



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Mayor Sam Liccardo
Councilmember Raul Perez
Councilmember Don Rocha
Councilmember Johnny Khamis

SUBJECT: Agreement with History San José
for Maintenance of City-Owned Facilities

DATE: May 8, 2018

Approved by:

Date: 5/8/18

Don Rocha PH *Sam Liccardo* *Johnny Khamis* *MMA*

RECOMMENDATION

Extend current Operations & Maintenance (O&M) contract for 1-year for \$784,000 and direct the City Manager to return to an appropriate Council Committee prior to end of the agreement with an extension of a contract and include the following additions:

- a. History San José should set outcomes-focused performance measures and objectives that align with Sections 5 and 6 of the current contract (See Exhibit A).
- b. History San José shall provide an Annual Report based on performance measures and objectives.

BACKGROUND

We thank History San José for being caretakers of our historic assets and sites. With a proposed 20-year contract and a potential 10-year extension option, this equates to more than \$23 million dollars over time. This means Council may not have an opportunity to review programming, operations or maintenance plans for another seven Council cycles. Therefore, now is the time to ensure we are being good stewards of our public assets. Since the former contract was not reviewed by this current Council, nor have any objectives or metrics been provided to any Council committee, it is essential that we give direction to do so upon consenting to a long term agreement.

History San José has done well in being open to school groups and private functions upon reservations (see attached Exhibit B). Currently, in our O&M agreement, programming and activities should be open to all populations (Section 5, D of Exhibit A). The Adobe-Peralta and Fallon House exist in a heavily populated destination within San Pedro Square and Market. Yet, too often we find these public spaces inactive. We encourage History San José to take more risks in being creative, to open up our historic sites more frequently to broaden general public participation and interest, along with generating revenue for additional operations and/or programming. This could happen through partnerships with other non-profits, arts groups, and businesses. Staff can work with History San José to create a strategic plan within the set contract amount, with the expectation that the organization leverages the contract to increase their fund development and ultimately expand operations.

Again, we share our gratitude to History San José for their commitment in preserving San José's most important history. Similar to other museums and historical sites locally and nationally, there are models and best-practices in which we can learn from to continue growing our own historic programs in an urban environment.

Exhibit A

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

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**AMENDED AND RESTATED
OPERATION AGREEMENT
BETWEEN THE CITY OF SAN JOSE
AND HISTORY SAN JOSE
(formerly THE HISTORY MUSEUMS OF SAN JOSE)**

THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made and entered into by and between the **CITY OF SAN JOSE**, a municipal corporation ("City") and **HISTORY SAN JOSE (formerly THE HISTORY MUSEUMS OF SAN JOSE)**, a California nonprofit corporation ("HSJ") as of the date of full execution by the parties.

RECITALS

- A. The City owns historic assets related to the history of San José and the Santa Clara Valley. These assets include History Park (formerly Kelley Park Museum) which is comprised of 26 original and replica structures, some of which contain historic exhibits; the Peralta-Fallon Historic Site; and Historic Collections which is comprised of a research library an archive and more than half a million artifacts.
- B. In 1994, City commissioned a report by the Wolf Organization ("Wolf") to make recommendations to City's Council regarding the operation of the Kelley Park Museum (currently known as History Park) by a nonprofit corporation rather than by City. Wolf issued its report in March, 1995 ("Wolf Report").
- C. Based on the Wolf Report and the recommendations of City staff, in March, 1995, the City Council approved a transition plan ("Transition Plan") for the proposed transfer of operation and maintenance of the History Park and the Peralta-Fallon Historic Site, collectively referred to as the "Museum" to a nonprofit corporation. The Transition Plan set forth the procedure for transitioning management of the Museum to a nonprofit corporation and also set forth certain goals for improvement that were to be met by the nonprofit operator.
- D. Under the Transition Plan, the San Jose Historical Museum Association (the "Association"), a private nonprofit corporation, amended its articles of incorporation and bylaws with the approval of its membership and then appointed a new Board of Directors. The Association also approved a name change to the History Museums of San Jose.
- E. On April 30, 1998, City and HSJ entered into an agreement entitled "Operation Agreement between the City of San Jose and History Museums of San Jose" for the operation of the Museum, which was subsequently amended ("Original Agreement").
- F. City and HSJ desire to enter into this Amended and Restated Agreement to update certain provisions including, but not limited to, the payment schedule, performance measures, financial record-keeping and to make certain other technical

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changes thereto.

G. The Original Agreement will be terminated and of no force and effect upon full execution of this Amended and Restated Agreement.

In view of the above, the parties agree as follows:

SECTION 1. Definitions.

Except as otherwise provided in this Agreement, the terms set forth below have the following meanings, unless the context clearly otherwise requires.

- A. "City Archives" means the public records of the City of San Jose that have been transferred physically to HSJ for the purpose of management and public access, in accord with the appropriate sections of the City of San Jose Administrative Manual.
- B. "City's Director" is City's Director of General Services ("GSD") or such other director appointed by City's Manager to administer this Agreement. The term 'City's Director' includes his or her authorized designees.
- C. "City's Fixed Use Reservations" is defined in Section 8.1.
- D. "City's Flexible Use" is defined in Section 8.2.
- E. "Claims" is defined in Section 22.
- F. "FF&E" means furniture, fixtures and equipment furnished by City or HSJ for installation or use in the Museum and any replacement furniture, fixtures and equipment required due to obsolescence or normal wear and tear.
- G. "Hazardous Materials" is defined in Appendix 2.
- H. "Material Alterations" is defined in Section 11.
- I. "Museum" is defined in Section 2.4.
- J. "Operations Payment" is defined in Section 7.1.
- K. "Permanent Improvement" is any building, monument, or statue that is installed at the Museum. The term "Permanent Improvement" also includes any other structure constructed or installed at the Museum in such a manner that it is affixed to the real property.

- L. "Replacement Cost" means the cost to replace property at its then current price, without deduction for depreciation.
- M. "Special Event" is an activity conducted by HSJ or a third party at History Park with an expected attendance of 100 or more persons.
- N. "Taking" is defined in Section 23.
- O. "Term" is defined in Section 4.

SECTION 2. Location and Description of the Museum.

2.1. History Park (formerly Kelley Park Museum).

History Park is located as described on the attached Exhibit A, pages 1 and 2.

2.2. Peralta-Fallon Historic Site.

The Fallon House and the Peralta Adobe are located as described on Exhibit A, page 3.

2.3 Historic Collections.

The Historic Collections are located at History Park, the Peralta-Fallon Historic Site, and the City Central Service Yard as described on Exhibit A. The Historic Collections consist of historic and recreated structures and their contents; and a research library and archive, and collection center and their contents as described in Exhibit A.1

2.4. Museum Defined.

Reference in this Agreement to the term "Museum" shall mean both History Park and the Peralta-Fallon Historic Site.

SECTION 3. Authority and Status of HSJ.

A. HSJ represents and warrants that the information contained in this Agreement is true and accurate; that the individuals who execute this Agreement are duly authorized by HSJ; and that HSJ has the authority to enter into this Agreement.

B. HSJ further represents and warrants that HSJ is a California nonprofit corporation accredited by the American Association of Museums, and that it possesses tax-exempt status under both state and federal law. HSJ shall maintain its accreditation by the American Association of Museums, and tax-exempt status under both state and federal law throughout the Term.

C. The parties acknowledge and agree that HSJ is a separate, private and independent legal entity. City agrees that it will have no right of approval of HSJ's board of directors, officers, bylaws or articles of incorporation. The provisions of this subsection shall not relieve HSJ of its obligation to maintain its tax exempt status.

SECTION 4. **Term.**

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 March 31, 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 5. **Museum Standards.**

HSJ shall use its best efforts to operate and manage the Museum to fulfill the following objectives to the greatest extent possible:

A. To provide the highest quality museum programming to visitors to, and residents of, the City of San Jose in accordance with the operating principles set forth in the attached Exhibit B ("Operating Principles").

B. To make the Museum available to the public as more fully described in Section 6.

C. To develop and maintain a capable, experienced professional staff to operate the Museum in a first-class manner consistent with the standards established by the American Association of Museums for accredited museums.

D. To make the programming and activities of the Museum open to all populations.

SECTION 6. **HSJ Operation of Museum.**

6.1. Museum Uses.

- A. City and HSJ agree that HSJ is hereby engaged to operate and manage the Museum independently of City although in compliance with agreed upon performance expectations and City, State and Federal rules, regulations, and laws. The nature of this engagement is that of an independent contractor and shall not be considered to be an agency, joint venture, partnership, or subsidiary relationship. City and HSJ agree further that HSJ shall not hold itself out as, act as, or be the agent of City without City's express written authority. It is the intent of the parties that HSJ will be delegated actual authority by City over the day to day operation of the Museum.
- B. HSJ shall have the obligation and the exclusive right to provide the programs and services at the Museum in general accordance with Exhibit B.
- C. HSJ shall have full responsibility for managing, monitoring and supervising all use of the Museum pursuant to this Section 6, except City's exclusive use of the Museum pursuant to Section 8.
- D. All use of the Museum shall be subject to the terms and conditions of this Agreement, including without limitation, Section 16 (Nondiscrimination).
- E. HSJ shall operate the Museum and conduct activities at the Museum in accordance with this Agreement, with due concern for the safety of the public and HSJ staff members and volunteers, and in compliance with all applicable laws, governmental regulations and the terms and conditions of this Agreement. Without limiting the generality of the foregoing, HSJ shall comply with all laws related to Hazardous Materials utilized by or under the direction, control or management of HSJ in the operation of the Museum, including without limitation, laws related to the disposal of Hazardous Materials at the facility designated as a disposal facility at History Park.
- F. HSJ shall operate the Museum so as to provide the fullest use of the Museum over the widest time period consistent with good administrative practices for like facilities and within its available resources.
- G. City may approve, in its sole discretion, an agreement or agreements between HSJ and a third party that provides for long term use of the Museums, provided that such an agreement does not conflict with HSJ's obligations and responsibilities under this Agreement and protects the City from liability for the use by a third party. No such agreement shall extend beyond the term of this Agreement.

6.2. HSJ Operation Standards.

HSJ shall meet the standards set forth in Appendix 1 ("HSJ Operation Standards").

6.3. Non-Profit Strategic Engagement Platform Services.

At its own cost and expense, and within 90 days of the commencement of this Agreement, HSJ shall complete the Quantum Logic Business Solution's ("QLBS") risk assessment and seek counseling services from Service Corp of Retired Executives ("SCORE"), a nonprofit association dedicated to educating entrepreneurs and the formation, growth, and success of small businesses and nonprofit organizations nationwide, or other City approved consultant, regarding financial management, development, marketing, and governance through City's Non-Profit Strategic Engagement Platform services. At the conclusion of these efforts, HSJ will provide a summary report to the City's Director and incorporate the key findings and strategies into the Strategic Plan due to the City's Director no later than December 31, 2009. HSJ shall comply with the requirements specified in Appendix 1 with respect to the development and implementation of a Strategic Plan and quarterly status reports.

6.4. Use of Central Service Yard.

A. HSJ shall have the use of City's Central Service Yard located on Senter Road as set forth below.

B. HSJ acknowledges that the facilities within the Central Service Yard have been financed with tax-exempt debt. HSJ shall take no action to jeopardize the tax exempt status of the debt financing for the Central Service Yard, including without limitation, actions which would jeopardize HSJ's tax-exempt status.

C. HSJ may have the use of the following facilities at the Central Service Yard, as set forth below ("Central Service Facilities"), solely for the purposes of storage, maintenance and conservation of the historical collections under HSJ's management:

1. The warehouse, designated as "D-4", on the diagram attached to Exhibit A.
2. A portion (approximately 46,000 square feet) of the building, designated as "Building A" on Exhibit A.

D. HSJ shall not permit any other party to use the Central Service Yard without the prior written consent of City's Director of General Services, which consent shall not be unreasonably withheld. HSJ acknowledges that because of the tax-exempt financing for the Central Service Yard, City, in advance of giving consent to HSJ's request, may be required to obtain the approval of the trustee with an opinion of bond counsel.

E. HSJ's use of the Central Service Yard shall be coterminous with the Term of this Agreement and shall not be subject to any separate or earlier termination, except as provided in Section 25 A (13), below.

6.5. Name Changes.

The parties acknowledge and agree that any proposal to change the name of History Park or the Peralta-Fallon Historic Site shall be subject to the processes, policies, and ordinances established by City.

6.6. HSJ Board Meetings.

Without limiting the provisions of Section 6.1.A., HSJ shall hold meetings of its Board of Directors ("HSJ Board"), including any subcommittees charged with advising on the operation of the Museum, in accordance with the Brown Act, if applicable, as well as any other applicable laws, or policies of the City. HSJ shall notify City's Director of any meetings of the HSJ Board and afford City's Director the opportunity to attend and participate in such meetings or portions of meetings of the HSJ Board.

6.7. Fee Schedule.

A. HSJ shall establish admission fees and fees for use of the Museum that encourage use by the general public.

B. HSJ shall also establish a written policy with respect to the waiver or discount of the Museum fees ("Museum Fee Policy"). The Museum Fee Policy shall set forth guidelines and procedures for the waiver or discount of Museum fees. The Museum Fee Policy shall be consistent with standards in the industry for the discounting and waiver of fees. HSJ shall provide City's Director with a copy of the Museum Fee Policy and any subsequent amendments to the Museum Fee Policy.

C. All fees charged by HSJ for use of, or admission into, the Museum, shall be expended only for purposes related to the operation of the Museum.

6.8. Operating Procedures.

A. HSJ will establish such reasonable rules and regulations to govern the public's use of History Park and the Peralta-Fallon Historic Site in order to assure the level, quality and character of the Museum operation required by this Agreement ("Museum Rules"). HSJ shall provide City's Director with a copy of the Museum Rules. Any amendments to the Museum Rules shall also be subject to the prior review and approval of City's Director.

6.9. Collections.

A. The parties recognize and agree that City owns or controls items constituting the City's museum collections ("City's Collections").

B. HSJ shall manage City's Collections as well as its own collections in accordance with the policy entitled: "History San Jose Collections Management Policy". The Policy

will be reviewed annually by the HSJ Collections Committee.

