shall be satisfactory to the City Attorney. TMI shall refrain from performing, or causing the performance of, the Initial Improvements or any Material Alteration until TMI furnishes a bond satisfying this subsection. Throughout the Term of this Lease, Tenant shall cause to be paid prevailing wages for the Initial

Improvements or any other alteration work performed on-site at the Facility by or on behalf of TMI or TMI Representatives. For the purposes of this Lease, “prevailing wages” means not less than the general prevailing rate of per diem wages, as defined in Section 1773 of the California Labor Code and Subchapter 3 of Chapter 8, Division 1, Title 8 of the California Code of Regulations (Section 16000 et seq.), including but not limited to San Jose Municipal Code Chapter 14.09 and as established by the Director of the California Department of Industrial Relations (“DIR”), or in the absence of such establishment by the DIR, by the City’s Office of Equality Assurance, for the respective craft classification. TMI shall also procure and maintain any additional insurance coverages which may be deemed necessary by City’s Risk Manager with respect to the Initial Improvements or any Material Alteration.

SECTION 25. **Title to Property/Notice of Possessory Interest Taxes.**

A. TMI shall neither make nor cause to be made any lien, encumbrance, or other charge whatsoever against the Facility, or any portion thereof, or against any of the FF&E located at the Facility (except Restricted FF&E) which lien, encumbrance or charge has not been approved in writing by City. Nothing herein shall be deemed to prevent TMI from contesting the validity or amounts of any tax, assessment, encumbrance or lien, provided TMI provides adequate bond or other financial assurance reasonably acceptable to City necessary to prevent Facility, or any portion thereof, from forfeiture or sale.

B. TMI understands and agrees that this Lease may create a possessory interest subject to taxation. TMI further agrees that any tax or assessment imposed on such possessory interest, together with any tax or assessment on the FF&E, shall be paid by TMI, in a timely manner, and without obligation on the part of City.

SECTION 26. **Parking.**

A. During the Term of the Lease, rates and charges for visitors to, and employees and volunteers of, the Facility which use City parking facilities shall be subject to such validation program as City Council shall approve from time to time. Use of City parking facilities by visitors to the Facility shall be on a first-come, first-serve basis.

B. City shall use reasonable efforts to secure space for at least 30 buses as close to the Facility as possible. The location of these spaces shall be in City's sole discretion, except for the obligation stated in the preceding sentence.

C. In addition to City's obligations under the foregoing provisions of this Section 26, TMI shall be entitled to parking in the Project Garage pursuant to the terms of the Parking Agreement.

SECTION 27. Right of Entry.

City shall have the right at all times during the Term (i) to enter the public areas of the Facility during Normal Business Hours, and (ii) upon reasonable advance notice (which shall be at least one business days' notice) to TMI, to enter the Facility during nonbusiness hours and to enter nonpublic areas upon reasonable notice (which shall be at least one business days' notice) to the extent access is requested to nonpublic areas or during nonbusiness hours. Notwithstanding the foregoing, City shall have the right to immediate access to conduct any emergency repairs.

SECTION 28. Waiver.

No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or authority under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by a party shall be deemed

to have been made unless and until such waiver shall have been reduced to writing and signed by that party. Failure by a party to enforce any of the terms, covenants or conditions of this Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of that party to insist thereafter upon strict performance.

SECTION 29. **Notices.**

A. All notices and other communications required or permitted to be given under this Lease shall be in writing and shall be personally served, sent by overnight courier or otherwise personally delivered, or e-mailed, provided the receipt of such e-mail is acknowledged by return e-mail, addressed to the respective parties as follows:

To City: Office of Economic Development – Real Estate Services
City of San José
200 E. Santa Clara Street, 12th Floor
San Jose, CA 95113
Attn. Real Estate Manager

With a Copy to: Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113
Attn. Real Estate Manager

To TMI: Tech Museum of Innovation
President and CEO
145 West San Carlos Street
San Jose, CA 95113

or to such other address as any party may designate by notice in accordance with this Section.

