

**THIRD AMENDMENT TO
AMENDED AND RESTATED OPERATION AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
HISTORY SAN JOSE
(FORMERLY THE HISTORY MUSEUMS OF SAN JOSE)**

This THIRD AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2018, by the CITY OF SAN JOSE (“City”), a municipal corporation, and HISTORY SAN JOSE (formerly THE HISTORY MUSEUMS OF SAN JOSE) a California nonprofit corporation (“HSJ”).

RECITALS

WHEREAS, on June 23, 2009, City and HSJ entered into an agreement entitled “Amended and Restated Operation Agreement between the City of San Jose and History San Jose (formerly The History Museums of San Jose)” (“Agreement”); and

WHEREAS, on October 19, 2012, City and HSJ entered into a First Amendment to the Agreement to remove the Fallon House Parking Lot (APN 259-32-083), a portion of the Peralta-Fallon Historic Site, located at 150 Terraine Street from the Agreement prior to finalizing the sale of the real property to Urban Markets, LLC; and

WHEREAS, on February 28, 2013, City and HSJ entered into a Second Amendment to the Agreement to modify the schedule for the annual Operations Payment to HSJ; and

WHEREAS, CITY and HSJ desire to further amend the amended Agreement to modify the term and compensation of the Agreement;

NOW, THEREFORE, the parties agree to further amend the amended Agreement as follows:

SECTION 1. Section 4, “Term” is amended to read as follows:

“A. The term of this Agreement will commence as of July 1, 2009 regardless of the date of execution (“Commencement Date”) and will expire on June 30, 2018 (“Expiration Date”) unless sooner terminated as provided elsewhere in this Agreement.

B. Prior to the Expiration Date, the parties may mutually agree to extend the term of this Agreement for an additional ten years (“Extension Period”). All terms and conditions of this Agreement shall apply during the Extension Period, except as otherwise agreed in writing. City will provide no operating support during the Extension Period.

C. “Term” shall refer to both the Initial Term as described in subsection A and the Extension Period.”

SECTION 2. Exhibit C, “Operations Payment” is amended to read as shown in Revised Exhibit C, attached and incorporated into this Third Amendment.

SECTION 3. All of the terms and conditions of the amended Agreement not specifically modified by this Third Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

COLLEEN WINCHESTER
Senior Deputy City Attorney

By _____
LELAND WILCOX
Chief of Staff,
Office of the City Manager

“HSJ”

HISTORY SAN JOSE, a California nonprofit corporation

By _____
Name:
Title:

REVISED EXHIBIT C OPERATIONS PAYMENT

The annual Operations Payment to HSJ shall be \$875,000, payable in monthly installments, on or about the 5th of each month, on a fiscal year basis, from July 2009 through January 2013. Beginning February 2013, the annual Operations Payment to HSJ shall be made in equal quarterly installments on or about the 5th day of the first month of each quarter on a fiscal year basis. Each installment shall be equal to 1/4th of the annual financial support for that given fiscal year. The quarterly installments shall begin in February 2013, minus the monthly amount paid to HSJ for the January 2013 installment. The quarterly installment for the period of April 1, 2018 to June 30, 2018 shall be in the amount of \$196,000. As set forth in Section 7.1(A), the amount of the Operations Payment is subject to annual appropriations as approved by City's Council.

If the minimum requirements of the Financial Standards portion of Appendix 1 are not met by HSJ in a particular fiscal year through fiscal year 2011-2012, the Operations Payment for the next fiscal year will be reduced by 5%, as set forth in Appendix 1. The adjusted Operations Payment will remain in effect for the entire fiscal year for which it is reduced. In the event that Financial Standards specified in Appendix 1 are not met by HSJ by the commencement of fiscal year 2012-2013, the provisions set forth in Appendix 1 related to the Operations Payment shall apply. Examples of the potential impacts of this provision are provided in Appendix 1.