

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

2011 MAY 26 PM 7:18 AGENDA REPORT-- LEASE

TO: Office of the City Administrator
ATTN: P. Lamont Ewell
FROM: Oakland Museum of California
DATE: June 7, 2011

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A TEN-YEAR PROFESSIONAL SERVICES AGREEMENT AND A THIRTY-YEAR LEASE FOR TWO MUSEUM BUILDINGS AT THE RENT OF \$1.00 PER YEAR, BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION TO PERFORM SERVICES RELATED TO THE CARE, CONSERVATION, STEWARDSHIP, AND PRESENTATION OF THE CITY'S COLLECTION OF ART WORKS, HISTORICAL ARTIFACTS AND NATURAL SCIENCES SPECIMENS RELATED TO CALIFORNIA'S CULTURAL AND ENVIRONMENTAL HISTORY, WITH AN INITIAL CITY ANNUAL PROFESSIONAL SERVICES AGREEMENT PAYMENT OF \$5 MILLION ON JULY 1, 2011 THAT DECLINES ANNUALLY TO \$3 MILLION OVER THE TEN-YEAR PERIOD.

SUMMARY-- LEASE

Staff is submitting two agenda reports; this one relating to the Lease and a second one relating to the Professional Services Agreement ("PSA"). The "Summary" sections are the same for both reports. The remaining sections and exhibits set forth the provisions of each separate document—PSA and Lease.

The Oakland Museum of California ("Museum") has been operated through a public/private partnership between the City of Oakland ("City") and the Oakland Museum of California Foundation ("Foundation"), as formalized in a Management Operations Agreement ("M&O Agreement") approved by the Oakland City Council in October 2006. Over the past several years, the City has provided support for employee compensation and benefits, facility operations, debt servicing, and partial operations and maintenance, while the Foundation solely funds all costs for exhibitions, education programs, marketing efforts, fundraising, visitor services, and various earned revenue enterprises, employing numerous employees whose functions significantly overlap with

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those of City employees. During this period, City support has steadily declined as a proportion of the Museum's budget, and in the current fiscal year 2010-11, the Foundation is budgeted to contribute through fundraising and earned revenue efforts close to \$8 million – or 55% -- of the Museum's \$14.3 million budget. The City is contributing \$6.3 in the current budget year.

In light of the Museum's increasingly complex organizational demands and bifurcated budget and employee structure, and in the context of the City's urgent financial crises, the City is proposing to cease operations and management of the Museum and enter into a Lease Agreement with the Foundation for the City's two Museum facilities. The City will maintain ownership of the buildings as well as the collections; they are important and long-standing assets for Oakland. The City will lease the Museum buildings to the Foundation for \$1 per year for thirty years, a period that will enable the Foundation to attract major grants that require long-term land tenure agreements. In addition, the City will enter into a separate Professional Services Agreement ("PSA") for the Foundation's services in caring, conserving, stewarding, and presenting the City's collection. The PSA is detailed separately. The PSA and the Lease Agreement are intended to be read together to provide the total picture for this transaction.

FISCAL IMPACT-- LEASE

The proposed Lease Agreement will entail leasing the City's facilities (1000 Oak Street and 450 Lancaster Street) to the Foundation for one dollar (\$1.00) per year for a thirty-year period. The Lease will remain in effect as long as the Foundation is providing collection-related services to the City through a Professional Services Agreement. In the event the PSA is terminated or expires with no new agreement, the Lease will be terminated simultaneously with the PSA.

The City will be the landlord and the Foundation, the tenant. The City will be responsible for major system and equipment repairs and capital improvements, and the Foundation will be responsible for general facility operating costs, service contracts, maintenance supplies, and minor repairs. The FY 2011-12 will serve as a year of transition as the City documents the condition of the existing major systems and equipment and the Foundation assesses the current condition and maintenance requirements of the facilities.

The City will continue to pay all utility bills at the two Museum facilities and the Foundation will reimburse the City for actual billed amounts. This provision continues for the duration of the Lease. The City will supply one full-time equivalent (FTE) stationary operating engineering and appropriate supervision via a Chief Engineer for one year (FY 2011-12) during which time the Foundation will develop operational contracts and prepare to assume full operation of the Museum facilities. The Foundation will reimburse the City the expense of one stationary engineer, materials and supplies, and

maintenance contracts for this period. The Foundation will hire a consultant to evaluate equipment condition.

For the duration of the Lease the City will retain financial responsibility for the buildings, building systems and building equipment-related maintenance that is not within the scope of, or handled by, a stationary engineer or is in excess of \$5,000 per occurrence. The City will perform work in excess of \$5,000 per occurrence and will budget \$250,000 per year for this purpose. (See attached *Exhibit A* for terms of maintenance responsibilities.)

The Foundation and the City agree to work in cooperation for development of CIP related items.

BACKGROUND--LEASE

The Museum has operated for the past two decades as a public/private partnership of the City and the Foundation, formalized through a five-year M&O Agreement, approved in October 2006. Since the M&O Agreement expires in a few months, it is necessary for the City and the Foundation to review operations of the Museum and negotiate a new structure.

With the City's very serious financial challenges, it must focus on its core services and determine what services it is able to continue, and what operations are better performed by another entity. The Museum's long-term financial and organizational sustainability require that it operate more independently of the City so that it is able to attract long-term funding from the philanthropic community and so that donors are ensured that their funding will be allocated in the most appropriate way to advance the Museum's mission.

Therefore, negotiations between the City and Foundation leadership began in fall 2010 to determine a new structure for Museum operations. It was determined that the most appropriate course of action was for the City to enter into two agreements with the Foundation for operation of the Museum: a Professional Services Agreement and a Lease Agreement for the City facilities. The two agreements are linked, and are intended to be read together. The goals of the Lease Agreement are:

- To ensure the proper care and maintenance of the City's museum building and collections storage facility by clearly assigning maintenance, operational and capital improvement responsibilities between the City and the Foundation;
- To transfer day-to-day operations of the facilities to the Foundation after a one-year period of transition, whereby the City is reimbursed by the Foundation for engineering staff and maintenance supplies and contracts while the Foundation assesses the building systems and puts in place the operational infrastructure to take on facility operations. Thereafter, the Foundation will be responsible for engineering support, building supplies and contracts, and repairs of less than \$5,000 per occurrence;

- To provide an incentive for energy conservation by the building tenant through reimbursement by the Foundation of annual utility costs;
- To provide an annual allocation of \$250,000 in the City's annual budget for major equipment repairs that exceed \$5,000 per occurrence as the landlord's responsibility;
- To require that the City and the Foundation work together on submittal of major capital equipment needs as part of the City's bi-annual Capital Improvements Program budget.

KEY ISSUES AND IMPACTS-- LEASE

The City will maintain its ownership of the Museum's Oak Street and 450 Lancaster Street. The City will be responsible for major repairs to the facility equipment and systems up to \$250,000 per year. The Foundation will assume responsibility after FY 12 for the building maintenance, supplies and contracts, and any facility engineering support. The Foundation will also be responsible for utility costs through reimbursement to the City. Debt service on the 450 Lancaster (a twenty-year mortgage ending in 2021) will remain in the City's budget.

POLICY DESCRIPTION --LEASE

Through execution of the Lease Agreement and accompanying Professional Services Agreement, the City and the Foundation will ensure the Museum's long-term financial sustainability and community service; enable appropriate care, preservation, and presentation of the City's extraordinary collection of art work, artifacts, and specimens; and maintain the care of the City's landmark Museum building and collection storage facility.

SUSTAINABLE OPPORTUNITIES LEASE

Through execution of the Lease Agreement, the City will help ensure the Oakland Museum of California's continued service to Oakland residents and visitors.

Economic: Museum jobs funded through the Foundation will be subject to the requirements of equal benefits and living wage ordinances. Funds generated by the Foundation through fundraising, memberships, admissions, and other revenue-generating activities will be applied directly to Museum educational and exhibition activities. It is anticipated that these activities will serve more than 1,750,000 people each year, including 50,000 school children.

Environmental: Approval of this Agreement will not provide specific environmental opportunities.

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Social Equity: Museum exhibitions, programs, and collections – housed in the Museum facilities -- reflect and welcome the diverse populations of Oakland, the Bay Area, and California, and Museum marketing and communication efforts extend to the City's various cultural communities. The Museum maintains a commitment to community accessibility through a monthly free admission program, low costs programs for Oakland schools, subsidized bus transportation for school field trips, and low-cost admission programs for students, youth, and seniors.

DISABILITY AND SENIOR CITIZEN ACCESS--LEASE

Through recent renovations, the Museum has improved accessibility to its facility with the addition of ADA ramps, accessible restrooms, and other amenities. In addition to compliance with the American with Disabilities Act and other non-discrimination laws, accessibility to the galleries and Museum collections is made possible through interpretive aids such as closed captioning. Finally, through the Museum's volunteer programs, many senior citizens are provided with opportunities for involvement and service to the City.

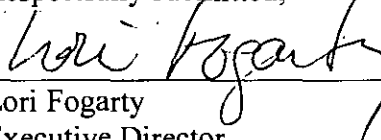
RECOMMENDATION(S) AND RATIONALE--LEASE

Staff recommends that the City Council approve the resolution authorizing the City Administrator to negotiate and execute a thirty-year Lease Agreement between the City of Oakland and the Oakland Museum of California Foundation for 1000 Oak Street and 450 Lancaster Avenue, which shall be introduced and approved by ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests approval of the proposed resolution and appropriation of funds for the facility responsibilities over the thirty-year period.

Respectfully submitted,


Lori Fogarty
Executive Director
Oakland Museum of California

APPROVED AND FORWARDED TO THE
CITY COUNCIL


Office of the City Administrator

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EXHIBIT A
MAINTENANCE AND OPERATIONAL RESPONSIBILITIES

YEAR ONE - 2011/12:

Landlord shall be responsible for:

- Maintaining HVAC systems
- Maintaining mechanical, electrical and plumbing (MEP)
- Maintaining emergency generator
- Maintaining Energy Management System (EMS)
- Maintaining doors, locks and mechanical key system
- Maintaining elevators and wheel chair lift
- Maintaining fire extinguishers
- Maintaining fire, life safety system
- Maintaining building lighting systems
- Maintaining roll-up door
- Maintaining service contracts for any of the above building systems until Tenant issues its own contracts
- Processing payments to service providers for utilities i.e., PG&E and EBMUD
- Providing garbage and recycling services through the City's contract agreement
- Invoicing Tenant for services provided by Landlord

Tenant shall be responsible for:

- Graffiti Abatement
- Janitorial/ Custodial services
- Security guard services
- Landscaping, including street trees
- Roof drain and gutter clearing
- Cleaning rain gutter
- Security Alarm System
- Security Camera System
- Telephone system
- Internet
- Communication and information technology
- Uninterruptible power supply (UPS)
- Minor Repairs costing less than \$5,000 per occurrence

BEGINNING JULY 1, 2012, AND CONTINUING FOR THE TERM OF THIS LEASE:

Landlord shall be responsible for:

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- Funding major repairs costing between \$5,000.01 and \$50,000.00 per occurrence related to the building and equipment which is part of the building.
- Processing payments to service providers for utilities, i.e. PG&E, EBMUD.
- Garbage and recycling services provided through the City's contract agreement
- Invoicing Tenant monthly for PG&E and EBMUD services.

Tenant shall be responsible for all maintenance and repairs needed to operate and maintain Museum facilities including, but not limited to:

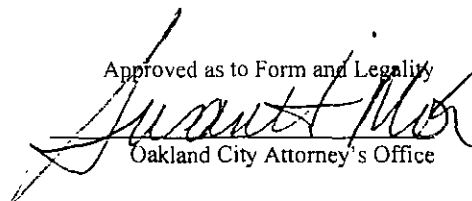
- Graffiti Abatement
- Janitorial/ Custodial services
- Security guard services
- Landscaping including street trees
- Roof drain and gutter clearing (previously handled by landscape staff)
- Security Alarm System
- Security Camera System
- Minor Repairs costing less than \$5,000 per occurrence
- Maintaining HVAC systems
- Maintaining mechanical, electrical and plumbing (MEP)
- Maintaining emergency generator
- Maintaining Energy Management System (EMS)
- Maintaining doors, locks and mechanical key system
- Maintaining elevators and wheel chair lift
- Maintaining fire extinguishers
- Maintaining fire, life safety system
- Maintaining building lighting systems
- Maintaining roll-up door
- Maintaining service contracts for all of the above building systems and equipment
- Reimbursing Landlord for invoices for PG&E, EBMUD.
- Telephone system
- Internet
- Communication and information technology
- Uninterruptible power supply (UPS)

Minor Repairs costing less than

OFFICE OF THE CITY CLERK
OAKLAND

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Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A TEN-YEAR PROFESSIONAL SERVICES AGREEMENT AND A THIRTY-YEAR LEASE FOR TWO MUSEUM BUILDINGS AT THE RENT OF \$1.00 PER YEAR, BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION TO PERFORM SERVICES RELATED TO THE CARE, CONSERVATION, STEWARDSHIP, AND PRESENTATION OF THE CITY'S COLLECTION OF ART WORKS, HISTORICAL ARTIFACTS AND NATURAL SCIENCES SPECIMENS RELATED TO CALIFORNIA'S CULTURAL AND ENVIRONMENTAL HISTORY, WITH AN INITIAL CITY ANNUAL PROFESSIONAL SERVICES AGREEMENT PAYMENT OF \$5 MILLION ON JULY 1, 2011 THAT DECLINES ANNUALLY TO \$3 MILLION OVER THE TEN-YEAR PERIOD.

