

Riverside Metropolitan Museum

Benchmark Report

Submitted by

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San Francisco, California

March 2017



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INTRODUCTION

The following *Benchmark Report* was completed by Museum Management Consultants, Inc. (MMC) for the City of Riverside as part of the *Organizational Assessment* of the Riverside Metropolitan Museum (RMM). The purpose of this report is to compare RMM with four like institutions noting similarities, differences, and trends.

Methodology

Information for this report was gathered through interviews with Benchmark Museum Executive Directors, who provided documents, data, and insights about their organizations. This material was supplemented by financial statements, organizational charts (See Appendix A), and data accessible on organization and government websites. Financial data from FY15, the most recently completed fiscal year available from all four museums, were used in order to compare actual expenses and revenue, which often vary significantly from budgeted figures. However, budgeted FY16 figures were used for RMM to parallel the data used in the *Organizational Assessment* which serves to provide the most recently available figures and to capture the current realities of RMM.

Benchmark Museums

The four museums presented in this report are:

- Bowers Museum
- Longmont Museum
- Pacific Grove Museum of Natural History
- Whatcom Museum

The four organizations vary in size and scope, but all are city-owned, regional museums located in the Western United States. They were selected not as exact comparisons to RMM, but rather to examine the operations and visitor experiences of museums with similar structures and governance models. They represent a spectrum of public-private partnerships from city-owned and operated with a nonprofit support group (RMM, Longmont Museum), to formal Operating Agreements providing for joint operation (Whatcom Museum), to sole operation by the private nonprofit (Bowers Museum and Pacific Grove Museum of Natural History). See Appendix B for copies of the Operating Agreements. The museums range in size from the Pacific Grove Museum of Natural History, a small organization that receives 18% of its operating budget from the City of Pacific Grove, to the Bowers Museum, a mid-sized museum receiving 25% of its operating funds from the City of Santa Ana. While the Bowers Museum is an art museum with a

larger facility and budget than the RMM, it presents a dramatic example of a city-owned museum that has not only survived but thrived while developing private support through the efforts of an associated nonprofit organization.

The following table provides an overview of the benchmark organizations, as well as comparative data from RMM:

Overview of Benchmark Museums

Organization	Location	Metro Area Population ¹	Operating Budget ²	% City Funding	Annual Attendance	Staff FTE
Riverside Metropolitan Museum	Riverside, CA	4,224,851	\$1,684,901	97%	51,631	14.25
Bowers Museum	Santa Ana, CA	12,828,837	\$5,484,791	25%	150,000	53
Longmont Museum	Longmont, CO	294,567	\$1,129,224	78%	62,652	12
Pacific Grove Museum of Natural History	Pacific Grove, CA	415,057	\$736,590	18%	50,000	12.25
Whatcom Museum	Bellingham, WA	201,140	\$2,264,231	68%	71,900	23.5

¹ Source: U.S. Census Bureau, Population for 2010 Metropolitan Statistical Areas in the United States, accessed at <https://www.census.gov/population/www/cen2010/cph-t/cph-t-5.html>

² RMM financial data is FY16 while the Benchmark Museums is FY15

All four Benchmark Museums present object lessons on developing sustainable operational and business models while offering vibrant programming relevant to the communities they serve. Yet, the path to sustainability and decreased reliance on city funds for each museum has been different:

1. The Bowers Museum experienced remarkable success when, after founding a nonprofit Corporation to operate the city-owned museum and closing for three years (1989 – 1992) to organize and expand, the Museum re-opened with a new Director and a greatly enlarged facility. The Museum now presents high-profile, popular exhibitions which are funded by, and in turn replenish, an operating reserve.
2. Longmont Museum, while stable and City-funded, had poor attendance. Beginning in 2011 with the tenure of a new Director, the strategy of expanding programming, involving the community in exhibitions planning, and launching a successful capital campaign to build an auditorium, has resulted in increased visitation, and in turn increased earned and contributed income.
3. Pacific Grove Museum of Natural History is operated by the Foundation, which has built a sustainable model by recruiting a fully-engaged Board of Directors. The Foundation Board worked with the staff to grow membership, donors and funding sources, and to present nature-based exhibitions and public programs.

4. Whatcom Museum has increased non-City funding over time by building the Foundation’s capacity to raise private dollars in support of increased professional staff and much needed upgrades to the visitor experience.

Profiles of the Benchmark Museums are presented on the following pages. Each profile includes an overview “snapshot” which provides a quick look at each organization; an overview of RMM is provided at right for comparison. Narrative descriptions for each museum include information about organizational infrastructure (mission, vision, governance), public-private partnership (nonprofit support organization, operating agreement), operations (staffing, facilities, business model), as well as accreditation

<u>Riverside Metropolitan Museum Overview</u>	
Founding Year	1924
Location	Riverside, California
Metro Area Population	4,224,851
FY16 Budget	\$1,684,901
City Funding	97%
Governance Model	City-owned and operated
Accreditation Status	Application for 2017 re-accreditation in process
Staff	14.25 FTE
Attendance	51,631
Website	http://www.riversideca.gov/Museum/

by the American Alliance of Museums (AAM), collections, and visitor experience. Presented within this narrative are related data tables as well as notes on topics of particular relevance to RMM. MMC’s observations and identification of overarching trends follow the museum profiles.

BENCHMARK MUSEUMS

BOWERS MUSEUM

Mission

The Bowers Museum enriches lives through the world's finest arts and cultures.

Vision

Celebrate world cultures through the arts.

Governance

The Bowers Museum is owned by the City of Santa Ana, and operated by the Charles W. Bowers Museum Corporation. The Bowers Museum President and CEO is an employee of the Charles W. Bowers Museum Corporation, and reports to its Board of Governors.

<u>Bowers Museum Overview</u>	
Founding Year	1936
Location	Santa Ana, California
Metro Area Population	12,828,837
FY15 Budget	\$5,484,791
City Funding	25%
Governance Model	City-owned and operated by the contracted Nonprofit
Accreditation Status	Accredited; reaccreditation due 2019
Staff	53 FTE
Attendance	150,000
Website	http://www.bowers.org/

Nonprofit Support Organization

The Charles W. Bowers Museum Corporation, a private 501(c)(3) organization, was formed by the City Council in 1985 to operate the Museum and assume fundraising responsibilities of the Bowers Museum Foundation (which was dissolved). The Board of Governors of the Corporation currently has 33 members, which includes seven honorary members.

Board Development

The Governing Board of the Corporation was initially made up of politically appointed individuals with little or no experience on nonprofit boards, who were neither contributing nor raising funds, and some of whom thought their role was to run the day-to-day operations of the Museum. AAM Accreditation was an early, important step as it required a policy clarifying that the role of the Corporation Board is to govern and fundraise, while the role of the Executive Director is to run the day-to-day operations of the Museum.

Operating Agreement

The Bowers Museum had been suffering financial and organizational challenges when, in 1987, an Operating Agreement was put in place whereby, "The Corporation agreed to be fully responsible for the cost of both operating the Museum and maintaining the Premises. In

exchange...the City agreed to provide operating assistance, which would increase in accordance with the cost of living for the first ten years, and then decline to zero over the second ten years.”¹ In 1989, the Museum closed for a period of self-study and community input, hiring a new Director in 1991. In 1992, after a three year closure, the Museum reopened in a renovated and enlarged facility (63,000 square feet) as a new cultural center.

The Agreement has been amended several times, most recently in 2001, which extends the Operating Agreement to 2026, provides for the City’s operating assistance to be fixed annually at the cost for repair and maintenance of the facilities, and provides for City funding of Capital repairs and replacements as necessary. (A copy of this Agreement is included in Appendix B).

Staffing

Full-time: 35

Part-time: 37

FTE: 53

(A copy of the Organizational Chart is included in Appendix A.)

All staff members are employees of the Charles W. Bowers Museum Corporation. In the Collections and Exhibition Development department, the Museum employs one Curator who is in charge of Collections and Special Exhibitions, one Collections Manager, and one Associate Registrar. Curatorial Consultants who are specialists in the various areas of the collections focus are hired on a contractual basis to provide advice on acquisitions and deaccessions.

Facilities

Main facility

The Bowers Museum is located in downtown Santa Ana, housed in a Mission Revival style building completed in 1932 and subsequently enlarged and renovated through several expansions.

Size: 100,000 square feet

¹ Amended and Restated Operating Agreement between the City of Santa Ana and the Charles W. Bowers Museum Corporation, June 18, 2001; p. 1, Recitals section, paragraph D.

Additional sites and facilities

Kidseum (11,000 square feet) is an interactive learning center for pre-school through elementary school aged children and their families located two blocks south of the main Museum.

Accreditation

The Museum is accredited by AAM through 2019, and may apply for re-accreditation no sooner than 2017.

Collections

Collecting areas include Native American, Pre-Columbian, Asian, Pacific Island, and Orange County art and history.

Number of artifacts: 120,000

Inventory

Museum Collections staff members follow a regular schedule of collections inventory, assuring records are up-to-date.

Deaccessioning

The Museum recently completed a refinement of collections through a process of deaccessioning. Outside curators with the appropriate expertise were contracted to assess areas of the collection in order to identify duplicate, unrelated, and less significant objects and determine their values for potential deaccessioning. Following AAM protocol, donors of objects slated for deaccession were notified beforehand, and objects were first offered for sale to other museums. Remaining objects were then offered for sale at a one-day event on-site, realizing \$100,000 to be used for acquisitions and collections care. Unsold items were placed on consignment at area auction houses.

Visitor Experience

The Bowers Museum maintains a full calendar of exhibitions, lectures, art classes, travel programs, children's art education programs, and other special community programs.

Annual attendance: 150,000

Temporary Exhibitions

The centerpiece of the Museum's offerings is the presentation of high profile temporary exhibitions. Since 1992, the Museum has presented over 60 major exhibitions drawn from the holdings of China's Imperial Palace, the British Museum, Tokyo National Museum, and the

Vatican Museums, among many other high-profile public and private collections. Exhibitions borrowed from Museo Casa Diego Rivera, Museo Frida Kahlo, and other museums in Mexico have been presented to engage the growing Latino population of the region.

Permanent Collections Exhibitions

The Museum maintains eight permanent collection galleries. To stimulate public interest and generate funding, collections galleries are regularly refreshed, with one or more new objects added each month. Selections from the Museum's Native American holdings will be presented as a special temporary exhibition, after having travelled to museums in Columbia and China.

Business Model

The Bowers receives 25% of its operating funds from the City, 42% from contributed income via the private nonprofit Corporation, and the remaining 22% from earned income and 11% from investments. In FY15, the Museum generated a 6% operating surplus, which was added to an Enterprise Fund which is used to underwrite the expenses of travelling exhibitions. At the date of this report, the Fund was valued at approximately \$18 million.

Membership: 7,500 households generating \$522,265 in contributed income

A detailed breakdown of Bowers Museum income and expenses follows on the next page.

BOWERS MUSEUM
Operating Budget FY15 (Actual)

REVENUE

City of Santa Ana	\$1,456,630
Contributed	\$2,454,617
Earned	\$1,279,711
Investment	\$636,579
Total Revenue:	\$5,827,537

EXPENSES

Personnel	\$2,764,827
Admin. & Development	\$614,786
Exhibits, Programs, Collections	\$944,161
Facility ¹	\$975,407
Marketing & PR	\$185,610
Total Expenses:²	\$5,484,791

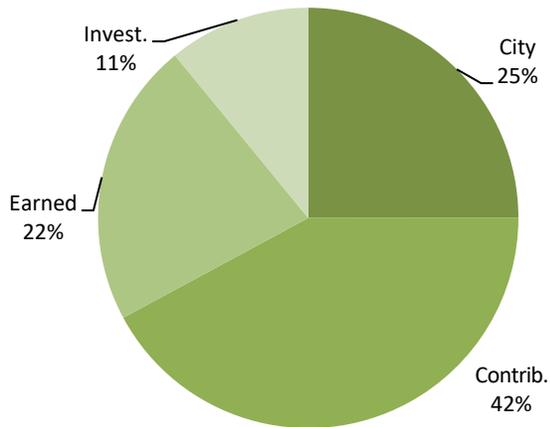
EXCESS OF REVENUE

OVER EXPENSES **\$342,746**

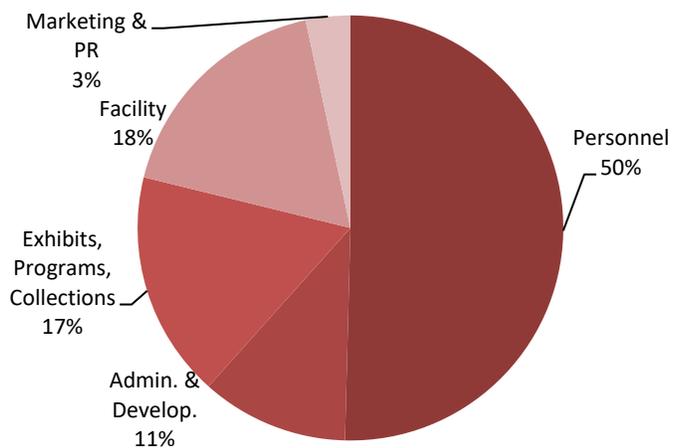
¹ Facility expenses do not include personnel dedicated to building maintenance

² Excluding depreciation

Bowers Museum: Income by Source FY15



Bowers Museum: Expenses by Category FY 15



Revenue Detail

Bowers Museum: Contributed Revenue Detail

Source	Revenue	% of Contributed Revenue
Donations ¹	\$719,893	29%
Fundraisers	\$431,261	18%
Grants ¹	\$781,198	32%
Memberships	\$522,265	21%
TOTAL	\$2,454,617	100%

¹ Donations and grants do not include permanently restricted or capital donations

Bowers Museum: Earned Revenue Detail

Source	Revenue	% of Earned Revenue
Admissions	\$571,643	45%
Programs	\$214,149	17%
Rentals	\$238,006	19%
Retail	\$255,913	20%
TOTAL	\$1,279,711	100%

LONGMONT MUSEUM

Mission

The Longmont Museum is a center for culture in Northern Colorado where people of all ages explore history, experience art, and discover new ideas through dynamic programs, exhibitions and events.

Vision

The Longmont Museum fosters a community that is culturally educated and creatively inspired.

Longmont Museum Overview

Founding Year	1936
Location	Longmont, Colorado
Metro Area Population	294,567
FY15 Budget	\$1,129,224
City Funding	78%
Governance Model	City-owned and operated
Accreditation Status	Non-accredited
Staff	12 FTE
Attendance	62,652
Website	https://www.longmontcolorado.gov

Governance

The Longmont Museum is a division of the City of Longmont, within the Community Services Department. The Executive Director is a City employee who reports to the Director of Community Services.

A Museum Advisory Board was formed to advise City Council in the development and use of the municipal museum. The Advisory Board meets monthly and consists of nine members, appointed by the City Council, who serve three year terms with the Museum Director serving as an ex-officio member. The Advisory Board's primary function is to approve Museum accessions.

The Art in Public Places (AIPP) program for the City is also situated within the Museum Division. The Museum Director supervises a part-time administrator for the AIPP who is responsible for maintaining the more than 100 works in the collection and working with the AIPP Commission and the community to choose additional works.²

Nonprofit Support Organization

The Friends of the Longmont Museum is a nonprofit 501(c)(3) organization formed in 1985 to promote the knowledge and understanding of history, arts, and the sciences through active support of the Longmont Museum, and to encourage public involvement and financial support to the Museum and its cultural activities. The Board of the Friends has seven members.

² City of Longmont, Community Services Department, Museum Director Position Description, <https://www.longmontcolorado.gov/Home/ShowDocument?id=17589>

Initially formed as the membership arm of the Museum, the Friends received and administered funds contributed to a recent successful capital campaign and expansion project. Basic membership is now marketed and managed by the Museum, while the Friends have initiated a higher level membership program to cultivate and secure donors.

Operating Agreement

There is no Operating Agreement in place between the Friends of the Longmont Museum and the City of Longmont at this time.

Staffing

Full-time: 8

Part-time: 10

FTE: 12

(A copy of the Organizational Chart is included in Appendix A.)

Facilities

Main facility

The Longmont Museum is located in a contemporary, purpose-built facility completed in 2002, part of a \$21 million bond issue that also funded construction of the neighboring Longmont Recreation Center and other expanded facilities. In 2015, the Museum opened the Stewart Auditorium after a \$4.5 million capital campaign. The Museum presents two permanent exhibition spaces, one temporary exhibition space, an Education Center, and collections storage and research spaces.

Size: 35,000 square feet

Additional sites and facilities

The Longmont Museum is in the process of building an off-site Collections Storage Facility, paid for by the City, in part through the proceeds from the sale of the previous City-owned storage facility. The Museum will be sharing 5,000 of the 20,000 square feet available with the Public Safety Department, which plans to use its portion to store evidence.

Notes on City-owned historic facilities

The City of Longmont maintains historic properties which are administered separately from the Museum Division and are operated through enterprise funds, which maintain them primarily for rental purposes. While this arrangement does not insure that historic properties are preserved to strict museum standards, it does allow for buildings to be used by the public in order to generate income which can then be used for maintenance and repairs.

Accreditation

As of this date, the Longmont Museum has not applied for accreditation. In discussions with Museum management, enlivening the program offerings and tending to the needs of the collection have been priorities over seeking accreditation. However, staff changes and the ability to hire an Archivist and Collections Manager have set them on a clear path toward applying for accreditation.

Collections

Collecting areas include three-dimensional objects, as well as photographs and documents relating to the City of Longmont and the region.

Number of artifacts: 27,000 plus 800 linear feet of archives

Inventory

Inventorying the collection was stalled for many years due to a lack of computer skills on the part of a long-time curator. After the retirement of this individual, part-time data entry staff as well as Museum Studies students and volunteers were brought in to enter records into the database.

Visitor Experience

The Museum presents permanent and changing exhibitions, educational and public programming, outdoor concerts and community festivals, and maintains the Longmont Archives as a community resource for original research. With the addition of the Stewart Auditorium, the Museum has added film, theater, indoor concerts, lectures, and other live performances.

Annual attendance: 62,652

Temporary Exhibitions

The Museum mounts six to 12 changing exhibitions annually in the fields of history, art, and science to give the Longmont community access to a range of media, materials, and subject matter of statewide, national, and international significance as well as local interest.³ To aid in this effort, the Museum established a Curatorial Committee which is 25% Hispanic and reflects the general population of the region. This Committee generates ideas which are then vetted by the staff. Exhibitions on robotics, LEGOs, and the cars and culture of lowriders (complete with a car rally that attracted 1,500 individuals to one event) have resulted in a program of exhibitions which engage the community from concept to presentation.