C. HSJ shall receive and maintain title to all collections transferred by persons and other private entities after the date that the Original Agreement commenced on April 23, 1998. Title to any collections owned currently or in the future by City, including, but not limited to, City Archives, shall remain with the City. Upon expiration or termination of this Agreement, title to items owned by HSJ shall be transferred to the City, unless specific donor restrictions prohibit such transfer.

D. City shall have the right of access to both City's and HSJ's Collections without charge upon reasonable advance notice to HSJ.

6.10. Utilities at History Park

A. HSJ shall be responsible for the cost of electrical and gas services to operate History Park.

B. HSJ shall be responsible for the cost of telephone service at History Park.

C. HSJ shall be responsible for the cost of potable water at History Park. City shall be responsible for the cost of non-potable water at History Park.

D. City will be responsible for the cost of trash services at History Park. HSJ shall comply with City procedures with respect to the disposal and pickup of trash at History Park.

6.11. Utilities at Peralta-Fallon Historic Site.

HSJ shall arrange for and pay when due any and all charges for electrical, gas telephone and trash disposal services to operate the Peralta-Fallon Historic Site.

6.12. Capital Improvements.

HSJ shall submit to City, on or before January 15 of each calendar year (unless otherwise indicated), a proposed list of Capital Improvements, which HSJ recommends to be undertaken at the Museum during the ensuing five-year period (the "Capital Improvement Program"). HSJ will include in the Capital Improvement Program HSJ's recommended expenditures for Capital Improvements in priority order including the estimated costs for design, materials, construction and the proposed contingency for each identified Capital Improvement, based on HSJ's knowledge of the Museum and related construction and its costs, knowledge of revenue-enhancing strategies, and HSJ's role in maintaining the quality of the Museum; provided, however, that HSJ shall not be obligated to obtain any bids in connection with its preparation of the Capital Improvement Plan. HSJ and City recognize and agree that the Capital Improvement Program will be considered by City in conjunction with City's review of the overall Capital Improvement Program for the City of San Jose and the recommendations of

HSJ for Capital Improvements will be evaluated against the needs for Capital Improvements to City's other facilities and properties. City's approval of any proposed Capital Improvement identified in the Capital Improvement Program is conceptual only and implementation of any such improvement is contingent upon approval by City and the availability of funds.

For purposes of this Paragraph 6.12, "Capital Improvement" means any alteration, repair, or improvement which costs in excess of Five Thousand Dollars (\$5,000) and which has a useful life of more than five (5) years.

SECTION 7. City and HSJ Funding.

7.1. City Funding.

A. City's funding of the Museum shall be on a fiscal year basis (July 1 to June 30) and is subject to annual appropriations. HSJ acknowledges that City has informed HSJ that City, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of this Agreement.

B. City's assistance pursuant to this Agreement is intended to supplement HSJ's other funding sources and shall be used by HSJ only for HSJ's obligations under this Agreement at the Museum.

C. City intends to provide annual financial support to HSJ ("Operations Payment") for the operation of the Museum as set forth in the attached Exhibit C. The annual payments are intended to be made in equal installments on or about the 5th of each month on a fiscal year basis. Each installment shall be equal to 1/12th of the annual financial support for that given fiscal year.

D. Any portion of City's Operations Payment not so used or encumbered for such obligations each year shall be deposited in a capital reserve, or maintenance reserve account to be used only for capital repairs or replacements or preventive maintenance expenses.

7.2. HSJ Funding.

A. HSJ is expected to raise annual operating funding from outside funders, including corporations, foundations, individual donors and government grant-making agencies. HSJ is also expected to generate revenues to pay for a portion of its annual operating expenses through ticket sales, educational programs, memberships, rentals, sales of goods and services and other sources.

B. HSJ shall be solely responsible for the management of fiscal resources of the

organization each year, as prescribed by the Financial Standards included in Appendix 1.

7.3. Endowment Fund.

A. The parties acknowledge that HSJ has established an endowment fund for the benefit of the History Park ("Endowment Fund"). City acknowledges receipt of the documents establishing the Endowment Fund in addition to the most recent financial report for the Endowment Fund.

B. HSJ represents and warrants that:

1. the documents provided to City by HSJ were current and accurate as of the Commencement Date; and
2. the corpus of the Endowment Fund, is \$138,425 (rounded to the nearest dollar).
3. HSJ has borrowed against the Endowment Fund to fund its operations, and by the terms and conditions of this Agreement is obligated to repay \$135,465 to the Endowment Fund as set forth in Appendix 1.

C. HSJ shall maintain its Endowment Fund program as set forth in that document entitled "San José Historical Museum Association Endowment Fund Declaration" ("Declaration") executed on May 4, 1987, and subsequently amended on February 22, 1994, which document is attached hereto as Exhibit I and is incorporated by reference as though fully set forth herein. HSJ shall immediately notify City of any additional amendments to the Declaration. In addition to HSJ's duties as set forth in the Declaration, the parties wish to make explicit here that HSJ shall administer the Endowment Fund program in accordance with HSJ's duties as a fiduciary, and shall invest the monies, including public funds, contained in the Endowment Fund with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims. In addition to any rights and remedies that City may have against HSJ for breach of this Agreement, HSJ's failure to maintain and manage the Endowment Fund program in accordance with the Declaration and the terms and conditions set forth in this Section, shall entitle City the right to terminate this Agreement upon thirty days' prior written notice to HSJ at the sole discretion of City's Director. The parties acknowledge and agree that the additional period of time to cure specified in Section 26A shall not apply to this Section.

SECTION 8. City's Use of Museum.

8.1. City's Fixed Use.

A. City shall have the right to reserve and use the Museum for City's exclusive use as specified in this Section for City's purposes ("City's Fixed Use Reservations"). All Fixed Use Reservations shall be submitted to HSJ through City's Director.

B. For purposes of this Section, "no cost" shall mean that the City shall not pay for the cost of HSJ staff, equipment and any other expenses associated with normal and customary services available to groups and the general public using the Museum during normal business hours, regardless of whether the City's Fixed Use occurs before, during or after such normal business hours. City shall pay HSJ all direct costs which are in addition to normal costs and which are required to provide the Museum for City's Fixed Use ("incremental costs").

C. City shall have the right to reserve the facilities at History Park for up to twelve dates each year, including three reservations of the entire History Park, for a period of up to eight hours per date. City's Fixed Use Reservation of History Park shall be at no cost except when City reserves the entire History Park for events with a projected attendance of 1000 persons or more ("City's Special Uses"). For City's Special Uses, City shall be responsible for all costs associated with charges imposed by HSJ for events of the same size except for the base rental charge for the use of the site.

D. City shall have the right to reserve, at no cost, the facilities at the Peralta-Fallon Historic Site for up to twelve dates each year for a period of up to eight hours per day.

E. City shall provide HSJ with at least forty-five (45) days' advance notice of each date that City desires to schedule and HSJ shall be obligated to reserve the Museum for the date(s) City desires unless another reservation previously has been made for the date(s) that City has selected. If another reservation has previously been made, HSJ shall make every reasonable effort to accommodate City's use on the dates requested and shall offer alternative dates if accommodation is not possible. When possible, City shall endeavor to provide advance notice in excess of forty-five (45) days.

8.2. City's Flexible Use.

In addition to City's Fixed Use as specified above, City shall have the right to use, at no cost, from time to time, the meeting rooms and grounds of the Museum for City purposes subject to reasonable written notice ("City's Flexible Use"). HSJ may reasonably restrict City's Flexible Use and City's access to public areas. HSJ shall make reasonable efforts to accommodate such City use consistent with the normal business activities of HSJ.

8.3. Insurance/Charges.

City may be self-insured against any loss or liability incurred by City as a result of its use under this Section. HSJ shall not impose any charges for City's use except as expressly permitted in Section 8.1.

SECTION 9. Ownership of Furniture, Fixtures and Equipment.

A. All FF&E purchased by City or by HSJ with City funding ("City FF&E") shall be and remain the property of City, who shall have sole right to possession upon expiration or sooner termination of this Agreement. HSJ shall have the right to use City FF&E during the term of this Agreement. A list of City FF&E available for HSJ's use as of the Commencement Date is set forth in the attached Exhibit D.

B. Upon expiration or sooner termination of this Agreement, City shall have the right to purchase at the then fair market value, all FF&E purchased by HSJ with funds raised by HSJ from sources other than City ("Museum FF&E") that is essential to the operations or programming of the Museum. If City and HSJ are unable to agree on the fair market value of the Museum FF&E, HSJ shall be allowed to remove the Museum FF&E from the Museum. HSJ will perform an annual inventory of all FF&E in the Museum and shall give the City an accounting of all City FF&E on an annual basis.

SECTION 10. Maintenance, Repair and Security of Museum.

10.1. Building Maintenance.

Subject to City's obligations set forth in Section 10.4, HSJ shall maintain and repair the History Park and the Peralta-Fallon Historic Site in order to keep the Museum in a serviceable condition for the public's use and enjoyment, including without limitation, viewing and touring of the Museum's buildings and exhibits. HSJ shall maintain the Museum in accordance with prevailing industry standards and consistent with any applicable warranties, operating manuals or instructions. At the discretion of the City's Director, City may assist HSJ with building maintenance tasks. No more frequently than quarterly, HSJ may make a formal request for building maintenance assistance to the City's Director, beginning with the submission of the Strategic Plan due no later than December 31, 2009.

10.2. Janitorial Services/Maintenance of FF&E.

HSJ shall provide at its sole cost and expense janitorial services to the Museum necessary to maintain the Museum in a clean, safe and serviceable condition for the public and staff. HSJ shall maintain all FF&E in use at the Museum in accordance with any applicable manufacturer's warranty requirements, manuals and records. HSJ shall promptly notify City's Director in the event that any of the City FF&E is lost, stolen or

damaged.

10.3. Security.

HSJ shall provide and maintain at its sole cost and expense an electronic security system, electronic fire protection, and security services at the Museum. HSJ shall have sole responsibility and bear all expense related to activating the system and responding to any and all alarm calls from the electronic system and from security services.

10.4. Landscaping Maintenance.

A. HSJ shall not be responsible for maintenance of the landscaping at History Park and the Peralta-Fallon Historic Site. City will continue to maintain the landscaping, park furniture and irrigation systems at the Museum in accordance with the standards, procedures and budgetary allocations then in effect. Pursuant to Section 6.12, HSJ shall annually provide a proposed list of Capital Improvements which HSJ recommends to be undertaken at the Museum during the ensuing five-year period. As appropriate, HSJ may include a request for the replacement of park furniture and landscape irrigation systems that are at the end of their useful lives.

B. City shall have exclusive use of the storage space, approximately 10 feet by 14 feet, currently located at the History Park corporation yard for the purpose of storing City's landscaping equipment. In the event that HSJ wishes to relocate City's storage space, HSJ at its sole cost shall provide City with comparable replacement space.

SECTION 11. Alterations to Museum.

A. "Material Alterations" shall mean any Permanent Improvement at the Museum; structural changes; changes to the exterior appearance of the Museum; changes in permanent floor and wall surfaces; changes in the interior of Museum structures (excluding changes in exhibits); and changes in major components of electrical, HVAC and other building systems.

B. HSJ shall not make any Material Alterations to the Museum without the prior written consent of City. The approval of the City Manager is required for Material Alterations covered by Section 12, below and the approval of City's Director is required in all other instances. Any alteration to the Museum approved by City shall be done with materials of an equal quality and durability to those in which the Museum was originally constructed or renovated, shall be consistent with the design of the Museum as originally constructed or renovated and shall be accomplished in accordance with any reasonable conditions imposed upon City's consent.

C. Notwithstanding Subsection B, HSJ may make nonstructural alterations for exhibits or programs so long as such alterations are temporary in nature. HSJ shall give City thirty (30) days advance notice before commencing such alterations, unless it

is impossible to foresee the need for the alteration thirty (30) days in advance, in which case HSJ shall give City notice as soon as practically possible. HSJ shall repair and take all actions to return the Museum to substantially its pre-existing condition at the end of such temporary period.

SECTION 12. **Expansion of Museum.**

A. The parties agree to confer with each other when either receives a request from a third party to locate any Permanent Improvement at the Museum prior to entering into any negotiations with the requesting party.

B. HSJ shall not construct or install any Permanent Improvement at the Museum without the prior written approval of the City Manager. Notwithstanding the foregoing sentence, any proposed Permanent Improvement that is not identified in the Master Plan for History Park will require the prior approval of the City Council. City's approval will be conditioned, among other things, upon HSJ having sufficient funds to maintain the Permanent Improvement contemplated without additional City funding.

SECTION 13. **Alteration and Construction Requirements..**

13.1. Application.

The provisions of this Section are in addition to any requirements for alterations or construction set forth elsewhere in this Agreement.

13.2. Master Plans.

Any alteration or construction at History Park must be consistent with its Master Plan and the Kelley Park Master Plan. Any amendment to either of these Master Plans is subject to the approval of City's Council.

13.3. Plans and Specifications.

A. The plans and specifications (the "Plans") for any Material Alteration to the Museum (collectively, "Construction Work") shall be in conformance with City's Standard Specifications then in effect. The Plans must set forth HSJ's proposed schedule for completion of the Construction Work.

B. The Plans for the Construction Work shall be subject to the prior review and approval of City's Director of Public Works ("DPW Director"). City acknowledges that in reviewing Plans, City will take into account the historical nature of structures that have been registered as historical landmarks. City's approval of the Plans shall not release HSJ of the responsibility for the correction of mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of

circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Construction Work, the DPW Director determines in the DPW Director's sole discretion that the public safety requires modification of, or the departure from, the Plans, the DPW Director shall have the authority to stop the construction and to require such modification or departure and to specify the manner in which the same may be made. The parties acknowledge that the Plans, once approved by City's DPW Director, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted unless City's DPW Director approves the proposed revision in writing.

13.4. Inspection of Construction Work.

City's DPW Director shall, at all times during the progress of work on the Construction Work, have free access to the Construction Work site for inspection purposes. If the DPW Director determines that all or any portion of the work done on the Construction Work is not in compliance with the Plans, the DPW Director shall notify HSJ of the same and HSJ shall promptly cure such defect to the DPW Director's satisfaction.

13.5. Bidding Requirements.

In the event, and to the extent, that any of the Construction Work constitutes a "public works project," as defined in Section 1217 of the City Charter, HSJ shall observe all public bidding requirements associated with such projects as prescribed by Section 1217 of the City's Charter and City's Municipal Code.

