

APPROVED
FEB 07 2017

BOARD REPORT

BOARD OF RECREATION
AND PARK COMMISSIONERS

NO. 18-018

DATE February 07, 2018

C.D. # 4

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: GRIFFITH OBSERVATORY – MEMORANDUM OF UNDERSTANDING WITH FRIENDS OF THE OBSERVATORY (2018-2020)

AP Diaz	_____	V. Israel	_____
R. Barajas	_____	* S. Pifia-Cortez	<u>sfc</u>
H. Fujita	_____	N. Williams	_____

General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Approve a proposed Memorandum of Understanding (MOU), substantially in the form on file in the Board office, between the Department of Recreation and Parks (RAP) and Friends Of The Observatory (FOTO), to define, codify, and continue the relationship of support to Griffith Observatory, subject to the approval of the Mayor and of the City Attorney as to form;
2. Direct the Board Secretary to transmit the proposed MOU to the Mayor for approval in accordance with Executive Directive 3, and concurrently, to the City Attorney for review and approval as to form; and,
3. Authorize the Board President and Secretary to execute the MOU, subsequent to receipt of the necessary approvals.

SUMMARY

The collaboration between RAP and FOTO in support of Griffith Observatory is a model for successful public-private partnerships in the City. This is the fourth MOU between the partners.

FOTO was founded as a non-profit organization in 1978 by Observatory Director Dr. E. C. Krupp, Harold Griffith (the grandson of founding Observatory benefactor Griffith J. Griffith), and Harold's wife, Debra, to offer a way for the public to support and improve Griffith Observatory.

In the 39 years since then, FOTO has repeatedly provided essential financial, logistical, and organizational assistance, advocacy, programming, and other forms of support to enhance Griffith Observatory for the public benefit. Most notably, RAP and FOTO formed a uniquely successful public-private partnership to renovate and expand the Observatory. This Ninety-Three Million Dollar (\$93,000,000.00) project, executed between 2002 and 2006, preserved and

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transformed the Observatory and then returned it to public use on November 3, 2006. FOTO was instrumental in raising the funds for the renovation project, including direct private contributions of over Thirty Million Dollars (\$30,000,000.00), but its impact extended far beyond that amount, with efforts to win public grants, purchase and coordination of the new equipment for the Samuel Oschin Planetarium and Leonard Nimoy Event Horizon, management of the design, fabrication, and installation of the new exhibit program, and extensive service on the Renovation and Expansion Steering Committee guiding the entire project.

Since the conclusion of the renovation and expansion project and reopening of the Observatory in November, 2006, FOTO has continued to provide vital funding and programming support to the Observatory and Department. Notable among these contributions are: nine (9) One Hundred Seventy-Five Thousand Dollar (\$175,000.00) gifts (Reports 08-260, 09-251, 10-250, 11-283, 12-258, 13-247, 14-260, 16-060, and 17-069) to support the Observatory's School Program; over Three Millions Dollars (\$3,000,000.00) in equipment to upgrade the Samuel Oschin Planetarium, Leonard Nimoy Event Horizon theater, and the Observatory programming studio; ongoing funding (over Eleven Thousand Dollars [\$11,000.00] a year) for enhanced internet/satellite connectivity to enable programming objectives; media relations support; and organization and funding of the 2009 and 2010 Cosmic Conjunction events and the 2012 premieres for the *Time's Up* planetarium show.

This agreement, which would cover the period from January 1, 2018 to December 31, 2020, is the same in form and intent as the first, second, and third three-year MOUs between the RAP and FOTO. The term of the first MOU (Report 06-126) was July 1, 2006 to June 30, 2009. The Board subsequently approved (Report 09-173) an extension of that MOU by six months to December 31, 2009. The term of the second MOU (Board Report 09-316) was January 1, 2010 to December 31, 2012. The term of the third MOU was January 1, 2013 to December 31, 2015 (Report 12-253). That MOU was extended for one year on two occasions (Reports 15-255 and 16-238), and the last of those extensions expires on December 31, 2017. Changes from the prior MOU document are minimal. Most are updates to dates and citations.