³ City of Longmont, 2017 Proposed Operating Budget, p. 102

Permanent Collections Exhibitions

The permanent exhibitions are 50% interactive and were designed by an outside firm, but fabricated by members of the in-house Museum staff who maintain the exhibitions. The most popular interactive exhibit recreates a dam and is used by area teachers to instruct their students on water uses in agricultural areas.

Business Model

The Longmont Museum receives 78% of operating funding from the City of Longmont (or 71% not including \$308,976 of AIPP dollars), 17% from earned income, 5% from contributed income, and less than 1% from investments.

Membership: 650 total members, generating \$13,000.

A detailed breakdown of Longmont Museum income and expenses follows on the next page.

LONGMONT MUSEUM Operating Budget FY15

REVENUE

City of Longmont ¹	\$1,024,696
Contributed	\$64,955
Earned	\$226,195
Investment	\$683
Total Revenue:	\$1,316,529

EXPENSES¹

Personnel	\$714,382
Admin. & Development	\$78,742
Exhibitions, Programs, Collections	\$219,727
Facility ²	\$88,724
Marketing & PR	\$27,648
Total Expenses:³	\$1,129,224

EXCESS OF REVENUE

OVER EXPENSES⁴ \$187,305

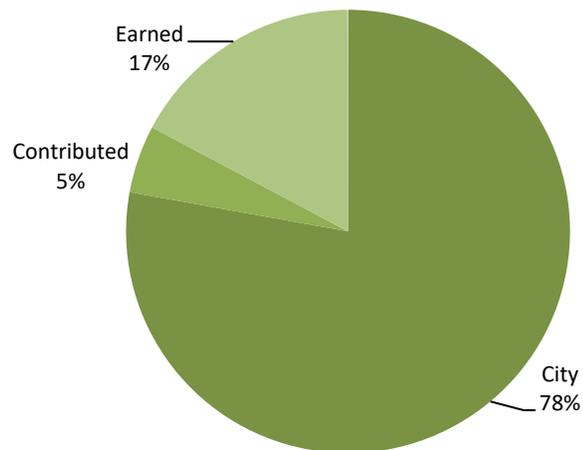
¹ Includes AIPP Fund Income and Expenses

² Does not include personnel dedicated to building maintenance

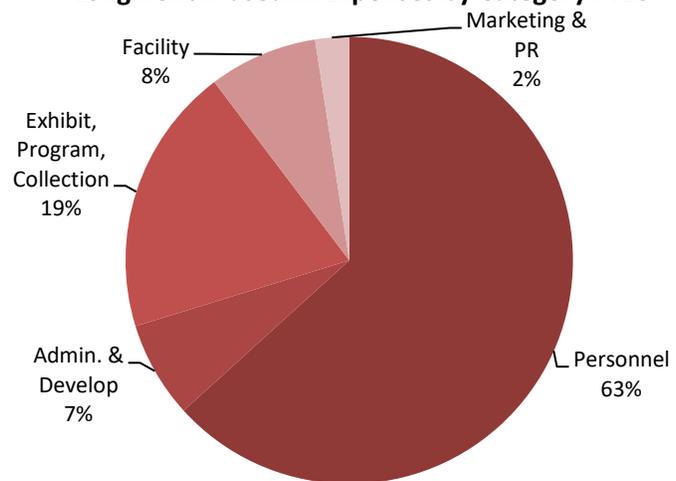
³ Excluding depreciation

⁴ Surplus held in Museum Services, and Trust Funds are retained, with balance returned to General Fund

Longmont Museum: Income by Source FY15



Longmont Museum: Expenses by Category FY15



Revenue Detail FY15

Longmont Museum: Contributed Revenue Detail

Source	Revenue	% of Contributed Revenue
Donations ¹	\$13,985	22%
Fundraisers	\$0	0%
Grants ¹	\$42,250	65%
Memberships	\$8,720	13%
TOTAL	\$64,955	100%

¹ Donations and grants do not include permanently restricted or capital donations

Longmont Museum: Earned Revenue Detail

Source	Revenue	% of Earned Revenue
Admissions	\$97,371	43%
Programs	\$87,645	39%
Rentals	\$9,169	4%
Retail & Concessions	\$32,010	14%
TOTAL	\$226,195	100%

PACIFIC GROVE MUSEUM OF NATURAL HISTORY

Mission

To inspire discovery, wonder, and stewardship of our natural world.

Vision

The Pacific Grove Museum of Natural History inspires a diverse community to explore and conserve the natural and cultural wonders of the Central California Coast.

Governance

The Museum is owned by the City of Pacific Grove and is operated by The Pacific Grove Museum of Natural History, a nonprofit 501(c)(3) corporation. The Executive Director of the Museum is an employee of the nonprofit organization and reports to its Board of Directors.

Pacific Grove Museum of Natural History Overview	
Founding Year	1883
Location	Pacific Grove, California
Metro Area Population	415,057
FY15 Budget	\$736,590
City Funding	18%
Governance Model	City-owned and operated by a private Nonprofit
Accreditation Status	Accredited; reaccreditation due 2022
Staff	12.25 FTE
Attendance	50,000
Website	http://www.pgmuseum.org/

Nonprofit Support Organization

The Museum Foundation of Pacific Grove, Inc., doing business as the Pacific Grove Museum of Natural History, was founded in 2009 to operate, maintain, advance and enhance the Pacific Grove Museum of Natural History as an educational and scientific institution for the benefit of the general public. The Foundation is governed by a 14 member Board of Directors. Board members include community leaders committed to the Museum, science education and environmental advocacy.⁴

Board Development

In order to assure a fully functioning Board, Foundation Board Members have staggered terms and are recruited according to a matrix of needed skills and demographics in order to promote Board diversity.

⁴ The Pacific Grove Museum of Natural History FY 2015/2015 Business Plan, August 30, 2014, p. 8, accessed at <https://static1.squarespace.com/static/53ac1211e4b0a7d6603b36c3/t/5407960ae4b035477defa9bf/1409783306840/BusinessPlan+2014+v2.pdf>

Operating Agreement

In 2009, the City entered into a “Public/Private Partnership Operating Agreement and Lease” with the Museum Foundation. The Agreement (which has been subsequently amended) provides for the Foundation to operate the Museum, care for and use the Museum collections, manage the education and interpretation at the Monarch Grove Sanctuary, and raise funds in support of these activities. The City owns the Museum land, building, collections, and retains responsibility for major repairs and maintenance of the Museum facility (including janitorial services). The term of the lease is 30 years (ending 2040), and fixes the annual contribution from the City to the Foundation at \$150,000 during the first three years, and 1.01% of the City’s total fiscal year General Fund budget thereafter. (A copy of this Agreement is included in Appendix B).

In 2014, the Pacific Grove City Council approved an amendment to the Operating Agreement and Lease allowing the Museum to charge an admission fee to visitors to Monterey County, and to retain 100% of facility rental profits, which the Museum is investing in the visitor experience.⁵

Staffing

Full-time: 9

Part-time: 7

FTE: 12.25

(A copy of the Organizational Chart is included in Appendix A.)

Facilities

Main facility

The Museum is located in downtown Pacific Grove near the Monterey Bay Aquarium. The facility was purpose-built in 1932.

Size: Could not be confirmed by MMC (exhibition space is 10,000 square feet)

Additional sites and facilities

The Museum maintains, operates, and interprets the Pacific Grove Monarch Sanctuary, a municipal park located 10 blocks from the Museum.

⁵ The Pacific Grove Museum of Natural History FY 2015/2015 Business Plan, August 30, 2014, p. 2, accessed at <https://static1.squarespace.com/static/53ac1211e4b0a7d6603b36c3/t/5407960ae4b035477defa9bf/1409783306840/BusinessPlan+2014+v2.pdf>

Accreditation

The Museum has been accredited continuously since 1972, and is scheduled for reaccreditation in 2022, with self-study to begin in 2018.

Collections

The Museum maintains a collection of objects and specimens of natural and cultural history including preserved birds, plants, Native American artifacts, and historic photographs.

Number of artifacts: 30,000

Inventory

A comprehensive inventory was completed in 2009 with the transfer of operations from the City to the Foundation. Subsequently, the collection is inventoried annually on a rotating basis, with a different section completed each year.

Deaccessioning

Deaccessioning has been accomplished through the transfer of items to other entities. The City Council must approve all deaccessions, and if sold, proceeds must be directed to collections acquisition and care, per AAM guidelines.

Visitor Experience

The Museum presents exhibitions and education programs for school children to adults. Education programs include a natural science-based day camp, free family “Science Saturdays,” and evening events which pair learning with socializing, such as the “Butterfly Ball” fundraiser and the regularly scheduled “Night Owl” series. The Museum also maintains partnerships with 13 public and private environmental and educational organizations to increase its impact on the Central Coast including the Bureau of Land Management, University of California, California Department of Education (California Environmental Educators Consortium), and California State University Monterey Bay.

Annual attendance: 50,000

Temporary Exhibitions

The Museum presents changing exhibitions of artwork related to natural history, both in its galleries and online, and mounts exhibitions of artwork by community members including students and artist organizations as part of an overall strategy to raise community involvement. Annually the Museum partners with the Science Illustration Program at California State University, Monterey Bay to display artwork by the program's graduating students. The

Museum also partners with the Monterey Bay Chapter of the California Native Plant Society to present a Wildflower Show, representing 600 species and varieties of Central Coast wildflowers.

Permanent Collections Exhibitions

Eight permanent exhibitions featuring wildlife, plants, geology, and material culture of the California Central Coast including a biodiversity display, native plant garden, recreation of an historic, local Chinese Fishing Village, and selections from the Native Central Coast basket collection. These exhibitions are refreshed continually, with new objects and interpretation added quarterly and public announcements of changes as appropriate. In addition, the Museum's website contains a searchable database of over 3,000 collections images.

Business Model

In FY15, the Pacific Grove Museum of Natural History received 18% of its revenue from the City, 71% of revenue from contributions, 11% from earned revenue, and less than 1% from investments.

Membership: 550 members, generating \$36,050

A detailed breakdown of Pacific Grove Museum of Natural History income and expenses follows on the next page.

**PACIFIC GROVE MUSEUM
OF NATURAL HISTORY
Operating Budget FY15 (Actual)**

REVENUE

City of Pacific Grove	\$169,000
Contributed	\$675,960
Earned	\$105,454
Investment	\$4,410
Total Revenue:	\$954,824

EXPENSES

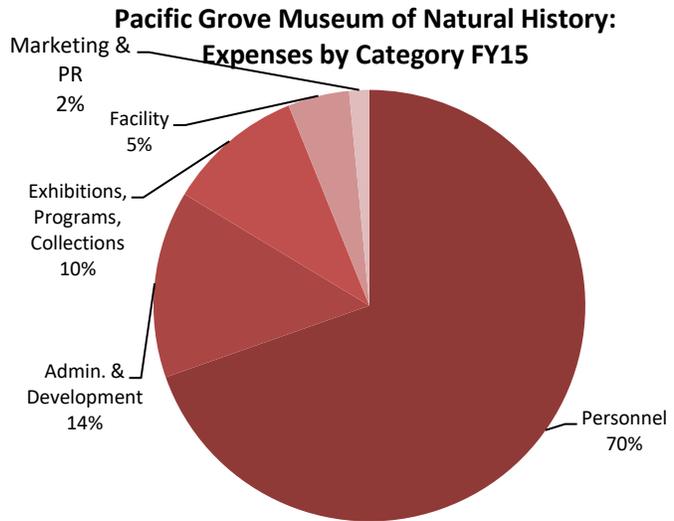
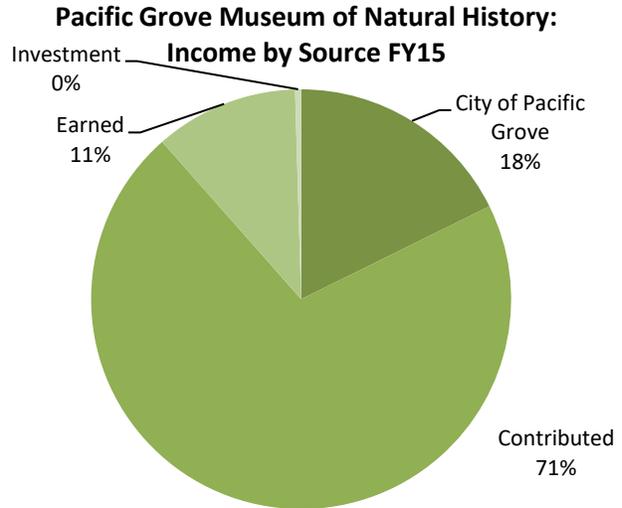
Personnel	\$512,806
Admin. & Development	\$103,296
Exhibitions, Programs, Collections	\$75,538
Facility ¹	\$33,862
Marketing & PR	\$11,088
Total Expenses:²	\$736,590

EXCESS OF REVENUE OVER EXPENSES³ \$218,234

¹ Does not include personnel dedicated to building maintenance

² Excluding depreciation

³ Surplus includes temporarily restricted program funds and contributions to endowment principal



Revenue Detail

Pacific Grove Museum: Contributed Revenue Detail

Source	Revenue	% of Contributed Revenue
Donations ¹	\$148,154	22%
Fundraisers	\$(2,432)	-0.4%
Grants ¹	\$494,188	73%
Memberships	\$36,050	5%
TOTAL	\$675,960	100%

¹ Donations and grants do not include permanently restricted or capital donations

Pacific Grove Museum: Earned Revenue Detail

Source	Revenue	% of Earned Revenue
Admissions	\$45,130	43%
Programs	\$35,627	34%
Rentals	\$2,530	2%
Retail	\$10,033	10%
Misc.	\$12,134	12%
TOTAL	\$105,454	100%

WHATCOM MUSEUM

Mission

The Whatcom Museum provides innovative and interactive educational programs and exhibitions about art, nature, and Northwest history. We seek to stimulate curiosity about our changing cultural, natural, and historical landscapes, for the youngest to the oldest minds, and to inspire preservation of and creative contributions to our region and beyond.

Vision

To share our region's rich heritage with people of all ages and backgrounds, through the museum's exhibitions, programs, and collections.⁶

Governance

The Whatcom Museum is jointly operated by the City of Bellingham and the Whatcom Museum Foundation, a nonprofit 501(c)(3) corporation. The Executive Director of the Museum is a City employee and reports to both the Mayor of Bellingham and the Foundation Board of Trustees. The Executive Director also serves as the CEO of the Foundation.

Nonprofit Support Organization

The Whatcom Museum Foundation was founded in 1968, in alliance with the City of Bellingham, to provide organizational governance and financial backing for the Whatcom Museum in support of the Museum's mission to enhance the quality of life for the community. The Foundation Board is made up of 20 persons, 10 of whom are appointed by the Mayor upon recommendation of the Trustee Committee.

Whatcom Museum Overview

Founding Year	1941
Location	Bellingham, Washington
Metro Area Population	201,140
FY15 Budget	\$2,264,231
City Funding	68%
Governance Model	Jointly operated by the City and the Nonprofit
Accreditation Status	Accredited; reaccreditation due 2017
Staff	23.25 FTE
Attendance	71,900
Website	https://whatcommuseum.org/

⁶ Whatcom Museum, Alchemy of Design, 2017, <http://alchemyofdesign.com/projects/whatcom-museum/>

Operating Agreement

The City of Bellingham entered into a Museum Services Agreement with the Whatcom Museum Foundation (then known as the Whatcom Museum Society) in 2001 whereby the City provided the facilities, staffing, and partial funding for collections maintenance, while the Foundation raised the balance of funds needed to fulfill the Museum's mission.

In 2009, the City and the Foundation modified the Agreement to clarify each entity's obligations and provide for greater independence and separation of management oversight and governance. The duties of the City now include property maintenance, employment of the Museum Director (who reports to the Mayor as a department head, with secondary reporting to the Foundation Board), employment of City staff, financial support, and review of foundation budget and Executive Director's performance. The Foundation is responsible for policy, planning, and budgeting for the Foundation, employment of the Foundation staff, an annual performance review of the Executive Director, and fundraising, among other duties. (A copy of the Museum Services Agreement is included in Appendix B.)

In order to address a lack of clarity on key issues of asset ownership, responsibilities, financial support, and other key issues, an Operating Agreement Task Force was appointed in 2015 to review the Agreement, which renewed at the beginning of that year to 2020. The Task Force will meet with the Mayor in 2017 to design a process and organizational structure which allows for a specified level of City support and management of facilities and collections, and an employment structure that incorporates nonprofit status for employees. To this end, work has begun with the City to update job descriptions and review employee benefit scenarios.

Staffing

Full-time: 16

Part-time: 24

FTE: 23.25

(A copy of the Organizational Chart is included in Appendix A.)

In 2017, the Museum has begun to transition employees from the City to the Foundation. Transitions from public to private employees are being made as City employees retire. For example, a contract Curator was hired to help refresh the Museum's permanent exhibitions, and then joined the staff as Director of Exhibitions upon the retirement of a City employee. The Museum plans to hire an External Affairs Manager in the same manner.

Facilities

Original facility

The original Museum presents historical exhibitions and public programs in the Old City Hall, built in 1892 and located in the downtown cultural district.

Size: 22,000

Additional sites and facilities

The Museum maintains two additional facilities within walking distance of the original building. The Syre Education Center (13,000) opened in 1992 in a repurposed, 1926 fire hall, and contains classrooms, permanent historical exhibits, and the photo archives, which are open to the public for research by appointment. The Lightcatcher building (30,060) was completed in 2009, and is the site of temporary art exhibitions, a family interactive gallery, and collections storage. A new, semi-permanent exhibition gallery on the second floor will open in 2017 focusing on Native Americans of the region.

The original Museum building and the Education Center are owned by the City, while the Lightcatcher building is owned by the Bellingham Whatcom Public Facilities District and leased jointly to the City and the Museum Foundation for \$1 per year.

Accreditation

The Museum is currently working on a re-accreditation self-study, due in April of 2017 for review by the Accreditation Committee in November.

A major criticism received in the previous 2003 Accreditation Report was the “outdated” visitor experience in the historic main facility, therefore the development of new permanent exhibitions has been a goal, and is being funded by private donors and a portion of the annual allowable Foundation endowment draw.

Collections

The Whatcom Museum collects art, history, and ethnography, along with historic photographs and related ephemera. With an emphasis on the Victorian era, the collection includes examples of everyday domestic items; tools and equipment vital to the agricultural, timber, and fishing industries; as well as other items representing prominent milestones in the development of the Pacific Northwest and region. The collection includes approximately 500 Native American baskets with an emphasis on those made by people from the coastal regions of Alaska, British Columbia, and Washington.

Number of artifacts: 30,000 artifacts plus 200,000 items (photo archives)

Deaccessioning

Items in the history collections not directly related to the Museum's mission have been deaccessioned. They were reviewed and voted upon by the Foundation Board, who has management authority of the Museum on behalf of the City, per the Operating Agreement.

