

OFFICE OF THE CITY CLERK
OAKLAND

09 MAY -5 PM 12:08

MANAGEMENT/OPERATIONS AGREEMENT

Between

OAKLAND MUSEUM OF CALIFORNIA FOUNDATION, INC., and CITY OF OAKLAND

THIS MANAGEMENT/OPERATIONS AGREEMENT ("Agreement") is made and entered into this 18th day of October, 2006 between the City of Oakland, a municipal corporation, hereinafter referred to as "CITY" and the Oakland Museum of California Foundation, Inc., ("FOUNDATION"), a California nonprofit public interest corporation to document their relationship in operating and funding the Oakland Museum of California ("the Museum").

WITNESSETH

WHEREAS, CITY is the fee owner of that certain real property located at 1000 Oak Street, Oakland, California known as the Oakland Museum of California; and

WHEREAS, CITY owns the Museum's growing collection of irreplaceable objects both valuable and significant to the documentation of California's art, history, and natural environment, and employs qualified personnel to ensure the continued education and enjoyment of these objects for the citizens of the City of Oakland, the San Francisco Bay Area, the State of California and visitors from around the world; and

WHEREAS, FOUNDATION is a non-profit corporation originally established in 1989 to raise private funds to support the Museum and as an IRS 501(c)3 organization the FOUNDATION is regulated by all applicable State and Federal laws; and

WHEREAS, FOUNDATION receives for the benefit of the Museum grants, contributions, fees, and earned revenue, manages its endowments to support Museum activities, engages in fundraising activities, employs staff who provide administrative, marketing, development, curatorial, and other services; and

WHEREAS, FOUNDATION provides services to the Museum, manages projects funded by Measure G and designated for Museum improvements and may perform similar functions with future bond proceeds and other public moneys; and

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WHEREAS, during the past decade, the FOUNDATION has funded a number of positions at the Museum for which the CITY has discontinued providing funding; and

WHEREAS, FOUNDATION is undertaking a multi-million dollar capital campaign to do the first renovation since the Museum was built 30 years ago as part of a major expansion, renovation and reinstallation of the Art, History and Natural Science galleries as well as to expand educational programs and opportunities for larger and more diverse populations of students and visitors; and

WHEREAS, in order to further the mutual goals of the CITY and FOUNDATION of ensuring the success of the Museum for current and future generations and to successfully accomplish the annual and special fundraising efforts, a clearly articulated understanding of the relationship that exists between CITY and FOUNDATION is necessary to advance the Museum and provide a transparent differentiation of responsibilities and functions that exist between the two entities.

In consideration of the above recitals and performance of the respective covenants hereinafter described, the CITY and the FOUNDATION hereby agree that they shall cooperate in sustaining the Museum pursuant to the following terms and conditions:

1. SUMMARY OF CITY AND FOUNDATION FUNCTIONS: The CITY and the FOUNDATION intend to continue their respective functions in supporting the Museum:

(a) CITY Functions

1. The CITY shall make its Museum, collection of art, historical artifacts, photographs, archival materials, natural specimens, and other Museum objects available for educational and cultural purposes at the Museum and shall provide curatorial and other staff as it deems necessary for this purpose.
2. The CITY shall maintain the Museum buildings and grounds and provide any necessary security personnel for the facility. The CITY shall provide the FOUNDATION with office space for the FOUNDATION'S activities in support of the Museum.

(b) FOUNDATION Functions

1 The FOUNDATION shall raise and administer funds to support the Museum, subject to Paragraph 1(b)(2), below

2. The FOUNDATION shall manage projects which are funded by Measure G money. Notwithstanding the foregoing, the City shall continue to administer and control the expenditure of Measure G money

3 The FOUNDATION shall employ staff necessary to raise funds and earned revenue for the Museum, and shall employ any additional Museum staff for other Museum purposes, as it deems necessary.

4. The FOUNDATION shall operate the Museum's visitor services, store, facility rental and Conservation Lab functions, as described in more detail below.

5. Pursuant to the FOUNDATION'S bylaws, the FOUNDATION shall advise the City Administrator in hiring, evaluation, and termination of the Executive Director.

2. EXECUTIVE DIRECTOR: The CITY and the FOUNDATION Chair agree to discuss the hiring and termination of the Executive Director and his/her duties and responsibilities, performance evaluations, and compensation. The CITY and FOUNDATION recognize that the FOUNDATION places time demands upon the Executive Director and other administrative staff. The FOUNDATION's above-referenced annual fund raising and capital campaign will require commitment of the Executive Director's time, and the CITY agrees to provide adequate time for this work in setting the Executive Director's duties and responsibilities.