13.6. Approvals.

All applicable local, state, and federal laws, rules and regulations, and all necessary and required approvals of plans and specifications, permits and all other approvals and documents required, shall be fully applicable to, and obtained by HSJ for Construction Work carried out by HSJ under this Agreement.

13.7. Prevailing Wages.

All applicable local, state, and federal laws, rules and regulations and policies regarding public works construction shall be adhered to, including, but not limited to, the payment of prevailing wages.

13.8. Costs.

All costs associated with Construction Work, including without limitation, City's charges for Plan review and inspection, shall be the sole responsibility of HSJ. HSJ shall not expend any portion of City's annual Operations Payment to defray the cost of Construction Work.

13.9. Bonding Requirements.

HSJ shall comply with the bonding requirements set forth in the attached Exhibit E as a condition of the DPW Director's approval of the Plans for any Construction Work.

13.10. Notice to Proceed.

HSJ may not begin the Construction Work unless and until both the City's Director and the DPW Director jointly give HSJ a written notice to proceed ("Notice to Proceed"). The Notice to Proceed may specify additional conditions related to the prosecution of the Construction Work. The Notice to Proceed will not be issued unless and until the following conditions are met:

- A. City's Director is satisfied that HSJ has or will have sufficient funds, donated services or both to complete the Construction Work in a timely manner.
- B. City's DPW Director has issued a written notice to HSJ approving the Plans for the Construction Work.
- C. The insurance requirements and bonding requirements set forth in Exhibits E and G, respectively, have been met.
- D. In the case of Construction Work resulting in an expansion of the Museum, the City Manager or the City Council, as applicable, has approved the proposed expansion pursuant to Section 12 ("Expansion of Museum").

13.11 Alternative Procedures.

Notwithstanding Sections 13.3 and 13.4 and 13.10 above, with the prior approval of both the DPW Director and the Department of Planning, Building, and Code Enforcement (PBCE) Director, PBCE may review the Plans for the Construction Work where appropriate, provide any approvals related thereto as applicable, and inspect the finished Construction Work for State Building Code compliance. HSJ shall submit all applications, Plans, and pay all fees required by PBCE as applicable. However, HSJ shall not commence Construction Work unless and until the Director has issued the Notice to Proceed specified in Section 13.10. In such case, the parties agree that the provisions of Section 13.10B shall not apply.

SECTION 14. Relationship Between History Park and Kelley Park.

14.1. Special Events.

HSJ shall designate a staff member to coordinate Special Events with City staff. The parties acknowledge and agree that coordination of Special Events with City staff is essential in order to reduce traffic congestion, crowding and undue wear and tear on both History Park and Kelley Park. The parties met in good faith and

drafted Special Event guidelines, a copy of which is attached as Exhibit H, and which may be modified upon the mutual consent of the parties. The Special Event guidelines address each party's respective responsibilities in connection with the coordination and supervision of Special Events. Coordination may include, but not be limited to, attendance at event coordination meetings by the appropriate HSJ and City staff and the development of parking plans. Without limiting the generality of the foregoing, HSJ shall submit to City's Director a monthly calendar of Special Events scheduled at History Park.

14.2. Park Special Events.

City will notify HSJ of park special events and provide HSJ staff the opportunity to attend any event coordination meetings. To the extent that park special events are reoccurring events, on or before February 1 of each year of the Term, City agrees to provide HSJ with the annual calendar of events scheduled at Kelley Park, from February through January 31 of the following year. City also agrees to provide HSJ with periodic updates to the annual calendar as events are scheduled or canceled.

14.3. Parking.

City will retain management of the parking lots shown in Exhibit A, located at Kelley Park, including without limitation, the right to charge for parking. HSJ will have non-exclusive use of the parking spaces located along Phelan Avenue, adjacent to History Park as well as the parking located in the History Park and staff parking at History Park.

14.4. Large Event Parking.

Notwithstanding Section 14.3 above, the parties have agreed that with the prior approval of the Director, HSJ may manage parking for up to twenty (20) HSJ events per calendar year with estimated attendance over 500 where such parking is limited to Parking Lot K-4 located at History Park including, without limitation, the right to charge for parking provided that the parking fees charged are consistent with the parking fees in effect at the time as adopted by resolution of the City Council, and to retain the revenues derived therefrom. For events where HSJ manages parking, HSJ shall be responsible for event signage directing attendees to Parking Lot K-4, ingress to and egress from Parking Lot K-4, and maintaining the cleanliness of Parking Lot 4 in a manner satisfactory to the City's Director including, but not limited to (i) removing all litter, debris, and graffiti, and (ii) emptying all garbage cans at the conclusion of each event. In addition, HSJ shall be responsible for providing its own security and lights at its sole cost and expense, and shall reimburse City for any and all costs incurred by City as a result of damage caused to Parking Lot K-4 while under the management of HSJ. Further, HSJ shall indemnify, defend, protect and hold harmless City and its officers, directors, agents and employees (collectively "City Indemnitees") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (collectively, "Claims") which may be imposed upon or incurred by or asserted against City Indemnitees in connection with HSJ's management of Parking Lot K-4, except (i) to

the extent caused by the negligence or willful misconduct of any of the City Indemnitees, or (ii) to the extent caused by any breach of this Agreement by any of the City Indemnitees.

SECTION 15. Administration of Museum Contracts.

15.1. Existing Contracts.

The parties acknowledge that City entered into contracts with the organizations listed in the attached Exhibit F ("Museum Affiliates") related to the use and development of History Park (collectively, "Museum Contracts"), prior to the commencement of the Original Agreement. HSJ acknowledges receipt of copies of the Museum Contracts. HSJ shall administer all current and future Museum Affiliate Contracts and shall take no action with respect to termination of any of the Museum Contracts without the prior written consent of City's Director.

15.2. Future Museum Contracts.

HSJ may enter into contracts with third parties for the operation of concessions at the Museum or the use or development of the Museum ("HSJ Contracts") subject to the provisions of this Section and the requirements set forth elsewhere in this Agreement.

- A. HSJ shall not give any property right in the Museum to a third party.
- B. Any HSJ Contract must be assignable to City and must provide that the HSJ Contract will terminate automatically upon expiration or sooner termination of HSJ's Agreement with City, unless City elects to accept the assignment.

SECTION 16. Nondiscrimination.

A. During the Term, HSJ shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

B. Any HSJ Contracts for the use, occupancy, or development of History Park or the Peralta-Fallon Historic Site shall contain substantially the following clause:

There shall be no discrimination in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself, or any person claiming under or through it,

establish or permit discrimination in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the selection, location, number, use or occupancy of licensees, vendees or invitees in the premises.

SECTION 17. Conflict of Interest.

HSJ shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. As of the date of entering into this Agreement, HSJ's management staff assigned to operate and manage the Museum ("HSJ's Management Staff") shall not be required to complete and file a Form 700 with City's Clerk. In the event that the City subsequently determines to require HSJ's Management Staff to complete and file a Form 700 with City's Clerk, City will notify HSJ in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). HSJ shall cause HSJ's Management Staff to complete and file the Form 700 with City's Clerk in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice.

SECTION 18. Books, Records and Accounts.

A. HSJ shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the operation of the Museum ("Museum Records") for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to HSJ pursuant to this Agreement.

B. HSJ shall maintain all Museum Records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

C. Any Museum Records required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at HSJ's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that Museum Records may be lost or discarded due to dissolution, disbandment or termination of HSJ's business, City may, by written request by any of the above-named officers, require that custody of the records be

given to City and that the records and documents be maintained by the City. Access to such Museum Records shall be granted to any party authorized by HSJ, HSJ's representatives, or HSJ's successor-in-interest.

SECTION 19. Budgets, Audits and Reporting Requirements.

19.1 Budget Review.

Both parties acknowledge the need and the intent to work together in a cooperative and supportive manner in City's budgetary processes. HSJ shall provide to City, upon City's request, timely and accurate information to support annual funding under this Agreement and any additional funding requests. Such information may include draft budgets, revenue projections, proposed fee schedules, practical plans, capital and special funding needs and any other information that City deems useful. City will provide HSJ with timely and accurate information on City's budgetary schedule and processes. City within the time constraints imposed by the schedule for budget review and approval, will provide HSJ an opportunity to provide comment to the City's budget as it relates to the Museum.

19.2. Annual Reporting.

Within ninety (90) days following the end of each fiscal year (July 1-June 30) during the Term, HSJ shall provide City with the following:

- A. An annual financial report audited by an independent certified public accounting firm with respect to the Museum for the previous fiscal year.
- B. An annual narrative report on the operations of the Museum for the previous fiscal year, which report shall detail the status of achieving HSJ's Standards and the Strategic Plan (as defined in Appendix 1), Museum activities, visitors, special events, programs and other material activities affecting the operation and maintenance of Museum and the Collections.
- C. A report assessing the status of physical condition of the Museum and any needed capital improvements and repairs.
- D. An approved budget for the current fiscal year.
- E. A fee, operations, program outreach and special event schedule for the current fiscal year.

19.3. Monthly Reporting.

HSJ shall submit the following monthly financial reports to the City's Director on or before the second business day following the regularly scheduled monthly

meeting of HSJ's Board of Directors during the term of this Agreement. However, at the sole discretion of the City's Director, the due date may be extended. All financial reports shall be approved by the Finance Committee of HSJ's Board of Directors prior to submittal to City. City will not process HSJ's monthly operating payment in whole or in part until such reports are received by the City's Director:

1. Monthly cash flow projection schedule
2. Monthly reconciliation of actual revenues and expenditures to cash flow projection schedule for the preceding month
3. Balance sheet for the preceding month's end
4. Monthly budget and financial forecast updates for HSJ's fiscal year, showing prior month's actuals and most recent projected forecasts for remaining months of HSJ's fiscal year.

If there are unfavorable budget to actual variances of 10% or more for total year-to-date amounts appearing on the monthly cash flow reports in any of the following categories – sources (cash receipts), or uses (cash disbursements), or ending cash balances, HSJ shall submit a written explanation and provide a corrective action plan, subject to the approval of the City's Director at the same time it submits its monthly reports. If HSJ fails to provide a corrective action plan acceptable to the City's Director or fails to implement the corrective action plan in a manner acceptable to the City's Director, the City's Director may immediately discontinue the operating payments and, upon thirty days' written notice to HSJ, the City's Director may terminate this Agreement at his/her sole option. The parties acknowledge and agree that the additional period of time to cure specified in Section 26A shall not apply to this Section.

19.4. Additional Reporting Requirements.

HSJ shall also furnish to the City's Director any additional financial statements, reports, documents, and other information as the City's Director may reasonably require.

Furthermore, during the term of this Agreement, HSJ shall maintain a website where it shall make its annual audited financial information provided to the City available to the public at no cost for viewing and downloading for a period of at least twenty-four months. HSJ shall post the information to the website no later than two weeks following delivery to the City, unless otherwise directed by the City's Director.

The financial information submitted to City by HSJ is submitted for purposes of this Agreement only and does not alter or change any other City requirement to which HSJ is subject that is not directly required by this Agreement.

Furthermore, review by City of HSJ's financial information shall be for the purpose of protecting City's interest as owner of the Museum. HSJ is solely responsible for management of its own fiscal resources, and any indebtedness incurred by HSJ to a third party shall be the responsibility of HSJ. Nothing in this Agreement shall be construed so as to render City responsible for any debts, liabilities or obligations of HSJ.

19.5. Reserve.

A. Except as otherwise provided in this Agreement, HSJ shall include in its annual budgets a minimum contribution of three percent (3%) of the budget to a cash flow reserve ("Reserve"). HSJ shall continue to make the Reserve contributions until the Reserve has reached twenty-five percent (25%) of its annual operating budget. This Reserve shall be maintained in a separate account and City shall be notified within five (5) days when expenditures are made from the Reserve account.

B. HSJ may utilize the Reserve from time to time for cash flow purposes after providing City with thirty (30) days prior written notice of its intent to do so. All borrowing from the Reserve must be repaid by the end of the following fiscal year. If HSJ fails to repay the account by the end of the following fiscal year, the City may, at its option, require that all or part of the annual Operations Payment be utilized to replenish the Reserve account.

19.6. City's Right to Audit.

City reserves the right at its own expense to conduct audits of HSJ's operations under this Agreement. All accounting records, basic or secondary, used in the ordinary course of business, including cash register tapes and all banking deposit tickets, statements and any other banking records, purchase invoices, and all records of sales, excise or other taxes paid or payable by HSJ for sales, fees and charges from the operation of the Museum shall be made available to City's Manager, City's Attorney, City's Director of Finance, City's Auditor and/or the City's Director for inspection and/or auditing purposes upon City's request.

SECTION 20. Insurance; Release.

A. HSJ agrees to have and maintain the policies set forth in Exhibit G, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Human Resources or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. HSJ agrees to provide City with a copy of said policies, certificates and/or endorsements before work commences under this Agreement.

B. The parties acknowledge that City currently maintains a casualty policy on the Peralta-Fallon Historic Site buildings and the buildings located at History Park. City agrees, subject to the provisions of Section 7.1, to keep the casualty insurance policy in effect. City and HSJ waive any and all right of recovery from the other for losses caused by the perils defined in the fire, extended coverage and all risk property insurance policies. No party shall be liable to the others for any loss of or damage to the property, equipment, or building premises in which there is an insurable interest held by others, resulting from any perils covered by fire, extended coverage and all risk property insurance.

C. Commencing on the fifth Anniversary of the Commencement Date and at five year intervals thereafter, City's Risk Manager shall have the right to reasonably review the insurance requirements contained in this Section and to require HSJ to increase the levels of insurance coverage, or types of coverage or both. HSJ shall provide the appropriate certificates of insurance reflecting any new or additional insurance requirements within 45 days of City's notice setting forth the revised insurance requirements.

SECTION 21. Restoration Following Damage or Destruction.

A. In the event of damage or destruction of all or part of the Museum from casualty or natural disaster, City shall be obligated to restore the Museum only to the extent that sufficient insurance proceeds from the policies described in Exhibit G are available for restoration of the Museum. Subject to the requirements of Section 13 (Alteration and Construction Requirements), any restoration shall conform as closely as practicable to the original design and materials of the Museum.

