

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO
COUNTY HISTORICAL ASSOCIATION**

THIS AGREEMENT, entered into this _____ day of _____, 2013, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SAN MATEO COUNTY HISTORICAL ASSOCIATION, a nonprofit corporation, hereinafter called "Association";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that the Association be retained for the purpose of maintaining the San Mateo County History Museum and two County-owned and maintained historical sites for the benefit of the County's residents and visitors.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Attachment I—§ 504 Compliance)

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth herein and in Exhibit A.

3. Payments

In consideration of the services provided by the Association in accordance with all

terms, conditions, and specifications set forth herein and in Exhibit A, County shall make payment to the Association based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed One Hundred Thirty Five Thousand Dollars, \$135,000.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2013 through June 30, 2014.

This Agreement may be terminated by the Association, the Director of the Parks Department, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by the Association under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, the Association may make and retain a copy of such materials. Subject to availability of funding, the Association shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to the Association as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. Relationship of Parties

The Association agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of County and that neither the Association nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

7.1 General Hold Harmless. Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of the Association under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including the Association or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from the Association's failure to comply, if applicable, with the

requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, the Association's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of the Association to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7.2 Intellectual Property Indemnification.

The Association hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets ("IP Rights") except as otherwise noted by this Agreement. The Association warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. The Association shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. The Association's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies the Association promptly in writing of any notice of any such third-party claim; (b) County cooperates with the Association, at Association's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) The Association retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided the Association shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in the Association's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, the Association shall, at the Association's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non infringing but remain functionally

equivalent.

Notwithstanding anything in this Section to the contrary, the Association will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, the Association) in such a way as to cause the alleged infringement at issue; (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of the Association to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

The Association shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by the Association under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Association shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and the Association shall use diligence to obtain such insurance and to obtain such approval. The Association shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Association's coverage to include the contractual liability assumed by the Association pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Workers' Compensation and Employer's Liability Insurance.** The Association shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, the Association certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) **Liability Insurance.** The Association shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability

insurance as shall protect the Association and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Association's operations under this Agreement, whether such operations be by the Association, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- | | | |
|-----|---|-------------|
| (a) | Comprehensive General Liability | \$1,000,000 |
| (b) | Motor Vehicle Liability Insurance | \$1,000,000 |
| (c) | Professional Liability. | \$1,000,000 |

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

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

10. Compliance With Laws

All services to be performed by the Association pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, the Association certifies that the Association and all of its subcontractors will

adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

The Association will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *Equal employment opportunity.* The Association shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. The Association's equal employment policies shall be made available to County upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* The Association shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, the Association shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, the Association must certify which of the following statements is/are accurate:
 - ☒ The Association complies with Chapter 2.84 by:
 - ☒ offering the same benefits to its employees with spouses and its employees with domestic partners.
 - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic

partner that is equal to the Association's cost of providing the benefit to an employee with a spouse.

- ☐ The Association is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ The Association does not comply with Chapter 2.84, and a waiver must be sought.

E. *Discrimination Against Individuals with Disabilities.* The Association shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.

F. *History of Discrimination.* The Association must check one of the two following options, and by executing this Agreement, the Association certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against the Association by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against the Association within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, the Association shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

G. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Association to penalties, to be determined by the County Manager, including but not limited to the following:

- i) termination of this Agreement;
- ii) disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation; and/or
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

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

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

12. Compliance with County Employee Jury Service Ordinance

The Association shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Association, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with the Association or that the Association may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, the Association certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if the Association has no employees in San Mateo County, it is sufficient for the Association to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, the Association certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, the Association shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

13. Retention of Records, Right to Monitor and Audit

(a) The Association shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and the Association shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: The Association shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by County.

(c) The Association agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies access to

and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. Merger Clause & Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Marlene Finley, Director
Address San Mateo County Parks Department
455 County Center, 4th Floor
Redwood City, CA 94063
Telephone: (650) 363-4020
Facsimile: (650) 599-1721
Email: mfinley@smcgov.org

In the case of Contractor, to:

Name/Title: Mitch Postel, President
Address: San Mateo County Historical Association
2200 Broadway
Redwood City, CA 94063
Telephone: (650) 299-0104
Facsimile: (650) 299-0141
Email: mitch@historysmc.org

17. Electronic Signature

If both County and the Association wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☐ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

San Mateo County Historical Association



Contractor's Signature
President, Mitch Postel

Date: 11-6-13

(Revised 7/1/13)

Exhibit A

In consideration of the payments set forth in Exhibit B, the Association shall provide the following services:

1. Maintain and operate a museum of the history of the County of San Mateo in substantially the same manner in which it has in the past; and in connection therewith, the ASSOCIATION shall keep said museum open to the public five days a week for a minimum of 30 hours a week.
2. Maintain and operate the docent program to keep the Woodside Store historical site open to the public 14 hours a week and the Sanchez Adobe site open to the public 20 hours a week.
3. Collect, catalog, and file records, photographs, maps, articles of the news media and periodicals, mementos, and any and all other appropriate materials relevant to the history of San Mateo County and shall give counsel and editorial assistance in connection herewith to all citizens of the County of San Mateo.
4. Promote through meetings, speakers, and any and all other appropriate methods, the dissemination of information to the public concerning the history, growth, and development of the County of San Mateo.
5. Continue to publish and make available to the public its journal of County history, La Peninsula, and shall continue to operate a lending service of any and all materials in the custody of the ASSOCIATION that may be appropriately loaned and circulated to members of the public.

Exhibit B

In consideration of the services provided by the Association in Exhibit A and subject to the terms of the Agreement, County shall pay to the Association during fiscal year 2013/14 the sum of \$135,000, which sum shall be payable upon execution of this Agreement.

It is understood and agreed that the said sum is the full compensation to be paid to the ASSOCIATION under the terms of this Agreement and that any expenses whatsoever incurred by the ASSOCIATION in complying with the terms of this Agreement including but not limited to the employment of any staff, cost of supplies and equipment, maintenance, space, and travel expenses, shall be at the ASSOCIATION's own expense.