



CITY OF PACIFIC GROVE

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Thomas Frutchey, City Manager
MEETING DATE: June 2, 2010
SUBJECT: Consider Approving the First Reading of the Ordinance to Amend the Operating Agreement and Lease between the City of Pacific Grove and the Museum Foundation Of Pacific Grove
CEQA STATUS: CEQA Class 1 Categorical Exemption, Existing Facilities, as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations

RECOMMENDATION

1. Consider amending the Operating Agreement and Lease between the City of Pacific Grove and the Museum Foundation of Pacific Grove.
2. Introduce and hold a first reading on the attached draft ordinance, and direct publication of a summary prior to second reading.

DISCUSSION

The Original Operating Agreement and Lease. On June 17, 2009, the City approved an *Operating Agreement and Lease* between the Museum Foundation of Pacific Grove and the City of Pacific Grove. To summarize this agreement, the City of Pacific Grove owns the Museum Collection, owns the Museum facility, and maintains the Museum facility. The agreement also ensures that the Museum Foundation of Pacific Grove Museum 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 these tasks. General admission to the Museum is to be free.

Improving the Contract. When the City Council approved the *Operating Agreement and Lease* on June 17, 2009, Jason Burnett, the Board President of the Museum Foundation of Pacific Grove, committed to meet with the City after six months of the Foundation operating the Museum and discuss ways to improve this contract. On February 17, 2010, the City Council approved Thomas Frutchey and Mayor Garcia entering into discussions with the Museum Foundation to improve this contract. The attached amendment is the result of these discussions and the table below analyses the proposed amendment items.

The Proposed Amendment. The following table describes each of the ten proposed changes to the existing agreement and lease:

Section #	Summary of Proposed Change	Reason for Proposed Change
#1 Section 2.02	The term of the lease agreement is currently 15 years with three, 5 year extensions for a total of 30 years. This amendment would change the term of the Lease Agreement to thirty (30) years and eleven (11) months, commencing August 1, 2009 and ending June 30, 2040. It would also change the lease extension to be an automatic on-going one year extension at the end of each year, with the ability to cancel this rolling extension at-will by either party.	<p>The initial lease term plus extensions brings the lease to a total of 30 years, but funders primarily look at the initial lease term being 15 years. The current lease term of 15 years plus extensions limits funding opportunities. For example, there is currently a grant that the Museum is eligible for where a 20 year lease allows an organization to apply for up to \$1M in funds and a 30 year lease allows an organization to apply for up to \$7M in funds. This funder does not include extensions as part of the lease term.</p> <p>Setting the base lease at 30 years allows for much greater funding opportunities without fundamentally altering the commitment of the City and of the Foundation. To meet the City Council objective of becoming a major attraction in three years, the Museum needs to be positioned for success in fund raising and larger funders want a longer lease.</p> <p>Allowing an on-going extension of one year to the lease provides some flexibility for renegotiations at the end of this contract without having a specific contract end looming. The annual extension may be canceled at will.</p>
#2 Sections 2.03, and 2.04	These sections would both be removed to allow for the above lease term changes. Section 2.03 currently describes the terms of extending the Lease. Section 2.04 describes the number of Lease extensions allowed.	See above.
#3 Section 4.03	Currently, the City pays for the Museum utilities and then charges the Museum quarterly for these utilities. This change would allow the Museum to transfer the utilities into its name and pay for them directly.	This change would allow the Museum to better manage its expenditures while reducing the City's staff time involved with invoicing the Museum for their utility bill.

Section #	Summary of Proposed Change	Reason for Proposed Change
#4 Section 5.06, Subsection (b)	Currently, the Museum may use Chautauqua Hall and the PG Community Center with no restrictions. This amendment would limit the Museum's use of Chautauqua Hall and the PG Community Center to only events relating to education and to fund raising for exhibitions.	This change underscores that Chautauqua Hall and the PG Community Center are both precious City resources. The intent of this amendment is to limit free use of these facilities to only events that draw visitors to PG, such as educational events, and fund raising to forward the Museum Foundation's primary role in the Museum. This amendment specifically rules out the Museum using these City Facilities for social engagements.
#5 Section 5.06, Subsection (e)	Section 5.06, subsection (e) currently allows the Museum to apply for an alcohol permit for Museum events that occur outside of Museum normal operating hours. This amendment would allow the Museum to apply for an alcohol permit for Museum events that occur during Museum hours.	The intent of this change would be to allow the Museum to hold events during normal business hours and apply for an alcohol permit for these events. For example, the Museum may want to have a wine and cheese reception in the late afternoon or a garden party with Mimosas.

