



Meeting Date: 06/22/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Steven L. Kinney *SLK* Agenda Item No. I-1

Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Other (Specify) HR *[Signature]*

DATE: May 4, 2010

TO: City Council

FROM: Edmund F. Sotelo, City Manager

SUBJECT: Carnegie Art Museum Management Contract

RECOMMENDATION

That the City Council approve and authorize the Mayor to execute an Agreement for Operation, Maintenance and Management of the Carnegie Art Museum, with the Carnegie Art Museum Cornerstones, a non-profit corporation, to take effect on July 1, 2010.

DISCUSSION

The Carnegie Art Museum is a City-owned facility, operated currently by City staff through the Library Department. In addition to its City General Fund operating budget, the Museum is supported financially by the Cornerstones, a private non-profit corporation whose mission is to garner community support and financial contributions for the benefit of Museum programs.

The Cornerstones Board of Directors has proposed to take on the responsibility of managing the operations of the Museum, in a contract relationship memorialized in the attached Agreement. The benefits put forward by the Cornerstones for making this change in management include the following:

- 1) the current management structure makes the Museum ineligible to seek accreditation from the American Association of Museums (AAM). AAM accreditation is an important and necessary step for the Museum to attract top-level exhibits, donations to its permanent collection, and grants which it is currently precluded from competing for. The change proposed herein would allow the Museum to pursue the steps to achieve AAM accreditation.
- 2) The private non-profit Board would encourage a more entrepreneurial role for the Museum in connection with other downtown arts organizations and activities. Given the stature of the Museum as an institution downtown, it can take a leadership role to assist in the implementation of the City's Cultural Arts Plan.
- 3) Fund-raising will be more effective when the financial accounts of the Museum will be seen to be separate from the City's General Fund.

The important operational points of the Agreement are as follows:

- The Cornerstones Board of Directors will assume responsibility for the day-to-day operations of the Museum, consistent with City policies and standards spelled out in the Agreement.
- The City will maintain its General Fund support for Museum operations consistent with prior years and current budget conditions.
- The term of the Agreement is ten (10) years, with the City's reserved right to cancel it upon six months' notice.
- The Cornerstones will contract with the City for the use of City employees to carry out the staff functions of the Museum. This arrangement is spelled out in detail in the Agreement, and has been reviewed by appropriate local union representatives. The practical effect is that the current City employees who work at the Museum will continue to work there under this Agreement; however, the Museum Director will report directly to the Cornerstones Board, rather than to a City department head.

FINANCIAL IMPACT

There is no financial impact inherent in this action. It is intended that the transfer of management be budget-neutral, i.e., the City will commit neither more nor less to the Cornerstones for museum operational support than it would commit to the Museum under City operation. The actual amount decided upon for the Museum from the General Fund will be a separate action by the City Council as a part of the overall City budget for FY 2010-2011.

There is, however, a potential future positive financial impact, as the improved fund-raising ability of the Cornerstones will help to leverage City funding with a greater amount of private donations.

Attachment #1 – Agreement for Operation, Maintenance, & Management of the Carnegie Art Museum

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AGREEMENT FOR OPERATION, MAINTENANCE AND MANAGEMENT OF THE CARNEGIE ART MUSEUM

This Agreement for Operation, Maintenance and Management of the Carnegie Art Museum ("Agreement"), is entered into in Ventura County, California by and between the CITY OF OXNARD, a municipal corporation ("City"), and the CARNEGIE ART MUSEUM CORNERSTONES, a nonprofit corporation ("Operator").

WHEREAS, City owns the Carnegie Art Museum building and City Art Collection (collectively "Museum"); and

WHEREAS, the Museum was designed for artistic exhibits, performances, public gatherings, cultural and educational programs, maintenance and development of the permanent collection, and other similar programs and events for the benefit and enjoyment of the public and the community; and

WHEREAS, the City Council of City desires that the Museum be operated, maintained and managed by Operator.

