

**AGREEMENT BETWEEN  
THE CITY OF MEMPHIS AND MEMPHIS MUSEUM INC.  
REGARDING EFFORTS TO UPDATE EXHIBITS AT  
THE PINK PALACE MUSEUM**

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2011 by and between the City of Memphis, Tennessee, acting by and through its Division of Park Services (hereinafter referred to as "City") and Memphis Museums Inc. (hereinafter referred to as "MMI").

**WITNESSETH,**

**WHEREAS**, pursuant to City Contract No. N9755, the City and MMI are partners in a joint venture in the operation of a system of museums, including exhibits at the Pink Palace Museum.

**WHEREAS**, the City and MMI desire to update and rehabilitate the exhibits and related spaces at the Museum through an Exhibit Rehabilitation Project (hereinafter referred to as "Project"); and

**WHEREAS**, the City, as part of its Capital Improvement Budget, has allocated \$1,258,000 for A/E in funding toward Capital Improvement Project Number PK08017 as reflected by Exhibit A attached hereto; and

**WHEREAS**, the City and MMI wish to memorialize an agreement providing for the sharing of costs associated with the Project.

**NOW, THEREFORE**, for good and valuable consideration, receipt of which both parties acknowledge, the City and MMI agree as follows:

1. The City of Memphis will fund programming, schematics, design development and construction documents up to a cost of approximately \$2,400,000.
2. The parties will then mutually fund rehabilitation of the exhibits and related spaces at the museum sharing the costs so that when complete each party will have paid 50% of the total cost inclusive of those costs in Section 1 above. The parties agree that MMI will work to complete a substantial amount of the overall balancing of the 50/50 cost sharing by the end of the first phase. It is expected that the total project cost will be approximately \$20,000,000 and that when completed each party will have paid 50% of the total. The parties agree to manage the CIP expenditures for this project equitably for the mutual benefit of MMI and the COM.
3. This Agreement is subject to the availability of funding provided by the Memphis City Council. In the event funds are not available, the City reserves the right to terminate this Agreement upon written notice to MMI and such termination shall not be a breach of contract by City. Upon such termination, MMI shall have no right to recover from City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
4. Both parties agree that this project may be accomplished in phases and agree to work together to administer the phases as one project in terms of cost sharing and planning.
5. This Agreement shall become effective upon the signature of both Parties.
6. This Agreement may be terminated by either party, with or without cause, by giving thirty (30) days notice to the other, before the effective date of termination. In the event of such termination, any remaining unspent funding shall be returned to the respective party that provided such funding within thirty (30) days unless otherwise mutually determined.

7. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether oral or written. This Agreement may be modified or amended only by written instrument signed by both parties.
8. If any provision of this Agreement is held to be unlawful, invalid or unenforceable for any reason, such provision shall be fully severable; and this Agreement shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from.
9. Any notices required or permitted to be given under the provisions of this Contract shall be effective only if in writing and delivered either in person to the authorized agent or by First Class or U.S. Mail, return receipt requested, to the addresses set forth below, or to such other person or address as either party may designate in writing and deliver as herein provided. Notices shall be deemed received (i) if by hand delivery, on date of delivery with a signed receipt; (ii) if U.S. Mail, on date of receipt appearing on the return receipt card; (iii) if by overnight courier, on date receipt is confirmed by such courier service.

MMI: President of Memphis Museums, Inc.  
c/o Steve Pike, Director of Pink Palace Family of Museums  
3050 Central Avenue  
Memphis, TN 38111

CITY: City of Memphis  
Attn: Division of Park Services, Director  
2599 Avery Avenue  
Memphis, TN 38112

*and*

City of Memphis  
Attn: City Attorney  
125 N. Main, Room 336  
Memphis, TN 38103

10. MMI shall comply with all applicable federal, state and local laws in the performance of its duties and obligations herein.
11. MMI shall make and keep as the same accrue, full and complete books, records, and other documents related to this Agreement for a minimum period of three (3) full years after the contract end date or from the date of final payment under this Agreement, whichever is later. MMI shall allow the City, during normal business hours and at all reasonable times, to examine, inspect, and audit any and all of MMI's books, records, and other documents, which are maintained or kept by MMI in its official functions in carrying out its duties and responsibilities under this Agreement.
12. Nothing in this Agreement shall be deemed to represent that either party, or any of its employees or agents, are the agents, representatives, or employees of the other party. Each party shall be an independent service provider over the details and means for performing the services under this Agreement. Anything in this Agreement which may appear to give either party the right to direct the

other party as to the details of the performance of the services under this Agreement or to exercise a measure of control over the other party is solely for purposes of compliance with local, state and federal regulations and means that the party will follow the desires of the other party only as to the intended results of the scope of this Agreement.

13 MMI warrants that no part of the funding provided by City in accordance with this Agreement shall be paid directly or indirectly to any officer or employee of the City as wages, compensation, or gifts in exchange for acting as officer, agent, employee, or subcontractor to the MMI in connection with any work contemplated or performed relative to this Agreement.

14. MMI warrants that it has not employed or retained any company or person other than a bona fide volunteer or employee working solely for the MMI, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the MMI any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City will have the right to recover the full amount of such fee, commission, percentage, brokerage fee, gift, or other consideration.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written.

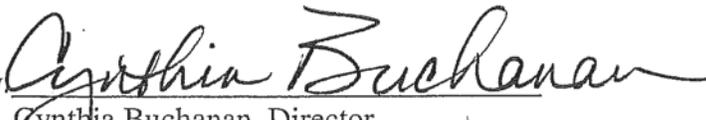
**CITY OF MEMPHIS**

**MEMPHIS MUSEUMS, INC.**

By: \_\_\_\_\_  
A C Wharton, Jr., Mayor

By:   
Printed Name: RONALD COLEMAN  
Title: Pres

By: \_\_\_\_\_  
Herman Morris, Jr., City Attorney

By:   
Cynthia Buchanan, Director  
Division of Park Services

Attest:  
  
\_\_\_\_\_  
Deputy Comptroller