B. A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served in the manner specified above to the following address:

Office of the City Attorney
City of San José
200 E. Santa Clara Street, 16th Floor

San José, CA 95113
Attn. Real Estate Attorney

C. Notice shall be deemed effective/received when confirmed delivered by the messenger or delivery service, or otherwise acknowledged in writing as received.

SECTION 30. Approvals.

Approvals required of City or TMI hereunder (excepting approvals specified to be in the “sole discretion” of a party or otherwise qualified herein) shall not be unreasonably withheld and, where a time period therefor is not specified, shall not be unreasonably delayed. Unless otherwise specified in this Lease to the contrary, City’s Directors, unless the City Manager otherwise directs, shall have authority to give any approvals and/or disapprovals hereunder on behalf of City. The City Manager shall be authorized to terminate this Lease, as specified in Section 21, on City’s behalf.

SECTION 31. Amendments to this Lease and the DDA.

A. This Lease may only be amended by written agreement signed by both parties and approved by the City Council, or City Manager if otherwise authorized by the City Council or City ordinance.

B. After the Effective Date, City shall not make any Material Amendment of certain enumerated provisions of the DDA (as set forth under Section 802 of the DDA) without the prior written consent of TMI, which consent will not be unreasonably withheld, conditioned or delayed, nor shall City amend the Parking Agreement, or the Common Area Governance Documents, if such amendment(s) would adversely affect TMI’s Facility (including the Expansion Facility) or TMI’s rights or obligations under this Lease, without the prior written consent of TMI, which consent shall not be unreasonably conditioned, withheld or delayed.

SECTION 32. **Venue.**

In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara or, where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

SECTION 33. **Force Majeure.**

Performance by either party hereunder shall be excused so long as, and the time for a party's performance hereunder shall be extended for such time as, the party's performance is delayed as a consequence of: war, insurrection, strike; work stoppage, lockout, riot, flood, earthquake, fire, other casualty, weather, or any other cause beyond the reasonable control of the party required to perform other than financial inability; provided that the party required to perform makes diligent efforts to timely perform notwithstanding such delay.

SECTION 34. **Governing Law.**

The law governing this Lease shall be that of the State of California.

SECTION 35. **McCabe Hall.**

In the event the City shall request that TMI agree to relocate its operations in McCabe Hall to other premises, the terms of any such agreement to relocate shall be subject to good faith negotiation between TMI and City at such time. If reasonably possible, City shall make such a request to TMI to relocate its operations in McCabe Hall, in writing, no later than one (1) year before any anticipated relocation by TMI.

SECTION 36. **Miscellaneous Provisions.**

A. TMI shall upon written demand by City execute such instruments as may be required at any time and from time to time to subordinate the rights and interest of TMI under this

Lease to the lien of any ground lease, mortgage or deed of trust or other financing; provided, however, that TMI shall, in the event any proceedings are brought for the foreclosure of any such mortgage or deed of trust or other financing or to terminate such ground lease, attorn to the successor in interest of City, and shall recognize such successor as landlord under this Lease, and so long as TMI is not in default hereunder, no such termination or foreclosure shall terminate this Lease or otherwise affect TMI's rights hereunder. Within ten (10) days after receipt of written request therefore, TMI shall execute and deliver to City, in a commercially reasonable form, a certificate stating that this Lease is in full force and effect, describing any amendments hereto and stating any other information City may reasonably request.

B. TMI agrees that, except for any relocation benefits which may be negotiated between the parties as provided in this Lease, it is not entitled to relocation assistance or benefits based on its tenancy under this Lease.

C. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein, and no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed a third party beneficiary of any of the provisions herein, except as herein expressly provided.

D. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify its terms and provisions.

E. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

F. This Lease, including its exhibits, constitutes the entire agreement between City and TMI with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written, including, without limitation, the Original Lease.