3. APPOINTMENT OF FOUNDATION TRUSTEES: The Board of Trustees shall be appointed in accordance with the FOUNDATION's bylaws. One Trustee shall be a City Administrator designee, the selection of which shall be subject to discussion between the City Administrator and the FOUNDATION Chair.

4 STRATEGIC/OPERATIONAL PLANNING: In order to improve coordination between the CITY and FOUNDATION in operating the Museum, the CITY and the FOUNDATION agree to undertake strategic planning for the Museum. The CITY and FOUNDATION further agree to coordinate in developing their respective budgets for Museum operations and will discuss changes to their respective budgets that are material to Museum operations prior to either party approving their budgets.

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FOUNDATION shall submit to the Mayor and City Administrator periodic reports on strategic plans and progress

5. CITY FUNDING: The CITY agrees that the Museum is a vital cultural institution. The CITY agrees to make best efforts to fund the Museum for a period of five (5) years from the date of this Agreement, at the current level of service.

6. FACILITY RENTAL FEES: The FOUNDATION may employ staff or engage contractors to continue to administer the rental of the Museum's building and grounds and retain all revenues from such rentals for the benefit of the Museum. Facility rental rates will be set by the CITY in the Master Fee Schedule. The FOUNDATION agrees to use its best efforts to offset up to \$10,000 per year in rental fees for non-profit organizations that rent the Museum's buildings and grounds and qualify for partial or fully-discounted rental fees under the Community Access Program (CAG). The CAG grant application is attached and incorporated herein by reference as Exhibit A.

7. PARKING FEES: The CITY shall retain all revenues and be responsible for the operation and administration of the parking space rental at the Museum's parking garage. The CITY and the FOUNDATION shall review the parking rental operation and rates every two years in conjunction with the CITY's budgeting cycle.

8. MUSEUM STORE: The FOUNDATION may employ sales staff and operate and retain all revenue derived from the Museum Store(s) for the benefit of the Museum.

9. CONSERVATION LAB: The CITY shall employ a Chief Conservator and other conservators as it deems necessary. The FOUNDATION shall employ additional conservators and shall receive all revenue from conservation services provided for outside contracts, applying such revenue for the benefit of the Museum and its collections.

10. ADMISSIONS REVENUE: The FOUNDATION shall employ admission staff and receptionist(s) for the benefit of the Museum and its visitors. Admission rates shall be set by the CITY in the Master Fee Schedule. Income from admissions shall be applied to the costs of admissions operations. The FOUNDATION shall retain one-hundred percent (100%) of the revenue collected from admissions. The FOUNDATION agrees to retain a "free admissions day" once a month to ensure the Museum's accessibility to the general public.

11 MEMBERSHIPS AND FUND-RAISING EVENTS. The FOUNDATION shall offer for sale memberships in the Museum at various levels, with appropriate benefits and publications associated therewith, and shall hold galas and special events, proceeds from all of which shall provide annual operating support, capital improvements, and other benefits for the Museum at the discretion of the FOUNDATION. The CITY shall allow members and participants in fund-raising and other special events access to the Museum and its exhibits free of charge, or for fees that may be set from time to time by the FOUNDATION.

12. MUSEUM RESTAURANT: The CITY shall retain one-hundred percent (100%) of the revenue collected from the Museum restaurant operations. The parties agree that upon the execution of a new agreement with a concessionaire for the Museum restaurant operations, the CITY and FOUNDATION will discuss a revenue-sharing arrangement.

13. ACCOUNTING/FUND ACCUMULATION. FOUNDATION agrees to comply with CITY accounting and audit requirements for nonprofit organizations, including any updates and modifications, set forth by the Finance Director, City Auditor and City Administrator during the term of the Agreement. The audit provision shall conform to the requirements outlined in Schedule S, including the Table of Contract Clauses Related to Financial Responsibilities, and any updates and modifications.

14. ACCESS TO RECORDS: FOUNDATION shall provide requested records to CITY within ten (10) working days of receipt of CITY'S request and shall allow CITY access to books and records at all reasonable times. At the option of the CITY, FOUNDATION shall provide payroll tax reports, sales tax reports, income tax reports, hazardous materials reports, and other reports filed with federal, state and local government

15. INSURANCE: The CITY and the FOUNDATION shall exchange proof of insurance (or self-insurance) for the activities covered by this Agreement. Unless a written waiver is obtained from the CITY's Risk Manager, FOUNDATION must provide the insurance listed in Schedule Q. Schedule Q is attached hereto and incorporated herein by reference.

16 NON-DISCRIMINATION/EQUAL EMPLOYMENT PRACTICES/EQUAL BENEFITS. In carrying out the services that the FOUNDATION provides to the Museum and in determining the appropriate fees to be charged and in other practices, the FOUNDATION shall endeavor to establish programs and charges that will make the subject property and facilities attractive and available to all levels of economic, racial and academic interest in the community, provided that the FOUNDATION'S goal of financial self-sufficiency is not thereby endangered.

