

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

**CITY OF OAKLAND**  
**AGENDA REPORT**

2010 SEP 30 PM 6: 12

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Oakland Museum of California  
DATE: October 12, 2010

RE: **Resolution Authorizing the City Administrator to Execute a Cooperative Agreement with the California Department of Transportation for a Major Exhibition at the Oakland Museum of California Regarding the San Francisco Bay and its Bridges Pursuant to Mitigation Measures Required of the State of California as Part of Construction of a New East Span of the San Francisco-Oakland Bay Bridge; and, Further, Authorizing the City Administrator to Enter into a Grant Agreement with the Oakland Museum of California Foundation to Administer the Grant Funds in the Amount of \$1.5 million and Fulfill the Requirements of the Cooperative Agreement and Related Scope of Services.**

---

**SUMMARY**

The California Department of Transportation is constructing a seismic safety project for a new San Francisco-Oakland Bay Bridge. The project includes replacement and demolition of the historic east span and, pursuant to the National Historic Preservation Act and as set forth in a Memorandum of Agreement executed in 2000, the State is required to mitigate the construction project's adverse effects on historic properties. One of the mitigation measures that the State identified was the presentation of a major museum exhibition highlighting the natural and cultural history of the San Francisco Bay. Over the past several years, the Oakland Museum of California ("Museum") has been in discussion with CalTrans on the scope of services and the deliverables for the exhibition and related programs. Per the State code requirements, CalTrans is required to enter into an agreement for the mitigation measures with a municipal agency and not an independent non-profit organization.

The California Department of Transportation has drafted a Cooperative Agreement, attached, that outlines the responsibilities of the State and the City in developing and funding the Bay. Included in the cooperative agreement is the State's financial obligation of \$1.5 million to support the exhibition on an agreed-upon schedule over the next four fiscal years (FY 2011 – 2014); to assist with identifying and providing materials and artifacts as needed; and to participate in exhibition review and reporting. In turn, the Cooperative Agreement calls for the City to create the exhibition through an agreed-up schedule and scope of work; to utilize all of the State's funds only to implement the work described in the agreement; to retain complete records of the exhibition costs; and to designate a representative for coordination.

As exhibition development and presentation are not services typically performed by the City, the actual execution of the work will be performed under the oversight of the Oakland Museum of

Item: \_\_\_\_\_  
Life Enrichment Committee  
October 12, 2010

California Foundation ("Foundation"), as with all Museum exhibitions. Therefore, the resolution also includes the execution of a Grant Agreement between the City of Oakland and the Foundation whereby the Foundation will receive, vis-vis the City, the \$1.5 million in California Department of Transportation funds over the four-year period and will present the exhibition to coincide with the opening of the new Bay Bridge in late 2013 or 2014.

## **FISCAL IMPACT**

The Cooperative Agreement between the State of California and City of Oakland will provide \$1.5 million to the Museum in funding over a four-year period for development and presentation of a major exhibition at the Museum. All funding is stipulated to support direct exhibition costs including research, preparation of oral histories, artifact loans, and exhibition design and installation. The City will not assume any costs for the exhibition above the current adopted budgets for the Museum, to include, but not limited to, ongoing costs for utilities, personnel, storage, etc.

Because many of the services required for the exhibition are not typical City functions, the Grant Agreement between the City of Oakland and the Foundation will transfer the funding from the City to the Foundation, which will oversee the grant and the exhibition project. This relationship is similar to previous City/Foundation agreements, such as for the Foundation's oversight of Measure G funds and the Museum's renovation project. A similar Grant Agreement is in place for transfer of Transient Occupancy Tax between the City and the Foundation.

The City, through the Museum, will receive an initial deposit of \$155,000 in FY10-11 for start-up funding of the project. Thereafter, the City, through the Foundation, will bill the State on a quarterly basis for reimbursement of expenses related to the project. In turn, these payments will be transferred between the City and the Foundation.

