

**AMENDED AND RESTATED OLD COURTHOUSE AGREEMENT
(March 21, 1995 AGREEMENT)**

THIS AMENDED AND RESTATED OLD COURTHOUSE AGREEMENT, originally executed March 21, 1995 (hereinafter "Agreement"), is made and entered into this ____ day of _____ 2019, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and the SAN MATEO COUNTY HISTORICAL ASSOCIATION, a non-profit corporation organized under the laws of the State of California, hereinafter sometimes referred to as "ASSOCIATION".

WITNESSETH:

WHEREAS, COUNTY is the fee owner of that certain real property known as the San Mateo County History Museum, previously known as the "Old Courthouse at Redwood City", located at 2200 Broadway Street, in Redwood City, State of California, and also described as San Mateo County Assessor's Parcel Number 052-367-010 (hereinafter "Property"), and shown on Exhibit "A", attached hereto and incorporated herein by this reference;

WHEREAS, COUNTY and ASSOCIATION entered into an Agreement dated March 21, 1995, pursuant to Resolution No. 59166 of the Board of Supervisors of COUNTY, subsequently amended on June 30, 1998, and on January 11, 2001, (collectively the "Existing Agreement"); for the purpose of developing and operating a museum facility ("The San Mateo County Historical Museum", or "Museum") on a portion of the Property (hereinafter "Premises"), and now wish to expand the Premises to provide for the relocation of the "Lathrop House" and the potential construction of a carriage museum ("Carriage House"), both to be located within the Premises, as shown on Exhibit "A";

WHEREAS, COUNTY and ASSOCIATION have entered into other agreements to address funding and services provided at the Museum and at other locations, including the October 12, 2017 Agreement, subsequently amended on October 2, 2018, collectively known as the "Funding and Service Agreement"; and

WHEREAS, COUNTY and ASSOCIATION intend this Agreement to amend, restate, and replace the Existing Agreement for the term set forth in the Existing Agreement, without affecting the terms and conditions of the Funding and Service Agreements.

NOW, THEREFORE, in consideration of the provisions, covenants, and conditions, contained herein, the parties agree as follows:

1. **PREMISES:** For and in consideration of the covenants to be performed by ASSOCIATION under this Agreement, COUNTY hereby grants to ASSOCIATION and ASSOCIATION hereby takes from COUNTY, exclusive use of the Premises shown on Exhibit A located on the Property, subject to the provisions set forth herein, for so long as ASSOCIATION uses the Premises only for the purposes and uses described in Section 4, **PURPOSE AND USE**. The City of Redwood City ("City") has exclusive use of the area identified on Exhibit A within the parameter of

the Premises pursuant to a separate agreement between COUNTY and Redwood City during the term of that agreement. In the event of termination of that agreement, the space occupied by the City shall become part of the Premises.

2. **TERM:** The initial term of this Agreement commenced March 21, 1995 and shall continue for a period of thirty (30) years from the date of commencement, until March 20, 2025.

3. **RENEWAL OF TERM:** This Agreement shall be automatically renewed for two (2) successive thirty (30) year terms unless County notifies Association in writing to the contrary one (1) year in advance of the renewal date.

4. **PURPOSE AND USE:** The purpose of this Agreement is to provide a facility to accomplish the following objectives:

- To provide space to house collections and exhibits relating to the history of San Mateo County and California.
- To provide space and facilities for investigations, presentations, studies, classes, and projects for and with members of the public concerning local and state history.
- To provide a study and resource center to assist members of the public in exploring local and state history.
- To provide a venue for events, as provided in Paragraph 13 below.

ASSOCIATION shall not expand its use of the Premises beyond the scope of this Agreement, nor use the Premises for any other purposes without the express written consent of COUNTY. ASSOCIATION acknowledges that it has had an opportunity to inspect the Premises and agrees to accept the Premises in their "As Is" condition and as satisfactory for ASSOCIATION's intended uses.

