

**Approvals:** \_\_\_\_\_

Dept. Head \_\_\_\_\_

Manager [Signature]Admin. Assistant [Signature]

## AGENDA REPORT

BEACHES, PARKS & RECREATION COMMISSION  
Meeting Date: February 13, 2018

**Department:** Beaches, Parks & Recreation  
**Prepared By:** Samantha Thomas, Recreation Manager

**Subject:** *SAN CLEMENTE ART ASSOCIATION ART GALLERY LEASE RENEWAL.*

**Fiscal Impact:** Yes. This agreement will establish annual rental rates of the Art Gallery at \$2,680, an increase of \$680 in Community Center facility rental revenue.

**Summary:** Staff recommends that the Beaches, Parks and Recreation Commission recommend the City Council approve and execute a 5-year lease agreement, with two (2) possible 5-year extensions, for the usage of the Art Gallery at the Community Center by the San Clemente Art Association.

**Background:** The San Clemente Art Association (SCAA) has been an integral part of the arts and crafts heritage of San Clemente since the 1950's. SCAA has utilized the Community Center for events, meetings, and workshops since the early 1970's. Since this same time period, SCAA has utilized the space designated as the Art Gallery to display and sell artwork created by its membership.

In 1984, the City and SCAA came to an agreement that SCAA would pay an annual rental fee of \$1,000, renewable each year. This agreement was established to aid the City in offsetting costs associated with the electricity, utilities, and maintenance provided to Art Gallery and its operations. In 2003, the two parties formally renewed the lease agreement, which included a 15-year contract at an established annual rental rate of \$2,000. This rate took into consideration the increase in utility costs over a 19-year period.

**Discussion:** Since the commencement of the 2003 agreement, utility costs have increased, along with an escalation in inflation demonstrated through the Consumer Price Index. Based on inflation and increases in facility rental costs, staff recommends the annual facility rate be \$2,680. All other terms and details are reflected in the attached agreement.

### **Recommended**

**Action:** STAFF RECOMMENDS THAT the Beaches, Parks and Recreation Commission recommend the City Council approve a 5-year lease agreement, with two (2) possible 5-year extensions, for the usage of the Art Gallery at the Community Center by the San Clemente Art Association.

**Attachments:** 1) Lease Agreement

**Notification:** San Clemente Art Association, George Gooch

FACILITY LEASE AGREEMENT  
(NON-EXCLUSIVE USE)

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF SAN CLEMENTE (hereinafter the "City") and SAN CLEMENTE ASSOCIATION, a non-profit incorporation.

WHEREAS, the City is the owner of the Community Center located at 100 North Calle Seville, San Clemente, California; and

WHEREAS, the City is willing to grant an agreement to L to use the Art Gallery located at the Community Center facility on the terms and conditions set forth herein.

NOW, THEREFORE, IT IS AGREED by and between the City and Lessee as follows:

1. PREMISES

The premises, which are the subject of this Agreement, shall consist of the Art Gallery. The Lessee has inspected the premises and accepts the same in "as-is" condition. Lessee shall provide all equipment and furnishings needed by Lessee to conduct its operation, and the City shall not be responsible for maintenance or repair thereof, or for any theft or loss occurring thereto.

Lessee understands and agrees that this Agreement constitutes a personal and unassignable permission to Lessee to occupy the premises subject to compliance with the terms and conditions of this Agreement, without granting to Lessee any interest or estate in real property.

2. USE

Lessee shall use the premises solely for the purpose of displaying and selling artwork created by their members and for special events that may include works of other artists. Lessee agrees at all times to conduct and operate the Art Gallery in conformity with all federal, state, and local laws.

3. TERM OF LEASE

Subject to Lessee's compliance with all terms and conditions of this Agreement, Lessee shall be entitled to the exclusive use Monday through Friday from 1:00 p.m. to 4:00 p.m. and Saturday and Sunday from 10:00 a.m. to 4:00 p.m. The facility will be closed on City holidays. Modification of the operating hours may be altered during the period of this agreement upon discretion of the Lessee and Director of Beaches, Parks and Recreation or his/her designee.

The term of this Agreement shall be 5-years with (2) possible 5-year extensions. The initial term of this Agreement shall be March 1, 2018 through February 28, 2023. The City Manager shall have authority to execute extensions, so long as the lessee fee does not change.