Section #	Summary of Proposed Change	Reason for Proposed Change
#6 Section 5.07	Add the following language to this section: “Foundation may sell merchandise at the Sanctuary, and all proceeds from such sales, as well as all donations received at the Sanctuary shall be the property of the Foundation. All other sanctuary donations not specifically designated otherwise, shall go to the City.”	<p>The Museum incurs costs with the Monarch Grove Sanctuary related to education and interpretation. These costs include items such as recruiting, training, and managing sanctuary docents, developing and printing Monarch interpretive brochures, and promoting the Monarch over-wintering season. Currently, sanctuary visitors donate at the sanctuary directly to sanctuary docents and these proceeds directly support the Museum education and interpretive efforts. This amendment would make it clear that these donations would be owned by the Museum. These sanctuary donations have traditionally totaled less than \$2,000 per season.</p> <p>If the Museum receives any other donations for the sanctuary, however, that are not specifically designated to support education and interpretation, these donations are to be given to the city.</p> <p>This amendment also allows the Museum to sell items at the Sanctuary and keep the proceeds. This would again help the Museum support its education and interpretation efforts.</p>

Section #	Summary of Proposed Change	Reason for Proposed Change
#7 Section 5.08	Currently the Museum submits a 12-Month Exhibit and Program Plan 45 days prior to the start of a new fiscal year. This would change require that the Museum submit this plan to the City 60 days prior to the start of the new fiscal year. This change would also remove the “objection” clause which allowed the City to object to any aspect of the Exhibit and Program Plan and proceed to mediation if this conflict could not be resolved. Instead, language was added that ensures that the Museum exhibits and programs must forward the Museum Mission.	<p>The mediation clause in this section was removed because it was considered redundant since there already is a separate Dispute Resolution clause, Section 7.01 that specifies in detail how disputes are managed with mediation.</p> <p>It is recommended that the Museum submit its 12-Month Exhibit and Program Plan 60 days, instead of 45 days, prior to the start of the new year. This is recommended because the Museum would need more time to make alterations if the City had an issue with any planned exhibit or program. The clause allowing for unqualified City objections to this plan was removed because if the Museum is scheduling exhibits and programs that forward the Museum Mission, but are counter to the City’s best interests and is not responsive to City discussions, then a much larger partnering issue is more likely and dispute resolution would be engaged.</p>
#8 Section 5.09	This proposed change would require the City to annually provide a Museum Facility Report estimating major facility improvements needed in the next three years and detailing the scheduled facility maintenance planned for the next 12 months.	If a major Museum facility improvement is needed three years in the future, the Museum and the City would like to have ample time to partner and identify funding to support this need. In addition, the Museum will work with Public Works to coordinate the 12-month scheduled facility maintenance.
#9 Section 6.01, Subsection (a)(i)	If there is a default by either party to this agreement, then the defaulting party has 45 days to comply unless the party not in default grants a longer period to achieve compliance.	The City and the Museum would prefer having a grace period for a party out of compliance to become compliant before defaulting on the contract. Being out of compliance for longer than 45 days would require written approval by the non-offending party.
#10 Section 9.01, Subsection (b)	This proposes updating the address of the Museum Foundation of Pacific Grove to be the address of the Museum, 165 Forest Avenue, PG.	The address of the Museum serves as a more resilient and lasting address than what is currently listed.

The City Charter, Article 15 (g), requires all leases of City property be approved by ordinance.

This activity is proposed to qualify for a CEQA Class 1 Categorical Exemption as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations. A Class 1 Exemption consists of permitting and leasing of existing facilities that involves negligible or no expansion of use.

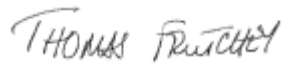
FISCAL IMPACT

None.

