

MANAGEMENT AGREEMENT FOR THE CHEECH MARIN CENTER FOR CHICANO ART AND CULTURE OF THE RIVERSIDE ART MUSEUM

THIS MANAGEMENT AGREEMENT FOR THE CHEECH MARIN CENTER FOR CHICANO ART AND CULTURE OF THE RIVERSIDE ART MUSEUM (“Agreement”) is made and entered into as of this ____ day of _____, 2021, (“Effective Date”) by and between the CITY OF RIVERSIDE, a charter city and municipal corporation (“City”), and RIVERSIDE ART MUSEUM, a California nonprofit corporation (“RAM”) (collectively the “Parties”) with reference to the following terms, conditions and obligations.

ARTICLE I SCOPE

1.1 **Property.** The City is the fee title holder to that certain real property located at 3581 Mission Inn Avenue, Riverside, California, currently the Riverside Main Library, including the parking lot but excluding the plaza area (which includes the Chinese Pavilion) outside the library (“Premises”). No legal title or leasehold interest in the Premises shall be deemed or construed to have been created or vested in RAM, by anything contained in this Agreement, except as set forth in Section 2.2 below.

1.2 **Purpose.** The purpose of this Agreement is to provide for the ongoing operation and management of the Premises as the Cheech Marin Center for Chicano Art and Culture (“Center”) once all necessary renovations have occurred. It is the City’s and RAM’s vision in connection with the Center to create a positive economic impact, to stimulate growth for the region, and to provide for the cultural and intellectual enrichment of the community. RAM recognizes these goals in its proposed operation and management of the Premises and the Center and will operate under RAM’s current policies and within the framework of RAM’s approved mission and strategic plan. The Parties acknowledge that they will also be entering into a Renovation Agreement for the Premises.

1.3 **Engagement.** The City does hereby engage RAM as the sole and exclusive operator of the Center and the Premises as set forth in this Agreement. RAM does hereby accept such engagement and agrees to perform the duties, terms, conditions and obligations in accordance with the terms in this Agreement.

1.4 **Cheech Contribution.** The parties understand and agree that Richard “Cheech” Marin (“Cheech”) has donated and will continue to donate much of his collection of Chicano art to RAM in part for the purpose of displaying a portion of his collection on the Premises and that this becomes an integral part of RAM’s permanent collection. RAM and Cheech are entering into a separate agreement regarding the donation to RAM.

1.5 **RAM Board of Trustees-restricted Operating Reserve.** RAM understands, agrees and acknowledges that throughout the term of this Agreement, RAM will use reasonable efforts to participate with the City and Cheech in raising funds to create a RAM Board of

Trustee-restricted operating reserve for the continued use, operation and management of the Center. Any such funds will be utilized at the sole discretion of the RAM Board of Trustees in accordance with donor intent and other factors.

1.6 **Mutual Commitment to Financial Sustainability.** The Parties agree to actively work towards making the Center financially independent and self-sustaining beyond the Initial Term of this agreement.

ARTICLE II TERM

2.1 **Term.** The term of this Agreement (“Initial Term”) shall commence upon the delivery of the Premises by the City to RAM after City renovation of the Premises (“Commencement Date”) but before the official public opening and continue for a period of Twenty-Five (25) years thereafter, subject to the termination provisions contained in this Agreement.

The Parties shall meet in good faith to discuss the continued operation of the Center and this Agreement at the end of the first ten (10) years. The Parties may also meet during the initial 10-year period to discuss the revenues and expenditures of Center operation or any event that could potentially have an adverse financial impact on the Center, if deemed necessary by both Parties. The City or RAM may terminate this Agreement during the Initial Term or any “Renewal Term” (as defined below) based upon RAM or the City’s uncured, material default of the terms of this Agreement in accordance with the terms of Article 9 below.

2.2 **Renewal Term.** Following the Initial Term, so long as neither the City nor RAM are in default under any material term, duty, condition or obligation of this Agreement following an opportunity to cure in accordance with the terms of this Agreement, this Agreement shall automatically renew for two (2) additional terms of five (5) years each (each a “Renewal Term”) unless the City or RAM has provided the other party with prior written notice at least twelve (12) months prior to the end of the Initial Term or a Renewal Term that it will not renew the Agreement. Alternatively, following the Initial Term, the Parties may enter into a lease agreement for the Premises. The Initial Term and Renewal Term may be referred to in this Agreement collectively as the “Term.”

ARTICLE III MANAGEMENT FEE

3.1 **Management Fee.** As compensation and in consideration for the services rendered under this Agreement, the City shall pay to RAM an annual Operations Management Fee of Eight Hundred Thousand Dollars (\$800,000) (“Management Fee”). The first payment of the Management Fee will occur thirty (30) days prior to the Center’s opening. For years two (2) through ten (10), the Management Fee shall increase each year on the anniversary date by a minimum of Twenty-Five Thousand Dollars (\$25,000). Following the initial ten (10) years of this Agreement, the Parties shall meet to discuss and/or renegotiate the Management Fee for the remainder of the Term.

3.2 **Payment.** RAM shall be paid the Management Fee monthly by the fifth (5th) of each month.