B. If the insurance proceeds for restoration of the Museum are not sufficient to complete the restoration, the parties shall obtain an estimate of the total cost of the restoration as soon as reasonably possible and the following shall apply:

1. If the difference between the insurance proceeds and the total cost of the Museum restoration (the "Insurance Shortfall") is less than or equal to ten percent (10%) of the then total replacement costs of the Museum, the parties shall endeavor to fund the Insurance Shortfall. If the parties are unable to raise the Insurance Shortfall within one (1) year following the event of damage or destruction, either party shall be entitled to terminate this Agreement in accordance with the procedure for termination set forth in Section 25.

2. If the Insurance Shortfall is equal to more than ten percent (10%) of the then-total replacement cost of the Museum and neither party elects to supply the additional funds necessary to complete the restoration, either party may terminate this Agreement in accordance with the procedure for termination set forth in Section 25.

3. If HSJ and City reasonably determine that the insurance proceeds and any other funds available for repair and installation of FF&E in the Museum after an event of damage or destruction are not sufficient to ensure the continued operation of the Museum, then the obligation of HSJ to operate the Museum shall be suspended for a period not exceeding two (2) years following the event of damage or destruction. HSJ shall diligently engage in fund raising activities to fund the repair and/or installation of the FF&E. If HSJ does not notify the City within two (2) years following the event of damage or destruction that it has sufficient funds to complete the repair and installation of FF&E in the Museum to a level which will ensure the operation of the Museum, then either party may terminate this Agreement in accordance with the procedure for termination set forth in Section 25.

4. During any period in which the parties are attempting to fund a deficiency in insurance proceeds as described in this Section, any insurance proceeds being held by City or HSJ shall be used only to the extent necessary to secure and provide for public safety at the Museum.

SECTION 22. Indemnification.

A. Subject to the provisions of Section 20 B, HSJ shall indemnify, defend, protect and hold harmless City and its officers, directors, agents and employees (collectively "City Indemnitees"), from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (collectively, "Claims") which may be imposed upon or incurred by or asserted against City Indemnitees by reason of any of the following occurrences during the Term except (i) to the extent caused by the negligence or willful misconduct of any of the City Indemnities or (ii) to the extent caused by any breach of this Agreement by any of the City Indemnities:

1. Any work or thing done in, on, or about the Museum, by or at the direction of HSJ including, without limitation, the installation of any furniture, fixtures or equipment, or any alteration to the Museum; or
2. Any use, possession, occupation, operation or management of the Museum or any part thereof by HSJ or any of its agents, contractors, servants, employees, operators, licensees or invitees (collectively, "HSJ Representatives"); or
3. Any negligence or willful misconduct on the part of HSJ or any of its agents, contractors, servants, employees, operators, licensees or invitees; or
4. Any accident, injury or damage to any person or property occurring in the Museum arising from the acts or omissions of HSJ or any of its agents, contractors, servants, employees, operators, licensees or invitees; or

5. Any failure on the part of HSJ to perform or comply with any of the terms, provisions, warranties, covenants and conditions contained in this Agreement, to be performed or complied with by HSJ.

B. Subject to the provisions of Section 20 B, City shall indemnify, defend, protect and hold harmless HSJ and its officers, directors, agents and employees (collectively, the "HSJ Indemnitees") from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (collectively, "Claims") which may be imposed upon or incurred by or asserted against HSJ Indemnitees by reason of any of the following occurrences during the term except (i) to the extent caused by the negligence or willful misconduct of any of the HSJ Indemnitees or (ii) to the extent caused by any breach of this Agreement by any of the HSJ Indemnitees:

1. Any work or thing done in, on or about the Museum by or at the direction of City or any of its agents, contractors, servants, employees, licensees or invitees (collectively, "City Representatives").
2. Any entry, use or occupancy of the Museum or any part thereof by City or any City Representatives.
3. Any negligence or willful misconduct on the part of City or any City Representatives.
4. Any failure on the part of City or any City Representatives to perform or comply with any of the terms, provisions, warranties, covenants and conditions contained in this Agreement, to be performed or complied with by City.

C. City and HSJ promptly shall give one another written notice of any Claim which might entitle either of them to indemnification pursuant to this Section.

D. The provisions of this Section shall survive expiration or sooner termination of this Agreement.

SECTION 23. Condemnation.

Any exercise by a governmental or other permitted authority, other than City or the Redevelopment Agency of the City of San Jose, of the power of eminent domain, or the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation, including, but not limited to, a voluntary sale or conveyance in lieu of condemnation, against the Museum (the "Taking") shall be controlled by the provisions of this Section.

A. If there is a Taking of the whole Museum, then either party may terminate this Agreement in accordance with the procedure for termination set forth in Section 25.

B. If any portion of the Museum is taken by condemnation so as to effect a partial Taking, then this Agreement shall remain in full force and effect as to the portion of the Museum remaining immediately after the partial Taking; provided, however, that in the event a partial Taking results in a remainder of such size, function or configuration so as to render the restoration or continued operation of the Museum infeasible or impracticable, either party may terminate this Agreement in accordance with the procedure for termination set forth in Section 25.

C. In the event of a partial Taking that does not render restoration or continued operation of the Museum infeasible or impracticable, City, subject to funding availability, shall restore the Museum as nearly as possible to its condition and character immediately prior to such partial Taking, except for any reduction in area caused thereby. City and HSJ shall endeavor to fund the restoration costs from condemnation proceeds and from other sources of funding. If the parties are unable to fund such restoration, either party may terminate this Agreement in accordance with the procedure set forth in Section 25.

D. Awards or other payments on account of a partial or total Taking of the Museum shall be as follows:

1. All condemnation proceeds shall be held by City in escrow on behalf of City and HSJ. The condemnation proceeds shall be allocated as follows: (i) the value of any Museum FF&E or FF&E owned by any other person or group that is encompassed in the condemnation proceeds shall be paid to HSJ or such other person or group, and (ii) the remaining proceeds shall be paid to City.
2. City shall notify HSJ in writing within ten (10) days after City's receipt of any notice of the commencement of the exercise of the power of eminent domain or other similar power by any governmental or other permitted authority or any attempt to purchase or otherwise acquire the Museum, in whole or in part. City shall fully inform HSJ of all matters relating to negotiations or litigation regarding any Taking of the Museum.

SECTION 24. Identity of Organization and Assignment.

A. HSJ will use its best efforts to recruit and retain, allowing for reasonable turnover, an ongoing, effectively-functioning and diverse Board of Directors that appropriately reflects the cultural and community focus of the Museum and incorporates the broad range of backgrounds and skills needed to provide appropriate leadership and oversight to the organization and Museum.

B. The parties agree that the expertise and experience of HSJ are material considerations for this Agreement. HSJ shall not assign or transfer any interest in this Agreement nor the performance of any of HSJ's obligations hereunder, without the prior written consent of City, and any attempt by HSJ to so assign this Agreement or any

rights, duties or obligations arising hereunder shall be void and of no effect.

C. City may assign from time to time all or any of its rights, title and interest in and to the Museum and this Agreement, upon any terms and conditions consistent with the terms of this Agreement. City shall notify HSJ in advance of the effective date of any such assignment.

SECTION 25. Termination of Agreement.

A. This Agreement may be terminated as follows:

1. Upon written notice given by either party if the other party defaults and the nondefaulting party has the right to terminate this Agreement pursuant to Section 26 or pursuant to another provision of this Agreement.
2. Upon written notice given by either party if there is a Taking of all of the Museum or if there is a partial Taking and such party has the right to terminate this Agreement pursuant to Section 23.
3. Upon written notice by either party if all or a portion of the Museum is damaged or destroyed by casualty or natural disaster and such party has a right to terminate this Agreement pursuant to Section 21.
4. By HSJ, upon twelve (12) months written notice to City, if HSJ is unable to perform its obligations under this Agreement due to the unavailability of funding and, despite its good faith efforts during the 12-month notice period, HSJ is unable to obtain such funding.
5. By City, upon written notice, if HSJ shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated as bankrupt or insolvent or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, provided, however, that if such event is dischargeable City shall not have the right to terminate this Agreement based on the occurrence of such event until the expiration of the 60-day period immediately following such event without discharge of such event.
6. By City, upon written notice, if a petition or answer proposing the adjudication of HSJ as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within 60 days after the filing thereof.
7. By City, upon written notice, if a receiver, trustee or liquidator of HSJ or of

all or substantially all of the property of HSJ shall be appointed in any proceeding brought by HSJ, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought by a third party against HSJ, or if HSJ shall acquiesce in or consent to such appointment, or if HSJ shall be liquidated or dissolved or shall begin proceedings toward its liquidation or dissolution, provided, however, that if any of the foregoing events is dischargeable City shall not have the right to terminate this Agreement based on the occurrence of such event until the expiration of the 60-day period immediately following such event without discharge of such event.

8. By City, if HSJ fails to use all or a portion of the Operations Payment in accordance with this Agreement and HSJ does not cure such failure within 90 days after receipt of written notice from City of such failure.

9. By City, if HSJ fails to maintain its federal or state tax-exempt status and HSJ does not cure such failure within 90 days after receipt of written notice from City of such failure.

10. By City, if City is unable to maintain its obligations under this Agreement due to the unavailability of funding, determined in the sole and absolute discretion of City, upon 120 days written notice to HSJ; provided, however, this Agreement shall not terminate if, during the 120 day notice period, HSJ provides evidence reasonably satisfactory to City that HSJ has, or will be able to acquire in a timely manner, the financial resources to continue the operation of the Museum in accordance with the operating standards and other terms and provisions of this Agreement with City relieved of its financial obligations. Following City's review of the evidence submitted by HSJ, City will notify HSJ in writing of City's determination to either (a) rescind its termination notice and to permit HSJ to continue the operation of the Museum in accordance with the operating standards and other terms and provisions of this Agreement with City relieved of its obligations; or (b) to terminate this Agreement as specified in City's notice of termination.

11. By City or HSJ, upon 60 days' written notice to the other if City and HSJ cannot agree on adjustments to HSJ's Standards as specified in Appendix 1, part I.

12. By City, if HSJ fails to comply with any of the provisions of Appendix 1 with respect to meeting HSJ's Standards and HSJ fails to cure the deficiency within 60 days of receiving written notice by City to cure.

13. By City, as to HSJ's use of the Central Service Yard, if HSJ fails to comply with the provisions of Section 6.4 with respect to use of the Central Service Yard.

14. By City, upon 10 days' written notice to HSJ, if City's Director reasonably determines that HSJ lacks the financial capacity to satisfy the terms and

conditions of this Agreement.

B. Any termination pursuant to Sections 25A (2), (3), (4), (5), (6), (7), (10) or (11) above shall not be deemed a termination on account of default and such termination shall be the only remedy available to the terminating party. Without limiting the foregoing, and subject to Sections 22 and 27, such terminating party shall have no further rights or remedies against or liability to the other party in the event of termination pursuant to Sections 25A (2), (3), (4), (5), (6), (7), (10) or (11) above, provided that the terminating party has made any good faith efforts required in connection with the termination right.

SECTION 26. **Default.**

A. Failure by either party to perform any provision of this Agreement within the time specified therefor shall constitute a default if such failure to perform is not cured within the cure period specified in this Agreement or if there is no specified cure period within thirty (30) days after written notice by the nonbreaching party is received by the breaching party. If the failure to perform by its nature cannot be cured within the specified cure period, the breaching party shall not be in default if it commences to cure within the specified cure period and diligently and in good faith continues until cure is effected, which in any event shall not be more than ninety (90) days, unless the time required to cure is greater than such period and the nonbreaching party approves such longer period to cure in writing, which approval shall not be unreasonably withheld or delayed. The foregoing sentence shall not apply to notices of termination issued pursuant to Section 25A(14) or pursuant to other provisions of this Agreement which specify that the additional cure periods of Section 26A shall not apply.

B. In the event of a default, the nondefaulting party, at its option, may terminate this Agreement pursuant to Section 25A and, except as set forth in Section 25B, may exercise any and all other legal remedies, including without limitation suit for damages or specific performance.

C. This Agreement requires that the parties work together in good faith to achieve the intent of this Agreement. In the event that a dispute arises as to the proper interpretation of the respective rights and responsibilities of the parties under this Agreement, or as to any other aspect of this Agreement, the parties agree that they each will assign the appropriate individuals to meet and make good faith efforts to negotiate in order to arrive at a resolution of the dispute. Initiation of negotiations shall commence no later than ten (10) days of the date of a party's written notice to the other seeking to resolve the dispute through negotiation. Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation, as set forth above. The parties agree that the dispute resolution process will take no longer than 60 days from the date initiated, unless the parties mutually agree in writing to extend such time period. The parties acknowledge and agree that nothing contained in this Section 26C

shall be construed to extend the cure periods set forth in this Agreement or affect the parties' termination rights as set forth in this Agreement.

SECTION 27. Surrender of Museum.

Upon the expiration or earlier termination of this Agreement:

A. HSJ shall surrender the Museum (including any additions or alterations) to City in the same condition as received, ordinary wear and tear, damage and destruction covered by Section 21 excepted. The Museum shall also be clean and free of debris and free of any liens or encumbrances placed on the Museum by HSJ during the Term. HSJ shall not be required to remove any alterations which have been approved in writing by City.

B. Subject to the provisions of Sections 6 and 9, HSJ may, at HSJ's election, remove from the Museum, at HSJ's sole cost and expense, all personal property belonging to HSJ. HSJ shall remove or cause to be removed any such personal property rented or loaned to HSJ by any person or entity other than City. City shall have no obligation to ascertain the owners of property not belonging to HSJ and shall have no obligation to return such property and materials. HSJ's obligation under this Section shall survive expiration or sooner termination of this Agreement.

C. Any personal property belonging to HSJ that has not been removed by HSJ within one hundred and twenty (120) days after such expiration or earlier termination of this Agreement shall be deemed to be abandoned by HSJ and shall, to the extent permitted by law and without compensation to HSJ, then become City's property, free and clear of all claims to or against it by HSJ, and may be disposed of by City by private sale or other means as required by law.

D. If for any reason HSJ shall retain possession of the Museum, or any part thereof without City's prior written consent following the date HSJ is required to surrender the Museum to City pursuant to this Agreement, HSJ shall pay to City for each day of such retention that amount equal to one thousand dollars (\$1,000) times a fraction, the numerator of which is the index published immediately preceding the date of the required surrender and the denominator of which is the index published immediately preceding the date of execution of this Agreement. For purposes of this Section, "Index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) for San Francisco-Oakland-San Jose, now being published by the United States Department of Labor, Bureau of Labor Statistics.