G. City represents and warrants to TMI that City has the right and the authority to lease the Facility to TMI.

H. This Lease may be executed in any number of counterparts, each of which, when so executed by a party, shall be deemed an original, but all such counter parts shall constitute but one and the same instrument. The parties agree that the delivery of an executed copy of this Lease, including those in PDF, sent by facsimile or email shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Lease had been delivered.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation

Cameron Day, Deputy City Attorney

By:_____

“LESSEE”

THE TECH INTERACTIVE, a California
not-for-profit corporation

By:_____

Title:_____

EXHIBIT A
DESCRIPTION AND DEPICTION OF ORIGINAL FACILITY AND PARKSIDE HALL

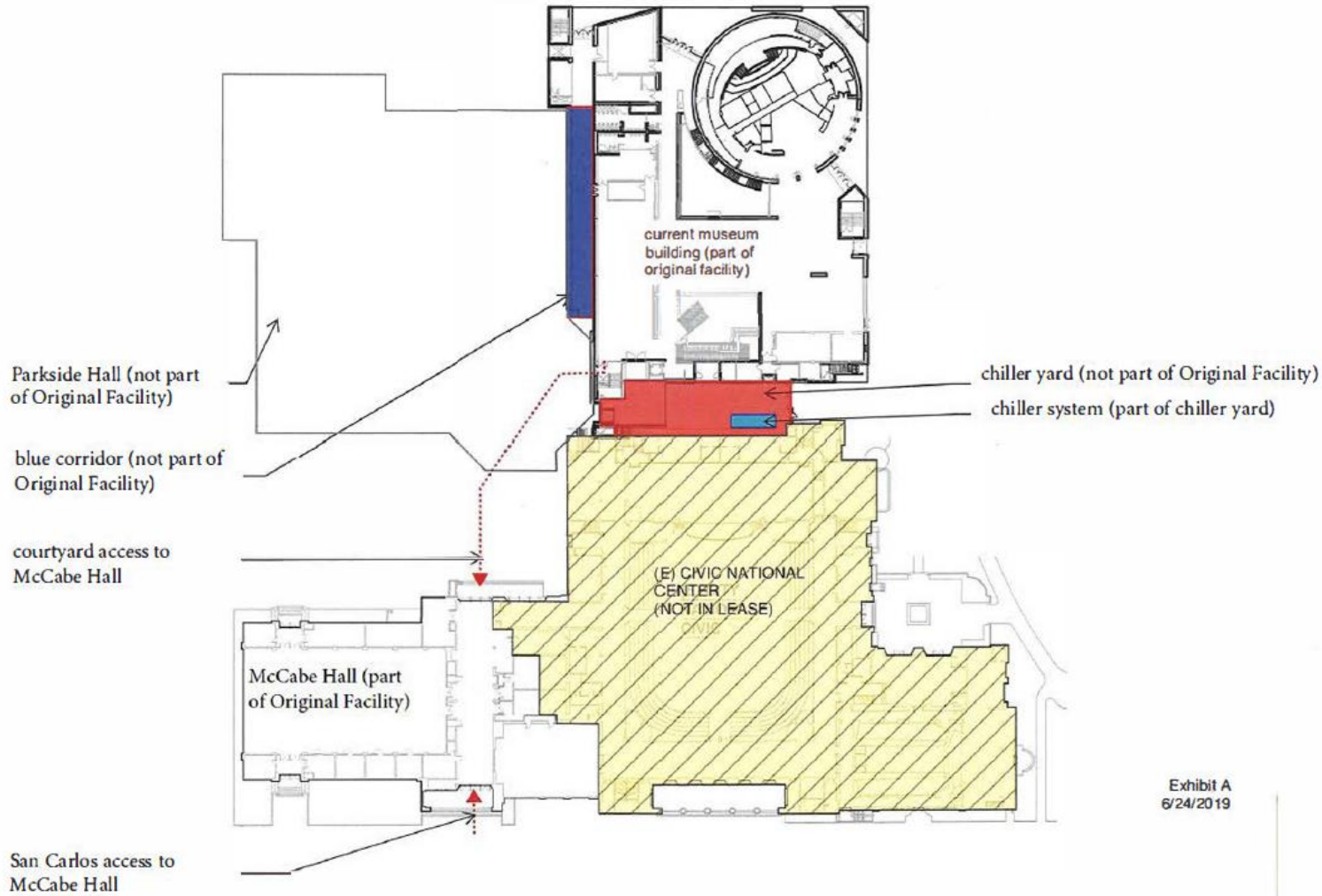


EXHIBIT
A

EXHIBIT B
TMI'S USE OR PERMITTED USE

Mission and Vision

TMI's mission is to inspire the innovator in everyone.

