

OPERATING AGREEMENT
for
THE DETROIT INSTITUTE OF ARTS

Between

THE CITY OF DETROIT

and

**FOUNDERS SOCIETY
DETROIT INSTITUTE OF ARTS**

City Contract No. 77009

OPERATING AGREEMENT
for
THE DETROIT INSTITUTE OF ARTS

THIS AGREEMENT, made on the 12th day of December 1997 and effective as of the effective date, which is defined below, is between the City of Detroit ("*City*"), a municipal corporation organized and existing under the laws of the State of Michigan, acting by and through its Arts Commission ("*Commission*"), and Founders Society Detroit Institute of Arts ("*Society*"), a private nonprofit corporation organized and existing under the laws of the State of Michigan.

RECITALS:

1. The Detroit Institute of Arts ("*DIA*") is a unique cultural institution owned by the *City* and located therein. The *DIA* has a long and rich history. The *City* and the *Society* desire to continue to expand the tradition of excellence that exists at the *DIA*.
2. The *DIA* ranks among the leading museums in the world today because of its extensive art collections and community educational programs. The *DIA*, having a building of 600,000 square feet, is the fifth largest art museum in the United States. Each year the *DIA* hosts special exhibitions, as well as numerous community, educational and corporate events.
3. For many years, the *Commission* has contracted with the *Society* to provide services for the operation of the *DIA*. The *Society* also has provided substantial financial support and volunteer services to the *DIA*.
4. The historical contracting arrangement, however, has resulted in, among other things, dual sets of employees and personnel procedures, as well as dual administrative systems and procedures, including financial, accounting and purchasing procedures, and dual auditors.
5. The *City* desires to retain the professional services of the *Society* to provide a uniform system of management of, and fundraising for, the *DIA* so as to continue to promote and maintain the excellence of the *DIA*. The *City* shall continue to own the *City art collection*, including works of art acquired prior or subsequent to the *effective date*, as well as the *DIA's building* ("*DIA building*"), located at 5200 Woodward Avenue, Detroit, Michigan 48202, and other *DIA* properties described below.
6. The parties believe that this *agreement* for the operation of the *DIA* by the *Society* will produce (a) cost efficiencies for the *City*; (b) improved business

efficiencies and overall effectiveness of *DIA* operations; (c) improved employee morale and long-term career development opportunities for employees; (d) increased gifts of works of art to the *DIA* and increased contributions to the *Society's* endowment funds held on behalf of the *DIA*; (e) increased opportunity to secure federal, state, regional, county, *City* and other financial support; (f) an ability to respond more quickly to changing conditions, circumstances and priorities; (g) continuation and possible future expansion of the *DIA's* hours and number of open galleries; and (h) an ability to host additional special exhibitions, all of which are expected to contribute to the long-term viability and stability of the *DIA* as a first-class fine arts museum.

7. The *City* and the *Society* are parties to two existing contracts, one with a term commencing on July 1, 1994 (the "*1994 contract*") and a Deaccession Form Contract dated as of November 1, 1992 (together with the *1994 contract*, the "*contracts*"). This *agreement* between the *City* and the *Society* will supplant the *contracts* between the *City* and the *Society*, and the *Society* fully agrees to the abrogation of its *contracts* with the *City*, as set forth in Exhibit 1 hereto.
8. The Corporation Counsel of the *City* has rendered an opinion to the effect that the applicable law does not prevent the transaction embodied herein.
9. Among the purposes for which the *Society* was founded are (a) assisting the *Commission* in the operation of the *DIA*, performing such services as may be requested by the *Commission*, (b) promoting the public's interest in and knowledge of art matters by classes, lectures, exhibits and such other methods as may be thought to be appropriate to that end, and (c) soliciting, receiving and administering money, works of art and other property.
10. The *Society* is firmly committed to the goal of diversity in all ranks of its workforce.
11. Section 7-301 of the *City Charter* establishes an Arts Department, headed by the *Commission*, which consists of seven (7) members. Section 7-301 provides in part that "the arts department shall maintain and operate the Detroit Institute of Arts." The parties acknowledge the important role played by the *Commission* in overseeing the *DIA* and agree that its oversight role is not diminished by the terms of this *agreement*.