SECTION 28. Title to Property/Notice of Possessory Interest Taxes.

A. HSJ shall neither make nor cause to be made any lien, encumbrance, or other charge whatsoever against the Museum, or any portion thereof, or against any of the

personal property located at the Museum (except property owned, or leased by, or on loan to HSJ) which lien, encumbrance or charge has not been approved in writing by City. Nothing herein shall be deemed to prevent HSJ from contesting the validity or amounts of any tax, assessment, encumbrance or lien, provided HSJ provides adequate bond or other financial assurance acceptable to City necessary to prevent Museum, or any portion thereof, from forfeiture or sale.

B. Although it is not the intent of the parties to create a possessory interest in the Museum, HSJ understands that this Agreement may create a possessory interest subject to taxation. HSJ further agrees that any tax or assessment imposed on such possessory interest shall be paid by HSJ, in a timely manner, and without obligation on the part of City.

SECTION 29. Right of Entry.

A. City shall have the right at all times during the term (i) to enter the public areas of the Museum during normal business hours, and (ii) upon reasonable advance notice to HSJ, to enter the Museum during nonbusiness hours and to enter nonpublic areas upon reasonable notice to the extent access is requested to nonpublic areas or during nonbusiness hours. Notwithstanding the foregoing, City shall have the right to immediate access to conduct any emergency repairs or for protection of life and property.

B. In addition to City's rights under Subsection A, above, City shall have the right to enter the Museum for the purpose of completing or supervising certain construction projects related to the Museum. City agrees to provide advance written notice to HSJ of its intended construction schedule prior to the commencement of construction work. City shall have no obligation to reimburse HSJ for any loss of revenue associated with City's construction projects.

SECTION 30. Environmentally Preferable Procurement Policy.

A. HSJ agrees that, in the performance of this Agreement, HSJ shall perform its obligations under the Agreement in conformance with City Council Policy 4-6, Environmentally Preferable Procurement Policy. A description for environmentally preferable procurement and the Policy can be found on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>.

B. Environmental procurement policies and activities related to the completion of work will include wherever practicable, but are not limited to:

1. Use of recycled and/or recyclable products in daily operations.(i.e. 30, 50, 100% PCW paper, chlorine process free; triclosan free hand cleaner, etc.)

2. Use of Energy Star Compliant equipment.
3. Vehicles and vehicle operations (i.e. Alternative Fuel, Hybrid, etc.)
4. Internal waste reduction and reuse protocol(s).
5. Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products, etc.

SECTION 31. **Waiver.**

HSJ agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by HSJ shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 32. **Notices.**

A. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, by postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: City of San Jose
Director of General Services
1661 Senter Road, Bldg A
San Jose, CA 95112

To HSJ: History San Jose
President/CEO
History San Jose
1650 Senter Road
San Jose, CA 95112

B. A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served in the manner specified above to the following address:

Office of the City Attorney
City of San José
Attention: Richard Doyle
200 East Santa Clara Street
San José, CA 95113-1905

C. Notice shall be deemed effective on the date personally delivered, or, if mailed, three (3) days after deposit in the mail.

SECTION 33. **Approvals.**

Approvals required of City or HSJ hereunder (excepting approvals specified to be in the "sole discretion" of a party), shall not be unreasonably withheld and, where a time period therefor is not specified, shall not be unreasonably delayed. Unless otherwise specified in this Agreement to the contrary, City's Director, unless the City Manager otherwise directs, shall have authority to give any approvals and/or disapprovals hereunder on behalf of City. The City Manager shall be authorized to terminate this Agreement, as specified in this Agreement, on City's behalf.

SECTION 34. **Amendments.**

This Agreement may only be amended by written agreement signed by both parties and approved by the City Council or City Manager, as applicable.

SECTION 35. **Venue.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 36. **Force Majeure.**

Performance by either party shall be excused so long as, and the time for a party's performance shall be extended for such time as the party's performance is delayed as a consequence of: war, insurrection, strike, work stoppage, lockout, riot, flood, earthquake, fire, other casualty, weather, or any other cause beyond the reasonable control of the party required to perform; provided that the party required to perform makes diligent efforts to timely perform notwithstanding such delay.

SECTION 37. **Governing Law.**

City and HSJ agree that the law governing this Agreement shall be that of the State of California.

SECTION 38. **Relationship of Parties.**

Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between HSJ and City. Each party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other party in any way.

SECTION 39. **Miscellaneous Provisions.**

A. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to anyone not a party except as otherwise expressly provided herein, and no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party nor shall any third party be deemed a third party beneficiary of any of the provisions herein, except as herein expressly provided.

B. The captions used herein are for convenience of reference only and are not a part of this Agreement and do not in any way limit or amplify its terms and provisions.

C. Time is of the essence of each and all of the agreements, covenants, and conditions of this Agreement.

D. HSJ has read each and every part of this Agreement, including without limitation, its exhibits, and on the advice of counsel, HSJ freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

E. The rights given to HSJ under this Agreement are contract rights only and in no respect shall the same constitute or be construed as granting a leasehold interest in any of the real or personal property described in this Agreement.

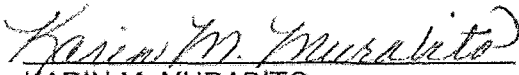
F. This Agreement, including its exhibits and appendices, constitutes the entire agreement between City and HSJ with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written.

G. This Agreement includes the following exhibits and appendices, which are attached and incorporated by reference:


Exhibit A History Park, Peralta-Fallon-Historic Site, and Central

	Service Yard locations
Exhibit B	Operating Principles
Exhibit C	Operations Payment
Exhibit D	Inventory of FF&E
Exhibit E	Bonding Requirements
Exhibit F	List of Museum Affiliates
Exhibit G	Insurance Requirements
Exhibit H	Special Park Use Guidelines Between City of San Jose and HSJ – History Park
Exhibit I	San José Historical Museum Association Endowment Fund Declaration
Appendix 1	HSJ's Standards
Appendix 2	Hazardous Materials Definition

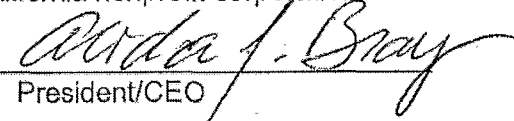
APPROVED AS TO FORM:


KARIN M. MURABITO
Sr. Deputy City Attorney

CITY OF SAN JOSE, a municipal
corporation

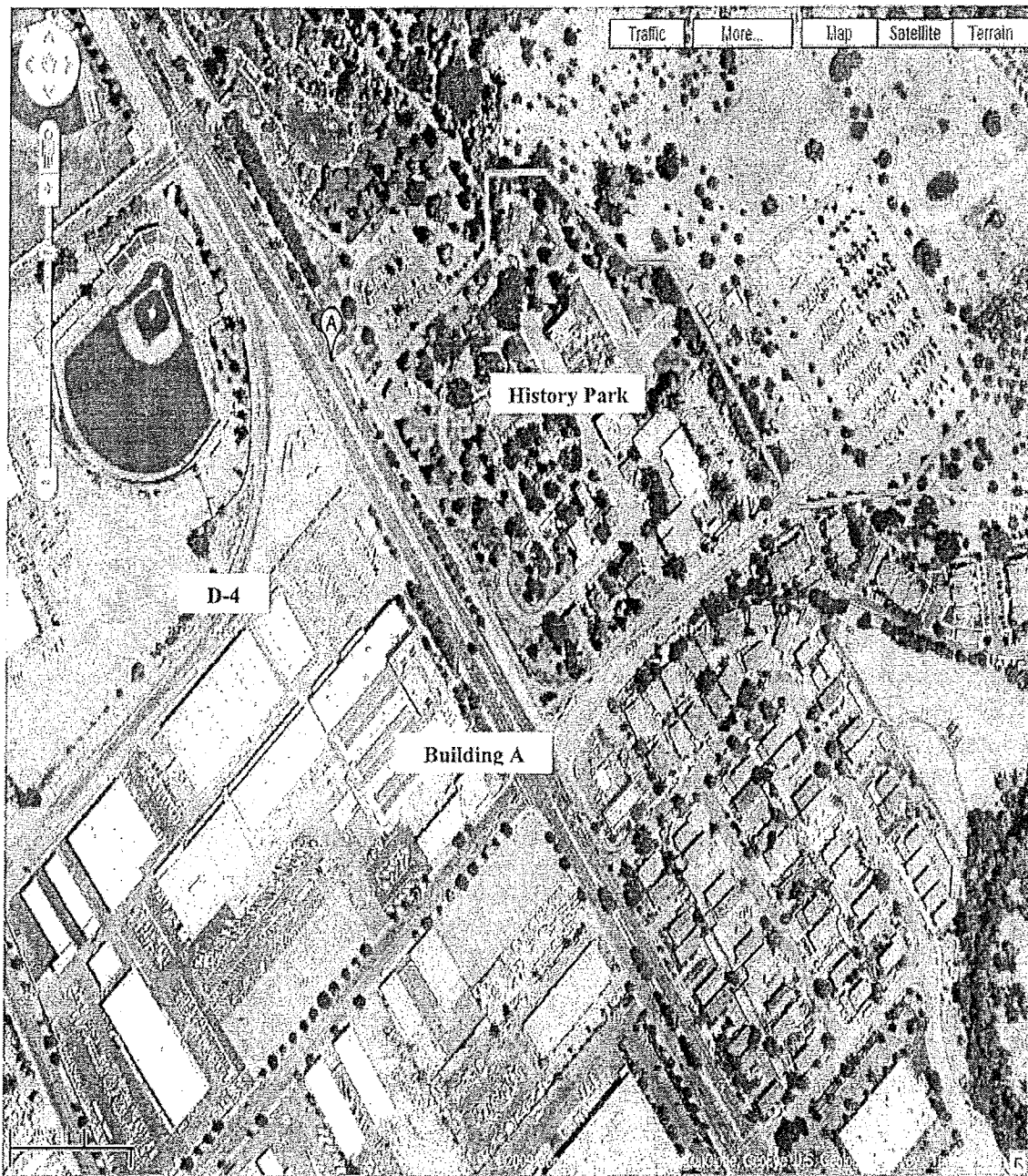
By: 
Name: _____ Deanna Santana
Title: _____ Deputy City Manager