ARTICLE IV USE OF THE PREMISES

4.1 **Use.** The Premises shall be used for the operation of the Center and for events (“Events”) that RAM deems consistent with and complementary to the Center. RAM shall establish and operate any staff offices, permanent collections and art education programs at the Center at its sole discretion. RAM shall enter into written agreements with third parties (collectively, “Users” or individually a “User”) for use of the Premises for Events. RAM shall have use of the parking lot adjacent to the building for its administrative staff use at no cost. However, RAM acknowledges and agrees that the parking lot shall remain open to the public. RAM will have fourteen (14) reserved parking spaces for staff and/or Trustees, location of which shall be determined by the Parties. There may be times in which RAM would like to use the plaza area in front of the Premises for Events. The City and RAM shall work together to create a process for such use and maintenance. The City will work with RAM prior to scheduling any events in the plaza area that may interfere with the Center.

The City shall be entitled to six (6) occasions in each fiscal year during the Initial Term and any Renewal Terms, subject to the terms and conditions hereof, to make use of the Center for hosting an Event (“City’s Use”), provided however, that the booking for City’s Use shall be subject to any RAM previously booked Events. The City Manager or his/her designee shall be the City’s designated agent to coordinate with RAM for City’s Use of the Center. The City cannot grant their usage of the Center to any other agency, nonprofit, or business and must be for the sole use of the City. The City will coordinate with RAM to ensure that the City’s use does not conflict with any revenue generating Event or prime booking dates such as weekends, unless otherwise agreed to by the Parties.

The City shall not pay any user or rental fee, for the City’s Use. City shall, however, after receipt of a written invoice, reimburse RAM within thirty (30) days for all actual labor costs, including all rental equipment, and other event services and supplies incurred by RAM to facilitate the City’s Use. RAM shall retain exclusive rights to the operation of all concessions and other operations at the Center during City’s Use, including, without limitation, food and beverage concessions and sales, including alcoholic beverages (but City shall have the right to prohibit the sale of alcoholic beverages for any City’s Use). RAM will ensure that the pricing for any concessions shall not exceed the normal pricing therefor charged at standard Events at the Center.

4.2 **Facility Rental Agreements.** RAM shall enter into written agreements with third parties who wish to use the Premises (“Facility Rental Agreements”). RAM shall employ and pay for legal services for any special circumstances when the Facility Rental Agreement is not sufficient for any Event. RAM shall provide one (1) copy of all executed Facility Rental Agreements to the City at least seven (7) days in advance of said Event. RAM shall retain one (1) original copy in RAM’s file available for inspection by the City at any time. All Facility Rental Agreements shall provide for insurance to cover for any loss, damage or injury (property and personal) that may occur from the Event, and shall name the City as an additional insured.

4.3 **Operations of Premises.** RAM shall charge for entry into the Premises, for any Event or separate rental of the Premises or any portion of the Premises (collectively “Events”), which shall include a Facility Fee as set forth in Section 4.4 below. The Events, programs and individuals listed in Attachment “A” shall be exempt from the Facility Fee consistent with existing RAM operations. However, any additions to Events, programs and/or individuals to Exhibit “A” shall require the prior written approval of the City, through its City Manager, which shall not be unreasonably withheld, conditioned or delayed. The Events that occur at the Center shall be at the sole discretion of RAM Board of Trustees, with prior notification to the City. RAM shall also have the exclusive right to sell food and beverages as well as concessions, clothing, novelties, and publications (collectively “Concessions”) within the Premises as determined appropriate by RAM in its sole and absolute discretion, subject to the applicable rules and regulations of the City. All revenue derived from the Events, memberships and Concessions, except for the Facility Fee, shall be RAM’s to use as determined by RAM Board of Trustees. RAM has the right to engage a third-party concessionaire(s) for the sale and service of food and beverages at the Premises.

4.4 **Facility Fee.** RAM shall impose a Facility Maintenance Fee (“Facility Fee”) to be added to the price of all paid admissions to the Center, and for Facility Rental Events at the Premises in order to help underwrite the future maintenance and operation of the Premises. RAM shall include the Facility Fee requirements in all Facility Rental Agreements for the Premises. As of the date of this Agreement, the minimum Facility Fee for single admission is Three Dollars (\$3.00) for adults and One Dollar (\$1.00) for children thirteen (13) and under and seniors over sixty-five (65) years old. For Facility Rental Events, RAM shall pay the City One Dollar (\$1) for every participant. The Facility Fee shall increase annually by Five Percent (5%) for the first ten (10) years. After ten (10) years, the Parties shall meet to determine and/or renegotiate said fees. After this meeting, the City may increase the Facility Fee upon ninety days (90) written notice of such increase, and upon approval by the City Council. Notwithstanding anything contained herein to the contrary, the parties will mutually agree upon the effective date of any modified Facility Fee and such new Facility Fee shall not apply until the agreed upon effective date. RAM shall pay to the City the Facility Fees twice a year. The City shall segregate all Facility Fees in a separate account that shall be used for the maintenance of the Cheech and provide to RAM semi-annually an accounting of such account.

4.5 **Utilities.** The City shall be solely responsible for and shall pay for all utilities for the Premises.