WHEREAS, the Oakland Museum of California, located at 1000 Oak Street, Oakland California, is owned by and in the custodial care of the City of Oakland, and

WHEREAS, since its founding more than forty years ago and with a history dating back one hundred years, the Oakland Museum of California ("Museum") has been a public institution, owned by the City of Oakland and committed to a broad civic mission serving local, statewide and national audiences, and

WHEREAS, the Museum's landmark facility was constructed through a public bond measure in the 1960s and is currently being renovated through a \$63 million capital campaign, funded in part through a \$23.6 million parcel tax measure that has been supported by Oakland voters, and

WHEREAS, the Oakland Museum of California Foundation ("Foundation") is a California 501c(3) non-profit corporation dedicated to raising and generating funds for the Museum's exhibitions, education programs, marketing efforts, earned revenue enterprises and other Museum services, and is currently providing more than 55% of the Museum's annual operating budget and employing more than 55% of the Museum's staff, and

WHEREAS, the City of Oakland and the Foundation have jointly operated the Museum in a public/private partnership as formalized in October 2006 through a Management & Operations Agreement that will expire in 2011, and

WHEREAS, the growth and development of the Museum through its major renovation project have made it a more complex organization requiring additional funding and staff, and

WHEREAS, the City of Oakland's serious financial challenges demand that it focus on core services to determine what services it is able to continue, and what operations are better performed by another entity, and

WHEREAS, the City has determined that it will cease operating and managing the Museum and will continue to own the Museum facilities and collection and lease the facilities at 1000 Oak Street and 450 Lancaster Street to the Foundation in order to ensure the Museum's long-term viability and sustainability and, therefore be it

RESOLVED: that the City authorizes the City Administrator to negotiate and execute a Professional Services Agreement with the Foundation for a period of ten years that sets forth the terms under which the Foundation will care for, conserve, steward, research and provide scholarly and interpretive expertise in support of the Museum's collection of close to two million art works, artifacts, and natural science specimens related to California's cultural and environmental history, and be it

FURTHER RESOLVED, that the City authorizes the City Administrator to negotiate and execute a thirty-year lease with the Foundation for two Museum buildings at the rent of \$1.00 per year, and be it

FURTHER RESOLVED, that all services performed by the Foundation will be in accordance with the standards of the American Association of Museums, and that the City and Foundation agree to abide by and comply with the standards of the American Association of Museums on all regulations concerning accessions to and deaccessions from the collection, and be it

FURTHER RESOLVED, that the City will make an annual payment on July 1 of each year commencing 2011 through and including 2020 for these services, with an amount of \$5 million in FY 2012 which declines to \$3 million in over the ten-year of the Professional Services Agreement, and be it

FURTHER RESOLVED, that the City will receive annual reports on the Foundation's performance of the required Scope of Services, as well as reports on the Foundation's financial condition.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

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

1000 Oak Street & 450 Lancaster Street
Oakland, California

LEASE AGREEMENT

By and Between

The Oakland Museum of California Foundation (“Tenant”)

and

The City of Oakland (“Landlord”)

Dated as of February , 2011

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DRAFT

BASIC LEASE TERMS

The following list is a summary of certain basic terms of this Lease. In case of a conflict between any provision of this Lease and the information contained in this summary, the applicable provision of this Lease shall control. Terms set forth in the left-hand column, below, and used in this Lease shall, unless otherwise defined in the Lease, have the meaning given opposite each such term in the right-hand column, below.

LANDLORD: The City of Oakland

ADDRESS OF LANDLORD: Office of the City Administrator, 1 Frank Ogawa Plaza,
Oakland, CA 94612

TENANT: The Oakland Museum of California Foundation

ADDRESS OF TENANT: 1000 Oak Street, Oakland, CA

PREMISES: The Premises are currently designated as 1000 Oak Street (building and garage) & 450 Lancaster St, Oakland, California. Landlord and Tenant agree that for the purpose of this Lease the Premises shall be deemed to include all buildings and grounds at such addresses.

LEASE TERM: 30 years

COMMENCEMENT DATE: July 1, 2011, or as otherwise set forth in Section 1.3.1.

TERMINATION DATE: June 30, 2041

LEASE YEAR: A twelve (12) month period ending on June 30.

RENT: \$1.00 per annum

USE: To care for, conserve, steward, research and provide scholarly and interpretive expertise in support of the Oakland Museum of California ("Museum") collection of close to two million artworks, artifacts, and natural science specimens related to California's cultural and natural history. To operate a Museum, restaurant/café, retail store and parking garage.

EXHIBITS

Exhibit A	Premises Description
Exhibit B	Map of Premises
Exhibit C	Maintenance and Operational Responsibilities
Exhibit D	

DRAFT

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease" or "Agreement") is made and entered into as of February __, 2011 by and between The Oakland Museum of California Foundation, a California nonprofit corporation ("Tenant" or "Foundation") and The City of Oakland, a municipal corporation ("Landlord" or "City").

1. Demise and Premises.

1.1 Demise. City hereby leases to Foundation and Foundation leases from City for the term, in exchange for the rent, and upon all of the conditions set forth herein, the building and grounds located in the City of Oakland known as 1000 Oak Street and those known as 450 Lancaster Street, as more particularly described in Exhibit A and illustrated on Map Exhibit B attached hereto and incorporated herein (collectively "the Premises").

1.2 Premises. The Premises leased to Tenant consist of the grounds, and all interior and exterior spaces, and improvements of the buildings generally identified in Section 1.1 above. The Premises shall be delivered to Tenant in the condition as set forth in Section 5 hereof

1.3 Term. The Term of this Lease shall be for the period of thirty (30) years as designated in the summary of Basic Lease Terms, and shall have the Commencement Date and Termination Date also designated in such summary ("Term"); provided that if the Premises are for any reason not ready for occupancy by the Commencement Date, the Commencement Date shall commence on such date as the Premises are ready for occupancy. The Term of this Lease shall be for the same term of years as set forth above, but the Commencement Date shall occur at the time that the Premises are ready for occupancy by the Tenant in accordance with the terms and conditions set forth herein. In such event, Rent shall remain the same and shall commence upon the revised Commencement Date; the Term of this Lease shall still end on June 30, 2041. Upon the Commencement Date, Tenant shall be deemed to have accepted the Premises in their then condition. If City shall not have delivered possession of the Premises within one hundred twenty (120) days from the Commencement Date, Tenant may, at Tenant's option, by notice in writing to City within ten (10) days thereafter, cancel this Lease, in which event the parties shall be discharged from all obligations hereunder.

2. Rent. Tenant shall pay to Landlord rent of One Dollar (\$1.00) per annum ("Rent"). Rent shall be paid in advance on July 1 of each year; provided that if the Commencement Date is a date other than July 1, 2010, the annual Rent for the first year shall be due on the Commencement Date. Tenant shall pay all Rent promptly when due without notice or demand therefore and without any abatement, deduction or off set, for any reason whatsoever. The Rent shall not increase during the Term of this Lease.

3. Obligations for Taxes.

3.1 Business Taxes. Tenant shall be directly liable for, and shall pay as and when due throughout the Term, all license and excise fees and occupation taxes covering or levied on the business conducted on the Premises by Tenant.

3.2 Real Property Taxes. Landlord shall pay prior to delinquency all taxes against and levied upon the real property at the Premises, including, but not limited to, any special assessments or special use taxes, regardless of the basis for the imposition of such taxes.

3.3 Personal Property Taxes. Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises unless such assessed taxes are included with the real property assessments, in which case they shall be paid by the Landlord.

3.4 Possessory Interest Taxes. Tenant understands and acknowledges that its leasehold interest hereunder may be subject to a possessory interest tax or property tax that may be levied on Tenant by the City or the County of Alameda pursuant to Section 107 of the Revenue and Taxation Code, Section 33673 of the Health and Safety Code, or other provision of state or local law. Tenant is required to pay any such tax directly to the City or County.

4. Use.

4.1 General.

4.1.1 Tenant shall use and occupy the Premises continuously during the Term of this Lease for uses as follows: care for, conserve, steward, research and provide scholarly and interpretive expertise in support of the Oakland Museum of California ("Museum") collection of close to two million artworks, artifacts, and natural science specimens related to California's cultural and natural history. City shall have access to Premises on 24 hour notification to Foundation.

4.1.2 Tenant shall, at Tenant's expense, comply in all material respects with all applicable laws and requirements of public authorities relating to Tenant's use and occupancy of the Premises. Tenant acknowledges and agrees that Tenant's failure to comply with the restrictions in this clause will be a material breach of this Lease and will entitle City to immediately terminate this Lease. Tenant warrants that it will fully and completely comply with the restrictions on use provided for herein.

4.2 Negative Covenants as to Use. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy the Premises, or permit anything to be done in the Premises, in any manner that materially: (a) violates the Certificate of Occupancy for the Premises or for the Building, or provisions of zoning laws or ordinances, or use permits, applicable to the Premises; (b) causes risk of significant injury to the Premises or the Building or any equipment, facilities or systems therein; (c) constitutes a violation of the laws or requirements of any public authorities or the requirements of insurance bodies, or the requirements of any restrictive covenants of record; (d) otherwise impairs the character, reputation or appearance of the Building; or (e) impairs the proper and economic maintenance, operation and repair of the Building and/or its equipment, facilities or systems.

4.3 Hazardous Substances.

4.3.1 Tenant Shall Not Permit Hazardous Substances Upon the Premises other than as needed for Normal Uses. Hazardous materials are those substances listed in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA") and the California Hazardous Waste Control Act, Health and Safety Code Section 25100 et seq., or those

which meet the toxicity, reactivity corrosivity or flammability criteria of the above regulations, as well as any other substance which poses a hazard to human health or to the environment. Tenant shall not use, create, store or allow any such substances on the Premises. In no case shall Tenant cause or allow the deposit or disposal of any such substance on the Premises. Cleaning products necessary for routine cleaning and maintenance of the Premises or exhibits or objects, or used in connection with the restoration work performed on the Premises, may be kept on the Premises in reasonable quantities for current needs.

4.3.2 Indemnity for Damage Caused by Hazardous Substances. Tenant shall indemnify, defend and hold City harmless from any claims, causes of actions, liabilities, fees, costs or expenses (including reasonable attorney's fees and costs) arising from or in connection with (I) any violation of applicable law, (ii) personal injury or death of any persons, (iii) property damage, or (iv) any response or environmental remediation costs, caused or alleged to have been caused by the presence of hazardous materials brought upon or generated on the Premises by Tenant, its agents or invitees, including, without limitation, claims made against the City with respect to property damage or personal injury to, or death of, any employee or agent of the City or of any third party. City shall indemnify, defend and hold Tenant harmless from any claims, causes of actions, liabilities, fees, costs or expenses (including reasonable attorney's fees and costs) arising from or in connection with (I) any violation of applicable law, (ii) personal injury or death of any persons, (iii) property damage, or (iv) any response or environmental remediation costs, caused or alleged to have been caused by the presence of hazardous materials brought upon or generated on the Premises (a) at any time prior to the commencement of this Lease, or (b) by City, its agents or invitees, including, without limitation, claims made against the Tenant with respect to property damage or personal injury to, or death of, any employee or agent of the Tenant or of any third party.

5. Condition of Premises, Maintenance and Repair. **(THIS ENTIRE SECTION TO BE FURTHER DISCUSSED IN NEGOTIATIONS)**

5.1 Condition of Premises and Tenant's Acceptance. By taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in its "as-is" condition. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business.

5.2 Tenant's Maintenance Obligations. Tenant, at its expense, shall be responsible for day to day maintenance of the interior & exterior spaces of the Premises, the fixtures and improvements in the Premises, as well as Tenant's Property.

5.3 Janitorial and Landscaping Services. Tenant shall provide all janitorial and landscaping services at the Premises at Tenant's expense.

5.4 Computer, Internet and Local Area Network (LAN) Facilities –On the Commencement Date, Landlord shall deliver to Tenant all electronic storage devices, servers, wiring, modems, routers, monitors, and associated equipment and computers currently used in and about the Premises for Information Technology purposes ("Information Technology Equipment"). Tenant shall provide for and maintain, at Tenant's expense, all Information Technology Equipment integral to Tenant's Use of the Premises. Landlord relinquishes ownership to Tenant of all such Information Technology Equipment as of the Commencement Date and Tenant accepts such Equipment and facilities "as-is". Internet and

intranet connectivity service and any usage charges for all such Information Technology Equipment, including replacements thereof and additions thereto, shall be provided to Tenant at the sole cost of Landlord during the Term of this Lease, as one of the utilities to be provided by Landlord under this Lease.

5.5 Telephone System and Facilities. – On the Commencement Date, Landlord shall deliver to Tenant all telephones, telephonic switching devices, wiring, and telephonic devices currently used in and about the Premises for Telephonic purposes (“Telephonic Equipment”). Tenant shall provide for and maintain, at Tenant’s expense, all Telephonic Equipment integral to Tenant’s Use of the Premises. Landlord relinquishes ownership to Tenant of all such Telephonic Equipment as of the Commencement Date and Tenant accepts such Equipment and facilities “as-is”. Telephonic connectivity service and any usage charges for all such Telephonic Equipment, including replacements thereof and additions thereto, shall be provided to Tenant at the sole cost of Landlord during the Term of this Lease, as one of the utilities to be provided by Landlord pursuant to this Lease.

5.7 Maintenance, Operations and Repair Obligations

5.7.1 Operations and Maintenance Responsibilities. Landlord and Tenant have agreed on a division of responsibilities regarding maintenance of the Premises. That agreement is attached as Exhibit C.

5.7.2. Reimbursement for Landlord’s Services. Landlord will supply one full time equivalent (FTE) stationary engineer and supervision/oversight via a Chief Engineer (estimated at less than 25%) for one year (FY 2011-12), after which time Tenant will assume full operation and maintenance of the Museum facilities. Tenant shall reimburse Landlord for actual expenses of the stationary engineer, supervision/oversight, materials and supplies, and maintenance contracts for this period.

5.7.3 Minor Repairs. Tenant at its sole cost shall be responsible for all repairs costing less than \$5,000.00 per occurrence.

5.7.4 Major Repairs. Landlord at its sole cost shall be responsible for funding all major repairs costing between \$5,000.01 and \$50,000.00 per occurrence related to the building and to equipment which is part of the building. City agrees to budget \$250,000.00 per fiscal year for major repairs. In FY 2011-12 landlord will manage all such repairs. Beginning July 1, 2012 and continuing for the life of this Lease, Tenant shall identify and request any such repairs be made. Once Landlord approves, tenant shall manage the repairs and be reimbursed by landlord. Repairs exceeding the budgeted amount shall be treated as capital improvements.

5.7.5 Capital Improvements. Landlord and Tenant agree to work in cooperation to develop capital improvement related items.

5.7.6 Vehicles. Tenant shall retain the three used forklifts and the scissors lift for Museum operations and shall be responsible for their maintenance.

5.8 End of Term. Upon termination of this Lease for any reason whatsoever Tenant will surrender to Landlord the entire Premises, together with all improvements, changes, alterations

and improvements thereto, in reasonably good order, condition and repair, ordinary wear and tear excepted.

6. Utilities. Landlord shall continue to make payments for utility services including gas, electricity, water, garbage, recycling, and sewer collection and treatment. Tenant shall reimburse landlord for gas, electricity, water and sewer services during the life of this lease.

7. Business Operations of Premises – Tenant is leasing the Premises for the purposes as set forth in Section 4.1.1 above. Tenant is responsible for opening, securing the Premises when closed, and providing security personnel services for the Premises. The Tenant shall be entitled to retain one-hundred percent (100%) of the revenue collected from general admissions, program and exhibit fees and admissions, facility rentals, professional services fees, catering and restaurant operations, store operations and parking garage operations. Unless otherwise provided in this Lease, the Tenant is responsible for all operations and operating expenses associated with the use of the Premises including staffing, admissions, program, exhibit, professional services, facility rentals, catering and restaurant, store and parking garage operations.

8. Tenant Alterations.

8.1 Landlord's Consent. Tenant shall make no alterations, additions, or improvements to the structure or structural integrity of the Premises (herein, "Tenant Alterations") without Landlord's prior written consent, such consent not to be unreasonably withheld. If such consent is granted, then only contractors or mechanics that are licensed shall affect such Tenant Alterations.

8.2 Procedure for Approval. If Tenant wishes to make any Tenant Alterations to the Premises that (a) are of a structural nature, or (b) involve a cost greater than \$500,000, or (c) involve the roof, foundation, exterior walls or appearance, or interior load-bearing walls of the Building (collectively, "Major Work"), Tenant shall submit to Landlord, for Landlord's written approval, such approval not to be unreasonably withheld, a written description of the Major Work that Tenant proposes to perform together with detailed plans and specifications for such Major Work. The Tenant is allowed to make alterations to non-structural walls for the purposes of exhibitions and programs conducted by the Tenant as part of Tenant's operations. The Tenant is allowed to make such alterations, additions, or improvements to the Premises without the prior consent of Landlord as long as they do not constitute Major Work.

