

**AGREEMENT
BETWEEN THE CITY OF SACRAMENTO AND
THE HISTORIC OLD SACRAMENTO FOUNDATION, INC.**

This agreement ("Agreement") is made as of _____ by and between the City of Sacramento, a municipal corporation, ("City") and the Historic Old Sacramento Foundation, a California corporation (the "HOSF"). The City and the HOSF may be referred to collectively as "Parties" or in the singular as "Party," as the context requires.

BACKGROUND

The HOSF and the Old Sacramento Business Association (the "OSBA") were founded in 2003 following an intensive stakeholder process to define strategies and develop an action plan to build on the success of Old Sacramento.

Since their formation, the HOSF and the OSBA have essentially functioned as a single organization, which has proven to dilute and obscure their separate roles. Separation of HOSF and OSBA functions will allow each organization to focus on its respective area of expertise and ensure the continuing popular and commercial success of the Old Sacramento Historic District (the "OSHD") as well as the preservation and interpretation of Sacramento's historic past.

Upon separation of the HOSF and OSBA functions, the City of Sacramento, through the Old Sacramento Management Division, will provide oversight, supervision and financial support to the HOSF to ensure its future success and expansion. The Downtown Sacramento Partnership ("DSP") will assume oversight of the OSBA programs and activities, including administration of the Old Sacramento Business Improvement Area.

The HOSF and DSP will collaborate and cooperate with each other and the City, State, and other Old Sacramento stakeholders to develop, manage, and promote a single vision for Old Sacramento and align all activities with that vision in order to create a comprehensive, integrated, and quality program for the OSHD.

The mission of the HOSF is to work in partnership with the OSBA, the DSP, the City, the State of California, property owners, merchants and other stakeholders in their common goal of improving the OSHD as a local, regional, and national historic and cultural asset by preserving and protecting the historic district, and conducting successful interpretive, historical, and entertainment programs.

RECITALS

- A. Old Sacramento is a registered national historic landmark that should be protected and preserved for future generations to enjoy.

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- B. Old Sacramento is recognized as a key destination for local residents as well as visitors to the area.
- C. A successful program of historic education, interpretation, and preservation activities is critical to the economic vitality of Old Sacramento.
- D. The joint HOSF/OSBA Board of Directors wishes to separate the HOSF and the OSBA to clarify and further define each organization's respective roles and responsibilities.
- E. The City of Sacramento is committed to providing oversight, supervision and financial support to the HOSF to ensure its future success and expansion.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Term.

The term of the Agreement shall commence on March 1, 2008 and end June 30, 2010, unless sooner terminated as set forth in this Agreement. The Parties may extend the term of this Agreement for up to four additional one-year terms upon the mutual consent of the Parties.

Section 2. HOSF Provided Services and Obligations.

A. Programs and Services

In cooperation with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders, the HOSF shall develop, coordinate, and implement a full range of programs, events, and activities to preserve and protect the OSHD and conduct successful educational, interpretive, historical, and entertainment programs, including:

1. Living History Program described in Section 2.D.;
2. Regular walking tours of Old Sacramento;
3. Underground Tour to be developed and implemented by 2009 unless parties mutually agree to extend date;
4. Historical events and re-enactments;
5. Re-enactors for street scenes, craft demonstrations, and public relations with Old Sacramento guests;
6. Youth and school programs, including annual History Camp;

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7. Historic education and interpretive activities, such as interpretive signage, self-guided tour materials, brochures, and other interpretive documents;
8. Promotion of Old Sacramento as a place to learn history;
9. Advice and support for Old Sacramento businesses regarding historic displays, furnishings, and other activities; and
10. OSHD Advocacy.

B. Annual Plan

In cooperation with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders, the HOSF shall develop an annual plan for Old Sacramento historic education, interpretive, and preservation programs and activities.

1. The annual interpretation and education plan shall include the programs, events, and activities listed in Section 2.A. as well as other activities that support the mission of the HOSF.
2. The annual interpretation and education plan shall become part of a comprehensive action plan for all Old Sacramento projects, events, services, and activities to ensure a coordinated, cohesive, and effective Old Sacramento program that maximizes all available resources.
3. The annual interpretation and education plan shall be submitted to the OSBA Board for review and comment at least three months in advance of the first scheduled activity or program included in the plan.

C. Annual Budget

The HOSF shall adopt an annual line item and program budget that adequately supports the annual interpretation and education plan described in Section 2.B.