## **BACKGROUND**

The State of California is required to meet certain mitigation measures as part of its construction of a new San Francisco-Oakland Bay Bridge, pursuant to a Memorandum of Understanding between various federal, state, and county organizations. One of these mitigation measures is for CalTrans to work with a selected Bay Area museum to develop and support a major exhibition on the cultural and environmental history of the San Francisco Bay and its bridges, with related curriculum, media presentations, and oral histories. The staff of the Museum has worked with CalTrans representatives over the past several years to develop an exhibition concept and scope of work, which has been approved by CalTrans. The Cooperative Agreement between the State of California and the City of Oakland will formalize the agreement for the City to accept the \$1.5 million grant from the State to support the exhibit, and for the Museum to develop and present the major exhibition and related programs, coinciding with the opening of the new Bay Bridge in late 2013 or early 2014.

Item: \_\_\_\_\_  
Life Enrichment Committee  
October 12, 2010

## KEY ISSUES AND IMPACTS

Authorization of the City Administrator to execute the Cooperative Agreement between the State and the City will enable the Museum to present the first major exhibition ever on the history of the San Francisco Bay to the City's residents and visitors. This authorization will also enable the City to accept and appropriate the funding from the State. The Cooperative Agreement requires that the City:

- Meet the terms of the Scope of Work described in *Exhibit A* of the Cooperative Agreement (draft attached);
- Perform all work in accordance with state and federal laws and regulations;
- Complete the project within the \$1.5 million grant unless additional funds are provided by the State pursuant to a written amendment to the agreement;
- Utilize all of the State's funds only to implement the work described in the agreement;
- Submit an invoice for an initial \$155,000 for the first 6 months of work on the exhibition and subsequently bill quarterly for the remaining funds through fiscal year 2014;
- To furnish the State with a detailed statement itemizing all of the work and costs incurred with the project within 90 days of completing the final phase of the project;
- To retain books, documents and accounting records during the course of the project, and
- To designate a representative of the City through whom all communications between the City and State relative to this Agreement shall be channeled.

Because the scope of exhibition projects lies outside the City's typical core services and duties, the City will enter into a separate grant agreement with the Foundation regarding actual execution of the exhibition and related programs.

## PROGRAM DESCRIPTION

The proposed project will be a major exhibition of approximately 7,500 square feet to be presented in the Great Hall of the Museum in late 2013 or early 2014. The exhibition, the working title of which is *San Francisco Bay – Our Changing Relationship*, will examine the cultural and natural history of the San Francisco Bay, from early Native times, through the Gold Rush and subsequent population explosion of California and the Bay Area, and including the building of bridges and the conservation efforts which emerged in the 1960s and 1970s. Recognizing the significant changes that have taken place in and around the Bay over the past two hundred years – as well as the reality that continued sea-level rise, seismic and other geomorphic and economic hazards will present ongoing challenges -- the exhibition and related

Item: \_\_\_\_\_  
Life Enrichment Committee  
October 12, 2010

programs are intended to encourage audiences to celebrate and enjoy the Bay as it exists, and to develop and implement a vision for the Bay of the future. The exhibition will serve a projected audience of 75,000 visitors including thousands of school children and families.

## **SUSTAINABLE OPPORTUNITIES**

Through execution of the Cooperative Agreement with CalTrans, the City will ensure a high quality and in-depth exhibition and learning opportunities on the San Francisco Bay and its history for Oakland residents and visitors.

### Economic

The proposed exhibition will provide employment opportunities for both Museum staff positions and contractors. Pursuant to the Cooperative Agreement, Museum positions or contractor positions funded through the CalTrans grant will be subject to the requirements of equal benefits and living wage ordinances. The exhibition is anticipated to also attract at least 75,000 visitors to the Museum, serving a range of audiences from school children to regional tourists and generating additional revenue opportunities for the City.

### Environmental

The exhibition will have a major focus on environmental sustainability issues and will provide information on how visitors can serve as stewards of the Bay and its surrounding regions.