Visitor Experience

The Museum provides educational programs and exhibitions about art, nature, and Northwest history, along with concerts and family programming. The Museum became a Smithsonian Affiliate in 2009.

Annual attendance: 71,900

Temporary Exhibitions

Temporary art exhibitions in the Lightcatcher building average four per year. The Museum has toured selected temporary exhibitions to other museums in the U.S.

Permanent Collections Exhibitions

A community-wide focus group process was held, facilitated by independent content and design consultants, to learn what kind of history, natural history, and ethnographic exhibits the community wanted to see and experience. The process culminated in the development of a *Master Interpretive Plan* focusing on the development of new permanent exhibitions in the historic buildings. An exhibit designer was brought on in 2015, with construction beginning in 2016 and completed in 2017. Objects were reinstalled and content re-interpreted, with the addition of interactive elements including touch screens, video, and audio. "Salish Coast Peoples" gallery, a semi-permanent exhibition will open in 2017 focusing on Native Americans of the region, and designed in consultation with tribe members and other advisors.

Business Model

In FY15, the Whatcom Museum received 68% of its operating income from the City, with the balance of 32% being provided by the Foundation through contributed (14%), earned (15%), and investment income (3%).

Membership: 1,595 members, generating \$121,272

A detailed breakdown of Whatcom Museum income and expenses follows on the next page.

WHATCOM MUSEUM
Operating Budget FY15 (Actual)

REVENUE	
City of Bellingham	\$1,542,900
Contributed	\$306,375
Earned	\$348,321
Investment	\$67,112
Total Revenue:	\$2,264,708

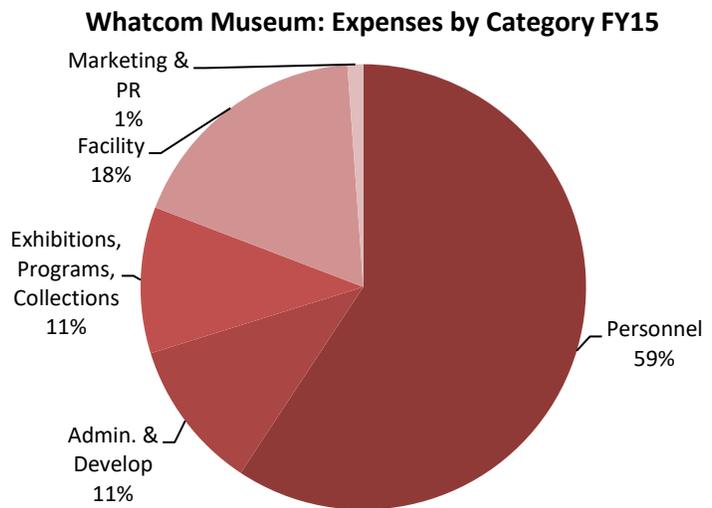
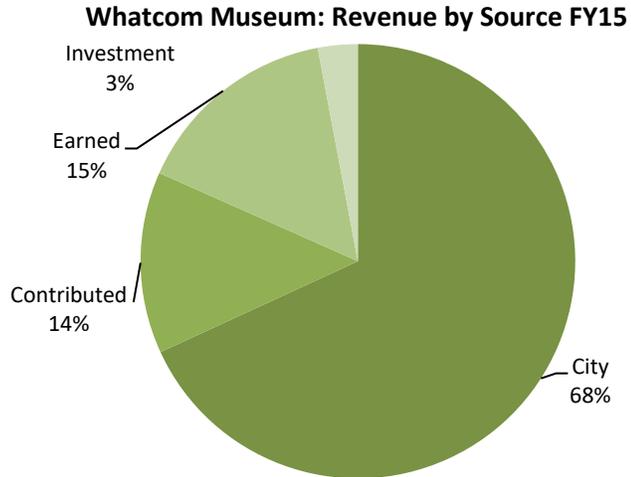
EXPENSES	
Personnel	\$1,342,142
Admin. & Development	\$246,937
Exhibitions, Programs, Collections	\$240,727
Facility ¹	\$408,606
Marketing & PR	\$25,819
Total Expenses:²	\$2,264,231

EXCESS OF REVENUE OVER EXPENSES³ \$477

¹ Does not include personnel dedicated to building maintenance

² Excluding depreciation

³ Surplus operating revenue is added to the Foundation's unrestricted assets



Revenue Detail

Whatcom Museum: Contributed Revenue Detail

Source	Revenue	% of Contributed Revenue
Donations ¹	\$82,084	27%
Fundraisers	\$95,244	31%
Grants ¹	\$7,775	3%
Memberships	\$121,272	40%
TOTAL	\$306,375	100%

¹ Donations and grants do not include permanently restricted or capital donations

Whatcom Museum: Earned Revenue Detail

Source	Revenue	% of Earned Revenue
Admissions	\$70,700	20%
Programs	\$146,975	42%
Rentals	\$80,533	23%
Retail	\$50,133	14%
TOTAL	\$348,341	100%

OBSERVATIONS AND TRENDS

The following observations and trends have been drawn from studying the four Benchmark Museums.

Overview

1. In comparison with benchmark organizations, RMM:
 - a. receives the largest (97%) percentage of City support, and the smallest (3%) of contributed support; it is the only Museum to receive no earned income
 - b. spends the largest (15%) percentage of funds on administrative expenses, and the smallest (10%) on exhibitions, programs, and collections
 - c. attracts the fewest number of visitors
 - d. is the only organization that does not charge an admission fee, or fees for programs, though all Benchmark Museums are city-owned
 - e. presents the fewest number of temporary exhibitions each year, and keeps these exhibitions on view for the longest amount of time
2. Diversification of income sources is key to sustainability, with benchmark organizations placing equal emphasis on generating earned and contributed income.
3. Vibrant public programming which engages and attracts the community relies on regular, frequent, and quality offerings developed with the input of desired audiences, when possible.
4. Curatorial specialists are frequently retained as contractors while full-time staff members in the areas of exhibitions and collections tend to be generalists with skills in program presentation and collections care.
5. The success of the nonprofit partner hinges on the strategic recruitment and involvement of Board Members and a mutual understanding of roles and responsibilities between the Executive Director (who is in charge of day-to-day operations) and the Board (that sets policy, determines strategy, and raises funds).
6. A formal agreement between the city and the nonprofit partner clarifies the role of each party and provides a basis for ongoing operations.

Governance

There are three governance structures represented in this report:

1. City-owned and operated, with a private nonprofit support organization (Longmont Museum). The Executive Director is a City employee.

2. City-owned and operated by a contracted private nonprofit organization (Bowers Museum, Pacific Grove Museum of Natural History). Executive Directors/CEOs are employees of the nonprofit organizations.
3. City-owned and jointly operated by the City and the private nonprofit organization (Whatcom Museum). The Executive Director is a City employee, and serves as CEO of the Foundation.

(Written legal agreements between the cities and the private nonprofit organizations are included in Appendix B.)

Nonprofit Support Organization

1. Nonprofit support organization boards range from seven members (Longmont Museum) to 33 members (Bowers Museum), and tend to grow over time with the level of the nonprofit support partner's fund generation and responsibility for operations.

Operating Agreement

1. With the initiation of an Operating Agreement between the museum and the nonprofit partner, an initial, set period of funding is typical. Funding is subsequently adjusted, at times based on actual operating expenses and available revenue.
2. Operating Agreements of Benchmark Museums are long-range, with terms extending 25 to 30 years.
3. The city partners of Benchmark Museums with Operating Agreements in place maintain the facilities and cover major repairs.

Staffing

1. The Bowers Museum has the largest staff (53 FTE), while the Longmont Museum has the smallest (12 FTE).
2. Employees of the Bowers Museum and the Pacific Grove Museum of Natural History are all employees of the nonprofit organization, while the Whatcom Museum has a mix of public and private employees. Staff members of the Longmont Museum are all employed by the City.
3. In the case of both the Longmont Museum and the Whatcom Museum, major staff changes were possible after the retirement of long-time City employees.

Facilities

1. All benchmark facilities are owned by their cities, which either maintain the facilities or provide funds to the nonprofit organization to do so.

2. All Benchmark Museums have facility rental programs, which generate between 2% (Pacific Grove Museum of Natural History) and 19% (Bowers Museum) of total earned revenue, and 0% (Pacific Grove Museum of Natural History) and 4% (Bowers Museum and Whatcom Museum) of total revenue.
3. In the case of the Longmont Museum, historic properties owned by the City are not managed by the Museum, but by other City Departments. The historic structures are rented out for approved use to generate funds for preservation of the properties.

Accreditation

1. The Bowers Museum, Pacific Grove Museum of Natural History, and the Whatcom Museum are accredited by the American Alliance of Museums, with reaccreditation scheduled for 2017 (Whatcom Museum) and 2019 (Bowers Museum, Pacific Grove Museum of Natural History).
2. The Longmont Museum has not yet applied for accreditation, but plans to begin the process in the near future.

Collections

1. The Bowers Museum maintains the largest collection (120,000 objects), while the remaining three Museums each maintain collections of 30,000 artifacts (not including archives), while the RMM cares for the greatest number at 200,000 (including archives).
2. The Benchmark Museums are able to maintain up-to-date collections inventory records by following regular work schedules and supplementing staff with volunteers and interns.
3. Deaccessioning is a common practice among Benchmark Museums, which follow AAM protocol and use funds generated through the sale of deaccessioned objects for new acquisitions and/or collections care.

Visitor Experience

1. The Benchmark Museums offer permanent exhibitions complemented by a regular schedule of temporary exhibitions and public programs.
2. The Benchmark Museums regularly refresh permanent exhibitions by adding new acquisitions or collections objects, re-installing existing objects with added interpretation, along with routine painting and cleaning.
3. Temporary exhibitions are a major draw for visitors and community members and range from high profile, “blockbuster” offerings presented by the Bowers Museum to regional offerings such as the “Colorado Low Rider: Cars and Culture” exhibition at the Longmont Museum, and exhibitions organized by community groups, such as “The Wildflower Show” presented at the Pacific Grove Museum of Natural History by the Monterey Native Plant Society.

4. Following table shows the number and average duration of temporary exhibitions presented by the Benchmark Museums each year:

Comparison of Temporary Exhibition Programs

	RMM	Bowers	Longmont	Pacific Grove	Whatcom
Number of Temporary Exhibitions Per Year	2	4	6	4	9
Average duration of Temporary Exhibitions	2 years	4 months	8 months	6 weeks	3 months

The duration of temporary exhibitions vary, with the Pacific Grove Museum of Natural History having the most rapid turnover at 6 weeks, and the Longmont Museum with the least turnover at 8 months.

Business Model

1. Operating budgets of the Benchmark Museums range from approximately \$5.5 million (Bowers Museum) to \$750,000 (Pacific Grove Museum of Natural History). The RMM operating budget falls in the middle at approximately \$1.7 million.
2. The following table compares the breakdown of overall revenue and expenditures of the RMM and the Benchmark Museums:

Comparison of Operating Budgets

	RMM	Bowers	Longmont	Pacific Grove	Whatcom	Median
REVENUE						
City	97%	25%	78%	18%	68%	47%
Contributed	3%	42%	5%	71%	14%	28%
Earned	0%	22%	17%	11%	15%	16%
Investment	0%	11%	0%	0%	3%	2%
EXPENSES						
Personnel	61%	50%	63%	70%	59%	61%
FTE	14.25	53.00	12.00	12.25	23.50	18.00
Admin. & Development	15%	11%	7%	14%	11%	11%
Exhibitions, Programs, Collections	10%	17%	19%	10%	11%	14%
Facility	9%	18%	8%	5%	18%	13%
Marketing & PR	4%	3%	2%	2%	1%	2%

Revenue

- Of the Benchmark Museums, the Pacific Grove Museum of Natural History receives the smallest percentage (18%) of City support, while the Longmont Museum receives the highest (78%). RMM receives by far the greatest percentage (97%) of operating funds from the City.
- The Pacific Grove Museum of Natural History receives the greatest percentage (71%) of contributed income, while the Longmont Museum receives the smallest percentage (5%). By comparison, the RMM receives 3% of its revenue from contributions.
- Membership is part of contributed revenue. The following chart compares membership numbers and revenue:

Comparison of Membership Programs

	RMM	Bowers	Longmont	Pacific Grove	Whatcom
Member Households	460	7,500	650	550	2,000
Basic Membership Fee	\$30	\$50	\$40	\$45	\$50
Total Member Revenue	\$7,998	\$522,265	\$13,000	\$36,050	\$121,272
Average Contribution per Member	\$17	\$70	\$20	\$66	\$61

- Membership households amongst the Benchmark Museums range from 7,500 (Bowers Museum) to 550 (Pacific Grove Museum of Natural History). RMM has the fewest members (460). However, among Benchmark Museums Longmont Museum has the lowest basic membership fee (\$40) and average contribution per member (\$20), and thus the smallest revenue of the benchmark group (\$13,000). RMM has the overall lowest basic membership fee (\$30), with an average member contribution of \$17.
- The following chart compares percentages of earned income (RMM receives no earned income and therefore is not included in this chart):

Comparison of Earned Revenue

SOURCE	Bowers		Longmont		Pacific Grove		Whatcom	
	% Earned	% Total	% Earned	% Total	% Earned	% Total	% Earned	% Total
Admissions	45%	10%	43%	7%	43%	5%	20%	3%
Programs	17%	4%	39%	7%	45%	5%	42%	6%
Rentals	19%	4%	4%	1%	2%	0%	23%	4%
Retail	20%	4%	14%	2%	10%	1%	14%	2%
TOTAL	100%	22%	100%	17%	100%	11%	100%	15%

8. Within the Benchmark Museums, the Bowers Museum receives the greatest percentage of overall revenue from earned sources (22%), with the Pacific Grove Museum of Natural History receiving the smallest percentage (11%).
9. With the exception of Whatcom Museum, the Benchmark Museums receive the majority of their earned income from admissions. The three smaller museums (Longmont Museum, Pacific Grove Museum of Natural History, and Whatcom Museum) receive a greater percentage of earned income from programs than rentals or retail.
10. The following table compares admissions numbers and revenue:

Comparison of Attendance and Admissions

	Bowers	Longmont	Pacific Grove	Whatcom
Attendance	150,000	62,652	50,000	71,900
Basic Admissions Fee	\$13 weekdays \$15 weekends	Free	\$8.95 (Free to County Residents)	\$10
Special Exhibition Admission Fee	\$23 weekdays \$25 weekends	\$8	N/A	N/A
Total Admissions Revenue	\$571,643	\$97,371	\$45,130	\$70,700
Average Fee per Visitor	\$4	\$2	\$1	\$1
% of visitors paying Basic Admissions Fee¹	27%	19%	10%	10%

¹ Percent of visitors paying basic admissions fee has been calculated by dividing total admissions revenue by average admissions fee, and dividing the result by the attendance figure. The number of free or discounted entries account for percentage paying other than basic fee.

11. Admissions range from \$8 to \$10 for the three smaller Benchmark Museums (Longmont, Pacific Grove Natural History, and Whatcom), and up to \$25 for the largest (Bowers Museum). The Longmont Museum and the Pacific Grove Museum of Natural History both provide free basic entry for residents.
12. Median investment income of all Benchmark Museums is 2%, with Bowers Museum generating 11% of operating revenue from this source. Maintaining an endowment and/or operating reserve which generates interest revenue further diversifies income and contributes to the stability and sustainability of the Museum.

Expenses

13. Personnel expenses range from 70% (Pacific Grove Natural History Museum) to 50% (Bowers Museum), while RMM budgeted 61%.
14. Administrative costs range from 14% (Pacific Grove Museum of Natural History) to 7% (Longmont Museum), with RMM budgeting the highest percentage at 15%.

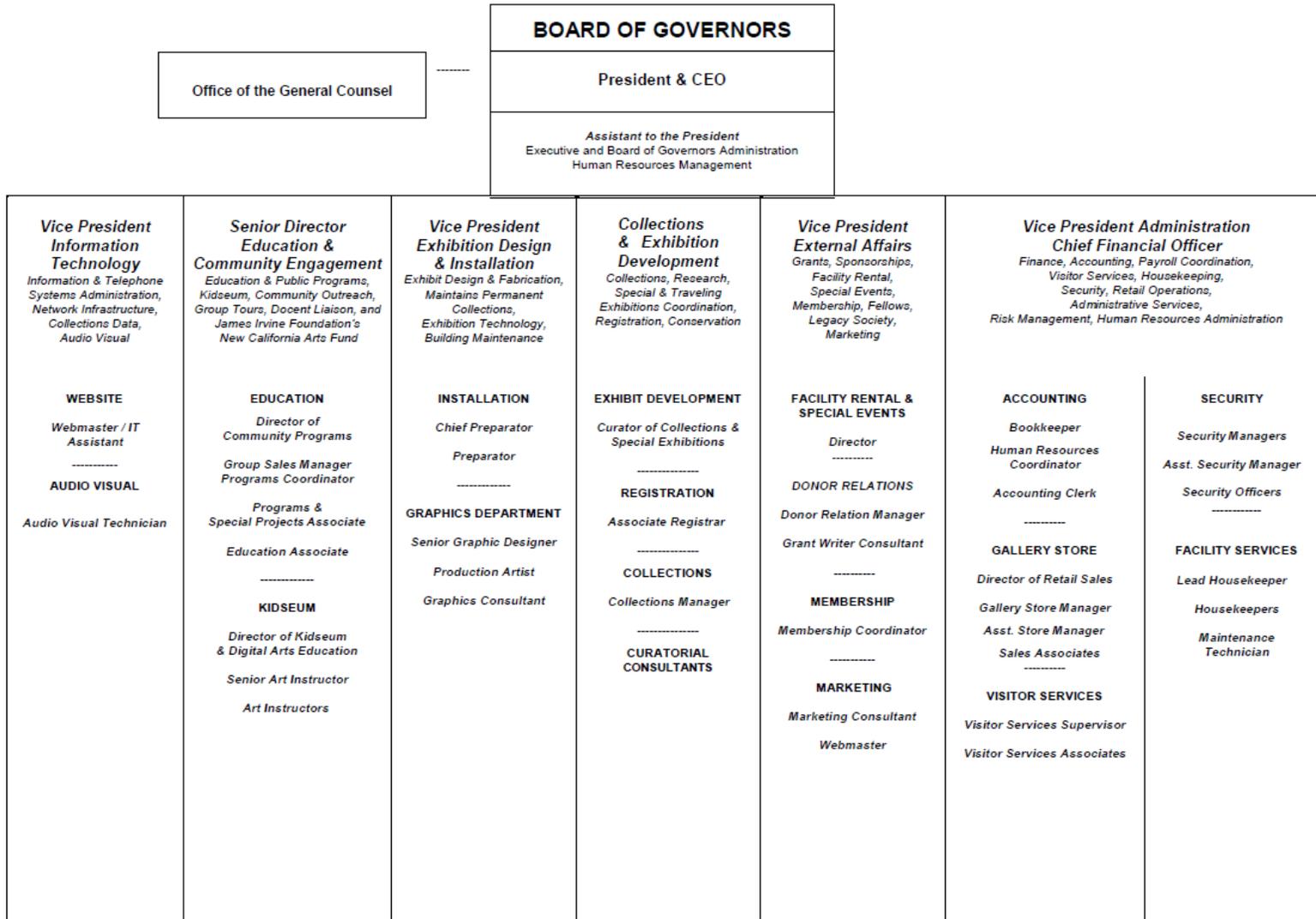
15. Exhibitions, programs, and collections expenses range from 10% (Pacific Grove Museum of Natural History) to 19% (Longmont Museum) RMM budgeted 10% in this area.
16. Bowers Museum and Whatcom Museum spend the greatest percentage on facilities (18%), with Pacific Grove Museum of Natural History spending the least (5%). RMM budgeted 9% on facilities.
17. Marketing and public relations expenses range from 3% (Bowers Museum) to 1% (Whatcom Museum). RMM budgeted 4% in this area, but actually spent less in FY16.