Key provisions of the agreement include:

- Authorization for FOTO to raise funds and provide donor and member services and recognition under the same conditions already approved by the Board as the exclusive non-profit organization so authorized, including prohibition of any non-City fundraising at the Observatory except by FOTO.
- Clear definition of FOTO as an organization separate from the City, and accountable for hiring decisions and its staff, paying all its own expenses, indemnifying the City as appropriate, conforming to the City's non-discrimination policies, reporting on its finances and fundraising, and obeying all relevant laws.
- Assignment of two office spaces and related utility support for FOTO in the Observatory and permission for FOTO to utilize Observatory premises and facilities for meetings, membership services, and donor cultivation and recognition, all in accordance with established rules in any Schedule of Rates and Fees policies approved by the Board, and with approval of Observatory management.

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- Indemnification of FOTO by City for FOTO's activities in support of the Observatory except in cases of gross negligence or intentional misconduct.

FISCAL IMPACT STATEMENT

This MOU will not have any fiscal impact on RAP's General Fund. There is no cost to RAP for its implementation, and it does not provide for any specific transfer of funds. By defining and codifying the relationship between the CITY and FOTO, however, the MOU provides the foundation for continued support of the Observatory by FOTO. The relationship with FOTO almost certainly will afford additional fundraising opportunities, which will enable the Observatory to continue and/or expand services without bearing the full cost of those services. For example, without the funds contributed by FOTO, the Griffith Observatory School Program would have been canceled for the last ten school years (2008-09 through 2017-18).

This report was prepared by Mark Pine, Deputy Director, Griffith Observatory.

LIST OF ATTACHMENTS/EXHIBITS

- 1) Proposed MOU, January 1, 2018 – December 31, 2020, with Friends Of The Observatory (FOTO)
- 2) MOU_January 1, 2013, to December 31, 2015
- 3) Board Report No. 16-238 Amendment No. 2 to Memorandum of Understanding with Friends Of The Observatory to Extend Terms of Agreement by One-Year.

MEMORANDUM OF UNDERSTANDING
BETWEEN

THE CITY OF LOS ANGELES
AND
FRIENDS OF THE OBSERVATORY

ESTABLISHING ROLES, RESPONSIBILITIES, AND THE RELATIONSHIP
OF SUPPORT TO GRIFFITH OBSERVATORY

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and entered into this _____ day of _____, 20____, by and between the CITY OF LOS ANGELES, a municipal corporation, (hereinafter referred to as "CITY") , Department of Recreation and Parks ("RAP") acting by and through its Board of Recreation and Park Commissioners, (hereinafter referred to as "BOARD"), and FRIENDS OF THE OBSERVATORY, a non-profit public benefit corporation, (hereinafter referred to as "FOTO").

- A. Through RAP, the CITY owns and operates Griffith Observatory and the Griffith Observatory Satellite in Griffith Park.
- B. FOTO was incorporated in 1978 as a California non-profit public benefit corporation to preserve, promote, and support Griffith Observatory and its mission of public astronomy.
- C. FOTO is governed by its Articles and Bylaws and the activities and affairs of FOTO are conducted and all of its corporate powers are exercised by or under the direction of its Board of Directors the members of which are designated, selected, and elected in accordance with FOTO's Bylaws.
- D. The purpose of this MOU is to establish in writing the respective roles, responsibilities, and financial relationship between CITY and FOTO.

CITY and FOTO hereby agree and understand as follows:

1. Fundraising

- a. Authority to Raise Funds. FOTO is authorized to raise funds to preserve, promote and support Griffith Observatory and its mission of public astronomy.
- b. FOTO is the only non-CITY organization authorized to hold fundraising events on the Observatory grounds.
- c. Donor Recognition. FOTO is authorized to provide recognition to donors consistent with naming and donor recognition rights approved by the BOARD, (Report Nos. 00-360 and No. 01-378). FOTO may propose or negotiate specific changes or additional donor recognition, subject to review by RAP, with approval by the BOARD as required.
- d. Gift Agreements. Gifts of equipment, materials, funds, or services to the CITY for Griffith Observatory by FOTO are subject to negotiated Gift Agreements executed by and between the CITY and FOTO, approved in writing by the City Attorney and approved by Mayor and City Council if required. This MOU shall not supersede the terms of any existing or future executed Gift Agreements.

