

## **OPERATING AGREEMENT**

### **CHARLES A WUSTUM MUSEUM OF FINE ARTS**

AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF RACINE, hereinafter called "City," and the RACINE ART MUSEUM ASSOCIATION, INC., hereinafter called "Association."

### **W I T N E S S E T H:**

WHEREAS, the City is the owner of the Charles A. Wustum Museum of Fine Arts, hereinafter called "Museum" and surrounding grounds located at 2519 Northwestern Avenue, Racine, Wisconsin; and

WHEREAS, the Association is a non-profit corporation existing pursuant to the laws of the State of Wisconsin, and is the successor in interest to the Wustum Museum Art Association; and

WHEREAS, the Association possesses the qualifications to operate the Charles A. Wustum Museum of Fine Arts; and

WHEREAS, the parties hereto are desirous of entering into an agreement whereby the Association will conduct the operations of the Museum in the public interest and in compliance with the Will of Jennie E. Wustum, deceased;

WHEREAS, the City has transferred the general operating control of the Museum and surrounding grounds to the Association; and

WHEREAS, the Association and the City are desirous of cooperating toward the continued growth and improvement of the fine arts program and facilities with the best interest of the community in mind.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter stated and for other good and valuable consideration, the parties hereto agree as follows:

I. ASSOCIATION'S RESPONSIBILITIES.

The Association's responsibilities under this agreement are:

- A. The care of the Museum grounds including the garden, general housekeeping and regular minor maintenance of the interiors of all buildings to keep the interior of the Museum in good condition taking into account normal wear and tear and minor upkeep of the exterior of the buildings. "Regular minor maintenance" shall mean the set of activities that a reasonable custodian of an asset would undertake to make certain that a structure, an artifact, or a piece of equipment, remains a functional capital component of Museum operations.
- B. No later than July 1 of each year, to provide the City of Racine Director of Parks, Recreation, and Cultural Services an itemization of major maintenance needs as to the grounds, buildings, fixtures, parking lots, and all other areas within the City's responsibilities.
- C. Responsibility for salting, sanding, and snow removal of sidewalks and parking lots and building fire exits, porches, and steps.
- D. General management, maintenance, and control of fine art exhibitions.
- E. The conduct of classes and lectures or other public functions relating to fine arts.
- F. Operation of the Art Sales and Rental Gallery.
- G. Authority over scheduling of events by individuals or community groups, including the setting and collection of fees for the use of the facility, said fees to be accrued to the benefit of the Association.
- H. General authority to designate the uses to which the Museum and surrounding grounds may be put.
- I. The exercise of control over all equipment and art objects owned by the City at the Museum.
- J. Employment and compensation of all Association personnel and the payment of all Museum utilities, including the utilities associated with the parking lot lights, stormwater charges, and sewer and water charges needed to carry out the Association's responsibilities under this agreement
- K. The Association shall assume full responsibility for damage or injury to any of its personal property which may be kept in the

Museum or on the surrounding grounds during the terms of this agreement.

- L. To keep Museum and surrounding grounds open to the general public on a regular basis at such times which shall afford the general public an opportunity to have reasonable access thereto. The Association shall be authorized in this regard, however, to make such rules and regulations governing the operation thereof as may be necessary to insure an orderly operation. Notwithstanding anything else contained herein, in operating the Museum, the Association shall at all times comply with all State and Local laws and regulations relating to access to public buildings.
- M. To retain the name of Charles A. Wustum Museum of Fine Arts in its reference to the Museum and its surrounding grounds.
- N. The Association shall not deny any person the Museum's use or otherwise discriminate against any person or permit discrimination against any person or group of persons in any manner prohibited by Title VII of the Civil Rights Act of 1964 or Section 3.40.050 of the Ordinances of the City of Racine.
- O. Permit reasonable access to the Museum and surrounding grounds to the City's authorized representatives.
- P. Authority to perform such other Museum functions in keeping with the spirit of this agreement as may be necessary for the orderly operation of the Museum and surrounding grounds for the benefit of the general public. All operations shall conform to the intent of the Last Will & Testament of Jennie E. Wustum, deceased.

## II. CITY'S RESPONSIBILITIES.

The City's responsibilities under this agreement are:

- A. Responsibilities normally assumed by landlords; i.e., major maintenance of buildings, grounds, and fixtures. improvements and repairs to bring buildings and grounds, and fixtures into compliance and maintain compliance as required by Federal, State, and Local laws and regulations relating to public safety and public buildings.
- B. Responsibility for major maintenance of parking lot surfaces and lighting.
- C. The City shall not to convey, lease or otherwise allow any use of the buildings and surrounding grounds by any other persons or any entities, other than the Racine Theater Guild, without the prior written consent of the Association.

