

**OPERATIONAL AGREEMENT BETWEEN
CITY OF SAN PABLO AND SAN PABLO HISTORICAL AND MUSEUM SOCIETY**

THIS AGREEMENT, is made and effective as of _____, 2017
between City and Society.

RECITALS

WHEREAS, this Agreement is entered into between City of San Pablo (“City”), a municipal corporation, and the San Pablo Historical and Museum Society (“Society”) a registered non-profit 501(c)(3) corporation and collectively the “parties”; and;

WHEREAS, City and Society desire to enter into an operational agreement to have Society operate the City’s Alvarado Adobe Museum, Blume House, and Bunk House (“Museums”) at 13831 San Pablo Avenue, San Pablo, California for cultural and educational purposes, and:

WHEREAS, the City desires Society to provide information and educational programs to honor and recognize the early historical events in the City’s history;

WHEREAS, the City currently operates the Teixeira House for City use as the Community Services Department/Youth Division office, but this Agreement may be amended by the parties should it be mutually desired to include the Teixeira House as one of the Museums operated by the Society;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **TERM.** This Agreement shall commence on August 8, 2017, and shall remain and continue in effect until terminated pursuant to the provisions of this Agreement.
2. **SERVICES.** The Society will:
 - Maintain a 501 (c) (3) non-profit organization registered corporation status with the State of California Secretary of State at all times while operating in City facilities;
 - Provide Society-owned artifacts and antiques for display in Museums and informational and educational programs, including the goal of instituting a Living History Program;
 - Provide staffing for the Museums as needed and docent training with the goal of being able to staff a future Living History Program;
 - Supervise visitors to the Museums during hours of public operations;

- Establish public hours of operation mutually agreeable to City and Society and provide notice to City of such hours for public education purposes;
- Maintain all required licenses and permits, including health permits and food handler's permits and training, when required;
- Provide janitorial and interior maintenance services and upkeep of the Museums and their furnishings and artifacts;
- Install and maintain a separate telephone line or telecommunications facilities at its sole cost and expense;
- Meet with City staff members on a mutually agreeable schedule;
- Use City's logo on all educational and promotional materials for the Museums; and
- Society shall support the City's overall efforts to preserve and protect the City's historic facilities through a future development of a Historic Preservation Park to enhance public accessibility, historical appreciation and longevity of the City's recognized historical facilities.

The City will:

- Provide exclusive use of Museums for informational and educational programs as may be jointly approved by Society and the City;
- Provide general maintenance of the Museums and grounds including but not limited to maintenance of the interior and exterior structural integrity and appearance of the buildings, door locks, and paint and deck staining (including graffiti removal);
- Provide maintenance and payment of the public utilities services including sanitary sewer, electrical, water, security, and fire alarms but not phone or telecommunications services;
- Advertise Society activities, events and programs at Museums on City's website, newsletter, and social media networks; and
- Provide the Society a \$5,000 annual stipend beginning in FY2017/18 and continuing for five (5) years for services rendered to the City by Society as enumerated in this section. The stipend may be continued beyond the five years by mutual agreement of the parties and subject to City Council budget appropriation approval.

Jointly, the Society and the City will:

- Seek grant or public funding and sponsorships to support all activities and operations for the Museums;
- Market and promote the San Pablo Historical Facilities and future Historic Preservation Park as a cultural and educational recreational resource in the community; and

- Meet with each other on a mutually agreeable schedule.

3. PERFORMANCE. Society shall follow, at a minimum, generally accepted standard and practices utilized by persons engaged in providing similar services as are required of Society in meeting its obligations under this Agreement.

4. IMPROVEMENTS OR CHANGE IN USE.

Any capital improvements to the Museums or modifications in the buildings or use shall be subject to the prior approval of the City Manager. Appropriate City permit and inspection shall be required for any such improvement(s). Any significant change, expansion, or intensification of the existing use may require a conditional use permit in accordance with the regulations set forth in the San Pablo Municipal Code.

In addition, the work on the Museums may be subject to public bidding provisions of the City's Purchasing Ordinance and/or State Government Code requirements.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE.