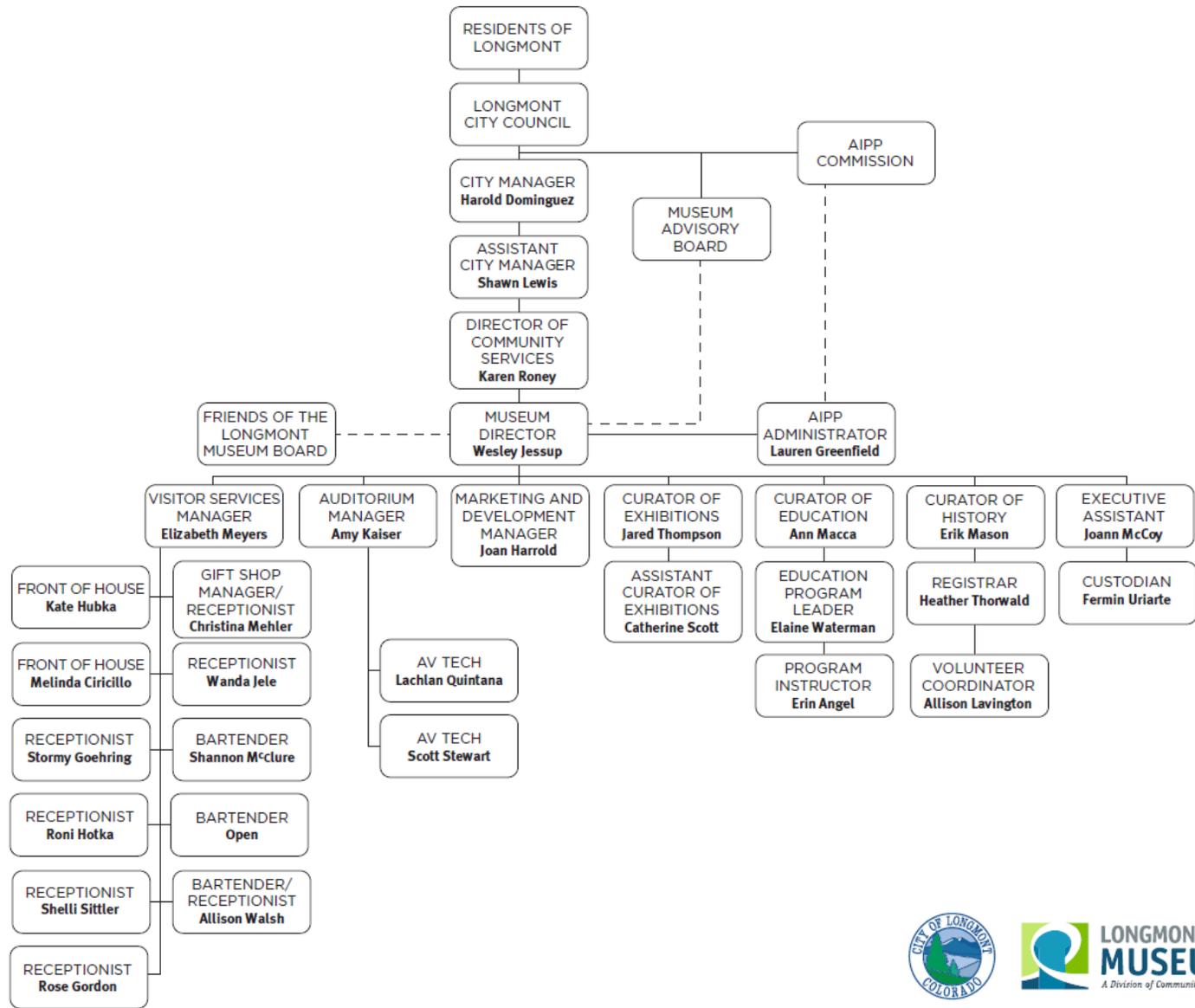
APPENDICES

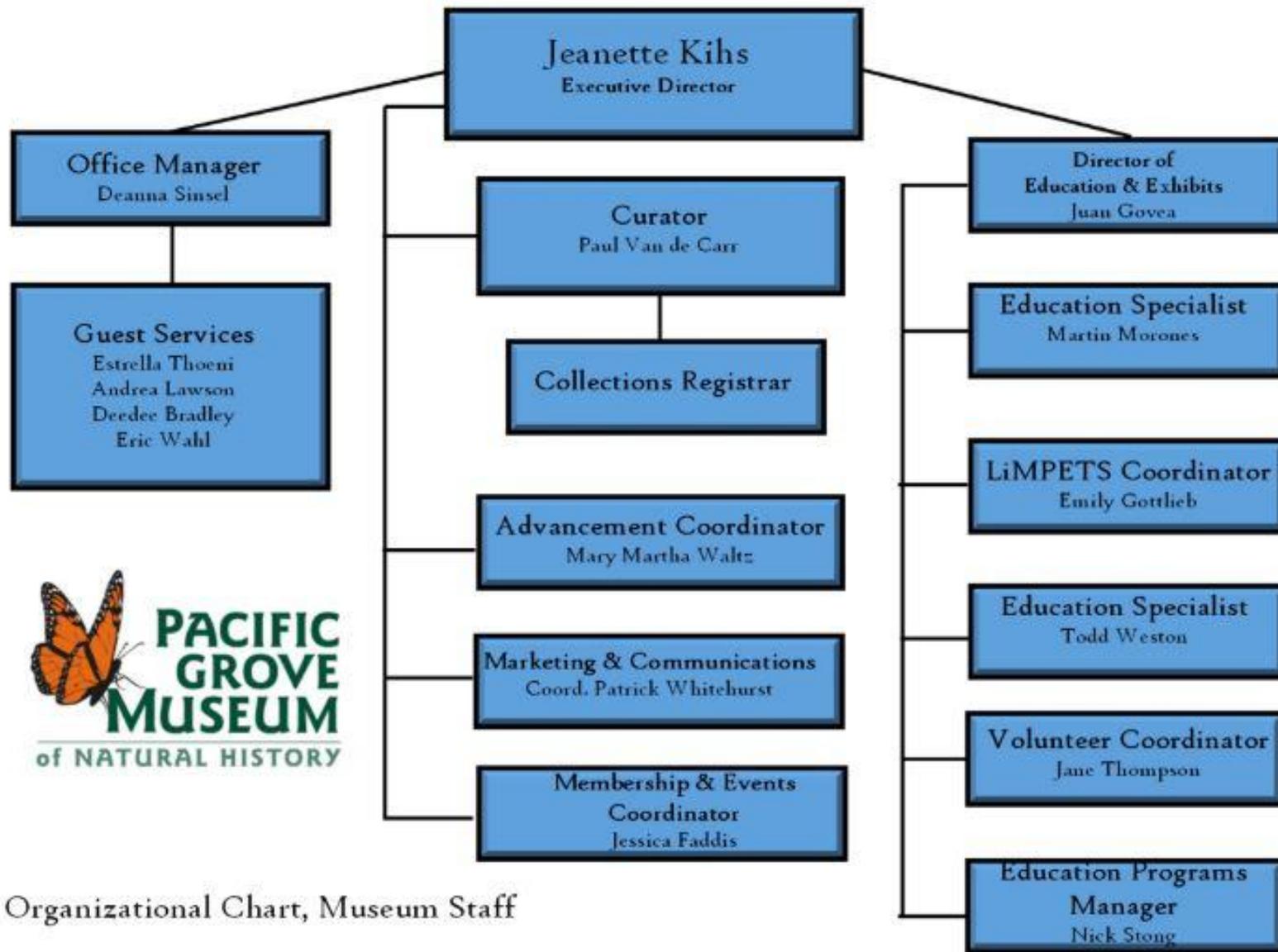
APPENDIX A:
ORGANIZATIONAL CHARTS

BOWERS MUSEUM

Organizational Chart

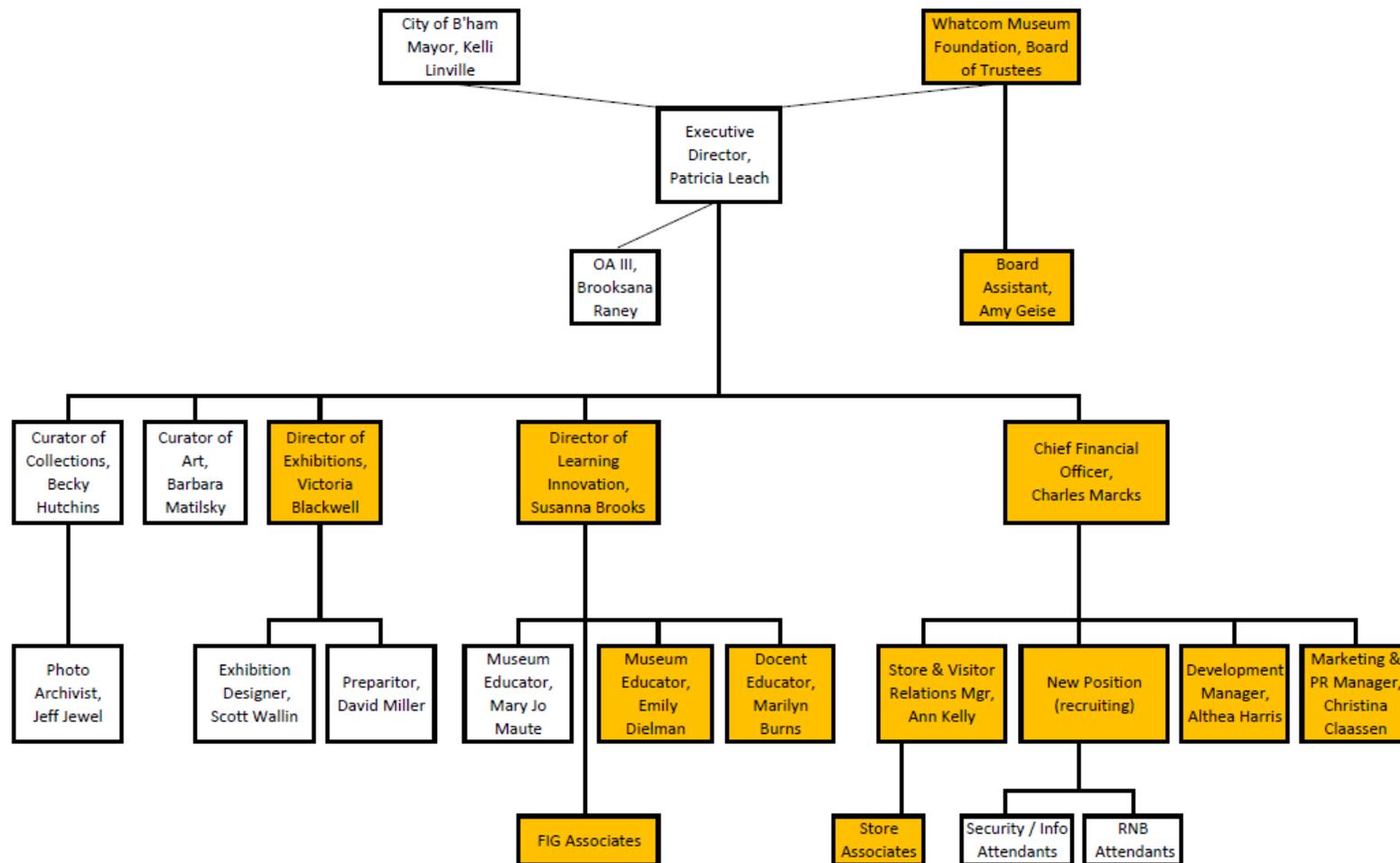






Organizational Chart, Museum Staff

Whatcom Museum Organizational Chart



White boxes indicate City of Bellingham employees; orange boxes indicate Museum Foundation Employees

v02.23.2017

APPENDIX B:
LEGAL AGREEMENTS BETWEEN
CITIES AND NONPROFIT PARTNER

BOWERS MUSEUM

**AGREEMENT BETWEEN CITY OF SANTA ANA AND THE
CHARLES W. BOWERS MUSEUM CORPORATION 2001**

A-2001-129

INSURANCE ON FILE
WORK MAY PROCEED
UNTIL INSURANCE EXPIRES
6-30-2003
CLERK OF COUNCIL
DATE: 10-30-01

AMENDED AND RESTATED OPERATING AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of June, 2001, by and between the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, hereinafter referred to as "City," and the Charles W. Bowers Museum Corporation, a California nonprofit public benefit corporation, hereinafter referred to as "Corporation."

RECITALS

- A. The Charles W. Bowers Memorial Museum (the "Museum") is owned by the City and operated by the Corporation in accordance with the terms of this Agreement and a conveyance in trust by the late Charles W. Bowers and his wife Ada Bowers (the "Bowers Trust"). The Museum is composed of several buildings and other improvements located at 2002 North Main Street (the "Premises"). Under separate agreements, the Corporation leases a parking lot from the Santa Ana Community Redevelopment Agency immediately south of the Premises as well as a childrens' museum adjacent thereto.
- B. The Corporation is a non-profit public benefit corporation organized and existing under the laws of the State of California for the purpose of managing and operating the Museum.
- C. The City and the Corporation entered into that certain Agreement dated April 20, 1987 for the purpose of establishing a program whereby the Corporation would undertake full operation and maintenance of the Museum on behalf of the City for a period of twenty years. The Agreement was amended in 1993, among other things, to grant the Corporation the option to extend the term of Operating Agreement. The Agreement was also amended in 1999 to extend the term five years and to modify the terms of the City operating assistance. The Agreement as amended in 1993 and 1999 shall hereafter be referred to as the 1987 Operating Agreement.
- D. Under the terms of the 1987 Operating Agreement, the Corporation agreed to be fully responsible for the cost of both operating the Museum and maintaining the Premises. In exchange for the license to operate and maintain the Museum, the City agreed to provide operating assistance, which would increase in accordance with the cost of living for the first ten years, and then decline to zero over the second ten years. The 1999 amendment caused the operating assistance to be stabilized for a period of five additional years before beginning to decline.
- E. The City and the Corporation have now determined that it is not economically feasible for the Corporation to operate the Museum at a mutually acceptable level of programming and maintain the Premises appropriately without permanent economic participation by the City.
- F. The Corporation also leases or licenses three other facilities from the Community Redevelopment Agency of the City of Santa Ana which are part of the overall operations of the

Museum. They are the Bowers Kidseum located at 1802 N. Main Street, the Bowers Museum Parking Lot located at 1900 N. Main Street and a storage facility located at 430 E. Third Street. While these facilities, hereafter collectively referred to as the "Associated Properties", are not part of this Agreement, the City and the Corporation desire to reflect the costs of operation of those facilities within the overall costs of the Museum.

G. Under this Amended and Restated Operating Agreement the parties propose to restate the Agreement to (1) extend the Term of the Agreement, (2) to provide that the City's operating assistance will be fixed annually at the cost for repair and maintenance of the Premises, (3) to provide for City funding of Capital Repair and Replacement, as necessary; and (4) make certain other technical modifications to the Agreement.

WHEREFORE, for and in consideration of their mutual and respective covenants and promises hereinafter set forth, and subject to the terms and conditions of this Agreement, the parties hereto do hereby agree as follows:

ARTICLE 1 PRELIMINARY MATTERS

§ 1.01 Definitions

As used in this Agreement, the following terms shall have the following meanings:

- (a) "City" means the City of Santa Ana, California.
- (b) "City Council" means the City Council of the City.
- (c) "City Manager" means the City Manager of the City.
- (d) "City Attorney" means the City Attorney of the City.
- (e) "Clerk of the Council" means the Clerk of the Council of the City.
- (f) "Corporation" means the Charles W. Bowers Museum Corporation, a California nonprofit public benefit corporation.
- (g) "Board" means the Board of Governors of the Corporation.
- (h) "Museum President" means the chief executive officer retained by the Corporation to manage and operate the Bowers Museum.
- (i) "Premises" means the land shown on the map attached to this Agreement as Exhibit

A, and incorporated herein by reference, together with all improvements thereon.