- D. All actions by the City of Racine and its employees relating to this agreement or Museum operations shall conform to the intent of the Last Will & Testament of Jennie E. Wustum, deceased.
- E. The mayor of the city of Racine shall appoint up to two members of the Association board of directors, to serve terms consistent with that of other Association directors. The mayor's appointees, who are subject to the board's approval (not to be unreasonably withheld) shall be residents of the city of Racine.

### III. FEES.

In consideration of the performance by the Association of the above described duties relating to the Museum and the surrounding grounds, the City agrees as follows:

- A. The City contribution to the Association will be \$392,000 for calendar year 2025, and then 400,000 annually, subject to such amount being budgeted and approved by the Common Council in the annual city budget. The \$400,000 or the amount approved by the Common Council in the annual city budget shall include \$350,000 in city contribution, and \$50,000 from the Wustum Trust. . The funding for the contribution made by the City to the Association under this agreement shall include all of the annual net income of the residuary trust created under the Last Will and Testament of Jennie E. Wustum, deceased. In addition to the City's annual contribution, the Association shall be permitted to have reasonable access to the proceeds of the Etta North Trust for the care, maintenance and installation of trees and shrubs on the Museum grounds.
- B. The quarterly contributions shall be made by the City during the first month of each quarter upon receipt of an invoice from the Association. Said sums shall be paid to the treasurer of the Association at an address or depository to be furnished in writing by the Association to the City Finance Director. In the event a portion of said funds is not expended during any calendar year of the terms of this agreement, said unexpended portion in that calendar year shall be returned to the City. The Association shall submit an audited financial report to the City Finance Director annually, no later than August 1 of each year, disclosing the disposition of the funds provided to it by the City under this agreement. Such audited financial report shall clearly delineate and separate expenditures as to Wustum Museum from the Association's other ventures.

### IV. TERM.

The term of this agreement shall be 5 years from and after January 1, 2025. This agreement shall be extended for one additional one year term, unless either party gives notice of termination to the other no later than December 30, 2029, as provided herein. Either party may terminate this agreement upon the giving to the other party a one-year written notice of termination. Said notice shall be served or sent by certified United States mail, postage prepaid, return receipt requested, to the other party at the address provided in this agreement.

#### V. ART.

The City has transferred custody and control of all objects of art owned by the City and located at the Museum or on the surrounding grounds to the Association, which custody and control shall continue for the term of this agreement or any renewals thereof. This transfer of custody and control shall not be construed as a transfer of any proprietary interest of said objects of art, but is intended to be a transfer for safe keeping and convenient operation by the Association. The Association agrees to accept said custody and control and further to catalog said objects and to render an accounting of them to the city from time to time as may be required by the Common Council of the City. The City agrees to maintain insurance on said objects and to pay the costs of their conservation or restoration. Notwithstanding anything else contained herein, the City must grant specific permission for any restoration before commencement of such work.

#### VI. INSURANCE AND INDEMNIFICATION.

##### A. INSURANCE:

The Association shall maintain at least the minimum insurance coverage as set forth below. It is hereby agreed and understood that the insurance required under this agreement is primary coverage and that any insurance or self-insurance maintained by the City, its elected and appointed officials, officers, employees, or authorized representatives or volunteers, and each of them, will not contribute

to a loss. All insurance shall be in full force prior to commencing work and remain in force for the term of this agreement.

## 1. GENERAL LIABILITY COVERAGE

- a. Commercial General Liability
  - (1) \$1,000,000 each occurrence limit
  - (2) \$1,000,000 personal liability and advertising injury
  - (3) \$2,000,000 general aggregate
- b. Claims made form of coverage is not acceptable.
- c. Insurance must include:
  - (1) Premises and Operations Liability
  - (2) Contractual Liability
  - (3) Personal Injury
  - (4) The general aggregate must apply separately to this project/location

## 2. BUSINESS AUTOMOBILE COVERAGE

- a. \$1,000,000 combined single limit for Bodily Injury and Property Damage each accident

Must cover liability for Symbol #1 - "Any Auto" - including Owned, Non-Owned, and Hired Automobile Liability.

## 3. WORKERS COMPENSATION AND EMPLOYERS LIABILITY

As required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.

- a. Must carry coverage for Statutory Workers Compensation, and an Employers Liability limit of:
  - (1) \$100,000 Each Accident
  - (2) \$500,000 Disease Policy Limit
  - (3) \$100,000 Disease - Each Employee

#### 4. UMBRELLA LIABILITY

If exposure exists, provide coverage at least as broad as the underlying Commercial General Liability, Automobile Liability and Employers Liability, with a minimum limit of \$2,000,000 each occurrence and \$2,000,000 aggregate, and a maximum self-insured retention of \$10,000.