NOW, THEREFORE, City and Operator agree as follows:

1. Facilities

The facilities governed by this Agreement consist of the Museum located at 424 South C Street, Oxnard, California and the surrounding grounds as depicted in Exhibit A attached hereto and incorporated in full herein by this reference.

2. Governing Policy

Operator shall use its best efforts to operate, manage and maintain the Museum as a first-class fine arts museum and art education center. City and Operator agree that the Museum shall be operated and maintained so as to maximize artistic exhibits, performances, public gatherings, cultural and educational programs, maintenance and development of the permanent collection, and other similar events for the benefit and enjoyment of the public and the community.

3. Operation, Maintenance and Management

a. Operator shall operate, maintain and manage the Museum in accordance with the terms and conditions set forth in the Agreement.

b. City shall cooperate with Operator to enable Operator to operate, maintain and manage the Museum in an efficient and economical manner so as to encourage maximum utilization of the Museum and to protect the Museum as a significant public asset.

4. General Standards of Performance

The following general standards of performance shall be satisfied by Operator:

a. Operator shall timely pay Operator's financial obligations required by this Agreement.

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b. Operator shall promptly discharge all claims for labor, material, supplies, and equipment furnished for or in connection with the Museum.

c. Operator shall adopt and enforce rules and regulations governing the Museum.

d. Operator shall comply with all valid requirements of any authority governing the Museum and shall require all persons using the Museum or attending events to comply with such valid requirements.

e. Operator shall maintain reasonable wages and benefits to all employees performing services in connection with the Museum provided, however, that the City shall determine wages and benefits to be paid to those City employees performing services for Operator pursuant to the provisions of paragraph 27 of this Agreement.

f. Operator shall maintain reasonable operating policies and procedures to govern various aspects of the Museum such as administrative functions, sales policies, maintenance, repair, and accounting practices.

g. The Board of Directors of Operator shall report annually during the first or second month of each year to the City Council. The report shall include:

(1) Museum Annual Report with statements of Museum revenue and expenses and details on the utilization of the Museum.

(2) Annual Goals and Objectives for the Museum with specific measurable indicators for Operator.

5. Term

a. City hereby grants to Operator an exclusive right to operate, maintain and manage the Museum for a period beginning July 1, 2010, and ending June 30, 2020 ("Initial Term"). City further grants Operator an opportunity to request renewal of this Agreement for two (2) additional terms of ten (10) years each. Any additional terms of this Agreement shall be effective only with the mutual consent of the City Council and the Operator.

b. This Agreement may be terminated by either City or Operator, with or without cause, by giving six (6) months written notice of the decision to terminate one party to the other party.

c. This Agreement is further subject to the City appropriating sufficient funds each year to fulfill the funding requirements of Operator set out in sections 13 and 14 (Capital Budget and Annual Operating Budget). If funds are not so appropriated, this Agreement shall automatically terminate on the date any funds previously appropriated are fully expended.

6. Operator as Exclusive Manager

Operator shall have the exclusive responsibility, discretion, and authority to determine policies, procedures, standards of operation, special rights or privileges, programs, standards of service and maintenance affecting the Museum.

7. City Manager

The City Manager, or designee, shall be the person generally responsible for administering and monitoring this Agreement on behalf of City.

8. Museum Director

a. Operator shall be responsible for providing a person to be the Museum Director of the Museum. The Museum Director shall be available during customary working hours to meet the City Manager, and such additional time as may be necessary to perform the duties of Museum Director as may be prescribed by Operator.

b. The Museum Director shall have full authority to act for Operator on all matters relating to the performance of services under this Agreement and shall be the principal contact person with the City Manager.

9. Quality of Programs

a. The primary mutual concern of City and Operator is to provide quality events to the public using the Museum, at affordable prices, and at minimal cost to the City.

b. Operator shall use its best efforts to operate, manage and maintain the Museum as a first-class fine arts museum and art education center.