- (j) "License" means the license specified in Section 2 of this Agreement.
- (k) "Commencement Date" means May 1, 1987.
- (l) "Term" means a period of thirty-nine (39) years from and after the Commencement Date, and any extended term occurring by reason of the Corporation's exercise of the option herein granted in Section 2.02.
- (m) "Capital Repair and Replacement" shall mean periodic upgrade and/or replacement of items or systems maintained and repaired by the Corporation pursuant to Section 1.01(n) exemplified by such things as replacement of roofs, repainting of exterior walls and replacement of floor coverings, replacement of worn climate control components such as compressors, fans, motors, etc.; repaving of parking lots; replacement/upgrades of doors, stairs, ramps, etc due to changes in access or other legal requirements; and replacement of elevator motors, controls and components.
- (n) "Regular Maintenance and Repair" shall mean costs for labor [including Allocable Internal Administrative Costs] and materials for:
 - (1) all cleaning, janitorial and landscape maintenance services for the Premises [which shall include waste management, trash removal and vermin control];
 - (2) maintenance and repair of climate control systems and equipment [such as replacement of filters, coolants, repair of minor leaks, cleaning of ducts, replacement of registers and adjustment of balancers];
 - (3) maintenance and repair of electrical and lighting systems and circuits [such as replacements of bulbs, ballasts, and fluorescent tubes, repair/replacement of circuit breakers, electrical outlets, lighting fixtures and diffusers];
 - (4) maintenance and repair of plumbing systems [such as repair/replacement of bathroom fixtures, drinking fountains, landscape irrigation, fire sprinkler heads];
 - (5) maintenance and repair of roofs and drainage systems [such as regular inspection and repair of minor or periodic roof leaks, cleaning of all gutters, downspouts and surface drainage systems];

- (6) maintenance and repair of signs, windows and doors [such as replacement of broken or cracked windows, and repair of broken or worn interior and exterior doors and hardware including locks];
 - (7) maintenance and repair of elevators [such as all routine inspection and upkeep, minor repairs and payment of maintenance contracts];
 - (8) maintenance and repair of telecommunications and security systems [such as maintenance/repair/replacement of telephone instruments, wiring, and switches, and maintenance/repair/replacement of all elements of any electronic/automatic security system];
 - (9) maintenance and repair of parking lots and patios and courtyards including landscaping [such as cleaning, inspecting and repairing of minor cracks in asphalt and sidewalks (other than public rights of way), restriping parking spaces and posting of all parking signs and controls, gates etc., repair/replacement of handrails and safety and directional lighting, and replacement of dead or diseased plants and trees (other than mature trees)];
 - (10) maintenance and repair of interior and exterior walls and floor surfaces [such as painting and repainting of interior walls, doors and trim, removal of graffiti and minor repainting of exterior walls due to repair of minor damage, and cleaning and repairing of carpeting and other floor coverings]; and,
 - (11) payment of all utility costs for water, gas and electricity, but excluding telecommunication;
 - (12) premiums for third party personal injury and property damage insurance for losses arising from the operation of the Museum and/or conditions of the Premises.
- (o) "Allocable Internal Administrative Costs" shall mean Six Hundred Seventy Two Thousand Dollars (\$672,000) of the Corporation's total payroll and benefit costs for labor, adjusted annually according to the Consumer Price Index for All Urban Consumers (CPI) during the prior twelve (12) month period for the Los Angeles-Long Beach-Anaheim area.)

§ 1.02 Status of Corporation

(a) By its execution of this Agreement, Corporation warrants that it is duly incorporated under the laws of the State of California and that true and correct copies of its Articles of

Incorporation and Bylaws and a true and correct listing of Corporation's governors and officers and their terms of office, certified as such by Corporation's Secretary, have been filed with the Clerk of the Council.

(b) By its execution of this Agreement, City accepts and agrees to the organization of the Corporation as set forth in the above said Articles of Incorporation and Bylaws.

§ 1.03 Compensation of Board Members and Meetings

(a) The members of the Board shall serve without compensation other than reimbursement for expenses incurred by them in the course of the performance of services for the Corporation when authorized by the Board.

(b) The Corporation shall conduct its board meetings in accordance with applicable law.

§ 1.04 Changes in Governors and Officers, Articles and Bylaws

The Corporation shall notify the Clerk of the Council of any change in the membership of Board and any change in the officers of the Corporation. Any amendment of the Corporation's Articles or Bylaws shall be filed with the Clerk of the Council.

§1.05 City Representation on the Board

The City Manager or his/her designated representative shall be entitled to attend all meetings of the Board and to participate in the discussions of the Board to the same extent as the members of the Board, and Corporation shall assure that the City Manager or his/her designated representative is provided with reasonable advance notice of all meetings of the Board. Nothing herein shall be construed to provide the City Manager or his designated representative with any authority to make, second, or vote on motions, or to cause him to be counted for purposes of determining whether a quorum exists, at meetings of the Board.

§1.06 City Residents on the Board

At least two members of the Board shall be City residents. If the number of members who are City residents become less than two due to the death, resignation, or change of residence of a member, The Corporation shall not be in default under this section, provided, however, that the next member appointed to the Board shall be a City resident.

ARTICLE 2
LICENSE FOR USE AND OCCUPANCY
OF THE PREMISES

§ 2.01 Grant of License

City hereby grants to the Corporation, and the Corporation hereby accepts, a license for the occupancy and use of the Premises during the Term for the uses and purposes set forth, in this Agreement and subject to the terms and conditions of this Agreement.

§2.02 Option to Extend Term

The Corporation is hereby granted the option to extend the Term for two (2) ten (10) year periods following expiration of the initial term or any prior extended term, by giving notice to the City not less than one (1) year or more than two (2) years before expiration of the term to be extended, as applicable; provided however, that such notice shall be of no force or effect if at the time of notice the Corporation is in material default of this Agreement and such default is continuing.

§ 2.03 Additions and Alterations

Throughout the Term, Corporation shall make no substantial additions or alterations to the buildings and grounds except after providing the City Manager with an opportunity to review and comment upon the plans for such additions or alterations. The retention and enhancement of the current physical character and appearance of the buildings and grounds shall be a primary objective in determining the propriety of any proposed addition or alteration.

§ 2.04 Personal Property

The City and the Corporation agree that all personal property including, but not limited to, furnishings, equipment, exhibit materials and collection materials shall become the property of the Corporation for its use for purposes of this Agreement. The Corporation shall not sell or otherwise dispose of any such items other than in the ordinary course of business and consistent with good museum practices and procedures regarding de-accession. The Corporation shall maintain such property in good condition, reasonable wear and tear excepted.

Upon termination of this Agreement for whatever reason whatsoever, all right title and interest of the Corporation in all property referenced in this Section, including all items of personal property donated or loaned to the Corporation for museum purposes shall be turned over and become the property of the City, subject to such loan or trust agreements and/or conditions affecting the Corporation's ownership or use of such property. The terms and conditions of any such donation or loan shall prevail over any inconsistent term or condition of this Agreement.

ARTICLE 3
MUSEUM OPERATIONS

§ 3.01 Corporation's Undertaking to Operate Museum

Corporation hereby agrees to operate the Museum open to the public on the Premises during the Term, subject to the terms and conditions herein set forth.

§ 3.02 Operation and Maintenance Standards

Corporation agrees that its operation of the said Museum shall be in accordance with the following standards:

(a) The Premises and the museum operations carried on thereon shall be known formally as the "Charles W. Bowers Memorial Museum" and referred to less formally as the "Bowers Museum." All operations shall likewise conform in all respects to all other requirements of that certain Trust No. 58, created the 26th of May, 1924, by C. W. Bowers and Ada A. Bowers, his wife, as Trustors, and the First National Bank of Santa Ana as Trustee.

(b) The Corporation shall display exhibits and conduct programs having artistic, scientific, cultural, or historic interest on the Premises. Such exhibits and programs shall be held open to the general public on a regular basis without regard to race, color, creed, religion, sex, marital status, national origin, or ancestry.

(c) The Corporation shall be responsible for all Regular Maintenance and Repair of the Premises and the Associated Properties..

(d) The Corporation shall be responsible for carrying out all Capital Repair and Replacement of the Premises and the Associated Facilities subject to funding approved by the City pursuant to Section 4.07 (e), unless otherwise agreed by the City and the Corporation.

(e) Corporation shall not permit any use of the Premises, except those authorized by this Agreement or by written authorization of the City Manager.

(f) Corporation will operate and manage the Museum in a competent and efficient manner at least comparable to other well-managed operations of the same type.

(g) The name "Bowers Museum" or "Charles W. Bowers Memorial Museum" and similar usages of the name Bowers in conjunction with a museum shall at all times remain the sole property of the City of Santa Ana, and right of the Corporation to use the name in connection with a museum, art gallery, exhibition or show shall be limited to the license for such use granted hereby.

Such right of use shall expire upon termination, for whatever cause, of this Agreement.

(h) The Corporation shall be responsible for retaining security personnel and systems to adequately protect the facility and collections.

§ 3.03 Permitted Activities

In addition to normal museum operations, under the license herein granted, Corporation may conduct or permit the following activities on the Premises:

(a) Events designed to raise funds for the benefit of the Museum or promote Museum interests.

(b) Meetings of persons involved in Museum activities.

(c) Events sponsored by the City of Santa Ana or by community organizations, subject to Corporation's normal scheduling procedures.

(d) The operation of a shop for the sale of books, artifacts or pictorial reproductions and similar items pertaining to Museum exhibits and programs or otherwise having artistic, scientific, cultural or historical interest.

(e) The operation of a restaurant provided that any agreement for such restaurant operation shall grant no rights any greater than those enjoyed by the Corporation under this Agreement, or operate as an assignment of any duties or rights of the Corporation under this Agreement.

(f) The licensing or renting out of Museum facilities on an occasional basis for such activities as weddings, corporate parties and other events for which the public may want to rent all or part of the Museum.

§ 3.04 Museum Staffing Levels

(a) Corporation shall at all times retain sufficient active, qualified, competent staff to conduct the Museum operations. Corporation shall maintain supervision over such personnel to insure the maintenance of a high standard of service to the public. Corporation shall take appropriate action against any employee whose conduct is detrimental to the maintenance of such standard.

(b) Except as otherwise provided herein, all personnel retained by Corporation to perform services pertaining to Museum operations shall be employees or independent contractors of Corporation which shall be solely responsible for the terms and conditions of employment thereof

and for any and all wages, salaries, benefits and expenses due or owing thereto, and for any claims or liability arising out of the employment thereof.

(c) City and Corporation, by one or more separate agreements, may arrange for City officers and employees to perform services pertaining to Museum operations upon such terms and conditions as may be mutually agreeable to the parties. The City Manager and the Museum President are authorized to execute such agreements on behalf of City and Corporation.

§ 3.05 Exhibits and Materials and Collections

Corporation shall have full control over the custody, display, and storage and disposition of exhibit items, collections, and research materials on the Premises or stored elsewhere for future use on the Premises and shall bear sole responsibility for the protection of the same from damage, destruction, theft or loss. Corporation shall likewise have control and responsibility for the interior design and decoration of the buildings on the Premises as appropriate for the accommodation of exhibits.

ARTICLE 4
REPORTS AND RECORDS
AND COMPENSATION

§ 4.01 The Fiscal Year

Corporation's fiscal year shall be July 1 of each calendar year through June 30 of the following calendar year.

§ 4.02 Annual Budget and Program Report

At the time called for in §4.07(a), Corporation shall provide the City Manager with a copy of a detailed operating budget showing expected sources of revenue and the nature of all expected or proposed expenditures for the forthcoming fiscal year and a report on the proposed programs to be undertaken by the Corporation in the said forthcoming fiscal year. Included therein shall be the proposed maintenance and repair budget described in Section 4.07 for the purpose of allowing City to determine the compensation to be paid to Corporation pursuant to said Section.

§ 4.03 Annual Financial Statement and Audit

Within one hundred twenty (120) days following the end of each fiscal year, Corporation shall submit to the City Manager a complete statement of Corporation's revenues and expenditures and a financial audit for the preceding fiscal year prepared by an independent certified public accountant.

§ 4.04 Financial Records

Corporation shall keep, or cause to be kept, true, accurate and complete records, including double-entry books, a profit and loss statement, and a balance sheet, such that if possible at all times to determine the amount and nature of all revenues and expenditures. All expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, and purchase invoice and receipts. All such account books, statements, balance sheets and supporting documents shall be retained by Corporation for a period of three (3) years after the end of the accounting year to which they pertain.

§ 4.05 Accounting Procedures

Corporation shall maintain a system of accounting according to Generally Accepted Accounting Practices.

§ 4.06 Inspection and Audit

(a) City shall be entitled, during the term of the License granted in this Agreement and for a period of one year following the termination of said License, to inspect and examine all of Corporation's books, statements, records, and supporting documents to ascertain the correctness of Corporation's financial statements. Any such inspection shall be conducted during normal business hours with prior notice to Corporation.

(b) City shall also be entitled during the Term and for a period of one year thereafter, but not more frequently than once in any one-year period, to an independent audit of Corporation's books, statements, records and supporting documents. Any such audit shall be at City's expense and shall be conducted during normal business hours at the location where Corporation's records are maintained.

§4.07 Management Compensation-Calculation

As compensation for the Corporation's services in operating the museum on the Premises pursuant to this Agreement, City agrees to pay annually to Corporation an amount equal to the estimated cost of maintaining the Premises pursuant to Sections 3.02 (c), above. For the Fiscal Year 2001-2002, the parties agree that the compensation shall be \$1,180,800.00. The amount of such compensation thereafter shall be determined each fiscal year by the City Council in accordance with the procedures set forth as follows.

(a) No later than February 15 of each year, the Museum President shall submit to the City Manager an estimated budget for the succeeding fiscal year intended to reflect the projected cost of Regular Maintenance and Repair as defined in Section 1.01 (o), above.

(b) Within 30 days of receipt of the proposed budget, the City Manager shall respond in writing to the Museum President with acceptance or rejection of the budget, or elements thereof. If the proposed budget is accepted by the City Manager, it shall be submitted to the City Council for approval, in whole or in part. If the proposed budget is rejected by the City Manager, the City Manager and the Museum President shall meet in good faith in an attempt to reach agreement on a budget. If they are unable to do so, the City Manager shall submit the Corporation's proposed budget to the City Council for approval, in whole or in part.

(c) In each fiscal year, once the amount of the annual compensation has been determined by the City Council, it shall be paid to Corporation in equal monthly installments, or in such other manner as is mutually agreed upon by the City Manager and the Museum President from time to time.

(d) In any event, the amount approved annually by the City pursuant to this Section shall be sufficient to reasonably permit the Corporation to meet its obligations set forth in Section 3.02 (c) and (d).

(e) The City and the Corporation hereby agree to promptly negotiate in good faith to reach agreement, separate and apart from this Agreement, on a schedule and funding program which will identify existing deferred Capital Repair and Replacement matters which will provide for them to be implemented within five (5) years. The City and the Corporation will devise similar continuing five (5) year plans for Capital Repair and Replacement to be paid from set aside funds for such purposes annually.

§4.08 Capital Expansion

Additions to, or upgrades of, the Premises beyond the levels existing at the time of this Agreement shall be subject to mutual agreement between the City Council and the Museum Board of Governors.

ARTICLE 5 INDEMNITY AND INSURANCE

§ 5.01 Indemnification

Corporation shall indemnify and save harmless City and its officers, agents and employees from and against any and all claims, demands, loss or liability of any kind or nature which City or its officers, agents, or employees may sustain or incur, or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with the occupancy and use of the Premises by Corporation, its officers,

agents, and employees, volunteers and visitors.

§ 5.02 Insurance Requirement Generally

Prior to the Commencement Date (except as hereinafter otherwise provided), Corporation shall obtain at its sole cost and file with the Clerk of the Council, and maintain throughout the Term, policies of insurance as required by this section and sections 5.03 through 5.06, or a certificate of such insurance, satisfactory in form to the City Attorney. Each such policy (except policies of Workers' Compensation Insurance) shall name City as an insured or additional insured and each liability insurance policy shall also name the officers, agents and employees of City as insureds or additional insureds. Each such policy shall also contain a provision that no termination, cancellation or change of coverage or (where applicable) of insured or additional insured shall be effective until after thirty (30) days notice thereof has been given in writing to City.

§ 5.03 Liability Insurance

Corporation shall provide a policy or policies of insurance which provides coverage not less than that provided in the form of a comprehensive general liability insurance policy against liability for any and all claims and suits for damages or injuries to persons or property resulting from or arising out of the operations of Corporation, its officers, employees, agents or assigns. Said policy or policies of insurance shall provide coverage for both bodily injury and property damage in not less than One Million Dollars (\$1,000,000.00) combined single limit, or its equivalent.

§ 5.04 Fine Arts Insurance

Corporation shall provide insurance protection against loss of or damage to all fine arts property in the custody and control of Corporation. Such insurance shall be at least equivalent in coverage to policy number IMC 435 117 issued by Continental Insurance Company to City and Corporation for a term beginning November 1, 1985, in a maximum payable amount of not less than \$5,000,000.00. The City Manager and the Museum President may agree upon any method whereby such insurance is maintained by City at the cost of Corporation for any mutually agreeable period of time. Corporation's obligation under this section shall not begin until the first premium date on the aforesaid policy occurring after the Commencement Date, or the termination of said policy, whichever first occurs.

§ 5.05 Fidelity Bonding

Corporation shall provide a policy or policies of insurance insuring Corporation against loss due to dishonesty of Corporation's officers, agents and employees. Said policy or policies shall provide coverage in not less than \$1,000,000.

§ 5.06 Workers' Compensation Insurance

Corporation shall provide a policy or policies of workers' compensation insurance as required by law.

§ 5.07 Other Insurance

(a) City shall maintain such insurance protection against loss of or damage to the buildings and personal property located on the Premises (exclusive of fine arts property covered pursuant to section 5.04 and of the Bowers Museum Shop stock-in-trade) as City shall deem appropriate. Corporation shall have no responsibility for such insurance.

(b) Corporation shall maintain such insurance protection against loss of or damage to the Bowers Museum Shop stock-in-trade as Corporation shall deem appropriate. City shall have no responsibility for such insurance.

§ 5.08 Modification of Insurance Requirements

The City Manager may modify or suspend the requirements imposed on Corporation by this Article if in his reasonable determination, strict compliance is impossible or excessively costly due to insurance market conditions.

ARTICLE 6
RESERVED

ARTICLE 7
DEFAULTS, REMEDIES AND TERMINATION

§ 7.01 Defaults

(a) Failure or delay by either party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The injured party shall not initiate the remedies hereinafter provided until the defaulting party has been given written notice of the default, specifying the nature thereof, and a period of sixty (60) days to cure or correct such default.

(b) Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

§ 7.02 Remedies of City

In the event of any default and failure to cure, correct or remedy the same by Corporation, City may, at City's sole discretion, in addition to or in lieu of any other remedies, exercise either of the following remedies:

(a) Delay of any or all compensation to Corporation pursuant to § 4.07 of this Agreement until such default is cured, corrected or remedied; provided such delay is approved by the City Council.

(b) Terminate this Agreement, provided such termination is approved by the City Council.

§ 7.03 Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal action must be instituted in the Superior court of the County of Orange, State of California, or in any other appropriate court in that county.

§ 7.04 Cumulative Rights and Remedies

The rights and remedies of the parties are cumulative and the exercise by either party of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

§ 7.05 Termination

Upon the expiration of the Term or upon the earlier termination of this Agreement:

(a) City shall have no further obligation to provide funding or other assistance to Corporation pursuant to this Agreement for any period following such expiration or early termination.

(b) Corporation shall vacate the Premises and deliver possession thereof to City.

(c) Corporation shall return to City possession of all personal property loaned to Corporation pursuant to Section 2.04.

(d) All cash donated to Corporation for museum purposes and all items of personal property donated or loaned to Corporation for museum purposes shall be delivered over to the City to be held in trust for the donor or lender and used solely for the purpose for which the donation or loan was made.

ARTICLE 8
GENERAL PROVISIONS

§ 8.01 Representatives

(a) All actions authorized to be taken by City pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of City by the City Manager, unless otherwise stated. The City Manager may, by written notice to Corporation, designate any officer of the City as his representative with respect to any specified authority given to the City Manager by this Agreement, and in such event the actions of such officer within the scope of such authority shall have the same effect as if taken by the City Manager.