D. Living History Program

The HOSF shall operate and manage the Old Sacramento Living History Program and shall:

1. Employ a Living History Program Coordinator to supervise, direct, and manage all aspects of the Living History Program;
2. Develop a program of characterization of historic persons important in early

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- Sacramento during the gold rush and post gold rush periods;
3. Include in the characterization persons representing certain businesses, trades, occupations, etc. present in early Sacramento;
 4. Develop a program of proper costuming as part of the portrayal of the persons in numbers 1 and 2 above. Maintain costume closets and 1850s reproductions of household items, structures, and possessions;
 5. Develop an outreach program for the enrollment of volunteers to implement the Living History program;
 6. Attend special events and historic activities in the OSHD and throughout the greater Sacramento region in costume to promote the OSHD;
 7. Develop a Living History Center facility with the long-term goal of becoming the center of interpretation for northern California. Develop specialty curricula that are available to state, city, and non-profit museums and interpretive centers. Create training workshops for docents, re-enactors, and museum educators. Sponsor workshops for teachers to promote interpretive learning inside the classroom. Create innovative programs for youths such as history camps, guide training programs, and interpretation live.

E. Outreach and Promotional Program

The HOSF shall collaborate with the OSBA, the DSP, the City, the State, property owners, merchants, and other Old Sacramento stakeholders to develop and implement a promotional program including outreach, special promotions, special events, historic activities, and public information to bring residents and visitors alike to the OSHD and assure that once they are in the OSHD there are special historic activities to experience.

1. The HOSF shall collaborate with the OSBA, the DSP, and other stakeholders to develop an annual cohesive, integrated, and comprehensive marketing and advertising program for all Old Sacramento programs, events, and activities.
2. The HOSF shall be responsible for providing, in a timely manner, Old Sacramento historic information and HOSF program information to the OSBA for inclusion on the www.oldsacramento.com web site.
3. The HOSF shall be responsible for providing, in a timely manner, Old Sacramento historic information and HOSF program information to the OSBA for inclusion in visitor guides or other visitor publication(s).
4. In cooperation with the OSBA, the DSP, the City, the State, and other Old

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Sacramento stakeholders, the HOSF shall develop interpretive signage, self-guided tour materials, brochures and other interpretive publications as necessary to interpret and promote Old Sacramento history.

F. Resource Development Program

The HOSF shall seek, identify, and develop funding sources for expansion and continuance of Old Sacramento historic education, interpretation, and preservation activities. The HOSF shall submit grant proposals and seek sponsorship or collaborative opportunities which will benefit the Old Sacramento Historic District.

G. Committees

The HOSF shall:

1. Establish committees as needed to advance the goals and programs of the HOSF;
2. Participate in committees and councils coordinated by the OSBA and/or the DSP as requested.

H. Non-profit Status

The HOSF shall maintain its 501(c)3 non-profit status as determined by law.

I. HOSF Executive Director

The City of Sacramento Historic District Manager shall serve as Executive Director of the HOSF. The HOSF Executive Director shall serve as staff to the HOSF Board of Directors who shall work closely with and have an active role in supporting OSBA/DSP Old Sacramento activities and operations.

J. Advisory Services

The HOSF shall advise the City and OSBA/DSP on issues relevant to Old Sacramento as needed.

K. Facilities, Supplies, and Equipment

The HOSF shall provide all facilities, supplies, and equipment necessary for the operations of the HOSF except for those items expressly provided by the City as listed in Section 5.

L. Other Services

The HOSF shall perform and deliver other services, programs, or items as

stipulated in writing between the HOSF and the Director of the City's Convention, Culture and Leisure Department (the "Director").

Section 3. HOSF Board of Directors.

- A. The HOSF agrees that the number of members, term of office, and method of filling vacancies for its Board of Directors ("Board") shall be consistent with its bylaws.
- B. The HOSF Board shall include the following voting members:
 - 1. A member of the Living History Program;
 - 2. An Old Sacramento property owner;
 - 3. An Old Sacramento business owner;
 - 4. A representative of the OSBA Board;
 - 5. The Director or his or her representative;
 - 6. The City of Sacramento History and Archives Manager;
 - 7. A representative from the Sacramento Convention and Visitors Bureau;
 - 8. A representative from the California State Railroad Museum;
 - 9. A representative from the Discovery Museum;
 - 10. An educator in the history field.

The HOSF Board shall also appoint other voting and advisory members as needed to ensure appropriate Old Sacramento stakeholder representation.