10. Payments to Operator

a. City agrees to grant Operator for operating, maintaining, and managing the Museum a yearly amount ("Operating Funds"), by semi-annual payments, as provided for in the Operating Budget.

b. City agrees to provide Operator the Operating Funds in semi-annual payments on or before the fifth (5th) day of July and January, each year this Agreement is in effect.

11. Marketing

a. Operator shall reasonably promote and advertise the Museum using the name "Carnegie Art Museum." Operator shall develop all publicity material in a professional manner.

b. During the course of performance of this Agreement, Operator, its employees, agents and subcontractors shall not publish or disseminate commercial advertisements, press releases, opinions or feature articles, using the legal name of City or City logo without the prior consent of City Manager provided that Operator may include in any such material the phrase "Carnegie Art Museum" without such prior approval. City Manager shall not unreasonably withhold such consent.

12. Financial Management and Budgets

a. Operator shall prepare and maintain all books, records, accounting statements, income and loss statements, balance sheets, and other data associated with the financial affairs of the Museum, in accordance with generally accepted accounting principles which will accurately reflect the gross receipts and expenses of the Operator. Every two years, the Operating Statements shall be audited by an independent certified public accountant and the results of such audit shall be made available to both Operator and City for review and approval.

b. Operator shall make available to City the Operating Statement at all times upon reasonable request of City Manager.

13. Capital Budgets

Operator shall prepare and submit to City Manager, as appropriate, an annual capital improvement budget for the Museum ("Capital Budget"). Operator shall submit the Capital Budget each year on the same schedule and at the same time as City Manager requires City departments to submit their budgets. The Capital Budget shall be presented in reasonable detail and in a format approved by City Manager. Upon approval of the Capital Budget by the City Council, City shall make available the requested funds in such amounts and at such times as may be described in the Capital Budget during the succeeding fiscal year.

14. Annual Operating Budget

An annual Operating Budget setting forth the projected revenues and expenses associated with the operations, maintenance and management of the Museum shall be prepared by Operator and submitted to City Manager, together with such other information and plans as may be reasonably requested by City Manager. Operator shall submit the Operating Budget each year on the same schedule and at the same time as City Manager requires City departments to submit their budgets. The Operating Budget shall be subject to the prior approval of the City Council. Upon the approval of the Operating Budget, City shall make available as provided in paragraph 10 of this Agreement to Operator the Operating Funds as approved by the City.

15. Artworks Trust Fund

City agrees to retain investment of the Artworks Trust Fund (originally Mary Bevans Fund for purchase of art for the museum collection) and agrees that it remains allocated for the exclusive use of acquiring and maintaining art for the Museum's City art collection. The Museum Artworks Trust Fund's interest and/or principle may continue to be used for collections, acquisition, and maintenance at the discretion of the Museum Director.

16. Advances of Working Capital

In the event that any operating working capital reserves, improvement capital reserves, and/or the net revenue from operations of the Museum are insufficient to pay the costs and expenses as set forth in the Operating Budget or Capital Budget, Operator may present City Manager with a written request for an advance of working capital adequate to cover such costs and expenses. City Manager will consider this request and determine, in his discretion, whether to present it to the City Council for consideration. Subject to City Council approval, the City shall advance funds requested by Operator.

17. Reallocation of Funds

___ Operator may reallocate all or any portion of any amount budgeted with respect to any one item in either the Operating Budget or Capital Budget to another item budgeted therein.

18. Inspection of Records

a. Upon seven (7) days' advance written notice to Operator setting forth the time of inspection and records to be inspected, City or its authorized auditors and representatives shall have access to and the rights to audit and reproduce any of Operator's records related to this Agreement.

b. Operator shall maintain and preserve all such records for a period of at least five (5) years from date of production. If Operator fails to make such records available within the city limits of City or at a mutually agreed upon place, Operator shall promptly reimburse City for all reasonable costs incurred in conducting the inspection at another location, including but not limited to expenses for personal, salaries, private auditors, travel, lodging, meals and overhead.

19. Condition of Museum

Operator agrees to accept the operation of the Museum in an "as is" condition as of July 1, 2010.