5. **MANAGEMENT and OPERATION:** COUNTY hereby delegates exclusively to ASSOCIATION the management, operation, interior maintenance, and regulation of the Premises and does hereby exclusively appoint for the term of this Agreement the ASSOCIATION for said purposes. ASSOCIATION hereby agrees to execute and accomplish to the best of its ability the objects and purposes of the Museum and to perform said functions subject to the following terms and conditions:

- Subject to reasonable health, safety, and special-event regulations, all members of the public shall be admitted to the Museum at all reasonable times, which times shall be specifically approved by COUNTY.
- All accounts and financial records of Association, its board of trustees or managers relating to the operation, management, or maintenance of the Museum shall be subject to such reasonable inspection and audits as may be directed by the Board of Supervisors of COUNTY.
- All persons employed in the management, operation, and interior maintenance of the Premises shall be deemed to be employees of ASSOCIATION, and in no way employees or contractors of COUNTY.
- Association will at its own expense manage, operate, and maintain the interior of the Museum and the Carriage House in accordance with policies and guidelines as approved by COUNTY. Association shall operate the Lathrop House in a neat and orderly manner but shall not be responsible for its maintenance. COUNTY shall be responsible for all interior and exterior maintenance of the Lathrop House. Should ASSOCIATION desire changes in

said policies and guidelines after their original approval by COUNTY as provided herein, ASSOCIATION will submit such recommended changes as it may desire to the County Manager for further approval. Such changes shall be deemed approved unless written notification to the contrary is given by COUNTY within sixty (60) days of submission. In any event, Association agrees to operate, manage, and maintain the Museum pursuant to policies and guidelines approved by the COUNTY at a given time. At any time the County Manager believes ASSOCIATION is not managing, operating, or maintaining the interior of the Premises in accordance with County-approved policies and guidelines, the County Manager will immediately notify ASSOCIATION in writing, and ASSOCIATION will promptly modify its practices to the satisfaction of the County Manager or will notify him or her in writing of its inability or unwillingness to do so. Should ASSOCIATION issue written notification to the County Manager declining to make such modifications as he or she desires, the issue will be decided by the County Board of Supervisors. Should the Board of Supervisors determine that ASSOCIATION'S position cannot be accepted, it may order the Museum, the Lathrop House, or the Carriage House closed to the public (except for on-going administrative and maintenance uses by museum staff only) and may keep the Museum closed to the public until such time as COUNTY and ASSOCIATION can agree on mutually acceptable terms of management, operation, and interior maintenance.

- Any signs to be attached to the buildings or landscaped areas, or any naming of buildings or areas on the Premises, shall be approved by the County Manager and shall be in reasonable conformity with the nearby COUNTY government complex.
- No officer, director, or employee of Association shall have any financial interest, direct or indirect, in the Museum or any improvements to the Property or Premises. Donations of work, material, or money, or its equivalent, for the operation of the Museum, the Lathrop House and/or for construction of improvements shall not be considered a conflict of interest for the purposes of this paragraph.
- ASSOCIATION agrees to abide by all County rules and regulations applicable to the Property, the Premises, or the Museum.

6. **PREMISES SUITABILITY:** ASSOCIATION has been operating the Museum and has determined that the Premises continues to be suitable for ASSOCIATION'S intended operations, and therefore, ASSOCIATION hereby accepts, by way of executing this Agreement, the Premises, as shown in Exhibit A hereof, in its existing condition.

ASSOCIATION ACKNOWLEDGES THAT, EXCEPT AS STATED HEREIN, COUNTY HAS MADE NO REPRESENTATIONS OR WARRANTIES ABOUT THE CONDITION OF THE PREMISES, OR THE SUITABILITY OF SAME FOR THE INTENDED USE BY ASSOCIATION.

7. **IMPROVEMENTS AND ALTERATIONS:** "Improvements" shall mean any interior or exterior improvements or alterations on the Premises to be made under the terms of this Agreement, including but not limited to the structure and all street appurtenances, parking, utilities and landscaping work constructed on the Premises during the term. After any of the above-mentioned Improvements are made, they shall be included as part of the Premises.

Any Improvements proposed by ASSOCIATION in, on, or about the Premises must be presented to COUNTY in written form with proposed plans and specifications prior to commencement

of any improvements or alterations. Such plans shall be submitted by ASSOCIATION and considered for COUNTY approval as set forth in Section 8 herein.

As set forth in Section 8, any COUNTY approval shall be deemed conditional upon ASSOCIATION acquiring all necessary permits from the appropriate governmental agencies at its sole expense, furnishing a copy(ies) thereof to COUNTY, and ASSOCIATION'S compliance with all conditions of said permit(s). Any and all permits or clearances required shall be granted only on the merits of the application thereof, and nothing in this Agreement shall be construed to require that COUNTY, or any other government agency, grant such permits or clearances. After obtaining final approval from the COUNTY, ASSOCIATION shall give COUNTY not less than ten (10) days written notice prior to the commencement of any such work in, on, or about the Property; and COUNTY shall have the right to post Notices of Non-responsibility, as provided by law. Notwithstanding any approval granted by COUNTY pursuant to this Section 7, ASSOCIATION shall be solely responsible and liable for any Improvements.