In addition, either the City or Lessee may terminate this Agreement, without cause, at any time after providing written notice at least sixty (60) days prior to the projected commencement of the next year.

4. CARE OF PREMISES

Lessee shall at all times keep the premises, and adjacent areas in clean, sanitary condition. Lessee shall not make any alterations or improvements to the premises or adjacent areas or install any fixtures thereto, without the prior written consent of the City.

Lessee shall leave the premises, and adjacent areas clean and neat at the end of each day's operation, it being understood that the premises, will be used by the City during the hours that the Lessee does not have the exclusive use and occupancy of the premises.

Should the premises or adjacent areas be left in an excessively unkempt state or disrepair at the end of any day's operation as a result of the Lessee's use, the time spent by City maintenance workers or cost for repairs in restoring the facility will be charge to the Lessee at a rate of \$35.00 per hour plus the cost of materials.

5. LEASE FEE

Lessee shall pay \$2,680.00 annually to the City for the use and occupancy of the premises for a period of five (5) years beginning March 1, 2018 through February 28, 2023, with two (2) possible five-year (5) extensions. The term and possible extensions shall be defined as follows:

INITIAL TERM 1	March 1, 2018 through February 28, 2023
POSSIBLE TERM 2	March 1, 2023 through February 28, 2028
POSSIBLE TERM 3	March 1, 2028 through February 28, 2033

The Lessee fee shall be paid in full by March 1 of each year.

6. ADDITIONAL USAGE OF THE ART GALLERY AND COMMUNITY CENTER FACILITIES

Any additional gallery rental hours requested by the Lessee, will be calculated at the same hourly rate as the Ole Hanson Fireside Room, based upon the current resident non-profit rate.

This Agreement shall also include the usage of the Ole Hanson Fireside Room, not to exceed eight (8) times per year, to be utilized by Lessee for board and membership meetings. Dates and times should be reserved through the Recreation office, up to one year prior to the rental

date. Any other usage of the Ole Hanson Fireside Room other than for these purposes shall fall under the regular rental rate, with any applicable rental discount.

This Agreement shall also include the usage of the grass area just outside the main doors to the art gallery, to be utilized by Lessee for gallery registration and openings. Any other usage of the grass area other than for these purposes shall fall under the regular rental rate for the grounds, with any applicable rental discount.

#### 7. INDEMNITY AND INSURANCE

City shall not be liable at any time for loss, damage, or injury to the premises or any property belonging to Lessee or any other person, or any personal injury to any person occasioned by or arising out of any act or omission of Lessee, or the occupancy or use of the premises or adjacent areas by Lessee.

Lessee agrees to protect, indemnify and hold City and all of City's officials, employees, and agents harmless from any and all claims, damages, or liabilities arising under the terms hereof or arising out of or in connection with Lessee's operation or Lessee's use or occupancy of the premises and surrounding areas.

During the entire term of this Agreement, and any extension thereof, Lessee shall at all times carry sufficient public liability insurance to protect and indemnify City and all of City's officials, employees, and agents against any claim, damage, or liability, including any court costs and reasonable attorneys' fees arising out of any accident or injury sustained in connection with the use of the premises and surrounding areas. The limits of the insurance to be provided by Lessee shall not be less than \$1,000,000 for personal injury to each person and \$500,000 property damage per occurrence or \$1,000,000 for a combined personal injury and property damage policy.

Said policy or policies of insurance shall designate the City of San Clemente and the San Clemente Redevelopment Agency as an additional insured, and shall contain a provision for written notice to the City not less than ten (10) days prior to any cancellation thereof. Lessee shall furnish the City an executed copy of said policy or policies of insurance prior to any occupancy or use of the premises under this Agreement.

#### 8. TAXES

Lessee shall pay any and all taxes which may be levied against the premises and surrounding areas or the operation thereon because of the Lessee's use or occupancy.

#### 9. ASSIGNMENT

Lessee shall not assign this Agreement or any of its rights herein without the prior written consent of the City.