Its vision is to develop problem solvers at scale.

In support of this mission, and in the effort to breathe life into this vision, TMI creates programs and exhibit experiences, provides professional development, fosters community meetings, partners with industry, supports public projects, entertains international visitors, provides learning opportunities for families, encourages economic development, and serves as a community resource for innovation.

A Statement of Purpose

Technology crosses all generations, genders and geographies. It is constantly changing and evolving, as are the people and companies who use it. TMI serves the innovation ecosystem by providing an environment that encourages learning, builds bridges, inspires visions, generates creative confidence, and inspires hope. These things occur because of programming and because of the built environment itself. By extending its physical and digital footprint and broadening its existing audience, the TMI uses the power of technology as a tool, inspiring others to develop the problem-solving skills they need to succeed in our technology-driven world.

TMI is committed to shaping the next generation of problem solvers – locally, nationally and globally. At the same time, the forecasted evolution of downtown San Jose also creates an opportunity for the Tech to expand its audience to young adults and technology companies, inspiring them to use technology to build better communities, enterprises and lives.

A Community Resource

The programs, services, facilities and exhibit experiences of TMI are all developed with its mission and vision in mind. The Tech fosters cooperation among educators, industry, governments and professional organizations, while promoting a positive attitude toward technology, science and life-long learning. TMI's goal is to make its programs, facilities, personnel and other assets available to the community so that educators, families, civic leaders, businesses and individuals of all kinds can solve problems in new and creative ways. Far from being a traditional museum, TMI is, and aspires to be, a community resource for innovation. We aspire to make a difference on a global scale, utilizing our local facilities as R&D platforms and as gathering places for a world that counts on Silicon Valley to solve problems through innovation.

TMI is an educational institution whose activities are limited so as to qualify as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal revenue law. Pursuant to its mission, TMI provides exhibits, programs and experiences related to topics such as the physical sciences, biological and natural sciences, engineering, mathematics, technology, transdisciplinary problem-solving, etc... It fulfills its mission using an array of science-learning, science communication, art, digital art and community engagement methods such as experiential, tactile and kinesthetic exhibits, participatory programs, community dialogues and deliberation programs, inquiry-based programs and the like. TMI's goal is to help individuals, institutions and communities succeed in a world driven by technology.

In the Original Facility, under the limitations of its tax exempt status, and in fulfillment of its mission, vision and goals, the following uses occur on a regular basis at TMI and will be considered acceptable uses in the Original Facility and Expansion Facility:

- Programming and exhibits that are consistent with TMI's educational mission;
- Travelling exhibitions that are consistent with TMI educational mission;
- Science and technology competitions;
- Special event rentals;
- Summer camps;
- Food service;
- Gift shop;
- Community convenings;
- Lectures and talks;
- Live performances;
- Video conferences;
- Multi-day conferences (less than 30 days);
- Pop-up exhibits;
- Movies;
- Alcohol Service with alcohol license.
-

TMI anticipates the following additional uses, and these also will be deemed acceptable in both the Original Facility and Expansion Facility:

- A cafe capable of providing 3 meals, take-out, catering;
- A full catering kitchen;
- A coffee shop or similar food amenities;
- A bar with full alcohol license;
- A digital skills training space;
- A workshop;
- A non-profit technology incubator;
- For non-profit research and development.