8.3 Standard for Approval. Approval of any Major Work shall be by Landlord's prior written consent, such consent not to be unreasonably withheld.

8.4 Compliance with Laws. All work done by Tenant shall be performed in full compliance with all laws, rules, orders and ordinances. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement of Tenant alterations and for final approval thereof upon completion, and shall cause the Tenant Alterations work to be performed in compliance with all such permits and certificates, applicable laws and requirements of public authorities and with all applicable requirements of insurance. Tenant acknowledges that certain of the Premises have received "Landmark" status, and that any work done must be done in compliance with the requirements of such status. Landlord shall be responsible for assuring that the Premises building complies with any and all requirements of the Americans with Disabilities Act and any other applicable Federal, State or local governmental agency requirements relating to disabled access. Tenant shall be responsible for assuring that its operations on the Premises and its maintenance responsibilities with respect to the Premises complies with any and all requirements of the Americans with Disabilities Act and any other applicable Federal, State or local governmental agency requirements relating to disabled access.

8.5 Title to Improvements. All Tenant Improvements or Alterations upon the Premises, shall become the property of Landlord, shall not be required to be removed by Tenant, and shall remain upon and be surrendered with the Premises as a part thereof at expiration or earlier termination of this Lease.

8.6 Schedule/Manner of Work. All of Tenant's contractors, suppliers, workmen, and mechanics for any Tenant Alterations shall comply with such rules and conditions as Landlord may reasonably impose from time to time, which rules and conditions shall be enforced by Tenant. At any time any contractor, supplier, workman, or mechanic performing construction of any Tenant Alterations performs any work that may or does impair the quality, integrity, or performance of any portion of the Premises, Tenant shall cause such contractor, supplier, workman, or mechanic to leave the Premises and remove all tools, equipment, and materials immediately upon written notice delivered to Tenant.

8.7 Debris. Tenant will cause construction of any Tenant Alterations to be accomplished in a neat, clean, and workmanlike manner. Tenant shall not permit any trash, rubbish, or debris to accumulate in the Premises, and Tenant shall remove or cause to be removed all such trash, rubbish, and debris from the Premises and on a timely basis.

8.8 Right of Entry/Inspection. At all times during the period of construction of any portion of any Tenant Alterations, Landlord and Landlord's architects and engineers shall have the right to enter upon the Premises to inspect the work of construction and the progress thereof.

8.9 Insurance. In addition to the insurance requirements set forth in Section 9 hereof, during the period of construction of any Major Work, Tenant and Tenant's general contractor shall maintain worker's compensation, builder's all-risk and public liability insurance, and such other insurance as Landlord may reasonably require in amounts reasonably satisfactory to Landlord. All policies shall have such coverage limits, and be underwritten by such companies, as Landlord may reasonably approve, and shall name Landlord as an additional insured thereunder. Before the commencement of construction of any Major Work, Tenant and Tenant's general contractor must deliver to Landlord certificates of all such insurance policies.

8.10 Non-Responsibility of Landlord; Indemnification. Tenant hereby acknowledges that Landlord shall have no responsibility whatsoever for the construction of any Tenant Alterations or for any defects therein. Tenant shall notify Landlord in writing no less than ten (10) business days before the commencement of construction of any Tenant Alterations in order to afford Landlord an opportunity to post

and record appropriate notices of non-responsibility. Tenant, at its expense, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Tenant Alterations work, or any other work, labor, services or materials done for or supplied to Tenant, or any other person claiming through or under Tenant, in or about the Premises or Building. Tenant shall defend, indemnify and save harmless Landlord and any mortgagee from and against any and all mechanics and other liens and encumbrances filed in connection with, and any other claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, cost and expense (including attorneys fees) arising or incurred by or against Landlord and arising in connection with, the Tenant Alterations work, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, in or about the Premises. Such indemnification obligation shall extend to all reasonable costs, attorneys' fees, and liabilities incurred in connection with the defense of any such claim (including appeals and petitions for review) or any action or proceeding brought thereon.

9. Liability and Insurance. (RISK MANAGEMENT)

9.1 Action by Tenant. Tenant shall not do, or permit anything to be done, or keep or permit anything to be kept in the Premises that is (i) not used in the normal course of Tenant's operations, and (ii) would increase insurance rates in respect of the Premises over the rates that would otherwise then be in effect or that would result in insurance companies of good standing refusing to insure the Premises in amounts satisfactory to Landlord, or would result in the cancellation of or the assertion of any defense by the insurer in whole or in part to claims under any policy of insurance in respect of the Premises.

9.2 Landlord's Insurance. Landlord at its sole cost shall procure and maintain at all times during the Term a policy or policies of insurance covering loss or damage to the Premises, equipment and all personal property and the art and artifacts that comprise the "collections" of the Oakland Museum of California, and covering commercial liability, such insurance to be in a commercially reasonable amount, providing protection against all perils included within the classification of fire, extended coverage, earthquake, and all risk of loss as it relates to the standard insuring clause, loss of Tenant's operating income and expenses, covering Tenant's furniture, fixtures, equipment, and inventory in an amount equal to not less than one hundred percent (100%) of the full replacement value thereof and insuring against fire and all risk perils coverage as provided by a standard all risk coverage endorsement. Landlord's risk liability coverage, and to the extent any mortgagee of the Premises may require or as Landlord may deem prudent, coverage against such other hazards that are then commonly insured against for similar properties. Such policies of insurance shall name Tenant as an additional insured as appropriate. Tenant may from time to time require that the amount of liability insurance to be maintained by Landlord under this Agreement be increased to an amount reasonably determined by Tenant to be necessary to adequately protect Tenant's operations. Upon receipt by Landlord of a notice from Tenant stating the increased amount of insurance, Landlord shall promptly thereafter carry the insurance as set forth in such notice. .

9.3 Waiver of Subrogation. Each party hereby releases the other party and its agents and employees in respect of any claim that the releasing party might otherwise have against the other party or its agents or employees for, and waives any right of subrogation in respect of, loss, damage or other casualty occurring during the term of this Lease and normally covered under a fire insurance policy with extended coverage endorsement in the form normally used in respect of similar property in the County and the State. Landlord at its sole cost shall secure an appropriate clause in, or an endorsement upon, each insurance policy obtained by it and covering or applicable to the Premises or the personal property, fixtures and equipment located therein, pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to make the waiver set forth in the first sentence of this Section 9.3, without

invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim shall extend to Landlord and Tenant and each of its agents and employees.

9.4 Tenant's Commercial General Liability Insurance. Tenant at its sole cost shall procure and maintain at all times during the Term (a) a policy of Commercial General Liability insurance in respect of the conduct or operation of business by Tenant therein, with Landlord, and any mortgagee whose name and address shall previously have been furnished to Tenant, as additional named insureds, with such policy having commercially reasonable amounts as then appropriate to Tenant's operations; (b) Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence; (c) Property Insurance, Fire and Extended Coverage Form in an amount sufficient to reimburse Tenant for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises; (d) Plate Glass Coverage, in an amount sufficient to replace every panel of glass located on the face of the Building defining the exterior perimeter of the Premises; and (e) such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of Tenant and City against other insurable risks relating to performance.

The insurance and the coverage referred to under (a) and (b) of this paragraph shall be endorsed to include City as an additional insured. Tenant, upon the execution of this Lease, shall furnish City with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further make provisions for thirty (30) day advance written notice to City of any modification, change or cancellation of any of the above insurance coverages.

9.5 Tenant's Worker's Compensation Insurance. Tenant at its own cost shall procure and maintain at all times during the Term Worker's Compensation and Employers Liability Insurance in a form and amount covering Tenant's full liability under the Workers' Compensation Insurance and Safety Act of the State of California as amended from time to time.

9.6 Insurance Policies. All insurance policies required to be carried by either Tenant or Landlord hereunder shall name the other party as additional insured and shall be with companies and with loss-payable clauses reasonably satisfactory to both Landlord and Tenant, and certificates evidencing such insurance shall be delivered to the other party prior to Tenant commencing occupancy and thereafter within ten (10) business days prior to each renewal thereof. Such certificate shall be from a company holding a "Best's Rating" of at least A: Class IX, shall indicate that the insurance policy is in full force and effect, and that the policy bears an endorsement that the same not be canceled or amended unless thirty (30) days prior written notice by U.S. Certified Mail of the proposed cancellation or amendment has been given to Landlord and any mortgagee of which Landlord has given Tenant notice prior to the date of such certificate. Each of said certificates of insurance and each such policy of insurance required to be maintained by either party hereunder shall expressly evidence insurance coverage as required by the Lease. All such policies shall be written as primary policies not contributing with and not in excess of coverage, which Landlord may carry, and shall not have a "deductible" in excess of a commercially reasonable amount approved in advance by both parties.

10. Landlord's Property, Tenant's Property

10.1 Landlord's Property. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises, whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, and shall be deemed the property of Landlord and shall not be removed by Tenant or be required to be removed by Landlord.

10.2 Tenant's Property. All unattached business and trade fixtures, machinery and equipment, communications equipment and office equipment that are installed or located in the Premises by or for the account of Tenant and that can be removed without structural damage to the Building and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (together, the "Tenant's Property") shall be and remain the property of Tenant and may be removed by Tenant at any time during the Term of this Lease; provided, that if any of Tenant's Property is removed, Tenant shall repair or pay the reasonable cost of repairing any damage to the Premises resulting from the installation and/or removal thereof.

10.3 Removal. At or within thirty (30) days following the Termination Date of this Lease, or any earlier termination of this Lease, Tenant, at its expense, shall remove from the Premises all of Tenant's Property, except such items thereof as Landlord shall have expressly permitted to remain, which property shall become the property of Landlord, and Tenant shall repair or pay the reasonable cost of repairing any material damage to the Premises resulting from any installation and/or removal of Tenant's Property.

10.4 Abandonment. Any items of Tenant's Property that shall remain in the Premises after thirty (30) days following the Termination Date of this Lease, or any earlier termination of this Lease, may be deemed to have been abandoned, and in such case such items may be retained by Landlord, and Landlord may deal with Tenant's Property in such manner as Landlord shall determine.

11. Climate Control. Landlord at its sole cost shall maintain and operate the heating, ventilating and air-conditioning systems serving the Premises and shall furnish heat, ventilating and air-conditioning in the Premises 24 hours per day, 365 days per year to meet museum quality standards for temperature and humidity as set forth from time to time by the American Association of Museums.

12. Access to Premises. Landlord, its employees and authorized agents, shall have access to the Premises at all reasonable times to: (a) inspect the Premises; (b) exhibit the Premises to prospective purchasers, lenders or tenants; (c) determine whether Tenant is complying with its obligations hereunder; (d) supply any service to be provided by Landlord to Tenant hereunder; (e) post notices of non-responsibility; or (f) make repairs required of Landlord hereunder or provide utility services or make repairs, alterations or improvements to any other portion of the Premises, provided, however, that all such work shall be done in a commercially reasonable and prompt manner. Landlord shall use commercially reasonable efforts to minimize interference or interruption to Tenant's operations.

13. Damage or Destruction.

13.1 Rights and Obligations.

13.1.1 Obligation to Rebuild. If the Premises, or any portion thereof, is damaged, destroyed, or rendered untenable due to fire or other casualty, and if (a) the damage or destruction does not exceed twenty-five percent (25%) of the insurable value of the Premises, and (b) the Premises is capable of being repaired, reconstructed or restored within a period of one hundred fifty (150) days from commencement of such work, then, Landlord shall be obligated to restore the Premises to a condition reasonably comparable to its condition prior to such casualty. In such event, this Lease shall remain in full

force and effect. Landlord will commence restoring that portion of the Premises so damaged as soon as commercially practicable, and will diligently complete the restoration.

13.1.2 In the case of a casualty loss not described in Section 13.1.1, then within sixty (60) days after such a casualty Landlord shall have the right to elect either to terminate this Lease or to restore the Premises. Landlord shall make its election by written notice to Tenant within such sixty (60) day period of time. If Landlord elects to terminate this Lease, the termination shall be effective thirty (30) days after receipt of the notice by Tenant. If Landlord does not elect to terminate this Lease, Landlord shall restore the Premises in accordance with the requirements of Section 13.1.1. If Landlord undertakes to repair the Premises after an event of casualty, such restoration shall include replacement of furniture, equipment or other items designated as Tenant's Property herein. If the casualty loss occurs within the last two (2) years of the Term, then, regardless of the extent of the damage, Section 13.1.2 shall establish the rights and obligations of Landlord and Tenant.

13.2 Interference with Tenant's Business. Tenant shall not be entitled to terminate this Lease and no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises pursuant to this Section 13.

14. Eminent Domain.

14.1 Total Condemnation. If the whole of the Premises shall be taken by condemnation or in any other manner for any public or quasi-public use or purpose, (including a sale under threat of condemnation) this Lease shall terminate as of the date of vesting of title on such taking (herein called "Date of Taking").

14.2 Partial Condemnation. If a part of the Premises shall be so taken, this Lease shall be unaffected by such taking, except that if twenty percent (20%) or more of the Premises shall be so taken, Tenant may, at its option, terminate this Lease by giving Landlord notice to that effect within ninety (90) days after the Date of Taking.

14.3 Effect of Termination or Continuation. This Lease shall terminate on the date that such notice from the Landlord or Tenant to the other shall be given. Upon a partial taking this Lease shall continue in force as to the remaining part of the Premises.

14.4 Temporary Taking. A temporary taking (or transfer in lieu thereof) of any portion of the Premises by any authorized authority shall not cause a termination of this Lease. If the taking is for a period of longer than one year, either Landlord or Tenant may elect to terminate this Lease by notice to the other given within thirty (30) days after the event giving rise to the right of termination.

15. Tenant's Self-Help Rights; Liability and Indemnification.

15.1 Tenant's Right to Cure. If Landlord fails to pay or perform any of its obligations under this Lease, Tenant may, without waiving or releasing Landlord from its obligations hereunder, but shall not be required to, pay or perform such obligations on Landlord's behalf upon thirty (30) business days notice to Landlord (except where, in Tenant's opinion, an emergency exists, in which event no notice shall be required), and Landlord shall reimburse or pay promptly to Tenant the reasonable cost thereof "Reasonable cost," as used in this Section 15, means Tenant's actual out-of-pocket costs to affect such cure plus ten percent (10%) to cover overhead, administrative and collection charges.

15.2 Tenant's Indemnity. As between Landlord and Tenant, and except to the limited extent otherwise provided in this Section 15.2, Landlord shall not be liable for injury to any person, or for the loss of or damage to any property (including property of Tenant) occurring in or about the Premises; provided, however, that Landlord shall be solely responsible for any injury or loss caused by Landlord's negligence or intentional acts. Tenant hereby assumes all risk of injury to persons in, upon or about the Premises, except as provided in the preceding sentence. Tenant hereby indemnifies and holds Landlord harmless, and shall defend Landlord, from and against any and all claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses (including attorneys' fees) arising, claimed, charged or incurred against or by Landlord and arising from or in connection with: (a) Tenant's use or occupancy of, or any activity, work or other thing done, permitted or suffered by Tenant on or about, the Premises, whether before, after or during the Term, (b) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or (c) any act or omission of Tenant, or any officer, contractor, agent, employee, guest, licensee, or invitee of Tenant; provided that such indemnification by Tenant shall not apply to losses caused by Landlord's negligence or intentional acts.