20. Retention of Ownership by City

a. During and after the term of this Agreement, City shall retain ownership of the Museum and all facilities constructed for the Museum by City in the future.

b. In the event of destruction of any part or all of the Museum, Operator shall have no obligation to repair or replace any or all of the Museum.

21. Federal and State Taxes

For purposes of federal and state tax law, Operator shall be considered as the "owner" of all items purchased by operator and held for resale or rental.

22. Purchase of Equipment, Supplies and Materials by Operator

Operator shall have the responsibility and authority to purchase such equipment, operating supplies and materials, furnishings, and fixtures as Operator requires for the operation, maintenance and management of the Museum; provided that City shall retain the title to and ownership of such equipment supplies, materials, furnishing and fixtures.

23. Licenses, Permits, and Accreditations

a. Operator shall apply for, obtain, and maintain all licenses, permits and accreditations required in connection with the operation, maintenance and management of the Museum. To the extent possible, City agrees to waive all fees or charges in connection with the issuance by the City of any licenses and permits required by Operator.

b. Operator agrees that, where required by law, the employees of Operator, performing services under this Agreement, shall possess the appropriate and currently valid licenses, certifications and accreditations.

24. [Intentionally Omitted]

25. Employee Conduct

Operator agrees that its employees shall perform services in a courteous and businesslike fashion, and Operator will provide proper supervision and a safe work environment to the City employees provided to it under the provisions of paragraph 27 below.

26. Subcontracting

Operator agrees to be responsible for the performance of any subcontractor. Operator agrees to ensure that the work or services performed by any subcontractor shall satisfy the terms of this Agreement. Operator agrees that no subcontractor shall relieve Operator of any obligation under this Agreement.

27. Staffing

In order to reduce the costs and expenses incurred by Operator in operating, maintaining, and managing the Museum, City and Operator agree to share staff, personnel and employees to the extent possible. Accordingly, to the extent Operator requests that City personnel perform such services, City agrees to provide at City's direct cost and to the extent consistent with the availability of City forces:

a. The following positions (with City-designated job titles) to the extent that Operator needs and the budget allows for said positions:

- (1) Museum Director (Cultural Arts Supervisor);
- (2) Visitor Service Representative (Office Assistant I/II);
- (3) Curator of Education (Event Attendant III); and
- (4) Museum Registrar (Event Attendant III).

b. A minimum of the following part-time positions, of which the work schedules may vary in accordance with budget allocations and program changes:

- (1) Event Attendants (3);
- (2) Workshop Coordinator ;
- (3) Museum Education Assistants (2); and
- (4) Custodian.

c. The following City support positions/departmental support:

- (1) All regular and ordinary grounds maintenance, landscaping, gardening and related services for the preservation of the exterior of the Museum.
- (2) Facilities Maintenance and Repair– includes building interior and exterior, elevator, landscaping, maintenance, and 24-hour on-call service.
- (3) Human Resources – Safety, Workers' Compensation compliance, recruitment, hiring, maintenance, benefits and separation of regular full-time, permanent part-

time and temporary Museum staff provided by City under the provision of this paragraph 27, as well as discipline, grievances and all other issues within wages, hours and terms and conditions of employment.

(4) Payroll – reporting, check distribution, tax withholding, payment of benefits and Workers' Compensation and Workers' Compensation insurance for museum staff provided by City under the provisions of paragraph 27.

(5) City Mail pickup and processing.