- a. FOUNDATION and FOUNDATION'S Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of FOUNDATION that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- b. FOUNDATION shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1** "Declaration of Compliance with the Americans with Disabilities Act," attached hereto and incorporated herein.
- c. This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations requiring contractors on CITY contracts of \$25,000.00 or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. If the FOUNDATION does not provide employees with spousal benefits they are not required to change their benefits policies. The FOUNDATION shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as **Schedule C-2** to this Agreement.
- d. If applicable, FOUNDATION will send to each labor union or representative of workers with whom FOUNDATION has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of FOUNDATION'S commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The FOUNDATION further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer,

recruitment or recruitment advertising, lay-off or termination, rates of pay or other form of compensation, and selection for training, including apprenticeship.

17. LIVING WAGE REQUIREMENTS

This Agreement is subject to the Living Wage Ordinance of Chapter 2 28 of the Oakland Municipal Code ("the Ordinance") and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that FOUNDATION provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$10.07 with health benefits or \$11.58 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.25 per hour. FOUNDATION shall provide proof that health benefits are in effect for those employees no later than thirty days after execution of the contract or receipt of CITY financial assistance.
- c. Compensated days off –The Foundation will comply with Federal, State and the Ordinance requirements for compensated days off.
- d. Federal Earned Income Credit (EIC) – FOUNDATION shall inform said employees who earn less than \$12.00 per hour that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees.
- e. Living Wage Notice -- FOUNDATION shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the CITY'S Living Wage requirements. Said notice shall be posted

prominently in communal areas of the work site(s) and shall include the above-referenced information.

- f. Language of Notices and Forms -- FOUNDATION shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within thirty days of employment under this Agreement.
- g. Reporting -- FOUNDATION shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. FOUNDATION shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within ten (10) days of the due date for the applicable quarter will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. FOUNDATION shall maintain employee payroll and related records for a period of four years after expiration of the compliance period.
- h. Living Wage Contractors' Compliance -- FOUNDATION shall require contractors and subcontractors that provide services pursuant to this Agreement to comply with the above Living Wage provisions. Such contractor(s) shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of Contract Compliance.

18 CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, the FOUNDATION must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as **Schedule O**

19. NUCLEAR FREE ZONE DISCLOSURE. FOUNDATION represents pursuant to Schedule P ("Nuclear Free Zone Disclosure Form") that it is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement the FOUNDATION shall complete **Schedule P**, attached hereto.

20. HOLD HARMLESS/INDEMNIFICATION: The FOUNDATION agrees to protect, defend, with counsel acceptable to the City, (including any third party lawsuits), indemnify, and hold harmless CITY, its Council Members, officers, agents, and employees from any and all claims, demands, actions, losses, expenses or damages arising out of the performance of this Agreement by the FOUNDATION, its contractors, and their respective subcontractors, vendors, guests, and invitees to which CITY may be subjected, except for those claims, demands, actions or damages resulting from the negligence or willful misconduct of CITY, its Council Members, officers, agents, and employees

The CITY agrees to protect, defend with counsel acceptable to the Foundation (including any third party lawsuits), indemnify, and hold harmless the FOUNDATION, its Board of Trustees, officers, employees and agents from and any and all claims, demands, actions, losses, expenses or damages, arising out of the performance of this Agreement by the CITY, its contractors and their respective subcontractors, vendors, guests, and invitees except for those claims, demands, actions or damages resulting from the negligence or willful misconduct of the FOUNDATION, its Board of Trustees, officers, employees and agents

21. OPEN MEETINGS AND ACCESS TO RECORDS: All Regular and Annual meetings of the FOUNDATION'S Board of Trustees shall be open to the public, with notice of said meetings appearing on the Museum's Website. Minutes of said meetings and financial statements shall be made available on request and shall not be unreasonably withheld

22. POLITICAL PROHIBITION: Subject to applicable law, funds received pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda designed to support or defeat legislation and ballot measures pending before federal, state, or local government. The FOUNDATION shall not use the property for political purposes, including, but not limited to, political fundraising and campaigning.

23 RELIGIOUS PROHIBITION There shall be no religious worship, instruction, or proselytization as part or, or in connection with the performance of this Agreement

24 CONFLICT OF INTEREST: The following protections against conflict of interest will be upheld:

- a FOUNDATION certifies that no member of or delegate of the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising herefrom.
- b FOUNDATION certifies that no member, officer, or employee of CITY or its designees or agents, and no other public official of the CITY who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, indirect or direct in this Agreement or in its proceeds during his/her tenure or for one year thereafter.
- c. FOUNDATION certifies that no one who has any financial interest in this Agreement or receives compensation for the services from FOUNDATION is related by blood or marriage within the third degree to the Mayor or any one or more of the members of the City Council, City Administrator, or the head of the department to which these services are to be provided pursuant to this Agreement.