15.3 Defense of Claims. In case any action or proceeding shall be brought against either party by reason of a claim covered by the provisions of Section 15.2, the other party shall defend the same at such other party's expense, by counsel reasonably approved in writing by both parties.

16. Tenant's Defaults and Remedies.

16.1 Events of Default. In addition to events described elsewhere in this Lease as constituting a "default" or an "Event of Default," the occurrence of any one or more of the following events shall constitute an Event of Default hereunder by Tenant:

(a) Tenant's vacation or abandonment of the Premises (abandonment is herein defined to include, but is not limited to, failure to conduct its business at the Premises during any continuous ninety (90) business-day period);

(b) Tenant's failure to make any payment of Rent hereunder as and when due, where such failure shall continue for a period of thirty (30) days after Tenant's receipt of a 3 Day Notice pursuant to California's unlawful detainer statutes;

(c) Tenant's failure at any time to carry insurance, with the coverage and in the amounts, required to be carried pursuant to this Agreement;

(d) Tenant's failure to observe or perform any of the other covenants or provisions of this Lease to be observed or performed by Tenant, where such failure (i) is material to the continuation of this Lease, and (ii) shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant (unless this Lease elsewhere provides that such failure alone constitutes an Event of Default hereunder upon its occurrence); or

(e) If (i) Tenant shall make any general assignment for the benefit of creditors; (ii) a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy shall be filed by or against Tenant; (iii) a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) substantially all of Tenant's assets located

at the Premises, or of Tenant's interest in this Lease, is attached, executed upon, or otherwise judicially seized, where such seizure is not discharged within 30 days.

16.2 Remedies. Upon the occurrence of an Event of Default, Landlord may exercise any one or more of the remedies set forth in this Section 16, or any other remedy available under applicable law or contained in this Lease.

16.2.1 Re-Entry. Landlord or Landlord's agents and employees may immediately, or at any time thereafter, re-enter the Premises, or any part thereof, and without judicial process, or by any suitable action or proceeding at law, repossess the Premises, and remove any persons, fixtures or chattels therefrom, to the end that Landlord may have, hold and enjoy the Premises. In the event of any such retaking of possession of Premises by Landlord, Tenant shall remove all personal property located thereon and upon failure to do so upon demand of Landlord, Landlord may in addition to any other remedies allowed by law, remove and store the same in any place selected by Landlord, including but not limited to a public warehouse, at the expense and risk of Tenant. If Tenant shall fail to pay all sums due hereunder together with the cost of storing any such property within thirty (30) days after it has been stored, Landlord may sell any or all of such property at public or private sale and shall apply the proceeds of such sale first, to the cost of such sale; second, to the payment of the charges and expenses for reentry, removal and storage; third, to the payment of any other sums of money that may be due from Tenant to Landlord under the terms of this Lease; and the balance, if any, to Tenant. Tenant hereby waives all claims for damages that may be caused by Landlord's re-entering and taking possession of Premises or removing and storing or selling the property of Tenant as herein provided, and will indemnify, defend and save Landlord harmless from loss, costs or damages to Tenant occasioned thereby, and no such re-entry shall be considered or construed to be a forcible entry. RE-ENTRY OR TAKING POSSESSION OF THE PREMISES BY LANDLORD SHALL BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE.

16.2.2 Terminate Lease. Landlord may elect to terminate Tenant's right to possession and use of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord and shall pay Landlord damages as provided at this Section 16.

16.2.3 Monetary Damages and Recovery. Tenant shall have full liability for payment of all damages directly suffered by Landlord which are proximately caused by any default or breach under this Lease, whether or not such default or breach is declared by Landlord, and such elements of damage and recovery by Landlord from Tenant shall specifically include, but not be limited to the sum of \$10,000 to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, all legal expenses and other related costs incurred by Landlord following Tenant's default and all costs incurred by Landlord in restoring the Premises to good order and condition, or in preparing the Premises for reletting and all other costs incurred by Landlord in reletting the Premises.

16.3 Cumulative Remedies. The remedies provided for in this Lease are cumulative and in addition to any other remedy available to Landlord at law or in equity. In the event of a breach by Tenant, of any of its obligations under this Lease, Landlord shall also have the right to obtain an injunction and any other appropriate equitable relief.

16.4 Termination. Tenant's contractual obligations under this Lease shall continue in effect for so long as Landlord does not terminate the same (and even though Landlord may have terminated

Tenant's estate and right to possession) by written notice to Tenant, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease.

17. Landlord's Defaults and Remedies.

17.1 Events of Default. In addition to events described elsewhere in this Lease as constituting a "default" or an "Event of Default," the occurrence of any one or more of the following events shall constitute an Event of Default hereunder by Landlord:

- (a) Landlord's vacation or abandonment of the Premises;
- (b) Landlord's failure to maintain and/or repair the Premises as required under Section 5 hereof, where such failure shall continue for a period of thirty (30) days after Landlord's receipt of a notice of such failure to maintain and/or repair;
- (c) Landlord's failure at any time to carry insurance, with the coverage and in the amounts, required to be carried pursuant to this Agreement;
- (d) Landlord's failure to observe or perform any of the other covenants or provisions of this Lease to be observed or performed by Landlord, where such failure shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord (unless this Lease elsewhere provides that such failure alone constitutes an Event of Default hereunder upon its occurrence);
- (e) The Professional Services Agreement ("PSA") entered into between Landlord and Tenant as of the Commencement Date expires or Landlord's obligations thereunder are not being fulfilled; or
- (f) If (i) Landlord shall make any general assignment for the benefit of creditors; (ii) a petition to have Landlord adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy shall be filed by or against Landlord; (iii) a trustee or receiver is appointed to take possession of substantially all of the Premises or of Landlord's interest in this Lease, where possession is not restored to Landlord within 30 days; or (iv) substantially all of the Premises, or of Landlord's interest in this Lease, is attached, executed upon, or otherwise judicially seized, where such seizure is not discharged within 30 days.
- (g) An uncured breach of this Agreement by Tenant shall automatically terminate the PSA between the parties. An uncured breach of the PSA by Tenant shall automatically terminate this Lease Agreement

17.2 Remedies. Upon the occurrence of an Event of Default, Tenant may exercise any one or more of the remedies set forth in this Section 17, or any other remedy available under applicable law or contained in this Lease.

17.2.1 Continue the Lease. Tenant may elect to continue this Lease in effect. If Tenant continues this Lease in effect, Tenant shall be entitled to enforce all Tenant's rights and remedies under this Lease.

17.2.2 Terminate Lease. Tenant may elect to terminate its right to possession and use of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord.

17.2.3 Monetary Damages and Recovery. Landlord shall have full liability for payment of all damages directly or indirectly suffered by Tenant which are proximately caused by any default or breach under this Lease, whether or not such default or breach is declared by Tenant, and such elements of damage and recovery by Tenant from Landlord shall specifically include, but not be limited to the sum of \$100,000 to compensate Tenant for all the detriment proximately caused by Landlord's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result there from, including but not limited to, all legal expenses and other related costs incurred by Tenant following Landlord's default.

17.3 Cumulative Remedies. The remedies provided for in this Lease are cumulative and in addition to any other remedy available to Tenant at law or in equity. In the event of a breach by Landlord of any of its obligations under this Lease, Tenant shall also have the right to obtain an injunction and/or an order for specific performance and any other appropriate equitable relief

17.4 Termination. Landlord's contractual obligations under this Lease shall continue in effect for so long as Tenant does not terminate the same by written notice to Landlord, and Tenant may enforce all its rights and remedies under this Lease.

18. Transfers By Tenant.

18.1 General.

18.1.1 Assignment and Subletting. Tenant shall not sell, assign, mortgage, pledge, hypothecate, encumber or otherwise transfer this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or suffer or permit the Premises or any part thereof to be occupied by any other person (the agents, contractors, employees, and invitees of Tenant excepted), without the prior written consent of Landlord in each instance which consent shall not unreasonably be withheld; and any attempt to do so without such consent shall be voidable at Landlord's election. Landlord and Tenant acknowledge that a material element of Landlord's consideration for entering into this Lease is based upon the specific use for which Tenant is leasing the Premises and the expectation that said use will benefit the community. The parties therefore agree that the restrictions on assignment and subletting set forth herein shall be strictly construed. Without in any way limiting Landlord's right to refuse to give such consent for any other reason, Landlord reserves the right to refuse to give such consent if the Premises will be used for any purpose other than as permitted under the use clause, Section ?? Herein.

- 18.1.2 Obligations of Assignees. Assignees or subtenants shall become directly liable to Landlord for all obligations of Tenant hereunder, but Tenant shall remain liable for the performance of all obligations owed to Landlord under this Lease. The instrument by which any assignment or subletting consented to by Landlord is accomplished shall expressly provide that the assignee or subtenant will perform and observe all the agreements, covenants, conditions and provisions to be performed and observed by Tenant under this Lease and that Landlord will have the right to enforce such agreements, covenants and conditions directly against such assignee or

subtenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease.

18.1.3 Procedure for Consent. It shall be the responsibility of Tenant to provide Landlord with such information as Landlord reasonably determines is necessary for Landlord to grant or withhold its consent. If Tenant desires to request approval to assign, hypothecate or otherwise transfer this Lease or sublet the Premises, then at least thirty (30) days prior to the date when Tenant desires the assignment or sublease to be effective (the "Assignment Date"), Tenant shall give Landlord a notice (the "Assignment Notice"), which shall set forth the name, address and business of the proposed assignees or subtenant, current financial statements, credit information, the Assignment Date, any ownership or commercial relationship between Tenant and the proposed assignee or subtenant, and the consideration and all other material terms and conditions of the proposed assignment or sublease. If Landlord requests additional detail, the Assignment Notice shall not be deemed to have been received until Landlord receives such additional detail, and Landlord may withhold action on the request to any assignment or sublease until such information is provided.

18.2 Corporate Changes. Foundation has informed City that it is anticipating reincorporating prior to the Commencement Date, with the successor not-for-profit corporation continuing to fulfill the obligations of Foundation under this Lease and the Professional Services Agreement. Upon such reincorporation, Foundation and City shall execute an Assignment of Lease binding the new corporation to all the terms and conditions of the Lease. Any subsequent transfer of this Lease to a not-for-profit organization that intends to continue the Use of the Premises shall not constitute an assignment for the purposes of this Section 18 requiring Landlord consent so long as the successor entity continues the Use of the Premises in the same or similar manner as Tenant.

18.3 Unapproved Transfers. Any attempted transfer in violation of the requirements of this Section 18 shall be void at the option of Landlord.

18.4 Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions, and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns.

19. Subordination; Attornment; Quiet Enjoyment.

19.1 Subordination, Nondisturbance. This Lease is expressly made subject and subordinate to all mortgages, trust deeds and other financing and security instruments ("Mortgages"), that may now or hereafter affect the Premises, and to all renewals, modifications, replacements and extensions of any such Mortgages. No further document shall be required to effect subordination hereunder; provided, however, that in confirmation of such subordination Tenant shall promptly execute, acknowledge or deliver any instrument that Landlord or any such mortgagee may reasonably request to evidence such subordination.

19.2 Attornment. If the interest of Landlord under this Lease is transferred, whether through possession, foreclosure or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights (herein called "Successor Landlord"), Tenant shall attorn to and recognize such Successor Landlord as Tenant's Landlord under this Lease and shall promptly execute and deliver any instrument (including without limitation tenant estoppels in a form prepared by the Landlord) that such Successor Landlord may reasonably request to evidence such attornment. Upon such request for attornment, Tenant's rights hereunder shall continue in full force and effect as a direct Lease between the

Successor Landlord and Tenant upon all of the terms, conditions and covenants as set forth in this Lease so long as Tenant is not in default.

19.3 Quiet Enjoyment. So long as Tenant pays all Rents and complies with ail of the terms and conditions of this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Premises. This covenant shall, subject lo the provisions of this Lease, be binding upon the subsequent successors in interest of Landlord's interest in this Lease.

19.4 Estoppel Certificates. Promptly upon request of the Landlord, Tenant shall execute and deliver to Landlord and/or any prospective mortgagee or purchaser designated by Landlord, a statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, and slating the date and nature of such modifications); (c) the date to which the rental and other sums payable under this Lease have been paid; (d) that there are no current defaults under this Lease by Landlord except as specified in such statement; and (e) such other matters as may be reasonably requested. Landlord and Tenant intend that any statement delivered by Tenant pursuant to this Section may be relied upon by any mortgagee, beneficiary, purchaser, or prospective purchaser of the Premises or any interest therein. If Landlord desires lo finance or refinance the Premises, or any part thereof, Tenant shall promptly deliver to any lender designated by Landlord such financial information of Tenant as shall be reasonably required by such lender. All such information shall be received in confidence and shall be used only for the purpose herein set forth.

19.5 Modification for Lender. If, in connection with obtaining construction, interim, or permanent financing related lo the Premises, a lender shall request reasonable modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay, or defer its consent thereto provided that such modifications do not materially, adversely increase Tenant's obligations, or decrease Tenant's rights, hereunder.

20. Governing Law. This Lease shall be governed by and construed pursuant to the laws of the Slate of California.

21. No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not constitute a merger of the Landlord's and Tenant's estate, and shall, al the option of Landlord, operate either as an assignment lo Landlord of any or all subleases or subtenancies or as a termination thereof

22. Disputes.

22.1 Attorneys' and Collection Fees. If either party should bring any arbitration, action or suit for possession of the Premises, for the recovery of any sum due under this Lease, or because of the breach of any provisions of this Lease, or for any other relief hereunder, or in the event of any other arbitration or litigation between the parties with respect to this Lease, then all out-of-pocket costs and expenses, including collection agency fees and reasonable attorneys' fees incurred by the prevailing party in such arbitration or litigation, including on any arbitration or court proceeding, appeal, petition for review theretrom or in any proceeding before a U.S. Bankruptcy Court, shall be paid by the other party, such amount lo be set by the arbitrator or court before which the matter is heard, which obligation on the part of the other party shall be

deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment.

23. Definition of Landlord; Limitation on Liability. The term "Landlord," as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the Premises or the tenants under any ground lease, if applicable. In the event of any transfer, assignment, or other conveyance or transfers of any such title, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment, or conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

24. Waiver. Either party's waiver of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained, nor shall any custom or practice that may evolve between the parties in the administration of the terms hereof be deemed a waiver of or in any way affect the right of such party to insist upon the performance in strict accordance with such terms.

25. Miscellaneous Provisions.

25.1 Successors or Assigns. Except as otherwise provided herein, all the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and their respective heirs, administrators, executors, successors, subtenants, concessionaires, assigns and marital communities, if any, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

25.2 Authority of Parties. Each individual executing this Lease on behalf of the Foundation represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the Foundation in accordance with a duly adopted resolution of the Board of Trustees of the Foundation and in accordance with the Foundation Bylaws, and this Lease is binding upon the Foundation. Each individual executing this Lease on behalf of the City represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of the City in accordance with a duly adopted Ordinance of the Oakland City Council and in accordance with the City's Charter, and this Lease is binding upon the City. Any person executing this instrument, its exhibits, addenda, extensions, or renewals, or represents any material fact relevant hereto in writing, warrants and represents that he/she is duly authorized to so act.