During any such Improvements, ASSOCIATION shall keep the Premises and improvements free and clear of liens for labor and materials expended by or for ASSOCIATION or on its behalf and shall hold COUNTY harmless and defend COUNTY with respect to any claims arising out of the Improvements or the construction, use, operation, design, repair, or maintenance thereof. Non-compliance with this section shall constitute a material breach hereof. When Improvements are made by ASSOCIATION under the provisions of this Agreement, ASSOCIATION shall inform COUNTY of the date of completion of such Improvements and shall provide "as-built" drawings of the completed Improvements. The requirements relating to Improvements set forth herein are those of COUNTY as landowner and not as a governmental entity. Nothing in this Agreement shall be construed to entitle ASSOCIATION to undertake any Improvements without complying with all permitting required by COUNTY in its governmental capacity.

8. **COUNTY APPROVAL REQUIRED FOR NEW IMPROVEMENTS:** At the time of execution of this Agreement, ASSOCIATION is planning construction of a Carriage House on the Premises ("Carriage House Project"). The ASSOCIATION may submit a request for the COUNTY's permission to construct a project ("the CARRIAGE HOUSE PROJECT") on the premises that is funded, designed, and carried out by ASSOCIATION. ASSOCIATION shall not commence the Carriage House Project or any other proposed Improvements project ("Project") without first having obtained prior COUNTY approval pursuant to this Section 8.

A. **CONDITIONS OF APPROVAL:** The following Conditions of Approval shall be satisfied prior to COUNTY's consideration of any proposed Project. ASSOCIATION shall submit a letter to the County Manager requesting COUNTY approval of the proposed Project ("Letter of Request"), which shall include documentation of ASSOCIATION'S satisfaction of the following Conditions of Approval:

(i) **FINANCING:** ASSOCIATION'S Letter of Request shall include documentation that ASSOCIATION has the funding required to complete the proposed Project as estimated in the plans and specifications submitted concurrently therewith pursuant to paragraph (iv) below. Such documentation may be in the form of a letter from ASSOCIATION's bank verifying sufficient funding for the proposed Project, an executed and enforceable agreement with a sufficiently capitalized entity promising to fund a portion of the cost of the proposed Project, or any similar documentation

sufficiently verifying, to the reasonable satisfaction of County, funding for the proposed project, or any combination thereof. Any bank letter submitted according to this subsection shall include a notarized bank statement showing the amount of funds in an account that is segregated and identified as set aside exclusively for the proposed Project. Any agreement submitted according to this subsection shall specifically include the amount promised to fund the Project.

ASSOCIATION shall not lien the interest created by this Agreement. ASSOCIATION shall not lien the COUNTY'S fee estate or other interest in the Property or any of the improvements on the Premises. Furthermore, COUNTY shall not be required to subject its fee estate and/or interest in the Property to the lien of any financing or mortgage sought or obtained by ASSOCIATION. COUNTY shall not be obligated to incur any cost arising out of any Project. Association shall be solely responsible for the costs of any Project, including any upgrade, remediation, renovation, or repair to the Premises and/or Property necessitated by the Project.

(ii) PERMITS: Plans for the Carriage House Project shall be submitted to the Real Property Division for review and approval as to scope along with the Letter of Request. The Real Property Division shall arrange for a plan review by the Chief Building Official to ensure that all work undertaken will comply with the Building Ordinance of the County of San Mateo and any other applicable laws governing the construction. Lessee shall permit reasonable access to the premises for such inspections as the Chief Building Official may undertake and will comply with all reasonable directives of the Chief Building Official to ensure compliance with codes..

(iii) ENVIRONMENTAL REVIEW: The Letter of Request shall also include documentation of all environmental reviews that have been conducted pursuant to the California Environmental Quality Act (CEQA). ASSOCIATION will be the Project Applicant, and shall coordinate with COUNTY as needed, in order to complete the CEQA process pertaining to the proposed Project. A copy of any notices, studies or reports required by CEQA shall be included with the Letter of Request.