HISTORY SAN JOSE
a California nonprofit corporation

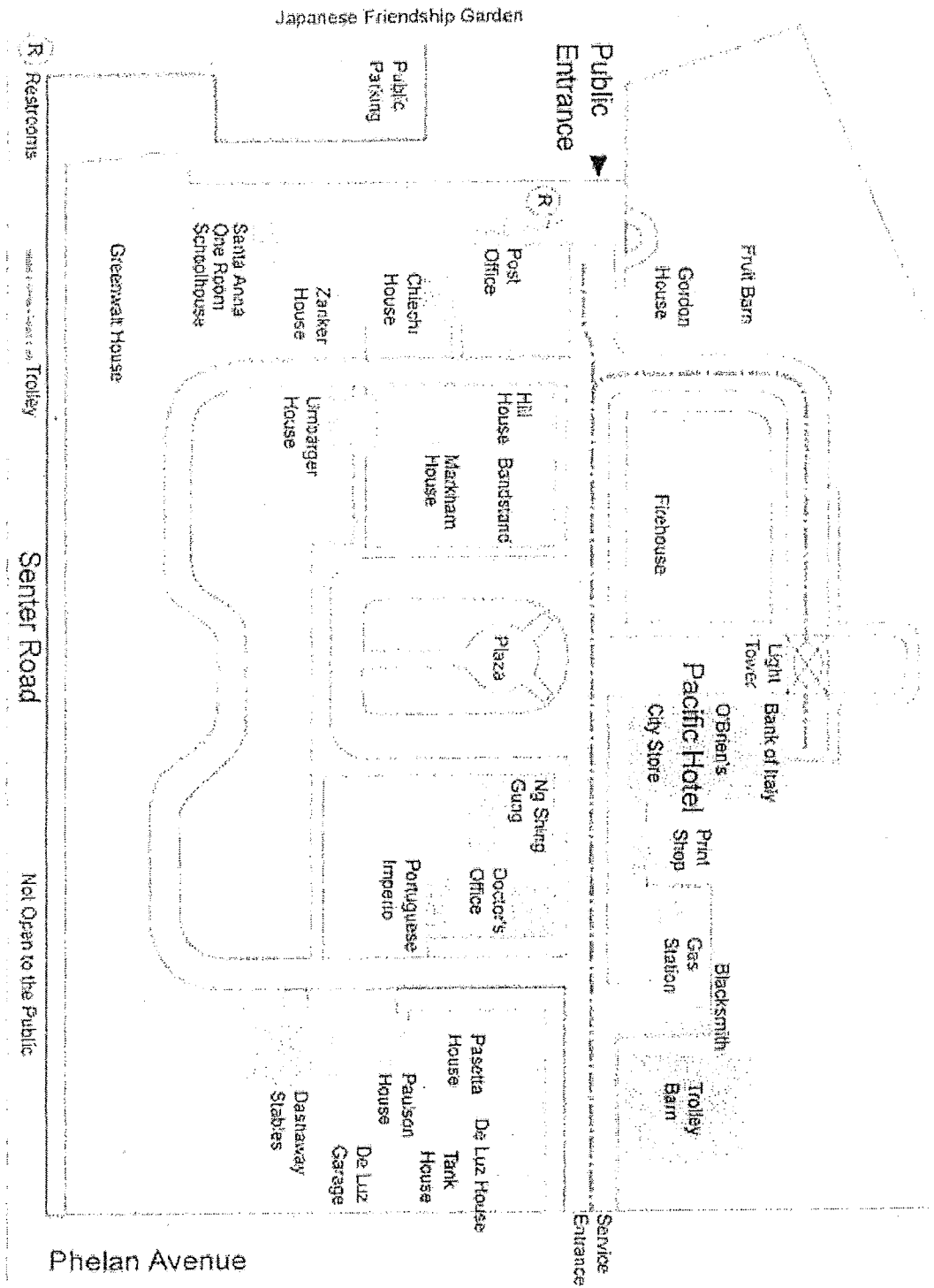
By: 
President/CEO

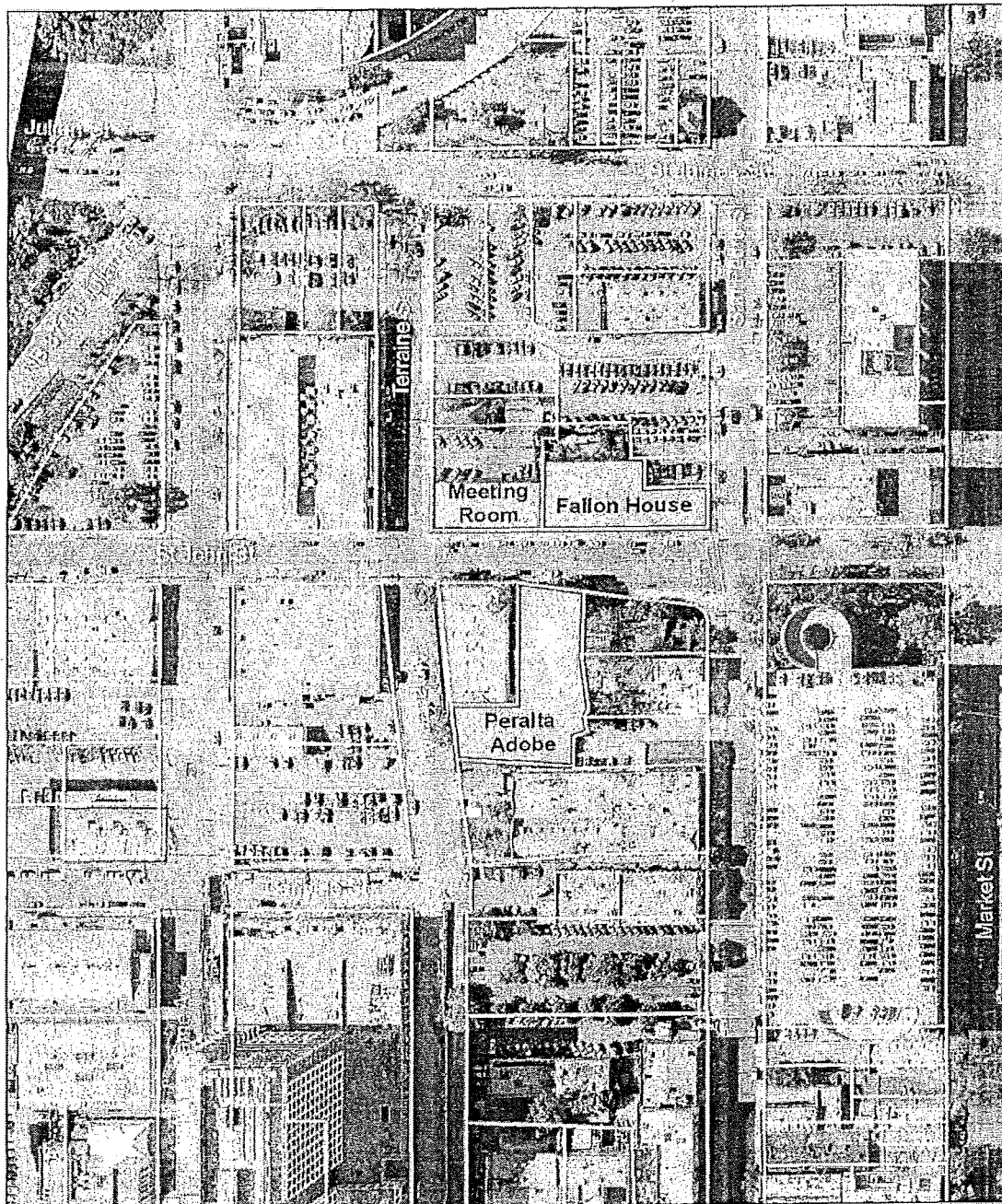
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EXHIBIT A HISTORY PARK AND CENTRAL SERVICE YARD LOCATION



HISTORY PARK LOCATION





Fallon House / Peralta Adobe

EXHIBIT B OPERATING PRINCIPLES

HSJ is responsible for the day-to-day management and operations of History Park, the Peralta-Fallon Historic Site and the Collection Center. Management and operations of these facilities include developing fundraising and corporate support, and maintaining the Standards as described in Appendix 1.

To this end and in addition to HSJ's responsibilities set forth elsewhere in this Agreement, HSJ shall be responsible for each of the following:

- Develop a broad and diverse revenue base to support the long term development and viability of the Museum.
- Involve the various cultures contributing to the rich heritage of San Jose and the Santa Clara Valley in collecting and interpretive efforts.
- Develop an Education Program through the use of exhibits, tours, docents, activities and programs to interpret the history of the San Jose and the Santa Clara Valley.
- Explore and implement ways in which the broadest audience can be served in new and innovative ways.
- Promote the Museum through marketing and other public relations activities to increase the public's awareness and use.
- Recruit and sustain a professional staff capable of implementing HSJ's strategic plan and fostering the development of an organizational culture that is collegial, mutually supportive and respectful of all contributions.

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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. 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.

EXHIBIT D
INVENTORY OF CITY FF&E

Quantity	Item	Material	Size: H" x W" x D/L"	Location	Owner	Property Tag #
30	Racking, green/ orange	metal	192 x 102 x 42	CC- D4	CSJ	
1	Table	laminated metal, laminated	29-1/2 x 96 x 42	CC- Library	CSJ	
1	Table	metal, laminated	29 x 30 x 59-1/2	CC- Library	CSJ	
2	File Cabinet, black	metal	52-1/4 x 18 x 28	CC- Library- Accessions	CSJ	
2	File Cabinet, black	metal	53-3/4 x 19-1/2 x 31	CC- Library- Accessions	CSJ	
1	Flat File Base, tan	metal	6 x 40-1/2 x 29	CC- Library- Map Room	CSJ	429081
1	Bookcase, brown	metal	42 x 36-1/4 x 12	CC- Library- Office	CSJ	
1	Flat File Cabinet base, tan	metal	6 x 53-1/4 x 40-1/2	CC- Map Room II	CSJ	
4	Flat File Cabinet, tan	metal	17-1/2 x 53-1/4 x 41- 1/2	CC- Map Room II	CSJ	
2	Flat File Cabinet, grey	metal	15-1/2 x 53-3/4 x 43	CC- Map Room II	CSJ	
1	Flat File Cabinet base, grey	metal	4 x 53-3/4 x 42	CC- Map Room II	CSJ	
3	File Cabinet, black	metal	52-1/4 x 18 x 28	CC- Storage 1	CSJ	
1	Desk	wood	29-1/2 x 60 x 30	CC- Storage 1	CSJ	
2	Flat File, tan	metal	16-1/2 x 46-1/2 x 36	CC- Storage 1	CSJ	56174, 56175
1	Space Saver Shelving	metal	9' x 41' x 63' (in feet)	CC- Storage 1	CSJ	
1	Shelving, wire rack	metal	86-1/2 x 48 x 18	CC- Storage 1- Supplies	CSJ	
1	Shelving, wire rack	metal	85-1/2 x 36 x 18	CC- Storage 1- Supplies	CSJ	
2	Shelving, wire rack	metal	86-1/2 x 35-3/4 x 18	CC- Storage 1- Supplies	CSJ	
1	Shelving, wire rack	metal	86-1/2 x 59-1/2 x 36- 1/2	CC- Storage 1- Supplies	CSJ	
1	Shelving, wire rack	metal	86-1/2 x 47-1/2 x 24	CC- Storage 1- Supplies	CSJ	
1	Shelving, grey	metal	87 x 48-1/4 x 25	CC- Storage 1- Supplies	CSJ	
1	Book Cart, tan	metal	41-1/4 x 31 x 13	CC- Storage 1- Supplies	CSJ	
1	Racking, orange/ green	metal	168 x 119-1/4 x	CC- Storage 2	CSJ	

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26	Racking, grey	metal	105-1/2 x 70 x 30-1/2	CC- Storage 2	CSJ	
3	Supply Shelving	metal	85 x 48-1/4 x 24	CC- Supply Room	CSJ	
1	Supply Shelving	metal	59 x 30 x 12	CC- Supply Room	CSJ	
4	Library Tables	wood	30 x 96 x 36	CC-Artifact Processing	CSJ	044033, 044035, 044037
1	Desk, wood-grain	metal, laminate	29 x 60 x 30	CC-Artifact Processing	CSJ	
1	Desk, grey	metal	29 x 60 x 30	CC-Artifact Processing	CSJ	

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Quantity	Item	Material	Size: H" x W" x D/L"	Location	Owner	Property Tag #
1	Chair, black	wood, leather	33 x 21-1/2 x 23	CC-Artifact Processing	CSJ	30284
3	Bookcase, tan	metal	84 x 38 x 10-1/4	CC-Artifact Processing	CSJ	
1	Bookcase, grey	metal	52-3/4 x 36 x 12	CC-Offices	CSJ	23412
1	Exhibit Platform	wood	16 x 60 x 60	City Hall- First Floor	CSJ	
3	Desk	metal	29 x 60 x 30	HP- Facilities Tool Room	CSJ	
1	Shelving	wood	58-1/4 x 25 x 24-1/2	HP- Facilities Tool Room	CSJ	
5	Shelving, grey	metal	85 x 48-1/4 x 24	HP- Facilities Tool Room	CSJ	
1	Cabinet, red	wood	36-1/4 x 114 x 30	HP- Facilities Tool Room	CSJ	
1	Bookshelf	wood	54-1/2 x 77 x 13	HP- Facilities Tool Room	CSJ	
1	Cabinet, brown	metal	36 x 30 x 14	HP- Facilities Tool Room	CSJ	
1	Bookcase	laminate	54-1/4 x 36 x 13-1/4	HP- Facilities Tool Room	CSJ	
1	Shelving	metal	84 x 36 x 18	HP- Facilities Tool Room	CSJ	
1	Table	wood, metal	39 x 27 x 36-1/2	HP- Facilities Tool Room	CSJ	
1	Table	wood	35 x 72 x 31	HP- Facilities Tool Room	CSJ	
1	Bookcase	wood	96 x 82 x 12	HP- Facilities Tool Room	CSJ	
70	Folding Chairs, white	wood, vinyl	31 x 17-1/2 x 18	HP- Firehouse-Dnstairs	CSJ	
1	Podium	laminate	46 x 24 x 20	HP- Firehouse-Dnstairs	CSJ	
11	Folding Table, round	metal, laminate	29 x 47 x 47	HP- Firehouse-Upstairs	CSJ	
98	Chair	metal, plastic	30-1/4 x 21 x 20	HP- Firehouse-Upstairs	CSJ	
1	Picnic Table	wood, metal	29 x 95 x 65	HP- Grounds	CSJ	

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1	Picnic Table	metal	28 x 96 x 63	HP- Grounds	CSJ	
1	Park Bench	metal, wood	34 x 60 x 23	HP- Grounds	CSJ	
4	Park Bench, green	metal, wood	32 x 48 x 24	HP- Grounds	CSJ	
26	Park Bench, black	metal, wood	32 x 48 x 24	HP- Grounds	CSJ	
57	Picnic Table	metal	29-1/4 x 64-1/4 x 96-1/4	HP- Grounds	CSJ	
1	Bench	wood	34-3/4 x 72-1/2 x 16	HP- Grounds	CSJ	
1	Bench	wood	33 x 84 x 22-1/2	HP- Grounds	CSJ	
1	Bench	wood, metal	33-1/2 x 50-1/2 x 23-1/2	HP- Grounds	CSJ	
1	Folding Table, small	metal, laminate	29-1/2 x 59-3/4 x 17-3/4	HP- Grounds	CSJ	
1	Cabinet, tan	plastic	72 x 32 x 22	HP- Grounds	CSJ	

Quantity	Item	Material	Size: H" x W" x D/L"	Location	Owner	Property Tag #
1	Picnic Table	wood, metal	30 x 55 x 94	HP- Grounds	CSJ	
1	Bench	wood	32 x 102 x 16	HP- Grounds	CSJ	
55	Chair, white	plastic, metal	32 x 20 x 20	HP- Hotel- 1st Floor	CSJ	
1	Podium	laminate	45 x 24 x 20	HP- Hotel- 1st Floor	CSJ	
11	Shelving, grey	metal	85 x 48 x 24	HP- Hotel- Bank Storage	CSJ	
1	Cabinet, brown	metal	78 x 36 x 18	HP- Hotel- Bank Storage	CSJ	
2	Bookcase	metal	90 x 38-1/4 x 14	HP- Hotel- Bank Storage	CSJ	
1	Table	wood	30 x 42 x 28	HP- Hotel- Gift Shop	CSJ	
1	Cabinet	wood	98 x 145 x 26	HP- Hotel- Gift Shop	CSJ	
1	End Table	wood	31 x 27 x 18-1/2	HP- Hotel- Gift Shop	CSJ	
1	Desk	wood	86 x 40 x 29-1/2	HP- Hotel- Gift Shop	CSJ	
1	Cabinet	wood, glass	99 x 42 x 20	HP- Hotel- Gift Shop	CSJ	
1	End Table	wood	28-1/2 x 30 x 18	HP- Hotel- Gift Shop	CSJ	
1	Table	wood	30 x 74 x 45	HP- Hotel- Gift Shop	CSJ	
1	Table, round	wood	28-1/4 x 38 x 38	HP- Hotel- Gift Shop	CSJ	
1	Bookcase	wood	100 x 52 x 21	HP- Hotel- Gift Shop	CSJ	
1	Bookcase	wood	63 x 37 x 13	HP- Hotel- Gift Shop	CSJ	
1	Gift Case	wood, glass	38 x 98 x 126	HP- Hotel- Gift Shop	CSJ	