25.3 Brokers. Each of the parties acknowledge that no brokers have been used in connection with this Lease.

25.4 Terms and Headings. The words "Landlord" and "Tenant" as used herein shall include the plural as well as the singular. Words used in any gender include other genders. The Section headings

of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof

25.5 Time. Except as otherwise specifically provided herein, time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

25.6 Amendments. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

25.7 Partial Invalidity. If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such terms, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

25.8 Recording. Tenant shall be allowed to record or file this Lease, or any assignment or security document pertaining to this Lease or all or any part of Tenant's interest therein without the prior written consent of Landlord.

25.9 Notices. All notices that either party shall be required or may desire to deliver hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, or by facsimile transmission followed by delivery of a "hard" copy, and shall be deemed received upon the earlier of the date of receipt or refusal thereof. Notices shall be delivered to Tenant at the Premises and to Landlord at the address for Landlord each set forth in the Summary of Basic Lease Terms preceding this Lease. Landlord may change its address for notice by giving notice to Tenant in the manner set forth above, which notice shall only be effective upon receipt or refusal.

25.10 Entire Agreement. This Lease, including the Table of Contents and summary of Basic Lease Terms that precede this Lease, and the Exhibits listed in such summary of Basic Lease Terms and attached hereto, all of which are incorporated herein by this reference to them, together with any other document to be furnished pursuant to the provisions hereof embody the entire agreement and understanding of the parties hereto as to the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings other than those expressly set forth or referred to in such documents. This Lease and such documents supersede all prior agreements and understandings among the parties with respect to the subject matter hereof

25.11 Survival of Obligations. The covenants, duties, and obligations of Tenant contained herein that by their nature do not depend upon Tenant's possession of the Premises shall survive the expiration or earlier termination of this Lease and such expiration or termination shall not excuse Tenant from the full performance thereof

25.12 Representations and Warranties. Each of the parties hereby represents and warrants that information furnished to the other party are true, accurate and complete, and such representation and warranty shall survive the execution and termination of this Lease and is material consideration relied upon by such party in executing this Lease. Any false, misleading or inaccurate statement made by either party shall constitute a material breach and an Event of Default hereunder.

25.13 Equal Benefits. Tenant must abide by the Equal Benefits Ordinance of the City of Oakland (the "City"), codified in Chapter 2.32 of the Oakland Municipal Code. Tenant warrants

and represents that it does not discriminate in the provision of those benefits enumerated in the Ordinance between its employees with domestic partners and its employees with spouses, or between the domestic partners and spouses of its employees. Tenant must post written notice to its employees of their potential rights under the Equal Benefits Ordinance. Tenant must promptly provide to the City upon City's request, documents and information verifying its compliance with the Equal Benefits Ordinance. Tenant understands that, in the event that it violates the Equal Benefits Ordinance, the City may suspend or terminate this Lease or pursue any other remedy permitted under the Ordinance.

25.14 Living Wage. Tenant is subject to the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations. The Ordinance requires among other things that, unless specific exemptions apply or a waiver is granted, all covered employers must pay a minimum level of compensation to their covered employees of at least \$11.15 per hour if health benefits of at least \$1.25 per hour are offered, or \$12.82 per hour if no health benefits are offered. This wage rate shall be adjusted annually pursuant to the terms of the Ordinance. Tenant agrees to abide by the requirements of the Living Wage Ordinance to pay the specified minimum compensation to its covered employees, to offer the required compensated and uncompensated leave time to its covered employees, to provide the required notices to its covered employees, to submit the required documentation to City, and to satisfy all other applicable requirements, for at least five years from the Commencement Date.

Tenant also agrees to include language in any service contract that it enters into related to the Premises, if the amount of the service contract exceeds \$25,000, requiring that the service contractor comply with Living Wage requirements for its covered employees. Tenant shall submit a copy of such service contracts to the City's Office of Contract Compliance.

For purposes of this section, "covered employees" mean any natural person who performs services for the employer and spends at least half of his or her time on Premises-related work or on the Premises; but does not include managerial, supervisory, or confidential employees, independent contractors, volunteers, or those construction employees who are entitled to be paid at prevailing wages.

Under the provisions of the Living Wage Ordinance, the City may, under appropriate circumstances, terminate this Lease and seek other remedies as set forth therein for violations of the Ordinance

25.15 Relocation. Tenant understands and acknowledges that this Lease creates no rights in Tenant to receive relocation benefits, payments or any advisory assistance upon termination of this Lease

IN WITNESS WHEREOF, the parties have executed this Lease on the date stated below.

The City of Oakland City, a municipal corporation

By: _____
Title: _____
Date: _____

“Landlord” or “City

Oakland City Attorney for Form and Legality

By: _____
Title: _____
Date: _____

The Oakland Museum of California Foundation, a
California corporation

By: _____
Title: _____
Date: _____

“Tenant” or “Foundation”

EXHIBIT A

Premises Description

EXHIBIT B

Plan of Premises

EXHIBIT C

Maintenance and Operational Responsibilities

YEAR ONE - 2011/12:

Landlord shall be responsible for:

- Maintaining HVAC systems
- Maintaining mechanical, electrical and plumbing (MEP)
- Maintaining emergency generator
- Maintaining Energy Management System (EMS)
- Maintaining doors, locks and mechanical key system
- Maintaining elevators and wheel chair lift
- Maintaining fire extinguishers
- Maintaining fire, life safety system
- Maintaining building lighting systems
- Maintaining roll-up door
- Maintaining service contracts for any of the above building systems until Tenant issues its own contracts
- Processing payments to service providers for utilities i.e., PG&E and EBMUD
- Providing garbage and recycling services through the City's contract agreement
- Invoicing Tenant for services provided by Landlord

Tenant shall be responsible for:

- Graffiti Abatement
- Janitorial/ Custodial services
- Security guard services
- Landscaping, including street trees
- Roof drain and gutter clearing
- Cleaning rain gutter
- Security Alarm System
- Security Camera System
- Telephone system
- Internet
- Communication and information technology
- Uninterruptible power supply (UPS)
- Minor Repairs costing less than \$5,000 per occurrence

BEGINNING JULY 1, 2012, AND CONTINUING FOR THE TERM OF THIS LEASE:

Landlord shall be responsible for:

- Funding major repairs costing between \$5,000.01 and \$50,000.00 per occurrence related to the building and equipment which is part of the building.
- Processing payments to service providers for utilities, i.e. PG&E, EBMUD.
- Garbage and recycling services provided through the City's contract agreement
- Invoicing Tenant monthly for PG&E and EBMUD services.

Tenant shall be responsible for all maintenance and repairs needed to operate and maintain Museum facilities including, but not limited to:

- Graffiti Abatement
- Janitorial/ Custodial services
- Security guard services
- Landscaping including street trees
- Roof drain and gutter clearing (previously handled by landscape staff)
- Security Alarm System
- Security Camera System
- Minor Repairs costing less than \$5,000 per occurrence
- Maintaining HVAC systems
- Maintaining mechanical, electrical and plumbing (MEP)
- Maintaining emergency generator
- Maintaining Energy Management System (EMS)
- Maintaining doors, locks and mechanical key system
- Maintaining elevators and wheel chair lift
- Maintaining fire extinguishers
- Maintaining fire, life safety system
- Maintaining building lighting systems
- Maintaining roll-up door
- Maintaining service contracts for all of the above building systems and equipment
- Reimbursing Landlord for invoices for PG&E, EBMUD.
- Telephone system
- Internet
- Communication and information technology
- Uninterruptible power supply (UPS)
- Minor Repairs costing less than \$5,000 per occurrence

EXHIBIT D

CITY OF OAKLAND
AGENDA REPORT—PROFESSIONAL SERVICES AGREEMENT

TO: Office of the City Administrator
ATTN: P. Lamont Ewell
FROM: Oakland Museum of California
DATE: June 7, 2011

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A TEN-YEAR PROFESSIONAL SERVICES AGREEMENT AND A THIRTY-YEAR LEASE FOR TWO MUSEUM BUILDINGS AT THE RENT OF \$1.00 PER YEAR, BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION TO PERFORM SERVICES RELATED TO THE CARE, CONSERVATION, STEWARDSHIP, AND PRESENTATION OF THE CITY'S COLLECTION OF ART WORKS, HISTORICAL ARTIFACTS AND NATURAL SCIENCES SPECIMENS RELATED TO CALIFORNIA'S CULTURAL AND ENVIRONMENTAL HISTORY, WITH AN INITIAL CITY ANNUAL PROFESSIONAL SERVICES AGREEMENT PAYMENT OF \$5 MILLION ON JULY 1, 2011 THAT DECLINES ANNUALLY TO \$3 MILLION OVER THE TEN-YEAR PERIOD.

SUMMARY-- PSA

Staff is submitting two agenda reports; this one relating to the Professional Services Agreement ("PSA") and a second one relating to the Lease. The "Summary" sections are the same for both reports. The remaining sections and exhibits set forth the provisions of each separate document—PSA and Lease.

The Oakland Museum of California ("Museum") has been operated through a public/private partnership between the City of Oakland ("City") and the Oakland Museum of California Foundation ("Foundation"), as formalized in a Management Operations Agreement ("M&O Agreement") approved by the Oakland City Council in October 2006. Over the past several years, the City has provided support for employee compensation and benefits, facility operations, debt servicing, and partial operations and maintenance, while the Foundation solely funds all costs for exhibitions, education programs, marketing efforts, fundraising, visitor services, and various earned revenue enterprises, employing numerous employees whose functions significantly overlap with those of City employees. During this period, City support has steadily declined as a proportion of the Museum's budget, and in the current fiscal year 2010-11, the Foundation is budgeted to contribute through fundraising and earned revenue efforts close to \$8

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million – or 55% -- of the Museum's \$14.3 million budget. The City is contributing \$6.3 in the current budget year. (See attached *Exhibits A1 and A2*)

While the M&O Agreement sets forth the roles and responsibilities of the Foundation and the City, events of the last few years now call for a re-examination of this partnership. These events include the increasing complexity of the Museum following its major renovation and expansion; the inefficiency of Museum operations with a bi-furcated staffing structure, budgeting, and governance oversight; and the City's financial crises, which require it to focus on core services and determine if some historic operations can be better performed by other entities.

Under these circumstances, the City is proposing to cease operating and managing the Museum and enter into a Lease Agreement with the Foundation for the City's two Museum facilities, and to enter into a PSA for services related to care of the City's collection. The City will maintain ownership of the buildings as well as the collections; they are important and long-standing assets for Oakland. The City will lease the Museum buildings to the Foundation for \$1 per year for thirty years, a period that will enable the Foundation to attract major grants that require long-term land tenure agreements. The Lease Agreement is detailed separately. The PSA and the Lease Agreement are intended to be read together to provide the total picture for this transaction.

Through the PSA, the Foundation will provide services related to the care, conservation, stewardship, presentation and interpretation of the City's art, history, and natural sciences collection held by the Oakland Museum of California. The PSA includes regular reporting requirements to ensure the Foundation adheres to the American Association of Museums' accreditation standards for collections care, and mutual terms are included for the protection in perpetuity of the Museum/City collections. A copy of Schedule A—Scope of Services, which is part of the PSA, is copied here as *Exhibit B* for Council's convenience. The entire PSA with all Exhibits is in the Council packet.

FISCAL IMPACT--PSA

The PSA requires an annual payment from the City, through the City Administrator's Office; to the Foundation of \$5 million beginning in FY 2012 and declining to \$3 million in FY 2020.

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Year	City Funding \$MM	Foundation Funding \$MM	Total Museum Budget \$MM
1	\$5.0	\$9.0	\$14
2	\$5.0	\$9.3	\$14.3
3	\$5.0	\$9.8	\$14.8
4	\$4.8	\$10.5	\$15.3
5	\$4.6	\$11.2	\$15.8
6	\$4.4	\$12.0	\$16.4
7	\$4.2	\$12.7	\$16.9
8	\$3.7	\$13.9	\$17.6
9	\$3.2	\$15.0	\$18.2
10	\$3.0	\$16.0	\$19

This level of funding, together with Museum expenses incorporated in the lease agreements, results in a savings of \$1 million annually to the City in the upcoming three fiscal years. Following this initial period, the Agreement calls for a reduction of \$200,000 annually during the following four years, while the Foundation expands its revenue capacity through increased earned and contributed revenue and an endowment campaign. In turn, the Foundation will be required to increase its current budget of \$8 million toward the Museum's total budget of \$14 million, to more than \$11 million-- while simultaneously absorbing all escalating costs of employee compensation, benefits, and facility operational costs. The PSA would be re-negotiated in year ten --2021.

While the Foundation would assume responsibility for a substantial portion of the Museum's operating costs during this period, the City would retain responsibility for a basic level of landlord responsibilities as detailed in the Lease Agreement and outlined in the separate Agenda Report for the Lease. In addition, the City would maintain responsibility for the debt service on the Museum's collections storage facility, which will expire in 2021.

BACKGROUND--PSA

The Oakland Museum of California has operated for the past two decades as a public/private partnership of the City and the Foundation, formalized through a five-year M&O Agreement, approved in October 2006. Since the M&O Agreement expires in a few months, it became necessary for the City and the Foundation to review operations of the Museum and negotiate a new structure.

The growth and development of the Museum through its major renovation project have made it a much more complex organization, with demands for increased interpretive efforts, audience development initiatives, and collection access that would make it extraordinarily difficult for the

Museum to withstand further cuts in staffing. Further, the more rigorous standards for the museum field, as articulated through the accreditation process of the American Association of Museums (AAM), require an increased level of efficiency, accountability, and stewardship than at any time in the history of museums. The Museum's current bi-furcated structure – with two budgets, two employee structures, and two governing bodies – makes the organization not only inefficient in its operation, but out of compliance with the recommended standards of AAM accreditation.

The Museum staff is currently 45% City and 55% Foundation employed, and its annual operating budget of approximately \$15 million is also split, with the City supporting 45% of the operating costs, primarily in staffing, facility operations and maintenance, and debt service for the Museum's collection facility. Standards for museums require clear and effective structures that advance an institution's mission. Management and operations by a single entity will allow the Museum to function more efficiently and with the flexibility required of cultural institutions in the 21st century. In addition, the City can no longer provide the specialized functions required for collection stewardship and access. As noted by the American Association of Museums, museums must manage, document, research, preserve, and ensure access to their collections and the City is not equipped to meet these standards within the current staffing structure or with limited funding.

Finally, with the City's very serious financial challenges, it must focus on its core services and determine what services it is able to continue, and what operations are better performed by another entity. The Museum's long-term financial and organizational sustainability require that it operate independently of the City so that it is able to attract long-term funding from the philanthropic community and so that donors are ensured that their funding will be allocated in the most appropriate way to advance the Museum's mission.