(6) Communications/Data Processing – phone system, cell phones, DSL lines for online access, new IP phone system, maintenance of computers, equipment upgrading, internet and email access, and color copy machine.

d. Operator shall reimburse the City for all staff and services provided by the City at rates and amounts established by the approved annual budget.

e. Operator understands and acknowledges that many of the City's non-management employees assigned to the Museum are represented by a labor union, the Service Employees International Union, Local 721 (SEIU), and that a memorandum of understanding (MOU) entered into between the City and SEIU is binding on the City and governs the wages, hours and other terms and conditions of the employment of those Museum employees. As a result, any action taken by the City and/or Operator which impacts these employees, or City Museum employees who may be hired subsequently, must be taken in a lawful manner that does not violate the MOU or the governing state statute, the Meyers-Miliias-Brown Act, California Government Code section 3500-3511. Operator also understands and is aware that all members of City staff, as public employees, are subject to many laws and regulations which may or may not also apply to Operators' employees. Operator therefore agrees that it shall not implement any action which affects the wages, hours or other terms and conditions of any City employee, or future City employee, without the prior written consent of the City Manager, or designee, and the City's Director of Human Resources.

28. [Intentionally Omitted]

29. Cooperation Between Operator and City

City agrees that the City Manager, or his designee, shall have the responsibility to work with Operator to assure that Operator obtains the full cooperation and assistance of City subject to the terms of this Agreement and all applicable law.

30. Indemnity

a. Operator agrees to indemnify, hold harmless, and defend City, its City Council and each member thereof, and every officer and employee of City, from any and all liability, claims, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), cost and financial loss, including all costs and expenses of litigation or arbitration that result or are claimed to have resulted directly from the wrongful or negligent act, errors or omissions of Operator or its agents, employees, subcontractors or consultants while they are performing services under this Agreement, or from the use of City's property by Operator or its agents, employees, subcontractors or consultants, except in cases of sole negligence on the part of the City, its officers, employees, agents, or subcontractors. This indemnification provision is solely the obligation of the Operator itself and is not the obligation of the Operator's individual directors, officers, employees, agents, subcontractors and consultants.

b. City agrees to indemnify, hold harmless, and defend Operator, and every officer and employee of Operator, from any and all liability, claims, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), cost and financial loss, including all costs and expenses of litigation or arbitration, that result or are claimed to have resulted directly from the wrongful or negligent act, errors or omissions of City or its agents, employees, subcontractors or consultants while they are performing services under this Agreement, or from the use of Operator's property by City or its agents, employees, subcontractors or consultants, except in cases of sole negligence on the part of the Operator, its officers, employees, agents, or subcontractors. This indemnification provision is solely the obligation of the City itself and is not the obligation of the City's individual Councilmembers directors, officers, employees, agents, subcontractors and consultants.

31. Insurance

a. Operator shall obtain and maintain during the Term of this Agreement the following insurance coverage issued by a company satisfactory to City Manager for all coverage not provided by the City as part of its ongoing risk management program in connection with its museum building, City Art Collection, and personnel .

(1) Commercial general liability insurance including a contractual liability endorsement, products, and completed operations liability, in an amount not less than \$5,000,000 combined single limit for injury and property damage for each claimant for general liability;

(2) Business automobile liability insurance in an amount not less than \$5,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability;

(3) Workers' Compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount no less than \$5,000,000 per claimant. In the event Operator hires non-City staff, Operator shall be responsible for providing workers' compensation insurance for these non-City employees.

(4) Property insurance which shall provide coverage for the full insurable replacement value of real property improvements and structures covered by this Agreement and shall insure against the hazards of fire, extended coverage, other property related losses, flood, vandalism, malicious mischief and earthquake.

(5) Fine Arts coverage insuring all risk of physical loss or damage including earthquake and flood for works of art at the Museum in the permanent collection at current fair market value at time of loss and works consigned or loaned, as per loan agreement, for no less than \$2 million per occurrence. This policy shall also cover artwork in the transit or at other locations on loan by the Museum.

(6) Directors and officers liability insurance for the protection of the directors and officers.

(7) For any insurance not provided by the City, any deductible or self-insured retention shall be declared, in writing to and approved by the City Manager. Failure to obtain approval of self-insured retentions and/or deductibles shall be considered a material breach of this Contract.

b. For insurance in support of the Operator's operational responsibilities, Operator shall bear its allocated costs of the insurance procured by City under this Agreement.

