

**AGREEMENT BETWEEN THE
CITY OF LOS ALTOS, CALIFORNIA,
AND THE ASSOCIATION OF THE LOS ALTOS HISTORICAL MUSEUM FOR THE
OPERATION OF THE LOS ALTOS HISTORY HOUSE AND MUSEUM**

THIS AGREEMENT ("Agreement") is made and entered into as of the 10th day of JUNE, 2005, by and between the CITY OF LOS ALTOS, a municipal corporation ("CITY"), and the Association of the Los Altos Historical Museum ("ASSOCIATION").

RECITALS

WHEREAS, in 1989, the Los Altos City Council approved conceptual plans presented by the ASSOCIATION for the construction of a museum on CITY property, the construction of which would be financed by private donations and the operations of which would be the responsibility of the ASSOCIATION. Construction and operations of the museum by the ASSOCIATION are for the purpose of preserving and displaying local historical artifacts and to provide an historical/educational facility for the community; and

WHEREAS, in 1996, after design approval by both the CITY and ASSOCIATION, a fund raising campaign was started that ultimately led to the construction and opening of the museum in March, 2001; and

WHEREAS, the museum building is located on CITY land within the Civic Center on San Antonio Road in Los Altos, California, and the building will be gifted to the CITY by ASSOCIATION by a separate instrument upon execution of the Agreement, and

WHEREAS, CITY retains control of all areas of the museum building and land, and except as set forth in the Agreement, reserves the right to determine the use of all of the museum building, History House, and surrounding grounds, landscaping and patio areas, and referred to as the MUSEUM; and

WHEREAS, the ASSOCIATION exists for the sole purpose of managing, facilitating and funding the programs and operations of MUSEUM for which purpose all funds raised by ASSOCIATION are designed to be used unless otherwise stated in the Agreement; and

WHEREAS, the purpose of this Agreement is to authorize ASSOCIATION to operate and maintain CITY'S building as a MUSEUM as a service to the general public and schools, to set forth responsibilities between CITY and ASSOCIATION and usage under which MUSEUM is to be operated and maintained.

NOW, THEREFORE, in consideration of the covenants, conditions and promises hereinafter contained, to be kept and performed by then parties hereto, **IT IS AGREED AS FOLLOWS:**

CITY'S RESPONSIBILITIES

1. CITY shall allow ASSOCIATION to use CITY'S building as a MUSEUM for ASSOCIATION'S exhibits exclusively for the preservation, education and development of the history of Los Altos, Los Altos Hills and the surrounding areas, unless otherwise stated in this Agreement. If ASSOCIATION ceases to operate MUSEUM under the terms of this Agreement, CITY reserves the right to use the structure or grounds for other civic purposes.
2. CITY authorizes ASSOCIATION to use CITY'S collection of historical artifacts, consisting of historical documents, pictures, furniture, equipment and exhibits ("COLLECTION"), as long as ASSOCIATION operates MUSEUM under the terms of this Agreement, it being understood that items in CITY'S possession shall be made available in CITY'S reasonable discretion.
3. CITY authorizes ASSOCIATION to hold public and private events, which are of benefit to the MUSEUM and to hold fund-raisers and events for the purpose of supporting the development and operation of the MUSEUM.
4. CITY authorizes ASSOCIATION to use MUSEUM for the purpose of: 1) restoration and maintenance of CITY'S COLLECTION, 2) development of MUSEUM'S exhibits and facilities, and 3) presenting MUSEUM collection, MUSEUM'S exhibits, educational programs, services, and facilities for the general public and school groups.
5. CITY, except as otherwise provided in this Agreement, in connection with ASSOCIATION'S responsibilities, shall provide, and maintain and repair MUSEUM. This shall include the structure, roof, floors, security systems, lighting, irrigation, plumbing, pest control, painting, elevator and heating and ventilating systems; CITY shall provide utilities including gas, electricity, water, telephone, data service, sewer and garbage collection. All of the foregoing shall be subject to funding designated for such purposes in CITY'S Service and Financial Plan. CITY shall maintain reserves to be increased by no less than ten thousand dollars (\$10,000) annually in CITY'S Facility Replacement Fund.
6. CITY shall provide to the MUSEUM a fixed annual contribution of sixty-five thousand dollars (\$65,000) for general support of the MUSEUM.

ASSOCIATION RESPONSIBILITIES

1. ASSOCIATION shall be solely responsible for management operations and maintain the MUSEUM (except as provided in CITY'S Responsibilities set out in Paragraph 5 above) through fund raising activities and the use of volunteers.
2. ASSOCIATION shall provide personnel to design, fabricate, install and maintain exhibits, develop MUSEUM programs, staff MUSEUM (tour docents) and its store during open hours and assist in carrying out the general MUSEUM administration. ASSOCIATION shall be responsible for recruitment, training, supervision and scheduling of all volunteers.