(iv) PLANS and SPECIFICATIONS: ASSOCIATION shall, at ASSOCIATION'S sole cost and expense, engage a licensed architect or engineer to prepare plans and specifications for the proposed Project. Concurrently with the Letter of Request, ASSOCIATION shall submit to COUNTY detailed working drawings, plans and specifications for the proposed Project, and an estimate of the construction costs that has been prepared and approved by the engaged architect or engineer.

(v) LIABILITY FOR DAMAGES: ASSOCIATION shall bear sole and complete responsibility for any damage, destruction, or other injury of any type caused by any Project or the construction thereof, including but not limited to the Carriage House Project, to any facility, structure, grounds, or other improvement on the Premises and Property, including but not limited to the Lathrop House and Museum, and ASSOCIATION shall execute any and all documents requested by County to sufficiently document ASSOCIATION'S responsibilities pursuant to this paragraph (v).

B. COUNTY MANAGER REVIEW OF LETTER OF REQUEST: Prior to submitting ASSOCIATION'S request for final approval of the proposed Project to the County Board of Supervisors, the County Manager shall review the Letter of Request. The County Manager shall provide ASSOCIATION written notification of his or her determination regarding the sufficiency of

the information provided in the Letter of Request, as proposed, or the County Manager may request that ASSOCIATION provide more information to assist in the determination, or may state that the proposed Project may be approved by the COUNTY Board of Supervisors upon satisfaction of certain conditions. In the event the County Manager requires certain conditions be satisfied prior to submittal to the COUNTY Board of Supervisors for final approval, ASSOCIATION shall submit the additional information evidencing satisfaction of those conditions.

C. COMMENCEMENT OF WORK: After receiving final approval from the County Board of Supervisors, ASSOCIATION shall give COUNTY no less than ten (10) days written notice prior to the commencement of any work in, on, or about the Premises and shall keep the Premises free and clear of liens for labor and materials. Nothing in this Agreement shall be construed to entitle ASSOCIATION to undertake Improvements to the Premises, nor additional future improvements, without receiving express written consent according to this Section and complying with all permitting required by COUNTY in its governmental capacity, or by any other government agency.

9. **TITLE**: Throughout the term of this Agreement, title to the Property and the Premises, including the Museum, the Lathrop House and any Improvements on or to the Property or the Premises, shall remain vested in COUNTY. Upon completion of any and all Improvements to the Property or Premises, title to such shall vest in COUNTY. ASSOCIATION shall execute whatever documents are reasonably requested by COUNTY to facilitate, acknowledge and evidence the release of all interest in any improvements completed on the Property or Premises and the passing of title thereto from ASSOCIATION to COUNTY.

For purposes of this Agreement, all exhibits, equipment, furniture and supplies owned or brought to the Premises by ASSOCIATION shall remain the property of the ASSOCIATION unless donated or otherwise transferred to COUNTY.

10. **ABANDONMENT OF THE PREMISES**: ASSOCIATION shall not abandon, vacate, surrender or assign use of the Premises and/or any portion of, or improvement to, the Premises at any time during the term of this Agreement. If ASSOCIATION does abandon, vacate, surrender or assign use of the Premises, this Agreement and all of ASSOCIATION'S rights thereto shall terminate at the option of COUNTY. COUNTY shall memorialize such termination via letter to ASSOCIATION. In the event of such termination, any personal property belonging to ASSOCIATION and left on the Premises more than ninety (90) days after the mailing of such termination letter shall be deemed abandoned at the option of COUNTY, and title to such may pass to COUNTY. This provision shall also apply to property left after the termination, or other expiration of this Agreement.

11. **CONVEYANCE OF REAL PROPERTY**: COUNTY shall have the right to convey fee and other real property interests in the Property and Premises, subject to Paragraph 19. Said conveyance shall not unduly interfere with ASSOCIATION'S interests herein and ASSOCIATION shall not interfere with any such rights granted by COUNTY. COUNTY shall notify ASSOCIATION in writing before a conveyance of real property interest and furnish ASSOCIATION with information concerning such proposed conveyance.

12. **NONINTERFERENCE:**

A. ASSOCIATION agrees not to use, nor permit those under its control, including, but not limited to, its employees, volunteers, guests, invitees, agents and/or contractors, to use any portion of the Property or Premises in any way that interferes with the use of the Property by COUNTY or other lessees, licensees, or permittees of COUNTY occupying or using the Property. Such interference shall be deemed a material breach, and ASSOCIATION shall terminate said interference immediately upon written notice from COUNTY.