32. Utilities

Operator agrees to pay for all utilities required to perform this Agreement including gas, water, electricity, telephone services, waste water, and trash collection. In connection therewith, City shall designate Operator and the use of the Museum facility as a City approved facility in order to permit Operator to obtain the lowest possible rate available for all utility services.

33. Default and Cure

a. When City Manager determines that Operator has violated any term or condition of this Agreement, City Manager shall notify Operator, in writing, of the defect or deficiency and shall give Operator not less than thirty (30) days within which to cure the defect or deficiency. If Operator fails to cure the defect or deficiency within thirty (30) days, or in the event such defect or deficiency cannot be cured within thirty (30) days for such additional time so long as Operator shall have commenced such cure within thirty (30) days and continued to prosecute the cure with reasonable diligence, City may pursue any and all remedies available to it under law, including termination of this Agreement.

b. When Operator determines that City has violated any term or condition of this Agreement, Operator shall notify City Manager, in writing, of the defect or deficiency and shall give City not less than thirty (30) days in which to cure the defect or deficiency. If City fails to cure the defect or deficiency within (30) days, or in the event such defect or deficiency cannot be cured within thirty (30) days for such additional time so long as City shall have commenced such a cure within thirty (30) days and continue to prosecute the cure with reasonable diligence, then Operator may pursue any and all remedies available to it under law, including termination of this Agreement.

34. Dispute Resolution Procedure

Upon mutual agreement of City and Operator, any dispute may be submitted to mediation or to binding or non-binding arbitration.

35. [Intentionally Omitted]

36. Force Majeure

Operator and City agree that neither party shall be liable to the other party for any non-performance, in whole or in part, of its obligations under this Agreement caused by the occurrence of any contingencies beyond the control of Operator or City, including but not limited to declared or undeclared war, sabotage, insurrection, riot or other act of civil disobedience, acts of any public enemy, acts of governments or agencies affecting the terms of this Agreement, labor disputes, shortages of fuel, accidents, fires, explosions, floods, earthquakes or other acts of God. In the event that any such contingencies occur, the party whose performance is affected shall have a reasonable time in which to resume performance and such party's non-performance shall not constitute material breach hereof unless the party fails to make a reasonable attempt to resume full performance.

37. User Comment Forms

Operator agrees to supply and have readily available at the Museum, at all times, appropriate forms for users to present their comments, criticisms, recommendations or complaints, regarding Operator's operation, maintenance and management of the Museum. Operator will retain these completed forms at the Museum for viewing until the end of the next calendar year. On a regular basis, as defined by the City, Operator shall provide the City with copies of such forms returned to Operator by users.

38. Independent Contractor

a. City and Operator agree that in the performance of this Agreement, Operator shall be, and is, an independent contractor, and that Operator and its employees (except for personnel provided by the City under the provisions of Paragraph 27 above) are not employees of the City. Operator has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Operator.

b. Operator shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Operator's employees, agents, subcontractors and consultants, including compliance with Social Security requirements, federal and state income tax withholding and all other regulations governing employer-employee relations.

c. Operator acknowledges that Operator and Operator's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and Workers' Compensation insurance benefits.

39. Operator Not Agent

Except as City may specify in writing, Operator, and its agents, employees, subcontractors and consultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

40. Conflict of Interest

Operator shall promptly inform City Manager of any contract, agreement, arrangement, or interest that Operator may enter into or have during the performance of this Agreement that may conflict with City's interests. This requirement includes contracts, agreements and arrangements with manufacturers, suppliers, contractors or other persons whose interests might be served by the services performed under this Agreement and Operator's interest in land that might be affected by the services. Operator shall take such measures as are necessary in the performance of this Agreement to prevent actual or appearances of conflicts of interest.

41. Assignability of Agreement

Operator agrees that this Agreement contemplates personal performance by Operator and its employees and is based upon a determination of such entity's unique competence and experience and upon their specialized knowledge. Assignments of any or all rights, duties, or obligations of Operator under this Agreement will be permitted only with the express written consent of City Manager, which consent may be withheld for any reason.

