# PUBLIC/PRIVATE PARTNERSHIP OPERATING AGREEMENT AND LEASE BETWEEN THE CITY OF PACIFIC GROVE CA AND MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

THIS AGREEMENT and LEASE is made and entered into as of the 27th day of July, 2009 by and between the City of Pacific Grove, California, a municipal corporation and charter city under the laws of the State of California, and the Museum Foundation of Pacific Grove, Inc., a non-profit public benefit corporation under the laws of the State of California.

IN CONSIDERATION of the mutual promises set forth in this Lease Agreement, the adequacy of which is hereby acknowledged by each party, the City hereby leases and lets to Foundation, the Foundation hereby leases and takes from City, all areas that constitute and are defined below as the Premises, and the Parties hereby covenant and agree as follows:

## Article I.
## Definitions and Recitals

Section 1.01 Definitions. As used in this Agreement, the following terms, when capitalized, shall have the meanings ascribed to them in this Section.

(a) "AAM" means the American Association of Museums.

(b) "Agreement" means this document, when executed by both parties, together with all attachments hereto, each of which is incorporated by reference as a part of this document. This document is at times also referenced as the "Lease Agreement".

(c) "Annual Contribution" means the contribution to be made by City to the Foundation under Section 4.02 to be used by the Foundation only for purposes to fulfill Foundation's obligations under this Lease Agreement, including the Mission Statement and Goals set forth in Attachment A.

(d) "Association" means the Pacific Grove Museum of Natural History Association.

(e) "Attachment A" means the Mission Statement and Goals established for the Museum by the City Council, as may be revised and amended from time to time by mutual agreement of the parties. The Goals set forth in Attachment A shall be deemed obligations of Foundation for the purposes of this Lease Agreement.

(f) "City" means the City of Pacific Grove, California, acting by and through its City Manager by authority of its City Council. The City is a Party to this Lease Agreement.

(g) "City Council" means the Pacific Grove City Council.

(h) "Default" shall mean any of the events set forth in Section 6.01.

(i) "Foundation" means the Museum Foundation of Pacific Grove, Inc., a California non-profit corporation. The Foundation is a Party to this Lease Agreement.

(j) "Major Repair" means:
  (i) repairs to the structure of the Museum building and grounds required by law or ordinance, or reasonably required to maintain the building and grounds as habitable areas for the general public;
  (ii) roof maintenance, repair or replacement;
  (iii) repairs or replacements of any malfunctioning or non-operating electrical, plumbing, heating, cooling or other building systems; and
  (iv) exterior and interior painting as required by normal wear and tear.

(k) "Museum" means the Pacific Grove Museum of Natural History, located at Forest Avenue and Central Avenue, Pacific Grove, California, including the buildings, land, back garden, and the Personal Property.

(l) "Museum Collection" means all artifacts owned by City and maintained at the Museum, as identified in the Museum Collection survey described in Section 2.05, including those exhibited and those stored, those located within City's Point Pinos Lighthouse, and those located within the Pacific Grove City Hall.

(m) "Packard Grant" means the financial grant to City previously made in 2008 by The David and Lucile Packard Foundation in the amount of $230,703 for use in connection with operation of the Museum.

(n) "Personal Property" means personal property (excluding the Museum Collection) owned by City and located in the Museum or used for or in connection with operation and maintenance of the Museum, as identified in the Physical Property Survey described in Section 2.06.

(o) "Premises" means the Pacific Grove Museum of Natural History, located at Forest Avenue and Central Avenue, Pacific Grove, California, including all buildings, land, and back garden.

(p) "Section" refers to a numbered section or subsection of this Agreement.

(q) "Term" means the term of this Lease Agreement, as set forth in Section 2.02, as it may be extended as provided in Section 2.02 and Section 2.04 or shortened as provided in Sections 6.02, 6.03, or 6.04.

(r) "Utilities" means water, sewer, gas, electricity and trash removal services.

Section 1.02 Recitals. Certain facts and circumstances surrounding this Lease Agreement are:

(a) City currently owns and maintains the Premises, the Museum, the Museum Collection, and the Personal Property.

(b) Due to financial conditions beyond the control of City, City's budget for operation of the Museum and the Premises is no longer adequate to continue operations of the Museum.

(c) Foundation has been formed by a group of citizens independent of City as a California public benefit charitable corporation for the purpose of operating the Premises and the Museum and for providing additional funding, through grants, donations, memberships and other programs, to continue and enhance the operations of the Museum as a public natural history museum, as set forth in Foundation's Articles of Incorporation and Bylaws, copies of which have been provided to City prior to the execution of this Lease Agreement.

## Article II.
## Right of Use of Museum and Museum Collection; Term.

Section 2.01 Right of Use. City hereby grants to Foundation, and Foundation hereby accepts the exclusive right to use and operate the Premises, the Museum and the Museum Collection for the Term set forth below, and any extension, upon the terms and conditions contained in this Lease Agreement.

Section 2.02 Term. The Term of this Lease Agreement shall be fourteen (14) years and eleven (11) months, commencing August 1, 2009 and ending June 30, 2024. The Term may be extended after the initial period for two (2) additional five (5) year periods, ending June 30, 2029 and June 30, 2034 respectively, provided all conditions in Section 2.03 are fully met.

Section 2.03 Term Extensions. The conditions that must be fully met to implement each extension to the Term are:

(a) Foundation shall have given written notice to City within six (6) calendar months prior to the expiration of the then-current Term that Foundation agrees to extend the Term for the period of the next extension;

(b) At the time of such notice by Foundation to City, and continuing until the commencement of the extension of the Term, there shall be no uncured Default by Foundation of which City has provided notice required by Sections 6.01 or 6.02; and

(c) Foundation has provided sufficient revenue to effectively operate and maintain the Premises, the Museum and the Museum Collection, and has provided City with a Business Plan for the period of the extended Term satisfactory to City; and

(d) Foundation has not committed an event of Default which has not been cured.

Section 2.04 Additional Extension. If the two (2) extensions of the Term have been implemented, the City and Foundation shall meet and confer, at least six (6) months prior to the end of the then-existing extended Term, and negotiate in good faith for additional extensions of the Term. If agreement cannot be reached, this Lease Agreement shall terminate at the end of the then-existing extended Term.

Section 2.05 Museum Collection Survey. Within one hundred eighty (180) days after the commencement of the Term, City and Foundation shall conduct a physical survey of all items constituting the Museum Collection (as shown in the Museum Collection catalog). Each Party shall pay one-half (½) of the cost of this physical survey. If any artifact listed in the Museum Collection catalog is not located, it shall be stricken from the survey list of Museum Collection items to be returned by Foundation under Section 2.07. The survey list shall indicate the condition and other features of each item.

Section 2.06 Personal Property Survey. Within one hundred eighty (180) days after the commencement of the Term, City and Foundation shall conduct a physical audit of all items of Personal Property. Each party shall pay one-half (½) of the cost of such physical survey. The physical survey list of Personal Property for which Foundation is taking control and responsibility shall include all books, furniture, fixtures and other personal property stored on the Premises or used in connection with the operation or maintenance of the Museum and Museum Collection. It shall indicate the condition and other features of each item, and to the extent that any item of such personal property is not in good usable or operating condition, it shall either be put into good usable or operating condition by City, or it shall be stricken from the survey list of Personal Property to be returned by Foundation under Section 2.07.

Section 2.07 Return on Termination. Upon the expiration or other termination of the Term, Foundation shall return to City full possession of the Museum and all items shown on the Museum Collection survey list (plus all items accessioned during the Term under Section 3.06, less all items de-accessioned during the Term under Section 3.06) in good museum quality and condition, and all items shown on the Personal Property Survey.

Section 2.08 Possessory Interest. City and Foundation agree to cooperate fully and take all steps necessary to ensure to the fullest extent possible against the imposition of any tax on any possessory interest asserted or assessed by the Monterey County Tax Assessor under Rev. & Tax. Code §107 or any successor section. In connection with such efforts, Foundation agrees to apply for an Organizational Clearance Certificate from the State of California and takes all steps necessary to obtain the so-called "welfare exemption" under the provisions of Rev. & Tax. Code §214 or any successor section or the regulations propounded by or pursuant to such section. Foundation shall keep City promptly and fully advised of its efforts in obtaining the "welfare exemption" and the Organizational Clearance Certificate, or of any change in its status as an exempt organization under Internal Revenue Code §501(c)(3).

Section 2.09 Removal of Items from City Hall. Foundation shall remove Museum Collection items from City Hall or Point Pinos Lighthouse only with the advance written approval of the City Manager.

## Article III.
## Operation and Management of Museum

Section 3.01 Operating the Museum. During the Term, Foundation shall have the right and obligation to operate the Premises and Museum as a public natural history museum, in accordance with Mission Statement and Goals established for the Museum by the City Council, as set forth in Attachment A to this Lease Agreement, as such Mission Statement and Goals may be revised and amended from time to time by mutual agreement of the parties. The Goals set forth in Attachment A shall be deemed obligations of Foundation for the purposes of this Lease Agreement.

Section 3.02 Maintaining Museum. During the Term, the Foundation shall maintain the Premises and Museum in good order and condition, subject to reasonable wear and tear, provided however that the City shall be responsible for normal week-day cleaning and maintenance of the Museum Premises, building and grounds, consisting of cleaning bathrooms, trash removal and vacuuming, consistent with accepted practice for comparable City facilities.

Section 3.03 Maintaining Museum Collection. Foundation shall care for and maintain the Museum Collection in accordance with good generally-recognized curating practices and specifically in accordance relevant guidelines of the AAM. City shall maintain items in its sole possession.

Section 3.04 Operation of Museum Store. The Foundation shall have sole responsibility to operate the Museum Store, and to maintain all accounts related thereto. The Foundation may retain any net proceeds from operation of the Museum Store. Foundation may delegate operation of the Museum Store to a third party, such as the Museum Association, and assign proceeds from operations of the Museum Store.

Section 3.05 Major Repairs. In the event Major Repairs of the Museum Premises are required, Foundation shall notify City of such requirement and City shall promptly consider the request and make the Major Repairs as the City deems appropriate in its reasonable discretion. The notice by Foundation shall specify the specific repairs requested and whether such repairs are emergency or non-emergency repairs. If Foundation's notice does not specify that Major Repairs are emergency repairs, they shall be deemed non-emergency repairs. Payment of the cost of Major Repairs may, at City's discretion, be made from City's Museum Improvement Fund. Foundation expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford it the right to make repairs at City's expense due to City's failure to keep the Premises in good order, condition and repair, including without limitation California Civil Code Sections 1941-1942.

Section 3.06 Accessioning and De-Accessioning. City shall have the sole right and responsibility to accession or de-accession any item to or from the Museum Collection. In the event that Foundation believes it to be in the best interests of the Museum to accession or de-accession any item, it shall give City written notice of the item and request accession or de-accession authority, describing the reasons and rationale for the action it seeks to take. City shall, within ninety (90) days, provide Foundation with written instruction on what action should be taken with respect to the de-accession of any item, and within thirty (30) days, provide Foundation with written instruction on what action should be taken with respect to accession of any item. If a request to accession an item is approved, Foundation shall add the item to the Museum Collection by entering it into the Museum Collection catalog in accordance with the Museum policies and procedures for accessioning. If a request to de-accession an item is approved, Foundation will remove the item from the Museum Collection, remove it from the Museum Collection catalog, and dispose of the item as City directs in its instructions to Foundation in accordance with the Museum policies and procedures for de-accessioning. Foundation shall follow the Museum policies and procedures for any action to accession or de-accession.

Section 3.07 Non-Structural Repairs and Improvements. Foundation shall have the right to make and obligation to pay for non-structural repairs or improvements to the Museum that do not constitute Major Repairs. Foundation shall notify City of any such repairs or improvements at least sixty (60) days prior to beginning the work, specifying the purpose and estimated cost of the work unless (a) the estimated cost of such work or improvements is less than fifty thousand dollars ($50,000.00), or (b) such work or improvements have been included and budgeted for in the Foundation's annual Business Plan and Budget provided to City under Sections 5.09(c) and 5.09(e). If the Foundation has any question as to whether a repair is structural, the Foundation shall request and the City shall promptly provide a determination. Foundation shall bear sole responsibility for all costs or liabilities that may accrue from its actions under this Section.

Section 3.08 Structural Alterations. Foundation shall not make any structural remodel, alteration or other change in excess of twenty-five thousand dollars ($25,000.00), including the installation of equipment in the Premises, without the prior written consent of the City. City may condition its consent to Foundation's agreement to restore the Premises to their prior condition upon the termination of this Lease Agreement. Any alteration other than the installation of removable equipment or appliances shall become property owned by City. City shall not be liable for the cost or expense of any alteration. Foundation shall bear sole responsibility for all costs or liabilities that may accrue from its actions under this Section.

Section 3.09 Duty of Care. Foundation shall not install, use, operate or maintain Equipment on the Premises improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease Agreement. Foundation shall ensure that window coverings, and carpets are in good and clean condition.

## Article IV.
## Rights and Obligations of City

Section 4.01 Transfer of Funds. Upon commencement of the Term, City shall transfer to Foundation, by check or direct transfer into a bank account designated by Foundation, all funds then remaining in City accounts holding funds donated for Museum purposes, except:

(a) Funds in the account designated Museum Improvement Funds, which funds shall be retained by City and used solely for purposes of repairs or improvements to the Museum building and grounds for which City remains responsible under this Lease Agreement or which City agrees to perform pursuant to Section 3.05; and

(b) Funds held by City representing any unexpended portion of the Packard Grant, which funds shall be returned to the Packard Foundation, it being understood that the Packard Foundation may re-grant such funds to Foundation.