B. COUNTY agrees not to use, nor permit those under its control, including but not limited to, its employees, volunteers, guests, invitees, agents and/or contractors, to use any portion of the Property or Premises in any way that interferes with ASSOCIATION's quiet use, enjoyment and possession of the Premises.

13. **EVENTS:** ASSOCIATION may contract with public and private entities for the use of the Premises for public and private events such as fundraisers, etc. ASSOCIATION shall comply with all applicable land use and zoning restrictions. ASSOCIATION shall require that all contractors obtain insurance for their event(s) naming the County of San Mateo as an "additional insured" on said policy.

COUNTY shall also have the right to use of the Premises for at least two events per year. Any such use shall be coordinated and scheduled with Association at least 10 business days prior to each such event, and shall be at no cost to COUNTY, except that COUNTY shall be responsible for any related janitorial or staffing costs incurred by ASSOCIATION resulting from such COUNTY use.

14. **UTILITIES/WATER/SEWER/TRASH:** COUNTY shall pay all charges for utilities, sewer services and trash disposal services for the Premises when due, except phone and data services, which shall be paid by ASSOCIATION. All accounts for such utilities, sewer services, and trash disposal services shall name COUNTY as the responsible party. ASSOCIATION shall have the right to install and maintain the necessary mains and ancillary equipment required to bring utilities, water and sewer services and trash disposal services to any improvements to the Premises that are approved by COUNTY pursuant to Section 8 hereof. COUNTY may provide and grant any licenses or easements deemed necessary to bring such utility, water and sewer services and trash disposal services to the Premises.

15. **MAINTENANCE/REPAIR:** During the term of this Agreement, including any extensions, ASSOCIATION agrees to keep in good maintenance and repair, at its sole expense, the interior of the Museum, the Lathrop House, the Carriage House, and any other Improvements on the Premises. COUNTY shall provide all maintenance and repair to:

A. The structural parts of the Museum, the Lathrop House and any other improvements including the foundation, subflooring, bearing and exterior walls, roof framing, sub-roofing, and roof surfaces, the electrical conduits, conductors, ground equipment and all other associated devices;

B. All mechanical equipment, as well as ancillary connections to the equipment, including but not limited to, electrical, gas, and water and sewer services, vent drains, ducting, and supporting structures;

C. All other unexposed electrical, plumbing and sewage systems;

D. The grounds, including landscaping and exterior lighting; and

E. Utility and emergency service facilities external to the structures such as but not limited to water, fire protection, sewer, electrical, and gas facilities.

Notwithstanding County's obligations to maintain and repair provided herein, ASSOCIATION shall be responsible for all costs and expenses incurred by County to repair any and all damage or injury to the Premises and Property, any and all Improvements thereon, or any other equipment, grounds, or facilities County is obligated to maintain and repair under this Section 15, caused by the ASSOCIATION and/or its officers, employees, agents, contractors, guests, or invitees.

16. **CONCESSIONS:** ASSOCIATION may operate concessions on the Premises such as bookstores, souvenir shops, vending machines, sandwich bars, and other similar or related concessions. Any such concessions shall be operated by ASSOCIATION in compliance with overall COUNTY policies with respect to concessions.

No persons employed in connection with such concessions shall be deemed employees of COUNTY. All charges to the public by such concessions shall be fair and reasonable. All concessions shall be operated in a safe and sanitary manner and in compliance with all laws and ordinances pertaining thereto. All profits from said concessions shall inure to the benefit of the ASSOCIATION with no commissions or other monies due to COUNTY.

17. **RECORDKEEPING/AUDITING:** ASSOCIATION shall keep at ASSOCIATION'S office, full and accurate books of account, cash receipts and other pertinent data customarily used in ASSOCIATION'S activities, including without limitation, all data and information relevant to the cost of maintenance and repair of the Premises and the use of the Premises for events. ASSOCIATION shall keep such books of account, cash receipts and other pertinent data for a period of not less than four (4) years following the end of each year of the term of this Agreement.