42. Successors and Assigns

Subject to any provisions to the contrary herein, Operator and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Operator and City.

43. Fair Employment Practices

a. Operator agrees that all persons employed by Operator shall be treated equally by Operator without regard to or because of race, color, religion, ancestry, national origin, physical or mental disability, sex, marital status, age, or sexual orientation and in compliance with all anti-discrimination laws of the United States of America, the State of California, and City.

b. Operator agrees that, during the performance of this Agreement, Operator and any other parties with whom Operator may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, physical or mental disability, sex, marital status, age, or sexual orientation.

c. Operator agrees to state in all of its solicitations or advertisement for applicants for employment that Operator is an "Equal Opportunity Employer" or that all qualified applicants shall receive consideration for employment without regard to their race, color, religion, ancestry, national origin, physical or mental disability, sex, marital status, age or sexual orientation.

d. Operator shall, if requested to do so by City, certify to City that Operator has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class and to recruit vigorously and encourage business owned by persons in a protected class to bid on subcontracts.

e. Operator shall provide City with access to and, upon request, provide copies to City, at City's expense, of all of Operator's records pertaining or relating to Operator's employment practices, to the extent such records are not confidential or privileged under state or federal law.

The foregoing provisions apply both with respect to direct employees of Operator and with respect to City employees provided to Operator under the provisions of Paragraph 27.

44. Time of Essence

Operator and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

45. Covenants and Conditions

Operator and City agree that each term and provision of this Agreement to be performed by Operator shall be construed to be both a covenant and a condition.

46. Governing Law

City and Operator agree that the construction and interpretation of this Agreement and the rights and duties of City and Operator hereunder shall be governed by the laws of the State of California.

47. Compliance with Laws

Operator agrees to comply with all City, state, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the services performed by Operator pursuant to this Agreement.

48. Severability

City and Operator agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

49. Waiver

City and Operator agree that no waiver of a breach of any provision of this Agreement by either Operator or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Operator to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

50. Counterpart

City and Operator agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

51. Expenses of Enforcement

Operator and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

52. Authority to Execute; Implement

- a. City acknowledges that the Mayor has been duly authorized by City Council to execute this Agreement on behalf of City.
- b. Operator acknowledges that the President of its Board of Directors has been duly authorized by Operator to execute this Agreement on behalf of Operator.
- c. City's City Manager has the authority to take all actions and execute all documents necessary to implement this Agreement and carry out its provisions.

53. Notices

- a. Any notices to Operator may be delivered personally or by mail addressed to Carnegie Art Museum, 424 South C Street, Oxnard, California 93030, Attention: Museum Director.
- b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, 300 West Third Street, Oxnard, California 93030, Attention: City Manager.

54. Headings

The paragraph headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

55. Amendment

City and Operator agree that the terms and conditions of this Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed to in writing by both City and Operator.

56. Entire Agreement

City and Operator agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

Dated: May 18, 2010

CITY OF OXNARD

CARNEGIE ART MUSEUM CORNERSTONES CORPORATION

Dr. Thomas E. Holden
Mayor

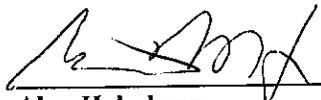


Stacy A. Roscoe
President

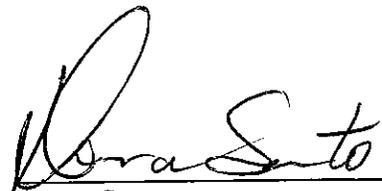
ATTEST:

Daniel Martinez
City Clerk

APPROVED AS TO FORM:

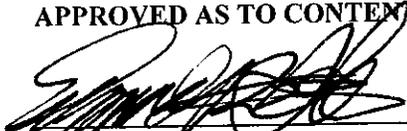


Alan Holmberg
City Attorney



Donna Santo
General Counsel

APPROVED AS TO CONTENT:



Edmund F. Sotelo
City Manager

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