4.6 **Website & Marketing Images.** RAM shall retain ownership of the Premises website domain and shall have the obligation to reasonably maintain and upkeep its contents. RAM will integrate programs, exhibition, and additional information about the Center into its existing website. RAM will retain all rights to, and continue to maintain, the “Reach for the Cheech” capital campaign website for as long as it deems appropriate. RAM will design marketing materials and posters including a Center logo and will retain all rights to this material. Notwithstanding the above, the City retains all ownership and copyright of the image of the exterior of the Premise and the Plaza Area. The Parties understand and acknowledge that the City logo or other City insignia will be utilized in the marketing of the Center when appropriate. RAM shall consult with and seek approval of the City prior to any such use. The City Manager, or his/her designee, is authorized to allow the use of the City logo or other City insignia.

4.7 **Original Content and Publications.** RAM retains all rights to any essays and research created at the Center in accordance with current copyright laws.

4.8 **In-kind marketing support.** RAM is solely responsible for the continued marketing of the Center. However, the City will make reasonable efforts to use RAM-created content to market Center exhibitions and programs through City's print and social media channels. The City will assist with the distribution of any press releases prepared by RAM. RAM will, in its marketing efforts of the Center, make every reasonable effort to market Riverside as the City of Arts & Innovation. Further, the City will work with RAM on the marketing for a successful opening of the Center.

4.9 **Lobbying support.** In concert with RAM, the City will provide assistance through its City-funded lobbyists in communicating issues related to RAM and the Center with local, state, and federal representatives.

4.10 **Sponsorship.** RAM may grant naming rights or sponsorships for up to a twenty-year period for any portion of the Center (excluding the name of the Center itself or Cheech's collection) such as galleries, classrooms, lobbies, and gift shop to honor significant donations to the Center. All naming rights and sponsorships shall be general public appropriate. The economic and other terms of such naming rights and sponsorships will be determined by RAM in accordance with its Naming and Dedications policy and fundraising campaign goals and will be addressed by RAM in a separate agreement between the donor and RAM. Notwithstanding the above, all naming rights or sponsorships shall terminate with the termination of this Agreement.

4.11 **Political Activities.** The Premises shall not be utilized for the purpose of working or campaigning for the nomination or election to any public office, whether partisan or nonpartisan or for any political activities.

4.12 **Ownership of the Premises, Data, Equipment and Materials.** The City will at all times retain ownership of the Premises including but not limited to real estate, fixtures attached to the Premises, furnishings and similar property that the City has provided RAM for use at the Cheech, including improvements made during the Initial Term and each Renewal Term at the Premises, except for any items purchased/paid for by RAM, which items shall belong solely to RAM, unless said items are attached to the Premises and the removal of the same will cause damage to the Premises, in which case the items will become the property of the City. Any data, equipment or materials furnished by the City to RAM shall remain the property of the City, and shall be returned to the City when no longer needed by RAM. Further, the City shall not have the right to use any third-party software licensed to RAM for general use by RAM at the Premises; such software may be retained by RAM upon expiration or termination hereof.

4.13 **City Access.** The City and the City's agents shall have the right to access the Premises at least one (1) time each quarterly period for the purpose of inspecting the same and to take all such action thereon as may be necessary or appropriate for any such purpose provided for under this Agreement (but nothing contained in this Agreement shall create or imply any duty on the part of the City to make any such inspection or to do any such work). The City will coordinate such access in advance with RAM so as to minimize interference with RAM's operations and Events. The City, and its authorized agents, representatives, and employees, may

enter the Premises at any time in case of emergency, and otherwise with at least twenty-four (24) hours prior notice reasonably coordinated with RAM to: (i) inspect the Premises; (ii) conduct tours of the Premises as a historic building for which RAM will pay no Facility Fee; (iii) determine whether RAM is complying with all its obligations hereunder; (iv) take possession due to any breach of this Agreement following notice and a reasonable opportunity to cure in the manner provided herein; (v) perform any covenants of RAM which RAM fails to perform following notice and a reasonable opportunity to cure; (vi) to perform duties of the City as set forth in this Agreement; and (vii) repair, alter or improve the Premises or any portion of the Premises, and may for such purposes erect, use and maintain scaffolding, pipes, conduits and other structures in and through the Premises where reasonably required by the nature of the work to be performed; provided, however, that all such work shall be done as promptly as reasonably possible and so as to cause as little interference with the operation of this Agreement.

4.14 **Liquor License.** Should RAM desire to serve alcohol on the Premises, either RAM or its third-party concessionaire must obtain and maintain a liquor license and must comply with all requirements of the liquor license and other applicable laws regulating the sale of alcoholic beverages. RAM must also limit sales of liquor on the Premises to only those times when an Event is being held at the Premises unless an on-site café includes liquor sales. RAM agrees that there shall be no liquor sold or served after midnight at any time.

ARTICLE V PERSONNEL

5.1 **Employees.** RAM, in its sole and absolute discretion, shall hire and supervise employees who are required to operate the Premises on a regular basis (“Employees”). These Employees shall not be deemed employees of the City, and RAM shall be responsible for and shall make timely payment of all Employee costs. RAM shall provide the City upon request with evidence that proper workers’ compensation insurance is maintained throughout the term hereof. All Employee costs (including but not limited to salary, bonus, benefits and commissions) are the sole responsibility of RAM. Nothing in this Section 5.1 shall limit the City’s obligation to reimburse RAM under Section 4.1 of this Agreement.