COUNTY shall have the right, upon reasonable, written notice during the term of this Agreement, and one year after expiration or termination of the term of the Agreement, to examine the books of account, cash receipts, records and other pertinent data showing all transactions related to maintenance and repair, as well as normal business done by ASSOCIATION in conjunction with the Agreement. Any such audit(s) or examination(s) will be conducted by the County Auditor, or designee. ASSOCIATION shall fully comply with the County Auditor, or designee, in making any such inspections and examinations. If any examination performed by the County Auditor, or designee, discloses a breach by ASSOCIATION in any of its obligations hereunder, said breach shall be cured within thirty (30) days of receipt of written notice from COUNTY of such breach.

18. **ASSIGNMENT/SUBLEASE:** ASSOCIATION shall not assign, license, or sublease the Premises, or any part thereof or any right or privilege appurtenant thereto without COUNTY'S written consent. Consent by COUNTY to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment made contrary to this Section shall be null and void.

19. **SUCCESSORS IN INTEREST:** This Agreement and the covenants contained herein shall be binding upon and inure to the benefit of the respective parties, their heirs, successors and assigns, and to any government or private organization into which ASSOCIATION may be merged.

20. **HOLD HARMLESS AND INDEMNIFICATION:** County shall not be liable or responsible for any accident, loss, injury, or damages which occurs because of ASSOCIATION's use

of the Premises and/or Property. ASSOCIATION shall indemnify, defend, reimburse, and hold harmless COUNTY, its officers, agents, employees, and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages, and liabilities of any kind ("Claims"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on, or about the Premises or Property whether such injury, death, damage, or destruction is caused by the person or property of ASSOCIATION, its officers, directors, members, employees, agents, consultants, contractors, or subcontractors (collectively, "Agents"), its invitees, guests, or business visitors (collectively, "Invitees"), or third persons, relating to any use or act required or permitted by this Agreement; (b) any failure by ASSOCIATION to faithfully observe or perform any of the terms, covenants, or conditions of this Agreement; (c) the use of the Premises or any activities conducted in, on, or about the Property by ASSOCIATION, its Agents, or Invitees; or (d) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by ASSOCIATION, its Agents, or Invitees, on, in, under, or about the Premises or Property or into the environment; except solely to the extent of Claims resulting directly from the gross negligence or willful misconduct of COUNTY or COUNTY's authorized representatives. In addition to ASSOCIATION's obligation to indemnify COUNTY, ASSOCIATION specifically acknowledges and agrees that it has an immediate and independent obligation to defend COUNTY from any claim that actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent, or false, which obligation arises at the time such claim is tendered to ASSOCIATION by COUNTY and continues at all times thereafter. The foregoing indemnity shall include, without limitation, reasonable attorneys', experts', and consultants' fees and costs, investigation and remediation costs, and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Property and claims for damages or decreases in the value of adjoining property. ASSOCIATION's obligations under this paragraph shall survive the expiration or other termination of this Agreement.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS: ASSOCIATION shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

21. **INSURANCE:** COUNTY shall maintain property insurance coverage for the Property and the Premises. COUNTY shall also procure Builder's Risk and/or Course of Construction Insurance coverage for any Improvement or Alteration constructed pursuant to Section 7, IMPROVEMENTS AND ALTERATIONS, and shall maintain such coverage until completion of construction.

ASSOCIATION shall maintain personal property insurance coverage for the contents of the Museum, the Lathrop House, the Carriage House, and any other Improvements on the Premises. ASSOCIATION shall also procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the ASSOCIATION's operation and use of the Premises. The cost of such insurance shall be borne by the ASSOCIATION.

- A. Minimum Scope of Insurance Coverage to be maintained by ASSOCIATION shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if ASSOCIATION has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

4. **Property Insurance:** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the ASSOCIATION maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the ASSOCIATION. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions:

—The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – The COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ASSOCIATION including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ASSOCIATION’s insurance at (least as broad as ISO Form CG 20 10.

2. **Primary Coverage** – For any claims related to this Agreement, the ASSOCIATION’s insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the ASSOCIATION’s insurance and shall not contribute with it.

3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.

4. **Waiver of Subrogation Rights** – ASSOCIATION hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said ASSOCIATION may acquire against the COUNTY by virtue of the payment of any loss under such insurance. ASSOCIATION agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. The COUNTY may require the ASSOCIATION to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

6. **Acceptability of Insurers** – Unless otherwise approved by the County's Risk Manager, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".

7. **Verification of Coverage** – ASSOCIATION shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ASSOCIATION's obligation to provide them. The ASSOCIATION shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.