- e. Exclusivity. FOTO is the only organization authorized by the CITY to raise funds for the Observatory and CITY will not enter into an MOU with any other organization or entity for the same purposes as this MOU.
2. Employment Practices. FOTO will make all hiring, retention, and compensation decisions with respect to its employees. All such decisions shall be subject to all applicable laws. FOTO will maintain its own employee handbook. FOTO's employees are employees of FOTO and are not employees of the Board, RAP or the City of Los Angeles.
3. Office Space and Telephone/Data. CITY will provide within the Griffith Observatory Administration area one large office for multiple FOTO staff, and one private office for the FOTO Executive Director. CITY will provide telephone equipment with connectivity for voice and data without charge for use by FOTO in conducting FOTO business. FOTO will provide furniture, equipment, and supplies necessary for the conduct of their business.
4. Uses of Observatory by FOTO. CITY and FOTO agree that use of various areas and facilities of Griffith Observatory are necessary and appropriate within the scope of FOTO's mission. Specifically:
 - a. Membership Services: FOTO offers member benefits. Space will be designated in the public area of the Observatory for soliciting and serving members and donors, to be staffed by FOTO.
 - b. Meeting and Conferences: FOTO is authorized at no-charge to use meeting rooms, class rooms, and the Leonard Nimoy Event Horizon theater for conducting FOTO business, including but not limited to lectures, conferences, donor cultivation, educational programming, and training, subject to approval of the Observatory Director as to schedule.
 - c. Other Facility Use: FOTO is authorized use of all facilities of the Observatory in accordance with the Griffith Observatory Rental Policy and Rates and Fees schedule as approved by the BOARD (Report No. 08-084 attached as "Exhibit A" incorporated herein by reference).
 - d. FOTO Activities: FOTO shall be authorized to conduct cultivation events, tours, fundraising receptions, demonstrations, and other activities, subject to approval of the Observatory Director, in support of FOTO'S specific purposes, without charge except to reimburse the CITY for out-of-pocket costs which are beyond typical operating costs.
 - e. CITY shall cooperate with FOTO in reasonably maintaining or providing links to FOTO'S Internet sites on the pages dedicated by CITY to the Observatory.
5. Indemnification. CITY hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless FOTO, its officers, directors, trustees, employees, members, and donors, including their successors, heirs, and assigns, from and against any and all claims, liabilities, losses, damages, fines, settlements, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising from or in connection with any act or omission of CITY, in agreeing to FOTO activities conducted under this MOU, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any act or omission

of FOTO, its officers, directors, trustees, employees, members, or donors, including their successors, heirs, and assigns. However, under no circumstances shall CITY be liable for performance of any agreements entered into by FOTO not otherwise approved by CITY, and FOTO agrees to defend, indemnify, and hold harmless CITY, its officers, employees, and agents, from and against any or all claims, liability, losses, and expenses (including reasonable attorneys' fees) directly, indirectly, wholly, or partially arising therefrom.

6. Intellectual Property. The arrangements between the CITY and FOTO with respect to intellectual property rights will be set out in license agreements negotiated and executed by and between CITY and FOTO, approved in writing by the City Attorney, and approved by Mayor and City Council if required. This MOU shall not supersede the terms of any existing or future executed license agreements.
7. Observatory Priorities. The Observatory Director will provide FOTO, from time to time, with information on Griffith Observatory's needs in terms of funding, support, or programming, which the Board of Directors of FOTO shall take into account in determining the use of FOTO's assets. The Observatory Director shall incorporate the participation of FOTO in the Observatory's establishment and review of annual goals and objectives.
8. Financial Statements. Annual, audited financial statements for FOTO will be provided to the CITY by June 30th each year, or FOTO will provide unaudited mid-year financial status reports as requested by the General Manager of RAP.
9. Disposition of Assets upon Liquidation. FOTO's Articles of Incorporation provide that upon liquidation its net assets will be transferred to another California non-profit public benefit corporation with similar purposes.
10. Term. The term of this Memorandum of Understanding shall be for three years beginning on January 1, 2018, and ending December 31, 2020.

11. INCORPORATION OF DOCUMENT

The following exhibit is incorporated by reference:

Exhibit A: Report No. 08-084

Signature Page to Follow

This MOU shall supersede any prior oral or written understanding or communications between the parties and constitutes the entire agreement of the parties with respect to the subject matter hereof. This MOU may not be amended or modified, except in a writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this MOU as of the day and year first above written.

APPROVED AS TO FORM:

MICHAEL N. FEUER
City Attorney

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

BY _____
Deputy City Attorney

By: _____
President

Date: _____

By: _____
Secretary

Date: _____

FRIENDS OF THE OBSERVATORY

By _____
(Signature)

(Print Name)

(Title)

By: _____
(Signature)

(Print Name)

(Title)

Date: _____