

**AMENDMENT NO. 2
TO THE AGREEMENT FOR LEASE AND OPERATION OF
TRITON MUSEUM OF ART
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
TRITON MUSEUM OF ART**

PREAMBLE

This agreement ("Amendment No. 2") is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and Triton Museum of Art, a California nonprofit corporation, (Lessee). City and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. The Parties previously entered into an agreement entitled "Agreement for Lease and Operation of Triton Museum of Art", dated April 16, 1998 (Agreement);
- B. The Agreement was previously amended by Amendment No. 1, dated April 13, 2018, and is again amended by this Amendment No. 2. The Agreement and all previous amendments are collectively referred to herein as the "Agreement as Amended"; and
- C. The Parties entered into the Agreement as Amended for the purpose of extending the term of the Agreement and modifying certain operating conditions, and the Parties now wish to amend the Agreement as Amended to further extend the term of the Agreement by an additional five years, make clarifications regarding certain operating conditions, and update insurance requirements.

NOW, THEREFORE, the Parties agree as follows:

AMENDMENT TERMS AND CONDITIONS

1. Section 3 of the Agreement as Amended, entitled "Term" is amended to read as follows:

The term of this Lease is for thirty (30) years, commencing on April 16, 1998, and ending on April 15, 2028. Upon giving no less than two (2) years of advance written notice to the other Party, either Party by an affirmative vote of two-thirds (2/3) of the members of the governing body may terminate this Lease prior to the stated Termination Date if either Party determines that it can no longer continue to work with the other in the spirit of cooperation intended under Recital D of this Lease, or if either Party determines that it does not have sufficient funds to

continue to carry out its obligations under this Lease. The Parties may also terminate this Lease as set forth elsewhere in this Lease.

2. Paragraph (b) of Section 6 of the Agreement as Amended, entitled "Rights and Duties of Lessee" is amended to read as follows:

Lessee shall maintain the Premises and Collection in such a manner as to fulfill the express purposes of this Lease. The public shall be provided with free admission to the programs held on the Premises with the exception of special appearances and shows of distinguished artists for which a nominal attendance charge to the public may be required. Examples of such special appearances and shows include, but are not limited to, concerts and speakers. There shall not be more than 36 special appearances or shows per year for which a charge is made to the public without the prior written consent of the City Manager's Office. The special appearances and shows should not impact the public's normal access to the Museum.

3. Exhibit B of the Agreement as Amended, entitled "Insurance Requirements for Lessee" is amended to read as follows:

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. (This applies to lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision. Lessee shall maintain fire and comprehensive insurance on the contents of the buildings and the Collection, including the art objects and sculptures located within and outside the buildings in the Premises.

If the Lessee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

B. OTHER INSURANCE PROVISIONS:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured Status:** The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Lessee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Lessee's insurance (at least as broad as ISO Form CG 20 10).
2. **Primary Coverage:** For any claims related to this contract, the Lessee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. **Legal Liability Coverage:** The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the leased property.
4. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
5. **Waiver of Subrogation:** Lessee hereby grants to City a waiver of any right to subrogation which any insurer of said Lessee may acquire against the City by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
6. **Acceptability of Insurers:** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

7. Self-Insured Retentions: Self-insured retentions must be declared to and approved by the City. The City may require the Lessee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
 8. Verification of Coverage: Lessee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before occupying the premises. However, failure to obtain the required documents prior to the work beginning shall not waive the Lessee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.
 9. Special Risks or Circumstances: City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
4. Except as set forth herein, all other terms and conditions of the Agreement as Amended shall remain in full force and effect. In case of a conflict in the terms of the Agreement as Amended and this Amendment No. 2, the provisions of this Amendment No. 2 shall control.

The Parties acknowledge and accept the terms and conditions of this Amendment No. 2 as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

[Signature] for

GLEN R. GOOGINS
City Attorney

Dated:

4/6/23

[Signature]

Office of the City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

TRITON MUSEUM OF ART
a California nonprofit corporation

Dated:

March 8, 2023

By (Signature):

[Signature]

Name:

Pilar Furlong

Title:

President of the Board

Principal Place of
Business Address:

1505 Warburton Ave.
Santa Clara, CA 95050

Email Address:

pfurlong@bwcmail.com

Telephone:

(408) 568-0756

Fax:

N/A

"LESSEE"