

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006/09/11 PM 6:13

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Oakland Museum of California
DATE: September 12, 2006

RE: **Resolution Authorizing the City Administrator to Execute a Ten-Year Management/Operations Agreement between the City of Oakland and the Oakland Museum of California Foundation**

SUMMARY

Staff has prepared a management/operations agreement between the City of Oakland and the Oakland Museum of California Foundation providing, for the first time, a formal delineation of roles and responsibilities between the City, which owns the Museum facility and its collection, and the Foundation, a non-profit corporation established in 1989 to support the Museum.

The creation of this management/operations agreement is necessary for a number of reasons including:

- The Foundation now raises approximately one-half of the Museum's overall budget and through contributions, fees, and earned revenues, supports Museum activities and employs staff who provide administrative, marketing, development, curatorial and other services;
- The Foundation is managing projects with \$23.6 million in Measure G funding designated for Museum improvements and may perform similar functions with future bonds and other public moneys; and
- The Foundation is undertaking a major capital campaign to complete the first major renovation of the Museum building and galleries. Clarification of the City and Foundation's respective roles and responsibilities is important to the success of this fundraising effort.

The Agreement serves the following functions:

- Summarizes the continuation of the City and Foundation's respective functions in support of the Museum;
- Stipulates the application of revenues from various sources;
- Clarifies the process for hiring, terminating and evaluating the Executive Director;
- Augments representation for the City on the Foundation's Board of Trustees through a designee of the City Administrator; and

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- Ensures that the Foundation will adhere to the City's non-discrimination/equal employment and living wage requirements and other City requirements.

The management/operations agreement will help ensure that the Museum operates in an efficient and fiscally sound manner in support of the City Council's goal of providing outstanding cultural and educational experiences to the diverse population of Oakland.

City Council approval is requested to authorize the City Administrator to execute the management/operations agreement on behalf of the City.

FISCAL IMPACT

The management/operations agreement lays out the functions of the City and the Foundation including the Foundation's operation of the Museum's visitor services, store, facility rental, and Conservation Lab functions. With the execution of the agreement, revenues from most of these operations will be retained by the Foundation for the benefit of the Museum, its operations, and its visitors. In the past and prior to the 2005-07 Budget Cycle, the City received a portion of the net income from admissions, but due to costs associated with admission staffing as well as marketing and organizing exhibitions, the net income associated with admissions is negligible and will be utilized by the Foundation to support visitor services staffing and related Museum marketing costs. The Foundation agrees to retain the current practice of one free admission day each month, and to provide access to community organizations for facility rental through the Community Access Grant program.

In recent years, the City has retained 100% of the revenue from the restaurant concession and this will continue until a future renegotiation of the concessionaire contract when a revenue-sharing arrangement will be discussed. The Foundation is currently considering improvements to the restaurant as part of its overall building renovation project which could improve concession proceeds. If the Foundation does invest in these improvements, a new revenue-sharing arrangement could be considered that would provide an incentive for the Foundation to improve the restaurant operations in order to retain a share of proceeds.

The parking concession will also be retained by the City with the provision that the parking rental operation will be reviewed as part of the City's budget cycle.

In addition, the agreement stipulates that the City agrees to make "best efforts" to fund the Museum and maintain the level of service set forth in Fiscal Years 2005-07 for a period of five years from the date of the Agreement. This commitment is critical to the Foundation's capital

campaign fundraising efforts to ensure major donors that their contributions will not simply offset potential loss of City funding.

The Oakland Museum of California Foundation currently has an outstanding debt to the City of \$651,686 representing a combination of admission revenue over a several year period and pooled personnel costs for temporary exhibitions. The Foundation's current assets would not allow repayment of this debt at this time, and this matter will be resolved outside the scope of this agreement.

BACKGROUND

The need for a formal agreement between the City and the Foundation was recognized by both parties as a result of several events including the hiring of a new Executive Director and shared responsibility for the Museum's building renovation. In addition, the Foundation's annual audit called for the clarification of roles and revenue-sharing and, furthermore, during the Foundation's current fundraising campaign, donors have inquired about the City's commitment to fund ongoing Museum operations.

The terms for the agreement were determined through negotiation between the City Administrator and the Chairman of the Board of the Oakland Museum of California Foundation, with advice and assistance from the City Attorney's Office.

