

Deposit Agreement between California State University, Sacramento and the City of Sacramento for the deposit of Old Sacramento Symphony Music Collection

This Deposit Agreement is made this _____ day of _____, 2006, between the City of Sacramento, a charter city and municipal corporation (hereinafter referred to as "CITY"), and the California State University, Sacramento (hereinafter referred to as "Sacramento State").

The Sacramento Metropolitan Arts Commission (hereinafter referred to as "Depositor") is the custodian acting on behalf of the CITY as owner of the Old Sacramento Symphony Music Collection (hereafter referred to as "Collection.") CITY desires to preserve the Collection, consisting of an estimated 1157 orchestral scores, from loss and deterioration and to provide the public, particularly regional orchestras and music groups, improved access to the Collection.

Accordingly, the parties hereto mutually agree to the following:

1. Depositor will deposit the Collection with the California State University, Sacramento, Library (hereinafter referred to as "Library"). Depositor will retain ownership and title to the Collection, including all copyrights contained therein except for those copyrights retained by any publishing company, organization, agency, corporate entity or individual.
2. The term of this agreement is from _____, 2006 to _____ 2016. The parties shall review the terms and conditions of this agreement no later than December 31, 2015 and may extend the term of this agreement upon the parties' mutual agreement.
3. Depositor will pay the costs related to moving the Collection to the Library.
4. The Library will inventory and catalog the Collection according to national cataloging standards within four (4) months after receipt of the Collection. The cataloging records for the Collection will be represented in the Library online catalog, EUREKA, and in the OCLC WorldCat (international bibliographic database). The Library will provide the Depositor with a corrected inventory listing. CITY will pay Sacramento State the amount of \$12,000 after completion of all the work stated herein.
5. The Collection will be stored and made available onsite in the Special Collections & University Archives Reading Room to all Library patrons during the Library's normal service hours. Photocopying for personal use or for the purpose of performance, to the degree allowed by U.S. Copyright Law, will be allowed. All photocopying of materials in the Collection will be performed by Library staff at the existing rate per page plus a surcharge of two cents (\$0.02) per page. The surcharge shall not apply to Sacramento State staff, faculty and students. Any surcharge collected will be deposited into a fund herein referred to as

Maintenance and Repair Fund. All funds in the Maintenance and Repair Fund will be used for the exclusive purpose of repairing or replacing damaged or lost Collection materials.

A. When an original orchestral score containing markings by concertmaster William Barbini is requested for check-out by Library patrons, Library shall photocopy the strings parts of said orchestral score containing the markings. The set of photocopies will be filed separately to serve as back-up in preserving the markings in the event the original orchestral part is damaged or lost. The Library shall charge the existing copy rate per page for copying the marked parts and present the CITY with an annual invoice for the photocopying costs.

6. An advisory group consisting of representatives from the Library, Sacramento State Music Department, regional professional, amateur and student orchestral groups, musician's union, and CITY (hereinafter referred to as the "Symphony Music Advisory Committee") will develop and recommend circulation policy and guidelines for the Collection materials, including guidance on which pieces of the Collection are worth replacing if damaged or lost. The circulation policy and guidelines may be reviewed, reassessed and/or revised from time to time as needed. Depositor and Sacramento State shall review recommendations from the Symphony Music Advisory Committee and shall mutually approve or modify the recommendations as needed.
7. At the end of each contract year, Depositor will pay Library the amount of \$1,000 ("Annual Payment") to help offset the expenses incurred in housing and managing the Collection. At the end of the same contract year and before invoicing Depositor, Library will provide Depositor with an accounting of relevant costs associated with the housing and managing of the Collection, including the photocopy costs provided in Section 5A above, as well as the revenue from photocopying charges, including the surcharge deposited in the Maintenance and Repair Fund. The costs associated with housing and maintaining the Collection will be reviewed once every two (2) years to determine whether the Annual Payment amount should be modified.
8. The Library agrees to take the customary precautions for the safeguarding of the Collection, but does not assume liability or responsibility for any loss or damage to the Collection not resulting from its own fault or negligence. The Collection is insured by the CITY.
9. This Deposit Agreement may be amended or modified only upon the written agreement of the parties in accordance with applicable provisions of the Sacramento City Code.
10. This Deposit Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California,

and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

11. The parties agree that the working relationship between them under this Deposit Agreement shall not be construed as or deemed to create an employer-employee, principal-agent, joint venture, or partnership relationship between the parties. The parties shall refrain from undertaking actions which may give rise to such relationships.
12. Each party shall assume responsibility for all workers compensation insurance coverage for its employees acting under this Deposit Agreement and shall assume all responsibility for all federal and state income tax withholding for its employees, including, but not limited to the Federal Income Tax, State Income Tax, Federal Insurance Contributions Act, State Unemployment Insurance, and State Disability Insurance, and any other deductions from income that such party is required to make as an employer.
13. Each party shall assume the responsibility and liability for and shall indemnify, defend, and hold harmless the other party (“Indemnified Party”) and its agents, officers, and employees, from and against any and all liabilities, obligations, losses, damages, penalties, fines, claims, actions, suits, costs and expenses and disbursements (including legal fees and expenses) of any kind and nature imposed in, asserted against, incurred or suffered by the Indemnified Party or its agents, officers or employees by reason of damage, loss or injury (including death) of any kind or nature whatsoever to persons or property caused by or in any way relating to or arising out of any negligent act or action, or any neglect, omission or failure to act when under a duty to act on the part of the party or any of its agents, officers, or employees in its or their actions related to the performance of services under this Deposit Agreement. This section shall survive the termination or expiration of this Deposit Agreement.
14. If any term, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall remain in full force and effect.
15. Any communication pertaining to this Deposit Agreement shall be referred to the respective party as follows:

TO CITY: Rhyena Halpern, Executive Director
Sacramento Metropolitan Arts Commission

TO SACRAMENTO STATE: Tamara Trujillo, Acting Director and Senior
Associate Dean, Library

16. The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing this Deposit Agreement and to bind their respective party thereto.

WHEREFORE, the parties have executed this agreement as of the day and year hereinabove written.

CITY OF SACRAMENTO
A Municipal Corporation

California State University, Trustees

By: _____
For Ray Kerridge, City Manager

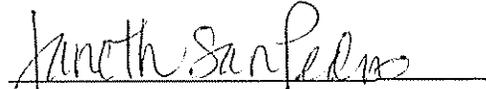


Signature of Authorized Person
Joseph F. Sheley
Provost/Vice President for Academic Affairs (Interim)

Print Name: _____
Title: _____

Name and Title

APPROVED AS TO FORM:



City Attorney

ATTEST:

City Clerk