### Social Equity

The exhibition will be designed to welcome the diverse populations of the Bay Area region. For example, information in the gallery will be provided in multiple languages, and stories in the exhibition will reflect the multiple cultures that have made their home in the Bay Area region. The Museum will also maintain a monthly free admission day to ensure community accessibility.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

*The exhibition will be accessible for visitors with disabilities. The Museum will ensure that the exhibition meets ADA criteria such as adequate wheelchair pathways, legible text size, and closed-captioning for media pieces. The exhibition will also be housed in the Museum's special exhibition space, and the Museum is now fully ADA accessible as a result of the recent facility upgrades. The Museum's senior admission rate also ensures accessibility for older adults.*

**RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the City Council authorize the City Administrator to execute a Cooperative Agreement between the California Department of Transportation, providing \$1.5 million funding for the exhibition of the San Francisco Bay at the Museum. Execution of the Cooperative Agreement will permit the City and the Museum to receive major funding to develop and present a major exhibition that will serve residents of Oakland, the Bay Area, and California.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff recommends that the City Council authorize the City Administrator to execute the Cooperative Agreement with the State of California and to accept and appropriate the \$1.5 million in funding for the exhibition through the Oakland Museum of California Foundation.

Respectfully submitted,

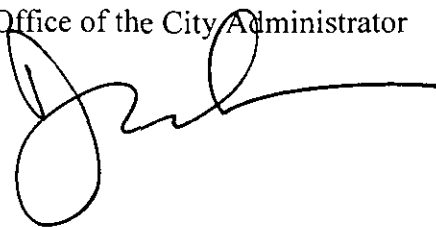


Executive Director  
Oakland Museum of California

Prepared by:  
Lori Fogarty  
Executive Director  
Oakland Museum of California

APPROVED AND FORWARDED TO THE  
LIFE ENRICHMENT COMMITTEE

Office of the City Administrator



Item: \_\_\_\_\_  
Life Enrichment Committee  
October 12, 2010

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
Custom Mitigation  
DRAFT 06-15-10  
2010 SEP 30 PM 6:12

4-SF-Ala-80 (KP 12.2/14.3, 0.0/2.1)  
San Francisco-Oakland Bay Bridge

EA 012091  
District Agreement No. 4-1936-C

### COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE on \_\_\_\_\_, 2010, is between the CALIFORNIA DEPARTMENT of TRANSPORTATION, referred to herein as "STATE," and the

CITY OF OAKLAND, a municipal corporation and a political subdivision of the State of California, referred to herein as "CITY."

### RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and/or 130, are authorized to enter into this Agreement.
2. STATE is constructing a seismic safety project for the historic east span of the San Francisco-Oakland Bay Bridge. Said project includes replacement and demolition of the historic east span, referred to herein as "PROJECT."
3. Pursuant to the National Historic Preservation Act and more specifically as set forth in the Memorandum of Agreement executed May 26, 2000, referred to herein as "MOA" and incorporated herein by reference, STATE is required to mitigate PROJECT's adverse effects on certain historic properties.
4. STATE desires that CITY assist STATE in satisfying MOA Stipulations III.C.1-2, III.D, III.E, and III.F.2, collectively referred to herein as "STIPULATIONS."
5. CITY is willing to assist STATE with satisfying STIPULATIONS by completing the work set forth in this Agreement.
6. STATE has determined that the cost to satisfy the work described in this Agreement is \$1,500,000.
7. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to STIPULATIONS.
8. The parties now define herein below the terms and conditions under which the Agreement will be satisfied.

