

DONATION AGREEMENT

THIS AGREEMENT is made on _____, between the **CITY OF SAN LUIS OBISPO**, a California charter city and municipal corporation ("City"), and **HISTORY CENTER OF SAN LUIS OBISPO COUNTY**, a California Nonprofit corporation ("Donor").

RECITALS:

WHEREAS, City is the owner of the historic Carnegie Library located at 696 Monterey Street St., in the City of San Luis Obispo, California, ("History Center"); and

WHEREAS, Donor has offered to donate labor and material to the City in order to upgrade the existing floor coverings (carpet) at the History Center (the "Donation"), as further described in donation letter attached hereto and incorporated herein by reference as Attachment A ("Donation Letter"); and

WHEREAS, on September 7, 1999, the City Council of the City adopted Resolution 8965 (1999 Series) adopting a City Donation Acceptance Policy, which is attached hereto and incorporated herein as Attachment C ("Donation Policy"); and

WHEREAS, City and Donor desire to enter into this Agreement to govern the Donations, in accordance with the Policy and applicable laws.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual terms and covenants hereinafter set forth, and other consideration, the sufficiency of which is hereby acknowledged, City and Donor hereby agree as follows:

Donor's Responsibilities

- A. Donor shall provide the Donations in accordance with the Scope of Work attached hereto as Exhibit A and with all applicable laws, regulations, and ordinances. The Donations shall be completed in a good and workmanlike manner and shall be subject to all warranties identified in the Scope of Work or other applicable laws.
- B. Donor will obtain all permits required by applicable state, federal, or City laws or ordinances for completion of the Donations.
- C. Donor will provide and complete the Donations at no cost to City, except that City agrees to waive permit processing and inspection fees for any required permits issued by City.
- D. The Donations shall be completed no later than December 31, 2022. Work shall not start until all material has been received by the contractor. Work shall be completed within 20 working days of commencement and shall be limited to the hours of 7:00 am-5:00 pm at the History Center.

- E. Donor shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws and county and City ordinances, regulations and adopted codes during its performance of the work addressed in this Agreement, including work performed during the design and preconstruction phases of construction, including but not limited to, inspection and land surveying work. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code.
- F. Donor is responsible to indemnify, hold harmless, and defend City and each of its councilmembers, officers, employees, agents, and volunteers from any and all claims, losses, liabilities, damages, fines, penalties, costs, and expenses (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty), including attorney's fees and litigation expenses, incurred by City, Donor, or any other person, arising or alleged to have arisen directly or indirectly out of: (a) the Donations; or (b) the breach or performance of this Agreement by Donor. The obligations of Donor under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused solely by the gross negligence or willful misconduct of City or any of its officers, officials, employees, agents, or volunteers.
- G. Donor shall ensure their contractors maintain for the duration of the work performed pursuant to this Agreement the following insurance policies that comply with the following requirements:
 - 1. Insurance Services Office Commercial General Liability insurance coverage (occurrence form CG 0001) \$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 as required by the State of California and Employer's Liability insurance.
 - 3. Donor's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of the Donor's insurance and shall not contribute with it.
 - 4. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

II. City's Responsibilities

- A. City acknowledges and agrees that the Donations are consistent with the Policy, subject to the provisions of this Agreement.

- B. City agrees to waive permit processing and inspection fees for all permits issued by City for the Donations.
- C. City will own, operate, and maintain the Donation once installed at the History Center.

IV. Termination of Agreement

- A. In the event of a substantial failure of performance by one party, this Agreement may be terminated by the other party upon written notice to the non-performing party.
- B. In the event that this Agreement is terminated following commencement of work by Donor but prior to final inspection and approval of the Donations by City, City shall retain ownership of any work completed by Donor as of the date of termination.
- C. In no event shall CITY be responsible to Donor for any damages resulting from termination of this Agreement.

V. General Provisions

- A. Attorney Fees. In the event of any action between City and Donor seeking enforcement of any of the terms and conditions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, reasonable costs and expenses and reasonable attorney's fees.
- B. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event that suit is brought by a party to this Agreement, the parties agree that trial of such action shall be vested exclusively in the courts of the County of San Luis Obispo, State of California.
- C. Notice. Notices and written communications sent by one party to the other must be personally delivered or sent by certified or registered U.S. Mail, return receipt requested, postage prepaid, to the following addresses (or such other addresses as may be designated by notice given in accordance with this paragraph):

To City: City of San Luis Obispo
 990 Palm Street
 San Luis Obispo, CA 93401
 Attention: Alejandro Hernandez

To Donor: The History Center of San Luis Obispo County
 696 Monterey Street
 San Luis Obispo, CA 93401

- D. No Third Party Rights. No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

- E. Assignment. Donor may not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of City. Any purported assignment without such consent shall be void and without effect.
- F. Compliance with Laws. Donor shall perform its obligations under this Agreement in accordance with all state, federal, and City laws, ordinances, rules, and regulations.
- G. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and the remainder of the provisions of this Agreement shall continue in full force without impairment.
- H. Entire Agreement. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein.
- I. Modification. This Agreement shall not be amended in any way except by a writing signed by both parties.

IN WITNESS WHEREOF, City and Donor have executed this Agreement on the day and year first above written.

CITY:
CITY OF SAN LUIS OBISPO

DONOR:
HISTORY CENTER OF SAN LUIS OBISPO

Mayor Erica A. Stewart

Print Name: _____
Title: _____

ATTEST:

Teresa Purrington
City Clerk

APPROVED AS TO FORM:

J. Christine Dietrick
City Attorney