NOW THEREFORE, the *City* and the *Society* agree as follows:

G. ROLE OF THE COMMISSION

1. **Arts Commission Oversight of Agreement.** Pursuant to Section 7-301 of the *City Charter*, the Arts Department, headed by the *Commission*, shall continue to exercise its mandated responsibility for maintenance and operation of the *DIA*, and shall administer and monitor the performance by the *Society* of the *Society's* obligations, all as provided for in this *agreement*.
2. **Commission to Prescribe the Form of, Receive and Review Society's Reports.**
 - (a) The *Commission* shall prescribe the form of the reports to be submitted by the *Society* in accordance with Subsections F37 and F39, *supra*. Additionally, the *Commission* shall also receive and review the reports and financial statements submitted to it by the *Society* as required by Subsections F37 through F40, *supra*.
 - (b) The *Commission* shall also receive and review the *Society's* submissions required from time to time by this *agreement*, including those specified in Section F, *supra*.
3. **Commission May Request Additional Information.** From time to time, the *Commission* may reasonably request from the *Society* additional information concerning the operations and management of the *DIA*.
4. **Commission's Duty to Renegotiate Insurance Coverages.** Every three (3) years during the *contract term*, or at such other times as the *Commission* and the *Society* deem appropriate, the *Commission* shall negotiate in good faith with the *Society* about the requirements for the types and limits of insurance listed in Subsections F15 and F16, *supra*.
5. **Commission's Audit Rights.** Once per year, the *Commission* or its designees may audit on demand the operations and records of the *Society*, and the *Commission* or its designees may audit such operations and records at other times on which both the *Commission* and the *Society* agree.
6. **Inspection Rights.** The *Commission* or its designees may on demand conduct an annual inspection of the *City art collection* or any portion thereof specified

by the *Commission*, the *DIA building*, the *Frederick lot* and/or the *employee parking lot*, at reasonable time(s) to be arranged by mutual agreement of the *Commission* and the *Society*, but in any event to be commenced no later than fifteen (15) business days after demand is made. Additional inspections may be conducted of the *City art collection* or any specified portion thereof, the *DIA building*, the *Frederick lot* and/or the *employee parking lot* upon request by the *Commission*, at reasonable time(s) to be arranged by mutual agreement of the *Commission* and the *Society*. Neither the *Society* nor the *City* shall unreasonably request or withhold agreement as to inspections or inspection times. Such inspections shall be performed for the purposes of monitoring the status of the *City art collection*, and identifying and requesting that the following types of maintenance be performed by the *Society* with regard to the *DIA building*, the *Frederick lot* and the *employee parking lot*, subject to the availability of funding and to features of the *DIA building* that cannot be modified without incurring unreasonable expense:

- (a) maintenance reasonably necessary to correct or repair substantial structural, heating, plumbing or electrical problems; and
- (b) maintenance reasonably necessary to put the *DIA building*, the *Frederick lot* and/or the *employee parking lot* into the condition that an ordinary and reasonable owner or operator of a leading fine arts museum would maintain its museum.

The *City's* Auditor General shall have the authority to conduct audits of the *DIA properties* consistent with *City Charter* Section 4-205; the Auditor General may request additional audits in coordination with those conducted by the *Commission*, approval of which requests the *Society* shall not unreasonably withhold.