Section 4.02 Annual Contribution.

(a) During each year of this Agreement, the Annual Contribution by the City to the Foundation shall be used by the Foundation to fund, in addition to other money it shall raise, the operation and maintenance of the Museum. The Annual Contribution shall be fixed at one hundred fifty thousand dollars ($150,000.00) during the first three (3) years of this Agreement, but each year thereafter shall be an amount equal to one and one one hundredths percent (1.01%) of the City's total fiscal year General Fund budget, before inclusion of any amount in such budget for the Annual Contribution.

(b) As an exception to the Annual Contribution required by subparagraph (a) above, after making the first three (3) Annual Contributions required by this Agreement, the City may reduce the amount of the Annual Contribution for any year for which it adopts a Resolution of the City Council that declares the diversion of the Annual Contribution funds is urgently needed for alternate City purposes. Before adopting the resolution to divert funds, the City shall provide twelve (12) months advance written notice to the Foundation of its intent to consider the resolution.

(c) In no event during the term of this Lease Agreement, however, shall the City reduce its Annual Contribution to less than the minimum amount necessary to store or "mothball" the Museum Collection, as determined in the City's reasonable discretion.

(d) Upon adoption of the resolution referenced in subparagraph (b) above, this Lease Agreement shall terminate on the one hundred eightieth ($180^{th}$) day after the date the resolution is adopted. The Foundation may nonetheless, in its sole discretion, waive this termination. Foundation's election to waive termination of the Lease Agreement under this subparagraph shall be exercised within ninety (90) days after the date the resolution to divert funds is adopted by the City.

(e) The City's obligations under Section 3.05, 4.01, 4.02, 4.04, and 4.05 constitute the sole payment obligations by City to fund the operation and maintenance of the Museum under this Lease Agreement.

Section 4.03 Utilities. The City shall pay Utilities for the Premises and submit the Utility bills to the Foundation on a quarterly basis. The Foundation shall promptly reimburse City, in full, for the sums the amount City has billed it.

Section 4.04 Payment of Annual Contribution. During the first year of the Term, City shall pay the Annual Contribution to Foundation in two (2) equal payments on July 1, 2009 and January 1, 2010. Thereafter, City shall pay the Annual Contribution to Foundation in four (4) equal quarterly installments, payable on the first (1st) day of July and thereafter on the first (1st) day of each succeeding calendar quarter.

Section 4.05 Insurance. City shall at all times maintain at its cost fire and extended coverage insurance, covering the Premises, the Museum building and grounds, all personal property located in the building and grounds, and the Museum Collection. The limits of such coverage shall be the same, and subject to the same terms, as City carries on other buildings and property owned by City. Foundation shall be named as an additional insured, as its interests may appear, on all insurance policies providing such coverage.

Section 4.06 Point Pinos Lighthouse. City's Point Pinos Lighthouse shall continue to be managed by City; provided, however, that Foundation agrees to assist City, at its request, for a period of one hundred twenty (120) days after commencement of the Term in transitioning any Lighthouse functions previously provided by Museum staff. All donation funds received at or for the Lighthouse shall be the property of City.

Section 4.07 Licenses and Permits. City shall assist Foundation in obtaining or transferring all licenses and permits need to operate the Museum or relating to artifacts in the Museum Collection.

Section 4.08 Condition of Equipment upon Occupancy. At the commencement of this Lease, the City shall provide any equipment located at the Premises to Foundation in good repair and working condition. Foundation, thereafter, shall maintain, preserve and keep equipment on the Premises in good repair, working order and condition.

## Article V.
## Rights and Obligations of Foundation

Section 5.01 Funding by Foundation. It is understood that the City's Annual Contribution is not sufficient to operate and maintain the Museum and Museum Collection on an annual basis. The Foundation shall use its best efforts during the Term, and any extended Term, to raise additional operating revenue from third-party sources to supplement City's Annual Contribution in an amount necessary to operate and maintain the Museum and Museum Collection in accord with Attachment A, at least at the level existing at the commencement of the Term. Foundation

shall seek such supplemental funds from a variety of sources, including, without limitation, private and public grants, donations, fund raising events and memberships.

Section 5.02 Hours of Regular Operation. During the Term, and any extended Term, Foundation shall operate the Museum as a free museum, open to the general public during normal business hours, which at a minimum shall be five (5) days per week, 10:00 a.m. to 5:00 p.m., subject to matters beyond Foundation's reasonable control and temporary closings for repair, maintenance and/or renovation. Foundation shall have the right to extend both the days and hours of operation beyond those currently existing at its discretion, but shall notify City not less than thirty (30) days prior to implementing any such extension of open operations.

Section 5.03 Museum Employees. All personnel required for the operation and maintenance of the Museum and Museum Collection (except for personnel required to perform specific obligations of City hereunder) shall be provided by Foundation, and City shall have no rights, responsibilities or obligations with respect to such personnel. Foundation shall comply with all governmental laws, rules and regulations with respect to such personnel.

Section 5.04 Insurance. At all times during the Term, and any extended Term, Foundation shall maintain Directors and Officers Liability and General Liability insurance coverage, with limits of not less than two million dollars ($2,000,000.00) per individual and three million dollars ($3,000,000.00) per event. Foundation shall maintain Worker Compensation insurance for its staff and any Museum staff. Foundation shall also maintain insurance to cover liability that may accrue in relation to the service of food and alcoholic beverages at events that it may host. City shall be named as an additional insured under such policies. Foundation shall provide to City photocopies of its then-current policies, including endorsements thereon. Foundation shall also provide to City, at the commencement of each policy period, a certificate from the insurer to the effect that the insurance coverage is in full force and effect and stating the dates the policy period begins and ends. Foundation shall require its insurer to provide notice to City of any cancellation or material change in insurance coverage, such notice to be delivered to the City at least sixty (60) days before the date of such change or cancellation of insurance. On and after January 1, 2014, and each five (5) year anniversary thereafter during the Term or any extended Term of this Lease Agreement, the insurance coverage stated above shall increase by a factor to account for inflation that may occur since the original date of this Agreement, unless the City shall waive this requirement in writing.

Section 5.05 Taxes. Foundation shall pay, when due, any tax, assessment or charge levied on operation of the Museum, or in relation to employment of staff. Taxes shall include, without limitation, taxes and general and special assessments, fees, assessments or charges levied on or assessed against Foundation by the United States of America, the State of California, or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other taxes. Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes.

Section 5.06 Private Events; Alcohol.

(a) Except during regular Museum hours, Foundation shall have the right to use the Museum for private events and to charge fees or accept donations for such events.

(b) Subject to prior scheduling of the Parties in accord with then-current City practice, Foundation may use other City meeting facilities, such as Chautauqua Hall and the City Community Center, for private Foundation events and shall have the right to charge fees or accept donations for such events. Such use shall be without charge unless, thirty (30) days prior to the event, City notifies Foundation that City has an opportunity to rent the facility to a third party at a time that conflicts with Foundation's reservation, in which case Foundation shall have the option of either paying the rental fees that would have been received from the third party or releasing its reservation of the facility. Alcohol use at other City facilities shall be in accord with then-current policies as may be set by the City.

(c) Foundation shall have the right to rent the Museum for museum-related events by third parties, and shall set all policies and fee schedules for such events. All rentals and fees received by Foundation for any such events shall be the property of Foundation. City can use the Museum without fees consistent with the Foundation policies and schedule provided City staff handle set-up and clean-up.

(d) Foundation shall have the right to rent the Museum for non-museum related events by third parties, and shall set policies and fee schedules for such events. City may, in its reasonable discretion, revise or rescind those policies. One half (½) of net proceeds for rentals and fees after accounting for expenses received by Foundation for any such events shall be given to the City.

(e) With regard to any private event of Foundation under subsections (a), (c) and (d) above, Foundation shall have the right to serve, or allow to be served, food and alcoholic beverages provided it has obtained all necessary Alcohol Beverage Control licenses for such activity and maintains the insurance coverage provided in Section 5.04.

Section 5.07 Monarch Butterfly Sanctuary. Foundation shall recruit, train and coordinate volunteers for the Museum and for City's Monarch Butterfly Sanctuary and, through such volunteers, shall provide interpretive services for visitors to the Sanctuary. Foundation shall also provide reasonable interpretive signage for the Sanctuary. Foundation shall have no other obligation with respect to the Monarch Butterfly Sanctuary. All donations received at or for the Sanctuary Facilities shall be the property of the City.

Section 5.08 Museum Exhibits. Foundation shall have the right and responsibility for planning, designing and implementing all special and permanent exhibits of the Museum, as well as all educational, scientific or recreational programs. Within forty-five (45) days after commencement of the Term, and thereafter within forty-five (45) days prior to the beginning of each fiscal year of the Term, or any extended Term, Foundation shall provide City with a written

Exhibits and Programs Plan, describing for the coming twelve (12) months any anticipated changes to any of the Museum's permanent exhibits, the schedule for special exhibits, to the extent known, and all planned educational, scientific or recreational programs, to the extent known. Any objections that City may have to any of the exhibits or programs shown in such Plan shall be provided to Foundation within thirty (30) days after receipt of the Plan. The parties shall promptly meet to resolve any differences with regard to such Plan. Any dispute shall thereafter be resolved by Mediation as set forth in Section 7.01.

Section 5.09 Reports. During the Term, or any extended Term, Foundation shall provide City with the following written reports:

(a) Within one hundred twenty (120) days after the end of Foundation's fiscal year (June 30), Foundation shall provide City with copies of its audited financial statements, consisting of a Profit and Loss Statement for the prior fiscal year and a Balance Sheet as of the end of such fiscal year.

(b) Within thirty (30) days after the end of each month, Foundation shall provide City with an Operations Report from the Museum's Executive Director.

(c) Not later than sixty (60) days prior to the end of each fiscal year, Foundation shall provide City with Foundation's budget for operation and maintenance of the Museum and the Museum Collection.

(d) Not later than ninety (90) days after the commencement of the Term, Foundation shall provide City with a detailed Business Plan and Fund Development Plan for the first two (2) years of the Term.

(e) Not later than sixty (60) days prior to the end of each fiscal year, Foundation shall provide City with its updated Business and Fund Development Plans for the following two (2) fiscal years.

(f) In the event of any change in Foundation's Articles of Incorporation or Bylaws during the Term, Foundation shall notify City of such change and provide City with a copy of such changed documents. If any change in such documents are inconsistent with or would prevent Foundation from complying with any obligation of this Lease Agreement, such change shall be considered an Event of Default.

Section 5.10 Fictitious Name Rights. City hereby grants to Foundation the exclusive right during the Term to file a Fictitious Name Certificate for, and to use the name and title "Pacific Grove Museum of Natural History" or any portion thereof, and to use such fictitious name in its logo, branding, marketing, fund raising and operations of the Museum. Upon expiration of the Term, or upon an Event of Default, these Fictitious Name Rights shall terminate.

Section 5.11 Branding. Foundation shall have the right to develop and use in connection with the operation of the Museum its own branding, including logo design, graphics, designs and

color schemes. Upon the expiration or termination of this Lease Agreement, all such branding materials shall be assigned by Foundation and transferred to City. Foundation shall have the right to control the external appearance (painting and signage) of the Museum to be consistent with the Foundation's branding materials, subject to standard City building and architectural procedures.

Section 5.12 Naming Rights. Foundation shall have the right to name any portion of the Museum (excluding the name of the Museum itself, which shall remain the "Pacific Grove Museum of Natural History"), within guidelines established by City, including all or any portions of the Museum or the Museum Collection; provided, however, that any funds received by Foundation for the naming of any portion of the Museum that are remaining in Foundation's accounts upon the expiration or termination of this Lease Agreement shall continue to support the donor's intent for the Museum. The City shall honor the name of any portion of the Museum after expiration or termination of this Agreement. If the Foundation ceases to exist, then any portion of the funds remaining in Foundation's accounts shall be paid by Foundation to The Community Foundation of Monterey County or other similar organization for ongoing support of Museum operations as per donor intent.

## Article VI.
## Events of Early Termination

Section 6.01 Default.

(a) Each of the following shall constitute an Event of Default under this Agreement:

(i) The failure of either party to this Agreement to perform any material obligation or covenant under this Agreement, if such failure is not cured within forty-five (45) days after notice of such default from the non-defaulting party;
(ii) A material breach of any representation or warranty set forth in this Agreement;
(iii) The filing of a petition for bankruptcy under the U.S. Bankruptcy Code by either party;
(iv) Failure by either party to pay any obligation due to the other party, if such failure is not cured within thirty (30) days after notice of such failure;
(v) The making of any material false statement, report, certificate, representation or warranty with respect to any transaction or thing contemplated or set forth in this Agreement; and
(vi) Any act by a party which is specifically designated an Act of Default in any provision of this Agreement.

(b) Upon any Event of Default, the non-defaulting party shall notify the defaulting party in writing of such default. The periods of cure set forth in Section 6.01(a) shall not commence until thirty (30) days after such written notice is posted by the non-defaulting party.

Section 6.02 Termination for Default Either party may terminate this Agreement upon an Event of Default by the other party that has not been cured within any period of cure provided in

Section 6.01, by giving the other party thirty (30) days written notice of such termination. Such notice shall be given, if at all, not more than forty-five (45) days after the notice of default provided in Section 6.01(b).