Section 4. HOSF Performance Measurement and Reporting Requirements.

The HOSF shall provide the following reports to the Director according to the schedule below.

- A. Performance Reporting
 - 1. The HOSF will collaborate with the OSBA/DSP to develop and maintain a comprehensive program of performance measurement and reporting. All measures shall be reported at least annually.
 - 2. The HOSF shall be responsible for collecting and reporting measures related to HOSF programs and activities, including, but not limited to, the following:

- a. Number of HOSF members;
 - b. Number of volunteers;
 - c. Number of tours provided in OSHD;
 - d. Number of historic characterizations throughout the greater Sacramento region;
 - e. Number of youth served by educational programs; and
 - f. Dollar value of grants received.
3. The HOSF shall provide quarterly status reports with a brief narrative of activities and projects to the City by the end of the month following the end of each quarter.

B. Financial Reporting

1. The HOSF shall provide to the City an adopted operating annual budget by May 1st of each year for the next fiscal year.
2. The HOSF shall provide to the City monthly reports indicating expenses and revenues against budget submitted by the 15th of each month for the preceding month.

C. Annual Report

1. The HOSF shall provide to the City not later than 120 days after the close of the fiscal year an annual report as described in Section 9.03 of the HOSF Bylaws, as amended.

Section 5. City Provided Services and Funding.

A. HOSF Executive Director

The City of Sacramento Historic District Manager shall serve as Executive Director of the HOSF and provide direct supervision and oversight over all HOSF staff.

B. Facilities, Supplies, and Equipment

At the sole discretion of the Director, the City may provide the following support for HOSF operations:

- a. Office space for HOSF staff;

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- b. Living History Center space to include offices, meeting rooms, costume storage, and other space necessary for the success of the Living History Program;
- c. All related utilities, including electricity, water, sewer, telephone, and internet access;
- d. All computer support necessary for HOSF operations including network support, email, IT support services, hardware and software; and
- e. Accounting and bookkeeping services.

C. Compliance with City Policies.

HOSF agrees that all employees, volunteers, and agents of the HOSF shall abide by all relevant City policies, rules and regulations. HOSF agrees to protect all City Information and treat it as strictly confidential and further agrees that HOSF shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City. In addition, HOSF shall comply with all City policies governing the use of the City network and technology systems, as set forth in applicable provisions of the City of Sacramento Administrative Policy Instructions # 30. A violation by HOSF of this subsection 5.C shall be a material breach of this Agreement.

D. Program Assistance

The HOSF shall submit requests for staff support to the Old Sacramento Management Division at least five business days in advance. The City's Old Sacramento Management Division shall have complete discretion in determining whether to provide staff support to HOSF for programs, events and activities.

E. Funding

1. The City shall provide \$10,000 per fiscal year to HOSF in support of the HOSF programs and activities.
 - a. Funding shall be prorated for fiscal year 2007/2008.
 - b. The City shall disburse funds to the HOSF in a lump sum payment by August 1 of each year.
 - c. The total funding per fiscal year may, at the sole discretion of the Director, be reduced by the same percentage reduction imposed on the Old Sacramento Management Division general fund budget for the same fiscal year.

2. By separate agreement, the OSBA will conduct one (1) fundraising event on behalf of the HOSF each fiscal year with net proceeds raised by that event to benefit the HOSF. If the net revenue from the OSBA-hosted event is less than \$40,000, the City shall provide funds to the HOSF in an amount equal to the difference between \$40,000 and the net revenue from the event. Should the net funds produced by the OSBA-hosted event exceed \$40,000, the City, the HOSF, and the OSBA shall work together to use the excess funds to market the OSHD.
3. Funding for additional services in an amount not to exceed \$100,000 per year may be provided upon written approval of the Director.
 - a. The granting of any additional funds is conditioned upon the Director's prior written approval of the projects, programs, and activities for which the funds will be expended.
 - b. Additional funds disbursed to the HOSF must be used for the express purposes and within the timelines approved by the Director.

Section 6. Maintenance and Inspection of Records.

The HOSF shall, at all times during the term of this agreement and for a period of three years thereafter, keep true, accurate, and complete financial records and accounts of all HOSF operations and such other financial or business records as may be reasonably required by the Director. The Director or his or her representative shall have the right at all times to examine and audit said records and accounts.

Section 7. Subcontracts.