## 10. ATTORNEYS' FEES

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms, conditions or covenants of this Agreement, the prevailing party shall be entitled to recover all costs in connection therewith, including reasonable attorneys' fees and court costs in addition to any other relief to which he may be entitled, whether or not the action proceeds to judgement.

## 11. TERMINATION OR EXPIRATION.

### A. Conditions of Premises

Upon expiration or sooner termination of this Lease, Lessee shall peaceably and quietly surrender the premises in a condition as good as when received, excepting reasonable wear and tear.

### B. Fixtures

All fixtures and/or equipment installed in the premises or adjacent areas by Lessee (with the City's approval), whether permanently affixed thereto or otherwise, shall continue to be the property of Lessee and may be removed by it at the expiration or termination of this Lease; provided, however, that Lessee shall repair any injury to the premises and adjacent areas resulting from such removal.

## 12. GENERAL PROVISIONS.

- A. No failure by City to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy upon a breach thereof, shall constitute a waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition and term of this Agreement shall continue in full force and effect with respect to another then existent or subsequent breach.
- B. Time is of the essence in the performance of each and all of the provisions and covenants of this Agreement, and each and all of the provisions and covenants of this Agreement are conditions precedent to be faithfully and fully performed and observed by Lessee to entitle Lessee to continue in possession of said premises.
- C. If any covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder shall remain in full force and effect and shall in no way be impaired or invalidated.
- D. It is expressly understood and agreed that City does not in any way nor for any purpose enter into a partnership or a joint venture with Lessee.

- E. The captions of paragraphs in this Agreement are for convenience only and do not in any way limit or amplify the terms and condition hereof.
- F. This Agreement contains the entire agreement with respect to all matters covered herein and is not subject to modification except in writing.

13. NOTICE.

Any written notice given under the terms of this Agreement shall be effective when delivered personally or when placed postage prepaid in the United States mail, and addressed to the party concerned as follows:

TO: CITY OF SAN CLEMENTE

CITY OF SAN CLEMENTE  
100 N. Calle Seville  
San Clemente, CA 92672  
ATTEN: BEACHES, PARKS AND RECREATION MANAGER

TO: LESSEE

SAN CLEMENTE ART ASSOCIATION  
George Gooch, President  
P.O. Box 227  
San Clemente, CA 92674-0227

Each party shall have the right, from time to time, to designate a different address for notice to be given in conformity with this section.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_  
Mayor

LESSEE

By: \_\_\_\_\_

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

**LESSEE'S INDEMNIFICATION/WAIVER**

I agree, on behalf of myself as an individual and \_\_\_\_\_ ("Organization"), to indemnify, defend, and hold free and harmless the City of San Clemente, the Redevelopment Agency of the City of San Clemente and all of their respective agents, officers, and employees (collectively hereinafter referred to as the "City") from and against any and all loss or liability for claims or judgements against the City, including attorneys fees and costs, that may occur or arise as a result of the planning, preparation, or operation of the Special Event. However, neither I nor the Organization shall be obligated to defend, indemnify and hold free and harmless the City from any claim that may arise as a result of the City's sole gross negligence or willful misconduct. Furthermore, on behalf of myself and the Organization, I agree to waive any and all claims, costs, liabilities, expenses, or judgments against the City, including attorney fees and court costs, which may accrue to myself or the Organization as a result of the planning, preparation, or operation of the Special Event. Furthermore, I agree, on behalf of myself as an individual and on behalf of the Organization, as a condition of holding the Special Event within the City of San Clemente, to pay to the City the costs of any damage, injury, or loss of any public property which directly or proximately results from the occurrence of the Special Event. The payment for all such damage, injury, or loss shall be submitted the City within ten (10) days of receiving an invoice from the City listing the costs of such damage, injury, or loss to public property. I understand that this obligation is both an obligation of the Organization sponsoring the event as well as a personal obligation which I freely accept. I certify under penalty of perjury that I have the authority to bind the Organization sponsoring this Special Event to pay any and all such costs associated with the damage, injury, or loss of public property which directly or proximately results from the occurrence of the special event. I CERTIFY THAT I HAVE READ AND UNDERSTAND THE ABOVE INDEMNIFICATION/WAIVER.

\_\_\_\_\_  
As an individual and on behalf (must be at least 18 years of age)

of \_\_\_\_\_  
(name of organization)