

**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN TOWN OF LOS GATOS
AND THE LOS GATOS MUSEUM ASSOCIATION**

This FIRST AMENDMENT to LEASE AGREEMENT is effective on March 1, 2020 and amends the Lease Agreement between the Town of Los Gatos, a California municipal corporation (herein "Town") and Los Gatos Museum Association, a California nonprofit corporation (herein "Lessee") entered into on December 9, 2013.

RECITALS

- A. Town and Lessee entered into a Lease Agreement ("Agreement"), executed by the Town Manager on December 9, 2013, a copy of which is attached hereto and incorporated by reference as Attachment 1 to this Amendment.
- B. Town and Lessee desire to amend certain terms and conditions of the Lease Agreement. Therefore, the following paragraphs are deleted in their entirety and replaced as set forth herein as follows:

AMENDMENT

1. PREMISES.

Town hereby leases to Lessee, certain real property located in the Town of Los Gatos, County of Santa Clara, State of California, commonly known as 106 East Main Street (herein the "Premises") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Premises consists of approximately ~~eleven~~ Ten thousand six hundred and ~~four~~ thirty (~~11,604~~10,630) square feet of space for museum exhibits, ~~staff offices, storage, art studio, MakerSpace classroom areas, lounge and meeting area, visitor reception areas, Collection room, educational program room/spaces, kitchen facilities, restrooms, elevators and an attached outside deck, Town offices, storage, educational lab, kitchen facilities, bathrooms, and a deck.~~ Lessee accepts the Premises "as-is" on the date of execution of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall be for ten (10) years ~~plus the initial period of Town construction and improvements to the Premises, as set forth in paragraph 2.5, commencing on July 1, 2013~~ January 1, 2016 and ending ~~on December 31, 2026~~ ten (10) years from the Delivery Date, as defined below ("Term"). Lessee shall, at the expiration of the term of this Lease, ~~or the end of any option period set forth in Paragraph 2.2,~~ or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

3. **RENT and MONETARY and PERFORMANCE OBLIGATIONS.**

3.1 Base Rent. The rent to be paid by Lessee shall be in the amount of twenty-five thousand dollars (\$25,000.00) per year payable in monthly installments of \$ 2,083.33.

3.2 Payment Date. Rent shall be payable on the first day of each month commencing on July 1, 2020 and thereafter during the term of the Lease and any Lease extension at Town Hall Finance Department.

~~The base rent shall be in the amount of Fair Market Rate (FMR) of \$2.50 per square foot per month without deduction or offset based on 11,604 square feet, not including the conference room, Town office space, and exterior decks as shown on Exhibit A or as memorialized in an Addendum to Lease following the determination regarding the actual space needed for the new HVAC system, which shall occur prior to the Delivery Date. For the first three (3) years after the Delivery Date, Lessee shall pay no Base Rent for the Premises. The FMR shall be updated no less than once every ten (10) years and at each Option Period using an appraisal methodology satisfactory to the Parties.~~

~~3.2 Annual Increase. During the Term of this Lease, including each Option Period if an option is exercised, the Base Rent shall be increased effective on each anniversary of the Delivery Date as follows:~~

- ~~(a) Years 1-3 Not Applicable, No Rent~~
- ~~(b) Year 4 1.25% of FMR~~
- ~~(c) Years 5 Year 4 + 1.25% of FMR~~
- ~~(d) Year 6 Year 5 + 1.25% of FMR~~

~~Despite the foregoing, in no event shall Base Rent shall exceed Two Thousand Dollars (\$2,000) per month during the initial 10-year period.~~

Prior to the extension of the Lease under the Option Periods of this Lease, Paragrah 2.2, if an option is exercised, the Town reserves the right to review the accounts and financial records of the Lessee and open negotiations for an adjustment in rent or performance obligatoions under Paragargh 3.6-potential increase in Base Rent.

~~3.6 Reimbursement for Downstairs Restroom Project. Lessee shall contribute 50% of the costs of downstairs restroom improvements, but in no event more tthan the sum of Twenty~~

~~Eight Thousand Dollars (\$ 28,000) for Lessee' s share of the restroom project for the Premises. Such Payment shall be made commencing on the fourth anniversary of the Delivery Date and on each anniversary of the Delivery Date thereafter at the rate of Four Thousand Dollars (\$ 4,000) per year until the entire sum has been paid to the Town.~~

3.6 Lessee Programs & Services to Town Residents & Non-Profit Organizations. Lessee shall provide the following services and programs to Los Gatos Residents:

1. Free Museum Admission to art and history exhibitions, opening receptions, and select events and programs.
2. Priority Registration/Admission for select programs and events.
3. Facility Rental Discounts (meetings, private events, fundraisers):

- a. 10 % discount for private rentals
- b. 15 % discount for non-profits rentals
- 4. Curate and install one Art in the Council Chambers exhibition.
- 5. Curate one Council Chambers display case per year.
- 6. Support Arts & Culture Commission in efforts to fund public projects through fiscal agency and curatorial support.
- 7. Support Los Gatos Town Events at request of organizers, based upon Museum capacity and resources.
- 8. Host GBAO/Los Gatos Art Association biennial exhibition (excludes soliciting exhibition sponsors, exhibition installation and and deinstallation exhibition management).
- 9. Continue to source funding and volunteer support for Los Gatos History Project (archiving collection, programming)

3.7 Annual Statements. On or before September 1, of each calendar year, beginning in 2021, Lessee shall furnish to the Town a statement (the "Annual Report"), setting forth in reasonable detail a listing of completed or in progress milestones ; attendance report (residents and non-residents) ; the current budget; a financial statement (revenues, expenses and endowment) for the prior year; provide a collections management report and a listing of the Museum's Board of Directors.

