

AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of May, 1985, by and between the City of Santa Ana, a municipal corporation of the State of California, hereinafter referred to as "City," and Charles W. Bowers Museum Corporation, a California nonprofit public benefit corporation, hereinafter referred to as "Corporation."

W-I-T-N-E-S-S-E-T-H

Recitals:

A. The Charles W. Bowers Memorial Museum (hereinafter referred to as the "Museum") is owned and operated by City in accordance with the terms of a conveyance in trust by the late Charles W. Bowers and his wife Ada Bowers.

B. Corporation is organized and existing under the laws of the State of California for the purpose of assisting City in managing and operating the Museum.

WHEREFORE, for and in consideration of their mutual and respective covenants and promises hereinafter set forth, and subject to the terms and conditions of this Agreement, the parties hereto do hereby agree as follows:

6th

ARTICLE 1

STATUS OF CORPORATION

§ 1.01 Status of Corporation

(a) By its execution of this Agreement, Corporation warrants that it is duly incorporated under the laws of the State of California and that true and correct copies of its Articles of Incorporation and Bylaws and a true and correct listing of Corporation's directors and officers and their terms of office, certified as such by Corporation's Secretary, have been filed with City's Clerk of the Council.

(b) By its execution of this Agreement, City accepts and agrees to the organization of Corporation as set forth in the abovesaid Articles of Incorporation and Bylaws.

§ 1.02 Amendment of Articles and Bylaws

Corporation shall not amend its Articles of Incorporation or Bylaws without the consent of City. Such consent shall not be unreasonably withheld, but City shall have the right to reject any amendment which would eliminate or reduce City's representation in the conduct of the Corporation's affairs. Any amendment of Corporation's Articles or Bylaws shall be promptly filed with City's Clerk of the Council.

§ 1.03 Changes in Directors and Officers

Corporation shall promptly notify City's Clerk of the Council of any change in the membership of Corporation's governing board and any change in the officers of Corporation.

ARTICLE 2

TERM OF AGREEMENT

§ 2.01 Term

The term of this Agreement shall commence on the date of execution hereof and shall continue until terminated as hereinafter provided.

§ 2.02 Termination

This Agreement may be terminated by the mutual consent of the parties hereto at any time. Either party may terminate this Agreement by providing six (6) months notice to terminate to the other party.

ARTICLE 3

CORPORATION DUTIES

§ 3.01 Policy

The Corporation shall have policy authority over all of the activities and programs of the Museum and its affiliated organizations.

§ 3.02 Studies

The Corporation may make such studies as it may deem necessary for the formulation of Museum policies, or to determine the wisdom and efficacy of the policies, plans and procedures of the Museum.

ARTICLE 4

CITY DUTIES

§ 4.01 Personnel and Administration

City shall provide such personnel through the civil service rules and regulations of City as it deems necessary and advisable for the operation of the Museum. Corporation shall not give orders to the City Manager or any subordinates of the City Manager, either publicly or privately, nor interfere with the administration of the Museum, provided, however, Corporation may provide advice to the City Manager regarding administration of the Museum.

City's City Manager, who is the appointing authority for the Director of the Museum, shall meet and consult with Corporation prior to any decision regarding appointment or retention of the Director of the Museum.

s 4.02 Secretary

City shall provide a secretary for the Corporation who shall perform the duties as prescribed by the By-laws of the Corporation.

§ 4.03 Financial Assistance

City shall provide such financial assistance to Corporation as it deems advisable and necessary for the Corporation to perform its duties under this Agreement. Upon request of Corporation, City shall provide the services of its Finance Department for receipts and disbursement of Corporation funds and accounting services.

§ 4.04 Committee Support

City shall provide staff support for committees which may from time-to-time be formed by Corporation.

ARTICLE 5

DONATIONS AND INCOME

§ 5.01 Funds

Corporation agrees that all income and donations received by Corporation during the term hereof shall only be used for Corporate and Museum purposes, and, upon termination of this Agreement, all funds received by Corporation during the term of this Agreement shall be transmitted to City to be used for Museum purposes.

§ 5.02 Property

Corporation agrees that all property, both real and personal, acquired by Corporation during the term hereof shall only be used for Museum purposes. Upon termination of this Agreement, all such property shall be conveyed to City to be used for Museum purposes.

ARTICLE 6

INDEMNITY AND INSURANCE

§ 6.01 Indemnification

City shall indemnify and save harmless Corporation and its officers, agents and employees from and against any and all claims, demands, loss or liability of any kind or nature which Corporation or its officers, agents, or employees may sustain or incur, or which may be imposed upon them or any of them for injury to or death of persons or damage to property as a result of, arising out of, or in any manner connected with this Agreement or with the activities of the Corporation, its officers, agents or employees pursuant to this Agreement.

§ 6.02 Insurance

City shall name Corporation as an additional insured under any liability or property insurance property maintained by City.

ARTICLE 7

MISCELLANEOUS PROVISIONS

§ 7.01 Notices

Notices and written communications sent by one party to the other shall be either personally delivered or sent by U.S. Mail, postage prepaid, to the following addresses:

(a) If sent by Corporation to City:

City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92701

(b) If sent by City to Corporation

§ 7.02 Non-assignability

The rights and obligations of Corporation under this Agreement may not be assigned or delegated without the prior approval of City's City Council.

§ 7.03 Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforcible, the remainder of the provisions

hereof shall remain in full force and effect, and shall in no way be affected, impaired or invalidated thereby.

§ 7.04 Exclusivity

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto and contains all the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement or amendment hereto shall be effective unless executed in writing and signed by both City and Corporation.

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

Approved as to content
Robert C. Buhl
City Manager

CITY OF SANTA ANA

by D. E. Griset
Daniel E. Griset
Mayor

ATTEST:

Janice C. Guy
Janice C. Guy
Clerk of the Council

CHARLES W. BOWERS MUSEUM CORPORATION

by D. E. Griset
Daniel E. Griset, Director

APPROVED AS TO FORM:

Edward J. Cooper
Edward J. Cooper
City Attorney

ATTEST:
by William B. Lee
William B. Lee, Secretary