(b) All actions authorized to be taken by Corporation pursuant to this Agreement, without specification in this Agreement as to the body or office so authorized, shall be deemed exercisable on behalf of Corporation by corporation's governing board or by such officer of Corporation as may be designated by resolution of said governing board.

(c) The officers designated as representatives of City and Corporation pursuant to this section may, on behalf of the parties hereto, enter into such subordinate arrangements and agreements as are consistent with the terms and conditions of this Agreement.

§ 8.02 Notices

Notices and written communications sent by one party to the other shall be either personally delivered or sent by U.S. Mail, postage prepaid, to the following addresses:

- (a) If sent by Corporation to City:

Clerk of the Council
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

With Copies to:

City Manager
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

And:

City Attorney
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702

(b) If sent by City to Corporation:

Bowers Museum Corporation
2002 N. Main Street
Santa Ana, CA 92707
Attention: President

With a Copy to:

Chair, Board of Governors
Bowers Museum Corporation
2002 N. Main Street
Santa Ana, CA 92707

§ 8.03 Non-assignability

The rights and obligations of Corporation under this Agreement may not be assigned or delegated without the prior approval of the City Council.

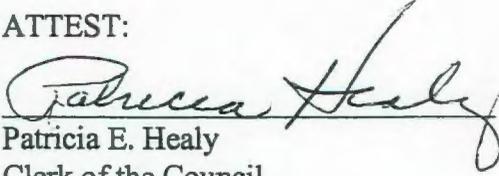
§ 8.04 Partial Invalidity

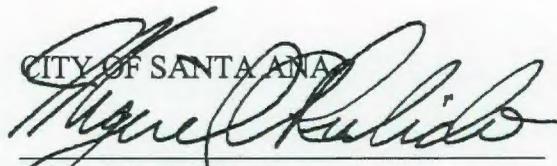
If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

§8.05 Exclusivity

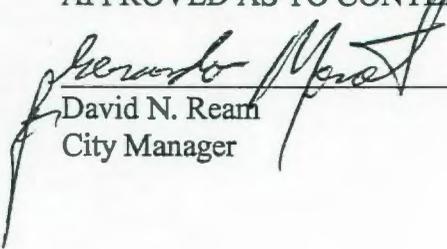
This Amended and Restated Agreement supersedes any and all other agreements including the 1987 Agreement and any other amendments made prior hereto, either oral or in writing, between the parties hereto and contains all covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both City and Corporation.

ATTEST:


Patricia E. Healy
Clerk of the Council

CITY OF SANTA ANA

Miguel A. Pulido
Mayor

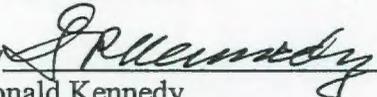
APPROVED AS TO CONTENT:


David N. Ream
City Manager

APPROVED AS TO FORM:


Joseph W. Fletcher
City Attorney

CHARLES W. BOWERS MUSEUM
CORPORATION

By 
Donald Kennedy
Chairman of the Board

**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 (180th) 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 (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 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 than 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.

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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: [Signature]
City Attorney

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: Steven J. Dennis
Vice-President Steven J. Dennis

By: [Signature]
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 its 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

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.

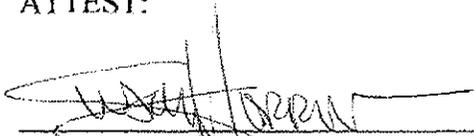
NOES: None.

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)

2009-0495

WHATCOM MUSEUM

AGREEMENT BETWEEN CITY OF BELLINGHAM AND THE
 WHATCOM MUSEUM FOUNDATION 2009

Kerry L Messer submitted this request on 09/21/2009

Tracking Number: KLMR-7W4VVV
 Type: Other (Defined in Title)
 Dept: Legal
 Title: Museum Operating Agreement

Comments / Special Instructions:

Routing List:

You are an Administrator of the approval process

Document eRouter: In Process

Approvers	Title	Assigned	Notified	Received	Status Changed	Status
Kerry L Messer	Legal Administrative Assistant	09/21/2009	09/21/2009	-	-	-
Tracy L Lewis	Administrative Assistant	-	-	-	-	-
Linda D Anderson	City Clerk Representative	-	-	-	-	-

A/22

Approval Cycle Settings

- Approval conditions: 100 % approval
- Routing method: Serial (one at a time)
- Approvers: Grp_eRouter
- Allow Approver comments: Yes
- Automatically Delegate to Assistant...: Yes
- Automatically Skip Approvers...: Yes
- Days until skipped/delegated: 30 Days
- 30 Days

OK

Notification

Access

9/22/09 Rec'd Finance

9/23/09 [Signature]

MUSEUM OPERATING AGREEMENT

THIS AGREEMENT is made on September 22, 2009 between the CITY OF BELLINGHAM, a municipal corporation, (the "City") and the WHATCOM MUSEUM FOUNDATION, a Washington non-profit corporation ("Foundation").

THIS AGREEMENT is made with reference to the following facts:

I. RECITAL

A. The City of Bellingham and the Whatcom Museum Society entered into a Museum Services Agreement in 2001. The parties agree that the 2001 Museum Services Agreement needs to be updated to reflect the current circumstances and the current relationship between the parties.

B. The Whatcom Museum Society was incorporated in 1968 to provide private financial and volunteer assistance to the Museum. In 2009 the Society changed its name to the Whatcom Museum Foundation ("Foundation"). The Foundation is a non-profit organization whose mission is to manage the museum operations. Over the course of time, the capabilities of the Foundation have expanded and a high degree of cooperation has developed between the Foundation and the City concerning the operation of the Museum. Reference is made herein to Exhibit "A" which summarizes the history between the Whatcom Museum Foundation and the City of Bellingham, but does not constitute a part of this binding legal agreement.

C. The City of Bellingham is the owner of the Whatcom Museum of History and Art, including the 1892 Old City Hall building located at 121 Prospect Street, Bellingham, WA and the Syre Education Center located at 201 Prospect Street, Bellingham, WA and certain permanent collections of the Museum.

D. The Whatcom Museum Foundation ("Foundation") is the owner of the Arco Exhibition Center located at 206 Prospect Street and certain permanent collections of the Museum. The Foundation was the previous owner and operator of the Children's Museum Building that was sold in 2009. Proceeds of this sale were retained by the Foundation and are devoted to museum purposes.

E. The Bellingham Whatcom Public Facilities District ("BWPF") is the owner of the "LightCatcher Building" located at 216 Grand Avenue, Bellingham, WA. Pursuant to a lease agreement, City of Bellingham Contract #2006-0161, dated May 2, 2006, the Bellingham Whatcom Public Facilities District (BWPF) is leasing the Lightcatcher Building, which houses the Art and Children's Museum, to the City of Bellingham and the Museum Foundation.

F. For purposes of this Operating Agreement, the term "Museum" includes buildings, City-owned collections, Foundation-owned collections, and programs located in the buildings: to-wit, the 1892 Old City Hall, the LightCatcher Building, the Syre Education Center, and the ARCO Exhibition Center.

G. The Foundation also manages the Whatcom Museum Endowment, the purpose of which is to provide long term financial stability for the Foundation and Museum.

NOW THEREFORE, the Parties agree as follows:

II. TERMS AND CONDITIONS

1. ORGANIZATION OF FOUNDATION

1.1 Directors. The Foundation's Board of Directors shall consist of no more than 20 voting directors selected as follows: Half of the directors shall be proposed by the Foundation Board for consideration by the Mayor. These directors shall be appointed by the Mayor with City Council approval. The remainder of the directors shall be elected or chosen by the members of the Foundation. Additional non-voting members may be added at Foundation discretion.

1.2 Museum Director. The Museum Director is a City Employee and also serves as chief executive officer of the Foundation's Board of Directors.

1.3 The Foundation's Articles of Incorporation and its current Bylaws are attached as Exhibits B and C and are incorporated in this document by reference.

2. DUTIES OF FOUNDATION

2.1 Operation. The Foundation shall oversee the following operations of the Museum under the direction of the Museum Director and pursuant to appropriations by the City Council:

2.1.1 Policy. The Foundation will adopt or modify policies regulating the operation of the Museum including, but not limited to policies relating to the acceptance of all gifts, devises, and bequests to the Foundation, the management and use of collections, and the use of facilities and professional activities of non-City staff specific to Museum operations. The Foundation shall determine policy pertaining to the management of the Foundation Endowment. All policies adopted or modified by the Foundation shall be consistent with City policies, procedures, or practices governing the same subject matter when applicable.

2.1.2 Planning. The Foundation will perform short and long-term planning for the Museum, including revenue sources, capital programs, facilities, collections, use of facilities, fees for Museum admissions, services and marketing. The Foundation will submit a copy of its strategic plan to the City each time it is revised or every three years whichever is sooner.

2.1.3 Budgeting. The Foundation will develop and submit to the City an annual operating budget and capital improvements budget for total Museum operations in accordance with the City's annual budget process.

2.1.4 Museum Director. The Foundation will annually conduct a performance evaluation of the Museum Director and report the results of its evaluation to the Mayor's Office.

2.2 Additional Foundation Duties

2.2.1 Foundation Development and Fundraising. The Foundation shall manage Museum facilities and collections to generate revenue to support Museum operations. Such endeavors may include: facility rentals and loans of collections and exhibitions to other institutions for purposes such as traveling exhibitions and other uses typical to American Museum Association professional standards. The Foundation may reproduce collection images in printed, manufactured or electronic forms for fundraising, retail sale and promotion of Foundation activities. Revenue generated from such actions shall be used by the Foundation specifically to fund Museum programs and operations including contributions to the Foundation Endowment and other uses for the benefit of the Museum.

2.2.2 Record Keeping. The Foundation will keep accurate books and records respecting all revenues and expenses related to the Foundation. The Foundation will prudently manage all gifts made to the Foundation and expend contributions exclusively for the benefit of the Museum. The Foundation will keep strictly separate accounts and records at all times for Foundation funds and for revenues and expenses of the Foundation. The Foundation will perform an annual audit by an independent auditor which will be provided to the City 150 days after the close of the fiscal year. All such data and information shall be maintained in accordance with Generally Accepted Accounting Principles and shall be retained for at least three (3) years following termination or expiration of this Agreement. The City shall have the right to audit, at City expense, all Foundation financial records and accounts at any time if deemed necessary or in the best interest of the City.

2.2.3 Volunteerism. The Foundation shall create and maintain an active volunteer program, including trained Docent tour guides and appropriately placed volunteer assistants within various Museum departments.

2.2.4 Annual Report. The Foundation will prepare and submit to the Mayor an annual report reviewing the operations of the Museum for the previous year.

2.2.5 Compliance with Laws. To the best of its ability, the Foundation will comply with all local ordinances and resolutions; and all federal and state laws, statutes, and regulations.

2.2.6 Property Ownership. The Foundation owns and is responsible for all maintenance of and improvements to the ARCO Exhibition Center and its non-collection contents, including after-acquired items, except for routine custodial maintenance. Non-collection contents are defined as furniture, fixtures and equipment ("FFE").

2.2.7 Foundation Employees. The Foundation will hire employees as necessary to perform duties required of the Foundation including but not limited to its current duties of operating and staffing functions related to exhibits, collections, programming, fundraising, membership development and facilities maintenance. All Foundation employees are subject to the personnel policies and practices adopted by the Foundation, from time to time, and will not for any purposes be considered City employees. The Museum Director, as Chief Executive Officer of the Foundation, is ultimately responsible for managing Foundation employees.

2.3 Foundation Insurance Requirements

2.3.1 Directors and Officers Insurance. The Foundation will provide Directors and Officers Insurance coverage in an appropriate amount as measured by AAM (American Association of Museums) standards for all the members of the Foundation Board of Directors.

2.3.2 Property Insurance. The Foundation will provide comprehensive property insurance for Foundation owned buildings and their non-collection contents.

2.3.3 Collection(s) Insurance. Coverage will be provided by the City as set forth in paragraph 3.6.1 below. The Foundation agrees that neither the City nor its agents or employees, will be liable, regardless of negligence, for loss or damage to Foundation property when such loss or damage is covered by insurance as provided in this Agreement. Therefore, the Foundation

agrees to waive any right of subrogation against the City for damage to Foundation owned property.

2.3.4 Liability Insurance. The Foundation will provide comprehensive general liability insurance for Foundation operations and the City shall be named as an additional insured on all policies.

3. DUTIES OF CITY

3.1 Property Maintenance. The City will be responsible for the maintenance and improvements of the 1892 Old City Hall and Syre Education Center. The City will be responsible for the maintenance of the Lightcatcher Building. The City also will provide custodial and curatorial services for these buildings and the collections housed in the Foundation owned ARCO Exhibition Center.

3.2 Museum Director. The City will employ a Museum Director who will serve as chief executive officer of the Museum and also as chief executive officer of the Foundation. The Director will report to the Mayor as a department head, with secondary reporting responsibility to the Board of Directors of the Whatcom Museum Foundation.

3.3 City Staffing of Museum. The City will employ staff as necessary for the operation of the Museum except as provided in paragraph 2.2.7 above. All City staff are subject to the personnel policies and practices adopted by the City.

3.4 Museum Financing. The parties are committed to an ongoing public-private collaboration in support of the Museum. Though subject to the respective organizations' circumstances and community developments, the parties shall plan on levels of City financial support as outlined in Exhibit D and subject to at least annual review by the City Council during its annual budget process. The Foundation shall gear its fund development and earned revenue generation efforts toward filling the difference between these figures and the Museum's annual financial needs.

3.5 Review Foundation Budget and Performance Evaluation. The City will review the annual reports and budget submitted by the Foundation. In addition, the Mayor will review the annual performance evaluation of the Museum Director submitted by the Foundation and the Mayor will consider these findings in any evaluation of the performance of the Museum Director. The parties recognize that the City has final decision-making authority regarding employment decisions related to the Museum Director position.

3.6 City Insurance and Indemnification Requirements

3.6.1 Collection(s) Insurance. The City will maintain sufficient insurance covering losses to the permanent collection and to other Museum sponsored exhibitions.

3.6.2 Property/Fire Insurance. The City will maintain throughout the term of this Agreement an adequate level of fire insurance/self-insurance for City owned buildings and their respective contents, and contents coverage for the leased storage facilities, if any. The City agrees that neither the Foundation nor its agents or employees will be liable, regardless of negligence, for loss or damage to City property when such loss or damage is covered by insurance as provided in this Agreement. Therefore, the City agrees to waive any right of subrogation against the Foundation for damage to City owned buildings.

3.6.3 Liability Coverage and Indemnification. (1) The City will provide comprehensive general liability insurance or a self-insurance program which will provide coverage for Museum operations; and (2) the City will defend and indemnify the Foundation, its Directors and its members from liability not covered by Foundation insurance arising from the day-to-day operations of the Museum except any liability arising from gross negligence or unlawful actions.

4. TERM. The term of this Agreement shall be five (5) years, beginning on January 1, 2010 and ending on December 31, 2014. After the expiration of the initial term, this Agreement may be automatically renewed under the same terms and conditions for successive five (5) year periods unless modified or terminated as provided herein.

5. TERMINATION. Neither party foresees a need to terminate this Agreement. Should either party elect to terminate this Agreement for any reason the party initiating the termination shall provide the other party with at least one (1) year written notice by December 31 such that this Agreement terminates on December 31 of the year following.

6. INDEPENDENT CONTRACTOR. The Foundation shall be considered as an independent contractor and this Agreement shall not be construed as creating any form of legal partnership between the City and the Foundation.

7. COMMUNICATIONS. The representative of the City for the purpose of all notices and other communications under this Agreement is the Mayor or his/her designee and the City Attorney, until the Foundation is otherwise notified in writing of a replacement representative for the City. The representative for the Foundation for the purpose of all notices and other communications under this Agreement is the Foundation's

President or designee, until the City is notified in writing of replacement for this representative for the Foundation.

8. INSPECTION. The Foundation agrees that the City may make periodic inspections of the Foundation work product including, but not limited to, writings, graphs, books, financial records, documents, reports and other written materials of every nature whatsoever which may be prepared, created or manufactured by the Foundation throughout the term of this Agreement.

9. NO ASSIGNMENT. The Foundation shall not assign this Agreement or subcontract its duties to another party without the expressed prior written consent of the City.

10. DISPUTE RESOLUTION. The Parties desire to establish a fair and rapid process to resolve any and all disputes arising out of or related to this Agreement. Accordingly, any such disputes shall be resolved as follows:

10.1 Informal meeting. Each Party is required to immediately notify the other Party, in writing, of each and every dispute or disagreement arising out of or related to this Agreement. Upon such written notification, the Parties shall, as soon as practicable but in no event longer than ten (10) days, meet and negotiate in good faith to resolve any such disputes. If the dispute is resolved by such a meeting, the terms and conditions of the resolution shall be reduced to writing and signed by both Parties. If the Parties cannot resolve the dispute as provided in this paragraph, the parties may elect to engage an outside mediator. The parties shall share equally in the costs of the mediation. If mediation does not resolve the dispute, then the dispute shall be resolved as set forth below.

10.2 Binding Arbitration. If any such dispute identified above is not resolved within fifteen (15) business days from notification of such dispute, excluding the time period for mediation, such dispute shall be submitted to binding arbitration as provided herein. The parties shall select an independent and unbiased arbitrator from the list of federal arbitrators of the American Arbitration Association ("AAA") within ten (10) days after any party demands arbitration. If the parties cannot agree on the choice of arbitrator, then the provisions of RCW 7.04A.110 shall be followed. If the arbitrator requests a hearing prior to rendering his/her decision, such hearing shall be held in Whatcom County, Washington within thirty (30) days of the arbitrator's appointment. The arbitrator's decision shall be binding on both parties. This paragraph shall be referred to herein as the "Binding Arbitration Clause".

10.3 The foregoing Binding Arbitration Clause, RCW Chapter 7.04A, and Rules 5.2 through 5.4 of the Mandatory Arbitration Rules for Superior Court ("MAR") shall govern the arbitration. In the event of any inconsistencies between the Binding Arbitration Clause, RCW Chapter 7.04A, and MAR 5.2 through 5.4, the terms of the Binding Arbitration Clause shall take precedence over RCW Chapter 7.04A and

MAR 5.2 through 5.4; and RCW Chapter 7.04A shall take precedence over MAR 5.2 through 5.4.

10.4 Fees and Costs. Each party shall bear its own expenses associated with the arbitration but shall share equally the costs of the arbitrator. The prevailing party, as determined by the arbitrator, shall be entitled to an award of its reasonable attorneys' fees and costs, including expert witness fees.