3.8 Books and Records. Lessee shall keep and maintains full, complete and appropriate books, records and accounts relating to the Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full all revenues and expenses incurred in the performance of this Agreement. All such books, records and accounts shall be open to and available for inspection by the Town, its auditors or other authorized representatives at reasonable intervals during normal business hours.

3.9 Sponsorship. Lessee acknowledge Town as a major sponsor on all press releases and other written materials available to the public. Such acknowledgement will substantially read: "Major funding for this program is made possible in part by the Town of Los Gatos." Said language will be in proportional type size to the total advertisement area.

5. **USE OF PREMISES and OPERATING HOURS.**

5. 1. 2 4,335 square feet of space on the upper level and 7,260 6295 square feet of space on the lower level of the old Town of Los Gatos Library located at 106 E. Main Street, Los Gatos, CA, as shown on Exhibit A and Exhibit B. Exhibit B is detailed plan of the new configuration on the lower level. The Town will be responsible for all costs associated with the new configuration on the lower level. or as memorialized in an Addendum to Lease following determination regarding the space needed for the new HVAC system, which shall occur prior to the Delivery Date.

5. 2 Hours of Operations.

5. 2. 1 Public Hours. ~~The Premises shall be closed to the Public on Wednesdays until~~

~~1: 00 P.M.~~ Public hours shall not exceed Monday through Sunday from ~~11~~9: 00 A.M. to ~~7~~9: 00 P.M. Additional ~~evening~~ hours are allowed for special events, programs, private events receptions, and Board /Committee meetings so long as no Town meeting or event is scheduled. ~~Additional morning hours are allowed for visits by school children when those school children are transported by a bus or other vehicles that do not park in any of the Civic Center lots or on the streets immediately adjacent to the Civic Center.~~ The Premises shall be open to the public a minimum of 25 hours per week, unless Lessee is in the process of changing exhibits.

~~5. 2.2 Schedule. Lessee shall submit a calendar in advance of all scheduled events on a quarterly basis to Town Manager in order to avoid conflicts with Town events and meetings.~~

~~5. 2. 3 Staff Hours. The Premises shall remain closed to the public, but available for use for up to five (5) staff members on Wednesdays prior to 1: 00 P.M.~~

5. 5 Parking. Lessee shall be obligated to purchase Olive Zone parking permits annually from Town for all Lessee employees and shared parking permits for volunteers working 20 hours or more during weekdays. Lessee' s employees and volunteers will comply with the same parking requirements consistent with Town employees. ~~In no event shall any buses or oversized vehicles associated with visitors to the Premises park in any of the Civic Center lots or on the streets immediately adjacent to the Civic Center.~~

5. 7 Use of Alcohol. Any use of alcohol will be subject to approval and conditions contained in any Conditional Use Permit obtained by Museums of Los Gatos ~~and, limited to beer and wine only.~~ If any use of alcohol requires additional regulatory permits, including an ABC license, Lessee shall be responsible for obtaining such permit, paying all associated costs, and notifying Town in writing of receipt of such permit.

7. UTILITIES AND OPERATING EXPENSES.

7. 1 Lessee Obligations. ~~Lessee at Lessee' s sole expense Town is responsible shall fully and promptly pay~~ for all expenses associated with ~~the operation of the Premises, including but not limited to~~ the furnishing of gas, water, sewer, electricity, ~~telephone service,~~ garbage pickup and disposal, ~~other public utilities and custodial service~~ that relate to the Premises. ~~Lessee shall be obligated to pay a pro-rated share based on square footage for gas, water, sewer, electricity, garbage service and other public utilities provided by or through the Town.~~ Lessee shall be obligated to pay their own direct costs for telephone, technology, audio - visual, custodial and other specialized services, including any initial costs for those services. Town shall maintain all exterior landscaping and integrated building HVAC system.

Lessee acknowledges that pursuant to the terms of the Lease before this Amendment, that there is due and owing to the Town the sum \$ \$24,417.58 for utilities and operating expenses under this Paragraph. If Lessee performs satisfactorily pursuant to the Agreement and this Amendment, Town Council, in its own and sole discretion, shall consider, prior to July 2022, whether to waive the amount past due. Until such time as Council makes a determination, no amount shall due form the Lessee to the Town for the amove referenced amount.

All other terms and conditions of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the TOWN and LOS GATOS MUSEUM ASSOCIATION have executed this Amendment.

TOWN OF LOS GATOS

LOS GATOS

By: _____

Laurel Prevetti

Town Manager

By: _____

Maureen Cappon-Javey

Executive Director

APPROVED AS TO FORM:

Robert Schultz
Town Attorney