5.2 **Generally.** All Center staff and other personnel shall be engaged or hired by RAM, and shall be Employees, agents or independent contractors of RAM and not of the City. RAM shall select the number, function, qualifications, and compensation, including salary and benefits, of its Employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such Employees. RAM agrees to use reasonable and prudent judgment in the selection and supervision of such personnel.

5.3 **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party’s compliance with the terms of this Agreement. Each party shall notify the other party of the name of its contract administrator within thirty (30) days of execution of this Agreement.

**ARTICLE VI
MAINTENANCE AND INSPECTION**

6.1 Repairs and Maintenance Obligations.

a. Upon delivery of the Premises, and subject to Section 6.1(d), RAM shall maintain and keep in good order, condition, and repair the Center and all improvements, fixtures, furniture, furnishings, and equipment situated on or used in connection with the Center. RAM shall cause the performance of work for any single repair to any fixtures, furniture, furnishings, and equipment situated on or used in connection for the Premises following the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. RAM shall use the proceeds of any damage deposit posted by a rental user, if applicable and available, towards the repair of any damage resulting from such rental user's use of the Premises.

b. The City shall maintain and perform landscape maintenance of the plaza area outside of the Premises, including watering/irrigation, fertilization, pruning, trimming, shaping, and replacement, as needed, of all trees, shrubs, grass, and other plants or plant materials, weeding of all plants, planters and other planted areas, staking for support of plants as necessary, and clearance, cleaning and proper disposal of all cuttings, weeds, leaves and other debris, and graffiti. Subject to 4.1, RAM shall not have any interest in nor responsibility for the Plaza area.

c. Subject to Section 6.1(d), RAM shall be responsible for the performance of work, and to pay for, the cost of maintenance and repair for non-structural interior fixtures, signs, displays, equipment, machinery, appliances, appurtenances, alterations, and systems required for the Center. RAM shall be also be responsible for janitorial services.

d. The City shall be responsible for the performance of any work, and to pay for, any maintenance and repairs related to the plumbing system, the electrical system, the wiring and conduits, the roof, the elevators, windows and doors, any exterior fixtures including permanent signage, the heating and air conditioning systems, structural foundation and structural parts of the exterior walls. The City may elect to request RAM to cause performance of said work, but the cost of such work shall nonetheless be the City's sole responsibility.

6.2 **Alterations.** RAM shall not make any alterations, improvements or additions in, on or about the Premises in excess of Ten Thousand dollars (\$10,000) and which become a permanent fixture or changes the structure, without first obtaining the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. RAM shall also obtain, at RAM's sole cost and expense, all required permits for any such alterations and/or improvements.

a. All alterations, improvements or additions in, on or about the Premises, that are permanent in character, shall immediately become the City's property and at the expiration of the Agreement and shall remain in the Premises without compensation to RAM, unless such alterations, improvements or additions were paid for by RAM, in which case, such items shall be the property of RAM, unless such items become permanently attached to the Premises and the removal of the same will cause damage to the Premises, in which case, the alterations, improvement or additions shall remain in the Premises.

b. By notice given to RAM no less than ninety (90) calendar days prior to the expiration of the Term of the Agreement, the City may require that any removable alterations, improvements, or additions in, on or about the Premises purchased by RAM be removed by RAM. In that event, RAM shall remove the alterations, improvements or additions at RAM's sole cost and expense and shall restore the Premises to the condition in which the Premises was before the alterations, improvements and additions were made, reasonable wear and tear excepted.

6.3 **Mechanic's Liens.** RAM shall pay or cause to be paid all costs and charges for: (i) work done by RAM or caused to be done by RAM, (other than work done in accordance with Section 6.1 (d) in or to the Premises, and (ii) all materials furnished for or in connection with such work. RAM shall indemnify the City against and hold the City and the Premises, free, clear and harmless of and from any liens or claims of liens arising out of any work performed, materials furnished, or obligations incurred by RAM, and RAM shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within sixty (60) calendar days of written request by the City shall constitute a default of this Agreement. At its election, but without having any obligation to do so, the City may pay such liens not so removed by RAM and any amount expended by the City shall be paid by RAM within fifteen (15) calendar days after delivery of a statement for the expense.

6.4 **Historical Structure.** RAM and the City understand and acknowledge that the Premises is a historical structure and a City Historic Landmark. RAM and the City hereby agree to maintain the historical structure and to not take any action or do anything that will damage or otherwise harm that historical nature. Any repairs, modifications or alterations must follow the Secretary of Interior Standards and must first be approved by the City.

6.5 **Property.** Except for all items purchased, caused to be purchased by or donated to RAM, RAM agrees that all other furniture, equipment, and other similar property of a personal nature shall be and remain the property of the City. All fixtures, i.e. items which are attached to, affixed or otherwise become part of the Premises identified in this Agreement shall be property of the City, except for those items purchased, caused to be purchased by or donated to RAM.

6.6 **Improvements and Alterations.** Except as may be limited by the City's obligations hereunder, RAM agrees to maintain all alterations, additions and improvements in the Center. RAM agrees not to alter any existing structural improvements, except in accordance with plans and specifications previously submitted and approved in writing by the City's designated representative and except as otherwise permitted in this Agreement.

ARTICLE VII ACCOUNTING/FINANCIAL

7.1 **Facility Fee Accounts.** RAM shall maintain a separate account for the Facility Fees collected.

