

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY
HISTORICAL ASSOCIATION FOR OPERATIONS AND MAINTENANCE OF COUNTY MUSEUM
AND TWO HISTORICAL SITES IN 2003/04

This Agreement, made and entered into this _____ day of _____, 2003, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, (hereinafter, "County"), and the SAN MATEO COUNTY HISTORICAL ASSOCIATION, a non-profit corporation, (hereinafter "Association"):

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, the County of San Mateo may retain independent contractors to perform special services to or for the County or any department thereof; and

WHEREAS, the Association has for many years maintained a museum and two County owned and maintained historical sites concerning the history of the County of San Mateo which has contributed in significant and substantial ways to the public interest of the citizens of this County; and

WHEREAS, for many years County has contracted for the services of the Association in maintaining said museum and two County owned and maintained historical sites for the benefit of the citizens of the community, and it is now the desire of this Board to again enter into an agreement with the Association for said services for fiscal year 2003/04;

NOW, THEREFORE, in consideration of the terms and conditions and mutual covenants herein contained, IT IS HEREBY AGREED by and between the parties hereto as follows:

SECTION 1. TERM. This Agreement shall be in full force and effect upon execution by both parties. This Agreement shall terminate on June 30, 2004. The parties acknowledge that Association has performed under this Agreement since July 1, 2003 in anticipation of the execution of this Agreement. Funds to be provided by the County under Section 3A. Obligations of County are provided in consideration of Association's performance from July 1, 2003 to June 30, 2004. However, either party at any time may

terminate the Agreement by giving written notice of such termination at least thirty (30) days in advance of the effective date of such termination as provided by Section 12. Any such termination shall be effective for all purposes except as to obligations acquired prior to the effective date thereof.

SECTION 2. OBLIGATIONS OF ASSOCIATION. In meeting its obligations under this Agreement, the Association shall:

- A. Maintain and operate a museum of the history of the County of San Mateo in substantially the same manner in which it has in the past; and in connection therewith, the Association shall keep said museum open to the public for at least one-half day for five days a week.
- B. Maintain and operate the docent program to keep the Woodside Store historical site open to the public 16 hours a week and the Sanchez Adobe site open to the public 22 hours a week.
- C. Collect, catalog, and file records, photographs, maps, articles of the news media and periodicals, mementos, and any and all other appropriate materials relevant to the history of San Mateo County and shall give counsel and editorial assistance in connection therewith to all citizens of the county.
- D. Promote through meetings, speakers, and any and all other appropriate methods the dissemination of information to the public concerning the history, growth, and development of the County of San Mateo.
- E. Continue to publish and make available to the public its quarterly journal of county history, La Peninsula, and shall continue to operate a lending service of any and all materials in the custody of the Association that may be appropriately loaned and circulated to members of the public.
- F. Provide appropriate curatorial assistance at all three museum sites as staff resources allow.

SECTION 3. OBLIGATIONS OF COUNTY.

- A. In consideration of the services described herein, County shall pay to the Association during fiscal year 2003/04 the sum of \$88,800 which sum shall be payable upon execution of this agreement.
- B. It is understood and agreed that the said sum is the full compensation to be paid to the Association under the terms of this Agreement and that any expenses whatsoever incurred by the Association in complying with the terms of this Agreement including but not limited to the employment of any staff, cost of supplies and equipment, maintenance, space, and travel expenses, shall be at the Association's own expense.

SECTION 4. HOLD HARMLESS AND INDEMNIFICATION. The Association shall indemnify and save harmless the County, its officers, agents, employees and servants from all claims, suits and actions of every name, kind and description, brought for, or on account of injuries to or death of any person including but not limited to Association or its members, employees, and volunteers, or damage to property of any kind whatsoever and to whomsoever belonging including but not limited to injuries and damages attributable to the concurrent active or passive negligence of the County, officers, agents, or employees and servants resulting from the performance of this Agreement by Association, provided that such provisions shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct. The duty of Association to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

SECTION 5. INSURANCE. The Association shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Parks and Recreation Division. The Association shall furnish the Parks and Recreation Division with

certificates of insurance evidencing the required coverage and there shall be a specific contractual liability endorsement extending the Association coverage to include the contractual liability assumed by the Association pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the Parks and Recreation Division of any pending change in the limits of liability or of nonrenewal, cancellation, or modification of the policy.

(a) Workers' Compensation and Employer's Liability Insurance:

The Association shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Association makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

(b) Liability Insurance: The Association shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Association while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Association operations under this Agreement, whether such operations be by Association or by any sub-contractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage for each occurrence. County and its officers, agents, employees and servants shall be named as additional insureds on any such policies of insurance,

which shall also contain a provision that the insurance afforded thereby to the County, or its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County, or its officers and employees, have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the Parks and Recreation Division, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement, suspend all further work pursuant to this Agreement and terminate Agreement per Section 12.

SECTION 6. FIDELITY BOND. Association shall submit to County, certification that all individuals handling or having access to funds provided under this Agreement other than petty cash not exceeding Fifty Dollars (\$50), or who are authorized to sign or counter-sign checks, are covered by a blanket fidelity bond, for the life of the Agreement in the equivalent amount of twenty percent (20%) of the total contract amount. County shall not be required to be insured on said bond. Failure to comply will be a breach of this Agreement and may result in the withholding of funds or in termination by County.