7. **Commission to Receive, Review and Approve Certain Society Policies and Amendments Thereto.** As provided in Subsection F36, *supra*, the *Commission* shall receive, review and approve certain of the *Society's* policies or amendments thereto. Based upon agreement of the *Commission* and the *Society*, the *Commission* may prescribe the establishment by the *Society* of additional policies consistent with generally recognized and generally followed state-of-the-art practices of leading fine arts museums.
8. **Commission to Receive, Review and Approve Certain Amendments to Society Articles of Incorporation and Bylaws.** The *Commission* shall receive, review and approve amendments to certain provisions of the *Society's* articles of incorporation and bylaws, as described in Subsection I2, *infra*. The *Society's* articles of incorporation and bylaws, effective as of the *effective date*, shall be

as set forth in Exhibits 13 and 14 hereto, and the *Commission* shall submit to the *City Clerk* copies of any subsequent amendments to the *Society's* articles of incorporation and bylaws that the *Commission* receives from the *Society*.

9. **Commission's Hearings.** During the two (2) year transition period after the *effective date*, and in its sole discretion, the *Commission* may require quarterly appearances of the *Society* at hearings and/or meetings with the *Society*, at which the *Society* shall report on and respond to the *Commission's* questions about the state of and operations of the *DIA*. The *Commission* shall have at least one (1) hearing during each of the two (2) years of the transition period. Thereafter, on at least an annual basis, the *Commission* shall hold a hearing at which the *Society* shall report on and respond to the *Commission's* questions about the state of and operations of the *DIA*. The *Commission* may schedule other hearings and/or meetings as it, in its sole discretion, deems necessary or desirable. The *Commission* shall establish the location of, date and time of, as well as the agenda for, any hearing. All such hearings and meetings shall be subject to the provisions of the Michigan Open Meetings Act, M.C.L. § 15.261, *et seq.*
10. **Commission to Review and Approve the Society's Director and Deputy Director of the DIA.** The *Commission* shall have the duty to receive the recommendations of the *Society* concerning candidates for the positions of the *Society's* director of the *DIA* and the *Society's* deputy director of the *DIA*, and the *Commission* and the Mayor of the *City* shall have the authority to approve or disapprove any such candidates, as provided in Subsection K7, *infra*. The *Commission* and the Mayor shall have the authority to remove the *Society's* *DIA* director or the *Society's* *DIA* deputy director but only if both the Mayor and the *Commission* determine that such director or deputy director has engaged in actions that are adverse to the best interests of the *City*, as provided in Subsection K7, *infra*.
11. **Commission to Report to the Mayor.** On at least an annual basis, the *Commission* shall report to the Mayor of the *City* as to the operations and management of the *DIA*.
12. **Commission to Evaluate Society's Services and to Provide Evaluation to the City Council and to the Society.** On an annual basis, the *Commission* shall evaluate the services provided by the *Society* under this *agreement* for the preceding year and shall provide a copy of such evaluation to the *City Council* and to the *Society*.

ARTICLE 7
THE EXECUTIVE BRANCH:
PROGRAMS, SERVICES and ACTIVITIES

CHAPTER 3. ARTS

Sec. 7-301. Department.

The arts department is headed by a seven (7) member commission. The members of the commission shall be appointed by and serve at the pleasure of the mayor.

The term of membership on the commission is four (4) years, and not more than two (2) members' terms expire each year.

The commission shall appoint, with approval of the mayor, the arts director and a deputy arts director. The director and the deputy director serve at the pleasure of the commission.

The arts department shall maintain and operate the Detroit Institute of Arts

Note: Since the entire Arts Commission is being re-constituted at this time, the terms should be staggered.

ARTS COMMISSION

Seven (7) members appointed by the Mayor to four (4) year term.

Applicable Removal Provisions

Serves at the pleasure of the Mayor. Charter 7-301

Bylaws

No bylaws; applicable provisions of Operating Agreement for the Detroit Institute of Arts attached

Applicable or Related Ordinances or Statutes

Charter Article 7, Chapter 3

EOP Sec 60

Current Description of Agency

Maintain and operate the Detroit Institute of Arts