KEY ISSUES AND IMPACTS

The Oakland Museum, as a public museum, is a department of the City of Oakland, but is jointly operated by the City of Oakland and the private, non-profit Oakland Museum of California Foundation. The Museum has a permanent staff of approximately 80 full-time and 25 part-time employees and an annual operating budget of approximately \$12.6 million. Of this, about half of the Museum's income is funded by the City of Oakland, including a portion of staff salaries (primarily in the area of core Museum functions, including administration, accounting, security, and collections care), facility expense, and basic operations, such as landscaping and custodial services. Over the past several years, Foundation support of the Museum has grown considerably. The Foundation now supports staff salaries and related expenses, primarily in the development, membership, marketing and public relations, visitor services, and education departments, and funds all temporary exhibitions and education programs. Foundation funding

is derived from a combination of contributed income and earned revenue through memberships, the museum store, and admissions. Expenses associated with these revenue streams, including staff and marketing expenses, are also borne by the Foundation.

In addition to clarifying the oversight and application of revenue streams described above, the management/operations agreement includes the following key points:

- The City and Foundation agree to coordinate on strategic planning for the Museum in order to improve coordination between the two entities in operating the institution. The City and Foundation also agree to coordinate in developing their respective budgets.
- The City Administrator will appoint a designee to the Foundation Board whose appointment will be subject to discussion between the Foundation Board Chair and the City Administrator. This designee is in addition to the current practice, per the Foundation's by-laws, of Mayoral appointment and City Council confirmation of Foundation trustees.
- The Foundation will adhere to the *non-discrimination/equal employment practices and living wage requirements* in its hiring and contracting practices.
- The Museum will retain its monthly free admission day in order to ensure broad public accessibility.
- The Museum will make its facility accessible for rental to qualified community groups through the Community Access Grant program.

POLICY DESCRIPTION

Through execution of the Agreement, the City and the Foundation will be better able to meet the Museum's mission, as outlined in the City of Oakland 2005-07 policy budget, to provide:

- Exemplary collections, exhibitions and educational services in ways that generate wider public understanding of California's environment, history and art; to create a broad passion and support for the museum; and,
- Safe, clean and accessible facilities and foster engaging programs reflecting the diversity of the Oakland community.

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SUSTAINABLE OPPORTUNITIES

Through execution of the 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 150,000 people each year, including 50,000 school children.

Environmental

Approval of this Agreement will not provide specific environmental opportunities.

Social Equity

The Foundation manages Measure G funded projects that will transform the Museum's galleries to better reflect and welcome the diverse populations of Oakland, the Bay Area, and California. For example, information in the galleries will be provided in multiple languages, and the History Gallery will embrace the stories of the diverse cultural communities of the state. The Museum will retain a monthly free admission day to ensure community accessibility.

DISABILITY AND SENIOR CITIZEN ACCESS

Through Measure G projects overseen by the Oakland Museum of California Foundation, improvements will be made to the Museum facility and galleries to ensure their accessibility to visitors and staff with disabilities. In addition to compliance with the American with Disabilities Act and other non-discrimination laws, accessibility to the galleries will be improved 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 and these opportunities will be expanded with the Museum's expansion and renovation.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve a resolution authorizing the City Administrator or her designee to execute a management/operations agreement between the City of Oakland and the Oakland Museum of California.

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ACTION REQUESTED OF THE CITY COUNCIL

The Oakland Museum of California requests that the City Council authorize the City Administrator or her designee to execute the management/operations agreement between the City of Oakland and the Oakland Museum of California Foundation.