## SECTION I

### CITY AGREES:

1. To assist STATE in satisfying STIPULATIONS by completing the work set forth in this Agreement including the work described in Exhibit A, (Scope of Services) attached hereto and incorporated herein.
2. All work performed by CITY, or performed on CITY's behalf, as set forth in this Agreement shall be performed in accordance with all applicable state and federal laws, regulations, policies, procedures, and standards.
3. The total final cost for all work described in this Agreement shall not exceed \$1,500,000, unless additional funds are provided by STATE pursuant to a written amendment to this Agreement.
4. To utilize all of STATE's funds only to implement the work described in this Agreement.
5. To submit to STATE immediately following execution of this Agreement an invoice in the amount of \$155,000, which represents the STATE's deposit for estimated costs for CITY to initiate work required during the first half of fiscal year 2010/2011, as more fully set forth in Exhibit A
6. Beginning in the second half of fiscal year 2010/2011, and ending in 2013/2014, to subsequently prepare and submit to STATE quarterly billing statements in arrears of actual expenditures based on progress reports as work proceeds. CITY further agrees not to submit more than four (4) billing statements each year until STATE's total financial obligations have been met.
7. To furnish STATE with a detailed statement itemizing all of the work and costs incurred within ninety (90) days after completion of Phase 6, Exhibit A.
8. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available at the respective offices of CITY at all reasonable times during the performance of the work described in this Agreement and for three (3) years from the termination date of this Agreement or completion, whichever is earlier. STATE, or any duly authorized representative of the Federal government shall have access to all books, records, and documents of CITY relating to the implementation of the work described in this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.
10. To designate a representative of CITY through whom all communications between CITY and STATE, relative to this Agreement, shall be channeled.

## SECTION II

### STATE AGREES:

1. To pay CITY one hundred percent (100%) of the actual reimbursable and allowable costs to complete the work described in this Agreement. STATE's total financial obligation shall not exceed \$1,500,000, unless agreed to by STATE in a written amendment to this Agreement.

2. To deposit with CITY within thirty (30) days of receipt of proper billing statement, the amount of \$155,000 representing STATE's initial deposit for estimated costs of work described in this Agreement for first half of fiscal year 2010/2011.
3. To thereafter, beginning in second half of fiscal year 2010/2011, and ending in fiscal year 2013/2014, reimburse CITY within thirty (30) days of receipt of subsequent proper quarterly billing statements in arrears of actual reimbursable and allowable costs incurred by CITY for work described in this Agreement.
4. To identify and provide an inventory of artifacts and documentary materials, but not limited to, photographs, drawings, videotape, models, oral histories, and salvaged components from the major bridges of the San Francisco bay in STATE's possession that are considered to be most appropriate by STATE to be included in the museum exhibit described in Exhibit A. Said artifacts and documentary materials shall be loaned to CITY, at no cost to CITY.
5. To review, comment and approve, if appropriate, any and all reports and/or documents as set forth in Exhibit A.
6. At STATE's discretion, to attend and participate in the meetings for museum exhibit.
7. To notify CITY prior to completion of Phase 6 in Exhibit A, the location for the permanent display of the artifacts and/or documentary material from the major bridges of the San Francisco Bay. Said location shall not be greater than 50 miles from CITY's Exhibition Hall.
8. To identify and provide a STATE representative through whom all communications between STATE and CITY, relative to this Agreement, shall be channeled.

### SECTION III

#### IT IS MUTALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriations of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. All applicable laws, rules and policies relating to the use of Federal or State funds shall apply, notwithstanding other provisions of this Agreement.
3. CITY shall conform to the provisions of Labor code sections 1720 through 1815, all applicable regulations and coverage determinations issued by the Director of Industrial Relations. CITY agrees to include prevailing wage requirements in its contracts for public work. Work performed by CITY's own forces is exempt from the Labor Code's prevailing wage requirements.
4. CITY shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts.



5. That STATE and CITY will work in cooperation until successful completion of the work described in this Agreement is attained.
6. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.
7. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, and other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
8. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
9. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

10. This Agreement shall terminate upon completion of the work described herein this Agreement and upon final payment to CITY by STATE, or on January 1, 2016, whichever is earlier in time, unless parties agree to an extension of time in a written amendment to this Agreement. However, the document retention, audit, and indemnification articles will remain in effect until terminated or modified, in writing, by mutual agreement.