EXHIBIT B-1

**CURRENT THEATER, FOOD AND GIFT SHOP OPERATIONS AND SUBLEASED OR
LICENSED SPACE IN THE ORIGINAL FACILITY AS OF THE EFFECTIVE DATE**

1. Best Beverage Catering—Beverage catering and concessions
2. Lunch with Tony LLC – Café and catering services
3. Event Network, Inc. – Gift shop

EXHIBIT C
ALLOCATION OF MAINTENANCE AND REPAIR ITEMS FOR ORIGINAL FACILITY

EXHIBIT C						
The Tech Museum of Innovation						
Maintenance Matrix – Original Facility						
	Operation Servicing	Preventative Maintenance	Scheduled Repairs	Emergency Repairs	Unit Replacement	Minor Improvements
Structural						
<input type="checkbox"/> Foundation	City	City	City	City	City	City
<input type="checkbox"/> Bearing & Exterior Walls	City	City	City	City	City	City
<input type="checkbox"/> Subflooring	City	City	City	City	City	City
<input type="checkbox"/> Party Wall between Original Facility and Expansion Facility	City	City	City	City	City	City
Exterior Shell						
<input type="checkbox"/> Roofing	City	City	City	City	City	City
<input type="checkbox"/> Exterior Wall Assemblies /Façade of Original Facility	City	City	City	City	City	City
<input type="checkbox"/> Windows & Hardware	TMI (Note 1)	TMI	TMI	City	City	City
<input type="checkbox"/> Doors & Hardware	TMI	TMI	TMI	TMI	City	City
<input type="checkbox"/> Flagpoles & Signage	TMI	TMI	TMI	TMI	TMI	TMI
Other						
Interior Shell						
<input type="checkbox"/> Ceiling Finishes	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Wall Surface Finishes	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Window Coverings	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Doors	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Floor Coverings	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Nonbearing Walls	TMI	TMI	TMI	TMI	TMI	TMI
Shared–Use Public Space (Note 5)						
<input type="checkbox"/> Floors	City (Note 6)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Walls	City (Note 6)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Ceilings	City (Note 6)	TMI	TMI	TMI	City	TMI

EXHIBIT
C

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

	Operation Servicing	Preventative Maintenance	Scheduled Repairs	Emergency Repairs	Unit Replacement	Minor Improvements
Other Public Spaces						
<input type="checkbox"/> Floors	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Walls	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Ceilings	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Outside of Original Facility (including sidewalks; provided, however, that responsibilities with respect to sidewalks shall be limited to those required by applicable law)	City	City	City	City	City	City
HVAC						
<input type="checkbox"/> HVAC System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Vent Air Handling System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Controls System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Main & Sub Panels (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Outlets & Switches	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Light Fixtures	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Lamps	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Cabling	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Pumps-Drainage (Note 5)	TMI	TMI	TMI	TMI	City	City
<input type="checkbox"/> Emergency Generator (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Exterior Lighting (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Other Electrical	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Phone System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Computer Cabling System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Elevators, escalators and stairs	TMI	TMI	TMI	TMI	City	TMI
Plumbing						
<input type="checkbox"/> Domestic Water Heating System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Domestic Water Lines & Fixtures (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Sewer Lines & Fixtures (Note 5)	TMI	TM	TMI	TMI	City	TMI
<input type="checkbox"/> Drinking Fountains	TMI	TMI	TMI	TMI	City	TMI

<input type="checkbox"/> Water Treatment System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Storm Drain System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Floor & Drain Area	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Sump System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> McCabe Hall Boiler & Expansion Tank	City	City	City	City	City	City
Building Safety Systems						
<input type="checkbox"/> Security System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Fire Alarm System	TMI (Note 3)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Sprinkler System	TMI (Note 3)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Fire Extinguisher (incl. hose cabinets)	TMI (Note 4)	TMI	TMI	TMI	City	TMI
Furniture, Fixtures & Equipment						
<input type="checkbox"/> LST & Other Theater & Stage Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Office Furniture & Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Food Service Furniture & Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Theater Seating	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Interior Plants/Planters	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Public Art (Note 7)	City/TMI	City/TMI	City/TMI	City/TMI	N/A	N/A
<input type="checkbox"/> TMI Exhibits	TMI	TMI	TMI	TMI	TMI	TMI
Footnotes:						
1 = TMI responsible for window washing (inside and out)	3 = Mandatory testing					7 = TMI shall maintain and retain ownership of any Art TMI purchases. City & TMI will cooperate in the maintenance of all other Art when appropriate; to be determined at time of purchase
2 = Custodial maintenance	4 = Refills					
	5 = If applicable					
	6 = Cleaning & routine scheduled maintenance by City					