The HOSF may award and administer all subcontracts necessary for providing the activities authorized herein. When awarding a subcontract for \$25,000 or more, the HOSF shall (1) solicit bids for the work; (2) consider the bids received before awarding the subcontract; and (3) make a written "Bid Record" after the subcontract is awarded (the Bid Record must list the name and amount bid for each bidder and describe the reasons for awarding the subcontract to the successful bidder). For any subcontract, upon request, the HOSF shall provide the City with a copy of the subcontract and the Bid Record.

Section 8. Indemnity.

A. Indemnity.

HOSF shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs

reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by HOSF, any sub-consultant, sub-contractors or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the direct supervision and control of HOSF.

B. Insurance Policies; Intellectual Property Claims.

The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 8, nor shall the limits of such insurance limit the liability of HOSF hereunder. The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

Section 9. Insurance.

During the entire term of this Agreement, the HOSF shall maintain the insurance coverage described in this Section.

It is understood and agreed by the HOSF that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the HOSF in connection with this Agreement.

A. Minimum Scope & Limits of Insurance Coverage

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and

personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the HOSF.

No automobile liability insurance shall be required if HOSF completes the following certification:

“I certify that a motor vehicle will not be used in the performance of any work or services under this agreement.”
_____ (HOSF initials)

- (3) Workers’ Compensation Insurance with statutory limits, and Employers’ Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker’s Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

_____ Workers’ Compensation waiver of subrogation in favor of the City is required for all work performed by the HOSF.

No Workers’ Compensation insurance shall be required if HOSF completes the following certification:

“I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers’ Compensation insurance.” _____
(HOSF initials)

- (4) Event Insurance. The HOSF shall obtain special event insurance as required by the City’s special event permits.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of HOSF, products and completed operations of HOSF, and premises owned, leased or used by HOSF. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) HOSF's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of HOSF's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.
- (3) Coverage shall state that HOSF's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 9 must be declared to and approved by the City Risk Management Division in writing prior to execution of this Agreement.

E. Verification of Coverage

- (1) HOSF shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the Old Sacramento Division, 1111 Second Street, 3rd floor, Sacramento, CA 95814. Copies of

policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (2) The City may withdraw its offer of contract or cancel this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement. The City may withhold payments to HOSF and/or cancel the Agreement if the insurance is canceled or HOSF otherwise ceases to be insured as required herein.

Section 10. Compliance with all Laws.

The HOSF shall, at all times, comply with and abide by all pertinent or applicable regulations and ordinances of the City of Sacramento and County of Sacramento and the laws of the State of California and the United States insofar as the same or any of them are applicable and shall obtain and keep in effect all necessary permits and licenses required for any and all operations permitted herein.

A. Special Event Permits

The HOSF shall obtain Special Event Permits from the City and adhere to all requirements associated with such permits prior to conducting any type of event or activity on City-owned public space in the OSHD. The City will not reasonably withhold issuance of a Special Event Permit and will expedite review and approval of HOSF Special Event Permit applications whenever possible.

Section 11. Non-Discrimination.

HOSF agrees that it shall not discriminate against any person on account their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation in violation of the Fair Employment and Housing or the Unruh Civil Rights Acts. Upon a final determination by a court of competent jurisdiction that the HOSF has violated either of these Acts, the City may, at its option, deem this Agreement void.

Section 12. Time of Essence.

Time is expressly declared to be in the essence of this agreement.

Section 13. Entire Agreement.

This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by HOSF, and by City, in accordance with applicable provisions of the Sacramento City Code.

Section 14. Severability.

If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 15. Waiver.

Neither City acceptance of any service performed by HOSF, nor any waiver by either Party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

Section 16. Assignment Prohibited.

The expertise and experience of HOSF are material considerations for this Agreement. City has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on HOSF under this Agreement. In recognition of this interest, HOSF shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.

Section 17. Binding Effect.

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 16, above.

Section 18. Notices.

All notices and orders that may be given under this Agreement may be served by first class mail or in person to City at the Convention, Culture and Leisure Department, 1030 15th Street, Suite 250, Sacramento, California 95814; and to HOSF at 1111 2nd Street, 3rd floor, Sacramento, California 95814, or such address as either may provide to the other in writing. Service shall be deemed complete upon deposit in the mail or upon delivery.

Section 19. Termination.

The HOSF or the City may terminate this agreement without cause upon one-hundred eighty (180) days' notice to the other party. If City gives notice of termination, the HOSF shall not after the date of notice encumber any funds received from the City without the prior written consent of the Director of Convention, Culture and Leisure. Upon termination, the HOSF shall return all unencumbered City funds to the City.