Section 6.03 Termination For Failure of Material Conditions After the first one hundred eighty (180) days of the Term, the parties shall meet to determine whether there has been any material failure of any of the conditions set forth below in this Section 6.03 by either party. In the event there has been a material failure of any condition by either party at that time, the other party may terminate this Agreement by giving not less than thirty (30) days' written notice of such termination, which notice shall be given not later than fifteen (15) days after the parties meet to make such determination.

(a) The material failure of any of the following conditions shall give City the right to terminate this Agreement under this Section 6.03:

(i) Failure of Foundation to comply with any of the operating commitments set forth in this Agreement;
(ii) Failure of the Foundation to have received or have committed to it financial grants to assist in funding of the operation of the Museum of not less than $200,000;or
(iii) Failure of the Foundation to provide City with a completed Business Plan and Fund Development Plan, as provided in Section 5.09(d), that the City, in its reasonable discretion, deems to be adequate.

(b) The material failure of City to make any payment required under Section 4.01 or 4.04, or to perform the obligations of Sections 3.02, 3.05 or 4.05 of this Agreement shall give Foundation the right to terminate this Agreement under this Section 6.03.

Section 6.04 Three Year Review. Within thirty (30) days after the end of the third (3rd) fiscal year of the Term, the parties shall meet to determine whether each party has performed in substantial accordance with this Lease Agreement and whether both parties wish to continue the Agreement for the balance of the Term. If either party determines that it does not wish for the Agreement to continue, that party shall give the other party written notice of its desire to terminate this Agreement, specifying in detail the ways in which it believes the other party has not performed in substantial accordance with this Agreement. The other party shall respond, within thirty (30) days of receipt of such written notice, with any rebuttal it may have to the allegations of non-performance. If the parties are unable to resolve their differences, the matter shall be submitted to mediation under Article VII. If not resolved by Mediation pursuant to Section 7.01, either Party may choose, in its discretion, to cause the early termination of this Agreement. Such termination may be with or without cause, and shall not be deemed a termination upon Default.

## Article VII.
## Mediation

Section 7.01 Dispute Resolution. If any dispute arises between the parties relating to or arising under this Agreement, Foundation and City agree to use the following procedures for resolving the dispute:

(a) A meeting or meetings shall be held promptly between representatives of the parties regarding the dispute to attempt in good faith a resolution of the dispute;
(b) If, within ninety (90) days, after a dispute arises, the parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to mediation;
(c) The mediator shall be jointly selected by the parties, or failing agreement within thirty (30) days after the parties fail to negotiate an informal resolution of any dispute, the mediator shall be a retired judge or justice designated by, and in accordance with the then-existing Rules of Practice and Procedure of Judicial Arbitration and Mediations Services, Inc.; and
(d) If there has been no resolution of the dispute within ninety (90) days after submittal of the dispute to the mediator, either party shall be free to exercise any legal rights it has at law or in equity in the Superior Court. Venue shall be in the County of Monterey.

## Article VIII.
## Indemnification

Section 8.01 To the fullest extent permitted by law, Foundation shall indemnify, defend and hold harmless City, and each of its agents, appointed officials, elected officials and employees, from and against any and all claims, losses and expenses, including attorneys' fees, arising out of:

(a) Any breach by Foundation of its obligations under this Agreement; and/or

(b) Any active or passive negligence or willful misconduct by Foundation, its members, agents or employees in connection with this Agreement, including the City's active or passive negligence, except for such loss or damage that may arise from the sole negligence or willful misconduct of City. In the event the City is made a party to any action, lawsuit or other adversarial proceeding arising from Foundation's performance under this Agreement, Foundation shall provide a defense to the City, or at the City's option, shall reimburse the City for its costs of defense, including reasonable attorneys' fees, incurred in the defense of such claims.

Section 8.02 To the fullest extent permitted by law, City shall indemnify, defend and hold harmless Foundation, and each of its directors, officers, employees and agents, from and against any and all claims, losses and expenses, including attorneys' fees, arising out of:

(a) Any breach by City of its obligations under this Agreement; and/or

(b) The sole negligence or willful misconduct of the City, its agents or employees.

## Article IX. Miscellaneous Provisions

Section 9.01 Notices. Any notice, report or other document required to be given under this Agreement shall be in writing and shall be provided by hand delivery; by certified mail, return receipt requested; or by a commercial delivery service. Notice shall take place upon receipt. Notices shall be directed to the parties as follows:

(a) To City - City Manager, City Hall, 300 Forest Avenue, Pacific Grove, CA 93950;

(b) To Foundation - President, 1211 Pico Ave. Pacific Grove CA 93950.

Either party may change the address to which notices, reports of documents are to be delivered to such party by written notice of such change to the other party in accordance with this Section.

Section 9.02 Status and Authority.

(a) City has all necessary power and authority to enter into this Agreement and to carry out the public/private partnership contemplated by this Agreement. The official executing and delivering this Agreement on behalf of City has been duly authorized to do so by appropriate action by the Pacific Grove City Council; and

(b) Foundation is a non-profit public benefit corporation duly organized and existing and in good standing under the laws of the State of California, and has all necessary power and authority to enter into this Agreement. The person executing and delivering this Agreement on behalf of Foundation represents and warrants that he or she has been duly authorized to do so by appropriate action of the corporation.

(c) Any and all actions, decisions, determinations, approvals or disapprovals to be taken or made by City under this Agreement shall be taken or made by the City Manager of City and if so taken or made shall be conclusively presumed to be the valid and lawful action of City.

Section 9.03 Compliance with Law and Non-Discrimination. Foundation shall not discriminate in its operation of the Museum against, or segregate any person or group of persons on account of, race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin. Foundation agrees it shall faithfully observe in the use of the Premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including requirements imposed by the Americans with Disabilities Act.

Section 9.04 Assignment . Neither party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other party, which consent may be withheld in the sole discretion of the other party. In the event of any permitted assignment, this Agreement shall be binding on the respective successors or assigns of the parties hereto. Further,

Foundation shall not voluntarily or by operation of law transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Foundation's interest in this Agreement or in the Premises, without City's prior written consent.

Section 9.05 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. The venue for any dispute shall be in the County of Monterey.

Section 9.06 Entire Agreement; Amendment. This Agreement, and its Attachments, represents the entire Agreement between the parties and supersedes all previous understandings, promises, representations, warranties, conversations, or writings regarding the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by both parties hereto.

Section 9.07 Attorney's Fees. In the event of any dispute that results in litigation or arbitration arising from or related to this Agreement, the prevailing Party shall be entitled to recovery of all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses, expenses for accountants or appraisers, and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing Party, and shall not require initiation of a separate legal proceeding.

Section 9.08 Headings. The headings used in this Agreement are for convenience of the Parties and shall not be considered in interpreting the meaning of any provision of this Lease Agreement.

Section 9.09 Waiver. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or failure to enforce any provision of ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law for any subsequent breach or violation of the same. The subsequent acceptance by either Party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

Section 9.10 Claims. Foundation shall notify City, in writing, by the end of the next work day, of any occurrence at the Premises known to the Foundation, its employees or agents, which involves injury to person or property. This notice shall include the full description of facts, circumstances, and nature of the incident. Foundation shall provide the names and addresses of persons involved, and of all witnesses. Foundation shall promptly provide City with copies of any claim for damage, including copies of any court actions regarding incidents that occurred on or about the Premises.

Section 9.11 Destruction of Premises. If the Premises are destroyed or made unusable by fire, flood, vandalism or any other cause so as to make it impossible to carry on business, this Agreement and its provisions, may be terminated at the election of either City or Foundation, delivered in writing to the other Party within thirty (30) days after such destruction.

Section 9.12 Liens. Foundation shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by Foundation. Foundation shall promptly discharge any liens placed on the Equipment located at the premises.

Section 9.13 Waste. Foundation shall not commit, or allow to be committed, any waste, damage, or nuisance on the Premises.

Section 9.14 Entry by City. City reserves the right to enter the Premises upon reasonable notice to Foundation to inspect for compliance with this Lease Agreement, to make necessary repairs and improvements which Foundation has not made, to supply necessary services, and for other legitimate purposes, at any reasonable time. The City may not unreasonably interfere with Foundation's use of the Premises in its entry under this provision.

Section 9.15 Surrender. At the end of the term of this Agreement, Foundation shall surrender the Premises and tenant improvements to the City in good order, condition and repair, ordinary wear and tear, unavoidable depreciation and obsolescence excepted. All improvements shall remain the property of City. All improvement affixed to the Premises shall remain on the Premises.

IN WITNESS WHEREOF, the parties have executed this Agreement as of date first above written, intending to be bound by all of its terms, covenants and conditions. Each person executing this Agreement represents and warrants that he or she has full authority to do so.

CITY OF PACIFIC GROVE, CALIFORNIA

By: _____
Mayor Dan Cort

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: _____
President

By: _____
Secretary

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ATTACHMENT A

## PACIFIC GROVE MUSEUM OF NATURAL HISTORY
## MISSION STATEMENT AND STRATEGIC GOALS

MISSION: "To Inspire Discovery, Wonder, and Stewardship of our Natural World"

THE MUSEUM WILL DO THIS BY:

- Emphasizing the unique and diverse natural and cultural history of the California Central Coast, while maintaining a global perspective;
- Preserving the heritage of Pacific Grove and the Museum;
- Managing its collections for research, education, and as a continuous record of the changing world for future generations;
- Serving as a resource center for the regional scientific and educational communities;
- Providing dynamic leadership in natural history, conservation, and environmental education through exhibits and educational programs, striving to make this outreach relevant to all the people of the California Central Coast;
- Fostering cooperative efforts I natural history research and education throughout our region.

STRATEGIC GOALS TO ACCOMPLISH MISSION:

The Museum will:

1.0 Fulfill its obligation to the public trust and be accountable to the community it serves;

2.0 Perform institutional planning and assessment processes and align its operations to this plan;

3.0 Have leadership, governance, and staffing structures that support the mission;

4.0 Be a responsible steward of the collections entrusted to its care and the Museum's historic heritage;

5.0 Have interpretive and educational programs and activities that support its mission and support its public service role;

6.0 Be financially stable in advancing its mission; and

7.0 Follow facility and risk management plans that meet programmatic and administrative needs, protect collections and support is public service role.

# RESTATED PUBLIC/PRIVATE PARTNERSHIP OPERATING AGREEMENT AND LEASE BETWEEN THE CITY OF PACIFIC GROVE CA AND MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

THIS AGREEMENT and LEASE was originally made and entered into as of the 29th day of June, 2009 by and between the City of Pacific Grove, California, a municipal corporation and charter city under the laws of the State of California, and the Museum Foundation of Pacific Grove, Inc., a non-profit public benefit corporation under the laws of the State of California and was amended by the parties by a First Amendment to Operating Agreement dated June 29, 2010 and a Second Amendment to Operating Agreement dated August 8, 2010 and is further amended by this document, which fully restates the Public/Private Partnership Operating Agreement and Lease Between the City of Pacific Grove CA and Museum Foundation of Pacific Grove, Inc., as amended, effective as of May 21, 2014.

IN CONSIDERATION of the mutual promises set forth in this Lease Agreement, the adequacy of which is hereby acknowledged by each party, the City hereby leases and lets to Foundation, the Foundation hereby leases and takes from City, all areas that constitute and are defined below as the Museum, the Personal Property and the Museum Collection and the Parties hereby covenant and agree as follows:

## Article I.
## Definitions and Recitals

Section 1.01 Definitions. As used in this Agreement, the following terms, when capitalized, shall have the meanings ascribed to them in this Section.

(a) "AAM" means the American Alliance of Museums.

(b) "Accreditation" means certification of the Museum by the AAM as an accredited museum in its category.

(c) "Agreement" means this document, when executed by both parties, together with all attachments hereto, each of which is incorporated by reference as a part of this document. This document is at times also referenced as the "Lease Agreement".

(d) "Annual Contribution" means the contribution to be made by City to the Foundation under Section 4.02 to be used by the Foundation only for purposes to fulfill Foundation's obligations under this Lease Agreement.

(e) "Attachment A" means the Mission Statement and Goals established for the Museum by the City Council, as may be revised and amended from time to time by mutual agreement of the parties; "Attachment B-1" means City Council Resolution 10-071; "Attachment B-2" means City Council Resolution 11-072; and "Attachment C means the Janitorial Standards. The Goals set forth in Attachment A shall be deemed obligations of Foundation for the purposes of this Lease Agreement and the Janitorial Standards set forth in Attachment C shall be deemed obligations of City for purposes of this Lease Agreement. Attachments B-1 and B-2 set forth the duties and responsibilities of the City's Museum Board.

(f) "City" means the City of Pacific Grove, California, acting by and through its City Manager by authority of its City Council. The City is a Party to this Lease Agreement.

(g) "City Council" means the Pacific Grove City Council.

(h) "Default" means any of the events set forth in Section 6.01.

(i) "Foundation" means the Museum Foundation of Pacific Grove, Inc., a California non-profit corporation. The Foundation is a Party to this Lease Agreement.

(j) "Major Repair" means:

i) repairs to the Museum required by law or ordinance, or reasonably required to maintain the Museum as habitable for the general public;
ii) roof maintenance, repair or replacement;
iii) repairs or replacements of any malfunctioning or non-operating electrical, plumbing, heating, cooling or other building systems; and
iv) exterior and interior painting as required by normal wear and tear.