Respectfully submitted,



Lori Fogarty
Executive Director,
Oakland Museum of California

APPROVED AND FORWARDED TO THE
LIFE ENRICHMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

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MANAGEMENT/OPERATIONS AGREEMENT

Between

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

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

WITNESSETH

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

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

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

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

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

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

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

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

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

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

(a) CITY Functions

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

(b) FOUNDATION Functions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. FOUNDATION and FOUNDATION'S Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of FOUNDATION that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.

b. FOUNDATION shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing **Schedule C-1** "Declaration of Compliance with the Americans with Disabilities Act," attached hereto and incorporated herein.

c. This Agreement is subject to the Equal Benefits Ordinance, Municipal Code, Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations requiring contractors on CITY contracts of \$25,000.00 or more to provide employee benefits to their employees with domestic partners equivalent to those provided to their employees with spouses. The ordinance covers all benefits that an employer offers its employees and their spouses, which include but are not limited to, health benefits, bereavement leave, family leave, retirement benefits, travel and other benefits. If the FOUNDATION does not provide employees with spousal benefits they are not required to change their benefits policies. The FOUNDATION shall execute an "Equal Benefits Declaration of Non-Discrimination" which shall be incorporated herein and attached as **Schedule C-2** to this Agreement.

d. If applicable, FOUNDATION will send to each labor union or representative of workers with whom FOUNDATION has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of FOUNDATION'S commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. The FOUNDATION further agrees that it shall not discriminate against any employee or applicant for employment because of race, creed, religion, sex, sexual preference, color, national origin, age, marital status, Acquired Immune Deficiency Syndrome (AIDS), AIDS Related Complex (ARC) or disability, handicap and that such provisions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer,

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

17. LIVING WAGE REQUIREMENTS

This Agreement is subject to the Living Wage Ordinance of Chapter 2.28 of the Oakland Municipal Code ("the Ordinance") and its implementing regulations. The Ordinance requires among other things, submission of the Declaration of Compliance attached and incorporated herein as **Schedule N** and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, that FOUNDATION provide the following to its employees who perform services under or related to this Agreement:

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

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

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

18. CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY

City of Oakland

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

FOUNDATION

Oakland Museum of California
Foundation

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

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

31. TERM and TERMINATION:

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

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

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

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

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

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

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

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

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

CITY OF OAKLAND,
a municipal corporation

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

By: _____
Date

By: _____
Date

Title: City Administrator

Title: Chairperson

Approved:

Received and Filed:

Office of the City Attorney Date

Office of the City Clerk Date

EXHIBIT A

COMMUNITY ACCESS GRANT APPLICATION

(Name of City Agency/Department/Facility)

The following are required to apply for a Community Access Grant at the (name of City facility).

Please read through it carefully.

- Applications must be submitted no later than three (3) months prior to the scheduled event.
- Non-Profit Organizations (defined as an organization that can verify its Internal Revenue Service IRS tax-exempt status) need to be based within the city of Oakland. Those NPO's based outside the City of Oakland need to provide direct benefits to Oakland residents sponsoring an event which directly advocates the goals and priorities of the Mayor and City Council and an annual operating budget less than \$1 million.
- NPO's cannot apply for the program if sponsoring a for-profit event or an event in which a private, commercial firm is promoting their products or services.
- Fee subsidies are granted for facility rental costs only. Hard costs (staffing, required third parties and other outside services) cannot be subsidized through the Community Access Grant program; NPO's must pay these costs directly.
- Should the organization be approved for a Community Access Grant, a non-refundable, non-transferable deposit is due with the (name of City facility) contract. The Community Access Grant cannot be used as the deposit.
- NPO is limited to a six (6) hour period of time (inclusive of move-in, event and move-out) during the hours of 8am – 12midnight. If the NPO's event is longer than six (6) hours, the NPO will be responsible for the standard hourly rate for the facilities they are utilizing. Holidays (are/are not) available for Community Access Grants at this facility.
- NPO applicant has not previously applied and received a grant subsidy within the same calendar year of the current application.
- All marketing and promotional materials associated with the event must carry the following acknowledgement:

**Agreement between Oakland Museum of California Foundation and City of
Oakland
Page 15**

“This event has been made possible in part through a Community Access Grant from the City of Oakland and the (name of the department/agency).

- The facility has a limit of available Community Access Grant funding and cannot award any Grants if it has exhausted its two (2) year allotment.
- If more than one NPO applies for the Community Access Grant Program for the same venue and date, or more than two applications are received for any one year, preference will be given to the NPO that: a) has not received a grant within the past two-year budget period; b) has not received any other City funding within the past two-year budget period; c) does not charge admission or request a donation for attendance at the event; d) is sponsoring an event to serve disadvantaged populations (e.g. low income, homeless, disabled, at-risk youth).