SECTION 7. TIME. Time is of the essence of this Agreement.

SECTION 8. ENTIRE CONTRACT. It is expressly agreed between the parties that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties and no oral understanding or agreement not incorporated herein shall be binding on the parties hereto.

SECTION 9. INDEPENDENT CONTRACTOR. It is expressly understood that this is an

agreement between two (2) independent contractors and that no agency, employee, partnership, joint venture or other relationship is established by this Agreement. The intent by both County and Association is to create an independent contractor relationship. Association expressly acknowledges and accepts his/her tax status and the tax consequences of an independent contractor. Further, as an independent contractor, Association expressly acknowledges and accepts that he/she has no rights, benefits, privileges and/or claims in any form whatsoever under, from through and/or pursuant to the San Mateo County Civil Service Rules.

SECTION 10. ASSIGNABILITY. Without the written consent of the County this Agreement is not assignable in whole or in part.

SECTION 11. NOTICES. All notices required hereunder shall be served upon the Parks and Recreation Division.

Notices will be sent to the County at:

Director, San Mateo County Parks and Recreation Division

455 County Center, 4th Floor

Redwood City, CA 94063

Notices will be sent to the Association at:

San Mateo County Historical Association

777 Hamilton Street

Redwood City, CA 94063

SECTION 12. TERMINATION.

- A. Either party at any time may, without cause, terminate this Agreement by giving written notice of such termination at least thirty (30) days in advance of the effective date of such termination. Any such termination shall be effective for all purposes except as to

obligations acquired prior to the effective date thereof.

- B. Further, should Association fail to perform any covenant contained herein, County may immediately terminate this Agreement. Termination by County shall be effective upon the mailing, return receipt requested, of notice thereof. Thereafter, County may take whatever action it deems proper to cure such failure to perform.
- C. In the event of such termination under this Section 12, Association shall immediately remit to County, in an amount proportionate to the remaining term of this Agreement, all funds previously advanced by the County under Section 3A of this Agreement.

SECTION 13. Non-Discrimination - General. No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Association shall ensure no discrimination for all employees and Subcontractors under this Agreement.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject Association to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Association's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due Association under the Agreement or any other contract between Association and County.

Contractor shall report to the County Manager the filing by any person in any court of any

complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Association that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstances. Association shall provide County with a copy of its response to the Complaint when filed.

SECTION 14. Equal Benefits. With respect to the provision of employee benefits, Association shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

SECTION 15. Records.

- A. Association agrees to provide to County, to any federal or state department having monitoring or reviewing authority, to County's authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant federal, state and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.
- B. Association shall maintain and preserve all financial records relating to this Agreement for a period of four (4) years from the termination date of this Agreement, or until audit findings are resolved, whichever is greater.

SECTION 16. Compliance with Applicable Laws. All services to be performed by Association pursuant to this Agreement shall be performed in accordance with all applicable federal, state, county and municipal laws, including, but not limited to, the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by

reference herein as Attachment I, which prohibits discrimination on the basis of handicap in programs and activities receiving any federal or county financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality or records, and applicable quality assurance regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on
the _____ day of _____, 20_____.

COUNTY OF SAN MATEO

BY _____
President, Board of Supervisors

ATTEST:

Clerk of Said Board

SAN MATEO COUNTY HISTORICAL ASSOCIATION
BY  _____
Director

Section 504, Rehabilitation Act of 1973

Section 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 706 (20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of any proposed regulations shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date of which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of -

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of Title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship -

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID SE SANMA-3	DATE (MM/DD/YYYY) 08/19/03
PRODUCER MacCorkle Insurance Service CA License #0606920 1650 Boreal Place, Suite 100 San Mateo CA 94402 Phone: 650-349-2364 Fax: 650-349-4631	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
INSURED San Mateo County Historical As Mitch Postel 777 Hamilton Ave. Redwood City CA 94063	INSURERS AFFORDING COVERAGE INSURER A: Travelers Property Casualty INSURER B: State Compensation Ins Fund INSURER C: INSURER D: INSURER E: REVISED - SUPERCEDES ALL PRIOR CERTS.	NAIC #	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/>	X660428X8878	01/02/03	01/02/04	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	STATE FUND MUST ISSUE CERTS DIRECTLY	01/02/03	01/02/04	STATU-TORY LIMITS E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Employee Dishonest	X660428X8878	01/02/03	01/02/04	\$75,000 Blankt Frm \$1000 Dad

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 The County of San Mateo, its officers, agents, or employees and servants are named as additional insured solely as respects liability arising from the operation of the Named Insured. This insurance is primary as per policy form CG00011093 (attached). 10 day notice shall apply for notice of cancellation due to non-payment of premium.

CERTIFICATE HOLDER County of San Mateo Parks and Recreation Division Environmental Services Agency 455 County Center, 4th Floor Redwood City CA 94063	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Shung Hook</i>
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COMMERCIAL GENERAL LIABILITY

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy.

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit.

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal pa-

pers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance.

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.