25. NON-ASSIGNMENT OF INTEREST: The parties to this Agreement shall not assign or otherwise transfer any rights, duties, or obligations or interest in this Agreement, either in whole or in part, without the prior written approval of the other party.

26. INUREMENT: This Agreement shall be and is hereby binding on the successors of the parties hereto.

27. WAIVER OF BREACH: The waiver by either party to this Agreement of any breach by the other party of any of the provisions of the Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or a different provision of this Agreement.

28. ACCESS TO RECORDS: The FOUNDATION shall cooperate with CITY to provide public access for the purposes of inspection of documents, correspondence, inspection records, logs, minutes, photographs, contracts and other documents related to the expenditure of funds granted or otherwise provided to the FOUNDATION by CITY

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29. NOTICES: Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to the CITY by the FOUNDATION or the FOUNDATION by the CITY shall be in writing and shall be deemed duly served and given when deposited in the United States mail, first-class postage prepaid, addressed as follows:

CITY

City of Oakland

Office of the City Administrator
One Frank Ogawa Plaza
Oakland, CA 94612
Attn: City Administrator

FOUNDATION

Oakland Museum of California
Foundation

1000 Oak Street
Oakland, CA 94607-4892
Attn: Chair, Board of Trustees

30. SEVERABILITY: In the event that any covenant, term or condition herein contained is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect any other valid covenant, term or condition herein contained.

31. TERM and TERMINATION:

a. The term of this Agreement shall be for ten (10) years commencing upon execution hereof and expiring on 10/15, 2016.

b. Notwithstanding paragraph 31(a), this Agreement may be terminated by the FOUNDATION or the CITY at any time without cause and without penalty upon six (6) months' prior written notice.

c. Upon termination of this Agreement for any reason, all assets shall revert to the party that holds title to such assets, operations will be turned over to the CITY or its designated representative, and the CITY will assume all financial and operational responsibilities for the Museum, except the FOUNDATION'S debts and liabilities which shall be the sole responsibility of the FOUNDATION.

32. HOLDOVER: Should the FOUNDATION hold over and continue management/operation services after the end of this Agreement, with the expressed or implied consent of the CITY, such holding over shall be construed as a confirmation of the Agreement from month-to-month and upon the same terms and conditions as herein provided for the previous Agreement. Any holdover shall terminate upon the execution of a new agreement or written notice of termination by the CITY or the FOUNDATION.

33. **DEFAULT BY FOUNDATION.** In the event the FOUNDATION defaults or fails to perform under any of the obligations hereunder, the CITY Administrator shall give written notice hereof to the FOUNDATION expressly stating the nature of said default or nonperformance. The FOUNDATION shall have sixty (60) days from receipt of said notice to correct said default or nonperformance, and in the event of the FOUNDATION's failure to do so, the CITY, in addition to any other legal or equitable rights it may have, may do any or all of the following:

- a. Terminate this Agreement upon written notice to the FOUNDATION; or
- b. Direct the FOUNDATION to assign its interest in and to this Agreement to a party designated by the CITY Council without compensation to the FOUNDATION; or
- c. Perform whatever corrective measures are deemed necessary, which costs of such services plus administrative overhead shall be charged to and paid by the FOUNDATION to the CITY upon demand.

34. **DELIVERY OF ORGANIZATIONAL DOCUMENTS.** A copy of the FOUNDATION'S Articles of Incorporation and Bylaws and any amendments thereto shall be submitted to the CITY within thirty days of the date of execution of this Agreement. Any amendments to these documents shall be submitted to the CITY within thirty days after the Board of Trustees approval.

35. **GOVERNING LAW:** This Agreement shall be deemed to be made and construed in accordance with the laws of the State of California.

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IN WITNESS WHEREOF, the City Administrator of the CITY OF
OAKLAND has caused the name of the City of Oakland to be affixed hereto and
the Oakland Museum of California Foundation has caused its name to be affixed,
all in quadruplicate, the day and year first above written. The City Administrator
is duly authorized by Resolution No. C.M S. passed by the City Council on
_____ 2006, to execute this agreement.

CITY OF OAKLAND,
a municipal corporation

OAKLAND MUSEUM OF CALIFORNIA
FOUNDATION, INC.,
a nonprofit public
interest corporation

By: Heidi A. Kyung
Date

Title: City Administrator

By: David D. Joyce 28/SEP/06
Date

Title: Chairperson

Approved:

Received and Filed:

James H. Hara 10/16/06
Office of the City Attorney Date

Alonda Simmons 5/5/09
Office of the City Clerk Date