CRITERIA/REQUIREMENTS FOR COMMUNITY ACCESS GRANT
(Name of City Agency/Department/Facility)

All criteria/requirements listed must be submitted no later than three (3) months prior to the event date.

- Rental Agreement
- Letter of Intent/Description of event and the benefit to the citizens of Oakland.
- State of California and IRS tax-exempt status.
- Previous fiscal year financial statements, including balance sheet and income statement.
- Current year operating budget.
- Names of Board of Directors or Trustees
- Incorporation papers (if applicable).
- Statement of purpose and organization description.
- Current year's programming.

Office Use Only	
Date of Event _____	Venue _____
Organization _____	Deposit _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Jana Atesian
City Attorney

RESOLUTION No. _____ C.M.S.
2006 AUG 31 PM 6:13

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A TEN-YEAR MANAGEMENT/OPERATIONS AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE OAKLAND MUSEUM OF CALIFORNIA FOUNDATION

WHEREAS, the City is the owner of the Museum’s facility at 1000 Oak Street and is the owner of the Museum’s growing collection of objects and artifacts both valuable and significant to the documentation of California’s art, history and natural environment; and

WHEREAS, the City employs qualified personnel to ensure the continued education and enjoyment of the collections for the citizens of the City of Oakland, the San Francisco Bay Area, the State of California, and visitors from around the world; and

WHEREAS, the Oakland Museum of California Foundation (the “Foundation”) is a non-profit corporation originally established in 1989 to raise private funds to support the Museum; and

WHEREAS, the Foundation receives for the benefit of the Museum grants, contributions, fees, and earned revenue, manages its endowments to support Museum activities, engages in fundraising activities, and employs staff who provide various services to the Museum; and

WHEREAS, the Foundation provides services to the Museum, and manages projects pursuant to expenditure of \$23.6 Million in Measure G Funds designated for Museum improvements; and

WHEREAS, the Foundation is undertaking a multi-million dollar capital campaign to complete the renovation, expansion, and reinstallation of the Museum’s building and galleries as well as to enhance educational programs and opportunities for a larger and more diverse population of students and visitors; and

WHEREAS, in order to further the mutual goals of the City and Foundation of ensuring the success of the Museum for current and future generations and to successfully accomplish the annual and special fundraising efforts, both parties wish to enter into a management/operations agreement (the “Agreement”); now, therefore be it

RESOLVED: That the City and Foundation shall cooperate in sustaining the Museum pursuant to various terms and conditions set forth in the Agreement; and be it

FURTHER RESOLVED: That the City will continue to make the Museum facility and its collections available for educational and cultural purposes and provide curatorial and other staff as it deems necessary for this purpose; and be it

FURTHER RESOLVED: That the City shall maintain the Museum buildings and grounds and provide necessary security personnel for the facility, including providing the Foundation with office space for its activities in support of the Museum; and be it

FURTHER RESOLVED: That the City, in recognizing that the Museum is a vital cultural institution, will make best efforts to fund the Museum at the 2005-07 level of service for a period of five years; and be it

FURTHER RESOLVED: That the Foundation will undertake functions including raising and administering funds to support the Museum, shall manage projects funded by Measure G, shall employ staff necessary to support other Museum purposes, and shall operate various Museum functions, such as visitor services, the store, facility rental, and the Conservation Lab; and be it

FURTHER RESOLVED: That the Foundation Board of Trustees shall include a designee of the City Administrator, the selection of which shall be subject to discussion between the City Administrator and the Foundation Chair; and be it

FURTHER RESOLVED: That the City will collaborate with the Foundation on annual strategic, budget, and operational planning; and be it

FURTHER RESOLVED: That the City and the Foundation will be assigned oversight, management, and allocation of revenues from distinct and various Museum functions, with the City retaining revenues from the parking and restaurant concession, until future renegotiation or review of these contracts during future budget cycles, and the Foundation retaining revenue from admissions, the store, memberships and fundraising, and Conservation Lab functions; and be it

FURTHER RESOLVED: That the Agreement shall be for ten years commencing upon its execution; and be it

FURTHER RESOLVED: That the City Administrator is duly authorized by this Resolution to execute the Agreement and is hereby authorized to take whatever action is necessary with respect to the Agreement in accordance with the basic purpose of this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California