EXHIBIT C-1
ALLOCATION OF MAINTENANCE AND REPAIR ITEMS FOR EXPANSION FACILITY

EXHIBIT C-1						
The Tech Museum of Innovation						
Maintenance Matrix – Expansion Facility						
	Operation Servicing	Preventative Maintenance	Scheduled Repairs	Emergency Repairs	Unit Replacement	Minor Improvements
Structural						
<input type="checkbox"/> Foundation	City	City	City	City	City	City
<input type="checkbox"/> Bearing & Exterior Walls	City	City	City	City	City	City
<input type="checkbox"/> Subflooring	City	City	City	City	City	City
<input type="checkbox"/> Party Wall between Original Facility and Expansion Facility	City	City	City	City	City	
Exterior Shell						
<input type="checkbox"/> Roofing	City	City	City	City	City	City
<input type="checkbox"/> Exterior Wall Assemblies /Façade of Expansion Facility	City	City	City	City	City	City
<input type="checkbox"/> Windows & Hardware	TMI (Note 1)	TMI	TMI	City	City	City
<input type="checkbox"/> Doors & Hardware	TMI	TMI	TMI	TMI	City	City
<input type="checkbox"/> Flagpoles & Signage	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Roll-up Doors and other hardware in connection space	TMI	TMI	TMI	TMI	City	
Other						
Interior Shell						
<input type="checkbox"/> Ceiling Finishes	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Wall Surface Finishes	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Window Coverings	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Doors	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Floor Coverings	TMI (Note 2)	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Nonbearing Walls	TMI	TMI	TMI	TMI	TMI	TMI

EXHIBIT
C-1

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

	Operation Servicing	Preventative Maintenance	Scheduled Repairs	Emergency Repairs	Unit Replacement	Minor Improvements
Shared--Use Public Space (Note 5)						
<input type="checkbox"/> Floors	TMI (Note 6)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Walls	TMI (Note 6)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Ceilings	TMI (Note 6)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Outside of Expansion Facility (including café frontage & sidewalks; provided, however, that responsibilities with respect to sidewalks shall be limited to those required by applicable law)	TMI	TMI	TMI	TMI	City	City
Other Public Spaces						
<input type="checkbox"/> Floors	City	City	City	TMI	City	TMI
<input type="checkbox"/> Walls	City	City	City	TMI	City	TMI
<input type="checkbox"/> Ceilings	City	City	City	TMI	City	TMI
HVAC						
<input type="checkbox"/> HVAC System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Vent Air Handling System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Controls System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Main & Sub Panels (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Outlets & Switches	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Light Fixtures	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Lamps	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Cabling	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Pumps-Drainage (Note 5)	TMI	TMI	TMI	TMI	City	City
<input type="checkbox"/> Emergency Generator (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Exterior Lighting (Note 5)	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Other Electrical	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Phone System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Computer Cabling System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Elevators, escalators and stairs	TMI	TMI	TMI	TMI	City	TMI
Plumbing						
<input type="checkbox"/> Domestic Water Heating System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Domestic Water Lines & Fixtures (Note 5)	TMI	TMI	TMI	TMI	City	TMI