9. **Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. ASSOCIATION agrees to execute any such amendment within thirty (30)-days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

22. **NONDISCRIMINATION**: ASSOCIATION shall comply with applicable laws, rules and regulations regarding nondiscrimination. Noncompliance with provisions of this section shall constitute a material breach of this Agreement and in addition to any other remedies provided by law, COUNTY shall have the right to terminate this Agreement and the interest hereby created without liability therefor.

23. **ENVIRONMENTAL IMPAIRMENT:** ASSOCIATION shall comply with all applicable laws, regulations, rules, and orders regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of COUNTY.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Property or Premises due to ASSOCIATION'S use and occupancy, ASSOCIATION shall clean all property affected to the satisfaction of COUNTY and any governmental body having jurisdiction therefor. ASSOCIATION shall indemnify, hold harmless, and defend COUNTY from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, consulting, engineering and construction costs) incurred by COUNTY as a result of ASSOCIATION'S breach of this section, or as a result of any such discharge, leakage, spillage, emission or pollution due to ASSOCIATION'S use and occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of COUNTY.

24. **TOXICS:** ASSOCIATION shall not manufacture or generate hazardous wastes on or in the Premises or Property. ASSOCIATION shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by ASSOCIATION, its agents, employees, or designees on or in the Premises or Property during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. ASSOCIATION shall notify COUNTY and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

25. **COMPLIANCE WITH THE LAW:** In the operation, maintenance, management of the Premises, including the design and construction of any Improvements, ASSOCIATION shall comply and/or ensure compliance with all applicable laws, rules, and regulations affecting the Property or Premises now or hereafter in effect, including but not limited to the Public Contract Code to the extent it may apply to any work planned or implemented by ASSOCIATION.

26. **TAXES AND ASSESSMENTS:** ASSOCIATION shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, which, due to ASSOCIATION's Facility may be levied upon said Facility and/or Premises during the term of this Agreement.

27. **NOTICES:** Any notice to be given to the parties shall be in writing and shall be served, either personally or by mail, to the following:

COUNTY:	San Mateo County
	County Manager's Office
	Real Property Division
	555 County Center, 4 th Floor
	Redwood City, CA 94063
	Phone: (650) 363-4047

ASSOCIATION:

San Mateo County Historical Association
Attn: President
2200 Broadway Street
Redwood City, CA 94063
Phone: (650) 299-0104, ext. 226
Fax: (650) 299-0141

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

28. **DEFAULT:** Except as otherwise required herein, should ASSOCIATION at any time be in material default hereunder with respect to any covenant contained herein, COUNTY shall give written notice to ASSOCIATION specifying the particulars of the default and ASSOCIATION shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of the COUNTY; unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case ASSOCIATION shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

29. **REMEDIES:** In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including but not limited to the following:

A. The nondefaulting party may waive the default or breach in accordance with Section 30, **WAIVER**, herein below.

B. The nondefaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.

C. Where ASSOCIATION is the nondefaulting party, ASSOCIATION may terminate the Agreement and surrender use of the Premises.

D. Where COUNTY is the nondefaulting party, COUNTY may terminate the Agreement and ASSOCIATION shall vacate within 90 days of written notice from COUNTY.

30. **WAIVER:** It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

31. **AMENDMENTS:** This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties.

32. **TERMINATION:** This Agreement shall, or may at COUNTY'S option, terminate and all rights of ASSOCIATION shall cease and ASSOCIATION shall quietly and peacefully deliver to COUNTY, possession and interest in the Premises:

A. Upon expiration of the Agreement as provided in Section 2, **TERM**; or

B. Upon abandonment of the Premises as provided in Section 10, ABANDONMENT OF THE PREMISES; or

C. Upon the failure of ASSOCIATION to satisfy, observe or perform any of the covenants, conditions or reservations set forth in this Agreement and the expiration of the cure period as provided in Section 28, DEFAULT; or

D. As provided in Section 33, WASTE, DAMAGE or DESTRUCTION.

Upon expiration or early termination of this Agreement, to the extent County does not already enjoy title to any and all Improvements on the Premises, COUNTY shall have the right to take title, ownership, and/or possession of the Improvements, or may require ASSOCIATION to remove the Improvements and restore the Premises to its original condition, at the option of COUNTY. In the event that COUNTY elects to retain any Improvements on the Premises, ASSOCIATION shall execute whatever documents are reasonably requested by COUNTY to facilitate, acknowledge, and evidence the release of all interest in the Premises and Improvements and the passing of title thereto from ASSOCIATION to COUNTY, and COUNTY shall execute whatever documents are required to accept said ownership interest and title.