11. MISCELLANEOUS.

11.1 Notices. Any notice, declaration, demand or communication to be given by a party to this Agreement to the other shall be in writing and transmitted to the other party by personal service or certified U.S. mail, return receipt requested, postage fully prepaid, addressed as follows:

Whatcom Museum Foundation
Attn: Museum Director
121 Prospect Street
Bellingham, WA 98225

City of Bellingham
Attn: Legal Department
210 Lottie Street
Bellingham, WA 98225

The mailing and certifying of any such notice as herein provided shall be sufficient service thereof. All notices given in compliance with this section shall be deemed effective two (2) business days following the deposit thereof in the U.S. mail, irrespective of the date of actual receipt of such notice by the addressee. Any party may, by notice, change its address for notice.

11.2 Governing Law. This Agreement shall be governed by the laws of the State of Washington. Any action in law, suit in equity, or judicial proceeding, for the enforcement of the Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County.

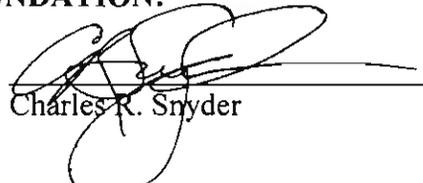
11.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction. No Party shall be liable to another Party for any representations made by any person regarding the terms of this Agreement, except to the extent that the same are expressed in this Agreement. This Agreement may be amended only by written instrument executed by the Parties or their lawful successors and assigns subsequent to the date hereof.

DATED this 22nd day of September, 2009.

CITY OF BELLINGHAM:

By: 
Dan Pike, Mayor

**WHATCOM MUSEUM
FOUNDATION:**

By: 
Charles R. Snyder

Attest:


Finance Director

Approved as to form:

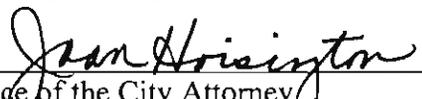

Office of the City Attorney

EXHIBIT A

The City of Bellingham (the "City") and the Whatcom Museum Foundation ("Foundation") together are directing a reorganization of Museum governance, management, facilities and staff to reinforce the institution and position it to handle the demands of new and expanded obligations at the new facility at Flora and Grand (the "Lightcatcher Building"). A primary issue is how to balance the allocation of monetary and professional resources, staff and facilities and provide governance to fulfill the Museum's Mission Statement.

The City has historically undertaken obligations to the Whatcom County community at large to provide a repository of, and preserve items important to, symbolic of the physical and cultural history of Whatcom County and its environs. The City owns these historical items generally known as the Museum collections: including items of general historical significance, photographic archives, fine art, etc.

The City has historically provided the facilities, staffing and funding to enable the Foundation to fulfill the City's contractual commitments to the Museum and the Museum's Mission Statement. City funding essentially provides for the majority of the cost of overhead, restoration and preservation of Museum collections and operation of Museum facilities. Additional revenue is provided through the Foundation's fundraising efforts and grants.

The Foundation's primary purpose is to provide governance and oversight to the Whatcom Museum to ensure the contractual obligations and fulfillment of the Museum's Mission Statement are met, and to raise funds to provide for the cost of overhead, acquisitions, maintenance of Foundation held collections and the operation of facilities.

The Foundation provides additional benefit to the community by making the collections available to the community through exhibitions and programming for cultural development, education and development of tourism. The Foundation also functions as an "ambassador" promoting the City of Bellingham and Whatcom County and creating widespread awareness of local attributes by interacting with regional museums through the Washington Arts Consortium, which includes the Tacoma Art Museum and Seattle Art Museums along with regional peer group museums. The Whatcom Museum has recently received the distinct honor of becoming a Smithsonian Institution Affiliate, making Smithsonian resources and select exhibitions available to the Whatcom Museum.

In 2009, the City and the Foundation agreed to modify the Museum Services Agreement to clarify each entity's obligations and to provide for greater independence and separation of management oversight and governance.

EXHIBIT B

Articles of Incorporation

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270



**STATE OF WASHINGTON
SECRETARY OF STATE**

**ARTICLES OF AMENDMENT
WASHINGTON
NONPROFIT CORPORATION**

(Per Chapter 24.03 RCW)

FEE: \$20

**EXPEDITED (24-HOUR) SERVICE AVAILABLE - \$20 PER ENTITY
INCLUDE FEE AND WRITE "EXPEDITE" IN BOLD LETTERS
ON OUTSIDE OF ENVELOPE**

- Please PRINT or TYPE in black ink
- Sign date and return original AND ONE COPY to:

CORPORATIONS DIVISION
801 CAPITOL WAY SOUTH • PO BOX 40234
OLYMPIA, WA 98504-0234

- BE SURE TO INCLUDE FILING FEE. Checks should be made payable to "Secretary of State"

FOR OFFICE USE ONLY
FILED: _____

IMPORTANT! Person to contact about this filing <i>Patricia Leach, Executive Director</i>	Daytime Phone Number (with area code) <i>360 778-8932</i>
---	--

AMENDMENT TO ARTICLES OF INCORPORATION

NAME OF CORPORATION (As currently recorded with the Office of the Secretary of State)
Whitcom Museum Society

UB NUMBER <i>371-012-050</i>	CORPORATION NUMBER (If known)	AMENDMENTS TO ARTICLES OF INCORPORATION WERE ADOPTED ON Date: <i>2/25/09</i>
---------------------------------	-------------------------------	---

EFFECTIVE DATE OF ARTICLES OF AMENDMENT (Specified effective date may be up to 30 days AFTER receipt of the document by the Secretary of State)

Specific Date: _____ Upon filing by the Secretary of State

ADOPTION OF THE ARTICLES OF AMENDMENT (Please check ONE of the following)

The amendment was adopted by a meeting of members held on (specify date): _____ . A quorum was present at the meeting and the amendment received at least two-thirds of the votes which members present or represented by proxy were entitled to cast

The amendment was adopted by a consent in writing and signed by all members entitled to vote.

There are no members that have voting rights. The amendment received a majority vote of the directors at a board meeting held on (specify date): *2/25/09*

AMENDMENTS TO THE ARTICLES OF INCORPORATION ARE AS FOLLOWS
If necessary, attach additional amendments or information

*Name change from Whitcom Museum Society to
Whitcom Museum Foundation.*

SIGNATURE OF OFFICER

This document is hereby executed under penalties of perjury, and is, to the best of my knowledge, true and correct.

Cherie T. Walker (President) *Cherie T. Walker* *2-5-09*
Signature of Officer Printed Name Date

FOR OFFICE USE ONLY

FOR OFFICE USE ONLY

FOR OFFICE USE ONLY



STATE of WASHINGTON SECRETARY of STATE

I, **Ralph Munro**, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF MERGER

of

WHATCOM MUSEUM SOCIETY

a Washington Non Profit corporation,

was/were filed for record in this office on the date indicated below.

Merging CHILDREN'S MUSEUM NORTHWEST into WHATCOM MUSEUM SOCIETY

Corporation Number: 2-190402-4

Date: September 17, 1992

Given under my hand and the seal of the State of Washington, at Olympia, the State Capitol.

Ralph Munro, Secretary of State

FILED
STATE OF WASHINGTON
SEP 17 1992
RALPH MUNRO
SECRETARY OF STATE

ARTICLES OF MERGER

TO: Ralph Munroe, Secretary of State of the State of Washington:

The undersigned corporations, pursuant to R.C.W. 24.06.225 hereby execute in duplicate the following Articles of Merger:

I. The plan of merger is as follows:

MERGER AGREEMENT

THIS MERGER AGREEMENT dated this 12 day of August, 1992 is between WHATCOM MUSEUM SOCIETY, a Washington nonprofit corporation (the "Whatcom Museum" or the Surviving Corporation), and CHILDREN'S MUSEUM NORTHWEST, a Washington nonprofit corporation, ("Children's Museum" or the "Merging Corporation").

IT IS MADE with reference to the following facts:

- A. Whatcom Museum is a nonprofit corporation organized and existing under the laws of the State of Washington.
- B. The Children's Museum is a nonprofit corporation organized and existing under the laws of the State of Washington.
- C. The Boards of Directors of the Whatcom Museum and the Children's Museum, and the members of the Whatcom Museum, deem it desirable and in the best interests of the corporations and their members that the Children's Museum be merged into the Whatcom Museum pursuant to the provisions of RCW 24.06.210.

IT IS THEREFORE AGREED as follows:

1. Merger.

The Children's Museum shall be merged into the Whatcom Museum, the Surviving Corporation, in order to form a single corporation.

2. Surviving Corporation.

The Whatcom Museum shall survive the merger pursuant to the provisions of R.C.W. 24.06.010, 24.06.220 and 24.06.225. On the effective date of the merger, the separate corporate existence of the Children's Museum shall cease, and the Whatcom Museum shall become the owner, without other transfer, of all rights and property of the Merging Corporation, and the Whatcom Museum shall become subject to all the debts and

Bylaws.

The Bylaws of the Society as in effect on the effective date shall be the Bylaws of the surviving corporation until they shall be altered, amended or repealed or until new Bylaws are properly adopted.

5. Board of Directors.

The names and addresses of the persons who shall constitute the Board of Directors of the surviving corporation and who shall hold office until the first annual meeting of the shareholders of the surviving corporation are as follows:

<u>NAME</u>	<u>ADDRESS</u>
JAMES G. ROBERTS	St. Luke's Foundation 718 E. Holly Bellingham, WA 98225
GEORGE GUST	324 Bayside Road Bellingham, WA 98225
CHARLES SELF	324 Bayside Road Bellingham, WA 98225
V. LAWRENCE EVANS	1015 McLeod Road Bellingham, WA 98226
MAYA ALLSOP	2247 North Shore Road Bellingham, WA 98225

6. Effective Date of Merger.

This Merger Agreement will be submitted to the Board of Directors of each corporation as provided by law. Following approval by both Boards, the Merger will take effect upon issuance of a Certificate of Merger of the Children's Museum into the Society by the Secretary of State of the State of Washington.

7. Abandonment.

The Directors of either merging corporation may, in their discretion, abandon this merger, subject to the rights of third parties in contracts relating to the merger, without further action or approval by the shareholders of the corporation they represent, at any time before the merger has been completed.

8. Counterparts.

This Merger Agreement may be executed in any number of counterparts and all such counterparts and copies shall constitute an original instrument.

DATED this 12th day of AUGUST, 1992.

WHATCOM MUSEUM SOCIETY

CHILDREN'S MUSEUM
NORTHWEST

By: *James Ed Roberts*
Its: President

By: *Craig R. Kern*
Its: PRESIDENT

.....

II. On the 16 day of July, 1992, a Plan of Merger was delivered to the Boards of Directors of the Whatcom Museum Society and the Children's Museum Northwest, and a quorum of directors of each corporation was present, and the Plan of Merger herein set forth was unanimously approved by such directors, and adopted by consent in writing signed by all directors, which consent also acted as a waiver of any notice required by law. Furthermore, the Plan of Merger was presented to the all of the members of the Whatcom Museum Society, and two-thirds of the total number of members approved the Plan of Merger pursuant to a consent in writing, which also acted as a waiver of any noticed required by law.

DATED this 12 day of AUGUST, 1992.

WHATCOM MUSEUM SOCIETY

CHILDREN'S MUSEUM NORTHWEST

By: *James Ed Roberts*
Its: President

By: *Craig R. Kern*
Its: PRESIDENT



STATE of WASHINGTON SECRETARY of STATE

I, Ralph Munro, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF MERGER

of

WHATCOM MUSEUM SOCIETY

a Washington non-profit corporation,

was/were filed for record in this office on the date indicated below.

Merging with and into itself WHATCOM MUSEUM FOUNDATION
and Amending Articles

Corporation Number: 2-190402-4

Date: December 15, 1983

Given under my hand and the seal of the State
of Washington, at Olympia, the State Capitol.

Ralph Munro, Secretary of State

FILED
DEC 15 1983

SECRETARY OF STATE
STATE OF WASHINGTON

ARTICLES OF MERGER
OF
WHATCOM MUSEUM SOCIETY

TO, RALPH MUNRO, the Secretary of State of the State of Washington:

Articles of Merger with the Whatcom Museum Foundation, a non-profit Washington corporation, are herein executed in duplicate by the Whatcom Museum Society, a non-profit Washington corporation, pursuant to the provisions of R.C.W. 24.03.200 as follows:

1. The Plan of Merger is set forth as follows:

The Board of Directors of the Whatcom Museum Society held a meeting on September 23, 1983, at which said meeting said Plan of Merger was adopted; said plan received the vote of a majority of the Directors in office.

DATED this 23 day of September, 1983.

WHATCOM MUSEUM SOCIETY

By Jean Key
President

By Jane Heisinger
Secretary

STATE OF WASHINGTON)
County of Whatcom) ss.

On this 23 day of September, 1983, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JEAN KEY and JANE HEISINGER, to me known to be the President and Secretary, respectively, of WHATCOM MUSEUM SOCIETY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument.

the said instrument.

WITNESS my hand and official seal hereto affixed the day
and year first above written.

Donna B. Brown

NOTARY PUBLIC in and for
the State of Washington,
residing in Bellingham.

ARTICLES OF MERGER
OF
WHATCOM MUSEUM FOUNDATION

TO, RALPH MUNRO , the Secretary of State of the
State of Washington:

Articles of Merger with the Whatcom Museum Society, a
non-profit Washington corporation, are herein executed in duplicate
by the Whatcom Museum Foundation , a non-profit Washington
corporation, pursuant to the provisions of R.C.W. 24.03.200 as
follows:

1. The Plan of Merger is set forth as follows:

The Board of Directors of the Whatcom Museum
Foundation held a meeting on September 8, 1983 at which said
meeting said Plan of Merger was adopted; said plan received the
vote of a majority of the Directors in office.

Dated the 23 day of September, 1983.

THE WHATCOM MUSEUM
FOUNDATION

By James A. Moran
President

By Denise B. Brennan
Secretary

STATE OF WASHINGTON)
County of Whatcom) ss.

On this 23 day of September, 1983, before me, the under-
signed, a Notary Public in and for the State of Washington, duly
commissioned and sworn, personally appeared JAMES MORAN
and DENISE BRENNAN, to me known to be the President and
Secretary, respectively, of THE WHATCOM MUSEUM FOUNDATION,
the corporation that executed the foregoing instrument, and
acknowledged the said instrument to be the free and voluntary
act and deed of said corporation, for the uses and purposes therein
mentioned, and on oath stated that they are authorized to execute

PLAN OF MERGER
OF
WHATCOM MUSEUM FOUNDATION
AND
WHATCOM MUSEUM SOCIETY

THE PLAN of merger herein set forth is duly adopted by the WHATCOM MUSEUM FOUNDATION and the WHATCOM MUSEUM SOCIETY, hereinafter referred to as the merging corporations, each of which said merging corporation is a nonprofit corporation duly organized and existing under and by virtue of the laws of the State of Washington, said plan being set forth as follows:

I.

1. The names of the merging corporations are the WHATCOM MUSEUM FOUNDATION and the WHATCOM MUSEUM SOCIETY.

2. The name of the surviving corporation into which said merging corporations propose to merge, hereinafter designated as the surviving corporation, is WHATCOM MUSEUM SOCIETY.

II.

The terms and conditions of the proposed consolidation are as follows:

1. All of the assets of the merging corporations, real, personal, and mixed, and wherever situated, shall be turned over to the surviving corporation upon issuance of the certificate of merger by the Secretary of State of the State of Washington. All of the persons who are now members of the merging corporations shall, upon issuance of said certificate of merger by said Secretary of State, be members of the surviving corporation under the same terms, conditions, and relationships as their present memberships in the merging corporations, except as indicated by the Articles of Incorporation in Part IV below. Said membership in the surviving corporation shall be effected immediately. The surviving corporation shall become liable

for and assume the payment of any and all legal debts and obligations of the merging corporations.

2. The Endowment Committee now existing in the merging corporation shall be transferred and remain active in the surviving corporation.

III.

With respect to the surviving corporation, the statements required to be set forth in Articles of Incorporation for corporations organized under Revised Code of Washington 24.03 are set forth as follows:

1. The name of the surviving corporation shall be WHATCOM MUSEUM SOCIETY.

2. The period of duration of the surviving corporation shall be perpetual.

3. The purpose for which the surviving corporation is organized shall be for cultural, educational and charitable purposes, within the meaning of Section 501(c) (3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any further United States Internal Revenue Code). The object for which this organization is formed is to promote the interests of the museum presently located at 121 Prospect Street, Bellingham, Washington, which is known as The Whatcom Museum of History and Art.

4. The surviving corporation shall retain all provisions for the regulation of the internal affairs of the surviving corporation.

5. The address of the initial registered office of the new corporation shall be 121 Prospect Street, Bellingham, Washington, 98225. The name of the initial registered agent of the new corporation at said address shall be Virginia Weller.

6. The number of directors constituting the initial Board of Directors of the new corporation shall be nine (9) directors. The names and addresses of the persons who are to serve as the initial directors of the new corporation are as follows:

Jean Key
1700 Edwards
Bellingham, WA 98225
734-5536

Patty Johnson
737 Lake Whatcom Blvd
Bellingham, WA 98226
733-6181

Alix Snyder
519 17th Street
Bellingham, WA 98225
734-1996

Will T. Neill
1384 Chuckanut Drive
Bellingham, WA 98226

Jane Heisinger
720 17th Street
Bellingham, WA 98225
734-0683

David C. Morse, Sr.
1403 Lake Whatcom Blvd
Bellingham, WA 98226
733-2655

Ken Culver
110 Unity Street
Bellingham, WA 98225
734-0050

Jim Moren
1815 C Street
Bellingham, WA 98225
671-3345

Denise Brennan
Bellingham Towers Suite 500
119 N. Commercial
Bellingham, WA 98225
671-2977

7. In the event of dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable, educational or scientific purposes and which has established its tax exempt status under 501(c) (3) of the Internal Revenue Code.

IV.

The attached changes shall be made to the Articles of Incorporation of the surviving corporation, and all other Articles of Incorporation of the surviving corporation shall remain the same.

DATED this 23 day of September, 1983.

WHATCOM MUSEUM FOUNDATION

BY James A. Moen, President

WHATCOM MUSEUM SOCIETY

BY Jean Key, President

D190402
FILE NUMBER



DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, RALPH MUNRO, Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION

of WHATCOM MUSEUM SOCIETY, INC.
a domestic corporation of Bellingham, Washington,
(Amending article II)

was filed for record in this office on this date, and I further certify that such Articles remain on file in this office.