Negotiations between the City and Foundation leadership began in fall 2010. It was determined that the most appropriate course of action was for the City to cease management and operations at the Museum and enter into two agreements with the Foundation for operation of the Museum: a Professional Services Agreement and a Lease Agreement for the City facilities. The two agreements are linked, although the Lease Agreement must be approved by a separate ordinance. The goals of the Professional Services Agreement are:

- To ensure care of the City's collection of art works, history artifacts, and natural science specimens at the very highest level to ensure continued accreditation by the American Association of Museums;
- To reduce the City's total financial support of the Museum by \$1 million in the upcoming three fiscal years (from the City's projected baseline budget of \$6.5 million in FY 2012), and declining as shown in the above chart;

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- To structure the agreement and related funding in a way to ensure the Museum's continued vitality, long-term financial sustainability and capacity to attract funding for ongoing operations as well as endowment.

KEY ISSUES AND IMPACTS--PSA

The primary issue related to the City ceasing its operations of the Museum is the reduction of the workforce of 44.95 FTE employees. These employees would be laid off as part of the City-wide budget reduction in the current fiscal year. Of these employees, several have many years of service and may choose to retire. Others are in City-wide classifications and will likely have seniority to be re-assigned to other departments. While the City has no control over the Foundation's process for hiring, the Foundation has communicated a hiring process whereby former City employees in Museum-specific classifications who are qualified and eligible for new positions in the Foundation will have the opportunity to apply and be hired in Museum positions prior to their lay-off from the City. It is anticipated that the majority of current City employees in these classifications at the Museum will either retire or be employed by the Foundation.

The City notified employees of the possibility of ceasing operations of the Museum in November 2010, six months before any anticipated impact on staff. The City has been participating in meet-and-confer meetings with Local 1021 and Local 21 representatives over the past month during the course of the negotiations.

POLICY DESCRIPTION --PSA

Through execution of the PSA and accompanying Lease Agreement, the City and the Foundation will ensure the Museum's long-term financial sustainability and community service; enable appropriate care, preservation, and presentation of the City's extraordinary collection of art work, artifacts, and specimens; maintain the care of the City's landmark Museum building and collection storage facility. The PSA also advances the City's mission of offering outstanding educational programs and cultural activities for Oakland's diverse citizenship and providing resources that attract visitors to the area, thereby supporting the City's economic development.

SUSTAINABLE OPPORTUNITIES --PSA

Through execution of the Professional Services Agreement, the City will help ensure the Oakland Museum of California's continued service to Oakland residents and visitors.

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Economic: Museum jobs funded through the Foundation will be subject to the requirements of equal benefits and living wage ordinances. Funds generated by the Foundation through fundraising, memberships, admissions, and other revenue-generating activities will be applied directly to Museum educational and exhibition activities. It is anticipated that these activities will serve more than 1,750,000 people each year, including 50,000 school children.

Environmental: Approval of this Agreement will not provide specific environmental opportunities.

Social Equity: Museum exhibitions, programs, and collections reflect and welcome the diverse populations of Oakland, the Bay Area, and California, and Museum marketing and communication efforts extend to the City's various cultural communities. The Museum maintains a commitment to community accessibility through a monthly free admission program, low costs programs for Oakland schools, subsidized bus transportation for school field trips, and low-cost admission programs for students, youth, and seniors.

DISABILITY AND SENIOR CITIZEN ACCESS--PSA

Through recent renovations, the Museum has improved accessibility to its facility with the addition of ADA ramps, accessible restrooms, and other amenities. In addition to compliance with the American with Disabilities Act and other non-discrimination laws, accessibility to the galleries and Museum collections is made possible through interpretive aids such as closed captioning. Finally, through the Museum's volunteer programs, many senior citizens are provided with opportunities for involvement and service to the City.

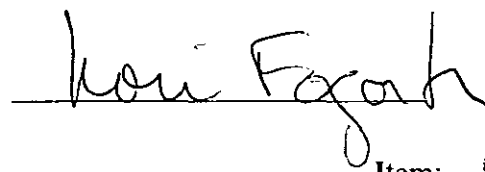
RECOMMENDATION(S) AND RATIONALE--PSA

Staff recommends that the City Council approve a resolution authorizing the City Administrator to negotiate and execute a Professional Services Agreement between the City of Oakland and the Oakland Museum of California Foundation.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests approval of the proposed resolution and appropriate funds for the services over the ten-year period.

Respectfully submitted,



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Lori Fogarty
Executive Director
Oakland Museum of California

APPROVED AND FORWARDED TO THE
CITY COUNCIL

Office of the City Administrator

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**EXHIBITS A1 and A2
(immediately following)**

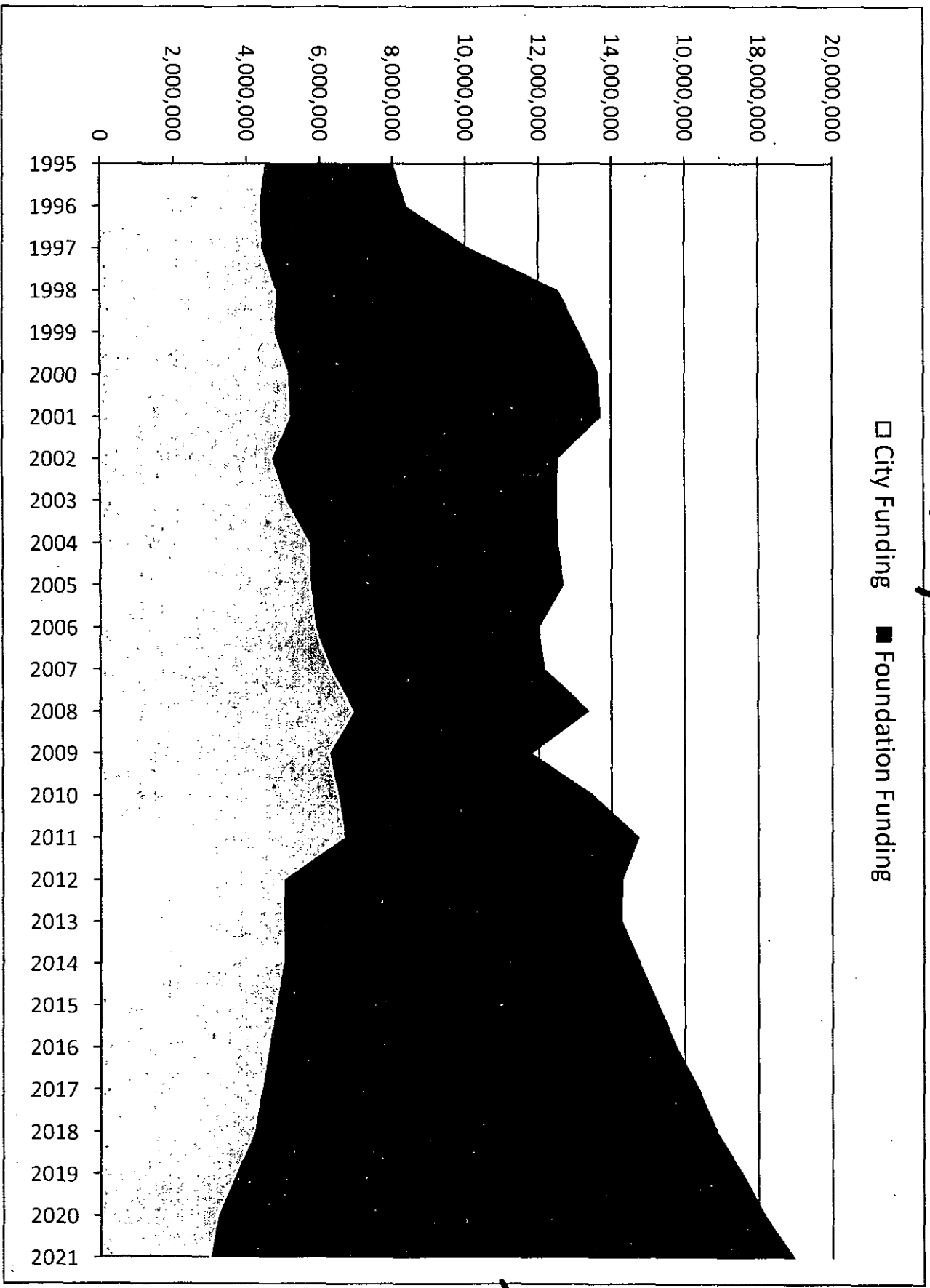
A1

Chart showing City and Foundation contributions to Museum Operating costs 1990-2011.

A2

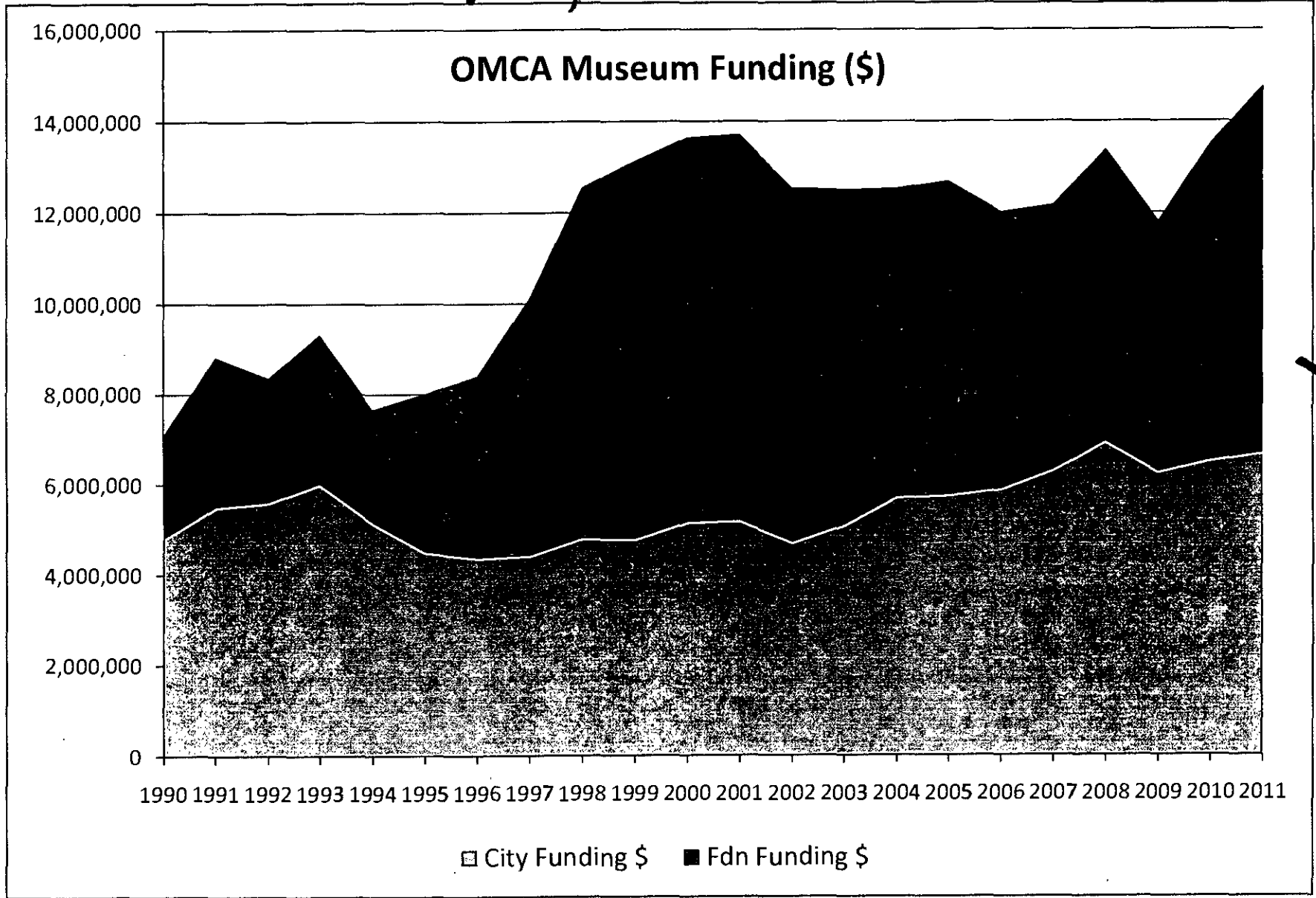
Chart showing City and Foundation contributions to Museum Operating costs 1990-2021.

A1



A1

A2



A2

EXHIBIT B
(Copy of Scope of Services, Schedule A to PSA)

SCHEDULE A--- SCOPE OF SERVICES

With a history that dates back 100 years to OMCA's predecessor organizations – the Oakland Public Museum, the Oakland Art Gallery, and the Snow Museum of Natural History, all civic institutions founded by the City of Oakland – the Oakland Museum of California ("Museum") has an extraordinary tradition as a cultural institution that has been created, nurtured, and supported by the City and its residents for many decades. The Museum's collections are the most complete resource on California's natural, artistic, and social history anywhere in the State and is held in public trust by the City of Oakland as one of the City's most valuable assets for the public good.

The Foundation's scope of services includes the following:

Collection Care

- Oversee acquisition, cataloguing, storage, research, and care for Museum collection of art, history, and natural sciences collections
- Make collections available through exhibitions, loans to other institutions, and on-line presentation
- Undertake preservation, security and conservation efforts for collections (cleaning, restoration treatment, using technology to protect, preventative maintenance, etc.)
- Present and interpret collections through exhibitions and public programs
- Ensure that collection care policies and practices adhere to the standards of an accredited museum by the American Association of Museums. (The Museum has a full range of collection-related policies that were submitted for its AAM accreditation and are maintained and adhered to on an ongoing basis: Accession and Deaccession Policies; Collection Planning; Conservation; Loans; Facility Reporting, etc.)

Programming

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- Present a balanced and diverse schedule of public programs including temporary and long-term exhibitions, educational programs, public events, temporary exhibitions collection installations, school programs, family programs, adult public programs, community programs, Web and on-line programs, etc. On-site and off-site programs as the Museum develops and installs exhibitions at off-site facilities and locations. Off-site education programs in schools, libraries, etc.
- Ensure accessible hours of operation. Currently, the Museum is open 11 am to 5 pm Wednesday, Thursday, Saturday and Sunday and 11 am to 9 pm on Friday. The Museum is free to the public for no less than one day of each month.
- Oversee all on-site visitor services including admissions, volunteer gallery guides, and volunteer ambassadors
- Coordinate with Museum volunteer groups on development and presentation of programs for the public.
- Oversee all on-site Museum events including Museum donor, member, and public events and facility rentals by external clients

Educational Programs

- Programming for school children and accessibility for Oakland schools.

Charges and Fees

- The Foundation/Museum sets prices for all services including admission, membership, facility rental, program fees, etc. Also charge modest fees for rights and reproduction, loans, etc.

Administration

- Oversee preparation of Museum and Foundation annual operating budget. Responsible for all annual operating costs for the Museum consistent with applicable provisions in the Lease.
- Produce CIP budget for major facility repairs to the City during its annual budget cycle. Oversee all aspects of Museum payroll, accounts payable and receivable, grant administration.
- Oversee insurance, tax-filing, etc. (This is separate from the collections insurance or general liability insurance that the City will maintain).
- Oversee bank accounts and banking relationships
- Oversee stewardship and investment of the Foundation's endowment
- Oversee the Museum's information technology infrastructure including data, internet, phone system, and all proprietary systems such as finance,

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development, collections management system, in-gallery media, ticketing, security and surveillance, etc.