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1	Bookcase	wood	85 x 38-1/2 x 12	HP- Hotel- Gift Shop	CSJ	
3	Shelving	metal	85 x 48-1/4 x 24	HP- N. Warehouse	CSJ	
3	Office Chair, brown	plastic, fabric	34 x 25 x 25	HP- N. Warehouse	CSJ	
2	Flat File Cabinet, black	metal	17-3/4 x 40-1/4 x 30	HP- N. Warehouse	CSJ	
2	Wooden Flat File Cabinet	wood	49-3/4 x 48 x 24-1/2	HP- N. Warehouse	CSJ	
9	Racking, green/ orange	metal	120 x 102 x 36	HP- N. Warehouse	CSJ	
1	Rolling Ladder, orange	metal	75 x 25 x 41	HP- N. Warehouse	CSJ	
1	Cabinet	wood	72 x 72 x 20	HP- N. Warehouse	CSJ	
17	Shelving, grey	metal	85 x 48-1/4 x 24	HP- N. Warehouse	CSJ	
1	Table	wood	34 x 96-1/4 x 48	HP- N. Warehouse	CSJ	
4	Shelving, red	metal	87 x 73-1/2 x 24	HP- N. Warehouse	CSJ	
13	Office Chair, grey	plastic, fabric	36-1/2 x 25 x 25	HP- N. Warehouse	CSJ	
2	Table, round	metal, laminate	29-1/4 x 60 x 60	HP- N. Warehouse	CSJ	
4	Wooden Flat File Cabinet	wood	55 x 49-3/4 x 24-1/2	HP- N. Warehouse	CSJ	
1	Bookcase	wood	73 x 36 x 12	HP- N. Warehouse	CSJ	
2	Table, round	metal, stone	29 x 36 x 36	HP- O'Brien's Café	CSJ	
15	Chair	wood	34 x 16 x 18	HP- O'Brien's Café	CSJ	
2	Table, square	metal, stone	29 x 28 x 28	HP- O'Brien's Café	CSJ	
3	Stool	wood	30 x 14 x 14	HP- O'Brien's Café	CSJ	
1	Baker's Rack	woos, metal	71 x 41-1/2 x 25	HP- O'Brien's Café	CSJ	
1	Counter	wood, stone	89 x 58 x 20	HP- O'Brien's Café	CSJ	
1	Refrigerator	metal, plastic	64-1/2 x 31-1/4 x 32	HP- O'Brien's Café	CSJ	
1	Ice Machine	metal, plastic	38-3/4 x 26 x 30	HP- O'Brien's Café	CSJ	

Quantity	Item	Material	Size: H" x W" x D/L"	Location	Owner	Property Tag #
1	Shelving, green	metal	48-1/4 x 23-1/2 x 11-1/2	HP- O'Brien's Café	CSJ	
1	Table	wood	38-1/4 x 36 x 22	HP- S. Warehouse	CSJ	
1	Shelving, grey	metal	85 x 48 x 24	HP- S. Warehouse	CSJ	
1	Counter	wood	35-1/4 x 95 x 24	HP- S. Warehouse	CSJ	
1	Counter	wood	35-1/4 x 72 x 30-3/4	HP- S. Warehouse	CSJ	
1	Shelving	wood	96 x 74-1/4 x 38	HP- S. Warehouse	CSJ	
2	Folding Tables (folded)	metal, laminate	4-1/2 x 100 x 49	HP- S. Warehouse	CSJ	

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1	Folding Chair, brown	metal	30 x 18 x 18	HP- S. Warehouse	CSJ	
1	Desk	metal	29 x 60 x 30	HP- S. Warehouse	CSJ	
2	Table, round	metal, plastic	29 x 36 x 36	HP- S. Warehouse	CSJ	
1	Table	wood	34-1/2 x 97-1/4 x 49-1/2	HP- S. Warehouse	CSJ	
1	Office Chair, red	metal, vinyl	40-1/2 x 22 x 22	HP- S. Warehouse	CSJ	
1	Shelving	wood	62 x 62 x 25	HP- S. Warehouse	CSJ	
1	Podium	wood	50 x 22 x 18	HP- S. Warehouse	CSJ	
3	Cabinet, tan	metal	78 x 36 x 20	HP-Hotel- Hallway	CSJ	
2	Cabinet, brown	metal	72-1/4 x 36 x 18	HP-Hotel- Hallway	CSJ	
1	Mailboxes	wood	42 x 40 x 12	HP-Hotel- Offices	CSJ	
1	Safe, black	metal	27-1/4 x 14 x 14	HP-Hotel- Offices	CSJ	
1	Mailboxes	wood	62-1/4 x 84-1/2 x 13	HP-Hotel- Offices	CSJ	
4	Picnic Table	wood	29 x 72 x 36	Peralta Adobe	CSJ	
1	Picnic Table	wood	27 x 68 x 24-1/4	Peralta Adobe	CSJ	
1	Shelving	metal	85 x 48 x 24	Peralta Adobe	CSJ	
1	Shelving, black	plastic	72 x 36 x 24	Peralta Adobe	CSJ	
8	Picnic Bench	wood	18 x 60 x 12	Peralta Adobe	CSJ	
1	Easel	wood	62 x 30 x 40	Peralta Adobe	CSJ	
5	Park Bench	wood	38 x 48 x 27	Peralta Adobe	CSJ	

Location Key:

HP= History Park

CC= Collection Center

EXHIBIT E BONDING REQUIREMENTS

Unless the prior written approval of City has been obtained, HSJ shall not commence any Construction Work at the Museum without the issuance of surety bonds of the types, in the amounts, and for the purposes described below. City shall approve HSJ's request to proceed without bonds if HSJ provides to City a letter of credit or other assurance, reasonably acceptable to the City, ensure that funds will be available to complete any work commenced by HSJ. Such surety bonds shall be duly executed by a responsible corporate surety authorized to issue such bonds in the State of California, and shall be obtained through an authorized agent with an office in California.

HSM, or HSJ's general construction contractor, shall pay all bond premium costs and incidentals as part of the project cost. Each bond shall be signed by either HSJ or HSJ's general construction contractor and the surety, and shall name the City of San José and HSJ as beneficiaries thereof.

The following types and amounts of surety bonds shall be provided for each improvement project:

- (a) A "Payment Bond" (Material and Labor Bond) in the amount of 100% of the contract price, for the Construction Work which shall meet the requirements of California Civil Code Sections 3247 and 3248, and shall be maintained in full force and effect until the particular improvement is completed and a certificate of completion is recorded (to the extent required); and
- (b) A "Faithful Performance Bond," which shall be for 100% of the contract price for Construction Work to guarantee faithful performance of all work in accordance with the approved plans and specifications, and to guarantee that all materials and workmanship will be free from original or developed defects.

Should any bond become insufficient, HSJ or HSJ's general construction contractor shall renew the bond within 10 days after receiving notice from City. Should any surety at any time be unsatisfactory to City, notice will be given to HSJ to that effect and HSJ or HSJ's general construction contractor shall obtain a new surety reasonably acceptable to the City.

HSJ shall require that changes in work within the scope of the original work, and/or extensions of time made pursuant to the construction contract(s), shall in no way release the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

EXHIBIT F
LIST OF MUSEUM AFFILIATES

- California Trolley and Railroad Corporation
- Chinese Historical and Cultural Project
- Connie L. Lurie College of Education Alumni Association (formally College Education Alumni Association at San Jose State University)
- Perham Foundation
- Portuguese Heritage Society of California
- Rotary Club of San José
- Victorian Preservation Association

EXHIBIT G INSURANCE REQUIREMENTS

HSJ, at its own cost and expense, except as expressly provided below, shall procure and maintain for the duration of this Agreement the following insurance coverage, against claims for injuries to persons or damages to property which may arise from or in connection with the HSJ's operation and use of the Museum.

HSJ shall be responsible for procuring and obtaining the liquor liability coverage specified below prior to those events at the Museum where alcoholic beverages are to be served. HSJ may, at its sole option, instead of itself providing liquor liability coverage, require users of the Museum, (collectively, "Museum Users"), excluding the City and the Redevelopment Agency, who intend to serve alcoholic beverages to procure and maintain the liquor liability coverage specified below for the duration of the use.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001) including products and completed operations, fire legal liability; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering automobile liability. Coverage shall include all owned, non-owned and hired automobiles; and
3. Workers' Compensation Insurance as required by the State of California and Employer's Liability insurance (for lessees with employees); and
4. Property insurance against all risks of loss to any contents, tenant improvements or betterments, except historical FF&E on loan to City and Museum historical FF&E; and
5. Combination Crime Policy; and
6. Excursion railroad liability coverage per form ER 19. As of the Commencement Date, City has excursion railroad liability coverage in place. HSJ shall be responsible for renewal of this coverage.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

MINIMUM LIMITS OF INSURANCE

HSJ shall maintain limits no less than:

1. Commercial General liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Museum/location or the general aggregate limit shall be twice the required occurrence limit. Liability shall include, but not be limited to Premises Operations, Personal and Advertising Injury, Products and Completed Operations, Liquor Liability \$1,000,000 and Fire Legal Liability of \$100,000; and
2. Automobile liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' liability: Workers' Compensation limits as required by Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident; and
4. Property insurance: full replacement cost with no coinsurance penalty provision; and
5. Combination Crime Policy with minimum limits of not less than \$300,000 for each form: Employers' Dishonesty/Forgery or Alteration, Theft Inside and Outside premises, Forgery and Safe Burglary Inside and Outside premises; and
6. Excursion Railroad Liability Coverage with minimum limits of not less than \$2,000,000.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the HSJ shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

OTHER INSURANCE PROVISIONS

A. The General Liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of San Jose, its officers, officials, employees and volunteers are

to be covered as additional insured as respects: liability arising out of the use, operation and maintenance of the Museum or other premises owned, occupied or used by HSJ. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officers, officials, employees and volunteers.

2. HSJ's insurance coverage and/or the insurance coverage provided by the Museum users shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the HSJ's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the entity, its officers, officials, employees or volunteers.
4. Coverage shall state that the HSJ's and/or Museum users' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

B. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

C. All Coverage's

1. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

VERIFICATION OF COVERAGE

HSJ shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Exhibit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind

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coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Human Resources
Risk Management
200 E. Santa Clara Street, 2nd Floor Wing
San Jose, CA 95113-1905

SUBCONTRACTORS/ SUBTEANTS

HSJ shall include all consultants, contractors or subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each.

REVIEW OF COVERAGE

These insurance requirements shall be subject to review by City's Risk Manager. Should the Risk Manager require any change in coverage, any such change shall be noticed in writing by City to HSJ and HSJ shall comply with the change within thirty (30) days of the date of receipt of the notice.

EXHIBIT H
SPECIAL PARK USE GUIDELINES BETWEEN CITY OF SAN JOSÉ
AND HISTORY SAN JOSE FOR HISTORY PARK

History Park (HP) special events are those with an anticipated attendance of 200 people or more. Coordination with Kelley Park staff is required for events of this size and if the following conditions are also present: alcohol being served, additional setup items to take place in the park, i.e., jumpers, extensive setup on turf.

History Park will host monthly coordination meetings with appropriate Kelley Park staff as designated by City's Director of Parks, Recreation, and Neighborhood Services, and representatives from SJ Police, SJ Fire, County Health, along with the event organizer and any other parties involved with the event that may assist with logistical questions regarding setup and park usage. These meetings should take place from February to September each year. This could take place year round depending on any upcoming events.

An annual review meeting will be held by HSJ to evaluate the previous year's events and coordination process. At this time, discussion regarding problem groups or events that are too large for HP will be discussed in order to provide proper direction for future park usage, including notification that a specific event cannot be held at HP.

HSJ will copy its event packet consisting of a final lay-out map, event description, parking needs and any special event related factors/considerations for the Kelley Park staff in lieu of applying for a Special Park Use Permit. HSJ will be required to complete an outdoor event form (one page) annually to cover all of the events anticipated to use the grounds of HP during the event season. Kelley Park staff will be responsible for sharing this information with other internal staff so that parking and other impacts can be planned for and mitigated.

Parking passes and special parking requests should be done in writing at least 30 days prior to an event. Parking pass requests are to be turned in to the Leininger Center no later than 14 days prior to the date the passes are requested to be available for pickup. Groups are responsible for paying the parking attendant on event day at the conclusion of the event.

Events open to the public that are serving or selling alcohol are required to receive a Temporary Liquor License from the Alcoholic and Beverage Control, State of California. Only beer, wine, sake and champagne are allowed to be served. Their phone number is (408) 277-1200.

Events open to the public that are serving or selling food that is not prepackaged are required to receive a County Food Permit by contacting (408) 918-3447.

No changes can be made to setup, logistics or items to be brought in to the park within 10 days of the event date.

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All generators must be diesel.

No stakes larger than 12 inches are allowed to be placed in the turf areas. Water barrels and sand bags are encouraged to be used in lieu of staking.

HSJ must notify all event organizers and caterers that hard plastic cups are not permitted in the park. All cooking appliances and barbecues must be three (3) feet above the ground.

EXHIBIT I
SAN JOSÉ HISTORICAL MUSEUM ASSOCIATION
ENDOWMENT FUND DECLARATION

SAN JOSE HISTORICAL MUSEUM ASSOCIATION
ENDOWMENT FUND DECLARATION

FIRST: The Fund shall be called "San Jose Historical Museum Association Endowment Fund" (hereinafter "The Fund")

SECOND: The purpose of the fund is to promote, receive and accept gifts from members of the San Jose Historical Museum Association and friends of the Museum to be used for the betterment of the San Jose Historical Museum.

THIRD: The Fund may receive and accept property, whether real, personal or mixed, by way of gift, bequest or devise, from any person, firm, trust or corporation, to be held, administered, and disposed of in accordance with and pursuant to the provisions of this Declaration; but no gift, bequest, or devise of any such property shall be reserved, received and accepted if it is conditioned or limited in such manner as to require the disposition of the income of its principal to any purpose other than the San Jose Historical Museum Association or as shall jeopardize the federal income tax exemption of the San Jose Historical Museum Association pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, as now in force or afterwards amended.

FOURTH: The principal of all unrestricted property received and accepted by the Fund shall be held by the fund and not distributed.

FIFTH: The income of all unrestricted property received and accepted by the Fund shall be held by the Fund and distributed to the San Jose Historical Museum Association General Fund to be used as follows:

- A. Capital Improvements
- B. Collection Acquisitions
- C. Capital Acquisitions

The Fund Committee may, if it so deems reasonable, choose not to expend all income available for expenditure. However, no income may be held for a period greater than three years.

Said distribution formula may be changed only by nine-tenths vote of the Board of Directors upon written request by the Fund Committee, or a member of the San Jose Historical Museum Association. In no event shall the proceeds be used for operating expenses or salaries.