#### 5. ADDITIONAL PROVISIONS

- a. Primary and Non-contributory requirement - all insurance must be primary and noncontributory to any insurance or self-insurance carried by the City.
- b. Acceptability of Insurers - Insurance is to be placed with insurers that have an A. M. *Best* rating of no less than A- and a Financial Size Category of no less than Class VII, and who are authorized as an admitted insurance company in the state of Wisconsin.
- c. Additional Insured Requirements - The following must be named as additional insureds on the General Liability and Business Automobile liability coverage arising out of this agreement:

The City of Racine, its elected and appointed officials, officers, employees, authorized representatives, and volunteers.

On the Commercial General liability Policy, the additional insured coverage must be ISO form CG 20 10 0704 or its equivalents. This does not apply to Workers Compensation Policies.

- d. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the City of Racine.
- e. Evidences of Insurance - Prior to execution of the agreement, the Contractor shall file with the City of Racine a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. In addition form CG 20 10 07 04 for ongoing work exposure and form CG 20 37 07 04 for products-completed operations exposure must also be provided or their equivalent.

#### B. INDEMNIFICATION BY ASSOCIATION:

To the fullest extent allowable by law, the Association hereby indemnifies and shall defend and hold harmless the City of Racine, its elected and appointed officials, officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the conduct of operations hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the Association or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement regardless if liability without fault is sought to be imposed on the City of Racine, the Association's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the City of Racine, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this agreement.

In any and all claims against the City of Racine, its elected and appointed officials, officers, employees or authorized representatives or volunteers by an employee of the Association, any subcontractor of the Association, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Association or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the City of Racine, its elected and appointed officials, officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in conjunction with all other indemnity provisions contained in this agreement. Any conflict or ambiguity arising between any indemnity provisions in this agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located. The Association shall reimburse the City of Racine, its elected and appointed officials, officers, employees or authorized



representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The Association's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City of Racine, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

C. INDEMNIFICATION BY CITY OF RACINE:

To the fullest extent allowable by law, the City of Racine hereby indemnifies and shall defend and hold harmless the Association, its officers, employees or authorized representatives or volunteers and each of them from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature whether arising before, during, or after completion of the conduct of operations hereunder and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive, of the City of Racine or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement regardless if liability without fault is sought to be imposed on the Association, the City of Racine's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the sole fault, sole negligence, or willful misconduct of the Association, or its elected and appointed officials, officers, employees or authorized representatives or volunteers. This indemnity provision shall survive the termination or expiration of this agreement.

In any and all claims against the Association, its officers, employees or authorized representatives or volunteers by an employee of the City of Racine, any subcontractor of the City of Racine, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the City of Racine or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts, or other employee benefit acts.

No provision of this Indemnification clause shall give rise to any duties not otherwise provided for by this agreement or by operation of law. No provision of this Indemnity clause shall be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to the Association, its officers, employees or authorized representatives or volunteers under this or any other contract. This clause is to be read in

conjunction with all other indemnity provisions contained in this agreement. Any conflict or ambiguity arising between any indemnity provisions in this agreement shall be construed in favor of indemnified parties except when such interpretation would violate the laws of the state in which the job site is located. The City of Racine shall reimburse the Association, its officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The City of Racine's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Association, its officers, employees or authorized representatives or volunteers.

#### VII. NOTICES.

All notices under this agreement shall be in writing and sent by United States mail, postage prepaid, to the following address. The City of Racine's address is City of Racine, Office of the City Clerk, 730 Washington Avenue, Racine, Wisconsin 53403. The Association's address is P.O. Box 187, Racine, Wisconsin 53401-0187. At the termination or expiration of this agreement, control and operation of the Museum shall revert to the City. The Association shall thereafter have a reasonable time within which to remove any equipment and other items of personal property which it owns.

#### VIII. MISCELLANEOUS.

Nothing in this agreement shall be construed to give the Association any authority or control over property now used by the Racine Theatre Guild. It is further agreed that the parking area lying north and adjacent to the Museum premises shall not be under the control of the Association or the Racine Theatre Guild, but shall remain under the exclusive control of the City as a public parking lot for purposes of serving patrons and visitors to the Museum and its grounds and the functions of the Racine Theatre Guild.

#### IX. SEVERABILITY.

In the event any part or portion of this agreement shall be declared invalid by a court of competent jurisdiction or is otherwise determined to be in violation of any law, it

is agreed that the balance of this agreement, exclusive of the section or portion determined to be invalid or unlawful, shall remain in full force and effect.

This agreement may not be assigned by the Association to any other person or organization without the prior approval of the City.

IN WITNESS the parties have set their hands and seals on the date first written above.

RACINE ART MUSEUM ASSOCIATION, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF RACINE

By: \_\_\_\_\_  
Cory Mason, Mayor

Attest:

By: \_\_\_\_\_  
Tara McMenamin, City Clerk

Approved as to form:

\_\_\_\_\_  
Scott R. Letteney, City Attorney

Provisions have been made to pay the liability that will accrue hereunder.

\_\_\_\_\_  
Kathleen Fisher, Finance Director