Either party may, at any time, for any reason, with or without cause, suspend or terminate this Agreement or any portion hereof upon ninety (90) days written notice.

6. INDEMNIFICATION. Society agrees to defend, indemnify, and hold harmless the City and any of its employees, volunteers, agents, and officials from any claims of third parties arising out of any act or omission of the Society and any of its employees, volunteers, agents, and officials in connection with the performance of this Agreement. City agrees to defend, indemnify, and hold harmless the Society and any of its employees, volunteers, agents, and officials from any claims of third parties arising out of any act or omission of the City and any of its employees, volunteers, agents, and officials in connection with the performance of this Agreement.

7. INSURANCE. Society shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from the acts or omissions of Society in performing or failing to perform its obligations under the terms of this Agreement, or arising from its activities or sales. At Society's request, the City may facilitate procuring the insurance through its membership in the Municipal Pooling Authority of Northern California (MPA), provided that the Society remains responsible for the cost of the insurance.

a) Minimum Scope and Limits of Insurance

Society shall maintain limits no less than:

(1) General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate

limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(2) Workers Compensation Insurance: If Society has employees, then workers' compensation insurance is required by the State of California and Employer's Liability insurance coverage at \$1,000,000 per accident for bodily injury or disease.

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

c) Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) The City, its officers, officials, employees and volunteers are to be covered as additionally insureds as respects liability arising out of activities performed by or on behalf of the Society; products and completed operations of the Society; or premises owned, occupied or used by the Society. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

(2) For any claims related to Society's acts or failure to act, the Society's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured retention maintained by the City, its officers, officials, employees or volunteers shall be excess of the Society's insurance and shall not contribute with it.

3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

d) Acceptability of Insurer. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII and authorized by the Insurance Commissioner to transact the business of insurance in the State of California, unless otherwise acceptable to the City.

e) Verification of Coverage. Society shall furnish the City with copies of original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require Society to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

f) Limitation on Coverage. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

g) Public Facility Insurance. The City shall include Museums under its public facility liability insurance coverage to be a covered loss due to fire, theft, vandalism, but not earthquake.

8. SOCIETY IS NOT AN AGENT OR EMPLOYEE OF THE CITY.

a) Society is and shall at all times remain as to the City a wholly independent entity. Neither City nor any of its officers, employees or agents shall have control over the conduct of Society or any of Society's officers, employees or agents, except as set forth in this Agreement. Society shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Society shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b) No employee benefits shall be available to Society in connection with the performance of this Agreement. City shall not be liable for compensation or indemnification to Society members or volunteers for injury or sickness arising out of performing services hereunder.

9. LEGAL RESPONSIBILITIES. Society shall use reasonable efforts to keep itself informed of Federal, State and local laws and regulations which in any manner affect those, persons employed by it or in any way affect the performance of its service pursuant to this Agreement, including, without limitation, all applicable health and food preparation laws and regulations. Society shall use reasonable efforts to observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of Society to comply with this section.

10. NONDISCRIMINATION. Society shall not discriminate in the acceptance of any person as a volunteer because of race, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age. Society shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Agreement. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Agreement. In performing work and providing services under this Agreement, Consultant shall, at its sole cost and expense, comply with all applicable laws of the United States and the State of California; the Ordinances of the City of San Pablo; and the rules, regulations, orders and directories of their respective administrative agencies and the officers thereof.

11. NOTICES. Any notices that either party desires to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice:

To City: City Manager
City of San Pablo
13831 San Pablo Avenue, Bldg. 1
San Pablo, CA 94806

To Society: President
The San Pablo Historical Society
13831 San Pablo Avenue
San Pablo, CA 94806

11. ASSIGNMENT. Society shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

12. ENTIRE AGREEMENT. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

SAN PABLO HISTORICAL &
MUSEUM SOCIETY

CITY OF SAN PABLO

By: _____
Janet Pottier, President

By: _____
Matt Rodriguez, City Manager

By: _____

Name and Title: _____

ATTEST:

Elizabeth Pabon-Alvarado, City Clerk

Approved as to Form:

Lynn Tracy Nerland, City Attorney

DRAFT