7.2 **Maintenance of Financial Accounts.** RAM shall maintain general operating financial accounts related to the Center at a federally-insured financial institution acceptable to the City and, in so doing, shall use reasonable efforts to obtain an interest-bearing account that

also has private insurance available to cover deposits in excess of \$250,000.00. RAM shall implement and adhere to such safeguards as are required by the applicable financial institution. RAM has the right to maintain investment accounts for the Center, related but not limited to long term reserves and endowments established by donors or RAM consistent with the RAM Investment Policy Statement.

7.3 **Payment of Facility Fee.** RAM shall cause all Facility Fees collected to be paid to the City in a timely manner. Within forty-five (45) days after the end of the mid-year period during the term hereof, RAM shall provide the City with an unaudited statement (“Mid-Year Annual Report”), prepared on an accrual basis and in a form reasonably acceptable to the City, setting forth the Operating Expenses and the Facility Fees collected. Within one hundred twenty (120) days of the end of its fiscal year, RAM shall provide the City with a statement prepared on an accrual basis and in a form acceptable to the City, setting forth the Operating Expenses and the Facility Fees collected. (“Final Annual Report”).

a. “Operating Expenses” means all fixed and variable expenses and costs incurred by RAM, which will include but not be limited to, operation expenses (e.g., security, clean-up/janitorial, staff, supplies, etc.), food and beverage fees, non-structural interior facility maintenance pursuant to Section 6.1(a)-(c), advertising expense, insurance expense, marketing, and all other costs associated with the operation of the Premises for which RAM is obligated.

7.4 **Responsibility for Operating Expenses.** Upon the Commencement Date, and provided the Management Agreement is paid, RAM shall be responsible for funding of the Operating Expenses during the Initial Term and any Renewal Term.

7.5 **Records and Annual Audit.** RAM shall provide to the City, within forty-five (45) days after the first six-month period, a mid-year report of accounts in accordance with generally accepted accounting principles and certified by RAM as true and correct, in the form acceptable to the City, and all records required to be kept by RAM shall be available to the City upon request. RAM shall provide to the City, within one hundred twenty (120) days after the end of the fiscal year, a Final Annual Report of accounts in accordance with generally accepted accounting principles and certified by RAM as true and correct in the form acceptable to the City and all records required to be kept by RAM shall be available to the City upon request. All records must be made available no later than one hundred twenty (120) days after the end of each fiscal year. RAM shall be responsible for and shall pay for any additional audit, accounting or legal costs incurred by either Party due to additional investigation warranted because of fraud, theft or gross negligence on the part of RAM.

7.6 **Annual Budget.** As a courtesy, RAM will submit to the City a Proposed Annual Budget no later than September 1st of each year. RAM acknowledges that the City is on a two (2) year budget and RAM will submit a two (2) year budget consistent with the City’s procedures. The Proposed Annual Budget will cover the operations of the Premises for the period September 1st through August 31st for the following two (2) year period. The Proposed Annual Budget will be approved by RAM Board of Trustees and will outline how the Management Fee will be used.

7.7 **Revenues.** As a nonprofit organization, RAM relies on a variety of diversified revenue streams to fund its ongoing mission-driven operations. Notwithstanding the Facility Fee that will be paid to the City, RAM Board of Trustees will reinvest any profit made at the Center per its discretion. Should RAM determine that the revenues are not sufficient for the operation of the Center, the Parties agree to meet and confer regarding efforts to be undertaken to allow for continued investment in the Center.

7.8 **Additional Reporting Requirements.** The Parties shall work together to identify specific categories of information resulting from operation of the Cheech that would be useful for future operation and planning, such as attendance numbers, demographic data of visitors and RAM marketing programs. Once these categories have been developed, RAM will provide such information to the City in its annual reporting.

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ARTICLE VIII INSURANCE

8.1 **General.** RAM shall assume all responsibility for damages to property and injuries to persons, including accidental death, which may arise out of or may be caused by RAM's performance of this Agreement, by its subcontractors or by anyone RAM directly or indirectly employed, and whether such damage or injury may accrue, or may be discovered, before or after termination of this Agreement. The City shall assume all responsibility for damages to property and injuries to persons, including accidental death, which may arise out of or may be caused by the City's performance of this Agreement, by its subcontractors or by anyone the City directly or indirectly employed, and whether such damage or injury may accrue, or may be discovered, before or after termination of this Agreement.

8.2 **Commercial General Liability Insurance.** Prior to the delivery of the Premises by the City, RAM shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance to insure RAM against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of RAM.

RAM's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$2,000,000 per occurrence and a general aggregate limit in the amount of not less than \$3,000,000. Property insurance must be "all risks" of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

8.3 **Workers' Compensation Insurance.** By executing this Agreement, RAM certifies that RAM is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. RAM shall carry the insurance or provide for self-insurance required by California law to protect said RAM from claims under the Workers' Compensation Act. RAM shall file with the City a certificate of insurance showing that such insurance is in effect at all times. Any certificate filed with the City shall provide that the City will be given ten (10) days prior written notice before modification or cancellation thereof.

8.4 **Crime Insurance.** RAM shall purchase from a company acceptable to the City, at RAM's expense, a crime insurance policy in an amount not less than Five Hundred Thousand Dollars (\$500,000).

8.5 **Liquor Liability Insurance.** If liquor is being sold on the Premises, RAM shall obtain, and shall thereafter maintain during the term of this Agreement, liquor liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from RAM's sale of alcohol.