	Operation Servicing	Preventative Maintenance	Scheduled Repairs	Emergency Repairs	Unit Replacement	Minor Improvements
<input type="checkbox"/> Sewer Lines & Fixtures (Note 5)	TMI	TM	TMI	TMI	City	TMI
<input type="checkbox"/> Drinking Fountains	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Water Treatment System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Storm Drain System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Floor & Drain Area	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Sump System	TMI	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> McCabe Hall Boiler & Expansion Tank	City	City	City	City	City	City
Building Safety Systems						
<input type="checkbox"/> Security System	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Fire Alarm System	TMI (Note 3)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Sprinkler System	TMI (Note 3)	TMI	TMI	TMI	City	TMI
<input type="checkbox"/> Fire Extinguisher (incl. hose cabinets)	TMI (Note 4)	TMI	TMI	TMI	City	TMI
Furniture, Fixtures & Equipment						
<input type="checkbox"/> LST & Other Theater & Stage Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Office Furniture & Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Food Service Furniture & Equipment	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Theater Seating	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Interior Plants/Planters	TMI	TMI	TMI	TMI	TMI	TMI
<input type="checkbox"/> Public Art (Note 7)	City/TMI	City/TMI	City/TMI	City/TMI	City	N/A
<input type="checkbox"/> TMI Exhibits	TMI	TMI	TMI	TMI	TMI	TMI
Footnotes:						
1 = TMI responsible for window washing	3 = Mandatory testing					7 = TMI shall maintain and retain ownership of any Art TMI purchases. City & TMI will cooperate in the maintenance of all other Art when appropriate; to be determined at time of purchase

EXHIBIT D
INSURANCE REQUIREMENTS
SPECIFIC PRESCRIPTION OF INSURANCE COVERAGE AND FORM

TMI shall procure and maintain for the duration of this Lease, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the TMI's operation and use of the Facility.

TMI shall be responsible for procuring and obtaining the liquor liability coverage specified below. TMI shall also require users of the Facility, excluding the City, who intend to serve alcoholic beverages to procure and maintain the liquor liability coverage specified below for the duration of the use.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
2. Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001) or its equivalent).
3. Insurance Services Office form number CA 0001 covering Automobile Liability, symbol 1 "any auto, symbol 2 "owned autos", symbol 8 "hired autos" and symbol 9 "non-owned" autos.
4. Excess liability/umbrella insurance at least as broad as all underlying policies providing additional limits of insurance to cover insurable activities as defined in this Amended and Restated Lease Agreement.
5. Property insurance against all risks of loss to any existing or future non-structural improvements or betterments, any FF&E and Restricted FF&E, stock and equipment, valuable papers and records, plate glass, property in TMI's care, custody and control, and other contents, including without limitation all elements for which TMI has unit replacement responsibility under this Lease.
6. Builders Risk during build outs, remodels or tenant improvements and betterments.
7. Commercial Crime Policy (Loss Sustained Form) at least as broad as Form CR 00 23.

B. Minimum limits of Insurance

TMI shall maintain limits, which may be obtained through a combination of primary and excess policies, no less than:

1. Workers' Compensation and Employer's Liability:
Coverage A: Worker's Compensation per Statutory limits.

Coverage B. Employer's Liability:

Bodily injury by accident: \$1,000,000 per accident

Bodily injury by disease: \$1,000,000 ea. employee

Bodily injury by disease: \$1,000,000 policy limit

2. General Liability: Minimum limit of \$2,000,000 combined single limit per occurrence, \$2,000,000 in the aggregate (may be structured as primary and excess insurance), to include coverage for:
 - a. bodily injury, advertising injury, personal injury, and property damage to others property
 - b. premises & operations
 - c. blanket contractual
 - d. fire legal liability (minimum \$100,000 limit)
 - e. liquor liability for a limit not less than \$1,000,000
3. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
4. Excess/umbrella liability insurance: A minimum limit of \$10,000,000 (such limits of insurance may be maintained through a combination of primary and excess/umbrella insurance). All excess/umbrella policies will provide premise and operations coverage, including any construction, renovations, or betterments being conducted on behalf of TMI.
5. Property Insurance: Replacement Cost with no coinsurance penalty provision.
6. During the period of the Tenant's build out, remodeling or any Tenant improvements and betterments, Tenant shall carry Builders' Risk insurance covering property at the site that will become a permanent part of the improvements and betterments, in addition to property at off-site storage locations and in transit that will become a permanent part of the improvements and betterments.