ATTACHMENTS

1. Draft Ordinance
2. First Amendment to Museum Agreement

RESPECTFULLY SUBMITTED,



Thomas Frutchey
CITY MANAGER

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
APPROVING THE FIRST AMENDMENT TO THE
PUBLIC/PRIVATE PARTNERSHIP
OPERATING AGREEMENT AND LEASE
BETWEEN THE CITY OF PACIFIC GROVE CA
AND
MUSEUM FOUNDATION OF PACIFIC GROVE, INC.**

WHEREAS, On June 17, 2009, the City approved an *Operating Agreement and Lease* between the Museum Foundation of Pacific Grove and the City of Pacific Grove; and

WHEREAS, the City of Pacific Grove owns the Museum collection, owns the Museum facility, and maintains the Museum facility; and

WHEREAS, The Museum Foundation of Pacific Grove Museum 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 these tasks; and

WHEREAS, The City Charter, Article 15 (g), requires all leases of City property be approved by ordinance; and

WHEREAS, This activity qualifies for a CEQA Class 1 Categorical Exemption as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations as it consists of permitting and leasing of existing facilities that involves negligible or no expansion of use.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The First Amendment to Public/private Partnership Operating Agreement and Lease between the City of Pacific Grove and the Museum Foundation of Pacific Grove is hereby approved. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect according to each and every term, covenant and condition thereof.

SECTION 3. The City Manager is authorized to execute all documents and to perform all other necessary City acts to implement the ordinance.

SECTION 4. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall become effective on the thirtieth (30th) day following passage and adoption hereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS ____ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

CARMELITA GARCIA, Mayor

ATTEST:

THOMAS FRUTCHEY, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

**FIRST AMENDMENT TO
PUBLIC/PRIVATE PARTNERSHIP
OPERATING AGREEMENT AND LEASE
BETWEEN THE CITY OF PACIFIC GROVE CA
AND
MUSEUM FOUNDATION OF PACIFIC GROVE, INC.**

THIS FIRST AMENDMENT to that certain Public/Private Partnership Operating Agreement and Lease Between the City of Pacific Grove CA and Museum Foundation of Pacific Grove, Inc., dated July 29, 2009 (hereinafter the "Agreement"), is made and entered into by and between the original parties thereto as of the 16th day of June, 2010.

IN CONSIDERATION of the mutual promises herein set forth, the adequacy of which is hereby acknowledged by each party, the Agreement is hereby amended as follows:

1. Section 2.02 of the Agreement is amended to read in its entirety as follows:

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 day of each year of the Term thereafter, the Term shall be extended by one (1) additional Term year (July 1st through June 30th); provided, however, that either party may, 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.

2. Sections 2.03 and 2.04 of the Agreement are hereby rescinded and shall be of no further force or effect.

3. Section 4.03 of the Agreement is amended to read in its entirety as follows:

Section 4.03 Utilities. From the commencement of this Agreement through June 30, 2010, the City shall pay Utilities for the Premises 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.

4. Subsection (b) of Section 5.06 of the Agreement is amended to read in its entirety as follows:

(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 events 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.

5. Subsection (e) of Section 5.06 of the Agreement is amended by striking therefrom the words "under subsections (a), (c) and (d) above,".

6. Section 5.07 is amended to read in its entirety as follows:

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 all donations received at the Sanctuary shall be the property of the Foundation. All other sanctuary donations not specifically designated otherwise, shall go to the City. Foundation shall have no other obligation with respect to the Monarch Butterfly Sanctuary.

7. Section 5.08 is amended to read in its entirety as follows:

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 (45) 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.

8. Section 5.09 is amended by adding thereto a new Subsection (g) to read in its entirety as follows:

(g) City shall develop and provide to the Foundation a Facility Management Plan annually on July 1 of each new fiscal year, commencing on July 1, 2010, describing estimated major maintenance of the Museum facility needed in the next three years and scheduled maintenance of the Museum facility during the next 12 months.

9. Subsection (a)(i) of Section 6.01 is amended to read in its entirety as follows:

- (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;

10. Subsection (b) of Section 9.01 is amended to read in its entirety as follows:

- (b) To Foundation - President, 165 Forest Avenue, Pacific Grove CA 93950

Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect according to each and every term, covenant and condition thereof.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement as of the date first above written, intending to be bound by all of its terms, covenants and conditions. Each person executing this First Amendment to the Agreement represents and warrants that he or she has full authority to do so.

CITY OF PACIFIC GROVE, CALIFORNIA

By: _____
Mayor Carmelita Garcia

Approved as to content: _____
City Manager Thomas Frutchey

Approved as to form: _____
City Attorney David Laredo

MUSEUM FOUNDATION OF PACIFIC GROVE, INC.

By: _____
Jason F. Burnett, President

By: _____
George M Perry, Secretary