Marketing

- Undertake all marketing and communication initiatives for and regarding the Museum, its collections and programs through press, advertising, promotions, collateral, social media and the Web, publications, etc.

Development and Membership

- Undertake all fundraising activities for the Museum including membership; individual and institutional fundraising; and donor relations and stewardship for operating, programmatic, and capital campaigns.

Museum Store, Restaurant, and Parking Lot

- Oversee operation or concession of Museum Store, Restaurant and Garage.

Facility Operation

- Foundation must maintain adequate security measures, including but not limited to, alarms, surveillance cameras, sensors and any new technology available in the future.
- Oversee any major renovation projects for the Museum facility, including Measure G projects.

City Payments to Foundation

Year	City Funding \$MM	Foundation Funding \$MM	Total Museum Budget \$MM
1	\$5.0	\$9.0	\$14
2	\$5.0	\$9.3	\$14.3
3	\$5.0	\$9.8	\$14.8
4	\$4.8	\$10.5	\$15.3
5	\$4.6	\$11.2	\$15.8
6	\$4.4	\$12.0	\$16.4
7	\$4.2	\$12.7	\$16.9
8	\$3.7	\$13.9	\$17.6

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9	\$3.2	\$15.0	\$18.2
10	\$3.0	\$16.0	\$19

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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND
THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION**

Whereas, the City Council has authorized the City Administrator to enter into contracts for professional or specialized services if the mandates of Oakland City Charter Section 902(e) have been met.

Now therefore the parties to this Agreement covenant as follows:

1. Parties and Effective Date

This Professional Services Agreement (“Agreement”) is made and entered into as of _____, 2011 between the City of Oakland, a municipal corporation, (“City”), One Frank H. Ogawa Plaza, Oakland, California 94612, and The Oakland Museum of California Foundation (“Foundation”).

Scope of Services: Care and Conservation of the City Collections Regarding the City’s collections of art and artifacts housed at the Oakland Museum of California or associated facilities (“Museum”. and “Collections”), the City and Foundation agree that as of the commencement date of this Agreement, the Foundation (or its successor organization) shall care for, conserve, steward, research and provide scholarly and interpretive expertise in support of the Museum’s Collections of close to 2 million artworks, artifacts, and natural science specimens related to California’s cultural and natural history.

The Foundation agrees to perform the services specified in Schedule A, Scope of Services, attached to this Agreement and incorporated herein by reference. All services will be performed by the Foundation according to the standards of the American Association of Museums. The City and Foundation agree to abide by and comply with the standards of the American Association of Museums, including regulations concerning all accessions and all deaccessions.

The Foundation hereby designates the Executive Director of the Foundation to be responsible for communications with the City for the duration of this Agreement.

2. Time of Performance; Term; Options to Renew

- a. The Parties have entered into a Lease Agreement (“Lease”) regarding the Premises (as defined in the Lease) of the Museum as of the date of this Agreement, which Lease is intended to be read with this Professional Services Agreement (“PSA”). Foundation’s services shall begin on the commencement date as specified in the Lease. This Agreement shall continue for a term of ten (10) years from the commencement date, and shall continue if the Foundation exercises any options. If the parties fail to negotiate a new agreement, regardless of term, this Agreement shall terminate and shall be cause for the Lease Agreement to terminate simultaneously.
- b. The Foundation shall have the option to renew this Agreement for ten (10) years on the same terms and conditions provided it gives City written notice to exercise such option at least ninety (90) days prior to the then expiration date of the Agreement. If the

Foundation elects to exercise this option, this Agreement shall be amended to specify the new termination date of the Agreement. If the parties fail to negotiate a new agreement, regardless of term, the current agreement shall terminate and shall be cause for the Lease Agreement to terminate simultaneously

- c. The Foundation shall have consecutive options to renew this Agreement for ten (10) years on the same terms and conditions until the termination of the Lease Agreement, currently set as June 30, 2036. At any time if the parties fail to negotiate a new agreement, regardless of term, the current agreement shall terminate and shall be cause for the Lease Agreement to terminate simultaneously.

3. Compensation and Method of Payment; Annual Report of Services Provided

The Foundation will be paid for performance of the scope of services as set forth in Schedule A and below, the annual amount of Five Million Five Hundred Thousand Dollars (\$ 5,000,000.00), subject to adjustment as provided herein. Each payment shall be made in advance on the commencement date and on each July 1 thereafter. See Exhibit A attached hereto and incorporated herein for schedule of declining annual City payments.

Year	City Funding \$MM	Foundation Funding \$MM	Total Museum Budget \$MM
1	\$5.0	\$9.0	\$14
2	\$5.0	\$9.3	\$14.3
3	\$5.0	\$9.8	\$14.8
4	\$4.8	\$10.5	\$15.3
5	\$4.6	\$11.2	\$15.8
6	\$4.4	\$12.0	\$16.4
7	\$4.2	\$12.7	\$16.9
8	\$3.7	\$13.9	\$17.6
9	\$3.2	\$15.0	\$18.2
10	\$3.0	\$16.0	\$19

Foundation shall provide to City, or, at City's election to the Life Enrichment Committee, an annual report regarding the Services provided during the preceding fiscal year for the duration of this Agreement.

4. Independent Contractor

a. Rights and Responsibilities

It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Foundation shall be, and is, an independent contractor, and is not an employee or department of the City. Foundation has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Foundation

in the performance of Foundation's services hereunder. Foundation shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Foundation's own acts and those of Foundation's subordinates and employees. Foundation will determine the method, details and means of performing the services specifically set forth in Schedule A.

b. Foundation's Qualifications

Foundation represents that Foundation has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of City. The Foundation warrants that the Foundation, and the Foundation's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Foundation's performance of the services. All services provided pursuant to this Agreement shall comply with all applicable laws and regulations. Foundation will promptly advise City of any change in the applicable laws, regulations, or other conditions that may affect the services. This means Foundation is able to fulfill the requirements of this Agreement. Failure to perform, in all material respects, all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Foundation has complete and sole discretion for the manner in which the Services under this Agreement are performed. Prior to execution of this Agreement, Foundation shall complete Schedule M, Independent Contractor Questionnaire, attached hereto.

c. Payment of Income Taxes

Foundation is responsible for paying, and when due, all, if any, income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Foundation for services under this Agreement. On request, Foundation will provide the City with a statement of no taxes due or proof of timely payment. Foundation agrees to indemnify the City for any claims, costs, losses, fees, penalties, interest or out-of-pocket actual damages suffered by the City resulting from Foundation's failure to comply with this provision.

d. Exclusive Relationship

Foundation may not perform services similar to those required under this Agreement for any additional clients, persons or companies.

e. Employees, Tools, Materials and Equipment

Foundation will supply all personnel, tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City

The City agrees to comply with all reasonable requests of Foundation necessary to the performance of Foundation's duties under this Agreement.

g. Extra Work

Foundation will do no extra work under this Agreement without first receiving prior written authority from City.

5. Proprietary of Confidential Information of the City

Foundation understands and agrees that, in the performance of the services under this Agreement or in contemplation thereof, Foundation may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Foundation agrees that all information disclosed by the City to Foundation shall be held in confidence and used only in performance of the Agreement. Foundation shall exercise the same standard of care to protect such information as a reasonably prudent person would use to protect its own proprietary data.

6. Ownership of Results

Any interest of Foundation or its subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Foundation or its subcontractors in drawings, plans, sheets or other connection with Services to be performed under this Agreement shall be assigned and transmitted to the City upon the reasonable written request thereof. However, Foundation may retain and use copies for reference and as documentation of its experience and capabilities.

7. Copyright

Foundation shall own any and all copyrights that may be created by Foundation or its employees in the works created and performance of the services pursuant to this Agreement, and the City shall have no right or interest, and disclaims any right or interest, in any such copyright or the proceeds from any sale or distribution thereof. Any existing copyrights owned by City shall continue to be owned by City.

8. Audit

Foundation shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received from the City under this Agreement; and (b) full and complete documentation of its performance of the services under this Agreement.

Foundation shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Foundation under this Agreement.

In addition to the above, Foundation agrees to comply with all audit, inspection, recordkeeping and fiscal reporting requirements incorporated by reference.

9. Agents/Brokers

Foundation warrants that Foundation has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Foundation working solely for Foundation, to solicit or secure this Agreement, and that Foundation has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from this Agreement.

10. Assignment

Foundation has informed City that it is anticipating reincorporating prior to the commencement date, with the successor not-for-profit corporation continuing to fulfill the obligations of Foundation under this Agreement. Upon such reincorporation, Foundation and City shall execute an Assignment of Professional Services Agreement binding the new corporation to all the terms and conditions of this Agreement. Other than as stated above, Foundation shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

11. Publicity

Foundation shall be solely responsible for any and all publicity for Museum, its events and exhibits. That publicity shall include but not be limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles. Foundation's responsibilities for publicity shall exist during the term of this Agreement and, as may be agreed at the time between Foundation and City, up to one year thereafter.

12. Title of Property

Title to property, real and personal, acquired by the Foundation with City funds, when any item of such property exceeds the cost of \$25,000, shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Foundation acknowledges it is responsible for the protection, maintenance and preservation of all such property currently in existence and any newly acquired property held in custody for the City during the term of the Agreement. The Foundation shall, upon termination of this Agreement, deliver to the City all of

such property and documents evidencing title to same. In the case of material damage or loss of, or stolen items or equipment, the Foundation shall immediately notify the Police Department, attempt to obtain a written police report and, in the case of any material loss, notify the City in accordance with "Notice" section of this Agreement.

Foundation shall provide to the City Auditor all property-related audit and other reports required under this Agreement.

Prior to the disposition or sale of real or personal property, if material to Services to be provided pursuant to this Agreement, be of value in excess of \$25,000 and acquired with City funds, Foundation shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. Surplus supplies and equipment – Disposal or Destruction.

13. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Foundation must provide the insurance as required in Schedule Q and additionally as required in the Lease Section 9.4 and 9.5 during the term of this Agreement.

[Note -- Need to define the City's insurance requirements for the collection.]

14. Indemnification

- a. Notwithstanding any other provision of this Agreement, Foundation shall indemnify and hold harmless (and at City's request,) defend City, and each of its respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:
- (i) Breach of Foundation's obligations, representations or warranties under this Agreement;
 - (ii) Act or failure to act in the course of performance of the services by Foundation under this Agreement;
 - (iii) Negligent or willful acts or omissions in the course of performance of the services by Foundation under this Agreement;
 - (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Foundation;

- (v) Unauthorized use or disclosure by Foundation of Confidential Information as provided in Section 6 above; and
 - (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party.
- b. For purposes of the preceding Subsections (i) through (vi), the term “Foundation” includes Foundation, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.
 - c. City shall give Foundation prompt written notice of any such claim of loss or damage and shall cooperate with Foundation, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.
 - d. Notwithstanding the foregoing, City shall have the right, if Foundation fails or refuses to defend City with counsel reasonably acceptable to City, to engage its own counsel for the purposes of participating in the defense. In no event shall Foundation agree to the settlement of any claim described herein without the prior written consent of City.
 - e. Foundation acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Foundation by City and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Foundation's liability under this Agreement shall not apply to any action or claim arising from the negligence or willful misconduct of an Indemnitee.
 - f. All of Foundation's obligations under this Section 15 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.
 - g. The indemnity set forth in this Section 15 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to payment of Foundation in accordance with the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable.

15. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City, as appropriate, from any monies due to Foundation by reason of any claim or counterclaim arising out of i) this Agreement, or ii) any purchase order, or iii) any other transaction with Foundation .

16. Prompt Payment Ordinance

This contract is subject to the Prompt Payment Ordinance of Oakland Municipal Code, Title 2, Chapter 2.06 (Ordinance 12857 C.M.S, passed January 15, 2008 and effective February 1,

2008). The Ordinance requires that, unless specific exemptions apply, the Foundation and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Foundation or its subcontractors notify the Liaison in writing within five (5) business days that there is a bona fide dispute between the Foundation or its subcontractor and claimant, in which case the Foundation or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed late payments are subject to investigation by the City of Oakland Liaison, Office of Contract Compliance, upon the filing of a complaint. Foundation or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. If Foundation or its subcontractor fails or refuses to deposit security, the City will withhold an amount sufficient to cover the claim from the next Foundation payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Foundation and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this Agreement.

17. Termination on Notice

The City may terminate this Agreement if Foundation is in breach in any material respect with the services to be provided hereunder, and the breach has not been cured by Foundation within thirty (30) calendar days after receipt of written notice of breach from City. Termination shall become effective on City giving thirty (30) calendar days' written notice of termination to Foundation. Unless otherwise terminated as provided in this Agreement, this Agreement will terminate on the date specified in Section 2 hereof.

18. Conflict of Interest

a. Foundation

The following protections against conflict of interest will be upheld:

- i. Foundation certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Foundation certifies that no member, officer, or employee of the 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 services covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

- iii. Foundation shall immediately notify the City of any real or possible conflict of interest between Services performed for the City and for other clients served by Foundation.
- iv. Foundation warrants and represents, to the best of its present knowledge, that no City public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Foundation shall exercise due diligence to ensure that no such official will receive such an interest.
- v. Foundation further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Foundation to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Foundation or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 in the previous year. Foundation agrees to promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Foundation's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).
- vi. Foundation understands that in some cases Foundation or persons associated with Foundation may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Foundation further understands that, as a public officer or official, Foundation or persons associated with Foundation may be disqualified from future City contracts to the extent that Foundation is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

vii. Foundation shall incorporate or cause to be incorporated into all material subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Foundation understands and agrees that, if the City reasonably determines that Foundation has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may, upon 30 days prior written notice to Foundation, 1) suspend payments under this Agreement or terminate this Agreement or 2) require reimbursement by Foundation to City of amounts disbursed in violation of this Section 18 of this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Foundation is responsible for the conflict of interest situation. If the City elects to suspend payments under this Agreement, Foundation, on 30 days prior written notice to City, may elect to terminate this Agreement.

19. Non-Discrimination/Equal Employment Practices

Foundation shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Foundation agrees as follows:

- a. Foundation and Foundation's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. 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 orientation, gender identity, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

- c. 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.
- 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.

20. Local and Small Local Business Enterprise Program (L/SLBE)

- a. *Requirement* - There is a twenty percent (20%) minimum participation requirement for all professional services contracts of \$50,000 or more. Foundation shall comply with the twenty percent (20%) local business participation requirement at a rate of ten percent (10%) local and 10% small local business participation. The requirement may be satisfied by a certified prime consultant and/or sub-consultant(s) or a small local certified firm may meet the twenty percent requirement. A business must be certified by the City of Oakland in order to earn credit toward meeting the twenty percent requirement.
- b. *Good Faith Effort* - In light of the twenty percent requirement, good faith effort documentation is not necessary.
- c. *Incentives* - Upon satisfying the twenty percent requirement, a consultant will earn two (2) preference points. Three additional preference points may be earned at a rate of one point for every additional ten percent participation up to fifty percent participation of the total contract dollars attributable to local certified firms.
- d. *Banking* - The City will allow banking of credits for L/SLBE participation that exceeds fifty percent (50%) on a City funded project and will allow consultants to accumulate credits for hiring certified local businesses and certified small local businesses on non-city funded projects within a year of the City funded project. Banked credits will count toward achieving a bid discount or preference points (up to 2%) on a City contract. The ability of firms to bank credits or hours on non-City projects will not be retroactive. Consultants will have one year to apply credits. A certificate validating banked credits must be issued by the City prior to the submittal or bid date.
- e. *The Exit Report and Affidavit (ERA)* - This report declares the level of participation achieved and will be used to calculate banked credits. The prime consultant must complete the Schedule F, Exit Report and Affidavit for, and have it executed by, each L/SLBE sub consultant and submitted to the City Administrator's Office of Contract Compliance & Employment Services along with a *copy* of the final progress payment application.