(k) "Museum" means the Pacific Grove Museum of Natural History, located at Forest Avenue and Central Avenue, Pacific Grove, California, including the buildings, land, and back garden.

(l) "Museum Collection" means all artifacts owned by City and maintained at the Museum, as identified in the Museum Collection survey described in Section 2.03, including those exhibited, those stored, those located within City's Point Pinos Lighthouse, and those located within the Pacific Grove City Hall.

(m) "Packard Grant" means the financial grant to City previously made in 2008 by The David and Lucile Packard Foundation in the amount of $230,703 for use in connection with operation of the Museum.

(n) "Personal Property" means tangible property (excluding the Museum Collection) owned by City and located at the Museum or used for or in connection with operation and maintenance of the Museum, as identified in the Physical Property Survey described in Section 2.04.

(o) "Section" refers to a numbered section or subsection of this Agreement.

(p) "Term" means the term of this Lease Agreement, as set forth in Section 2.02, as it may be extended as provided in Section 2.02 or shortened as provided in Sections 6.02 or 6.03.

(q) "Utilities" means water, sewer, gas, electricity and trash removal services.

Section 1.02 Recitals. Certain facts and circumstances surrounding this Lease Agreement are:

(a) City currently owns and maintains the Museum, the Personal Property and the Museum Collection.

(b) Due to financial conditions beyond the control of City, City's budget for operation and maintenance of the Museum, the Personal Property and the Museum Collection is no longer adequate to continue such operations and maintenance.

(c) Foundation has been formed by a group of citizens independent of City as a California public benefit charitable corporation for the purpose of operating the Museum and for providing additional funding, through grants, donations, memberships and other programs, to continue and enhance the operations of the Museum as a public natural history museum, as set forth in Foundation's Articles of Incorporation and Bylaws, copies of which have been provided to City prior to the execution of this Lease Agreement.

(d) The role of City's Museum Board with respect to its relationship to the City is set forth in the Pacific Grove City Councils Resolutions Nos. 10-071 and 11-072, copies of which are appended to this Agreement as Attachments B-1 and B-2 respectively.

## Article II.
## Right of Use of Museum and Museum Collection; Term.

Section 2.01 Right of Use. City hereby grants to Foundation, and Foundation hereby accepts the exclusive right to use and operate the Museum, the Museum Collection and the Personal Property for the Term set forth below, and any extension, upon the terms and conditions contained in this Lease Agreement.

Section 2.02 Term. The Term of this Lease Agreement shall be thirty (30) years and eleven (11) months, commencing August 1, 2009 and ending June 30, 2040. Commencing on June 30, 2010 and continuing thereafter on June 30th of each year of the Term thereafter, the Term shall be extended by one (1) Term year (July 1st through June 30th); provided, however, that either party may, in its sole discretion, give written notice to the other party, not later than thirty (30) days prior to June 30th of any Term year that it wishes to terminate the automatic one (1) year extension provided for above, in which case the Term of this Lease Agreement shall be fixed at thirty (30) years from the end of the Term year in which such notice is given.

Section 2.03 Museum Collection Survey. Within one hundred eighty (180) days after the commencement of the Term, City and Foundation shall conduct a physical survey of all items constituting the Museum Collection (as shown in the Museum Collection catalog). Each Party shall pay one-half (½) of the cost of this physical survey. If any artifact listed in the Museum Collection catalog is not located, it shall be stricken from the survey list of Museum Collection items to be returned by Foundation under Section 2.05. The survey list shall indicate the condition and other features of each item.

Section 2.04 Personal Property Survey. Within one hundred eighty (180) days after the commencement of the Term, City and Foundation shall conduct a physical audit of all items of Personal Property. Each party shall pay one-half (½) of the cost of such physical survey. The physical survey list of Personal Property for which Foundation is taking control and responsibility shall include all books, furniture, fixtures and other personal property stored at the Museum or used in connection with the operation or maintenance of the Museum and Museum Collection. It shall indicate the condition and other features of each item, and to the extent that any item of such personal property is not in good usable or operating condition, it shall either be put into good usable or operating condition by City, or it shall be stricken from the survey list of Personal Property to be returned by Foundation under Section 2.05.

Section 2.05 Return on Termination. Upon the expiration or other termination of the Term, Foundation shall return to City full possession of the Museum and all items shown on the Museum Collection survey list (plus all items accessioned during the Term under Section 3.06, less all items de-accessioned during the Term under Section 3.06) in good museum quality and condition, and all items shown on the Personal Property Survey.

Section 2.06 Possessory Interest. City and Foundation agree to cooperate fully and take all steps necessary to ensure to the fullest extent possible against the imposition of any tax on any possessory interest asserted or assessed by the Monterey County Tax Assessor under Rev. & Tax Code §107 or any successor section. In connection with such efforts, Foundation agrees to apply for an Organizational Clearance Certificate from the State of California and takes all steps necessary to obtain the so-called "welfare exemption" under the provisions of Rev. & Tax. Code §214 or any successor section or the regulations propounded by or pursuant to such section. Foundation shall keep City promptly and fully advised of its efforts in obtaining the "welfare exemption" and the Organizational Clearance Certificate, or of any change in its status as an exempt organization under Internal Revenue Code §501(c)(3).

Section 2.07 Removal of Items from City Hall. Foundation shall remove Museum Collection items from City Hall or Point Pinos Lighthouse only with the advance written approval of the City Manager.

## Article III.
## Operation and Management of Museum

Section 3.01 Operating the Museum. During the Term, Foundation shall have the right and obligation to operate the Museum as a public natural history museum, in accordance with Mission Statement and Goals established for the Museum by the City Council, as set forth in Attachment A to this Lease Agreement, as such Mission Statement and Goals may be revised and amended from time to time by mutual agreement of the parties.

Section 3.02 Maintaining Museum. During the Term, the Foundation shall maintain the Museum and the Personal Property in good order and condition, subject to reasonable wear and tear, provided however that the City shall be responsible for normal week-day cleaning and maintenance of the Museum consistent with the Janitorial Standards set forth in Attachment C.

Section 3.03 Maintaining Museum Collection. Foundation shall care for and maintain the Museum Collection in accordance with good generally-recognized curating practices and specifically in accordance with relevant guidelines of the AAM. City shall maintain items in its sole possession. Foundation shall check objects of the Museum Collection that are in City's possession at City facilities not less frequently than quarterly, or at the request of City, and report any change in the status of those objects.

Section 3.04 Operation of Museum Store. The Foundation shall have sole right to operate the Museum Store, and to maintain all accounts related thereto. The Foundation may retain any net proceeds from operation of the Museum Store. Foundation may delegate operation of the Museum Store to a third party, and assign proceeds from operations of the Museum Store.

Section 3.05 Major Repairs. In the event Major Repairs of the Museum are required, Foundation shall notify City of such requirement and City shall promptly consider the request and make the Major Repairs as the City deems appropriate in its reasonable discretion. The notice by Foundation shall specify the specific repairs requested and whether such repairs are emergency or non-emergency repairs. If Foundation's notice does not specify that Major Repairs are emergency repairs, they shall be deemed non-emergency repairs. Payment of the cost of Major Repairs may, at City's discretion, be made from City's Museum Improvement Fund. Foundation expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford it the right to make repairs at City's expense due to City's failure to keep the Museum in good order, condition and repair, including without limitation California Civil Code Sections 1941-1942.

Section 3.06 Accessioning and De-Accessioning. City shall have the sole right and responsibility to accession or de-accession any item to or from the Museum Collection. In the event that Foundation believes

it to be in the best interests of the Museum to accession or de-accession any item, it shall give City written notice of the item and request accession or de-accession authority, describing the reasons and rationale for the action it seeks to take. City shall, within ninety (90) days, provide Foundation with written instruction on what action should be taken with respect to the de-accession of any item, and within thirty (30) days, provide Foundation with written instruction on what action should be taken with respect to accession of any item. If a request to accession an item is approved, Foundation shall add the item to the Museum Collection by entering it into the Museum Collection catalog in accordance with the Museum policies and procedures for accessioning. If a request to de-accession an item is approved, Foundation will remove the item from the Museum Collection, remove it from the Museum Collection catalog, and dispose of the item as City directs in its instructions to Foundation in accordance with the Museum policies and procedures for de-accessioning. Foundation shall follow the Museum policies and procedures for any action to accession or de-accession.

Section 3.07 Repairs, Alterations and Improvements. Foundation shall have the right to make and obligation to pay for repairs, alterations or improvements to the Museum, except for Major Repairs. Foundation shall not allow Museum equipment or facilities to waste or degrade due to misuse or neglect. Foundation shall notify City not less than seven (7) days prior to submitting to City an application for any planning permit or building permit required for any such proposed repair, alteration or improvement under City's municipal codes, rules or regulations. Foundation shall have the right to make such applications on behalf of City, as owner of the Museum. Foundation shall bear sole responsibility during the Term for all costs or liabilities that may accrue from its actions under Sections 3.05, 3.06 or 3.09.

Section 3.08 Duty of Care. Foundation shall not install, use, operate or maintain equipment at the Museum improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease Agreement. Foundation shall ensure that window coverings, and carpets are in good and clean condition. Foundation shall promptly notify City of any condition that appears to require Major Repairs.

## Article IV
## Rights and Obligations of City

Section 4.01 Transfer of Funds. Upon commencement of the Term, City shall transfer to Foundation, by check or direct transfer into a bank account designated by Foundation, all funds then remaining in City accounts holding funds donated for Museum purposes, except:

(a) Funds in the account designated Museum Improvement Funds, which funds shall be retained by City and used solely for purposes of repairs or improvements to the Museum building and grounds for which City remains responsible under this Lease Agreement or which City agrees to perform pursuant to Section 3.05; and

(b) Funds held by City representing any unexpended portion of the Packard Grant, which funds shall be returned to the Packard Foundation, it being understood that the Packard Foundation may re-grant such funds to Foundation.

Section 4.02 Annual Contribution.

(a) During each year of this Agreement, the Annual Contribution by the City to the Foundation shall be used by the Foundation to fund, in addition to other money it shall raise, the operation and maintenance of the Museum. The Annual Contribution shall be fixed at one hundred fifty thousand dollars ($150,000.00) during the first three (3) years of this Agreement, but each year thereafter shall be an amount equal to one and one one-hundredths percent (1.01%) of the City's total fiscal year General Fund budget, before inclusion of any amount in such budget for the Annual Contribution.

(b) As an exception to the Annual Contribution required by subparagraph (a) above, after making the first three (3) Annual Contributions required by this Agreement, the City may reduce the amount of the Annual Contribution for any year for which it adopts a Resolution of the City Council that declares the diversion of the Annual Contribution funds is urgently needed for alternate City purposes. Before adopting the resolution to divert funds, the City shall provide twelve (12) months advance written notice to the Foundation of its intent to consider the resolution.

(c) In no event during the term of this Lease Agreement, however, shall the City reduce its Annual Contribution to less than the minimum amount necessary to store or "mothball" the Museum Collection, as determined in the City's reasonable discretion.

(d) Upon adoption of the resolution referenced in subparagraph (b) above, this Lease Agreement shall terminate on the one hundred eightieth ($180^{th}$) day after the date the resolution is adopted. The Foundation may nonetheless, in its sole discretion, waive this termination clause. Foundation's election to waive termination of the Lease Agreement under this subparagraph shall be exercised within ninety (90) days after the date the resolution to divert funds is adopted by the City.

(e) The City's obligations under Section 3.05, 4.01, 4.02, 4.04, 4.05 and Attachment C constitute the sole payment obligations by City to fund the operation and maintenance of the Museum under this Lease Agreement.

Section 4.03 Utilities. From the commencement of this Agreement through June 30, 2010, the City shall pay Utilities for the Museum and submit the Utility bills to the Foundation on a quarterly basis. The Foundation shall promptly reimburse City, in full, for the sums the amount City has billed it. From and after July 1, 2010, Foundation shall maintain its own accounts for Museum utilities and shall pay such accounts within the time prescribed by the utility providers, except in the case of a good faith challenge of the amounts owed by Foundation.

Section 4.04 Payment of Annual Contribution. During the first year of the Term, City shall pay the Annual Contribution to Foundation in two (2) equal payments on July 1, 2009 and January 1, 2010. Thereafter, City shall pay the Annual Contribution to Foundation in four (4) equal quarterly installments, payable on the first ($1^{st}$) day of July and thereafter on the first ($1^{st}$) day of each succeeding calendar quarter.

Section 4.05 Insurance. City shall at all times maintain at its cost fire and extended coverage insurance, covering the Museum, the Personal Property, and the Museum Collection. The limits of such coverage shall be the same, and subject to the same terms, as City carries on other buildings and property owned by City. Foundation shall be named as an additional insured, as its interests may appear, on all insurance policies providing such coverage.

Section 4.06 Point Pinos Lighthouse. City's Point Pinos Lighthouse shall continue to be managed by City; provided, however, that Foundation agrees to assist City, at its request, for a period of one hundred twenty (120) days after commencement of the Term in transitioning any Lighthouse functions previously provided by City employees. All donation funds received at or for the Lighthouse shall be the property of City.

Section 4.07 Licenses and Permits. City shall assist Foundation in obtaining or transferring all licenses and permits need to operate the Museum or relating to artifacts in the Museum Collection.

Section 4.08 Condition of Equipment upon Occupancy. At the commencement of this Lease, the City shall provide any equipment located at the Museum to Foundation in good repair and working condition.

Foundation, thereafter, shall maintain, preserve and keep equipment at the Museum in good repair, working order and condition.