8.6 **Errors and Omissions Insurance.** RAM shall obtain, and shall thereafter maintain during the term of this Agreement, errors and omissions professional liability insurance in the minimum amount of \$1,000,000 to protect the City from claims resulting from RAM's activities.

8.7 **Requirements.** Prior to delivery of the Premises by the City to RAM, RAM shall comply with the following requirements and shall continue to comply during the Initial Term and any Renewal Term of this Agreement:

a. Copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, shall be filed with the City and shall include the City and its officers, employees and agents, as additional insureds. Said policies shall be in the usual form of commercial general and automobile liability insurance policies, but shall include the following provisions.

b. It is agreed that the City of Riverside, and its officers, employees and agents, are added as additional insureds under this policy, with respect to liability arising out of work or operations performed by or on behalf of RAM including materials, parts, or equipment furnished in connection with such work or operations solely related to work for the Center.

c. RAM hereby grants the City a waiver of any right to subrogation which any insurer of RAM may acquire against the City by virtue of the payment of any loss under such insurance. RAM agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. Subrogation waiver does not apply for negligence on the part of the City.

d. If the policy is written on a claims made basis, the certificate should so specify and the policy must continue in force for one year after completion of the services. The retroactive date of coverage must also be listed. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, RAM must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

e. The policy shall specify that the insurance provided by RAM will be considered primary and not contributory to any other insurance available to the City. Any insurance or self-insurance maintained by RAM, its officers, officials, employees, or volunteers shall be excess of RAM’s insurance and shall not contribute with it.

f. Insurance required hereunder shall be with companies duly licensed to transact business in the state of California, and maintaining during the policy term a “General Policyholders Rating” of at least A, and a financial class of VII or higher. RAM shall not do or permit to be done anything, which shall invalidate the insurance policies referred to in this Article. No such policy shall be cancelable or subject to modification except after thirty (30) days’ prior written notice to the City. RAM shall, at least thirty (30) days prior to the expiration of such policies, furnish the City with evidence of renewals or “insurance binders” evidencing renewal thereof, or the City may order such insurance and charge the cost thereof to RAM, which amount shall be payable by RAM to the City upon demand.

8.8 **Mutual Waiver of Subrogation.** The Parties hereto release each other and their respective authorized employees, agents and representatives, from any and all claims, demands, loss, expense or injury to any person, or to the Premise or to personal property, including, but not limited to, furnishings, fixtures or equipment located therein, caused by or resulting from perils, Events or happenings which are the subject of insurance in force at the time of such loss. Each Party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

8.9 **RAM’s Failure to Obtain, Pay For, or Maintain Insurance.** RAM shall deliver to the City the required certificate(s) of insurance and endorsement(s) fifteen (15) days prior to delivery of the Premises by the City to RAM. RAM’s failure to obtain, pay for, or maintain any required insurance shall constitute a material breach upon which the City may immediately terminate or suspend this Agreement. At its sole discretion, the City may obtain or renew RAM’s insurance, and the City may pay all or part of the premiums. Upon demand, RAM shall pay the City all monies paid to obtain or renew the insurance. The City may offset the cost of the premium against any monies due to RAM from the City.

8.10 **City’s Insurance.** The City hereby represents that it has a self-insured retention amount of \$3,000,000 with excess coverage up to \$20,000,000 for general liability. The City also maintains \$3,000,000 in worker’s compensation insurance. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

If RAM maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by RAM. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

ARTICLE IX DEFAULT AND TERMINATION

9.1 **Default of RAM.** In the event that the City reasonably determines that RAM has failed to comply with any material term of this Agreement (“Default”), the City shall notify RAM in writing of the nature of the Default and of the corrective action to be taken. If corrective action is not commenced within ten (10) business days after receipt of written notice or such reasonable time given the circumstances and completed within a reasonable time thereafter, then, if such default is not cured within sixty (60) days (or if the default is not susceptible to cure within said sixty-day period, the City does not commence to cure the default within the sixty (60) day period), the City may terminate this Agreement by written notice to RAM (“Notice of Termination”), which termination shall take effect thirty (30) days after delivery of the Notice of Termination, unless such default is cured in this time frame and the City agrees to withdraw the Notice of Termination. The City further reserves the right to prohibit RAM from incurring additional obligations during the investigation of any alleged Default and pending corrective action by RAM or a decision by the City to terminate the Agreement.

9.2 **Default of the City.** In the event that RAM reasonably determines that the City is in Default, RAM shall notify the City in writing of the nature of the Default and of the corrective action to be taken. If corrective action is not commenced within ten (10) business days after receipt of written notice or such reasonable time given the circumstances and completed within a reasonable time thereafter, then, if such default is not cured within sixty (60) days (or if the default is not susceptible to cure within said sixty-day period, and RAM does not commence to cure the default within the sixty (60) day period), RAM may terminate this Agreement by Notice of Termination to the City, which termination shall take effect thirty (30) days after delivery of the Notice of Termination, unless such default is cured in this time frame and RAM agrees to withdraw the Notice of Termination or RAM Board of Trustees approves a longer time frame to correct the default.