- f. Joint Venture and Mentor Protégé Agreements. If a prime contractor or prime consultant is able to develop a Joint Venture or “Mentor-Protégé” relationship with a certified LBE or SLBE, the mentor or Joint Venture partners will enjoy the benefit of credits against the participation requirement. In order to earn credit for Joint Venture or Mentor-Protégé relationships, the Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts. Joint Venture Applications and elements of City approved Mentor Protégé relation are available upon request.
- g. Contractor shall submit information concerning the ownership and workforce composition of Contractor’s firm as well as its subcontractors and suppliers, by completing Schedule D, Ownership, Ethnicity, and Gender Questionnaire, and Schedule E, Project Consultant Team, attached and incorporated herein and made a part of this Agreement.
- h. All affirmative action efforts of Contractor are subject to tracking by the City. This information or data shall be used for statistical purposes only. All contractors are required to provide data regarding the make-up of their subcontractors and agents who will perform City contracts, including the race and gender of each employee and/or contractor and his or her job title or function and the methodology used by Contractor to hire and/or contract with the individual or entity in question.
- i. In the recruitment of subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts, which include outreach to minorities and women-owned businesses as well as other segments of Oakland’s business community. The City Administrator will track the City’s MBE/WBE utilization to ensure the absence of unlawful discrimination on the basis of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- j. In the use of such recruitment, hiring and retention of employees or subcontractors, the City of Oakland requires all contractors to undertake nondiscriminatory and equal outreach efforts which include outreach to minorities and women as well as other segments of Oakland’s business community.

21. Living Wage Ordinance

Since the contract amount of this Agreement is greater than \$25,000 annually, Foundation must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires 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, Foundation must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Each such employee shall be paid an initial hourly wage rate of **\$11.15** with health benefits or **\$12.82** 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. Effective July 1 of each year, rates will be adjusted up according to the Consumer Price Index (CPI). Contractor shall pay adjusted wage rates.
- b. Health benefits – Such full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$2.67 per hour. Foundation shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Such employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accme compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. To inform employees that he or she may be eligible for Eamed Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov>. for current EIC guidelines as prescribed by the Internal Revenue Service.
- e. 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. Such notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Foundation shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 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 the 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 the list within ten (10) days after receipt of written notice that the list is more than five days overdue may result in liquidated damages of five hundred dollars (\$500.00) for each day that the list thereafter remains outstanding. Foundation shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.

- h. Foundation shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Foundation shall include the above-referenced sections in its subcontracts. Copies of the subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division promptly upon request thereof

22. Equal Benefits Ordinance

This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1, Equal Benefits-Declaration of Nondiscrimination.

23. 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, Foundation must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

24. Nuclear Free Zone Disclosure

Foundation represents, pursuant to Schedule P, Nuclear Free Zone Disclosure Form, that Foundation 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, Foundation shall complete Schedule P, attached hereto.

25. Dispute Disclosure

Entities are required to disclose pending disputes with the City of Oakland or Redevelopment Agency when they are involved in submitting bids, proposals or applications for a City or Agency contract or transaction involving:

- purchase of products, construction, non-professional or professional services,
- contracts with concessionaires, facility or program operators or managers,
- contracts with project developers, including Disposition and Development Agreements, Lease-Disposition and Development Agreements and other participation agreements
- loans and grants, or
- acquisition, sale, lease or other conveyance of real property, excluding licenses for rights of entry or use of city facilities for a term less than thirty (30) consecutive calendar days.

Disclosure is required (1) for competitive solicitations, at the time bids, proposals or applications are due for any of the above-described contracts or transactions; and (2) for contracts or transactions that do not involve competitive processes, at the commencement of negotiations when bids, proposals or applications are solicited by or submitted to the City.

The disclosure requirement also applies to pending disputes on other City and Agency contracts or projects that: (1) have resulted in a claim or lawsuit against the City of Oakland or Redevelopment Agency, (2) could result in a new claim or new lawsuit against the City of Oakland or Redevelopment Agency, or (3) could result in a cross-complaint or any other action to make the City of Oakland or Redevelopment Agency a party to an existing lawsuit. Claim includes, but is not limited to, a pending administrative claim or a claim or demand for additional compensation.

Entities that are required to disclose the information include (1) any principal owner or partner, (2) any business entity with principal owners or partners that are owners or partners in a business entity, or (3) any affiliate of such a business entity, that is involved in a pending dispute against the City of Oakland or Oakland Redevelopment Agency.

For price-base awards, the City may determine that an entity's bid is non-responsive or non-responsible if the entity fails to timely disclose pending disputes.

For bids or proposals for a professional service contract or other qualification-based awards, the City may determine in its sole discretion not to consider the entity's submission. The City may elect to terminate contracts with entities that failed to timely disclose pending disputes and/or initiate debarment proceedings against such entities. Schedule K must be completed and attached to this contract.

26. Arizona Resolution

Oakland City Council adopted the Arizona Boycott Resolution #82727 (Attachment I) on May 4, 2010 and states:

Unless and until Arizona rescinds SB 1070, the City of Oakland urges City departments:

- (1) to the extent practicable, and in instances where there is no significant additional cost to the City or conflict with law, to refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona;
- (2) to not send City officials or employees to conferences in Arizona, and
- (3) to review existing contracts for the purchase of goods and services with companies headquartered in Arizona and explore opportunities to discontinue those contracts consistent with the terms of those contracts and principles of fiscal responsibility,”

Schedule B-1 must be completed and attached to this agreement.

27. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

28. Business Tax Certificate

Foundation shall obtain and provide proof of a valid City business tax certificate if appropriate. Such certificate must remain valid during the duration of this Agreement.

29. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

30. Governing Law

This Agreement shall be governed by the laws of the State of California.

31. Notice

If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via facsimile and concurrently by prepaid U.S. certified or registered postage, addressed to recipient as follows:

City of Oakland

Oakland, CA 94612-2033

Attn: _____

The Oakland Museum of California Foundation

1000 Oak Street

Oakland, CA 94607-4892

Tel: (510) 238-3404

Attn: Executive Director

Any party to this Agreement may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to all other parties ten (10) business days before the change is effective.

32. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of Services by Foundation for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

33. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

34. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

35. Time of the Essence

Time is of the essence in the performance of this Agreement.

36. Commencement and Completion

It shall be the responsibility of the Foundation to coordinate and schedule the services to be performed so that commencement and completion take place in accordance with the provisions of this Agreement.

37. Approval

If the terms of this Agreement are acceptable to Foundation and the City, each party should sign and date below.

38. Inconsistency

If there is any inconsistency between the main agreement and the attachments/exhibits, the text of the main agreement shall prevail.

City of Oakland,
a municipal corporation

The Oakland Museum of California
Foundation, a California nfp corporation

(City Administrator's Office) (Date)

(Signature) (Date)

(Agency Director's Signature) (Date)

«Business Tax Lic»
Business Tax Certificate No.

Approved as to form and legality:

Resolution Number

(City Attorney's Office Signature) (Date)

Accounting Number

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Schedule Q

**INSURANCE REQUIREMENTS
PROFESSIONAL AND SPECIALIZED SERVICES AGREEMENTS**

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Foundation shall procure, prior to commencement of service, and keep in force for the term of this contract, at Foundation's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City; provided, however, that any such insurance required to be carried by the City under the Lease Agreement shall remain the responsibility of the City. If requested, Foundation shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

- i. Commercial General Liability insurance, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.
 - A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).
 - B. Limits of liability: Foundation shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location [project].
 - C. If the policy is a "claim made" type policy, the following should be included as endorsements:
 - 1) The retroactive date shall be the effective date of this Agreement or a prior date.
 - 2) The extended reporting or discovery period shall not be less than thirty-six (36) months.
- ii. Automobile Liability Insurance. Foundation shall maintain automobile liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall

cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Foundation does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Foundation stating that only non-owned and hired vehicles are used in the course of the contract.

- iii. **Worker's Compensation** insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than \$1,000,000. The Foundation certifies that it is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Foundation shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
- iv. **Professional Liability/errors and omissions** insurance in the amount of \$1,000,000.00.

b. Terms, Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. **Insured Status (Additional Insured)**: Foundation shall provide insured status using ISO endorsement GG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If Foundation submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and
- ii. **Cancellation Notice**: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;
- iii. **Cross-liability coverage** as provided under standard ISO forms' separation of insureds clause; and
- iv. **Certificate holder** is to be the same person and address as indicated in the "Notices" section of this Agreement; and
- v. **Insurer** shall carry any insurance from an admitted company with a Best Rating of A VII or better.

Foundation waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

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SCHEDULE A--- SCOPE OF SERVICES

With a history that dates back 100 years to OMCA's predecessor organizations – the Oakland Public Museum, the Oakland Art Gallery, and the Snow Museum of Natural History, all civic institutions founded by the City of Oakland – the Oakland Museum of California (“Museum”) has an extraordinary tradition as a cultural institution that has been created, nurtured, and supported by the City and its residents for many decades. The Museum's collections are the most complete resource on California's natural, artistic, and social history anywhere in the State and is held in public trust by the City of Oakland as one of the City's most valuable assets for the public good.

The Foundation's scope of services includes the following:

Collection Care

- Oversee acquisition, cataloguing, storage, research, and care for Museum collection of art, history, and natural sciences collections
- Make collections available through exhibitions, loans to other institutions, and on-line presentation
- Undertake preservation, security and conservation efforts for collections (cleaning, restoration treatment, using technology to protect, preventative maintenance, etc.)
- Present and interpret collections through exhibitions and public programs
- Ensure that collection care policies and practices adhere to the standards of an accredited museum by the American Association of Museums. (The Museum has a full range of collection-related policies that were submitted for its AAM accreditation and are maintained and adhered to on an ongoing basis: Accession and Deaccession Policies; Collection Planning; Conservation; Loans; Facility Reporting, etc.)

Programming

- Present a balanced and diverse schedule of public programs including temporary and long-term exhibitions, educational programs, public events, temporary exhibitions collection installations, school programs, family programs, adult public programs, community programs, Web and on-line programs, etc. On-site and off-site programs as the Museum develops and installs exhibitions at off-site facilities and locations. Off-site education programs in schools, libraries, etc.

- Ensure accessible hours of operation. Currently, the Museum is open 11 am to 5 pm Wednesday, Thursday, Saturday and Sunday and 11 am to 9 pm on Friday. The Museum is free to the public for no less than one day of each month.
- Oversee all on-site visitor services including admissions, volunteer gallery guides, and volunteer ambassadors
- Coordinate with Museum volunteer groups on development and presentation of programs for the public.
- Oversee all on-site Museum events including Museum donor, member, and public events and facility rentals by external clients

Educational Programs

- Programming for school children and accessibility for Oakland schools.

Charges and Fees

- The Foundation/Museum sets prices for all services including admission, membership, facility rental, program fees, etc. Also charge modest fees for rights and reproduction, loans, etc.

Administration

- Oversee preparation of Museum and Foundation annual operating budget. Responsible for all annual operating costs for the Museum consistent with applicable provisions in the Lease.
- Produce CIP budget for major facility repairs to the City during its annual budget cycle. Oversee all aspects of Museum payroll, accounts payable and receivable, grant administration.
- Oversee insurance, tax-filing, etc. (This is separate from the collections insurance or general liability insurance that the City will maintain).
- Oversee bank accounts and banking relationships
- Oversee stewardship and investment of the Foundation's endowment
- Oversee the Museum's information technology infrastructure including data, internet, phone system, and all proprietary systems such as finance, development, collections management system, in-gallery media, ticketing, security and surveillance, etc.

Marketing

- Undertake all marketing and communication initiatives for and regarding the Museum, its collections and programs through press, advertising, promotions, collateral, social media and the Web, publications, etc.

Development and Membership

- Undertake all fundraising activities for the Museum including membership; individual and institutional fundraising; and donor relations and stewardship for operating, programmatic, and capital campaigns.

Museum Store, Restaurant, and Parking Lot

- Oversee operation or concession of Museum Store, Restaurant and Garage.

Facility Operation

- Foundation must maintain adequate security measures, including but not limited to, alarms, surveillance cameras, sensors and any new technology available in the future.
- Oversee any major renovation projects for the Museum facility, including Measure G projects.

City Payments to Foundation

Year	City Funding \$MM	Foundation Funding \$MM	Total Museum Budget \$MM
1	\$5.0	\$9.0	\$14
2	\$5.0	\$9.3	\$14.3
3	\$5.0	\$9.8	\$14.8
4	\$4.8	\$10.5	\$15.3
5	\$4.6	\$11.2	\$15.8
6	\$4.4	\$12.0	\$16.4
7	\$4.2	\$12.7	\$16.9
8	\$3.7	\$13.9	\$17.6
9	\$3.2	\$15.0	\$18.2
10	\$3.0	\$16.0	\$19

SCHEDULE A-1—FINANCES AND REPORTING REQUIREMENTS

The Foundation will submit to the City of Oakland reports on the Museum as follows:

- Annual report provided to Foundation members and donors to include the annual audit and an overview of the activities during the fiscal year;
- Annual report to the City Life Enrichment Committee on Museum activities including exhibitions, educational programs, loans, acquisitions and deaccessions as well as any plans for facility improvements, renovations, or capital expenditures.

To the extent not provided in the reports noted above, the Foundation will submit to the City of Oakland reports on the Museum's financial condition as follows:

1. Bi-annual report on the expenditure of the funds paid through the Professional Services Agreement on collection care, stewardship, presentation, interpretation, and programming as well as supporting activities including administration, marketing, development, and visitor services (to be submitted by January 31 for the period July 1 – December 31 and by July 31 for the period January 1 – June 30);
2. Annual submittal of Foundation audit of financial results performed by an independent auditor that includes a review of Foundation assets and liabilities;
3. Annual submittal of Foundation operating budget by June 15 for the fiscal year beginning July 1 reflecting projected annual revenue and expenditures as well as beginning and year-end balance sheets and cash flow projections;
4. Annual submittal of Foundation final operating expenses by December 31 for the fiscal year preceding (ending the prior June 30) that reflects actual revenue and expenditures;
5. Annual submittal of Foundation balance sheet by July 1 for each fiscal year;
6. Annual report to the City Life Enrichment Committee on Museum activities including, loans, acquisitions and deaccessions as well as any plans for facility improvements, renovations, or capital expenditures;

7. Annual report by July 30 on funds available in the restricted account for Museum acquisitions and highlighting any activity from the previous year (ie interest earned; funds used for acquisitions; donated fund; funds secured through deaccession).

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