STATE OF CALIFORNIA  
Department of Transportation

CITY OF OAKLAND

CINDY MCKIM  
Director

By: \_\_\_\_\_  
Deputy District Director

By: \_\_\_\_\_  
City Manager

Approved as to form and procedure:

Approved as to form and procedure:

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
City Attorney  
City of Oakland

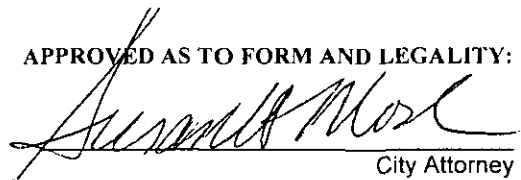
Certified as to funds:

\_\_\_\_\_  
District Budget Manager

Attest: \_\_\_\_\_  
City Clerk

Certified as to financial terms and policies:

\_\_\_\_\_  
Accounting Administrator


  
City Attorney

 FILED  
 OFFICE OF THE CITY CLERK  
 OAKLAND

**OAKLAND CITY COUNCIL**

2010 SEP 30 PM 6:12

RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR A MAJOR EXHIBITION AT THE OAKLAND MUSEUM OF CALIFORNIA REGARDING THE SAN FRANCISCO BAY AND ITS BRIDGES PURSUANT TO MITIGATION MEASURES REQUIRED OF THE STATE OF CALIFORNIA AS PART OF CONSTRUCTION OF A NEW EAST SPAN OF THE SAN FRANCISCO-OAKLAND BAY BRIDGE AND, FURTHER, AUTHORIZING THE CITY ADMINISTRATOR TO ENTER INTO A GRANT AGREEMENT WITH THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION TO ADMINISTER THE GRANT FUNDS IN THE AMOUNT OF \$1.5 MILLION AND FULFILL THE REQUIREMENTS OF THE COOPERATIVE AGREEMENT AND RELATED SCOPE OF SERVICES.**

**WHEREAS**, the California Department of Transportation is constructing a seismic safety project for a new San Francisco-Oakland Bay Bridge that includes replacement and demolition of the historic east span; and

**WHEREAS**, pursuant to the National Historic Preservation Act, the State is required to implement measures to mitigate the construction project's effects on historic properties, one of which is a major exhibition highlighting the natural and cultural history of the San Francisco Bay; and

**WHEREAS**, the Oakland Museum of California has the curatorial expertise, experience, and collections to implement the exhibition on the occasion of the opening of the new San Francisco-Oakland Bay Bridge in 2013 or 2014 and has been in discussion with CalTrans on the scope of services and deliverables for the exhibition and related programs and is prepared to undertake the organization of the exhibition with support of a \$1.5 million grant from Cal Trans to be paid over a four-year period from 2010 to 2014; and

**WHEREAS**, per the terms of the State code requirements, CalTrans is required to enter into an agreement for the mitigation measures with a municipal agency and, therefore, the \$1.5 million grant must come through the City of Oakland; and

**WHEREAS**, exhibition development and presentation responsibilities at the Museum are typically supported and overseen by the Oakland Museum of California Foundation and, similar to other agreements between the City and the Foundation, the CalTrans funds can be transferred through a Grant Agreement to the Foundation for performance of the obligations related to the exhibition implementation and scope of services; now, therefore be it

**RESOLVED:** that the City Administrator will be authorized to execute a Cooperative Agreement with the California Department of Transportation for a major exhibition at the Oakland Museum of California regarding the San Francisco Bay and its bridges pursuant to

mitigation measures required of the State of California as part of construction of a new east span of the San Francisco-Oakland Bay Bridge; and be it

**FURTHER RESOLVED:** that the City Administrator will be authorized to enter into a Grant Agreement with the Oakland Museum of California Foundation to administer the grant funds in the amount of \$1.5 million and to fulfill the requirement of the Cooperative Agreement and related scope of services.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California