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol,

March 30, 1981

RALPH MUNRO
SECRETARY OF STATE

FILED
MAR 30 1981

SECRETARY OF STATE
STATE OF WASHINGTON



Whatcom Museum of History & Art

AMENDMENT TO ARTICLES OF INCORPORATION

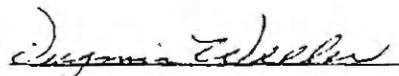
It is hereby certified by the undersigned Officers of the Whatcom Museum Society that at the annual meeting of the membership of said corporation held at the Whatcom Museum of History and Art, 121 Prospect Street, Bellingham, Washington on the 10th day of February, 1981, at which a quorum was present, pursuant to Article VIII of the Articles of Incorporation of the Whatcom Museum Society, the following amendment to the Articles of Incorporation was adopted by a unanimous vote of the members:

Article II, Purpose which had read:

The purpose of the Whatcom Museum Society, Inc., shall be to assist the Whatcom Museum of History and Art to fulfill its function of education and recreation for residents of and visitors to the City of Bellingham and the County of Whatcom, and to further the usefulness of this civic asset in any manner in conformity with the Bellingham City ordinances; and further to coordinate all non-professional museum activities and all volunteer programs.

be changed to read; Article II, Purpose

1. This corporation is organized and shall be operated exclusively for cultural, educational and charitable purposes, within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provisions of any future United States Internal Revenue Code).
2. The object for which this organization if formed is to promote the interests of the museum presently located at 121 Prospect Street, Bellingham, Washington which is known as The Whatcom Museum of History and Art.



Virginia Weller, President



Jean Key, Vice-President

190402
FILE NUMBER



DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, A. LUDLOW KRAMER, Secretary of State of the State of Washington and custodian of its seal,
hereby certify that

ARTICLES OF INCORPORATION

of WHATCOM MUSEUM SOCIETY, INC.

a domestic corporation of Bellingham, Washington,

was filed for record in this office on this date, and I further certify that such Articles remain
on file in this office.



In witness whereof I have signed and have
affixed the seal of the State of Washington to
this certificate at Olympia, the State Capitol,

April 3, 1968

A. LUDLOW KRAMER
SECRETARY OF STATE

THE WHATCOM MUSEUM OF HISTORY AND ART

121 Prospect Street, Bellingham, Wash. 98225 • Phone 734-5791



ARTICLES OF INCORPORATION

of the

WHATCOM MUSEUM SOCIETY, INC.

WE, THE UNDERSIGNED, residents of the State of Washington, and citizens of the United States, do hereby voluntarily associate ourselves together for the purpose of forming a non-profit corporation pursuant to the provisions of Title 24, Revised Code of Washington.

ARTICLE I

Name

The name of this corporation shall be: "Whatcom Museum Society, Inc."

ARTICLE II

Purpose

The purpose of the Whatcom Museum Society, Inc., shall be to assist the Whatcom Museum of History and Art to fulfill its function of education and recreation for residents of and visitors to the City of Bellingham and the County of Whatcom, and to further the usefulness of this civic asset in any manner in conformity with the Bellingham City ordinances; and further to coordinate all non-professional museum activities and all volunteer programs.

ARTICLE III

Membership

Membership shall be open to any person, club, association, business firm or organization on terms established by the corporation.

ARTICLE IV

Powers

This corporation shall have and possess all powers which may be lawfully exercised by a non-profit corporation under the laws of the State of Washington, and, without limiting the generality of the foregoing, this corporation shall have the power to acquire, own, lease, transfer, encumber, dispose of and otherwise use real and personal property, and to borrow money for corporation purposes.

ARTICLE V
Duration

The period of existence of this corporation shall be perpetual.

ARTICLE VI
Place of Business

The principal place of business of this corporation shall be at Bellingham, Whatcom County, Washington.

ARTICLE VII
Board of Trustees

The business of the corporation shall be managed by a Board of Trustees, consisting of five members, the terms and time of the election to be fixed by the by-laws. The following individuals shall act as trustees of this corporation and serve for not less than two nor more than six months from date of incorporation and their successors shall be elected pursuant to the by-laws of the corporation:

Name	Address
Mrs. Meldel Applegate	105 Briar Road, Bellingham, Washington
Mrs. Kenneth Ireland	619 15th Street, Bellingham, Washington
Mrs. William Mize	2342 Smith Road, Bellingham, Washington
Mrs. Joel Ware	2314 Victor Street, Bellingham, Washington
Mrs. Richard Hudson	3806 Lummi Park, Lummi Island, Washington

ARTICLE VIII

These articles may be amended by a majority of the trustees at any regular or special meeting called for that purpose, provided that notice of the proposed amendment is given in writing ten days in advance of said meeting, and provided further that any change in the purpose or purposes for which this corporation is organized shall require a two-thirds vote of all members.

ARTICLE IX

This corporation is a non-profit corporation, and no member shall receive dividends or distribution of property in the event of liquidation. Upon dissolution of this corporation, any surplus funds remaining on hand shall be paid to the City of Bellingham in Bellingham, Washington, to be used for the Whatcom Museum of History and Art purposes.

1 April 1968

Mrs. Ruth Carter
Corporations and Trademarks Division
Office of the Secretary of State
Olympia, Washington

Dear Mrs. Carter:

Mr. Richard Fleeson from the law office of Abbott, Lant and Fleeson, returned to me the Articles of Incorporation of the Whatcom Museum Society, Inc. for the following correction:

"Under the provisions of Chapter 24.4 the first trustees cannot serve for less than two nor more than six months from the date of incorporation."

This change has now been made in Article VII and I hope meets with your approval.

Sincerely


Susan H. L. Barrow
Director

encs.
check \$ 25.00

EXHIBIT C

Bylaws

City of Bellingham
CITY ATTORNEY
210 Lottie Street
Bellingham, Washington 98225
Telephone (360) 778-8270

**WHATCOM MUSEUM SOCIETY
BY-LAWS
2007**

MISSION STATEMENT

In alliance with the City of Bellingham, the Whatcom Museum Society provides organizational governance and financial backing for the Whatcom Museum of History and Art in support of the Museum's mission to enhance the quality of life for our community.

ARTICLE I - BOARD OF DIRECTORS

Section 1. Directors

There shall be twenty Directors (the "Board") of the Whatcom Museum Society (the "Society"). Eight shall be elected by the membership, two shall automatically become members of the Board because of their office as Docent President and Chair of the Children's Museum Advisory Committee and ten shall be appointed by the City of Bellingham (the "City") according to provisions of these By-laws.

Section 2. Terms

The term of a Director shall be three years beginning with the Annual Meeting at which the individual was elected or appointed, with the exception of the Docent President and Chair of the Children's Museum Advisory Committee, whose terms shall coincide with those offices as long as they do not exceed the term limit specified herein.

There shall be a two-term limit not including any partial terms filled by appointment, but persons can be re-appointed to the Board after a one-year absence. Terms shall be established so that no more than seven positions become vacant each year.

Under certain circumstances, persons may extend the two-term limit by serving a maximum of one additional year of the next three year term (hereinafter referred to as a "Term Extension"). After the Board member serves a Term Extension, a new Board member will be appointed to serve the remaining two years of that three year term. Term Extensions are strictly voluntary and require approval of a sixty percent (60%) vote of the Board. The Board will notify the City in advance of any City Directors (see Section 4 herein) who will serve a Term Extension. In approving a Term Extension, the Board shall be mindful of any interested members of the community who would be precluded from Board service by the Term Extension. This Term Extension provision will expire at the Annual Meeting in year 2010.

Section 3. Elections

Eight Directors shall be elected by a majority vote of the Society membership present at the Annual Meeting (hereinafter the "Society Directors"). Nominations for Society Directors will be made by the Trustee Committee. The Trustee Committee shall consider the county-wide service of the Museum and may therefore provide for County as well as City residents as Directors. Anyone is eligible to be elected as a Director provided that the individual is a Museum Society

member in good standing. No more than one Society Director may reside outside of Whatcom County.

Section 4. City Appointments

Ten Directors shall be appointed by the Mayor with City Council approval (hereinafter the "City Directors"). Nominations for Directors will be made by the Trustee Committee and/or by the Mayor at his or her discretion. The Trustee Committee shall consider the county-wide service area of the Museum and may provide for County as well as City residents as Directors. Anyone is eligible to be appointed as a Director provided that the individual is a Museum Society member in good standing.

Section 5. Vacancies

In the event that a Director position becomes vacant, the President of the Board (for a Society Director vacancy) or the Mayor (for a City Director vacancy) will appoint an individual to fill the remainder of the term of the vacancy, provided that the appointment is ratified by the membership at the next Annual Meeting or by the City Council as appropriate.

Section 6. Removal

Directors may be removed by a sixty percent (60%) vote of the Board in the event that there are five absences in a one year period from regular Board meetings; or if the conduct of the Director is determined to have a negative effect on the Museum and/or the Society; or if the Director member fails to fulfill their duties as specified below.

Section 7. Officers

The officers of the Board shall consist of the President and at least one (the "First Vice-President") but no more than three Vice Presidents, Secretary, Treasurer and the immediate Past President. The Board will elect officers and determine the number of vice-presidents, which shall be based upon organizational needs, at the first regular Board meeting following the Annual Meeting. The term of office for an officer shall be one year or until successors are duly elected. In the event of a vacancy in the office of President, the First Vice-President shall become President and assume the Presidency of the Board for the remainder of the term. Any other vacancy shall be filled for the remainder of the term by appointment by the Board.

Section 8. Duties of Officers

The duties of the President shall be to preside over the meetings of the Board and membership, make appointments to the standing and temporary committees, execute on behalf of the Society all legal documents relating to Society business, authorize checks in the absence of the Treasurer, call special meetings, and other responsibilities and duties assigned by the Board or by these By-Laws.

The duties of the First Vice-President shall be to assume the powers and functions of the President in the absence of the President and any other duties as delegated by the President of the Board.

The duties of the other vice-president(s), if any, shall be assigned by the Executive Committee and confirmed by the full Board on an annual basis.

The duties of Secretary shall be to sit on the Executive Committee and present the minutes at the Annual Meeting.

The duties of the Treasurer shall be to report at each meeting of the general Society membership and the Board the status of the finances of the Society, be in attendance at Finance Committee meetings and authorize checks.

Section 9. Board Member's Duties

The duties of each Director shall be to abide by the Code of Ethics, maintain membership in good standing and serve on at least one standing committee and attend its meetings.

Section 10. Museum Director

The Museum Director is an *ex officio*, non-voting member of the Board and serves on all standing committees except for the Docents Committee.

Section 11. City Council Representatives

The City Council shall appoint a representative to the Board and that person shall serve as *ex officio*, non-voting member of the Board.

ARTICLE II - MEETINGS

Section 1. Annual Meeting

The Society shall hold an Annual Meeting in the Museum in March of each year at a time determined by the Board. Written notice of the annual meeting shall be provided to all members in good standing.

Section 2. Special Meetings

Special meetings of the Society membership may be called by approval of the Board provided that a meeting notice, which shall contain the reason for the meeting, its time, date and location, is provided to all members by telephone, mail, e-mail or fax at least fourteen(14) days prior to the scheduled meeting. The business of special meetings shall be limited to those subjects identified in the Notice. Special meetings may also be called by the Board upon receipt of a petition of at least twenty current members.

Section 3. Quorum

Twenty Society members in good standing who are in attendance at the Annual Meeting or any special meetings of the Society membership shall constitute a quorum.

Section 4. Board Meetings

The Board shall meet on the fourth Thursday of each month at 12:00 noon at a place designated in advance for such meetings by the President for the transaction of business. When this time is

in conflict with holidays, other events, or other activities, the President shall reschedule the meetings and provide notice of the same to the Directors.

Section 5. Special Meetings of the Board

Special meetings of the Board may be called by the President or by a quorum of the Board. Due notice of the date, time, and place of the meeting shall be provided to all Directors by telephone, mail, e-mail or fax at least five (5) working days in advance of the scheduled special meeting.

Section 6. Quorum of the Board

A simple majority of the current Directors who are in attendance at Board meetings shall constitute a quorum. A quorum is required for the transaction of business at regular and special meetings.

Section 7. Minutes

Minutes of each Board meeting or Society membership meeting shall be kept and when approved entered into the permanent record of the Board or the Society.

Section 8. Rules of Order

The business of all meetings shall be conducted according to Roberts Rules of Order, short version.

Section 9. Waiver of Notice

When any notice is required to be given to a Director, a waiver thereof in writing signed by the Director entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice. Attendance at a meeting shall constitute waiver of notice of the meeting unless the Director at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

ARTICLE III - STANDING COMMITTEES

Section 1. Committees

Except for the Docents and the Children's Museum Advisory Committee, appointments of Directors to standing committees are made by the President each year after the Annual Meeting.

The President shall also appoint the committee chairs. The committees shall have the duties and powers as defined by the Board and expressed in these By-Laws or by policies adopted by the Board. Additionally, the President may appoint any Society Member in good standing to one or more committee.

Section 2. Executive Committee

The Executive Committee of the Board shall be composed of the President, First Vice-President, any other vice-president(s) as determined herein, Secretary, Treasurer and any other Directors the Officers may choose to appoint from time to time. The Director of the Museum will sit on the Committee as a non-voting member. The Executive Committee will review Museum policies, By-

Laws and strategic plans, and present proposed changes or additions to the Board. The Committee is also responsible for the yearly evaluation of the Museum Director, which shall be presented to the Mayor on or before June 1 of each year.

Section 3. Finance Committee

The Finance Committee shall consist of the Treasurer and at least two other Directors. Its duties shall be to recommend an annual budget and changes thereto, manage investments, administer trusts, develop fiscal policies and procedures for the Society and its active committees, oversee the Museum Shop operations, assist in resource development and expansion of the Endowment Fund, and other duties as assigned by the Board.

Section 4. Development and Membership Committee

The Development and Membership Committee of the Board shall be made up of at least three Directors and other members who may add expertise and depth to the Committee. Its duties shall be to raise money for the Museum through methods which may include some or all of the following: securing donations for and sponsorship of Museum exhibitions, events and capital improvements, procurement of grants and gifts and implementation of a planned giving program.

The Committee's membership responsibilities include the expansion of Society membership, public awareness of and support for the Museum, to periodically review member benefits and services and to evaluate procedures and policies relating to membership.

The Development and Membership Committee shall also assist in the planning of an annual giving campaign, special fundraising events and other duties as assigned by the Board.

Section 5. Children's Museum Advisory Committee

The Children's Museum Advisory Committee will elect its own officers, establish active sub-committees and carry out volunteer and fund raising activities in support of the Children's Museum division.

Section 6. Docents Committee

Membership in the Docents is open to any Museum Society member in good standing. Docent members' duties include annual election of officers, establishment of active committees, and the carrying out of volunteer and fundraising activities in support of the Museum.

Section 7. Collections Committee

The Collections Committee shall consist of at least two Directors, the Museum Director, the Curator of Collections, the Photo Archivist/Curator of History, and other members may be added.

The Committee shall review and approve all gifts and deaccessions and report them to the Board. Major transactions shall have full Board approval. Additionally, the Committee shall take steps as necessary to remain knowledgeable of Collections policies and space and the new technologies needed to manage these holdings.

Section 8. Trustee Committee

The Trustee Committee shall be made up of at least two Directors of the Board, the Museum Director and other members as shall be deemed necessary to carry out the responsibilities of the

Committee. The Committee is responsible for the active identification and recruitment of members of the Board; conducting an orientation program for new Board members; designing and implementing educational programs for the Board; evaluating governing Board performance; and, recognizing exemplary board service.

Section 9. Building Committee

The Building Committee shall be made up of at least one Director and other members or individuals as necessary for the carrying out of its duties. Its duties include advanced planning to ensure that the Museum has sufficient, well-equipped facilities to meet the needs of the public; work with the City of Bellingham and the private sector to identify and cultivate funding sources for capital needs; oversight of capital maintenance and improvement projects for Society-owned buildings; review of capital maintenance and other duties as assigned by the Board.

ARTICLE IV – OTHER COMMITTEES

Section 1. Committees

In addition to Standing Committees, other Committees may be created from time to time depending on need and governance preferences by the Board and the Museum Director. They may include one or more of the following or other committees as determined by the Board:

Section 1.1. Long-Range Planning Committee

The Long-Range Planning Committee shall be chaired by the President of the Board and shall be composed of at least three Directors and other members as necessary for the carrying out of its duties. Its duties shall include the periodic review of the mission, goals and objectives of the Museum and the recommendation of changes as necessary to keep the long-range plan document current. The Committee shall be constituted every three years or more frequently as warranted by changing events or conditions.

Section 2. Ad Hoc Committees

Ad Hoc Committees created under this section shall be created for limited periods of time and for specific purposes as determined by the Board. The Board shall have the authority to create an Ad Hoc Committee. A simple majority vote of the Board shall be necessary to create and dissolve Ad Hoc Committees.

ARTICLE V - DUES

Section 1. Dues

The annual dues of the Society shall be determined by the Board and adjusted annually as recommended by the Development and Membership Committee. Benefits and services for members in the various membership categories shall be established and approved by Board policy.

ARTICLE VI - AUDITS

Section 1. Audits

Each year, the Board shall, at the recommendation of the Finance Committee, appoint an independent auditor to audit the annual financial statements of the Society. The audit shall be conducted in accordance with generally accepted auditing standards and the financial statements prepared in accordance with generally accepted accounting principles. The audit report shall be submitted to the Board no later than four months following the end of the year under audit, and shall be made available to any member of the Board or general Society membership upon request.

ARTICLE VII - AMENDMENTS

Section 1. Amendments

These By-Laws may be amended at any regular meeting of the Board or at a special meeting of the Board called for that purpose. Written copies of proposed amendments shall be provided by mail, e-mail or fax to each Director at least ten (10) working days before said meeting, unless the Board shall waive such notice period by simple majority vote. An affirmative vote of two-thirds of the Board is required for passage of amendments to the By-Laws.

ARTICLE VIII – BY-LAWS AND MUSEUM SERVICES AGREEMENT

Section 1. By-Laws and Museum Services Agreement

These By-Laws are the governing rules of the Whatcom Museum Society Board of Directors. Acknowledgement is hereby made of the contract between the Society and the City of Bellingham, titled the "Museum Services Agreement", which may contain additional expectations, obligations, and specific requirements for governance of the Museum and the Society Board action.

Revisions History:

Adopted revisions on March 29, 2007
Adopted revisions on July 20, 2006
Adopted revisions on April 5, 2005
Adopted revisions on April 22, 2004
Adopted revisions on March 27, 2003
Adopted revisions on February 27, 2003
Adopted revisions on November 15, 2001
Adopted revisions on February 15, 2001
Adopted revisions on August 24, 1995

EXHIBIT D

Table of Projected City Financial Support

Calendar Year	Estimated Amount
2010	\$1.45 Million
2011	\$1.35 Million
2012	\$1.275 Million
2013	\$1.225 Million
2014	\$1.2 Million

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