

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 2007/08

This Agreement, made and entered into this _____ day of _____, 2007, 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 the County to again enter into an agreement with the Association for said services for fiscal year 2007/08.

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, 2008. The parties acknowledge that Association has performed under this Agreement since July 1, 2007 in anticipation of the execution of this Agreement. Funds to be provided by the County under Section 3.A. Obligations of County are provided in consideration of Association's performance from July 1, 2007 to June 30, 2008. 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 11. 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 six days a week for a minimum of 36 hours.
- B. Maintain and operate the docent program to keep the Woodside Store

historical site open to the public 20 hours a week and the Sanchez Adobe site open to the public 26 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 2007/08 the sum of \$150,000 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 this 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 Department of Parks. The Association shall furnish the Department of Parks 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 Department of Parks 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 insured 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 Department of Parks, 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. TIME. Time is of the essence of this Agreement.

SECTION 7. 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 8. 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 9. ASSIGNABILITY. Without the written consent of the County, this Agreement is not assignable in whole or in part.

SECTION 10. NOTICES. All notices required hereunder shall be served as follows.

Notices will be sent to the County at:

Director, San Mateo County Department of Parks
455 County Center, 4th Floor
Redwood City, CA 94063

Notices will be sent to the Association at:

President, San Mateo County Historical Association
2200 Broadway
Redwood City, CA 94063

SECTION 11. 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 11, 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 3.A. of this Agreement.

SECTION 12. 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 full compliance with federal, state and local laws, directives and executive orders regarding non-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 13. 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 14. 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 statues, 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 15. 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.

SECTION 16. Compliance with Contractor Employee Jury Service Ordinance.

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2007.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

COUNTY OF SAN MATEO

By: _____
Rose Jacobs Gibson, President, Board of Supervisors

ATTEST:

Clerk of Said Board

SAN MATEO COUNTY HISTORICAL ASSOCIATION

By: _____
Mitch Postel, President