9.3 **Damage or Destruction.** In the event of the damage or destruction of the Premises to an extent which interferes with the regular and customary operation of the Premises, either the City or RAM may terminate this Agreement unless the City, shall as promptly as practicable (subject to an event of force majeure) diligently undertakes to repair, restore, rebuild or replace such damage or destruction.

9.4 **Vacation of Premises.** Upon termination of this Agreement, RAM shall: (a) vacate the Premises and shall not damage any part of the Premises during such vacation; (b) deliver to the City all records, accounts, contracts and other information held or obtainable by RAM in connection with the use or operation of the Premises to the extent permitted by Applicable Laws and excluding any confidential/proprietary information of RAM; and (c) cooperate with the City and any successor in accomplishing a transition of management that minimizes to the extent possible any disruption in the operation of the Premises. This includes

any and all tenants or subtenants of RAM.

9.5 **Abandonment by RAM.** Should RAM abandon this Agreement by complete cessation of operations of the Premises for reasons other than force majeure, RAM shall immediately turn over the Premises, to the City without any further demand or compensation.

9.6 **Consequences of Termination.** In the event of termination, RAM shall deliver to the City copies of all reports, documents, and other work performed by RAM under this Agreement to the extent permitted by Applicable Laws and excluding any proprietary/confidential information of RAM, and, upon receipt thereof, the City shall pay RAM for services performed pursuant to the provisions of this Agreement to the date of termination.

9.7 **Termination Procedures.** After receipt of a Notice of Termination, RAM shall:

a. Consult with and follow the direction of Contract Administrator to determine when and the manner by which to stop work under the Agreement on the date and to the extent specified in the Notice of Termination.

b. Place only those orders or subcontracts for materials or services, as may be necessary to maintain the interests of the City.

c. Assign to the City, in the manner, at the times, and to the extent reasonably directed by the Contract Administrator, all of the rights, title and interests of RAM under this Agreement.

d. Settle all outstanding liabilities and claims of RAM, with the approval or ratification of the City to the extent the City may reasonably require, which approval or ratification shall be final for all the purposes of this clause.

e. Transfer to the City, and deliver in the manner, at the times, and to the extent directed by the City, title to any property which, if the Agreement had been completed, would have been required to be furnished to the City.

f. Take such action as may be necessary, or as the City may reasonably direct, for the protection and preservation of the property related to this Agreement which is in the possession of RAM and in which the City has or may acquire an interest.

ARTICLE X REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 **RAM Representations and Warranties.** RAM hereby represents warrants and covenants to the City as follows:

a. That it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of RAM herein, and that no third-party consent or approval is required to grant such rights or perform such obligations hereunder.

b. That this Agreement has been duly executed and delivered by RAM and constitutes a valid and binding obligation of RAM, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar Laws affecting creditors' rights generally or by general equitable principles.

c. That RAM will comply with all Applicable Laws related to its management of the Premises.

10.2 **City's Representations, Warranties and Covenants.** The City represents warrants and covenants to RAM as follows:

a. That it has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of the City herein, and that no other third-party consent or approval is required to grant such rights or perform such obligations hereunder.

b. That this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

c. That the Premises is, as of delivery of the Premises by the City to RAM, in compliance in all respects, with all Applicable Laws (including but not limited to ADA and Environmental Laws) relating to the construction, use and operation of the Premises, and that there exist no structural defects or unsound operating conditions at the Premises.

ARTICLE XI TAXES

11.1 **Possessory Interest Tax.** It is the understanding of RAM that no interest in the Premises property or structures is created by this Agreement. It is acknowledged and agreed that the sole purpose of this Agreement is for RAM to provide operation management services. Nevertheless, RAM recognizes and agrees that the assessor for the County of Riverside may determine that RAM's right to operate and manage the Premises as set forth in this Agreement creates a possessory interest subject to a possessory interest tax. In the event that possessory interest taxes are assessed, RAM shall be solely responsible for any possessory interest tax or taxes imposed upon RAM as a result of its operation and management of the Premises.

11.2 **Income Taxes.** RAM shall timely pay any state, federal and local income taxes arising from RAM's Management Fees under this Agreement.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 **Assignment.** The City may assign its interest in this Agreement to a governmental, nonprofit, or for-profit entity, in its sole discretion. Any assignment of the City's interest will be subject to the terms and obligations of this Agreement. RAM may not assign any

right or interest in this Agreement, and shall not delegate any duty owned, without the City's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all persons, and shall constitute a material breach upon which the City may immediately terminate or suspend this Agreement.

12.2 **Notices.** All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a party at the facsimile number set forth below or to such other or further facsimile number provided in a notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should the City or RAM have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests shall be given as follows:

City: City of Riverside
3900 Main Street
Riverside, California 92522
Attention: City Manager

RAM: Riverside Art Museum
3425 Mission Inn Avenue
Riverside, California 92501
Attention: Executive Director

12.3 **Successors and Assigns.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything to the contrary in this Agreement, RAM shall have the right to grant licenses, concessions, operating/management agreements and rentals for Events without the City's approval or consent, and all of the foregoing shall be deemed to not be an assignment or sublease of a violation of this Agreement, provided that the same shall not relieve RAM of its obligations under this Agreement.

12.4 **Rights Cumulative.** The rights and remedies hereby created are cumulative, and the use of one remedy shall not be taken to exclude or waive the right to use of another.