Builder's Risk: Completed value of the project. No deductible shall exceed \$25,000.
7. Crime Insurance: Minimum limit of \$500,000 covering employee dishonesty and property of others (and \$500,000 for money and securities).

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions greater than \$25,000 must be declared to and reasonably approved by the City's Risk Manager. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the TMI shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense fees and expenses.

D. Other Insurance Provisions

1. Workers' Compensation and Employers' Liability Insurance:
 - a. TMI and any contractors working on TMI's behalf under this lease agreement, shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City, its officers, employees, agents, and volunteers for losses arising from work performed under this lease agreement.
2. General Liability Insurance:
 - a. The City, its officers, officials, employees, agents, and volunteers shall be additional insureds as respect to liability arising out of activities performed by, or on behalf of, TMI. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, employees, agents, and volunteers.
3. Auto liability for automobiles owned, leased, hired or borrowed by TMI or those working on TMI's behalf, shall contain no special limitation on the scope of protection afforded to the City, its officers, employees, agents, and volunteers.
4. Property and builder's risk insurance policies shall name the City, its officers, employees, agents, and volunteers, as loss payees.

E. All Coverages

- a. To the extent obtainable, all policies shall contain a waiver of subrogation in favor of The City of San Jose, its officers, employee, agents and volunteers.
- b. All insurance coverage shall be primary insurance as respects the City, its officers, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the TMI's insurance and shall not contribute with it.
- c. Coverage shall state that all insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, officers, employees, agents, and contractors.
- e. To the extent obtainable, each insurance policy required by this Lease Agreement shall be endorsed to state the City's Risk Manager will be provided with thirty (30) days prior written notice in the event of cancellation, termination, or reduction in limits, except that ten (10) days prior written notice shall apply in the event of cancellation or nonpayment of premium. In the event such endorsement is not obtainable, TMI shall endeavor to provide such notice to the City's Risk Manager promptly upon receipt from its insurers.

f. A severability of interest provision must apply for all additional insureds.

F. Acceptability of Insurers

a. Insurance is to be placed with insurers with the latest A.M. Best Rating no less than A-VII.

G. Verification of Coverage

a. TMI shall furnish the City with certificates of insurance and with original endorsements required by this exhibit that affect coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

b. Proof of insurance shall be mailed to the following address or any subsequent address, or may be directed in writing to the City's Risk Manager.

City of San Jose
c/o Risk Management
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113-1905

H. General Contractor Insurance Coverage

a. Construction General Contractors: General Contractors providing construction services to TMI at the Original Facility or Expansion Facility shall procure during such construction all of the coverages noted in Section A above with the exception of A(4)-A(7).

b. TMI shall use commercially reasonable efforts to request that its Construction General Contractors require its subcontractors to procure during such construction all of the coverages noted in Section A above with the exception of A(4)-A(7).

c. Applicable provisions in Sections (B)(1), B(2)(a) and B(3), (C)-(G) shall apply to TMI General Contractors.

EXHIBIT E
COMPLETED RESERVATION FORM

City-Use Application

THE TECH MUSEUM OF INNOVATION

From:	Title:
Department/Office:	Date:
Telephone:	Fax:
Department/Office Director's Signature:	

Proposed Tech City Use Reservation Information

Type of Activity:

Purpose:

Date of Event:	Attendance estimate:
----------------	----------------------

<i>Event Time:</i>	<i>To</i>	
--------------------	-----------	--

Food Service: Describe service required (Note: Facility Use Events are required to use the Tech's onsite caterer)

Beverages: Describe beverage service required (Note: Any alcoholic beverages must be served by Best Beverage Catering)
--

Entertainment: (Describe)

Equipment: (Describe)

Additional details:

Facility Use is defined as the facility rental fee being waived, with all additional costs and requirements to be met by the user. Call with questions and/or return this request to the attention of the Office of Cultural Affairs. Once the event is approved by the City and The Tech, the user will work directly with The Tech's Special Events staff on arrangements and details of the event.

Approved by City	Date:
Approved by TECH	Date: