

**AMENDED AND RESTATED AGREEMENT FOR LEASE AND
OPERATION OF THE KERN COUNTY MUSEUM**

THIS AMENDED AND RESTATED AGREEMENT ("**Amended Agreement**"), is executed at Bakersfield, California, this 10th day of June, 2014 ("**Effective Date**"), by and between the **COUNTY OF KERN**, a political subdivision of the State of California ("**County**"), and **THE KERN COUNTY MUSEUM FOUNDATION**, a California non-profit public benefit corporation ("**Foundation**") (individually a "**Party**" or collectively the "**Parties**").

RECITALS:

- A. Pursuant to Division 5, Chapter 2, Article 2 of the Public Resources Code (Section 5120, et seq.), County established and owns a museum facility and grounds, as well as a children's enrichment center, commonly known as the "Kern County Museum" or "Pioneer Village" ("**Museum**"), located at 3801 Chester Avenue, Bakersfield, County of Kern, State of California.
- B. The objective of the Museum is to preserve and commemorate local heritage, and to provide cultural, educational, and recreational experiences to all of the residents of County, and County wishes to enhance the access, scope of operations, and educational components of the Museum's programs.
- C. Pursuant to Government Code Section 25536, County is authorized to enter into lease and managerial contracts involving all or any part of County-owned property.
- D. The Museum was, until June 30, 2011, operated and managed by the Kern County Superintendent of Schools/Board of Education ("**KCSOS**") under a Joint Powers Agreement dated October 7, 1997, as amended ("**JPA**").
- E. County and KCSOS terminated the JPA effective July 1, 2011, and County and the Foundation entered into an Agreement for the Lease and Operation of the Kern County Museum, Agreement No. 515-2011 ("**Operating Agreement**"), for the purpose of leasing and taking over operation and maintenance of the Museum, effective July 1, 2011 (the "**Lease Date**").
- F. On May 7, 2013, the Parties entered into a First Amendment to the Agreement for Lease and Operation of the Kern County Museum, Agreement No. 241-2013 ("**First Amendment**"), for the purpose of allowing the Foundation to sublet portions of the Museum grounds upon the express written authorization of the Assistant County Administrative Officer for General Services.
- G. The Kern County Board of Supervisors of County ("**KCBOS**") has determined, pursuant to California Government Code Section 26277, that the continued operation of the Museum is necessary to meet the educational needs of the population of the County.

- H. The KCBOS desires to continue contracting with Foundation to operate the Museum.
- I. The KCBOS has authorized the use of County property and County funds for the operation of the Museum.
- J. The Parties now desire to enter into this Amended Agreement in place and instead of the Operating Agreement and First Amendment.

AGREEMENT:

1. Formation, Function and Composition of Kern County Museum Foundation.

a. **Formation and Function.** The Kern County Museum Foundation ("Foundation") has been formed as a California non-profit public benefit corporation. The Foundation has a governing board of trustees ("Board") that is responsible for the overall operation, maintenance, and development of the Museum and the educational, cultural, and recreational activities taking place on or originating from the Museum's grounds and facilities. The Board shall provide policy direction as to the operation and maintenance of the Museum, which shall include all grounds, facilities, collections, education, and other programs, community events, and fiscal matters such as budget, staffing, fees, fundraising, grant applications, and the expenditure of grant awards and other revenues.

b. **Governing Body.** The Board consists of the following trustees ("Trustees"):

- i. **County Representative Trustee.** One County Representative Trustee shall be the Kern County Parks and Recreation Department Head, or such other County representative as designated by the KCBOS;
- ii. **General Trustees.** Eight General Trustees shall be appointed by the KCBOS, at its discretion, upon nomination by a majority of the votes of the authorized number of all Trustees at a regularly scheduled meeting of the Board of Trustees. Each General Trustee shall hold office for three (3) years. General Trustees may be re-nominated for additional three (3) year terms.

2. **Services.** Foundation shall perform or provide the services ("Services") for the Museum, as described in this Amended Agreement. Foundation shall determine the method, details, and means of performing the Services, subject to broad oversight by the KCBOS. Foundation may, at Foundation's own expense, employ such assistants, as Foundation deems necessary, to perform the Services. County may not control, direct, or supervise Foundation's assistants or employees in the performance of the Services.

3. **Term.** This Amended Agreement shall commence on Effective Date, and shall continue in effect until June 30, 2021 ("**Termination Date**"), unless earlier terminated as provided in Section 11.

4. **Funding of Museum Operations and Activities; County Administrative and Financial Services.**

- a. **Operating Revenue.** Foundation shall be entitled to retain, and shall rely on, all operating revenues from the Museum, such as admission and membership fees, and all revenues from subleases with the KCSOS for portions of the Museum grounds and facilities.
- b. **Grants.** The Foundation shall support the operations and activities of the Museum, including through good faith efforts to secure educational grants, dedication of school-focused resources, and other funding, fund-raising activities, access fees, and other charges for services. The Foundation shall also actively solicit and secure support of the Museum's activities through volunteers and work experience and other such programs.
- c. **County Funding.** The KCBOS shall consider requests from the Foundation for support, including but not limited to: capital and facilities improvement, and a minimum of \$325,000 for Museum operations and utility costs. County funding shall be subject to County's annual budget process.

This Amended Agreement shall not be construed to create any indebtedness beyond the current fiscal year; rather, the County will provide Foundation with funds in exchange for services rendered in a given year. The Parties understand and agree that any County funding is subject to the County budget appropriation process. This Amended Agreement shall be construed in accordance with Article XVI, Section 18 of the California Constitution, which prohibits aggregate indebtedness.

- d. **Museum Budget.** Annually, following consideration of public comment and on such date prescribed by the Board, the Board shall adopt a budget governing the expenditure of anticipated funds for the next fiscal year, which shall be July 1 of each year through June 30 of the immediately following year. Throughout the fiscal year, the Foundation shall review the expenditure of funds and the receipt of revenue and shall make adjustments as appropriate.
- e. **Administrative Support Services.** Upon Foundation's request, County shall provide administrative support services to the Museum's operation, as necessary, during the term of this Amended Agreement. The use of legal services from County Counsel shall not be included in this provision, and shall be the subject of a separate retainer agreement between the Foundation and the County.

- f. **Annual Audit.** Annually, the Foundation shall cause to be conducted an audit of the receipt and disbursement of funds, accounting practices, and other financial and management matters as appropriate or required pursuant to Government Code Section 6505.

5. Grounds, Facilities, Collections and Other Assets.

- a. **Condition of Premises; Modifications.** Foundation's agreement to operate the Museum, effective as of the Lease Date and set forth in the Operating Agreement, constituted acknowledgement that the Museum is in good and tenantable condition, and that Foundation agrees to accept the Museum in its present existing condition, "as is" "where is." The Foundation accepted the premises "as is" "where is" as of the Lease Date; however, subsequent audit of the collection identified significant deficiencies, which are identified in the attached **Exhibit "A."** Foundation agrees to report on any deficiencies that Foundation discovers as a part of the annual report required by **Section 7.c.** Foundation may make minor structural, exterior or capital improvements, modifications or repairs to Museum facilities as needed (i.e. rain gutters). Any plans for major construction (i.e. new buildings) or modification shall first be submitted to the Assistant County Administrative Officer for General Services for prior written approval. Unless authorized by the KCBOS, such construction or modification shall be without cost to County. All projects must be approved by the Assistant County Administrative Officer ("ACAO") and/or KCBOS. All projects shall be subject to the County's permit process, all applicable building codes, building inspections, and all applicable State, Federal, and local laws, including the ADA.
- b. **Ownership of Museum Grounds, Facilities, Collections, and Other Assets.** The Museum grounds and facilities, and all collections, other assets and all furniture, fixtures and improvements thereon, as of the Lease Date, are then, now and shall remain the property of County.
- c. **Lease of Property.** By the terms of this Amended Agreement, County leases the Museum grounds and facilities to Foundation, effective as of the Lease Date, which shall continue for the term of this Amended Agreement. However, if the Foundation ceases to exist or to provide and maintain the essential functions provided for in this Amended Agreement, such real property and all improvements shall revert automatically to the County and this Amended Agreement shall terminate.
- d. **Museum Collections – Owned by County as of the Lease Date.** The Foundation shall ensure that the Museum's collection inventory numbering system is maintained to assure clear differentiation of the existing inventory as of the Lease Date from those items that may be acquired after the Lease Date.

- e. **Museum Collections – Acquired by Foundation after Lease Date.** Commencing on the Lease Date, all items added to the collection of the Museum shall be the property of the Foundation and may be managed in such manner as prescribed by the Board. The Board shall cause to be maintained an inventory and accounting of such items in such a manner as to meet professional museum standards and general accounting practices.
- f. **Reversion of Ownership of Foundation Collections to County.** Upon the expiration or earlier termination of this Amended Agreement, or if earlier, the termination of the Foundation, and absent any contrary agreement with County providing for the disposition of Foundation assets, all collections acquired by the Foundation after the Lease Date shall revert to and become the property of County.
- g. **County Equipment – Owned by County as of Lease Date.** As permitted by Government Code Section 6504, all non-street legal vehicles, equipment, tools, office machines, restoration, and cleaning supplies, and other implements owned by County and used for the maintenance and/or operation of the Museum (“**Equipment**”), as of the Lease Date, shall be donated to the Foundation, following completion of the process specified in Government Code Section 6504, for its use in the maintenance and operation of the Museum. The repair, maintenance, and replacement of all such equipment and supplies shall be the responsibility of the Foundation as of the Lease Date.
- h. **Foundation Equipment – Acquired by Foundation after Lease Date.** Commencing on the Lease Date, all Equipment used for the operation and maintenance of the Museum or other activities at the Museum that are purchased by the Foundation after the Lease Date shall be the property of the Foundation and may be managed in such manner as prescribed by the Board. The Board shall cause to be maintained an inventory and accounting of such items in such a manner as to meet professional museum standards and general accounting practices.
- i. **Reversion of Ownership of Foundation Equipment to County.** Upon the expiration or earlier termination of this Amended Agreement, or if earlier, the termination of the Foundation, and absent any contrary agreement with County providing for the disposition of Foundation assets, all Equipment acquired by the Foundation after the Lease Date shall revert to and become the property of County.
- j. **Reversion of Foundation Assets to County.** Upon the expiration or earlier termination of this Amended Agreement, or if earlier, the termination of the Foundation, and absent any contrary agreement with County providing for the disposition of Foundation assets, all assets, including, without limitation cash, funds, bank accounts, and assets of any kind acquired by the Foundation after the Lease Date shall revert to and become the property of County.

6. **Damage, Destruction and Repair of Premises.**

- a. **Major Damage or Destruction:** County shall be responsible for major infrastructure repairs to the Museum property, improvements thereon and equipment thereof. Examples of major repairs include, but are not limited to: roof leaks or damage, HVAC, wiring failures. Major damage shall be assessed by the County within five (5) days and County, in its sole discretion, shall determine responsibility for repair within two (2) weeks. County shall not be required to build, rebuild, replace, or repair any structures, improvements, or Equipment located on the Museum property, in the event said structures or improvements are damaged or destroyed in whole or in part by whatever means.
- b. **Total Destruction:** In the event the Museum property is totally destroyed, this Amended Agreement shall terminate effective on the day of such destruction.
- c. **Partial Damage or Destruction:** In the event of partial damage or destruction to said structures, improvements, or Equipment to the extent that Foundation cannot effectively use the Museum, unless such damage or destruction is caused by a grossly negligent or willful act of Foundation, this Amended Agreement shall terminate at the option of either Foundation or County upon giving notice in writing to the other Party within 30 days after such partial damage or destruction.
- d. **Normal Recurring Maintenance and Repair:** The Foundation is responsible for the normal, recurring repair and maintenance of the grounds and structures. County shall be responsible for other than normal, recurring repairs and maintenance of structures and improvements. The responsibilities of Foundation and County shall be as described on the attached **Exhibit "B."** For items not listed on **Exhibit "B,"** Foundation and County shall confer to discuss which Party shall have responsibility for repairs. If County does not accept responsibility for repair, then Foundation may make repairs at its own expense or submit a request to the County so that County may consider allocating funds for the repairs. **Exhibit "B"** may be amended or clarified from time to time subject to mutual agreement by the Parties, with the express written consent of the **ACAO.**

Annually, by February 1st, the Foundation shall approve a list of priority capital maintenance projects for submission to the County. This will be important so that on an annual basis, both the Foundation and the County agree on priority capital needs and so the County can budget accordingly. The Foundation will take appropriate measures to protect the facilities, grounds and equipment against potential loss and risk so that the Museum's capital assets are: safe and secure, clean, well-maintained and accessible. Damage to the property or structures that impair safety, if beyond normal, recurring repair and maintenance, shall be promptly repaired, replaced, rebuilt, or destroyed by County upon County's determination that the repairs are in County's best interest and within County's budget for repairs.

7. **Obligations of Foundation.** In addition to obligations of the Foundation specified elsewhere in this Amended Agreement:
- a. **Days of Operation.** The Foundation shall have the Museum open to the public at least five days per week, in addition to private or rental events, unless otherwise agreed by the KCBOS.
 - b. **Management of County's Collection.**
 - i. County delegates its authority to the Foundation to manage the Museum's collection owned by County. Such management shall be as governed by the Collections Management Policy as adopted by the KCBOS.
 - ii. As provided for in the Collections Management Policy, all proceeds resulting from the de-accession of objects from the permanent collections of the Museum shall be deposited to the credit of the Collections Development/Acquisition Fund to procure objects for the collection, to care for current collections, or to further document current collections. The Foundation shall maintain an inventory and accounting of such items in accordance with professional museum standards and general accounting practices.
 - iii. Within 120 days after the Lease Date, the Foundation shall adopt an Ethics of Sale Policy which shall provide for the exclusion of such persons as may be associated with the Foundation from those eligible to be transferred items de-accessed from the Museum's collection.
 - c. **Annual Reports.** Commencing on the Lease Date, and on or about each July 1 of each subsequent year, the Foundation shall, no later than 150 days after the fiscal year end provide the KCBOS a report on the previous year's activities and accomplishments, as well as the proposed activities and accomplishments for the coming fiscal year.
 - d. **Taxes.** Foundation shall cause to be paid all lawful taxes, assessments or charges, if any, which may be levied by government entities.
 - e. **Equipment.** Foundation shall cause the Museum to be fully equipped and to keep all Equipment in a good repair and in safe operating condition throughout the term of this Amended Agreement.
 - f. **Tools and Instrumentalities.** Foundation shall provide all tools and instrumentalities to perform the Services.
 - g. **Maintenance; Compliance with Laws.** Foundation shall:

- i. Maintain throughout the term of this Amended Agreement, in good order, condition, and repair, and in compliance with all applicable laws, all portions of the improvements and the Equipment;
 - ii. Notify County promptly in writing of any damage to the Museum, the improvements, or the Equipment resulting from or attributed to the acts or omissions of Foundation, its invitees, or its authorized representatives, and thereafter promptly repair all such damage at Foundation's sole expense; and
 - iii. Maintain the access required by the Americans with Disabilities Act ("ADA") at all times, and any other health and safety requirements pursuant to federal, state or local laws.
 - h. **Independent Contractor.** Nothing in this Amended Agreement shall be construed or interpreted to make Foundation anything but an independent contractor. The role of Foundation is to coordinate the personnel who are managing operation of the Museum. In all of its activities and operations pursuant to this Amended Agreement, Foundation and Foundation's employees and agents shall for no purpose be considered an agent of County and shall have no right to Worker's Compensation and other employee benefits. If any worker insurance protections is desired, Foundation shall provide Worker's Compensation and other employee benefits, where required by law, for Foundation's employees and agents. Foundation shall defend and indemnify County for all claims arising out of any claim for injury, disability, or death of any of Foundation's employees or agents, as provided in **Section 9**.
8. **Obligations of County.** In addition to obligations of the County specified elsewhere in this Amended Agreement:
- a. **Cooperation.** County shall comply with all reasonable requests of Foundation necessary to the performance of the Services.
 - b. **Place of Work.** County shall allow Foundation the use of the Museum while Foundation performs the Services.
 - c. **Water Supplies.** County shall continue to provide, without charge, water to the Museum site from its water well located at the Metropolitan Recreation Center.
9. **Indemnification.** Foundation shall defend and indemnify County, its commissions, agents, officers, and employees, and each of them, from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to person or persons, or damage to property of third persons, and including attorneys' fees and

costs, arising out of or in any way connected with the operation activities allowed under this Amended Agreement, unless due to the negligence of County.

- 10. Liability Insurance.** Foundation, in order to protect County and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Foundation's actions in connection with the performance of Foundation's obligations, as required in this Amended Agreement, shall secure and maintain insurance as described below. Foundation shall not perform any work under this Amended Agreement until Foundation has secured all insurance required under this Section 10 and the required certificates of insurance and a copy of the completed endorsement have been filed with and approved by County. Foundation shall pay any deductibles and self-insured retentions under all required insurance policies.

a. Worker's Compensation and Employer's Liability Insurance Requirements.

- i. Worker's Compensation Insurance.** If Foundation has employees who may perform any Services pursuant to this Amended Agreement, Foundation shall submit written proof that Foundation is insured against liability for worker's compensation in accordance with the provisions of California Labor Code Section 3700. Foundation shall require any subcontractors to provide worker's compensation for all of the subcontractor's employees, unless the subcontractor's employees are covered by the insurance afforded by Foundation. If any class of employees engaged in work or services performed under this Amended Agreement is not covered by California Labor Code Section 3700, Foundation shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.
- ii. Employer's Liability Insurance.** Foundation shall also maintain employer's liability insurance with limits equal to the policy limits, which shall be no less than \$1,000,000 for bodily injury or disease.

b. Liability Insurance Requirements.

- i.** Foundation shall maintain in full force and effect, at all times during the term of this Amended Agreement, the following insurance:
 - (a) Commercial General Liability Insurance** including but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Amended Agreement with County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Foundation's performance of work under this Amended Agreement. The amount of said insurance coverage

required by this Amended Agreement shall be the policy limits, which shall be at least \$1,000,000 each occurrence and \$2,000,000 aggregate.

(b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Amended Agreement with County with coverage equal to the policy limits, which shall be at least \$1,000,000 each occurrence.

- ii. The Commercial General Liability and Automobile Liability Insurance shall include an endorsement naming County and County's board members, officials, officers, agents and employees as additional insured's for liability arising out of this Amended Agreement and any operations related thereto.
 - iii. If any of the insurance coverage's required under this Amended Agreement is written on a claims-made basis, Foundation, at Foundation's option, shall either (i) maintain said coverage for at least one year following the termination of this Amended Agreement with coverage extending back to the Lease Date; or (ii) purchase an extended reporting period of not less than one year following the termination of this Amended Agreement.
 - iv. Prior to Foundation commencing any of its obligations under this Amended Agreement, evidence of insurance in compliance with the requirements above shall be furnished to County by a Certificate of Insurance and a copy of the completed endorsement. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.
- c. **Cancellation of Insurance.** The above-stated insurance coverages required to be maintained by Foundation shall be maintained until the completion of all of Foundation's obligations under this Amended Agreement, and shall not be reduced, modified, or canceled without 30 days prior written notice to County. Foundation shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
- d. **Insurance Company Minimum Rating.** All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII.

Any exception to these requirements must be approved in writing by the County Risk Manager.

- e. **Self-Insured.** If Foundation is, or becomes during the term of this Amended Agreement, self-insured or a member of a self-insurance pool, Foundation shall provide coverage equivalent to the insurance coverage's and endorsements required above. County will not accept such coverage unless County determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Foundation is equivalent to the above-required coverage.
- f. **Insurance Primary.** All insurance afforded by Foundation pursuant to this Amended Agreement shall be primary to and not contributing to any other insurance or self-insurance maintained by County.
- g. **Liability Insurance Coverage.** Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Foundation for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude County from taking such other actions as are available to it under any other provision of this Amended Agreement or otherwise in law.
- h. **Failure to Maintain Insurance.** Failure by Foundation to maintain all such insurance in effect at all times required by this Amended Agreement shall be a material breach of this Amended Agreement by Foundation. County, at its sole option, may terminate this Amended Agreement and obtain damages from Foundation resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Foundation, County shall deduct from sums due to Foundation any premiums and associated costs advanced or paid by County for such insurance. If the balance of monies obligated to Foundation pursuant to this Amended Agreement is insufficient to reimburse County for the premiums and any associated costs, Foundation agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by County to take this alternative action shall not relieve Foundation of its obligation to obtain and maintain the insurance coverage's required by this Amended Agreement.

11. Termination of Amended Agreement.

- a. **Termination on Notice.** Notwithstanding any other provision of this Amended Agreement, either Party may terminate this Amended Agreement, at any time, without cause by giving at least 180 days prior written notice to the other Party.
- b. **Termination on Occurrence of Stated Events.** This Amended Agreement shall terminate automatically on the occurrence of any of the following events:

- i. The end of the 180 day-termination notice as set forth in **Section 11.a**; or
 - ii. The stated end of the term of this Amended Agreement as set forth in **Section 3**.
- c. **Termination on Occurrence of Default.** Should either Party default in the performance of this Amended Agreement or materially breach any of its provisions, the non-breaching Party, at its option, may terminate this Amended Agreement, immediately, by giving written notice of termination to the breaching Party.
- d. **Reversion of Foundation Assets to County upon Termination.** Upon the expiration or earlier termination of this Amended Agreement, or if earlier, the termination of the Foundation, all assets of the Foundation shall revert to the County, as provided in **Section 5**.

12. Liens and Encumbrances. Foundation shall keep the Museum grounds and facilities free from any liens or encumbrances arising out of any work performed, materials furnished, or obligations incurred by Foundation, or from any other cause.

13. Notices.

- a. All notices provided to be given, or which may be given, by either Party to the other shall be deemed to have been fully given when made in writing and deposited with the United States Postal Service, first-class mail, return receipt requested, postage prepared and addressed as follows:

To County: County Administrative Office
Attn: County Administrative Officer
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301

To Foundation: Kern County Museum Foundation
Attn: Bob Lerude
3801 Chester Avenue
Bakersfield, CA 93301

Kern County Museum Foundation
Attn: Beth Pandol
3801 Chester Avenue
Bakersfield, CA 93301

- b. The address to which the notices shall be mailed to either Party may be changed by written notice given by such Party to the other, as provided in this **Section 13**.

- c. Nothing herein contained shall preclude the giving of any such notice by personal service.

14. **Incorporation of Prior Agreements.** Except for leases between County and the KCSOS, which may cross-reference the original Operating Agreement or this Amended Agreement, this Amended Agreement contains all agreements of the Parties with respect to the subject matter of this Amended Agreement. No prior agreement or understanding pertaining to any such matter shall be effective.
15. **Governing Law; Venue.** This Amended Agreement has been entered into and will be performed within the State of California. Accordingly, the Parties agree that the provisions of this Amended Agreement will be construed pursuant to the laws of the State of California. If any legal action is instituted by any Party to this Amended Agreement regarding the terms, conditions and/or performance of this Amended Agreement, venue shall be in the Superior Court of County of Kern.
16. **Organization Authority.** Each individual executing this Amended Agreement on behalf of his or her entity represents and warrants that he or she is duly authorized to execute and deliver this Amended Agreement on behalf of said entity, and that this Amended Agreement is binding upon said entity in accordance with its terms.
17. **Authority to Bind County.** It is understood that Foundation in its performance of any and all duties under this Amended Agreement, except as otherwise provided in this Amended Agreement, has no authority to bind County to any agreements or undertakings.
18. **Time of Essence.** Time is the essence of each and all the terms and provisions of this Amended Agreement.
19. **Assignment of Agreement.** Foundation shall not assign or transfer this Amended Agreement, or any part hereof, without the express written authorization of the KCBOS.
20. **Sublease of Site.** Foundation shall not sublet the Museum site, or any part thereof, without the express written authorization of the Assistant County Administrative Officer for General Services.
21. **Binding Effect.** This Amended Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the Parties, but

nothing in this **Section 21** shall be construed as consent by County to any assignment of this Amended Agreement or any interest in this Amended Agreement.

22. Modifications of Amended Agreement. This Amended Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.

23. Enforcement of Remedies. No right or remedy herein conferred on or reserved to County is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently from time to time.

24. No Waiver. The waiver of any breach by any Party of any provision of this Amended Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of this Amended Agreement.

25. Force Majeure. Except as otherwise expressly provided for in this Amended Agreement, should the performance of any action required by this Amended Agreement to be performed by either Party be prevented or delayed by reason by any act of nature or God, strike, lockout, labor trouble, inability to secure materials, or any other cause except financial inability not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period of time equivalent to the period of delay will be excused. However, nothing contained in this **Section 25** shall exclude the prompt payment by either Party as required by this Amended Agreement or the performance of any act rendered difficult or impossible solely because of the financial condition of the Party required to perform the act.

26. Severability. Should any part, term, portion or provision of this Amended Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

27. Conflict of Interest. The Parties have read and are aware of the provisions of Government Code Section 1090, et seq., and Section 87100, et seq., relating to conflict of interest of public officers and employees. Foundation agrees that they have no actual knowledge of any financial or economic interest of any public officer or employee of County relating to this Amended Agreement. The Parties shall comply with the requirements of Government Code Section 87100, et seq. during the term of this Amended Agreement.

28. **Compliance with Law.** Foundation shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatever, present or future, of the national, state, county or city government which may in any way apply to the use, maintenance, occupation of, or operations on the Museum Premises. Foundation agrees that all activities and any construction on the Premises are subject to the ADA. Should Foundation not comply with ADA, and County does work on the Premises to meet ADA standards, Foundation shall reimburse County for all costs incurred by County to comply with ADA.
29. **Captions; Exhibits.** The use of paragraph headings in this Amended Agreement is solely for convenience, and they shall be wholly disregarded in the construction of this Amended Agreement. Exhibits are attached to this Amended Agreement and incorporated herein by reference.
30. **Construction.** The Parties agree that each has had an opportunity to have their counsel review this Amended Agreement and that any rule to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Amended Agreement or any amendment or exhibits thereto. The captions of the sections are for convenience and reference only, and are not intended to be construed to define or limit the provisions to which they relate.
31. **No Third Party Beneficiaries.** It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to County and Foundation. Nothing contained in this Amended Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of County and Foundation that any such person or entity, other than County or Foundation, receiving services or benefits under this Amended Agreement shall be deemed an incidental beneficiary only.
32. **Recitals.** Each of the recitals is incorporated in this Amended Agreement by reference as if fully set forth in this Amended Agreement at length, is deemed to be the agreement and a reflection of the intent of the Parties, and is relied upon by the Parties in agreeing to the provisions of this Amended Agreement and in interpreting its provisions.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

APPROVED AS TO CONTENT

COUNTY OF KERN

Parks and Recreation Department

By Robert Leunde
Director

By [Signature] JUN 10 2014
Chairman, Board of Supervisors
"COUNTY"

County Administrative Office

**KERN COUNTY MUSEUM
FOUNDATION**

By [Signature]
Assistant County Administrative
Officer for General Services

By Robert Leunde
By [Signature]
"Foundation"

APPROVED AS TO FORM
Office of County Counsel

By [Signature]
Brian Van Wyk, Deputy

Office of County Counsel

By Kendra L. Graham
Kendra L. Graham, Deputy
For "Foundation"