12.5 **Severability.** In the event that any provision of this Agreement shall be held invalid or unenforceable, no other provisions of this Agreement shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect pursuant to the terms hereof.

12.6 **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of California.

12.7 **Entire Agreement.** This Agreement is the entire agreement of the parties and replaces and supersedes any prior agreements or understandings between the parties.

12.8 **No Additional Rights.** By entering into this Agreement, RAM shall obtain no additional rights or privileges in the future regarding the operation or use of the Premises and the City shall not be deemed to have waived or abrogated any power or discretion it has regarding the operation or ownership of the Premises upon the expiration or termination of this Agreement.

12.9 **Force Majeure.** Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest. Any delays beyond the control of either party shall automatically extend the time schedule as set forth in this Agreement by the period of any such delay.

12.10 **Indemnification.** “City” for the purposes of this Section 12.10 shall mean and include the City and the City’s affiliates, directors, officers, shareholders, agents and employees. “RAM” for the purposes of this Section 12.10 shall mean and include RAM and RAM’s affiliates, directors, officers, shareholders, agents and employees. To the fullest extent permitted by law and except to the extent caused by the City’s fraud, negligence or willful misconduct, RAM covenants with the City that the City shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of RAM or any other person occurring from and after the date the City delivers possession of the Premises to RAM from any cause whatsoever by reason of the use, occupancy and enjoyment of the Premises by RAM or any person holding under RAM. Subject to the provisions of this Section 12.10, RAM shall pay for, defend (with an attorney reasonably approved by the City), indemnify, and hold the City harmless against and from any real or alleged damage or injury and from all claims, judgments, liabilities, costs and expenses, including reasonable attorney’s fees and costs, arising out of or connected with RAM’s use of the Premises and its facilities, or any repairs, alterations or improvements which RAM may make or cause to be made upon the Premises (except those that it undertakes or causes to be made at the direction or request of the City) and any material breach of this Agreement by RAM provided, however, the foregoing indemnity shall not extend to the extent of the City’s negligence or willful misconduct. Subject to the provisions of this Section 12.10, the City shall pay for, defend (with an attorney reasonably approved by RAM), indemnify, and hold RAM harmless against and from any real or alleged damage or injury and from all claims, judgments, liabilities, costs and expenses, including reasonable attorneys’ fees and costs, arising out of or connected with the Premises and its facilities, or any repairs, alterations or improvements which the City may make or cause to be made to the Premises, any claims arising from matters or incidents occurring prior to the Commencement Date; and any breach of this Agreement by the City; provided, however, the foregoing indemnity shall not extend to the extent of RAM’s fraud, negligence or willful misconduct. The obligations to indemnify set forth in this Section 12.10 shall include all reasonable attorneys’ fees, litigation costs, investigation costs and court costs and all other costs, expenses and liabilities reasonably incurred by the indemnified party from the first notice that any claim or demand is to be made or may be made and upon determination of such obligation to indemnify. All indemnity obligations under this Section 12.10 shall survive the expiration or termination of this Agreement.

12.11 **Signs.** Any signs to be installed by RAM that become permanently affixed to the exterior of the Premises shall be subject to the prior written approval of the City and shall be installed by a sign contractor approved by the City. RAM shall be responsible for payment of all sign costs including installation costs, permits and costs to repair the Premises resulting from the installation or removal of such sign.

12.12 **Compliance with Laws.** The City and RAM shall comply with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of the City or RAM in a proceeding brought against it by any governmental entity, that the City or RAM has violated any such governmental requirement shall be conclusive as between the City and RAM and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by the City or RAM.

12.13 **Non-Discrimination.** RAM herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, that this Agreement shall be performed and is subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, sexual orientation, or military and veteran's status in the, use, occupancy, tenure, or enjoyment of the Premises during the performance of this Agreement.

[Signatures on the following page.]

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

CITY OF RIVERSIDE

RIVERSIDE ART MUSEUM

By: _____

By: _____

Its:
Name:

Attested to:

By: _____
City Clerk

Approved as to form:

By: _____
Chief Assistant City Attorney

CA 18-0240; 11/24/20

ATTACHMENT A

Free Admission/Programs

- RAM Trustee and Art Alliance functions.
- Children (age 12 and under)
- Active duty Military and families
- RAM sponsored events that are free to the public such as ArtsWalk, First Sunday and other appropriate museum and civic-related events.
 - o Blue Star Museums program
 - o Free admission to the nation's active-duty military personnel and their families, including National Guard and Reserve, from Memorial Day through Labor Day.
- Voices for Children
 - o Free admission to all National Court Appointed Special Advocate Association volunteers and case children.
- Big Brothers and Sisters (national organization)
 - o Free admission to all "Bigs" showing their badges and their accompanying "Littles".
- North American Reciprocal Museum (NARM)
 - o This program is an affiliation of arts, historical, and cultural institutions in the United States, Canada, Bermuda, and El Salvador, which offer reciprocal benefits to other participating museum members at a certain level. Free admission to qualified members of participating museums.

Reduced Admission

Museums for All is a cooperative initiative between the Association of Children's Museums and the Institute of Museum and Library Sciences to offer a signature access program that encourages families of all backgrounds to visit museums regularly and build lifelong museum habits. Holders of Show your Electronic Benefits Transfer (EBT) card receive discounted admission (\$1 per person) for up to 4 people.

DRAFT