## Article V
## Rights and Obligations of Foundation

Section 5.01 Funding by Foundation. It is understood that the City's Annual Contribution is not sufficient to operate and maintain the Museum, the Personal Property and the Museum Collection on an annual basis. The Foundation shall use its best efforts during the Term, and any extended Term, to raise additional operating revenue from third-party sources to supplement City's Annual Contribution in an amount necessary to operate and maintain the Museum, the Personal Property and the Museum Collection in accord with Attachment A, at least at the level existing at the commencement of the Term. Foundation shall seek such supplemental funds from a variety of sources, including, without limitation, private and public grants, donations, fund raising events and memberships.

Section 5.02 Hours of Regular Operation; Admission Fees. During the Term, and any extended Term, Foundation shall operate the Museum with free general admission to Monterey County residents, open to the general public during normal business hours, which at a minimum shall be five (5) days per week, 10:00 a.m. to 5:00 p.m., subject to matters beyond Foundation's reasonable control and temporary closings for repair, maintenance or renovation. Foundation shall have the right to charge a general admission fee for Museum visitors who reside outside Monterey County and to charge an admission fee for all visitors, including Monterey County residents, for special exhibits (those that will be available to visitors for less than 12 months in a calendar year or continuously for less that 12 months). Foundation shall have the right to extend both the days and hours of operation beyond those currently existing at its discretion, but shall notify City not less than thirty (30) days prior to implementing any such extension of open operations.

Section 5.03 Museum Employees and Volunteers. All paid employees and volunteers required for the operation and maintenance of the Museum, the Personal Property and the Museum Collection (except for City employees or City volunteers required to perform specific obligations of City hereunder) shall be provided by Foundation, and City shall have no rights, responsibilities or obligations with respect to such Foundation employees or volunteers. Foundation shall comply with all governmental laws, rules and regulations with respect to such Foundation employees and volunteers.

Section 5.04 Insurance. At all times during the Term, and any extended Term, Foundation shall maintain Directors and Officers Liability and General Liability insurance coverage, with limits of not less than two million dollars ($2,000,000.00) per individual and three million dollars ($3,000,000.00) per event. Foundation shall maintain Workers Compensation insurance for its paid employees. Foundation shall also maintain insurance to cover liability that may accrue in relation to the service of food and alcoholic beverages at events that it may host. City shall be named as an additional insured under such policies. Foundation shall provide to City photocopies of its then-current policies, including endorsements thereon. Foundation shall also provide to City, at the commencement of each policy period, a certificate from the insurer to the effect that the insurance coverage is in full force and effect and stating the dates the policy period begins and ends. Foundation shall require its insurer to provide notice to City of any cancellation or material change in insurance coverage, such notice to be delivered to the City at least sixty (60) days before the date of such change or cancellation of insurance. On and after January 1, 2014, and each five (5) year anniversary thereafter during the Term or any extended Term of this Lease Agreement, the insurance coverage stated above shall increase by a factor to account for inflation that may occur since the original date of this Agreement, unless the City shall waive this requirement in writing.

Section 5.05 Taxes. Foundation shall pay, when due, any tax, assessment or charge levied on operation of the Museum, or in relation to employment of staff. Taxes shall include, without limitation, taxes and general and special assessments, fees, assessments or charges levied on or assessed against Foundation by the United States of America, the State of California, or any political subdivision, public corporation, district or other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other taxes. Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce taxes.

Section 5.06 Private Events; Alcohol.

(a) Except during regular Museum hours, Foundation shall have the right to use the Museum for private events and to charge fees or accept donations for such events.

(b) Subject to prior scheduling of the Parties in accord with then-current City practice, Foundation may use other City meeting facilities, such as Chautauqua Hall and the City Community Center, for private Museum-related educational or fund-raising events for Museum Exhibits, and shall have the right to charge fees or accept donations for such events. Such use shall be without charge unless, thirty (30) days prior to the event, City notifies Foundation that City has an opportunity to rent the facility to a third party at a time that conflicts with Foundation's reservation, in which case Foundation shall have the option of either paying the rental fees that would have been received from the third party or releasing its reservation of the facility. Alcohol use at such other City facilities shall be in accord with then-current policies as may be set by the City. Other Museum events, such as those of a social or team-building nature, must rent City facilities at the appropriate City facility rental rate.

(c) Foundation shall have the right to rent the Museum for museum-related events by third parties, and shall set all policies and fee schedules for such events. All rentals and fees received by Foundation for any such events shall be the property of Foundation. City can use the Museum without fees consistent with the Foundation policies and schedule provided City staff handle set-up and clean-up.

(d) Foundation shall have the right to rent the Museum for non-museum related events by third parties, and shall set policies and fee schedules for such events. City may, in its reasonable discretion, revise or rescind those policies.

(e) With regard to any private event of Foundation, Foundation shall have the right to serve, or allow to be served, food and alcoholic beverages provided it has obtained all necessary Alcohol Beverage Control licenses for such activity and maintains the insurance coverage provided in Section 5.04.

Section 5.07 Monarch Butterfly Sanctuary. Foundation shall recruit, train and coordinate volunteers for the Museum and for City's Monarch Butterfly Sanctuary and, through such volunteers, shall provide interpretive services for visitors to the Sanctuary. Foundation shall also provide reasonable interpretive signage for the Sanctuary. Foundation may sell merchandise at the Sanctuary, and all proceeds from such sales, as well as cash donations received at the Sanctuary site shall be the property of the Foundation. All other Sanctuary donations or bequests, unless specifically designated for the benefit of the Foundation, shall be received and held as a charitable gift by the City for the benefit of the Sanctuary. Foundation shall have no other obligation with respect to the Monarch Butterfly Sanctuary.

Section 5.08 Museum Exhibits. The City is committed to the Museum providing mission-appropriate public education. The Museum's exhibits and programs shall be designed to further the Museum's Mission. Foundation shall have the right and responsibility for planning, designing and implementing all special and permanent exhibits of the Museum, as well as all educational, scientific or recreational programs. Within sixty (60) days after commencement of the Term, and thereafter within sixty (60) days prior to the beginning of each fiscal year of the Term, or any extended Term, Foundation shall provide City with a written Exhibits and Programs Plan, describing for the coming twelve (12) months any anticipated changes to any of the Museum's permanent exhibits, the schedule for special exhibits, to the extent known, and all planned educational, scientific or recreational programs, to the extent known.

Section 5.09 Reports. During the Term, or any extended Term, Foundation shall provide City with the following written reports:

(a) Within one hundred twenty (120) days after the end of Foundation's fiscal year (June 30), Foundation shall provide City with copies of its audited financial statements, consisting of a Profit and Loss Statement for the prior fiscal year and a Balance Sheet as of the end of such fiscal year.

(b) Within forty-five (45) days after the end of each month, Foundation shall provide City with an Operations Report from the Foundation's Executive Director.

(c) Not later than sixty (60) days prior to the end of each fiscal year, Foundation shall provide City with Foundation's budget for operation and maintenance of the Museum and the Museum Collection.

(d) Not later than ninety (90) days after the commencement of the Term, Foundation shall provide City with a detailed Business Plan and Fund Development Plan for the first two (2) years of the Term.

(e) Not later than sixty (60) days prior to the end of each fiscal year, Foundation shall provide City with its updated Business and Fund Development Plans for the following two (2) fiscal years.

(f) In the event of any change in Foundation's Articles of Incorporation or Bylaws during the Term, Foundation shall notify City of such change and provide City with a copy of such changed documents. If any change in such documents are inconsistent with or would prevent Foundation from complying with any obligation of this Lease Agreement, such change shall be considered an Event of Default.

(g) City shall develop and provide to the Foundation a Facility Management Plan annually by July 1 of each new fiscal year, commencing on July 1, 2010, describing estimated major maintenance of the Museum needed in the next three years and scheduled maintenance of the Museum during the next 12 months.

Section 5.10 Fictitious Name Rights. City hereby grants to Foundation the exclusive right during the Term to file a Fictitious Name Certificate for, and to use the name and title "Pacific Grove Museum of Natural History" or any portion thereof, and to use such fictitious name in its logo, branding, marketing, fund raising and operations of the Museum. Upon expiration of the Term, or upon an Event of Default, these Fictitious Name Rights shall terminate.

Section 5.11 Branding. Foundation shall have the right to develop and use in connection with the operation of the Museum its own branding, including logo design, graphics, designs and color schemes.

Upon the expiration or termination of this Lease Agreement, all such branding materials shall be assigned by Foundation and transferred to City. Foundation shall have the right to control the external appearance (painting and signage) of the Museum to be consistent with the Foundation's branding materials, subject to standard City building and architectural procedures.

Section 5.12 Naming Rights. Foundation shall have the right to name any portion of the Museum (excluding the name of the Museum itself, which shall remain the "Pacific Grove Museum of Natural History"), within guidelines established by City, including all or any portions of the Museum or the Museum Collection; provided, however, that any funds received by Foundation for the naming of any portion of the Museum that are remaining in Foundation's accounts upon the expiration or termination of this Lease Agreement shall continue to support the donor's intent for the Museum. The City shall honor the name of any portion of the Museum after expiration or termination of this Agreement. If the Foundation ceases to exist, then any portion of the funds remaining in Foundation's accounts shall be paid by Foundation to The Community Foundation of Monterey County or other similar organization for ongoing support of Museum operations as per donor intent.

Section 5.13 AAM Accreditation. Foundation shall take the lead in and shall make all reasonable and appropriate efforts to continue to meet or exceed AAM accreditation standards for museums in its category and continue the Accreditation of the Museum. City shall make all reasonable and appropriate efforts to support the Foundation in meeting or exceeding the accreditation standards and in continuing the Accreditation of the Museum.

## Article VI
## Events of Early Termination

Section 6.01 Default.

(a) Each of the following shall constitute an Event of Default under this Agreement:
(i) The failure of either party to this Agreement to perform any material obligation or covenant under this Agreement, if such failure is not cured within forty-five (45) days, or such longer cure period as the non-defaulting party may allow in writing to the defaulting party, after notice of such default from the non-defaulting party;
(ii) A material breach of any representation or warranty set forth in this Agreement;
(iii) The filing of a petition for bankruptcy under the U.S. Bankruptcy Code by either party;
(iv) Failure by either party to pay any obligation due to the other party, if such failure is not cured within thirty (30) days after notice of such failure;
(v) The making of any material false statement, report, certificate, representation or warranty with respect to any transaction or thing contemplated or set forth in this Agreement; and
(vi) Any act by a party which is specifically designated an Act of Default in any provision of this Agreement.

(b) Upon any Event of Default, the non-defaulting party shall notify the defaulting party in writing of such default. The periods of cure set forth in Section 6.01(a) shall not commence until thirty (30) days after such written notice is posted by the non-defaulting party.

Section 6.02 Termination for Default Either party may terminate this Agreement upon an Event of Default by the other party that has not been cured within any period of cure provided in Section 6.01(a) by giving the other party thirty (30) days written notice of such termination. Such notice shall be given, if at all, not more than forty-five (45) days after the notice of default provided in Section 6.01(b).

Section 6.03 Termination for Failure of Material Conditions. After the first one hundred eighty (180) days of the Term, the parties shall meet to determine whether there has been any material failure of any of the conditions set forth below in this Section 6.03 by either party. In the event there has been a material failure of any condition by either party at that time, the other party may terminate this Agreement by giving not less than thirty (30) days' written notice of such termination, which notice shall be given not later than fifteen (15) days after the parties meet to make such determination.

(a) The material failure of any of the following conditions shall give City the right to terminate this Agreement under this Section 6.03:

(i) Failure of Foundation to comply with any of the operating commitments set forth in this Agreement;
(ii) Failure of the Foundation to have received or have committed to it financial grants to assist in funding of the operation of the Museum of not less than $200,000; and/or
(iii) Failure of the Foundation to provide City with a completed Business Plan and Fund Development Plan, as provided in Section 5.09(d), that the City, in its reasonable discretion, deems to be adequate.

(b) The material failure of City to make any payment required under Section 4.01 or 4.04, or to perform the obligations of Sections 3.02, 3.05 or 4.05 of this Agreement shall give Foundation the right to terminate this Agreement under this Section 6.03.

Section 6.04 Biennial Review. Commencing in March 2015 and continuing every second year thereafter during the Term, the parties shall meet to discuss the relationship between City and Foundation and the state of the Museum. Representatives of the City Council and representatives of the Foundation's Board of Directors shall work in good faith to explore opportunities and to resolve any issues on which there may be disagreement. The inability of the parties to resolve any such issues shall not constitute an event of default under Section 6.01(a) above. Nothing in this Section 6.04 shall prevent the parties from meeting more frequently than required hereunder at mutually agreeable times to discuss the relationship between them and the state of the Museum.

## Article VII
## Mediation

Section 7.01 Dispute Resolution. If any dispute arises between the parties relating to or arising under this Agreement, Foundation and City agree to use the following procedures for resolving the dispute:

(a) A meeting or meetings shall be held promptly between representatives of the parties regarding the dispute to attempt in good faith a resolution of the dispute;
(b) If, within ninety (90) days, after a dispute arises, the parties have not succeeded in negotiating a resolution of the dispute, the dispute shall be submitted to mediation;
(c) The mediator shall be jointly selected by the parties, or failing agreement within thirty (30) days after the parties fail to negotiate an informal resolution of any dispute, the mediator shall be a retired judge or justice designated by, and in accordance with the then-existing Rules of Practice and Procedure of Judicial Arbitration and Mediations Services, Inc.; and
(d) If there has been no resolution of the dispute within ninety (90) days after submittal of the dispute to the mediator, either party shall be free to exercise any legal rights it has at law or in equity in the Superior Court. Venue shall be in the County of Monterey.

## Article VIII
## Indemnification

Section 8.01 To the fullest extent permitted by law, Foundation shall indemnify, defend and hold harmless City, and each of its agents, appointed officials, elected officials and employees, from and against any and all claims, losses and expenses, including attorneys' fees, arising out of:

(a) Any breach by Foundation of its obligations under this Agreement; and/or

(b) Any active or passive negligence or willful misconduct by Foundation, its members, agents or employees in connection with this Agreement, including the City's active or passive negligence, except for such loss or damage that may arise from the sole negligence or willful misconduct of City. In the event the City is made a party to any action, lawsuit or other adversarial proceeding arising from Foundation's performance under this Agreement, Foundation shall provide a defense to the City, or at the City's option, shall reimburse the City for its costs of defense, including reasonable attorneys' fees, incurred in the defense of such claims.

Section 8.02 To the fullest extent permitted by law, City shall indemnify, defend and hold harmless Foundation, and each of its directors, officers, employees and agents, from and against any and all claims, losses and expenses, including attorneys' fees, arising out of:

(a) Any breach by City of its obligations under this Agreement; and/or

(b) The sole negligence or willful misconduct of the City, its agents or employees.

Section 8.03 Survival of Indemnities. The indemnity obligations provided for in Sections 8.01 and 8.02 shall survive the expiration or termination of this Agreement.

## Article IX.
## Miscellaneous Provisions

Section 9.01 Notices. Any notice, report or other document required to be given under this Agreement shall be in writing and shall be provided by hand delivery; by certified mail, return receipt requested; or by a commercial delivery service. Notice shall take place upon receipt. Notices shall be directed to the parties as follows:

(a) To City – City Manager, City Hall, 300 Forest Avenue, Pacific Grove, CA 93950;

(b) To Foundation – Executive Director, 165 Forest Avenue, Pacific Grove CA 93950.

Either party may change the address to which notices, reports of documents are to be delivered to such party by written notice of such change to the other party in accordance with this Section.

Section 9.02 Status and Authority.

(a) City has all necessary power and authority to enter into this Agreement and to carry out the public/private partnership contemplated by this Agreement. The official executing and delivering this Agreement on behalf of City has been duly authorized to do so by appropriate action by the Pacific Grove City Council; and

(b) Foundation is a non-profit public benefit corporation duly organized and existing and in good standing under the laws of the State of California, and has all necessary power and authority to enter into this Agreement. The person executing and delivering this Agreement on behalf of Foundation represents and warrants that he or she has been duly authorized to do so by appropriate action of the corporation.

(c) Any and all actions, decisions, determinations, approvals or disapprovals to be taken or made by City under this Agreement shall be taken or made by the City Manager of City and if so taken or made shall be conclusively presumed to be the valid and lawful action of City.

Section 9.03 Compliance with Law and Non-Discrimination. Foundation shall not discriminate in its operation of the Museum against, or segregate any person or group of persons on account of, race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin. Foundation agrees it shall faithfully observe in the use of the Museum all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including requirements imposed by the Americans with Disabilities Act.

Section 9.04 Assignment. Neither party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other party, which consent may be withheld in the sole discretion of the other party. In the event of any permitted assignment, this Agreement shall be binding on the respective successors or assigns of the parties hereto. Further, Foundation shall not voluntarily or by operation of law transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Foundation's interest in this Agreement or in the Museum, without City's prior written consent.

Section 9.05 Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. The venue for any dispute shall be in the County of Monterey.

Section 9.06 Entire Agreement; Amendment. This Agreement, and its Attachments, represents the entire Agreement between the parties and supersedes all previous understandings, promises, representations, warranties, conversations, or writings regarding the subject matter hereof. This Agreement may be modified or amended only by a written instrument executed by both parties hereto.

Section 9.07 Attorney's Fees. In the event of any dispute that results in litigation or arbitration arising from or related to this Agreement, the prevailing Party shall be entitled to recovery of all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses, expenses for accountants or appraisers, and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing Party, and shall not require initiation of a separate legal proceeding.

Section 9.08 Headings. The headings used in this Agreement are for convenience of the Parties and shall not be considered in interpreting the meaning of any provision of this Lease Agreement.

Section 9.09 Waiver. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or failure to enforce any provision of ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law for any subsequent breach or violation of the same. The subsequent acceptance by either Party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

Section 9.10 Claims. Foundation shall notify City, in writing, by the end of the next work day, of any occurrence at the Museum known to the Foundation, its employees or agents, which involves injury to person or property. This notice shall include the full description of facts, circumstances, and nature of the incident. Foundation shall provide the names and addresses of persons involved, and of all witnesses. Foundation shall promptly provide City with copies of any claim for damage, including copies of any court actions regarding incidents that occurred at or about the Museum.

Section 9.11 Destruction of Museum. If the Museum are destroyed or made unusable by fire, flood, vandalism or any other cause so as to make it impossible to carry on business, this Agreement and its provisions, may be terminated at the election of either City or Foundation, delivered in writing to the other Party within thirty (30) days after such destruction.

Section 9.12 Liens. Foundation shall keep the Museum, Personal Property and Museum Collection free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by Foundation, and shall promptly discharge any liens placed thereon.

Section 9.13 Waste. Foundation shall not commit, or allow to be committed, any waste, damage, or nuisance at the Museum.

Section 9.14 Entry by City. City reserves the right to enter the Museum upon reasonable notice to Foundation to inspect for compliance with this Lease Agreement, to make necessary repairs and improvements which Foundation has not made, to supply necessary services, and for other legitimate purposes, at any reasonable time. The City may not unreasonably interfere with Foundation's use of the Museum in its entry under this provision.

Section 9.15 Surrender. At the end of the term of this Agreement, Foundation shall surrender the Museum and tenant improvements to the City in good order, condition and repair, ordinary wear and tear, unavoidable depreciation and obsolescence excepted. All improvements shall remain the property of City. All improvement affixed to the Museum shall remain on the Museum.

[Remaining Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of date first above written, intending to be bound by all of its terms, covenants and conditions. Each person executing this Agreement represents and warrants that he or she has full authority to do so.

CITY OF PACIFIC GROVE, CALIFORNIA

By: Bill Kampe
Mayor

APPROVED AS TO FORM

By: _____
City Attorney

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: Steven J Dennis
Vice President Steven J. DeNNIS

By: _____
Secretary George M. Perry

ATTACHMENT A

## PACIFIC GROVE MUSEUM OF NATURAL HISTORY
## MISSION STATEMENT AND STRATEGIC GOALS

MISSION: "To Inspire Discovery, Wonder, and Stewardship of our Natural World"

THE MUSEUM WILL DO THIS BY:

- Emphasizing the unique and diverse natural and cultural history of the California Central Coast, while maintaining a global perspective;
- Preserving the heritage of Pacific Grove and the Museum;
- Managing its collections for research, education, and as a continuous record of the changing world for future generations;
- Serving as a resource center for the regional scientific and educational communities;
- Providing dynamic leadership in natural history, conservation, and environmental education through exhibits and educational programs, striving to make this outreach relevant to all the people of the California Central Coast;
- Fostering cooperative efforts in natural history research and education throughout our region.

STRATEGIC GOALS TO ACCOMPLISH MISSION:

The Museum will:

1.0 Fulfill its obligation to the public trust and be accountable to the community it serves;

2.0 Perform institutional planning and assessment processes and align its operations to this plan;

3.0 Have leadership, governance, and staffing structures that support the mission;

4.0 Be a responsible steward of the collections entrusted to its care and the Museum's historic heritage;

5.0 Have interpretive and educational programs and activities that support its mission and support its public service role;

6.0 Be financially stable in advancing its mission; and

7.0 Follow facility and risk management plans that meet programmatic and administrative needs, protect collections and support is public service role.

**ATTACHMENT B-1**

RESOLUTION NO. 10-071

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESCINDING COUNCIL POLICY 200-5 AND PROVIDING GUIDANCE IN ADDITION TO THAT IN THE CITY CHARTER AS TO THE DUTIES AND RESPONSIBILITIES OF THE MUSEUM BOARD

**WHEREAS**, Article 26 of the City Charter specifies there shall be a Museum Board consisting of five members appointed by the Mayor subject to four affirmative votes of the City Council. Appointment is for four years, with staggered terms of the members, and no member shall serve more than three successive full terms. The Museum Board shall have the following powers and duties: (1) act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum; (2) recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the Museum; and (3) perform such other duties relating to the Museum service as the Council may require by ordinance or resolution; and

**WHEREAS**, the Council in 1991 adopted Council Policy 200-5, *Museum,* in order "to set general guidelines for the operation of the Pacific Grove Museum of Natural History and affiliated groups"; and

**WHEREAS**, the Council amended Council Policy 200-5 in 1993 and 2008; and

**WHEREAS**, on June 17, 2009, the City and the Museum Foundation of Pacific Grove entered into an *Operating Agreement and Lease* that created a public private partnership for the operation and future of the Museum; and

**WHEREAS**, under the terms of the *Operating Agreement and Lease,* the City of Pacific Grove owns the Museum collection, owns the Museum facility, and maintains the Museum facility; and the Museum Foundation of Pacific Grove cares for the Museum collection, utilizes the Museum collection in support of the Museum mission, operates the Museum, and raises the funds necessary to accomplish its tasks; and

**WHEREAS**, as stated in that *Operating Agreement and Lease,* the Mission of the Pacific Grove Museum of Natural History is, "To inspire discovery, wonder, and stewardship of our natural world;" and

**WHEREAS**. Attachment A to the *Operating Agreement and Lease* provides the strategic goals for the Museum and the methods by which the Foundation is to achieve the stated mission; and

**WHEREAS**, the membership of the Museum Association has voted to end its existence and transfer its assets to the Museum Foundation; and

**WHEREAS**, in addition to its duties with respect to the Museum, the Museum Board has traditionally advised the Council and City Manager with respect to the Point Pinos Lighthouse and the Pacific Grove Monarch Sanctuary; and

**WHEREAS**, effective on or about September 1, 2010, the City and the Heritage Society are entering into a partnership to guide and facilitate restoration efforts for the Point Pinos Lighthouse; and

**WHEREAS**, the Museum Board and the Natural Resources Commission have created a joint subcommittee to explore the appropriate roles for each body to take on individually and jointly with respect to the Monarch Sanctuary; and

**WHEREAS**, resulting from these events, the Museum Board is now operating in an entirely different environment than it did for all prior years of its existence, an environment where it shares many of its powers and duties with other bodies; and

**WHEREAS**, the Council wishes for the Museum Board to continue to perform its Charter-mandated functions as effectively and efficiently as possible, and to do so in as collaborative and mutually beneficial manner as possible with the Museum Foundation, the Heritage Society, the Natural Resources Commission, and others; and

**WHEREAS**, in the development of this matter, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

**WHEREAS**, this action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE**, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds each recital set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution.

SECTION 2. Council Policy 200-5, having been effectively replaced by the *Operating Agreement and Lease* and this Resolution, is hereby rescinded.

SECTION 3. The Museum Board and its individual members shall be appointed, operate, and serve in an advisory capacity to the City Council and City Manager, as specified in the Charter, as shall be amended from time to time by the voters, and as specified in the Municipal Code and Council Policies, as shall be amended from time to time by the City Council.

SECTION 4. In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). Perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action.

SECTION 5. The officers of the Museum Board shall be elected annually by the members of the Museum Board and include a Chair, Vice-Chair, and Secretary.

SECTION 6. Through public meetings, the Museum Board shall provide a way for members of the public to express their interests and needs regarding the operations of the Museum, Lighthouse, and Monarch Sanctuary. If the Board deems that matters raised by the public require administrative attention of the City

Manager or policy attention of the City Council, the matters shall be promptly communicated to the City Council Liaison who shall follow up to ensure appropriate action and/or response.

SECTION 7. Communications between the City and the Foundation shall be between the City Manager and the Executive Director of the Foundation. Communications between the City and the Museum Board will be through the City Council liaison, who shall link comments or concerns to the City Manager.

SECTION 8. The Museum Board also advises the City Manager and City Council on matters related to obligations of the City under the Agreement. Specific obligations for which the City Manager may request review by the Museum Board include:

- Revision or amendment to the mission statement and strategic goals of the Museum (Ref. Section 3.01 of the Agreement and Attachment A).
- Implementation of major facilities repairs (Ref. Section 3.05 of the Agreement)
- Accessioning and De-Accessioning of items from the collections (Ref. Section 3.06 of the Agreement)
- Non-Structural Repairs and Improvements (Ref. Section 3.07 of the Agreement)
- Structural Alterations (Ref. Section 3.08 of the Agreement)
- Exhibits and Program Plans (Ref. Section 5.08 of the Agreement)
- Reports (Ref. Section 5.09 of the Agreement)
- Proposed Amendments to the Agreement

SECTION 9. The City Manager or City Council may refer any other matter to the Museum Board where advice of the Board is deemed to be helpful in ensuring current and future success of the Museum, the Lighthouse, or the Monarch Sanctuary. These matters may typically include: maintenance of items in sole possession of the City (Ref. Section 3.03 of the Agreement); reviews of museum plans and operations provided to the Foundation by the City not otherwise mentioned in this policy; and periodic review of accreditation.

SECTION 10. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED **AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 1st day of September, 2010, by the following vote:

AYES: Mayor Garcia, Councilmembers Cohen, Miller, Kampe, Bennett, Cuneo, & Huitt

NOES: None

ABSENT: None

APPROVED:
/s/ Carmelita Garcia
CARMELITA GARCIA, Mayor

ATTEST:
/s/ Lawrence Bangert
LAWRENCE BANGERT, City Clerk

APPROVED AS TO FORM:
/s/ David C. Laredo
DAVID C. LAREDO, City Attorney

ATTACHMENT B-2

**RESOLUTION NO. 11-072**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE PROVIDING GUIDANCE IN ADDITION TO THAT IN THE CITY CHARTER AS TO THE DUTIES AND RESPONSIBILITIES OF THE MUSEUM BOARD**

**WHEREAS,** Article 26 of the City Charter specifies there shall be a Museum Board consisting of five members appointed by the Mayor subject to four affirmative votes of the City Council. Appointment is for four years, with staggered terms of the members, and no member shall serve more than three successive full terms. The Charter specifies that the Museum Board shall have the following powers and duties: (1) act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum; (2) recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the Museum; and (3) perform such other duties relating to the Museum service as the Council may require by ordinance or resolution; and

**WHEREAS,** in addition to its duties with respect to the Museum, the Museum Board has traditionally advised the Council and City Manager with respect to the Point Pinos Lighthouse and the Pacific Grove Monarch Sanctuary; and

**WHEREAS,** on September 1, 2010 the City Council, by approving Resolution No. 10-071, the City Council provided the following direction and guidance, in addition to that in the City Charter, as to the duties and responsibilities of the Museum Board: "In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action.

**WHEREAS,** effective on or about September 1, 2010, the City and the Heritage Society entered into a partnership to guide and facilitate restoration efforts for the Point Pinos Lighthouse, the City's efforts being led by the Golf Superintendent; and

**WHEREAS,** since then, however, the Natural Resources Commission has effectively taken on overall responsibility for oversight of the Monarch Sanctuary, working in conjunction with the Public Works Superintendent; and

**WHEREAS,** resulting from these events, the Museum Board is now operating in an entirely different environment than it did, an environment that does not require that it share many of its powers and duties with other bodies; and

**WHEREAS,** the Council wishes for the Museum Board to continue to perform its Charter-mandated functions as effectively and efficiently as possible; and

**WHEREAS,** in the development of this matter, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

**WHEREAS,** this action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE,** THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds each recital set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution.

SECTION 2. The City Council hereby rescinds in its entirety Section 4 of Resolution No. 10-071, adopted September 1, 2010, in its entirety. That section read, as follows:

> "In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action."

SECTION 3. As a complete replacement to that Section 4 referenced above, the Council provides the following guidance as to the roles and responsibilities of the Museum Board, in order to amplify and provide further specificity to the duties specified in the City Charter: "The Museum Board shall: 1). ensure the Museum serves to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum; 3) serve as an informational conduit between the public and the City on matters related to the Museum; 4). coordinate activities with other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum as the Council may require by ordinance, resolution, or minute action."

SECTION 4. All other sections of Council Resolution No. 10-071 shall remain in effect.

SECTION 5. The Natural Resources Commission roles and responsibilities shall be amended to reflect its responsibilities with respect to the Monarch Sanctuary.

SECTION 6. This Resolution shall become effective immediately following passage and adoption thereof.

**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 7th day of September, 2011, by the following vote:

AYES: Mayor Garcia, Councilmembers Kampe, Cohen, Cuneo, Fischer, Huitt, and Miller.

NOES: None.

ABSENT: None.

APPROVED:

CARMELITA GARCIA, Mayor

ATTEST:

SUSAN MORROW, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

**ATTACHMENT C**

MUSEUM JANITORIAL STANDARDS
PURSUANT TO SECTION 3.02

**DAILY TASKS--SIX DAYS A WEEK**

**ALL INSIDE AREAS**

- Collect all trash and place in appropriate receptacle
- Replace trash liners as needed
- Replenish paper and soap supplies as needed

**RESTROOMS**

- Sweep all floors
- Mop and disinfect all floors
- Clean and sanitize fixtures, sinks, counter tops, urinals, toilets, and toilet seats
- Clean and polish all mirrors and bright work dispensers

**MAIN BUILDING, OFFICES**

- Dust and polish all furniture including cabinets, counters, fixtures, etc.
- Spot clean carpets
- Vacuum all carpet
- Sweep all hardwood floors and linoleum
- Spot clean walls, doors, door jams and partitions, light switches, etc.
- Clean all windows and glass doors at entrances of buildings

**BREAKROOMS/KITCHENS**

- Sanitize sinks and counter tops
- Clean exterior of appliances
- Spot clean walls, doors, door jams, light switches, etc.
- Sweep/ vacuum floors

**ALL OUTSIDE AREAS**

- Empty trash and recycling can(s) and dispose of in the appropriate receptacles
- Pick up garbage around main entrance
- Sweep sand off sidewalk and back into Whale area and raking sand as well as needed.
- Address any graffiti or damage to property, reporting to proper individuals

**WEEKLY TASKS:**

**ALL INSIDE AREAS**

- Set out trash and recycling for collection
- Buff linoleum floors
- Completely clean all doors and handles
- Mop all wood floors
- Blow or sweep entrance areas of buildings
- Pick up garbage in landscaping and around building
- Dust

**ALL OUTSIDE AREAS**

- Sweep outside entrance areas of buildings such as the loading dock area, Forest Avenue entrance, and in front of garage.

**MONTHLY TASKS**

**ALL INSIDE AREAS**

- Wipe all baseboards
- High dust, cobweb removal
- Wash all trash cans
- Clean light fixtures, bathroom fan housings, etc.
- Wash the insides of external windows
- Check heating filters and replace as needed

**QUARTERLY TASKS**

- Clean heater room

**ANNUAL TASKS**

**ALL INSIDE AREAS**

- Clean all carpets (contract service)

**ALL OUTSIDE AREAS**

- Clean all windows (contract service)

# FIRST AMENDMENT TO PUBLIC/PRIVATE PARTNERSHIP OPERATING AGREEMENT AND LEASE BETWEEN THE CITY OF PACIFIC GROVE AND MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

THIS FIRST AMENDMENT to that certain Public/Private Partnership Operating Agreement and Lease Between the City of Pacific Grove CA and Museum Foundation of Pacific Grove, Inc., dated July 29, 2009 (hereinafter the "Agreement"), is made and entered into by and between the original parties thereto as of the 16th day of June, 2010.

IN CONSIDERATION of the mutual promises herein set forth, the adequacy of which is hereby acknowledged by each party, the Agreement is hereby amended as follows:

1. Section 2.02 of the Agreement is amended to read in its entirety as follows:

Section 2.02 Term. The Term of this Lease Agreement shall be thirty (30) years and eleven (11) months, commencing August 1, 2009 and ending June 30, 2040. Commencing on June 30, 2010 and continuing thereafter on June 30th day of each year of the Term thereafter, the Term shall be extended by one (1) additional Term year (July 1st through June 30th); provided, however, that either party may, its sole discretion, give written notice to the other party, not later than thirty (30) days prior to June 30th of any Term year, that it wishes to terminate the automatic one (1) year extension provided for above, in which case the Term of this Lease Agreement shall be fixed at thirty (30) years from the end of the Term year in which such notice is given.

2. Sections 2.03 and 2.04 of the Agreement are hereby rescinded and shall be of no further force or effect.

3. Section 3.10 is added to read as follows:

Section 3.10 Major Repairs, Structural Alterations, and Structural Improvements in Conformance with City Procedures. All major repairs, structural alterations, and structural improvements by Foundation to the Museum building shall be undertaken in full conformance with open bidding procedures, as specified in the Pacific Grove Charter, Article 40, except that the Foundation Board is authorized, on behalf of the City Council, to accept or reject bids and otherwise oversee the process.

4. Section 4.03 of the Agreement is amended to read in its entirety as follows:

Section 4.03 Utilities. From the commencement of this Agreement through June 30, 2010, the City shall pay Utilities for the Premises and submit the Utility bills to the Foundation on a quarterly basis. The Foundation shall promptly reimburse City, in full, for the sums the amount City has billed it. From and after July 1, 2010, Foundation shall maintain its own accounts for Museum utilities and shall pay such accounts within the time prescribed by the utility providers, except in the case of a good faith challenge of the amounts owed by Foundation.

5. Subsection (b) of Section 5.06 of the Agreement is amended to read in its entirety as follows:

(b) Subject to prior scheduling of the Parties in accord with then-current City practice, Foundation may use other City meeting facilities, such as Chautauqua Hall and the City Community Center, for private Museum-related educational or fund-raising events for Museum Exhibits, and shall have the right to charge fees or accept donations for such events. Such use shall be without charge unless, thirty (30) days prior to the event, City notifies Foundation that City has an opportunity to rent the facility to a third party at a time that conflicts with Foundation's reservation, in which case Foundation shall have the option of either paying the rental fees that would have been received from the third party or releasing its reservation of the facility. Alcohol use at such other City facilities shall be in accord with then-current policies as may be set by the City. Other Museum events, such as those of a social or team-building nature, must rent City facilities at the appropriate City facility rental rate.

6. Subsection (e) of Section 5.06 of the Agreement is amended by striking therefrom the words "under subsections (a), (c) and (d) above,".

7. Section 5.07 is amended to read in its entirety as follows:

Section 5.07 Monarch Butterfly Sanctuary. Foundation shall recruit, train and coordinate volunteers for the Museum and for City's Monarch Butterfly Sanctuary and, through such volunteers, shall provide interpretive services for visitors to the Sanctuary. Foundation shall also provide reasonable interpretive signage for the Sanctuary. Foundation may sell merchandise at the Sanctuary, and all proceeds from such sales, as well as cash donations received at the Sanctuary site shall be the property of the Foundation. All other Sanctuary donations or bequests, unless specifically designated for the benefit of the Foundation, shall be received and held as a charitable gift by the City for the benefit of the Sanctuary. Foundation shall have no other obligation with respect to the Monarch Butterfly Sanctuary.

8. Section 5.08 is amended to read in its entirety as follows:

Section 5.08 Museum Exhibits. The City is committed to the Museum providing mission-appropriate public education. The Museum's exhibits and programs shall be designed to further the Museum's Mission. Foundation shall have the right and responsibility for planning, designing and implementing all special and permanent exhibits of the Museum, as well as all educational, scientific or recreational programs. Within sixty (60) days after commencement of the Term, and thereafter within sixty (60) days prior to the beginning of each fiscal year of the Term, or any extended Term, Foundation shall provide City with a written Exhibits and Programs Plan, describing for the coming twelve (12) months any anticipated changes to any of the Museum's permanent exhibits, the schedule for special exhibits, to the extent known, and all planned educational, scientific or recreational programs, to the extent known.

9. Section 5.09 is amended by adding thereto a new Subsection (g) to read in its entirety as follows:

(g) City shall develop and provide to the Foundation a Facility Management Plan annually on July 1 of each new fiscal year, commencing on July 1, 2010, describing

estimated major maintenance of the Museum facility needed in the next three years and scheduled maintenance of the Museum facility during the next 12 months.

10. Subsection (a)(i) of Section 6.01 is amended to read in its entirety as follows:

(i) The failure of either party to this Agreement to perform any material obligation or covenant under this Agreement, if such failure is not cured within forty-five (45) days, or such longer cure period as the non-defaulting party may allow in writing to the defaulting party, after notice of such default from the non-defaulting party;

11. Subsection (b) of Section 9.01 is amended to read in its entirety as follows:

(b) To Foundation - President, 165 Forest Avenue, Pacific Grove CA 93950

Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect according to each and every term, covenant and condition thereof.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement as of the date first above written, intending to be bound by all of its terms, covenants and conditions. Each person executing this First Amendment to the Agreement represents and warrants that he or she has full authority to do so.

CITY OF PACIFIC GROVE, CALIFORNIA

By: _____
Mayor Carmelita Garcia

Approved as to content: _____
City Manager Thomas Frutchey

Approved as to form: _____
City Attorney David Laredo

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: _____
Lori Mannel, EXECUTIVE DIRECTOR

By: _____
George M Perry, Secretary

**SECOND AMENDMENT TO**
**PUBLIC/PRIVATE PARTNERSHIP OPERATING AGREEMENT AND LEASE**
**BETWEEN THE CITY OF PACIFIC GROVE AND**
**MUSEUM FOUNDATION OF PACIFIC GROVE, INC.**

THIS SECOND AMENDMENT to that certain Public/Private Partnership Operating Agreement and Lease Between the City of Pacific Grove CA and Museum Foundation of Pacific Grove, Inc., dated July 29, 2009 (hereinafter the "Agreement"), is made and entered into by and between the original parties thereto as of the 18th day of August, 2010.

IN CONSIDERATION of the mutual promises herein set forth, the adequacy of which is hereby acknowledged by each party, the Agreement is hereby amended as follows:

1. Section 1.01 of the Agreement is amended to add the following definition:

   "Accreditation" means certification of the Museum by the AAM as an accredited museum in its category.

2. Section 5.13 is added to read as follows:

   5.13. Accreditation. Foundation shall take the lead in and shall make all reasonable and appropriate efforts to continue to meet or exceed AAM accreditation standards for museums in its category and continue the Accreditation of the Museum. City shall make all reasonable and appropriate efforts to support the Foundation in meeting or exceeding accreditation standards and in continuing the Accreditation of the Museum.

Except as expressly amended by this Second Amendment, the Agreement and the First Amendment shall both remain in full force and effect according to each and every term, covenant, and condition thereof.

IN WITNESS WHEREOF, the parties have executed this Second Amendment to the Agreement as of the date first above written, intending to be bound by all of its terms, covenants, and conditions. Each person executing this Second Amendment to the Agreement represents and warrants that he or she has full authority to do so.

CITY OF PACIFIC GROVE, CALIFORNIA

By: _____
Carmelita Garcia, Mayor

Approved as to content: _____
Thomas Frutchey, City Manager

Approved as to form: _____
David Laredo, City Attorney

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: _____
Derek Smead, Vice President

By: _____
George M. Perry, Secretary

**ATTACHMENT B-1**

RESOLUTION NO. 10-071

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESCINDING COUNCIL POLICY 200-5 AND PROVIDING GUIDANCE IN ADDITION TO THAT IN THE CITY CHARTER AS TO THE DUTIES AND RESPONSIBILITIES OF THE MUSEUM BOARD

**WHEREAS**, Article 26 of the City Charter specifies there shall be a Museum Board consisting of five members appointed by the Mayor subject to four affirmative votes of the City Council. Appointment is for four years, with staggered terms of the members, and no member shall serve more than three successive full terms. The Museum Board shall have the following powers and duties: (1) act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum; (2) recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the Museum; and (3) perform such other duties relating to the Museum service as the Council may require by ordinance or resolution; and

**WHEREAS**, the Council in 1991 adopted Council Policy 200-5, *Museum,* in order "to set general guidelines for the operation of the Pacific Grove Museum of Natural History and affiliated groups"; and

**WHEREAS**, the Council amended Council Policy 200-5 in 1993 and 2008; and

**WHEREAS**, on June 17, 2009, the City and the Museum Foundation of Pacific Grove entered into an *Operating Agreement and Lease* that created a public private partnership for the operation and future of the Museum; and

**WHEREAS**, under the terms of the *Operating Agreement and Lease,* the City of Pacific Grove owns the Museum collection, owns the Museum facility, and maintains the Museum facility; and the Museum Foundation of Pacific Grove cares for the Museum collection, utilizes the Museum collection in support of the Museum mission, operates the Museum, and raises the funds necessary to accomplish its tasks; and

**WHEREAS**, as stated in that *Operating Agreement and Lease,* the Mission of the Pacific Grove Museum of Natural History is, "To inspire discovery, wonder, and stewardship of our natural world;" and

**WHEREAS**. Attachment A to the *Operating Agreement and Lease* provides the strategic goals for the Museum and the methods by which the Foundation is to achieve the stated mission; and

**WHEREAS**, the membership of the Museum Association has voted to end its existence and transfer its assets to the Museum Foundation; and

**WHEREAS**, in addition to its duties with respect to the Museum, the Museum Board has traditionally advised the Council and City Manager with respect to the Point Pinos Lighthouse and the Pacific Grove Monarch Sanctuary; and

**WHEREAS**, effective on or about September 1, 2010, the City and the Heritage Society are entering into a partnership to guide and facilitate restoration efforts for the Point Pinos Lighthouse; and

**WHEREAS**, the Museum Board and the Natural Resources Commission have created a joint subcommittee to explore the appropriate roles for each body to take on individually and jointly with respect to the Monarch Sanctuary; and

**WHEREAS**, resulting from these events, the Museum Board is now operating in an entirely different environment than it did for all prior years of its existence, an environment where it shares many of its powers and duties with other bodies; and

**WHEREAS**, the Council wishes for the Museum Board to continue to perform its Charter-mandated functions as effectively and efficiently as possible, and to do so in as collaborative and mutually beneficial manner as possible with the Museum Foundation, the Heritage Society, the Natural Resources Commission, and others; and

**WHEREAS**, in the development of this matter, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

**WHEREAS**, this action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE**, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds each recital set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution.

SECTION 2. Council Policy 200-5, having been effectively replaced by the *Operating Agreement and Lease* and this Resolution, is hereby rescinded.

SECTION 3. The Museum Board and its individual members shall be appointed, operate, and serve in an advisory capacity to the City Council and City Manager, as specified in the Charter, as shall be amended from time to time by the voters, and as specified in the Municipal Code and Council Policies, as shall be amended from time to time by the City Council.

SECTION 4. In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). Perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action.

SECTION 5. The officers of the Museum Board shall be elected annually by the members of the Museum Board and include a Chair, Vice-Chair, and Secretary.

SECTION 6. Through public meetings, the Museum Board shall provide a way for members of the public to express their interests and needs regarding the operations of the Museum, Lighthouse, and Monarch Sanctuary. If the Board deems that matters raised by the public require administrative attention of the City

Manager or policy attention of the City Council, the matters shall be promptly communicated to the City Council Liaison who shall follow up to ensure appropriate action and/or response.

SECTION 7. Communications between the City and the Foundation shall be between the City Manager and the Executive Director of the Foundation. Communications between the City and the Museum Board will be through the City Council liaison, who shall link comments or concerns to the City Manager.

SECTION 8. The Museum Board also advises the City Manager and City Council on matters related to obligations of the City under the Agreement. Specific obligations for which the City Manager may request review by the Museum Board include:

- Revision or amendment to the mission statement and strategic goals of the Museum (Ref. Section 3.01 of the Agreement and Attachment A).
- Implementation of major facilities repairs (Ref. Section 3.05 of the Agreement)
- Accessioning and De-Accessioning of items from the collections (Ref. Section 3.06 of the Agreement)
- Non-Structural Repairs and Improvements (Ref. Section 3.07 of the Agreement)
- Structural Alterations (Ref. Section 3.08 of the Agreement)
- Exhibits and Program Plans (Ref. Section 5.08 of the Agreement)
- Reports (Ref. Section 5.09 of the Agreement)
- Proposed Amendments to the Agreement

SECTION 9. The City Manager or City Council may refer any other matter to the Museum Board where advice of the Board is deemed to be helpful in ensuring current and future success of the Museum, the Lighthouse, or the Monarch Sanctuary. These matters may typically include: maintenance of items in sole possession of the City (Ref. Section 3.03 of the Agreement); reviews of museum plans and operations provided to the Foundation by the City not otherwise mentioned in this policy; and periodic review of accreditation.

SECTION 10. This Resolution shall become effective immediately following passage and adoption thereof.

PASSED **AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 1st day of September, 2010, by the following vote:

AYES: Mayor Garcia, Councilmembers Cohen, Miller, Kampe, Bennett, Cuneo, & Huitt

NOES: None

ABSENT: None

APPROVED:
/s/ Carmelita Garcia
CARMELITA GARCIA, Mayor

ATTEST:
/s/ Lawrence Bangert
LAWRENCE BANGERT, City Clerk

APPROVED AS TO FORM:
/s/ David C. Laredo
DAVID C. LAREDO, City Attorney

# RESOLUTION NO. 11-072

## RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE PROVIDING GUIDANCE IN ADDITION TO THAT IN THE CITY CHARTER AS TO THE DUTIES AND RESPONSIBILITIES OF THE MUSEUM BOARD

**WHEREAS,** Article 26 of the City Charter specifies there shall be a Museum Board consisting of five members appointed by the Mayor subject to four affirmative votes of the City Council. Appointment is for four years, with staggered terms of the members, and no member shall serve more than three successive full terms. The Charter specifies that the Museum Board shall have the following powers and duties: (1) act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum; (2) recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the Museum; and (3) perform such other duties relating to the Museum service as the Council may require by ordinance or resolution; and

**WHEREAS,** in addition to its duties with respect to the Museum, the Museum Board has traditionally advised the Council and City Manager with respect to the Point Pinos Lighthouse and the Pacific Grove Monarch Sanctuary; and

**WHEREAS,** on September 1, 2010 the City Council, by approving Resolution No. 10-071, the City Council provided the following direction and guidance, in addition to that in the City Charter, as to the duties and responsibilities of the Museum Board: "In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action.

**WHEREAS,** effective on or about September 1, 2010, the City and the Heritage Society entered into a partnership to guide and facilitate restoration efforts for the Point Pinos Lighthouse, the City's efforts being led by the Golf Superintendent; and

**WHEREAS,** since then, however, the Natural Resources Commission has effectively taken on overall responsibility for oversight of the Monarch Sanctuary, working in conjunction with the Public Works Superintendent; and

**WHEREAS,** resulting from these events, the Museum Board is now operating in an entirely different environment than it did, an environment that does not require that it share many of its powers and duties with other bodies; and

**WHEREAS,** the Council wishes for the Museum Board to continue to perform its Charter-mandated functions as effectively and efficiently as possible; and

**WHEREAS,** in the development of this matter, the City followed the guidelines adopted by the State of California and published in the California Code of Regulations, Title 14, Section 15000, et seq.; and

**WHEREAS,** this action does not constitute a "project" as defined by California Environmental Quality Act (CEQA) because it is an organizational or administrative activity that will not result in direct or indirect physical changes in the environment.

**NOW, THEREFORE,** THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. The City Council finds each recital set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution.

SECTION 2. The City Council hereby rescinds in its entirety Section 4 of Resolution No. 10-071, adopted September 1, 2010, in its entirety. That section read, as follows:

"In furtherance of the duties and responsibilities of the City of Pacific Grove Museum Board prescribed by Article 26 of the City Charter, the Museum Board shall: 1). ensure the Museum, Lighthouse, and Monarch Sanctuary serve to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum, the Point Pinos Lighthouse, and Monarch Sanctuary; 3) serve as an informational conduit between the public and the City on matters related to the Museum, the Lighthouse, and the Monarch Sanctuary; 4). coordinate its activities with those of other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum, Lighthouse, and Monarch Sanctuary as the Council may require by ordinance, resolution, or minute action."

SECTION 3. As a complete replacement to that Section 4 referenced above, the Council provides the following guidance as to the roles and responsibilities of the Museum Board, in order to amplify and provide further specificity to the duties specified in the City Charter: "The Museum Board shall: 1). ensure the Museum serves to benefit the City as a whole, its natural environment, its citizens, and visitors; 2) advise the City Council and City Manager on matters relating to the Museum; 3) serve as an informational conduit between the public and the City on matters related to the Museum; 4). coordinate activities with other appropriate City advisory boards, committees, and commissions on matters of mutual concern; and 5). perform such other duties relating to the Museum as the Council may require by ordinance, resolution, or minute action."

SECTION 4. All other sections of Council Resolution No. 10-071 shall remain in effect.

SECTION 5. The Natural Resources Commission roles and responsibilities shall be amended to reflect its responsibilities with respect to the Monarch Sanctuary.

SECTION 6. This Resolution shall become effective immediately following passage and adoption thereof.

**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 7th day of September, 2011, by the following vote:

AYES: Mayor Garcia, Councilmembers Kampe, Cohen, Cuneo, Fischer, Huitt, and Miller.

NOES: None.

ABSENT: None.

APPROVED:

CARMELITA GARCIA, Mayor

ATTEST:

SUSAN MORROW, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

**ORDINANCE NO. 14-007**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE APPROVING THE THIRD AMENDMENT TO THE PUBLIC/PRIVATE PARTNERSHIP OPERATING AGREEMENT AND LEASE BETWEEN THE CITY OF PACIFIC GROVE AND THE MUSEUM FOUNDATION OF PACIFIC GROVE, INC.**

**WHEREAS,** On June 17, 2009, the City approved an *Operating Agreement and Lease* between the Museum Foundation of Pacific Grove and the City of Pacific Grove; and

**WHEREAS,** the City of Pacific Grove owns the Museum collection, owns the Museum facility, and maintains the Museum facility; and

**WHEREAS,** the Museum Foundation of Pacific Grove Museum cares for the Museum collection, utilizes the Museum collection in support of the Museum mission, operates the Museum, and raises the funds necessary to accomplish these tasks; and

**WHEREAS,** the City Charter, Article 15 (g), requires all leases of City property be approved by ordinance; and

**WHEREAS,** the City and Museum Foundation have already approved two amendments to the original Agreement and Lease; and

**WHEREAS,** after engaging in collaborative discussions, the City and Museum Foundation desire to make further improvements to the amended Agreement and Lease; and

**WHEREAS,** the City and Foundation have decided to incorporate all amendments to date into a new, restated agreement; and

**WHEREAS,** this activity qualifies for a CEQA Class 1 Categorical Exemption as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations as it consists of permitting and leasing of existing facilities that involves negligible or no expansion of use.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The Third Amendment to Public/private Partnership Operating Agreement and Lease between the City of Pacific Grove and the Museum Foundation of Pacific Grove is hereby approved. Except as expressly amended by this Third

Amendment, the Agreement shall remain in full force and effect according to each and every term, covenant, and condition thereof.

SECTION 3. The City Manager is authorized to execute all documents and to perform all other necessary City acts to implement the ordinance.

SECTION 4. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

**PASSED AND ADOPTED** BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 21st day of May, 2014, by the following vote:

AYES: Mayor Kampe, Councilmembers Cohen, Cuneo, Huitt, Lucius
NOES: Councilmember Miller
ABSENT: Councilmember Fischer

APPROVED:

_____
BILL KAMPE, Mayor

ATTEST:

_____
Ann Camel, Interim City Clerk

APPROVED AS TO FORM:

_____
DAVID C. LAREDO, City Attorney