SIXTH: The principal and income of all restricted property received and accepted by the Fund shall be managed by the Fund at the request of the Board of Directors or its designee.

SEVENTH: Any gift offered to the fund must be approved by the Board of Directors of the Historical Museum Association.

EIGHTH: The Fund shall be held, invested and administered separately from the general budget of the San Jose Historical Museum Association by the "The Fund Committee." The number of members on the fund Committee

shall be at all times not less than five and shall always contain three members, including the association treasurer, who shall also be members of the Board of Directors of the San Jose Historical Museum Association. The Fund Committee members shall be nominated by the Nominating Committee members and shall be elected by the Board of Directors of the San Jose Historical Museum Association for five year terms. No person shall serve more than two (2) consecutive five year terms. The Museum Director and one association staff member shall serve as non-voting ex-officio members of the Fund Committee. The Fund Committee shall be accountable to and report on a regular basis to the Board of Directors.

NINTH: This Declaration may be amended at any time or times by written instrument or instruments signed by the Board of Directors upon nine-tenths vote of the members of the Board of Directors of the San Jose Historical Museum Association, provided that no amendment shall authorize the Fund to conduct its affairs in any manner or for any purpose contrary to the provision of section 501(c)(3) of the Internal Revenue Code of 1954, as now in force or afterwards amended. All instruments amending this Declaration shall be noted upon or kept attached to the executed original of this Declaration.


TENTH: Any member of the Fund Committee by signed written, instrument may resign his position. Should a member of the Fund Committee resign, a new member shall be

nominated by the Nominating Committee and elected by the Board of Directors.

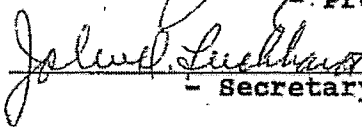
ELEVENTH: This Declaration is to be governed in all respects by the Laws of the State of California.

TWELFTH: This document was amended on
February 22, 1994.

Dated:



President
Victor Giacalone



Secretary/Treasurer
John D. Luckhardt

APPENDIX 1 HSJ STANDARDS

I. Operation Standards through Strategic Plan.

1. By December 31, 2009, HSJ shall submit a strategic plan ("Strategic Plan") to City's Director for review and approval that incorporates the findings and strategies identified through the QLBS assessment and the assistance received from SCORE, or other City approved consultant, to provide goals, performance measures and strategies that address, but are not necessarily limited to the following areas:
 - a. Income development, including earned and unearned revenues.
 - b. Financial management, development, marketing and governance.
 - c. Interpretive exhibitions and programs.
 - d. Educational programs including school programs.
 - e. Community outreach and public service programs.
 - f. Collections management, conservation and care.
 - g. Maintaining accreditation by the American Association of Museums.
 - h. Audience development.
 - i. Volunteer recruitment and retention.
 - j. Board development and retention.

For each quarter following the approval of the Strategic Plan, HSJ will prepare a quarterly progress report documenting the implementation of the various elements of the Strategic Plan for review. These reviews will be conducted with the City's Director. In the event that HSJ's performance substantially deviates from the goals and performance measures outlined in the Strategic Plan, HSJ shall prepare and present a corrective measures plan to City's Director for review and approval.

II. Financial Standards

The following financial standards are to be met by HSJ according to the schedule provided:

1. Over the next three fiscal years, eliminate HSJ's debt to the Endowment Fund, according to the table below:

Fiscal Year*	Target Balance	Maximum Allowable Balance
Current Actual	\$135,465	
2009-2010	\$90,000	\$105,000
2010-2011	\$45,000	\$55,000
2011-2012	\$0	\$0

*Balance to be achieved by June 30 of the listed fiscal year.

2. Over the next three fiscal years, eliminate HSJ's debt associated with borrowing against temporarily restricted net assets, according to the table below:

Fiscal Year*	Target Balance	Maximum Allowable Balance
Current Actual	\$81,493	
2009-2010	\$54,000	\$63,000
2010-2011	\$27,000	\$32,000
2011-2012	\$0	\$0

*Balance to be achieved by June 30 of the listed fiscal year.

3. Over the next three fiscal years, eliminate HSJ's aged accounts payable (accounts past due by more than sixty days), according to the table below:

Fiscal Year*	Target Balance	Maximum Allowable Balance
Current Actual	\$70,296	
2009-2010	\$47,000	\$55,000
2010-2011	\$23,000	\$27,000
2011-2012	\$0	\$0

*Balance to be achieved by June 30 of the listed fiscal year.

The parties explicitly agree that meeting these Financial Standards may require expenditure reductions on the part of HSJ, which may result in reduced services as compared with those currently provided. The performance measures set as part of the Strategic Plan described in Subsection A above should reflect any such necessary budget adjustments.

Failure to achieve each of the financial standards included in this section in a particular fiscal year will result in a reduced Operations Payment in the following year. For example, if HSJ fails to satisfy the Financial Standards set forth herein, the Operations Payment shall be reduced as follows:

Scenario 1	
2009-2010 standards met	2010-2011 Operations Payment - \$875,000
2010-2011 standards met	2011-2012 Operations Payment - \$875,000
2011-2012 standards met	2012-2013 Operations Payment - \$875,000

Scenario 2	
2009-2010 standards not met	2010-2011 Operations Payment - \$831,250
2010-2011 standards met	2011-2012 Operations Payment - \$875,000
2011-2012 standards met	2012-2013 Operations Payment - \$875,000

Scenario 3	
2009-2010 standards met	2010-2011 Operations Payment - \$875,000
2010-2011 standards not met	2011-2012 Operations Payment - \$831,250
2011-2012 standards met	2012-2013 Operations Payment - \$875,000

Scenario 4	
2009-2010 standards met	2010-2011 Operations Payment - \$875,000
2010-2011 standards met	2011-2012 Operations Payment - \$875,000
2011-2012 standards not met	2012-2013 Operations Payment - \$831,250

Scenario 5	
2009-2010 standards not met	2010-2011 Operations Payment - \$831,250
2010-2011 standards not met	2011-2012 Operations Payment - \$789,688
2011-2012 standards met	2012-2013 Operations Payment - \$875,000

Scenario 6	
2009-2010 standards not met	2010-2011 Operations Payment - \$831,250
2010-2011 standards met	2011-2012 Operations Payment - \$875,000
2011-2012 standards not met	2012-2013 Operations Payment - \$831,250

Scenario 7	
2009-2010 standards met	2010-2011 Operations Payment - \$875,000
2010-2011 standards not met	2011-2012 Operations Payment - \$831,250
2011-2012 standards not met	2012-2013 Operations Payment - \$789,688

Scenario 8	
2009-2010 standards not met	2010-2011 Operations Payment - \$831,250
2010-2011 standards not met	2011-2012 Operations Payment - \$789,688
2011-2012 standards not met	2012-2013 Operations Payment - \$750,203

During the period that these Financial Standards are in place (through 2011-2012), the City expressly suspends the provisions of Section 19.5, "Reserves." This is done in recognition that meeting these standards is likely to require HSJ to make expenditure reductions, and imposing the reserve funding requirements of Section 19.5 may require further expenditure reductions, which could jeopardize the mutual goals of the parties as set forth in this Agreement in terms of public access to History Park, the Peralta-Fallon Historic Site, and the Historic Collections.

In the event the Financial Standards are not met by the end of fiscal year 2011-2012, the Director may at his or her sole discretion reinstate the provisions of Section 19.5 or continue the suspension. However, as soon as all Financial Standards are met, the provisions of Section 19.5 will be automatically reinstated for the following fiscal year.

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Further, if the Financial Standards set forth above are not met by HSJ by the end of fiscal year 2011-2012, then the Operations Payments for subsequent fiscal years will remain at the level of the fiscal year 2012-2013 payments until the Financial Standards are met. Furthermore, the City's Director shall retain the right to reduce the Operations Payments by an additional 5% in subsequent fiscal years if substantial progress towards meeting the Financial Standards set out above (as determined at the sole discretion of the City's Director) is not made by HSJ.

APPENDIX 2 HAZARDOUS MATERIALS DEFINITION

For purposes of this Agreement, the term "Hazardous Materials" shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court, and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term "Environmental Laws" shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.

CITY MANAGER CONTRACT TRANSMITTAL FORM

(ALL REQUESTED INFORMATION IS MANDATORY)

L= 07/01/09
S=
C

A. CONTRACT INFORMATION

NAME OF CONTRACTOR History San Jose *BUSINESS TAX LICENSE*
 ** (MANDATORY) **

CONTRACTOR CONTACT Alida Bray; President and CEO; 408-918-1041

CONTRACTOR ADDRESS 1650 Senter Road, San Jose, CA 95112-2599

TYPE OF CONTRACT (CHECK ONE):

NEW ☐ AMENDMENT ☒ IF YES, LIST AMENDMENT Amended and Restated

TERM OF THIS AGREEMENT July 1, 2009 TO Mar 31, 2018 AMOUNT OF CONTRACT/AMENDMENT \$875,000 annual

TERM OF ORIGINAL AGREEMENT Apr 1, 1998 TO Mar 31, 2018 ORIGINAL AMOUNT OF CONTRACT \$12,000,000

CONTRACT CATEGORY AMENDMENT CEQA STATUS CATEGORICALLY EXEMPT

COUNCIL ITEM

☒ YES IF YES, LIST DATE 6/23/09 COUNCIL AGENDA # 2.18 RESOLUTION # 75031

☐ NO

BUDGET YEAR 2009-10 BUDGET REFERENCE 001; Proposed 09-10 page IX-10

APPROPRIATION 2913 - History San Jose

DEPARTMENT GENERAL SERVICES CONTACT Peter Jensen PHONE 975-7290

B. CONTRACT DESCRIPTION

BRIEFLY DESCRIBE THE SCOPE OF THE WORK TO BE COMPLETED

This Amended and Restated Operation Agreement is with History San Jose for the operation of City-owned historical facilities within History Park at Kelly Park and the Peralta-Fallon Historic Site, as well as management of the City's historic collections. This new agreement incorporates changes to the existing payment schedule, updates performance expectations and consolidates various contract amendments executed to date into one document.

C. CONTRACTOR SELECTION PROCESS

SELECT ONE: ☐ RFP/RFQ DATES RFP/RFQ WAS CONDUCTED

☐ QBS (QUALIFICATIONS BASED)

IF THE CONTRACTOR **WAS NOT** SELECTED THROUGH A COMPETITIVE PROCESS, PROVIDE DETERMINATION IN ACCORDANCE WITH MUNICIPAL CODE SECTION 4.12.235, UNIQUE SERVICES.

n/a - This is an amendment to an existing operating agreement.

D. INFLUENCE OF LOCAL PREFERENCE

LOCAL BUSINESS-VALID SAN JOSE BUSINESS TAX LICENSE CERTIFICATE NUMBER AND AT LEAST 1 EMPLOYEE IN SANTA CLARA COUNTY ☐ YES ☐ NO ☒ N/A

SMALL BUSINESS OF 35 OR FEWER EMPLOYEES ☐ YES ☐ NO ☒ N/A

AWARD INFLUENCED BY LOCAL PREFERENCE POLICY ☐ YES ☐ NO ☒ N/A

E. ISSUES OF IMPORTANCE

PLEASE LIST ANY ISSUES SUCH AS PROTESTS, APPEALS, ETC.

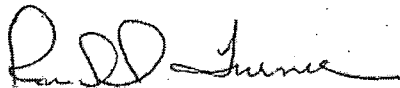
F. COORDINATION (CHECK ALL THAT APPLY)

HUMAN RESOURCES/RISK MANAGEMENT (REQUIRED) ☒

CITY ATTORNEY'S OFFICE (REQUIRED) ☒

OTHER

G. SIGNATURES:



DEPARTMENT HEAD SIGNATURE:

DATE: 7-1-09



CITY MANAGER/AUTHORIZED REP. SIGNATURE

DATE:

7/1/09

H. SPECIAL DELIVERY INSTRUCTIONS

RUSH ☒

NEEDED BY

RETURN TO DEPARTMENT (LEAVE AT CMO FRONT DESK AND NOTIFY CONTACT)

OTHER, USE THIS CONTACT

Randal Turner - 975-7280

history / san josé

History San José preserves and enriches the cultural heritage of San José and the Santa Clara Valley through research, collections, partnerships, educational programs and events.

2018 Peralta Adobe – Fallon House Historic Site

Programming Schedule

School Programs

September 10 through June 8, 2019

Adobe Days (grade 4)

Monday – Friday 9:30am – 12:00pm, 35 school children; every day is sold out with a waiting list.

Upstairs/Downstairs: A Family's Life in Victorian San Jose (grade 3)

Tuesday through Friday 9:30am – 12:00pm, 35 school children mostly booked with few openings.

Lecture Series & Open House

February 22 – June 2019

5:30pm – 6:30pm, guests can explore the Fallon House

6:30pm – 8pm, talk and book signings

Fallon House, 60 seat guest capacity

- Feb. 22 Book signing & talk with author Toby Gilman, author of The McGlinchey Killings in Campbell California an 1896 Unsolved Mystery
- March 14 Book signing & talk with Mary Jo Ignoffo, author of Captive of the Labyrinth: Sarah L. Winchester, Heiress to the Rifle Fortune
- April 19 Talk with Basim Jabar on The History of the Mount Umunhum Air Force Station
- May 10 Book signing & talk with author Toby Gilman, author of 19th Century San Jose in a Bottle
- TBD

Immersive Theatre

July 6 through June 30, 2019

When We Awaken a VR-Integrated Immersive Theatrical Experience

Epic Immersive will perform, funded through a Knight Foundation grant

Friday/Saturday/Sunday nights

Special Events

May 5

Cinco de Mayo Event at San Pedro Square Market

Sponsored by SPSM, HSJ will have the Adobe will be open and staffed with both docents and descendants helping guests tour the site.

Oct. 13

Happy Birthday San José City Anniversary Celebration

A day long program of performances and activities for the whole family.

Meetings

Monthly, Wednesday nights

La Raza Historical Society Board Meeting

We are partnering on interpretation, programming and finding volunteers to help staff the houses.

Tours - *current* ?

Monthly, TBD

Max capacity: 12, requiring 2 staff

3 different types of tours so that the same audience has a reason to come back:

- Architectural
- Upstairs/Downstairs
- Annie's Birthday

Virtual Tours

Napkins, signs with QR codes

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