33. **WASTE, DAMAGE or DESTRUCTION**: Association shall give prompt notice to County of any fire, or significant damage that may occur for any reason whatsoever. Association shall not commit or suffer to be committed any waste or injury, or any public or private nuisance, and shall keep the Premises clean and clear of refuse and obstructions. If the Museum interior, the proposed Carriage House, or any other improvement or alteration constructed on the Premises by Association is damaged by any cause so as to render that portion of the Premises untenable or unfit for the use or purposes for which the same are hereby set aside and said damages are repairable within a reasonable time in the opinion of County, Association may elect, by written notice to County within sixty (60) days of such destruction, to make full repairs to said damages so as to restore the Museum, proposed Carriage House, or any other improvement or alteration constructed on the Premises by Association to the condition which existed prior to said damages; or Association may elect to clear and remove all debris resulting from said damages and to continue operations on a limited scale. In the event Association elects to make such repairs or to clear such debris, the work shall be commenced within ninety (90) days and the restoration or clearance shall be completed within a reasonable time thereafter. Failure to commence such restorative work or clearance, or failure to complete such work or clearance within said reasonable time shall constitute an abandonment of this agreement by Association.

In the event Association does not so elect to make such repairs or to continue operations on a limited scale as herein before provided, then either Association or County may after one hundred twenty (120) days from the date of damage terminate this Agreement provided, however, that Association must first remove to the best of its ability all debris from the Museum before it may exercise this right to terminate. If ASSOCIATION chooses to terminate the Agreement then ASSOCIATION, at COUNTY'S option, shall return the Premises to its original condition as near as is practical. COUNTY may require ASSOCIATION remove any Improvements constructed on the Premises by ASSOCIATION.

COUNTY, in its sole and absolute discretion, shall have the right to determine whether it will repair or replace any portion of the Property or the Premises damaged or destroyed during the Term. In the case of total destruction of the Premises, and COUNTY'S determination not to repair or replace the Premises, ASSOCIATION shall have the right to terminate this Agreement.

34. **HOLDING OVER:** Should ASSOCIATION occupy the Premises after the expiration date of this Agreement or any extension thereof, with the consent of the COUNTY, express or implied, such possession shall be construed to be a tenancy from month to month.

35. **SURRENDER OF PREMISES:** Except as otherwise provided in this Agreement, upon expiration or termination of this Agreement, ASSOCIATION shall vacate and surrender possession of, and any claim to the Premises, leaving it in good condition, except for ordinary wear and tear.

36. **CAPTIONS:** The title or headings to the sections of this Agreement are not a part of this Agreement, and shall have no effect upon the construction or interpretation of any part hereof.

37. **SEVERABILITY:** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

38. **CERTIFICATION OF SIGNATORY:** The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind COUNTY and ASSOCIATION to its terms and conditions or to carry out duties contemplated herein.

39. **EXECUTION IN COUNTERPARTS:** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

40. **CONSTRUCTION:** The parties have negotiated the terms of this Agreement. They have consulted an attorney when they felt the need. The terms of this Agreement reflect this negotiation and the intentions of both parties. These terms shall be interpreted with regard to each party equally.

41. **FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES:** In the event that the parties hereto utilize facsimile transmitted documents or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures; however, funds shall not be released nor shall documents be accepted for recordation by the Clerk Recorder of the County until such documents bearing original signatures are received by COUNTY.

42. **ENTIRE AGREEMENT:** The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, prior writings, and statements shall be deemed to create rights or obligations other than those stated herein.

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IN WITNESS WHEREOF, COUNTY and ASSOCIATION have executed this Agreement to be effective upon execution by COUNTY.

“COUNTY”
COUNTY OF SAN MATEO

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

Date: _____

ATTEST:

By: _____
Clerk of Said Board

“ASSOCIATION”
SAN MATEO COUNTY HISTORICAL ASSOCIATION

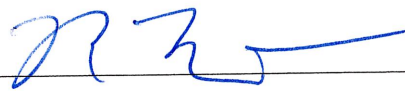
By: 
Mitch Postel, President
Name and Title

EXHIBIT A
PREMISES

*PREMISES REVISED 10/22/19 TO
INCLUDE GROUND FLOOR ANNEX