3. ASSOCIATION shall hire a Chief Executive Officer who shall report to ASSOCIATION'S Board of Director or to a designated member of the Board. The ASSOCIATION will hire other staff and independent contractors who shall report to the Chief Executive Officer.
4. ASSOCIATION shall be responsible for scheduling all events at MUSEUM. ASSOCIATION shall be responsible for planning all museum-related events held at MUSEUM, providing for all necessary equipment and staffing, and seeing that all necessary permits and/or licenses required by law are obtained. Scheduling priorities shall be opening MUSEUM for general public and school groups (first priority), revenue generating events (second priority) and CITY events (third priority). ASSOCIATION shall not charge CITY for CITY events as long as CITY provides its own set up, staffing and janitorial clean up after the event. CITY in using MUSEUM for events shall abide by all regulations established by ASSOCIATION for use of MUSEUM.
5. ASSOCIATION shall provide CITY with an annual financial report ninety (90) days after the close of ASSOCIATION'S fiscal year. CITY shall have the right to examine the financial records of ASSOCIATION at any time upon ten (10) days' notice.
6. ASSOCIATION shall utilize all funds received by ASSOCIATION for development and operations of MUSEUM and its programs. ASSOCIATION shall hold such funds in accounts designated for such purposes.
7. ASSOCIATION shall maintain 501(c)(3) status as a charitable non-profit association.
8. ASSOCIATION shall not commit, suffer, permit, allow or authorize any of the following acts during the term of this Agreement:
 - a. Transfer, sell or assign its rights or obligations under this Agreement or any interest herein to any person or entity without prior written approval of CITY. ASSOCIATION may utilize persons or organizations at ASSOCIATION'S expense for services that are the responsibility of ASSOCIATION such as janitorial and creation or rental of exhibits.
 - b. Change or alter MUSEUM without prior written approval of CITY.
 - c. Construct or install any permanent fence, barrier, sign, exterior exhibit, or structure without prior written approval of CITY.
 - d. Perform any work such as plumbing, electrical, floor repair, interior and exterior painting without the prior written approval of CITY.
 - e. Accept or remove valuable (defined as any item in excess of \$10,000.00) MUSEUM acquisitions or any part of CITY'S COLLECTION without prior written approval of CITY.
9. ASSOCIATION shall cooperate with and keep CITY informed of all ASSOCIATION programs and activities.
10. ASSOCIATION shall purchase and maintain at its own expense a two million dollar (\$2,000,000) liability insurance policy, naming CITY and its officers, agents, and employees as additional insureds. CITY shall be provided with a contractual liability endorsement

specifically referencing this Agreement. If required by law, ASSOCIATION shall provide workers' compensation insurance for ASSOCIATION'S volunteers and staff.

11. ASSOCIATION shall purchase, maintain and provide all furniture, equipment, including office equipment, computers, exhibit cases, exhibit furniture, office supplies, printed materials, postage and MUSEUM store inventory.
12. ASSOCIATION shall be entitled to exclusive use of the MUSEUM logo and other copyrighted protected products or designs obtained by ASSOCIATION for the use of MUSEUM or MUSEUM store.

GENERAL PROVISIONS

1. **RESOLUTION OF DISPUTES. Mediation.** Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs and fees. Neither party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution.
2. **TERMINATION OF AGREEMENT.**
 - a. Except for breach of any of the terms and conditions as set forth in the Agreement, this Agreement may be terminated at any time by mutual consent by both parties, expressed in writing.
 - b. Additional grounds for termination include:
 - (i) If ASSOCIATION shall become bankrupt or insolvent, or if there shall be any default in the terms of this permit by ASSOCIATION, CITY may, if it is meeting all of the CITY'S RESPONSIBILITIES as set forth in this Agreement, cancel and terminate this Agreement by the following procedure:
 - (ii) CITY shall give ASSOCIATION written notice of the particulars of the default. If ASSOCIATION fails to remedy the default within a period of ninety (90) days, or within such greater time as CITY may approve, then this Agreement shall automatically terminate and all rights of ASSOCIATION shall cease and terminate.
 - c. If this Agreement is terminated, MUSEUM related structures and installed improvements shall remain the property of the CITY. The Collections shall also remain the property of CITY.
3. **SPONSORSHIP AGREEMENTS.** ASSOCIATION may enter into sponsorship agreements with individuals or companies to place structures, improvements, and facilities at MUSEUM with prior approval of CITY.
4. **ANNUAL MEETING.** CITY and ASSOCIATION shall meet each year and cooperatively develop their respective operations, maintenance, and capital improvements budgets for MUSEUM and related facilities subject to this Agreement.

5. **FURTHER ASSURANCES.** Both parties may enter into Letters of Understanding, as conditions warrant, pursuant to the foregoing terms and conditions, to further define the details of joint and shared responsibilities regarding the day-to-day operations of MUSEUM. Any such Letters of Understanding shall not alter, modify, or change any provision(s) of this Agreement. In case of conflict, this Agreement shall prevail.
6. **AMENDMENT.** No amendment to this Agreement shall be valid or binding unless made in writing and duly authorized on behalf of both parties.
7. **NOTICES.** Any notices to be given under this Agreement by either party to the other shall be in writing and may be effected either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed as follows:

CITY

City Manager
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

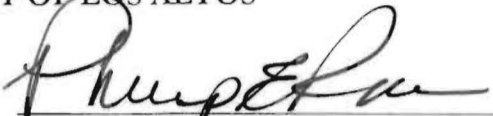
ASSOCIATION

President
The Association of the Los Altos Historical Museum
51 South San Antonio Road
Los Altos, CA 94022

8. **PARTIAL INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
9. **BINDING.** This Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, assigns and successors-in-interest to the parties hereto.
10. **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other party of any provisions hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
11. **APPLICABLE LAW AND FORUM.** This Agreement shall be construed and interpreted according to the laws of the State of California in any action to enforce the terms of this Agreement or for the breach thereof, and shall be brought and tried in the County of Santa Clara, California.
12. **CONSTRUCTION.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in the manner that avoids any violation of statute, ordinance, regulation or law.
13. **INTEGRATION.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto and contains all the covenants and agreements between the parties

with respect to the matters set out in this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed by the party to be charged.

CITY OF LOS ALTOS

By: 
Philip E. Rose, City Manager

ASSOCIATION OF LOS ALTOS HISTORICAL MUSEUM

By: 
Lynne McCreight

Its: President